Environmental Law and Policy: ENVS 450.02
Spring, 2015
San Francisco State University
Tuesday 7:00-9:45 pm

Instructor: Brent Plater, bplater@sfsu.edu, 415-405-0326

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Office Hours: Tuesday 3:00pm – 4:00pm HSS 332

Required Reading: Environmental Law and Policy: Nature, Law, and Society (Fourth Edition), Plater et al. In addition to the required text, supplemental materials may be assigned. These materials will be made available during the semester.

Course Overview

The primary purpose of this course is to provide students with an introduction to environmental law, legislation, and policy. The secondary purpose is to give students insight into how environmental lawyers think, write, and persuade. The course will begin by introducing basic environmental principles and exploring the limits of human nature in dealing with environmental degradation. We will then study environmental law from several perspectives, primarily through the examination of famous (and infamous) court decisions, environmental statutes, and everyday scenarios that illustrate the intricacies of environmental law.

It is assumed that students in this course have no background in legal studies, but do understand environmental issues. Nonetheless, all information students must know in order to meet the course expectations will be introduced and thoroughly discussed in class and/or through required readings.

Students are encouraged to ask questions in class and provide feedback regarding the course of the course, as it were. Adjustments in the course structure may be made as deemed necessary.

To help students learn legal jargon and technical terms, the TAs will post jargon resources on the iLearn site that students can reference. Students may also post words they don't understand and get definitions by emailing the class or your instructor and TA.

Since the class is practically three hours long, a small break will be given every hour or so. We hope you will enjoy the class as much as we enjoy teaching it.
Course Objectives

If we successfully teach and you successfully take this course, you will:

1. Understand the structure of the U.S. legal system, including a fairly detailed understanding of the federal court system and structure.
2. Understand how an environmental dispute is turned into a legal claim, and the various steps in the judicial process for resolving that legal claim, including appeals to higher courts.
3. Understand several different theories or approaches lawyers, legal theorists, and judges use to bring, critique, or decide cases.
4. Learn how to find, read, analyze, and critique judicial opinions.
5. Understand the constitutional constraints on crafting federal environmental laws.
6. Learn about the role administrative agencies play in interpreting and adapting laws passed by Congress through agency rulemaking and adjudication.
7. Learn about the “common law,” its strengths and weaknesses for resolving environmental disputes, the consequences various “tort reform” measures may have on environmental lawsuits, and the common law’s influence on environmental statutes.
8. Learn the structural approach taken by several federal environmental statutes, and their most important operative sections.
9. Learn how to think and write clearly, and how to use your thinking and writing skills when addressing legal questions or working with lawyers.
10. Learn how to apply the lessons from past legal cases to predict outcomes in new (future) factual circumstances.
11. Learn the definition of many specialized legal words.

Favorite Legal Stimulant Program

Due to the schedule and length of each class period, it is anticipated that students may, from time to time, become drowsy or inattentive, despite our best efforts to remain simultaneously entertaining and informative. To combat this unfortunate state of affairs, we will institute a “Favorite Legal Stimulant” program during this course. Under this program, a volunteer (or two) will bring their favorite legal stimulant to class in quantities abundant enough to share with the entire class for the duration of the lecture. For example, a few pounds of chocolate covered espresso beans would be appropriate.

Because this class is open to freshman (who may not yet be of age), because bringing such substances to class would violate school policy, and because alcohol is a depressant, not a stimulant, nicotine and alcohol, in addition to all other substances regulated by applicable law, will not be considered legal for the purposes of this program.
Expectations and Grading

We believe that the process of engaging difficult material is an important exercise, and the value of that exercise often remains with students long after the content of the course material has been forgotten. For these reasons we’ve designed a difficult course. However, the course is graded on a curve. Thus, it is possible that a 60% score on a quiz may deserve an “A,” based on the overall difficulty of the quiz and the standing of your peers. The point is that low raw numbers do not necessarily equate with low grades in this course: if you engage the material and the course, there is a high probability that you will succeed. Conversely, if you are looking for a way to tune-out on your Tuesday evenings, this is probably not the course for you. Furthermore, it is the students’ responsibility to regularly check grades on iLearn.

Students are expected to abide by the school honor code. Anyone caught signing-in another student on attendance sheets will be penalized. Anyone directing another student to sign them in despite their absence will also be penalized. Cheating on quizzes and/or the final exam will not be tolerated. It is disrespectful to us and to your fellow students, and will be punished swiftly and severely.

You will be graded according to the following criteria:

| Class participation:                      | 10% |
| Case presentation:                        | 10% |
| Case briefings:                           | 10% |
| Mid-term exam:                            | 10% |
| Draft annotated paper outline:            | 15% |
| Final paper:                              | 25% |
| Final exam:                               | 20% |

We intend to grade you on these criteria as follows:

Class Participation: Your class participation grade will be based on your attendance and the quality and quantity of your class conduct.

Class attendance is required. If you have more than 2 unexcused absences in the semester, you may not pass the course, regardless of how well you score on other class requirements. We will be keeping track of attendance in every class.

Class participation grades will be enhanced greatly by completing the required reading assignments for each class, and by remembering that our time together is a commons, subject to enhancement (or degradation) by individuals to the benefit (or detriment) of the whole. A portion of your class participation will be based on keeping pace with the reading assignments: your pace will be evident by your engagement in the course. Another portion of your class participation grade will be based on in-class questions students will be required to answer, in writing, in randomly assigned teams of 2-3 students every week. Questions will be related to the week's topics, and should take no more than 10 or so minutes to answer.
We will call on students randomly to answer questions in the Socratic tradition: providing informed, thoughtful answers to these questions, even if they aren’t necessarily correct, will also bolster your class participation grade. Unless you proffer some other explanation, repeatedly failing to answer these questions when randomly called upon will reduce your class participation grade.

Off-topic questions will be held till the end of class, to avoid disrupting the flow of lecture. Keep your cell phones etc. inaudible during class.

**Case Hypothetical Presentation:** Each student will work in a group to debate a hypothetical legal dispute in class against another student group. One team will present a “pro” argument—acting essentially as plaintiffs’ attorneys—and the other team a “con” argument, i.e., acting like defense attorneys. The issue will be based on a brief fact pattern and case statement prepared by us, but students will be required to do additional research beyond the fact pattern to formulate their arguments. **Before you present you must submit to Yin an email with at least two cases or statutes that you intend to reference.** Failure to do so will result in a deduction from your grade on this assignment.

Each side will be given 5 minutes to present, and then there will be 5 minutes of Q&A from ½ of the remaining class, who will act as district court judges and determine which argument was more persuasive, and explain why. The losing side will then appeal to the *other half of the class.* The losing side will have 2 minutes to make its most important points regarding the district court’s error, and the winning side will have 1 minute to encourage a rejection of the appeal. The appeal judges will then have 3 minutes to decide whether to accept or reject the appeal. **Each judge (that is, every student who is NOT presenting that day) must submit to Yin an email with at least two questions for the presenting parties that they will want answered during the presentation.** Failure to do so will result in a deduction from your grade on this assignment.

A strong case presentation will frame the issue, describe the legal, moral, or other strengths of your argument, address counter-arguments, and flow logically and smoothly from point to point. Yin will help you prepare for this assignment.

**Case Briefings:** Nearly every week you will be required to “brief” one legal case from the readings. A copy of your brief will be due to Yin before each class. We will explain how to brief a case by working through both the *Meints* and the *Boomer* decisions with you during the first and second weeks of class, respectively. This will be much more helpful to you if you read and attempt to brief *Meints* and *Boomer* before class. We strongly suggest that you read through each case first before going back and reading it a second time to start your brief.

**Draft Annotated Paper Outline and Final In-depth Paper:** Each student will be required to write an in-depth persuasive essay/argument (approximately 4,000 words, roughly 8-10 single-spaced pages) about a contemporary environmental policy or legal issue. This assignment requires that you (1) have your paper topic approved, preferably during office hours and with a follow-up email; (2) submit an annotated outline, and (3) turn in a final paper. Review the in-depth instructions about this assignment, provided separately, as soon as possible.
Your paper topic must be selected and approved by us on or before **February 24th**. You MUST SUBMIT THE OUTLINE USING TURNIT IN ON ILEARN on or before 11:59:59 p.m. **April 7th.** An example of a good and not so good draft annotated outline is provided on iLearn. Your final paper is due on or before 11:59:59 p.m. **April 28th.** YOU MUST SUBMIT THE FINAL PAPER USING TURNIT IN ON ILEARN. A template for a good final paper is available on iLearn; we will provide more details later in the semester.

**Mid-term Examination:** The mid-term will cover approximately seven weeks of course material. The mid-term will consist of multiple-choice, true/false, and short answer questions. It will probably look similar to many other undergraduate and K-12 examinations you have taken. Anything covered in class or in the readings—regardless of whether the reading was covered during lecture—is fair game for the exam. It is a closed-book examination.

Our mid-term questions are not tricks. They are designed, to the best of our ability, to help us understand whether we have successfully helped you comprehend the course materials. Nonetheless, sometimes we write questions that an unusually high number of students fail to answer correctly. When that happens, it is usually because (a) we failed to teach you something we thought we taught you; (b) you failed to learn something you should have learned, or (c) the question was unfair. If you prove to us the question was unfair—i.e. a true/false question could be correctly answered as true or false, or more than one answer to a multiple choice question was a correct answer—we will probably give the entire class an extra point on the mid-term. Make a strong argument that our teaching was flawed, and you will likewise all be rewarded. The mid-term exam will be on **March 17th.**

**Final Examination:** According to Academic Senate policy F76-12 a time period is set aside at the end of each semester for a formal examination period. All classes are expected to meet during the final examination period whether an examination is given or not. The final examination schedule is published each semester in the **Class Schedule.** The final exam for this class will be a traditional law school exam, consisting of essay questions that require you to spot relevant facts and analyze these facts using legal concepts taught in the course. The final exam will be cumulative, but it will be “open book”: you may bring your textbook, your notes, and some other reference materials and use them during the exam. The exam will require you to write clearly and persuasively in a time-stressed environment. Details will be provided later in the semester. **The final exam will be on Tuesday, May 19th at 7:00pm – 9:45pm in our normal classroom.** Anything covered in the readings and/or covered in class, is fair game for the exams. Do not presume that a topic assigned in the reading but ignored in class will not be tested.

**EXTRA CREDIT - Public Comment:** Every week dozens of government bodies hold public hearings on environmental issues. These hearings nearly always have opportunities for the public to comment on the decision; typically the time allotted for such comments is between one and three minutes. Each student in this course may obtain extra credit by (1) attending a public hearing on an environmental issue of the student’s choice, and (2) providing informed oral comments to the government agency about the issue. The comments should be persuasive: you must conduct research on the issue, determine how best to resolve the issue, and then support your position with reasoned analysis and relevant facts. During the next class after delivering
your comments (or as soon thereafter as we can schedule it), you will be given five minutes of class time to describe the issue to your fellow students, describe the forum where you spoke, deliver your comments to your student audience verbatim, and then field questions and feedback from your students about your public comment. A maximum of 7.5 extra credit points may be awarded for this exercise, but the maximum amount will decrease as the semester progresses thusly: if you are prepared to present your comments to your students during our first class, you are eligible for 7.5 points; if you are ready only by the second class, you are eligible for 7 points; the third class, 6.5 points; etc. If you wish to attend a hearing that is late in the semester without a reduction in points, email Yin in advance with the details of the hearing and a copy of the comment you intend to give. We will reserve for you the appropriate number of points based on your reservation date, which you will be awarded after you have attended the hearing and given your presentation.

Graduate Writing Assessment Requirement: In order to use this course to satisfy the GWAR requirement, you must pass the course with a C grade or better. Furthermore, you must pass English 214 with a C- grade or better to use this course as your GWAR credit. Please also review the instructions for the draft annotated paper outline and final paper for further GWAR credit requirements.

College of Health and Human Services Disclaimers

CHSS Withdrawal Policy: The last day to drop a class is February 6, 2015 until 11:59pm. Starting February 7 – April 24, 2015 you must submit a withdrawal petition. Withdrawal from a class starting February 7, 2015 will be considered for serious and compelling reasons only and must have accompanying documentation. The following reasons are not considered serious and compelling: Changing your major, poor performance, class not required for graduation/major, or more time needed for other classes. If you wish to withdraw from class due to unexpected changes in your work schedule, illness or family emergencies, documentation will be required, along with a copy of unofficial transcripts. Submit your petition within a reasonable timeframe (e.g., within 2 weeks of a change in work hours.) From April 25 – May 15, 2015 you may not withdraw from a class or the University, except in the case of a serious documented illness or verified accident. Please refer to the following website for further information on withdrawal policies: https://chss.sfsu.edu/advising/

CR/NC Option: The last day to request CR/NC option is March 20, 2015 until 11:59pm. The Associate Dean will not approve requests for changes if you miss this deadline.

Late Add Policy: The period to add classes via permit numbers is January 26 – February 6, 2015. The period to add classes by Exception is February 7 – February 20, 2015. It is your responsibility to procure a late permit number from your instructor and add the class. Faculty cannot add you into a class. Starting February 21, 2015, a Waiver of College Regulations form must be signed by your instructor, Chair and CHSS Associate Dean to add. This will be approved only if there was an administrative error.

Check your registration through SF State Gateway: Sign up for CR/NC, drop and add classes by the appropriate deadline online through SF State Gateway. ALWAYS check your registration after making any changes and BEFORE deadlines to be sure you are registered properly for your classes. Deadlines for all registration procedures, including withdrawals and requests for credit/no credit, are listed in the class schedule and will be strictly adhered to by the instructor, the Department Chair and the Associate Dean of College of Health & Social Sciences. It is ALWAYS the student’s responsibility to ensure their schedule is correct, even if the instructor indicates they will drop you. This can be viewed on the Registration Calendar at the following website: http://www.sfsu.edu/~admisrec/reg/regsched.html

Disability Programs and Resource Center: Students with disabilities who need reasonable accommodations are encouraged to contact the instructor. The Disability Programs and Resource Center (DPRC) is available to facilitate the reasonable accommodations process. The DPRC, located in SSB 110, can be reached by telephone at 415-338-2472 (voice/TTY) or by e-mail at dprc@sfsu.edu.
Syllabus
This syllabus may be modified during the course of the semester.

1. January 27 - Administrative Matters; Introduction to Science, Ethics, and Law; Intro to Briefing Cases
   iLearn File: Briefing Cases
   iLearn File: Introduction to American Law
   iLearn File: Introduction to Judicial Opinions, and brief the case Meints v. Huntington
   found in this reading.

2. February 3 - The Nature of the Common Law
   Suggested Reading: pp. 79-82
   Suggested Reading: pp. 100-101
   pp. 95-96: Negligence

3. February 10 - Common Law, Causation, Damages, and Relief; Paper Topic Class.
   Suggested Reading: pp. 108-109
   pp. 120-128: Punitive Damages: Exxon Shipping Company v. Baker
   Suggested Reading: pp. 128-130
   Read Handout: Topic Selection, Outline And Final Paper Instructions

4. February 17 - Constitutional Law: Federalism, Preemption, Takings, and Hapless Toads
   pp. 270-277: Preemption of State Law
   iLearn File: San Luis & Delta-Mendota Water District v. Salazar Brief Due: Salazar.
   pp. 891-900: Eminent Domain and Physical Takings
   pp. 904-905: Introduction to Regulatory Takings
   pp. 917-920: The Supreme Court’s Takings Jurisprudence

5. February 24 - Administrative Law and the National Environmental Policy Act; Deadline for Paper Topic Approval (5 points of your final grade)
   pp. 217-227: Administrative Law in a Nutshell
   pp. 227-233: Judicial Review: Citizens to Preserve Overton Park, Inc. v. Volpe
   Suggested Reading: pp. 233-238
   Suggested Reading: pp. 339-340
   Suggested Reading: pp. 262-266

6. March 3 - The Clean Water Act
   pp. 530-531: CWA: U.S. Environmental Protection Agency v. California
   Suggested reading: pp. 531-539
   Suggested Reading: pp. 544-551
   Suggested Reading: pp. 523-529: The Basics of the Clean Water Act
7. March 10 - The Clean Air Act
   pp. 465-481: Clean Air Act: *Whitman v. American Trucking Association* Brief due:
   *Whitman.*
   Suggested Reading: pp. 502-503

8. March 17- Mid-term Exam; Persuasive Writing and Outline Class; BEFORE CLASS
   SUBMIT FIVE SUGGESTIONS TO IMPROVE SAMPLE OUTLINES POSTED ON iLEARN
   iLearn File: The Process of Writing
   iLearn File: Effective Style
   iLearn File: Developing Persuasive Arguments

SPRING BREAK – MARCH 23 - MARCH 28: NO CLASS

CEASAR CHAVEZ DAY – MARCH 31: NO CLASS

9. April 7 - Superfund and the Resource Conservation Recovery Act; Draft Annotated
   Paper Outline Due
   pp. 692-693: CERCLA: United States v. Wade (Wade II)
   pp. 751-761: RCRA's Cradle to Grave Regulatory Framework
   pp. 679-691: Liability Strategies and Superfund
   pp. 702-707: Who’s Liable?

10. April 14- Environmental Justice & Law
    iLearn File: History of the EJ Movement
    iLearn File: Principles of EJ
    iLearn File: Caste from the Past
    iLearn File: Environmental Justice Litigation: Another Stone in David’s Sling
    iLearn File: *South Camden Citizens v. New Jersey* Brief Due: Jersey.
    NEPA Hypothetical Case Presentation

11. April 21 - Protecting Public Lands: Federal Planning Statutes, the Public Trust
    Doctrine, and the Property Clause.
    pp. 866: Public Trust Doctrine: *Marks v. Whitney*
    pp. 870-875: Public Trust Doctrine: *Mono Lake Decision Brief due: Mono Lake.*
    Suggested Reading: pp. 416-419
    Suggested Reading: pp. 400-403
    CWA Hypothetical Case Presentation
12. April 28 - National Parks; Final Paper Due (see syllabus above)
   iLearn File: Bicycle Trails v. Babbitt
   iLearn File: Fort Funston Dog Walkers v. Babbitt
   iLearn File: Excerpt from Leash Law Petition

13. May 5 - The Endangered Species Act
    Suggested Reading: pp. 433-440
    Suggested Reading: pp. 445-446
    CERCLA Hypothetical Case Presentation

14. May 12- Wetlands, Zoning, and International Law

    pp. 368-370: Section 404 of CWA: Bersani v. U.S. Environmental Protection Agency
    Suggested Reading: pp. 370-374
    pp. 360-368, 379-382: Planning, Zoning, and Smart Growth
    pp. 933-937: International Law: Trail Smelter Arbitration (United States v. Canada)
    Brief due: Trail Smelter.
    Suggested Reading: pp. 937-939
    Suggested Reading: Climate Change pp. 963-975
    pp. 482-484: Greenhouse Gas Regulation: Massachusetts v U.S. Environmental Protection Agency
    Suggested Reading: pp. 484-487
    ESA Hypothetical Case Presentation

16. Final Exam - Tuesday, May 19th at 7:00pm – 9:45pm