SYLLABUS

The casebook for this course is Klein, Cheever, Birdsong, *Natural Resources Law: A Place-Based Book of Problems and Cases* (2005) (KCB). In addition to the casebook, you should also purchase the Supplemental Reader. There are also reading materials posted on the website or available through the Internet. This syllabus is tentative, and may be revised as the semester proceeds.

I may hand out other supplementary material in the form of Handouts. These Handouts are numbered and dated. I suggest that you keep these with your class notes or in a separate folder so that by the end of the semester you will have all of them. I also distribute Handouts and other announcements through the web page on BSpace. Please check our web page frequently.

SCHEDULE OF CLASSES

Generally we will meet on Tuesdays and Thursdays in Room 124 at the scheduled time of 1:55 p.m. – 3:10 p.m.

OFFICE HOURS

My office is 689 Simon Hall and my telephone number is 643-5647. My e-mail is ebiber@law.berkeley.edu. I am available to talk with you after every class on a drop-in basis. Regular office hours on Tuesdays and Wednesdays from 3:30-5:30 PM. Please contact my assistant, Teriann Asami-Oki, at 642-1729 or tasamioki@law.berkeley.edu, to schedule an appointment if you can’t make my scheduled office hours.

INTERNET MATERIALS

A substantial number of the readings in the syllabus (either required or optional) are available on the Internet, rather than through the class reader. There are four sources for those materials: (1) the class website; (2) Lexis or Westlaw (primarily for additional cases and some law review articles); (3) Hein On-line (primarily for law review articles); and (4) government and other public-access websites as indicated on the syllabus. The class website is available at [http://www.law.berkeley.edu/students/courses/index.html](http://www.law.berkeley.edu/students/courses/index.html). Hein On-line is available at [http://heinonline.org/HOL/Welcome](http://heinonline.org/HOL/Welcome) (or you can go the index of databases listed at [http://www.law.berkeley.edu/library/online/databases/alpha.html](http://www.law.berkeley.edu/library/online/databases/alpha.html) and find the link for Hein On-line on that list). Hein may be accessed for free from computers on the UCB campus. The syllabus indicates which supplemental reading is available from which source in bold. If you have any problems or difficulties accessing the materials please do not hesitate to let me know.
GRADING

Your grade in this class will be determined by a final examination. I will count class participation as a tie-breaker if needed.

FINAL EXAMINATION

There will be a take-home final examination during the law school final exam period. It will be 24 hours in length. The exam is open book, meaning that you may use your casebook, reader, class handouts and any other material that you have prepared. No commercial outlines or other materials are allowed. My practice is to give you a lot of practice and feedback on how to analyze exam-type questions. There will be a review session focused on the exam at the end of the semester.

CLASS PARTICIPATION

I expect everyone to participate in class. I will divide the class into groups of approximately 5 students. Each group will be responsible for preparing for a specific class, and each member of the group can expect to be called on during that class. I may assign specific roles or specific material for members of the group to prepare for that class. While I will focus on calling on the students in the group that is on-call for that class, I reserve the right to call on any student in class at any time. Class participation is a tie-breaker for grades. Your class participation grade will be based on your participation when your group is on-call or when I call on you at random. Student participation based on volunteering in class or questions asked in class will not affect your class participation grade. I strongly encourage volunteers and questions. There may come a time in the class when I need to move the discussion forward and not all questions can be answered. But I encourage you then to bring those questions to my office hours where we can discuss them fully.

PAPER

A limited number of students may choose, in lieu of the final examination, to write a paper in the class. You must schedule an appointment with me to talk about this possibility within the first 2 weeks of class. You must have my approval to choose this option. If you do choose this option, I will require a paper topic proposal by February 24th, six weeks into the semester, a detailed outline by March 31st, 11 weeks into the semester, and a rough draft for my initial review by the end of classes. All papers must be submitted in final form by the end of the exam period. Papers must be 20-35 pages in length.

Students who successfully complete the paper for this class may choose to do further work on the paper next semester to satisfy their writing requirement.

CROSS-ENROLLMENT
I encourage graduate students from other departments (e.g., ESPM, urban planning) to cross-enroll in this class. Cross-enrollment requires the permission of the instructor – please talk to me after class during the first week of classes if you wish to cross-enroll. We will discuss your prior background and experience in order to determine whether this class is suitable.
SUMMARY OF MAJOR TOPICS

I. INTRODUCTION AND FOUNDATIONS OF FEDERAL LAND MANAGEMENT
II. FEDERAL AGENCY DECISIONMAKING
III. NON-FEDERAL AUTHORITY ON FEDERAL LAND
IV. NATIONAL FORESTS AND FOREST MANAGEMENT
V. BUREAU OF LAND MANAGEMENT AND GRAZING
VI. MINING AND OIL AND GAS ON FEDERAL, STATE AND PRIVATE LANDS
VII. PROTECTED FEDERAL LANDS
VII. STATE LAND MANAGEMENT: PUBLIC TRUST DOCTRINE
IX. WILDFIRE AND CONCLUSION

DETAILED OUTLINE

I. INTRODUCTION AND FOUNDATIONS OF FEDERAL LAND MANAGEMENT

A. Introduction to the Class.

Discussion Problem: The Yellowstone Bison Herd. What are natural resources? What is conservation? The trust doctrine. The importance of place.

- Read KCB pp. 1-4, 5-8 (In re Tortorelli), 8-11 (up through n.1) (Paige v. Fairfield), 14-18, 30-33 (skip notes), 24-28 (skip notes).

B. The Federal Public Domain


   - Read KCB pp. 37-40, 43-44.


   - Read newspaper article on disposal of federal lands in Las Vegas area, on the Internet at http://www.nytimes.com/2007/12/03/us/03lands.html?ex=1197262800&en=fc06aff4f5e1324d&ei=5070&emc=eta1
3. From Grants to Management.

- Read KCB pp. 73-75, 76-78 (United States v. Grimaud), 78-84

C. The Property Clause.

- Read KCB pp. 84-85, 85-88 (Camfield v. United States), 89-90, 90-94 (Kleppe v. New Mexico), 95, 95-99 (Minnesota v. Block), 99-100

II. FEDERAL AGENCY DECISIONMAKING

A. Introduction


- Skim the San Rafael BLM planning document at issue in Norton v. SUWA, pages 12, 43-46, 81-87, on the Internet at www.ut.blm.gov/planning/SRFEISV1.PDF

B. National Environmental Policy Act.

1. Introduction.

Read KCB pp. 123-132.

2. Is an EIS Required?


3. Scope of Analysis in EIS. Cumulative Impacts, Tiering, Alternatives.

- Read KCB pp. 147-49, 149-151 (Kleppe v. Sierra Club (again)), 151-153, 153-160 (Sierra Club v. United States).
4. Adequacy of the EIS

5. New Information and the Duty to Supplement the EIS.
   • Read KCB pp. 174-179 (Marsh v. Oregon Natural Resources Council), 179-180.

6. NEPA’s Impact.
   • Read KCB pp. 180-184.

C. Judicial Review of Agency Decisionmaking

1. Introduction.


   • Read KCB pp. 210-216 (Sierra Club v. Morton), 216-219.
   • Read State of Utah v. Babbitt, 137 F.3d 1193 (10th Cir. 1998) (Parts I, II.A and II.B.1, B.3 & B.4) (Lexis/Westlaw)
   • Read KCB pp. 219-228 (Lujan v. National Wildlife Federation), 228-234
- Read Committee to Save the Rio Hondo v. Lucero, 102 F.3d 445 (10th Cir. 1996) (Lexis/Westlaw)
- Read KCB 234-237 (Friends of the Boundary Waters Wilderness v. Dombeck), 237-240 (Central South Dakota Cooperative Grazing District v. U.S. Department of Agriculture)
- Reac KCB 240-245 (Ohio Forestry Association v. Sierra Club), 245-246, 246-251 (Kleissler v. United States Forest Service), 251-53.
- Read Mobil Exploration & Producing U.S. v. Dep’t of Interior, 180 F.3d 1192 (10th Cir. 1999) (Parts I and III.A.1) (Lexis/Westlaw)

III. NON-FEDERAL AUTHORITY ON FEDERAL LAND

A. State Law on Federal Lands.


B. Non-federal Interests on Federal Lands: R.S. 2477.

- Read KCB pp. 274-275.
- Read Southern Utah Wilderness Alliance v. BLM, 425 F.3d 735 (10th Cir. 2005) (Intro, Parts I, II, III, V 1 through 4). (Lexis/Westlaw).
- Read KCB pp. 282-83 (note 4).

IV. NATIONAL FORESTS AND FOREST MANAGEMENT

A. Introduction.


B. National Forest Management Act.

1. Introduction.

Read KCB pp. 335-340.

• Read KCB pp. 341-344.
• Skim Modoc National Forest planning documents, pages 4-1 to 4-16, 4-109 to 4-111, 4-146, 4-148 to 4-151, on the Internet at http://www.fs.fed.us/r5/modoc/documents/forest-plan/Chapter_4.pdf

3. Standards under NFMA. **Discussion Problem: The Roadless Rule.**

• Read KCB 380-384 (discussion problem on roadless rule).
• Read newspaper article on the roadless rule under the Bush Administration, on the Internet at http://www.hcn.org/issues/40.23/not-so-dead-on-arrival
• Read final revisions to Forest Service planning regulations (edited version) (course website)

C. **State Regulation of Private Forestry**

California’s Forest Protection Act.

• Read selected provisions of California Forest Practices Act (course website)
• Read Sierra Club v. State Board of Forestry, 32 Cal.Rptr.2d 19, 7 Cal.4th 1215 (Cal. 1994) (Lexis/Westlaw)
• Read Rolling Stone article on Headwaters (The Last Stand) (reader)
• Read California LAO report on Headwaters Forest deal pp. 57-65 of the reader (reader).
• Read newspaper article about timber land protection and development, on the Internet at http://www.nytimes.com/2007/10/13/us/13timber.html?ex=1192852800&en=9b393c62fed0733a&ei=5070&emc=eta1

V. **BUREAU OF LAND MANAGEMENT AND GRAZING**

A. **Introduction and History.**

Statutory Framework. Taylor Grazing Act. FLPMA. PRIA.
• Read KCB pp. 385-390, 391-393 (Public Lands Council v. Babbitt), 393-399.

B. Grazier’s Interest in Public Lands.

• Read KCB pp. 399-302 (United States v. Fuller), 403-404, 404-409 (Public Lands Council v. Babbitt (again)), 409.
• Skim a sample grazing permit (course website)

C. Environmental Protection of the Federal Range.


VI. MINING AND OIL AND GAS ON FEDERAL, STATE, AND PRIVATE LANDS

A. Introduction.

Basics about mining.

• Read KCB pp. 439-443.

B. Federal Hard Rock Mining Law.

1. Introduction

• Read KCB pp. 443-449.

2. Rights of Claimants before Discovery. Discovery and the Marketability Test.


• Read KCB pp. 459, 460-65 (United States v. Locke), 465-466, 466-469 (United States v. Rizzinelli), 470-472.
**Discussion Problem: Open Pit Gold Mining on Native American Sacred Lands.**


5. Reform?

- Read KCB pp. 513-515.

C. **Leasing of Federal Lands for Coal, Oil, and Gas Development.**

Introduction to Oil and Gas Development Issues. **Discussion Problem: Coal Bed Methane Leasing and Development in the Powder River Basin.**

- Read KCB pp. 501-508 (Mobil Oil Exploration & Producing Southeast, Inc. v. United States), 508-512.

D. **State and Federal Regulation of Mineral Development on Private Land.**

1. State Oil and Gas Regulation.

- Read Barnard v. Monongahela Natural Gas, 65 A. 801 (Pa. 1907) (Lexis/Westlaw)
- Read Wronski v. Sun Oil Co., 279 N.W.2d 564 (Mich. 1979) (through p. 571) (Lexis/Westlaw)
- Read Larsen v. Oil and Gas Conservation Commision, 569 P.2d 87 (Wyo. 1977) (Lexis/Westlaw)
- Read Bennion v. ANR Production Co., 819 P.2d 343 (Utah 1991) (Lexis/Westlaw)


- Read Hodel v. Virginia Surface Mining & Reclamation Association, 452

- Newspaper article about revision to SMCRA mountain-top removal regulations, on the Internet at http://www.washingtonpost.com/wp-dyn/content/article/2008/10/17/AR2008101702942.html?referrer=emailarticle
- Read Bragg v. Robertson, 248 F.3d 275 (4th Cir. 2001) (Parts 1, II, III A & B) (Lexis/Westlaw)
- Read Kinney-Coastal Oil Co. v. Kieffer, 277 U.S. 488 (1928) (Lexis/Westlaw)
- Read Duncan Energy Co. v. United States Forest Service, 50 F.3d 584 (8th Cir. 1995) (Lexis/Westlaw).

VII. PROTECTED FEDERAL LANDS

A. National Parks


- Read two NY Times newspaper articles about proposed revisions to NPS policy guidelines (course website)

B. National Monuments.


- Read Grand Staircase Escalante National Monument proclamation (course website).

C. Wilderness.

Wilderness Act of 1964. Discussion Problem: What is Wilderness For?
Discussion Problem: The Great Sand Dunes from Monument to Park.

- Newspaper article about the impacts climate change will have on public land management: [http://www.hcn.org/servlets/hcn.Article?article_id=17481](http://www.hcn.org/servlets/hcn.Article?article_id=17481)

VIII. STATE LAND MANAGEMENT: PUBLIC TRUST DOCTRINE

A. History and Background


B. Scope of Public Trust Doctrine.

Navigability and Submerged Lands. Management Obligations Imposed on States. Dry Land and Beaches.

- Read KCB pp. 683-684 (Grayson v. Huntington).

IX. WILDFIRE AND CONCLUSION


  [http://www.sfgate.com/cgi-

12
bin/article.cgi?file=/c/a/2008/07/26/MNNR11S8D0.DTL
http://www.nytimes.com/2007/06/26/us/26fire.html?pagewanted=3&ei=5070&en=e1b90cb0f79b927f&ex=1183521600&emc=eta1
http://www.hcn.org/issues/315/16079
http://www.hcn.org/wotr/16133
http://www.hcn.org/issues/180/5840

• Optional: Stephens article on history and policy of fire management in United States (course website)