# Natural Resources Law Seminar – Course Syllabus
## Spring Semester 2000
### Professors Kaplowitz and Klein

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### SPRING BREAK

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<td>Mar. 14</td>
<td>Norine Noonan, EPA, <em>Future Directions for Environmental Protection</em></td>
<td>Please keep Thursday, Mar. 16th open</td>
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<td>Mar. 23</td>
<td>William A. Fischel, Dartmouth College, <em>Why Local Governments Don’t Race to the Bottom of the Environmental Ladder</em></td>
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<td>April 6</td>
<td>John D. Echeverria, Georgetown University Law Center, <em>The Takings Issue and Environmental Protection</em></td>
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<td>Handout; Background: 228-29, 243-49</td>
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<td>April 13</td>
<td>Lynn Scarlett, Executive Director, Reason Public Policy, <em>The New Environmentalism</em></td>
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Natural Resources Law Seminar – General Course Information
Spring Semester 2000
Professors Kaplowitz and Klein

Text: The primary text for this course is Coggins, Wilkinson, and Leshy, Federal Public Land and Resources Law (3rd edition). Copies of additional assigned readings will be distributed prior to most class sessions.

Attendance: Class attendance is mandatory. You should not miss more than three classes for any reason. If your absences exceed that amount, your grade may be adversely affected.

Class preparation: You are expected to be prepared for each class session. Preparation includes not only reading the assigned materials, but also reflecting upon the readings and being able to discuss them intelligently. We will solicit class participation both by calling on students and by asking for volunteers.

Office hours: We would like to get to know as many of you as possible, and encourage you to drop by during office hours (posted outside our offices).

Professor Kaplowitz:
Room 311A Natural Resources
355-0101
kaplowit@msu.edu

Professor Klein:
Room 421 Law College Building
432-6906
kleinchen@msu.edu

Announcements: Class announcements (if any) will be distributed by e-mail. You are responsible for checking your e-mail on a regular basis.

Seminar paper and presentation: There will be no final examination in this course. Instead, you will be expected to produce a thirty-page paper (double-spaced, including footnotes/endnotes). In addition, depending upon course enrollment, students may also be required to present their papers to the class.

Speaker series: For the second half of the course, we will attend and participate in the MSU Spring Speaker Series on Environmental Policy, which will bring to campus five leading environmental and natural resource policy experts from across the United States (series will take place in the law school’s moot court room). From 3:00-3:45 p.m., each guest speaker will meet informally with the students enrolled in this course (as well as with students enrolled in other participating seminars). Participating students will then attend the public lecture from 4:00-5:30 p.m. Each week, several students will be assigned the role of “questioner” at the public lecture. Please note that one class/Speaker Series date has been scheduled for Tuesday, March 14, 2000.
Grading policy: Your grade will be based upon the following components:

Paper: 70%
Seminar paper (version 1) and revised seminar paper will be given roughly equal weight, with substantial consideration given to the degree of improvement and response to instructor suggestions on first draft.

Professionalism: 30%
Questioning of speaker on assigned date, class presentation (if required), prompt and consistent attendance, participation in class, observance of all class requirements and deadlines.

Seminar paper – additional requirements

1. Format: Papers should be 30 pages in length (double-spaced). Margins should not exceed one inch with 12-point font, including footnotes/endnotes. Please turn in two copies of each written product (one for each instructor).

2. Citations to sources:
Law students are expected to format footnotes (not endnotes) carefully in accordance with THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (follow model of “Law Review Footnotes” on the inside front cover). Law students are not expected to prepare a bibliography. Professor Klein will grade the papers of the law students in comparison to one another.

MSU students may follow the BLUEBOOK or may use an accepted journal style (Chicago Manual, APA, etc.). Professor Kaplowitz will grade the papers of the Resource Development students in comparison to one another.

3. Creativity: A good paper is analytical in nature, rather than merely descriptive. It contributes something new to the literature and is not simply a “book report” summarizing the ideas of others. In fact, coming up with your own creative twist is one of the most rewarding aspects of academic writing. Note that past class writing assignments have been used by students as springboards for subsequent submissions to journal and law reviews.

4. Plagiarism: Plagiarism is the appropriation of the words, ideas, or thoughts of another and representation of them as one’s own original work. Notice the breadth of that definition. You must cite another author not only for direct quotations, but also for the use of ideas and for the paraphrasing of another’s work. To do a proper job of crediting you sources, it is not uncommon to have one citation for every two or three sentences of your paper.

5. Paper topic – due January 27: See suggestions below. You will be required to turn in a one-paragraph, typed description of your topic.
6. **Outline and research proposal – due February 17:** You will be required to turn in a brief outline and research proposal for your paper. Your outline (about 1-2 typewritten pages) will be subject to change as you continue your research and writing process. Your brief research proposal (about 2 typewritten pages) should include the following: a) tentative list of proposed sources, and b) statement of your research question or issue (this should be a 1-2 sentence statement of the creative idea, argument or theme that is your unique contribution to the existing literature).

7. **Seminar paper – due March 30:** This should be a substantially-completed version of your paper, and not merely a skeleton. Footnotes/endnotes should be in proper citation format – do not underestimate the amount of time it takes to properly format your citations!

8. **Revised seminar paper – due April 20:** A piece of serious, scholarly writing requires many drafts of the same article. You are expected to make substantial revisions to the first draft of your paper, incorporating your instructor’s comments and your own ideas for improvement. To receive a good grade, a student will avoid simply resubmitting the first draft with only minor, technical changes.

9. **Deadlines:** To be fair to your classmates, the deadlines listed on the syllabus will be strictly enforced and the grade for late documents will be reduced.

10. **Finding a topic:** Newspapers are full of natural resource issues (the Wall Street Journal, New York Times, and Washington Post provide fairly extensive coverage). Topical news services include the ABA SONREL (section on natural resources and environment) newsletters and Natural Resources and Environment quarterly publication; Environmental Law Institute Forum (ELI), and BNA Environment Reporter. Other interesting publications include the Sierra Club and Audubon magazines, as well as High Country News (although these latter sources do a nice job of bringing “hot topics” to light, we do not vouch for their accuracy). Web pages of governmental entities and environmental groups might also provide ideas and links to other sites.

11. **Suggested topics:** These ideas are offered merely as suggestions. Please feel free to choose any topic you deem appropriate, and we will give you feedback as to whether or not we think your topic is viable.

   **Public lands:**
   - Clinton administration’s designation of new national parks and monuments
   - “Land swaps” to eliminate private inholdings among the federal lands; the law and history of the “checkerboard” pattern of public lands
   - The law and politics of wilderness designation
   - Use of motorized vehicles in the Boundary Waters Canoe Area
   - As a matter of public policy, are we striking the proper balance between use and preservation of resources on public lands? Is sustained yield/multiple use an appropriate objective, and do present laws and policies achieve that goal?
Is clearcutting or even-aged management on public lands appropriate? Is it acceptable in some areas but not others? What weight should erosion and risk of landslides, regenerative potential, impacts to riparian areas and native species, and local economies be given in the decision-making process?

Who should make public lands decisions? All citizens? Local citizens? Should state and local governments be afforded more power over public lands? There are a number of articles and a few cases about the County Supremacy movement (successor to the “Sagebrush Rebellion” and the Wise Use movement). Nye County, Nevada went so far as to argue that the federal government had no power or ownership of the public lands within its borders.

Should public lands and resources be privatized? What are the drawbacks of such an approach? Advantages? What legal management constraints might be appropriate?

Water resources:
- Dam removal campaigns (Pacific Northwest, Glen Canyon Dam)
- Is Congress and/or the Executive bound by the public trust doctrine in managing federal lands? If so, what is the source of the doctrine and what constraints would result? What role does judicial review play? The Mono Lake case is a good starting point.
- The public trust doctrine in Michigan
- Proposals to divert water from the Great Lakes to other regions
- Should instream uses for protection of fish and wildlife be considered a beneficial use in prior appropriation states?
- The negotiation of a compact to allocate water among the southeastern states (especially Georgia, Florida)
- Restoration of the Everglades
- Is there a duty not only to conserve water resources, but also to affirmatively restore them? If so, who is charged with the duty (state natural resource departments? water boards? federal agencies?). What is the source of the duty and what are its parameters?

Mining, oil & gas, nuclear power, storage and disposal
- Current legislative efforts to address directional drilling under the Great Lakes for natural gas
- Natural gas conflicts in northern Michigan
- Analyze the relationship between holders of interests in split estates. Does the analysis change if the federal government is one of the parties? For example, if Oklahoma law provides that the subsurface owner holds the dominant estate with few restrictions on use of the surface to access underlying oil and gas reserves, may the United States as surface owner take steps to protect its resources? What if the reserves are beneath a National Park or wilderness area?
- Although the 1872 Mining Act gives miners “carte blanche” for the exploration and development of hard rock minerals on most public lands, are there some constraints? Should there be (proposals for reform have generated lots of heated debate over the years)? Is it appropriate for federal land managers (such as the
Forest Service) to require operating plans before development proceeds? Are there constitutional or other limitations?

**Wildlife**

?? Should the Endangered Species Act be amended to provide further protection for at-risk species? Conversely, is an amendment in order to protect private property rights? Analyze current proposals for amendments.

?? Recently, the Endangered Species Act has become an urban issue with the listing of new species found in urban areas in the Pacific Northwest. What legal requirements may now affect cities such as Seattle and Portland? What is the interrelationship between species protection and water use?

?? Is it appropriate to ignore economics in the listing process? Is it appropriate to consider economics in the designation of critical habitat? Should there be critical habitat designations at all?

?? Should landowners be compensated if compliance with section 7 results in damage to property (increased risks of flooding, crop damage, and livestock depredation) (this is an issue under the Wild Horses and Burros Act as well)? In the Yellowstone wolf reintroduction cases, the ranchers’ primary argument was that as an equitable matter, the risks of livestock depredation were so significant that wolves should not be returned to their historic habitat.

?? Analyze the wolf reintroduction cases. What is an experimental population under section 10(j) of the Endangered Species Act? Must the wolves reintroduced into Yellowstone be removed if they interbreed with existing wolves?

**Politics and Natural Resources**

?? Notice that many natural resource proposals are advanced in the form of appropriations “riders,” which are attached to unrelated bills. Does this practice present any concerns? If so, how can they be addressed?