

Advanced Problems In Environmental Law: A Practical Litigation Seminar

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Class Grade will be based on class participation (15%) and one written assignment (85%).

January 20: Judicial Review of Informal Federal Agency Decisions Under the Administrative Procedure Act

In preparation for this class, please read:

- (1) judicial review sections of the Administrative Procedure Act (5 U.S.C. 701- 706); be prepared to discuss the specific parameters of these provisions.
- (2) Florida Power & Light Co. v. Lorion, 470 U.S. 729 (1985)
- (3) Lujan v. National Wildlife Fed'n, 497 U.S. 871 (1990)
- (4) Olenhouse v. Commodity Credit Corp., 42 F.3d 1560 (10th Cir. 1994)

January 27: Snow Day

February 3: Judicial Review of Informal Federal Agency Decisions Under the Administrative Procedure Act: Deference & The Role of Science in the Courtroom/ Establishing Standing In Environmental Cases Challenging Federal Agency Decisions: Constitutional & Prudential Standing

In preparation for this class, please read:

- (1) Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989)
- (2) Mount Graham Red Squirrel v. Espy, 986 F.2d 1568 (9th Cir. 1993)
- (3) Reynolds Metals Co. v. EPA, 760 F.2d 549 (4th Cir. 1985)
- (4) Ohio Valley Environmental Coalition v. Corps of Engineers, 479 F. Supp. 2d 607 (S.D. WV 2007)

In preparation for this class, please read:

- (1) Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
- (2) Arizona Cattle Growers' Ass'n v. Cartwright, 29 F.Supp.2d 1100, 1100-1110 (D. Arizona 1998)
- (3) Brief challenging Article III standing (handout)

February 10 – The National Environmental Policy Act

In preparation for this class, please read:

- (1) 42 U.S.C. 4331-4332
- (2) 40 CFR Parts 1500-1508 (focusing on parts 1500, 1502, 1508)

- (3) Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989)
- (4) NEPA: A Study of Effectiveness After 25 Years (pages 1-20, 25-30)
<http://ceq.hss.doe.gov/nepa/nepa25fn.pdf>

February 17 - The National Historic Preservation Act

In preparation for this class, please read:

- (1) 16 U.S.C. 470, 470f
- (2) 36 CFR Part 800 (Subparts A and B)
- (3) Trout Unlimited v. United States Army Corp of Eng'rs, 187 F. Supp. 2d 1334 (D. Utah 2002)
- (4) Apache Survival Coalition v. United States, 21 F.3d 895, 906 (9th Cir. 1994)

February 24: A case study on NEPA and the NHPA - coal bed methane development in Montana

In preparation for this class please read assigned sections of the Final Statewide Oil and Gas Environmental Impact Statement, Powder River and Billings Resource Management Plans (Jan., 2003) (http://www.blm.gov/mt/st/en/fo/miles_city_field_office/og_eis.html). Be prepared to discuss potential issues for litigation, including how a litigant might establish standing to challenge the decision based on this document, what vulnerabilities might exist under NEPA, and any NHPA issues.

March 3: Coal bed methane case study continued – focus on NEPA

In preparation for this class, please read:

- (1) Complaints (handouts)
- (2) Friends of Southeast's Future v. Morrison, 153 F.3d 1059 (9th Cir. 1998): Section I (facts) & Section IIB (alternatives)
- (3) Pitt River Tribe v. BLM, 306 F. Supp. 2d 929 (E.D. Cal. 2004): Sections I (facts), II (EIS sufficiency), III (NHPA)
- (4) Okanogon Highlands Alliance v. Williams, 236 F.3d 468 (9th Cir. 2000): Factual History, Discussion B (mitigation)

March 10: Coal bed methane case study continued – focus on the NHPA

In preparation for this class, please read:

- (1) Summary Judgment briefs (handout)
- (2) District Court decision: Northern Plains Resource Council v. Norton (D. Montana, 2005) (handout)
- (3) Appellate briefs (handout)
- (4) Northern Cheyenne Tribe v. Norton, 503 F.3d 836 (9th Cir. 2007)

March 17: A case study on the nature of injury required to support an emergency injunction in environmental cases - U.S. Navy use of mid-frequency sonar

In preparation for this class, please read:

- (1) Earth Island Institute v. U.S. Forest Service, 442 F.3d 1147 (9th Cir. 2006):
Sections I (Background), IV (Preliminary Injunction Standard), VD (injury),
Conclusion
- (2) Amoco Production Co. v. Gambell, 480 US 531 (1987)
- (3) Briefs (handouts)
- (4) Winter v. NRDC, 129 S. Ct. 365 (2008)

March 31: Exercise (related to federal support for a new hospital in Springfield, Ohio) – draft a Complaint in class based on fact pattern provided.

In preparation for this class, please read:

- (1) agency decision documents (handouts)
- (2) authority

Be prepared to provide specific wording to support required elements of the Complaint (jurisdiction, venue, identify of the parties, standing, substantive allegations, relief requested).

April 7: Exercise – in class, outline a motion to transfer venue; draft an Answer.

In preparation for this class, please read:

- (1) 28 U.S.C. 1391(e) & 1404(a) (venue)
- (2) Stewart Organization v. Ricoh Corp., 487 U.S. 22 (1988)
- (3) Trout Unlimited v. U.S. Dept. of Agriculture, 944 F. Supp. 13 (D. D.C. 1996)
- (4) Sample TRO filing (handout)

April 14: Exercise – in class, we will divide into groups to argue and defend a motion for a temporary restraining order before the Court.

In addition to preparing for the TRO hearing, please read:

- (1) Actual Complaint filed in this action. Be prepared to discuss jurisdictional defects.

FINAL WRITING ASSIGNMENT DUE ON FRIDAY MAY 1: Write a motion for a Preliminary Injunction and supporting memorandum in the Springfield Hospital case.

April 21: To be determined based on issues developed in class.

Makeup for January 13: To be determined based on issues developed in class.