

Syllabi by Discipline :: Environmental Studies

Course Title: Land and Water Law

Instructor: Chris Beach

School: Unity College

Categories:

Environmental Studies, Law

Syllabus:

This course is designed for students preparing for careers in natural resource management. Students who successfully complete this course will have a better understanding of the legal and policy contexts in which natural resource managers function. The course is organized around the following five learning outcomes.

A. Knowledge outcomes. Students will demonstrate basic knowledge and understanding of:

Outcome 1 - American property law with particular focus on water and land use regulation;

Outcome 2 - Legal approaches to conserving private lands;

Outcome 3 - Policy dilemmas facing federal land managers.

B. Skills outcomes. Students will practice and demonstrate abilities to

Outcome 4 - develop solutions to a local water resource problem by applying legal knowledge in a collaborative exercise;

Outcome 5 - present relevant information in an organized and persuasive manner, both orally and in writing.

Course requirements

A. Wakeful attendance is required, the early hour notwithstanding. Active participation in class discussions, exercises and presentations is encouraged and expected. I follow format (and rarely lecture), so assigned readings must be completed before attending class. This preparatory reading requirement will be enforced through regular quizzes. Late work will be downgraded one letter per day of tardy delivery.

B. The course schedule (see below) lists the due dates for all reading assignments, quizzes, examinations, projects and presentations. You should expect some additional unannounced quizzes, especially in response to displays of inadequate preparation and/or minimal participation - better to come prepared and to participate!

C. There are four required texts. Additional reading materials will be distributed in class.

S. Buck, Understanding Environmental Administration and Law, 2d.

W. Weeks, Beyond the ArX: Tools for an Ecosystem Approach

B. Lind, The Conservation Easement Stewardship Guide

S. Yaffe, The Wisdom of the Spotted Owl: Policy Lessons

D. In the middle third of the course, you will be asked to help develop solutions in an ongoing local water resource project, known as "The Lake Winnecook Project. Working collaboratively (in teams of two) on specific assigned problems, your solutions will be incorporated into a "Conservation and Legal Guidebook" scheduled for publication early next year.

E. Final grading will be distributed as follows:
attendance and participation 20
10 quizzes 20
1st exam 20
Lake Winnecook projects 20
2nd exam 20
total 100 points

A requires 90+ accumulative points, B requires 80+, C requires 70+, and ~ requires 60+. This is a challenging course designed for juniors and seniors who have developed a capacity for intensive, focused effort. I will be happy to discuss your progress in the course at any point in the semester.

LAKE WINNECOOK RESEARCH PROJECTS

1. Working in teams of two students each, the class will conduct research and write reports on six different issues. All issues have been requested by the *Lake Winnecook Project's* community partners. Your work will provide a valuable service to the community, and quite probably to other Maine communities working on water quality issues. Your work will be edited and joined with the work completed by students in last year's Land and Water Law class in a citizens guidebook on the law and conservation of lakes.

2. The six project problems are:

- A. Restoration of shorelands - local and state regulations + best management practices
- B. Camp roads (private ways) - statute and case law + forming road associations + bmp
- C. Water discharges and removals - septic system regulations + removal law
- D. Agricultural and Timber practices - regulations + best management practices
- E. Lake recreation - regulations of watercraft (jet skis) + floats docks public access
- F. Water level management - law on permanent structures + Temporary flashboards

3. Each team will receive a packet of background information on the project. Teams will be responsible for conducting further research on the laws and conservation practices related to the project. This will involve use of the library, internet, interviews with experts in water management, and interviews with community partners. All information gathered will be turned in and reviewed at the end of the projects.

4. Once the relevant information has been gathered, teams will write reports that explain the legal aspects of the assigned water management problem, and the recommended best management practices related to that problem. Reports need not be lengthy, but they must be thorough and accurate according to the current state of the law. A first draft of your report, including supporting evidence, is **due October 19.**

5. Each team will present in class a preliminary report (on October 21), and a final report (on **November 2** for projects A, B & C, and on **November 4** for projects D, E & F). On the day of final reports, each

team will turn in the final written report with supporting evidence in a project folder. All reports should be delivered on paper and on a clearly marked diskette (diskettes will be returned).

6. Normally, grades are given to the team. The instructor may lower the grade of a team member who has failed to provide a significant contribution to the success of the project.

LAKE WINNECOOK TEAM ASSIGNMENT

1. Review the contents of your packet. It contains samples of three different kinds of information relevant to solving your problem - statute law; agency regulations; general information, usually including suggestions for best management practices.
2. Once you understand the contents of your packet, you will need to conduct further research on the law and regulations. You need to confirm whether the legal information in the packet is complete, whether it is current (up-to-date). By design, it probably is not complete, and may not even be current. You can complete this legal research in two places: in the red volume statutes (M.R.S.A.) located in the reference area of Quimby Library; and over the internet. *Once you find relevant and current statutes and regulations, download the key provisions for future reference.* You may need to discuss your research with an expert at DEP or another agency in order to clarify a key point.
3. Using the law & regulations in your packet together with the law & regulations located by your research, write a summary of it that explains the purposes, key definitions, prohibitions, and basic procedures.
4. At the same time you are working on the legal research, you need to educate yourself further concerning the best management practices relevant to your problem. Supplement the information in the packet with research in the library and internet. Ask yourself if any of the concepts we are studying in *Beyond The Ark* might be useful in formulating a best management approach to the problem. Write a summary of this information.
5. **Written summaries of law, regulations and best management practices are due October 19.**
6. Once you have completed your basic research, contact the community partner to discuss how it relates to the specific conditions found in the Lake Winnecook watershed. If the law and best management practices are fairly simple, your project may evolve into an action plan. To complete an action plan, you will need to conduct a field investigation of the conditions and extent of your problem, and probably interview more than one community member.
7. **Final reports are due November 2 or 4.**

PL3233 Land & Water Law CAMROADS PROBLEM

Camroads have long been recognized as one of the biggest nonpoint source-contributors to nutrient problems in lakes. The problem involves both legal and bmp aspects. Legal issues include liability (who is responsible), creation of associations to address maintenance issues, and regulation by the towns and the state. While statutes and regulations exist (see packet for a sampling), some aspects of this problem involve researching the case law on property rights in "private ways."

The Friends of Lake Winnecook members who have expressed interest in the camroad problem include

Jerry Cinnamon and Rick Kirsbergen and Walter Edgecomb. The FOLW "needs list" recites the following: "Camproads: inventory, classification, maintenance & remediation, as nutrient sources (particularly phosphates), siting and permitting new roads, culverts, specifications for construction with turnouts, listings of construction companies, workshops with Waldo County Extension, legal assistance organizing camproad associations." As you can see, this list is a mixture of inventorying, monitoring, legal issues, and best management practices. You are only responsible for the legal and bmp issues.

Land & Water Law

Restoration of Shorelands.

There is growing interest in initiating small restoration projects around the Lake Winnecook watershed. As we now know, any activities, even well-intentioned ones, is potentially regulated under the Natural Resources Protection Act and the Shorelands Zoning Law. Your task will be to determine which activities can be conducted in which locations - without permits, with "permits by rule" and with "permits by application." Once you complete this legal review, you can explore the best management practices literature, searching for the practices that can be implemented within the three permit categories.

Our community partners have asked for information about permits for shore rip-rap, guidelines for shore planting, vegetation enhancement and removal, and similar activities. Elizabeth Huard and Max Gillette are both members of Friends of Lake Winnecook who are particularly concerned about these issues. Also, Rick Kirsbergen of the Waldo County Extension Service is initiating a community effort to train local citizens (including Unity students) in restoration work. Your project will be most helpful if you can gain an understanding of current conditions around the lake and watershed, and the likeliest places people want to begin with restoration work.

Land & Water Law

Water discharges & removals

There are not supposed to be any point source discharges into lakes (great ponds). However, problems with septic systems persist - students have found several cold hotspots around the lake that may be due to illegal discharges or defective septic systems that are leaking into the lake. Your task is to understand the regulations (see packet), especially on requirements for replacing defective systems.

Other "discharges" include storm water and soil erosion. Some of this kind of discharge has been noted coming from temporary activities like construction sites. How are these regulated?

Water removals can be for a number of purposes - drinking water, irrigation water, tanker trucks for swimming pools or other bulk uses, etc. Which of these are regulated?

One of the members of the Friends of Lake Winnecook, Fred Schlapp, has expressed a particular interest in these issues. After you have conducted your basic legal research, talk to him about the specific concerns about Lake Winnecook discharges and removals.

Land & Water Law

Agriculture & Timber practices

Generally speaking, special laws and regulations to protect water quality have been developed for commercial farming and timber harvesting. Thus the Maine Natural Resources Protection Act and the Mandatory Shoreland Zoning Law both contain *some* exemptions for these commercial activities. Your primary task will be to inventory the primary sources of regulation of agricultural and timber practices, sorting out the important regulations from the fairly peripheral ones. While the packet provides a beginning, it is by no means complete, especially regarding nonpoint source pollution from farming.

Fairly early in your research, I suggest you contact the Waldo County Extension Service (try to speak with Rick Kirsbergen -he lives on Lake Winnecook and is aware of this project).

Land & Water Law Lake Recreation

Recreation on and around the lake involves a variety of legal issues. One is public access - where & under what circumstances can people get to the lake? The town of Troy has no public access - does this create problems? Another is boating, especially jet skiis. Who can regulate boating? For what purposes can boating (or snowmobiling or trucks on ice) be regulated? Are there "no wake" zones? Wildlife habitat zones? What about location of docks and floats and boathouses and "improvements" for swimming areas and temporary camping equipment? What state or local regulations apply to them? Lake recreation can also involve social tensions between riparian owners and members of the public. Who enforces or mediates any disputes?

The information in your packet is a mere sampler. When conducting legal research, you should know that a lake is called a "great pond," that a jetski is a kind of "personal watercraft", and that game wardens probably know more about this subject than most other officials.

Land & Water Law Water Level Management

Lake Winnecook presently has no dams at its outlet, so any existing water level management exists in connection with its inlets, e.g. Carlton Bog dam. At some time in the past there was evidently a dam near the outlet (25 Mile Stream). Some lake residents believe that water quality could be improved if a dam were restored at the outlet, and then operated to "raise" and then to "flush" the lake. Others recall the use of flashboards at Prairie Road. The legal aspect of your research is to determine the permitting process for any water level management activities contemplated for the lake - be assured that this will be somewhat complex and will involve all levels of government. You also need to learn about the potential benefits of managing water levels, including erosion control, flushing potential, fisheries, etc.

Your community contact for these issues is Mr. Andy Reed. I suggest you speak to him fairly early in your research in order to understand the background and specific ideas that local people have on this subject.

STUDENT EVALUATION OF LAKE WINNECOOK PROJECT

The Lake Winnecook project provides Unity students with opportunities to serve the local community while they are learning. Your evaluation of your participation in the project will help to improve it. On behalf of the lake and its friends, thanks again for helping out!

1. The part of the learning portion of the project that I liked most was...
2. The part of the learning portion of the project that could be improved was...
3. The part of the service portion of the project that was most meaningful to me was...
4. The best advice I could give to other students concerning their participation in the project is...



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