Vermont Law School
Spring 2021

WATER RESOURCES LAW

Tuesday and Thursday, 9:55 a.m. to 11:10 a.m.

SYLLABUS

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Introduction to the Course

Welcome to Water Resources.

My name. My name is John and that is what I like to be called. No need to try Echeverria or to call me “Professor” or “Sir.”

Office Hours. I welcome speaking out of class with students, both to offer any assistance I can and to get feedback on the course. I will hold office hours this term via TEAMS at mutually convenient times. I am generally free in the afternoons after 1:00 p.m.

Reaching Me. My e-mail address is JEcheverria@vermontlaw.edu.

Course Materials. The case book is Thompson et al., Legal Control of Water Resources (6th ed. 2018). There are also assigned supplementary course materials, which I have posted on the course TWEN site.

Exam. There will be a traditional four-hour, “in-class” examination, consisting entirely or mostly of short essay questions. The exam score will count for 90% of the final grade. Details to follow.

Quizzes. There will be three brief, in-class quizzes during the course of the semester. Grades on all of the quizzes will count for 10% of the final grade.

Class Participation. The final grade in the class will be determined in most instances by the exam score and quiz results. Active class participation is expected from all, and the level of participation will not normally factor into the final grade. However, grades will be raised slightly to reflect exceptional contributions to the classroom discussion, especially if there is a significant divergence between the classroom contribution and the exam score. Thus, a student who is a stellar participant in class, but scores less impressively on the exam, might receive a grade that is one level higher than the grade as determined by the exam and quizzes (for example, B+ instead of B).

Essential Background. Prior to the first class, please read pp. vii-ix and 1 to 25 in the text.

Study Aids. The only materials you need to read are the Thompson casebook and the assigned materials on the TWEN site. You might find it helpful, as a supplement, to dip into Sandra Zellmer and Adell Amos, Water Law in a Nutshell (6th ed. 2021).
Power Points on TWEN. I will store all the class power points on the TWEN site. I generally will post a power point to TWEN the day before the class.

Attendance. Every student is expected to attend every class, unless he or she has a valid excuse for missing a class (religious observance, serious illness, personal emergency, or a reason that is otherwise adequate in my judgment). Absence from class will affect performance on the class quizzes and the final exam and, therefore, will affect a student’s grade. The academic regulations specify penalties for excessive absences from class.

Learning Outcomes. This is summary of the main course outcomes (knowledge, skills) that a student should attain as a result of taking this course:

- The student should be able to describe the fundamental elements of the different surface water allocation regimes recognized in the United States.
- The student should be able to describe the fundamental elements of the different groundwater allocation regimes recognized in the United States.
- The student should be able to apply the basic rules governing surface water and groundwater use in order to resolve practical conflicts over access to water.
- The student should be able to describe the fundamental elements of the different legal regimes governing drainage waters recognized in the United States.
- The student should be able to describe the scope and characteristics of different public rights in water, including the public trust doctrine and the law of navigability.
- The student should be able to describe and apply basic principles of takings doctrine as they apply to government management of water resources.
- The student should be able to identify and describe the federalism issues associated with water management in the United States.
- The student should be able to describe the scope and characteristics of water rights associated with different types of federal public lands.
- The student should be able to identify the basic rules governing Native American water rights.
- The student should be able to describe and apply in at least a conceptual way the primary provisions of the Clean Water Act.
- The student should gain an appreciation of the increasing scarcity of usable water resources due to population growth, climate change, pollution, and social injustice.
- The student should be able to identify the likely implications of climate change for the future condition and uses of water resources law in the United States.
Scheduled Class Readings and Discussion (subject to change)

1. Riparianism: Basic Tenets
   
   Restatement (Second) of Torts

2. Riparianism: Historical Evolution of Riparian Doctrine

   Martin v. Bigelow
   Snow v. Parsons
   Pyle v. Gilbert


   Thompson v. Enz
   Anderson v. Bell
   Argyelan v. Haviland

4. Prior Appropriation: Basic Tenets

   In the Matter of a Certain Petition for Adjudication of Rights to the Use of Water


   Coffin v. Left Hand Ditch
   Lux v. Haggin

6. Prior Appropriation: Modern Administration

   Shokal v. Dunn

7. Modern Riparianism

   Model Water Code
   Marion County v. Greene
   Vermont Surface Water Diversion and Transfer Study Group Report

   Martin v. City of Linden
   Katz v. Walkinshaw
   Cline v. American Aggregates Corp.


   Harloff v. City of Sarasota
   Edwards Aquifer Authority v. Day


    Central Delta Water Agency v. SWRCB
    Empire Water & Power Co. v. Cascade Town Co.
    State Department of Ecology v. Grimes
    Imperial Irrigation District: Alleged Waste and Unreasonable Use of Water


    Glass v. Goeckel
    Marks v. Whitney
    National Audubon Society v. Superior Court

12. Takings & Water Rights 387-396, TWEN

    United States v. SWRCB
    Klamath Irrigation District v. United States (ultimately resolved on other grounds)
    Arkansas Game & Fish Comm’n v. United States


    PPL Montana, LLC v. Montana


    United States v. Willow River Power Co.
    Arkansas v. McIlroy
    Bott v. Michigan Dep’t of Nat. Res.

15. Evolving Federal Water Development Policy 125-135, 762-768, TWEN
In re MDL-1824 Tri-State Water Rights Litigation
FERC Dam Decommissioning Policy

16. Water and Federalism 739-745, TWEN
   Rapanos v. United States
   WOTUS Rule

17. Interstate Water Management; Part I 897-918, 958-62
   Bean v. Morris
   Colorado v. New Mexico (I & II)

18. Interstate Water Management; Part II TWEN
   Florida v. Georgia I
   Florida v. Georgia II
   Mississippi v. Tennessee

19. Interstate Water Management: part III 931-36; 938-949; 967-978
   Kansas v. Nebraska
   Sporhase v. Nebraska

20. The Colorado River Basin: Part I 1000- 1038
   Arizona v. California

21. The Colorado River Basin: Part II TWEN

22. Federal Reserved Water Rights: Basic Tenets 1039-1058
   Winters v. United States
   Arizona v. California
   Cappaert v. United States

   United States v. New Mexico

24. Indian Reserved Rights 1096-1114; 1116-18; 1121-1129; TWEN
   In re Adjudication of the Big Horn River System
   Colville Confederated Tribes v. Walton
Klamath (aka Baley) Decision (skim)

25. Water Protection under the Clean Water Act: Part I 1155-1174; TWEN 1182-84 (notes 2, 3 & 5)

South Florida Water Management District v. Miccosukee Tribe
Catskill Mountains Chapter of TU v. EPA

26. Water Protection under the Clean Water Act: Part II 1185-1190; 1194 - 1209; TWEN

City of Thornton v. Bijou Irrigation Co.
PUD No. 1 v. Washington Dept. of Ecology
County of Maui v. Hawaii Wildlife Fund

27. Access to Water as a Human Right/Equity Issues TWEN

Sultana, “Water Justice: Why It Matters and How to Achieve It”
Willis, “The Hidden Racial Inequities of Access to Water in America”
“Our Right to Water”
‘Tapping Water Markets”

28. Climate Change and Water Law TWEN

TBD