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Excerpt from “The Piedmont Project at Emory University” by Peggy Barlett and Arri Eisen, in, *Teaching Sustainability at Universities: Toward Curriculum Greening*. 2002 Walter Leal Filho, editor. Frankfurt: Peter Lang.

“Public Lands & Natural Resources” (Prof. Marc Miller, Emory School of Law)

This new course connects a set of disparate laws, policies, battles, and histories that relate to public lands, waters (and the organisms and objects on them) and natural resources. His syllabus outlines the range of ways in which the study of law intersects with larger environmental issues:

But even a first effort simply to define the scope of this course runs into barriers. Which resources are considered “natural” depends on a person’s conception of nature. The notion of what is a “resource” is also subjective and contextual. Do we mean only physical objects (animals, minerals, water), or only those objects for which there is market? And if so, must it be a “real” or functioning market? Or do we include as resources qualities of land (silence, isolation, vastness, lack of human presence or control, wildness) or qualities of life forms (native over invasive; genetically varied over genetically uniform; genetically evolved over genetically engineered)?

The volume of materials, issues and laws leads to a very important point about the entire course: it is critical to see the forest and not get caught in the trees (perhaps this saying applies more literally here than for most classes). There are a handful of core themes throughout the course....

The first major theme explores basic questions of value and allocation of resources. What is the best or wisest use of the public lands and natural resources? Whose resources are they – who is the “public” in public lands? How do the answers to these questions change over time and space? Are these questions mainly concerned with identifying the costs and benefits of various uses of lands and natural resources, and if so, have we properly included the full range in both columns? Or are there other choices and responsibilities regarding public lands and resources that fit poorly or not at all within any kind of utilitarian calculus? Complex “answers” that lurk in the materials include the ideas of “multiple use” and “ecosystem management.” One particular “hot” answer to this set of questions is that public lands and natural resources should be used “sustainably,” or, in the most widely used formulation, for “sustainable development.”

We will spend significant time trying to give these ideas meaning with help from a number of texts, including Timothy Flannery’s *The Future Eaters: an*

Ecological History of the Australian Lands and People, McDaniel and Gowdy's Paradise for Sale: a Parable of Nature, the Bruntland Report, Our Common Future: The World Commission on the Environment and Development, Restoring and Inventing Landscapes, and Harrison's Constructing Sustainable Development.

PUBLIC LANDS & NATURAL RESOURCES

SYLLABUS FALL 2001

This syllabus includes a description of the class in addition to the particular class assignments for the whole semester. The length and detail of this syllabus reflect an effort to provide an overview that will be useful throughout the class, a clear statement of my expectations, and sufficient detail to allow you to adjust your workload in light of other classes and commitments during the semester.

Overview

* **Subject:** The Public Lands and Natural Resources (PLNR) class addresses a wide range of issues related to the law, policy and science regarding public lands and natural resources in the United States. Materials include a casebook along with substantial additional readings and a few case studies.

* **Timing:** The class meets Mondays and Wednesdays from 1:30-2:45 p.m. in room _____. The class is a 3 credit hour course: there will be occasional additional sessions, sometimes on Friday or Saturday, where we will confront lands and resources issues in special projects and outside the classroom.

* **Grading.** Grades will be based on three projects:

1. A 10-15 page (double spaced) analytic paper (draft due Monday, November 19, 2001). You will be required to present this paper in class. Use of Powerpoint or other visual presentation tools is strongly encouraged. (80%)
2. A small creative project. (10%)
3. A written critique of another student's draft analytic paper (minimum 3 double spaced pages; due Wednesday, November 28, 2001). (10%)

* **Attendance.** This class will succeed based on the quality of the class discussion. Good discussion requires regular attendance, preparation and participation. Unacceptable attendance, preparation or participation may affect your grade.

What This Course Covers

This class ties together a set of disparate laws, policies, battles and histories tied together, if at all, because they relate to (mostly) public lands (and waters, and the organisms and objects on those lands and waters) and (mostly) natural resources.

But even a first effort simply to define the scope of this course runs into barriers. Which resources are considered “natural” depends on a person’s conception of nature. The notion of what is a “resource” is also subjective and contextual. Do we mean only physical objects (animals, minerals, water), or only those objects for which there is market (and if so, must it be a “real” or functioning market?), or do we include qualities of land (silence, isolation, vastness, lack of human presence or control – wildness), or qualities of life (native over invasive; genetically varied over genetically uniform; genetically evolved over genetically engineered)?

No public lands or natural resources course was taught at Emory for some time, and neither course has ever been a regular part of the Emory curriculum. At the same time, public lands and natural resources courses are a common part of law school curricula throughout the country. Indeed, at schools with well-developed lands programs, especially at some Western schools, it is not uncommon for there to be an extensive series of courses covering in vastly greater depth some of the issues touched on in this course (water law; mineral and gas law; fisheries laws; jurisprudential courses on the nature of property), and some issues which we do not study much at all (oil and gas law; fresh water fisheries; the law of ski resort and other recreation areas).

At Emory, all students are given some introduction to basic concepts of property and ownership in the first year property course, perhaps some initial exposure to notions of environmental harm in torts or a legal “methods” course, and some exposure to relevant concepts of federalism and possible limits on federal policymaking in first year constitutional law. Advanced classes with connection to this course include administrative law, land use, state and local government, and more recently a course in law and biodiversity and a new seminar on devolution. Emory has occasionally offered a course in water law – one key natural resource. A special recent addition to the curriculum is the Turner Environmental Law Clinic – the first internal law clinic at Emory for almost 30 years – along with an associated environmental litigation course.

Where does this public lands and natural resources course fit in this curricular array?

This course focuses largely on public (government) lands, and indeed mostly on federal government lands. This might sound like too narrow a focus for a law school course, but somewhere around a third (now a little less) of all U.S. lands are under the control of the federal government, and another substantial portion of U.S. lands are under the control of states. The natural resources touched on in this course have humongous economic impacts and profound ecological, philosophical, and historical dimensions. The real surprise may not be that the course is being taught, but that it has not been taught in a while, and is taught as a single, quick-paced survey course.

Insert chart and map
of federal public
lands here.

One reason that a lands and natural resources course may be taught less often at Emory and at eastern law schools generally is that most public lands and many of the resources are located in the west. Take a look at the chart of public lands in the U.S. (from p. 13 of the textbook). In which states do you think the public lands course is a central part of the curriculum? Where might the issues and areas addressed in this course seem (at least at first glance) less necessary to basic legal practice?

One of our challenges will be to look at public lands and natural resources in the context of Georgia and the Southeast. Again and again you will see cases and materials from the west. The west is a grand place. It is where I grew up, and in many ways it is still my home, and one of the many reasons I wanted to teach this course is to share some very central (defining) aspects of that home with you. But Georgia and the southeast are our residence (and may be your home), and so we should work to explore these issues in a national context. We will ask, when we can, about lands and resources East of the 100th meridian.

By focusing on the tension between (U.S.) east and (U.S.) west, you may already get the sense of two dimensions of public lands and natural resources not addressed in this course: international and comparative dimensions. There are many interesting international resource issues, including international and non-U.S. efforts to protect endangered species (e.g., CITES; CAMPFIRE; tiger programs) and places (e.g., Antarctica). You are welcome to explore international and comparative topics in your papers, but it will be more than enough of a challenge to get our minds around the many topics and theoretical dimensions of U.S. lands and resources law, and we will only occasionally venture as a group into international natural resources territory.

Course Materials

I have assigned a very good book on federal public land law – Coggins, Wilkinson & Leshy, Eds., *FEDERAL PUBLIC LAND AND RESOURCES LAW* (2001) (4th Ed.). The book's greatest strength is its wide and detailed coverage of federal public land law, including very good historical materials. But as good as this book is, it does not address all of the topics central to even this short course.

A number of PLNR teachers have put together their own course materials. Often those courses rely on a rich and complex theoretical literature about different conceptions of property and the public good, and political and economic theories about the use, preservation and regulation of lands and resources. Other courses emphasize the frequent jumble of law, policy and science that make actual lands and resource conflicts the subject of both front-page news and frequent litigation. These policy oriented courses often include a larger number of trial and lower appellate court decisions and increasingly make use of extensive case studies that place students into the middle of legal disputes and demand different sorts of analytical and problem-solving skills than the all-too-familiar skill of reading a high appellate court decision.

Our course will try and mix these different perspectives. I have assigned selected readings from Coggins, Wilkinson and Leshy to provide a basic historical and legal framework. I have added many supplemental readings that provide a more theoretical dimension. (This field

provides such great stories and so much law that it is hard, sometimes, to stop and look for the deeper themes and lessons). I have also included several case studies so that we can wrestle, occasionally, with the dynamics of problem solving when theoretical rubber meets the forests, fish and other metaphorical resource roads.

The volume of materials, issues and laws leads to a very important point about the entire course: it is critical to see the forest and not get caught in the trees (perhaps this saying applies more literally here than for most classes). There are a handful of core themes we should look for in all of the materials.

The first major theme explores basic questions of value and allocation of resources. What is the best or wisest use of the public lands and natural resources? Whose resources are they – who is the “public” in public lands? How do the answers to these questions change over time and space? Are these questions mainly concerned with identifying the costs and benefits of various uses of lands and natural resources, and if so, have we properly included the full range in both columns? Or are there other choices and responsibilities with respect to public lands and resources that fit poorly or not at all within any kind of utilitarian calculus? Complex “answers” that lurk in the materials include the ideas of “multiple use” and “ecosystem management.” One particular “hot” answer to this set of questions is that public lands and natural resources should be used “sustainably,” or, in the most widely used formulation, for “sustainable development.” We will spend several days trying to give these ideas meaning.

A second rich branch of literature addresses such questions as whether and when different forms of private and public ownership and different forms of government control lead to different outcomes in the way resources are used. What is the impact of different kinds of legal, administrative and social regimes on public lands and natural resources? Do different regimes best attain the selected values for different types of public lands and natural resources? Can all goals be attained solely through public lands, or is regulation or other participation of private lands and their owners also necessary? One theme we focus on in the supplement readings is the idea of a “common pool resource” and whether this concept helps to reveal answers to the preferable administrative regime in different settings.

A third theoretical prong focuses on questions of politics and process. What is the role of lawyers, executive and administrative agencies, courts, legislatures, and various private actors; and the social and behavioral limits to public land and resources. Why are so many lands issues so closely bound by extensive administrative processes? What values do administrative (as opposed to more overtly political or judicial) processes emphasize? Are political processes merely another market based system, with the buyers “purchasing” (through money, votes, or other favors) political support? If so, is the political market systematically better or worse than commodity and land markets at making decisions about land and resource use? Who gets to answer the questions about policy, preference, and process, now, in the past, and in the future?

This wide range of materials and issues produces a fair volume of pages. Some reading assignments run 40 pages. Some of the case studies include exhibits with many more pages. There are a number of reasons to take this reading in stride. First, much of the reading, especially from the casebook, provides background information – it does not have the density of

cases and statutes that you may find in other courses. Second, where the assignments are longer – indeed for most class sessions – I have tried to identify in the syllabus or will identify in the prior class a few cases or other materials that will be the focus of our discussion. Third, since there is no exam in the class, you do not need to worry about catching the mass of (often interesting, rarely essential) detail in the materials.

Thanks

While I have written on resource issues for sometime, I began teaching in this area only in the last few years. Fortunately, there are a number of brilliant and kind people in the country who work in this area and who have been enormously generous with their time, their ideas, and their materials. The people who have been especially helpful are Buzz Thompson and Meg Caldwell of Stanford, Carol Rose of Yale, Charles Wilkinson of Colorado, Oliver Houck of Tulane, Peter Appel of Georgia, Bob Kuehn, newly at Alabama and formerly (and notably!) at Tulane, Peter Shelley, Director of the Conservation Law Foundation in Rockland, Maine, and Jerry Muys, a lands and resources expert in Washington, D.C.. Two of the case studies were developed by the Environmental and Natural Resources Law and Policy Program at Stanford, and are used with their permission.

Deserving of special appreciation for their support and contributions in developing this course are my colleagues and friends Bill Buzbee, Lance Gunderson and Julie Mayfield. One of my oldest friends and an occasional co-author who has taught me much of what I know about natural resources science and policy is Greg Aplet, a senior ecologist with The Wilderness Society. None of these people can be blamed for what I do not know, but they get substantial credit for whichever materials and ideas work best in this course.

Class Schedule

We have class sessions scheduled twice a week – Mondays and Wednesdays from 1:30-2:45 a.m. I have listed 28 classroom sessions, and 4 special sessions, in the syllabus.

The class is a 3 credit hour class, and we could occupy all 3 credit hours (or more) in the classroom. If we spent more time in class, we would address some more of the literally infinite numbers of issues, and some of the issues we now address in greater depth. However, this is a course with a real, physical and immediate connection to the world around us, and to the demands that people and their representatives make on those lands. Keeping ourselves within classroom walls might cloud that important point.

In addition, some of the exercises and problems we address will be more enjoyable and successful if we meet at a different time and for a longer period. Therefore, we will on occasion schedule meetings at other than class times, usually later in the afternoon when few people are likely to have class conflicts.

Of course there is no way of guaranteeing everyone's availability at times that are not regularly scheduled, but I will give as much notice as possible and I expect every member of

class to make strong efforts to attend and participate, and will expect the courtesy of a note if a conflict is unavoidable for these special sessions.

Emory Law School and the AALS have attendance requirements. So do I. This class will ultimately succeed or fail based on the quality of the discussion in class. Good discussion requires regular attendance, preparation and participation. If you will not be in class, I expect the courtesy of an email or mention before or after class. I reserve the right to call on people. Unacceptable attendance, preparation or participation may affect your grade.

Grading

Grading for this course will be based upon three projects. The first and principal project is an analytic paper that should run approximately 10-15 pages, and that must be presented to the class at the end of the semester. (This paper, including the presentation, will account for approximately 80 percent of the total grade). The second is a short creative project addressing some issue related to this course, which may take almost any form you want (approximately 10 percent of the total grade). The third is a short written critique of another student's analytic draft that must be at least three double spaced pages (approximately 10 percent of the total grade).

We will discuss each of these written projects during the semester, but let me offer some initial thoughts so that you will have a reasonable sense of what is expected.

An "analytic" paper turns on some idea, assertion, puzzle, question or principle, whether philosophical or empirical, that you state and then discuss, prove or disprove, strengthen or weaken. An analytic paper might begin with an idea offered by a scholar or politician, or with some assertion about the world made by a court or judge. The necessary elements of an analytic paper are a problem, idea or thesis, the placement of that problem, idea or thesis in some context, including current literature, and some new investigation, facts, or arguments that explore and develop the problem, idea or thesis. A paper satisfies the requirements of being analytic when it convinces the reader through logic, fact and argument of the correctness or error of either the original proposition or some idea derived from the original proposition.

Grades for the analytic papers will be based on originality, clarity, and coherence. You must be able to answer the question "what is new about this paper?" Graduate level work requires that a paper (of any length) do more than merely describe a topic or issue or summarize information or other commentary. You should also easily be able to answer the questions "what is the paper about?" (clarity) and "what do you argue and conclude?" (coherence). The grade will not be based on the amount of material you have read or the number of citations you offer. The central, indeed essential, point of an analytic paper of any length, and emphatically of short analytic papers, is the thought process that it reveals. (By the way, a short analytic paper does not satisfy the writing requirement for graduation).

Analytic work should be shared with others. Since we will all be working on a shared set of materials, and writing on topics in the same general area, we should present our ideas to each other. You will need to present your paper – or at least its core ideas, information and analysis – at the end of the semester. You will have between 15 and 20 minutes to present your topic. You

should make use of PowerPoint or some other presentation software or visual tools to organize and present your core ideas. This format will allow you to include images, video and sounds if such materials assist in the presentation of your ideas.

The idea behind the creative project is twofold. First, I want to provide the opportunity for people to work together. The “real world” will require that you work with others all the time. Group work is a skill, and law schools (including Emory) give too few opportunities, in my view, to practice that skill. The creative project may be done with a fellow student, or with more than one other student with my approval. Second, I have found that there are many topics and questions on which people have strong feelings, but either no desire to write an analytic piece or some doubt that the topic is amenable to analytic review. A creative paper is meant to provide the opportunity to explore such topics.

The creative project can take any form so long as it is connected to some issue or aspect related to this class. Among the myriad possible creative projects, you might consider writing an op-ed or producing a photo essay on a natural resource issue. The freedom in form is intended to allow consideration of thoughts, perspectives, attitudes and feelings that do not fit easily into the framework of an analytic (or even a written) piece.

You will find over time that serious writing is often a collective and evolutionary process. Some people find it helpful to distinguish drafting from writing, where writing occurs only when editing and reworking or rewriting some text. An important skill that we do not often develop in law school is the ability to critically read and constructively comment on other people’s draft texts. I expect you to do so in this class for the draft of another person’s analytical paper.

To allow people to comment on each other’s drafts, and to take account of the comments they receive, rough drafts of the analysis must be completed by Monday, November 19, 2001 – the Monday before the Thanksgiving holiday. Your critique is due Wednesday, November 28, 2001. Final drafts of the analytic paper, the creative paper or project, and the critique are due at the end of the exam period. Variations on final due dates are freely given, but must be obtained from me in writing (e-mail is fine).

Paper topics

There are a million possible topics that fall within the realm of lands and natural resources. Many of these topics come from headlines in local and national news. If you see a story involving parks, forests, timber, fire policy, recreation (snowmobiles, hiking, hunting), preservation, grazing, disputed waters, fisheries (salmon, trout, swordfish, etc.), minerals, or oil and natural gas, it probably connects to a topic that could be the basis for a paper for this course. The Bush (II) administration seems to go out of its way to suggest several possible paper topics each week (many involving use of public lands, including access for energy development).

You could analyze the legal and policy framework for any particular federal or state public lands at anything from a local to a national scale. You could pick any national or state forest, park, wilderness, river or recreation area, or some specific natural resource, and place it in legal and policy context.

You may want to read some materials in the area to spark ideas. You might survey the casebook (spend a few hours, surveying its detailed table of contents and major topics). You might start on Lexis or Westlaw, in the news or journals databases, and search for topics involving the natural resource or land area or law that interests you most.

Another great source of information is *High Country News* [<http://www.hcn.org>] – the newspaper of resource issues in the west. Since the paper is such a great read, its articles of high relevance to the class, and its rates for students so reasonable, I have required that each student subscribe for the semester, and I want to encourage you to consider subscribing for the year.

You may already have a dozen ideas in mind. If so, I would be glad to discuss them with you. Many issues will be suggested by our discussions in class. You will not want to wait, however, to choose a topic and begin. I encourage you to select a topic by the end of September.

*** The best single modern volume on water and related natural resource issues is CROSSING THE NEXT MERIDIAN (1992) by Charles Wilkinson. There are several copies on reserve: I highly recommend that you find time to read this book. ***

Plagiarism

Plagiarism is the intentional or reckless use of the language or ideas of others without attribution. If you take an idea, argument or substantial text from any person or publication, academic integrity, intellectual honesty, and the development of ideas requires proper attribution. Plagiarism is not merely the taking of specific language; it includes the modification of another person's words, while keeping their analysis and meaning.

Electronic legal research offers many advantages. It has some perils. One of those perils is that material may be casually or quickly copied, and the source or attribution lost in later editing or work. I expect and insist that care be taken in the writing of all papers. If you have any questions about how and when to cite or refer to materials, please ask.

Foundations: “public” “natural” “resources” -- Competing claims to natural resources and the role of science

1. Multiple claimants, multiple legal sources, and executive decision-making (Monday, August 27, 2001)
 - Jack Metcalf v. William Daley (9th Cir. June 9, 2000)
 - National Geographic, The Public Lands (August 2001)
2. Science as sword and shield – The Summer Flounder cases
An introduction to fisheries law, the role of science, and a review of basic administrative law (Wednesday, August 29, 2001)
 - National Resources Defense Council v. William Daley, 209 F.3d 747 (DC Cir. April 25, 2000)
 - Fisherman’s Dock Cooperative, Inc. v. Ronald Brown, 75 F.3d 164 (4th Cir. 1996)
 - Fishery Conservation & Management Act, 16 U.S.C. § 1801 (commonly referred to as the “Magnuson Act” or “Magnuson-Stevens Act”)

Overview: Michael Bean & Melanie Rowland, *Ocean Fish*, in THE EVOLUTION OF NATIONAL WILDLIFE LAW (1997).

[No class on Labor Day – Monday, September 3, 2001]

3. Theoretical Foundations: Common Pool Resources (Wednesday, September 5, 2001)
 - * *This class day focuses on one leading piece (by Hardin) and then a set of quite short readings — a few pages each.*
 - Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968)
 - James Acheson, *The Lobster Gangs of Maine*, in PERSPECTIVES ON PROPERTY Law 48 (1988)
 - Elinor Ostrom, GOVERNING THE COMMONS 1-13 (1990).
 - TESTIMONY OF THE ENVIRONMENTAL DEFENSE FUND CONCERNING INDIVIDUAL TRANSFERABLE QUOTAS FOR FISH HARVEST PRIVILEGES, BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON MERCHANT MARINE AND FISHERIES, SUBCOMMITTEE ON FISHERIES MANAGEMENT (Feb. 9, 1994).
 - TESTIMONY OF GREENPEACE CONCERNING INDIVIDUAL TRANSFERABLE QUOTAS FOR FISH HARVEST PRIVILEGES, BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON MERCHANT MARINE AND FISHERIES, SUBCOMMITTEE ON FISHERIES MANAGEMENT (Feb. 9, 1994).
 - Gisli Palsson, *Learning by Fishing: Practical Science and Scientific Practice*, in PROPERTY RIGHTS IN A SOCIAL AND ECOLOGICAL CONTEXT: CASE STUDIES AND DESIGN APPLICATIONS (World Bank 1995).

Special Session: The Red Snapper Fishery

* *This problem was developed by the Stanford Law School program on Environmental and Natural Resources, and is used with their permission. The problem will be provided in print (18 pages). The problem refers to exhibits, which will be available on-line in the lawlink conference for this class.*

Public Land Acquisition, Disposition, and Reservation: A Sweeping & Selective History

4. Acquisition and initial disposition
(Monday, September 10, 2001)
 - Casebook, pp. 39-61. Focus especially on
 - Casebook chart, p. 13 & syllabus: Where are federal public lands?
 - *Johnson v. M'Intosh* (U.S. 1823), p. 44
 - *Pollard v. Hagan* (U.S. 1845), p. 53
 - *Illinois Central Railroad Co. v. Illinois* (U.S. 1892), p. 59
 - Background:** Casebook pp. 1-38, and especially pp. 10-23.
5. Acquisition and initial disposition
(Wednesday, September 12, 2001)
 - Casebook, pp. 61-108. Focus especially on:
 - *Andrus v. Utah* (U.S. 1980), p. 62.
 - *Stewart v. Penny* (D.Nev. 1965), p. 80.
 - *Camfield v. U.S.* (U.S. 1897), p. 91.
6. Hardrock minerals: history writ in stone
(Monday, September 17, 2001)
 - Casebook pp. 428-457, 467-477, 484-527. Focus on:
 - *Wilderness Society v. Dombeck* (9th Cir. 1999), p. 443.
 - *U.S. v. Coleman*, at p. 451.
 - *Swanson v. Babbitt* (9th Cir. 1993), p. 472.
 - *U.S. v. Curtis-Nevada Mines, Inc.*, at p. 488.
7. Reservation and withdrawal
(Wednesday, September 19, 2001)
 - Casebook, pp. 111-140. See especially:
 - *U.S. v. Gettysburg Elec. R. Co.* (U.S. 1896), p. 112.
 - *U.S. v. Grimaud* (U.S. 1911), p. 115.
 - *Omaechevarria v. Idaho* (U.S. 1918), p. 134.
 - Christopher Klyza, *The Ideas: Competing Conceptions of the Public Interest*, in WHO CONTROLS THE PUBLIC LANDS? (1996)
 - Overview:** Marla Mansfield, *A Primer of Public Land Law*, 1993 WASH. L. REV. 801.
8. Reservation and withdrawal
(Monday, September 24, 2001)
 - Casebook, page 285-307. See especially:
 - *National Wildlife Federation v. Burford* (DC Cir. 1987), p. 294.
 - Focus on the discussion of limitation executive withdrawals at pp. 297-302.
 - Antiquities Act, 16 U.S.C. §431. Casebook materials.
 - Bruce Babbitt, *From Grand Staircase to Grand Canyon Parashant: Is There a Monumental Future for the BLM?*, Transcript of Remarks at Denver Law School (February 17, 2000)
 - Summary of Clinton actions / Lands Legacy Initiative.

-- U.S. Department of Agriculture, U.S. Forest Service, Forest Roads: A Synthesis of Scientific Information (May 2001) (Technical Report PNW-GTR-509). Excerpts.

9. Theoretical Foundations: Complex Notions of Property and Ownership
(Wednesday, September 26, 2001)

-- Carol Rose, *Property Rights and Responsibilities*, in THINKING ECOLOGICALLY: THE NEXT GENERATION OF ENVIRONMENTAL POLICY (1997).

-- Susan Hanna, Carl Folke, and Karl-Goran Maler, *Property Rights and Environmental Resources*, in PROPERTY RIGHTS AND THE ENVIRONMENT 15-29 (1995).

-- Agora: What Obligation Does Our Generation Own to the Next? 84 AMERICAN JOURNAL OF INT'L LAW 190-212 (1990).

Background:

-- David Westbrook, *Liberal Environmental Jurisprudence*, 27 U.C. Davis L. Rev. 619 (1994)

-- Carol Rose, *Given-ness and Gift: Property and the Quest for Environmental Ethics*, 24 ENVIRONMENTAL LAW 1 (1994)

Federal Powers over State and Private lands

10. Federal authority over lands
(Monday, October 1, 2001)

-- Casebook, pp. 152-189. See especially:

-- Fort Leavenworth R. Co. v. Lowe (U.S. 1885), p. 153.

-- Kleppe v. New Mexico (U.S. 1976), p. 164.

-- United States v. Gardner (9th Cir. 1997), p. 174.

11. Federal authority. Preemption and new limits on the Commerce Clause
(Wednesday, October 3, 2001)

-- Casebook pp. 189-227. See especially:

-- California Coastal Comm'n v. Granite Rock Co. (U.S. 1987), p. 196.

-- other limitations on federal and state power over natural resources

-- Takings.

-- United States v. Locke (U.S. 1985), p. 223.

-- Commerce Clause.

-- Solid Waste Agency v. Corps of Engineers, 531 U.S. 159 (Jan. 9, 2001).

-- Charles Gibbs vs. Bruce Babbitt (4th Cir. June 6, 2000)

Background: Sally Fairfax, *State Trust Lands: The Culture of Administrative Accountability*, in ENVIRONMENTAL FEDERALISM (Terry Anderson & Peter Hill, Eds., 1997).

Public lands and public actions: NEPA, environmental awareness and assessment

12. NEPA
(Monday, October 7, 2001)
- Casebook, pp. 346-374. Focus on:
 - *Kleppe v. Sierra Club* (U.S. 1976), p. 350.
 - *Robertson v. Methow Valley Citizens Council* (U.S. 1989), p. 360.
 - Senate Report on NEPA (1969)
13. NEPA
(Wednesday, October 10, 2001)
- What is “federal action”
 - *Atlanta Coalition on Transportation Crisis, Inc. v. Atlanta Regional Commission (MARTA)*, 599 F.2d 1333 (5th Cir. 1979)
 - Federal “programs” as federal “actions”
 - *Scientists’ Institute for Public Information, Inc., v. Atomic Energy Commission*, , 481 F.2d 1079 (D.C. Cir. 1973)
 - NEPA guidance.
 - Comparative studies of each of the NEPA guidance documents, available on the CEQ web site: textual analysis and role in litigation. See <http://ceq.eh.doe.gov/nepa/regs/guidance.html>

Natural Resources Administration: Focus on the National Forests

14. Water as a defining resource
(Monday, October 15, 2001)
- John Wesley Powell, REPORT ON THE LANDS OF THE ARID REGION OF THE UNITED STATES, WITH A MORE DETAILED ACCOUNT OF THE LANDS OF UTAH (1879). Excerpts.
 - WESTERN WATER POL’Y REVIEW ADVISORY COMM’N, WATER IN THE WEST: CHALLENGE FOR THE NEXT CENTURY 2-1 (1998). Excerpts.
 - Wallace Stegner, *Thoughts on a Dry Land* and *Living Dry*, from WHERE THE BLUEBIRD SINGS TO THE LEMONADE SPRINGS (19xx).
 - public trust doctrine and water rights
 - *National Audubon Society v. Superior Court*, 33 Cal. 3d 419 (1983) (Mono Lake decision).
15. Theoretical Perspectives: Sustainable Development as Answer
(Wednesday, October 17, 2001)
- Timothy Flannery, THE FUTURE EATERS: AN ECOLOGICAL HISTORY OF THE AUSTRALIAN LANDS AND PEOPLE (1994) (excerpts)
 - Carl McDaniel & John Gowdy, PARADISE FOR SALE: A PARABLE OF NATURE (2000) (excerpts)
 - OUR COMMON FUTURE: THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (Brundland Report) (1987) (excerpts).

Friday, October 19, 2001. 3-5 p.m. Special session.

Quincy Library Group Forest case study.

(This problem was developed by the Stanford Law School program on Environmental and Natural Resources, and is used with their permission).

16. Theoretical Perspectives: Critique of Sustainable Development
(Monday, October 22, 2001)
 - Michael McCloskey, *The Emperor Has No Clothes: The Conundrum of Sustainable Development*, 9 DUKE ENVTL. L. & POL'Y F. 153 (1999).
 - Neil Harrison, CONSTRUCTING SUSTAINABLE DEVELOPMENT 1-18, 81-118 (2000).
 - Oliver Houck, *Are Humans Part of Ecosystems?*, 28 ENVTL. L. 1 (1998).
 - William Stevens, *Biologists Fear Sustainable Yield is Unsustainable Idea; Scientists Can't Predict it, and Human Greed is Insatiable*, NEW YORK TIMES, Tuesday, April 20, 1993.

17. Theoretical Perspectives: Restoration as an Alternative to Sustainable Development
(Wednesday, October 24, 2001)
 - ecological visions:
 - Frederick Turner, *The Invented Landscape* in BEYOND PRESERVATION: RESTORING AND INVENTING LANDSCAPES 35-66 (A. Dwight Baldwin et al, Eds. 1994)
 - G. Stanley Kane, *Restoration or Preservation? Reflections on a Clash of Environmental Philosophies*, in BEYOND PRESERVATION: RESTORING AND INVENTING LANDSCAPES 69-84 (A. Dwight Baldwin et al, Eds. 1994).
 - economic visions
 - John Heckman & John Cairns, *Ecosystem Restoration: A New Perspective For Sustainable Use of the Planet*, 69-75, in DAMAGED ECOSYSTEMS AND RESTORATION (Rana, Ed.) (1998).
 - Bjorn Lomborg, *The Truth About the Environment*, THE ECONOMIST 63-65 (Aug. 4, 2001).
 - Consider Bjorn Lomborg, THE SKEPTICAL ENVIRONMENTALIST (2001). Excerpts.
 - architectural visions
 - William McDonough, *Sustainable Architecture in Japan: The Green Buildings of Nikken Sekkei* (2000)

18. The Range Resource
(Monday, October 29, 2001)
 - Casebook 743-751, 756-760, 763-778, 781-813, 822-835. See especially
 - National Wildlife Federation v. BLM (Int. Bd. Land Appls. 1997), p. 772
 - McKinley v. United States (D.N.M 1993), p. 781.
 - Public Lands Council v. Babbitt (U.S. May 15, 2000) , p. 792.
 - Oregon Natural Desert Assoc. v. Singleton (D.Ore. 1998), p. 822.

19. The Timber Resource
(Wednesday, October 31, 2001)
 - Casebook, pp. 627-670. See especially:
 - Prineville Sawmill Co. v. United States (Fed. Cir. 1988), p. 628.
 - Scott Timber v. United States (Fed. Cir. 1998), p. 636.
 - Focus on National Wildlife Federation v. United States Forest Service (D. Ore. 1984), p. 646.

20. The Timber Resource
(Monday, November 5, 2001)

- Casebook, pp. 670-742
 - Neighbors of Cuddy Mountain v. U.S. Forest Service (9th Cir. 1998), p. 686.
 - Sierra Club v. Marita (7th Cir. 1995), p. 704.
 - Friends of Southeast's Future v. Morrison (9th Cir. 1998), p. 731.

* Friday, November 2, 2001 or Saturday, November 3, 2001.

Noon-late evening. Field trip to the Southern Appalachians –

National Forest Law & Policy in The Southeast

21. Forests: Southern Appalachians – legal perspectives
(Wednesday, November 7, 2001)
 - Sierra Club v. Martin, 168 F.3d 1 (11th Cir. 1999)
 - Compare – Inland Empire Public Lands Council v. U.S. Forest Service, 88 F.3d 754 (9th Cir. 1996)
 - Problem: Current Southern Appalachians litigation. Amended complaint. Oct. 2000.
22. Forests: Southern Appalachians – biological perspectives
(Monday, November 12, 2001)
 - Daniel Boone and Greg Aplet, SUSTAINING BIODIVERSITY IN THE SOUTHERN APPALACHIANS (The Wilderness Society, 1994)
23. Forests: Southern Appalachians – economic perspectives
(Wednesday, November 14, 2001)
 - Peter Morton, CHARTING A NEW COURSE: NATIONAL FORESTS IN THE SOUTHERN APPALACHIANS (The Wilderness Society, 1994)

Other Natural Resources: Recreation, Wildlife, Wildness

24. Wildlife resources
(Monday, November 19, 2001)
 - Dean Lueck, *The Economic Nature of Wildlife Law*, 18 J. LEGAL STUDIES 291 (1989).
 - Casebook pp. 847-855, 869-891, 914-915, 963-965.
 - models
 - endangered species act.
 - Delhi Sands Flower-Loving Fly problem (from John Nagle & J.B. Ruhl)
 - preserves, corridors, and biological puzzles.
 - Larry Harris & Peter Gallagher, *The Need for Movement Corridors: New Initiatives for Wildlife Conservation*, from IN DEFENSE OF WILDLIFE: PRESERVING COMMUNITIES AND CORRIDORS 11-34(1989)
 - values. Casebook p. 970-983. See especially,
 - Defenders of Wildlife v. Andrus, p. 975.
25. Recreation resources

(Wednesday, November 21, 2001)

- hunting, fishing, hiking, skiing ...
 - Casebook, pp. 1001-1037, 1043-1046, 1056-1062. Focus on:
 - Wilderness Public Rights Fund v. Kleppe (9th Cir. 1979), p. 1016.
 - Sierra Club v. United States (N.D. Cal. 1998), p. 1023.
- snowmobiles – the new debate on abolition
 - Mausolf v. Babbitt, 125 F.3d 661 (8th Cir. 1997)
 - Excerpts of May 25, 2000 Congressional testimony from various individuals on the federal proposal to abolish snowmobiles in national parks
- beaches
 - beach use, beach access, beach destruction

Background: Carol Rose, *The Comedy of the Commons: Custom, Commerce and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986).

REMINDER

Draft analytic papers due Monday, November 19, 2001.

26. Notions of Wilderness: Cumberland Island
(Monday, November 26, 2001)
- The Wilderness Act of 1964.
 - The Wilderness Act, 16 U.S.C. § 529.
 - Background: Casebook, pp. 1148-1153, 1100-1102.
 - National Historic Preservation Act, Casebook pp. 1088-1091, 1099.
 - River Preservation, Casebook pp. 1117-1122.
 - Mayfield & Miller, Cumberland NOAA Paper
 - Cumberland: Intro and theoretical chapter
- Background:** Greg Aplet, *On The Nature of Wilderness: Exploring What Wilderness Really Protects*, 76 DENVER L. REV. 347 (1999).
27. Hidden & Diffuse Threats to Natural Resources:
The Problem of Invasive Species
(Wednesday, November 28, 2001)
- Charles Elton, *THE ECOLOGY OF INVASIONS BY PLANTS AND ANIMALS* (1959), Excerpt.
 - Executive Order 11987 (1977) (Carter)
 - Executive Order 13112 (1999) (Clinton)
 - National Invasive Species Management Plan (2001), excerpts
 - Miller & Gunderson, *Introduction to Invasives Species*
 - Miller, *The Paradox of Harmful Non-Indigenous Species Law* (2001), excerpts.

Reminder:

Critiques due Wednesday, November 28, 2001.

28. Special extended or two part session.
(Monday, December 3, 2001)

- Papers round I. $\frac{1}{2}$ of all analytic papers.
- Papers round II. $\frac{1}{2}$ papers at each session.