Syllabus and Introduction
Colorado River Seminar – Law 7800-002
Fall 2011

Mondays – 3:15 – 5:15 p.m. – Room 108

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801-581-3791

ADA Disclosure:

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, (Union Building), Rm 162 or you can call 801-581-5020. All written information in this course can be made available in alternative format with prior notification.

I. INTRODUCTION

A. Seminar Description, Format, Methodology and Outline

In this seminar we will address the range of legal, scientific, economic, and other policy issues affecting the use and management of the economic and environmental resources of the Colorado River system. The primary focus will be on the system of dams and other water developments that have significantly altered the natural hydrologic regime and ecosystem, the economic and other social benefits as well as the environmental impacts of those developments, ongoing conflicts regarding the use and allocation of the water and other resources in the system, and ongoing efforts and proposals to restore the damaged ecosystems. While we will evaluate these issues from an interdisciplinary and integrated perspective, we will draw on major legal sources including the Colorado River Compact and its various implementing instruments and surrounding case law, the Reclamation Act and more specific federal water development statutes, and other environmental laws such as the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act.

The course will follow a standard seminar format. For most of the semester, we will discuss the assigned and suggested readings, trying to draw out as many perspectives as possible. Each student will prepare a major research paper related to the seminar theme. Students will first submit the papers in draft form, followed by a detailed critique by the instructor and an oral presentation and class discussion at the end of the semester. Students will revise papers based on that process of constructive analysis. Each student will also read and make a very brief presentation on a “perspective book” related to the seminar theme.
B. Required and Supplemental Readings

The primary text for this course is Robert W. Adler, *Restoring Colorado River Ecosystems: A Troubled Sense of Immensity* (Island Press 2007). Additional suggested readings and relevant websites will be posted on the course TWEN site, and some may be put on reserve in the library. Although most of the supplemental readings are optional, you will understand and be able to participate in the discussion much better if you review these materials and read what you think is appropriate. Many will also be relevant to your paper topics and will help with your research. You can also find more relevant information on both class discussion and on paper topics on the many websites posted on TWEN. Each student will also read and give a brief report on a perspective book, described below.

C. Expectations and Workload

*Attendance and class participation.* I expect all students to read and be prepared to discuss the materials each week, so we can identify and discuss as many perspectives as possible on each set of readings. Students should participate critically, that is, express opinions rather than simply recite from the materials. I will often provide a list of questions and issues a week in advance to focus your reading and discussion, but discussion by no means must be limited to those issues. Seminar rule number one is that all participants will respect all opinions, but constructive disagreement is encouraged. Discussion of diverse views is one of the most important goals of any seminar. Because this is a seminar, the most valuable part of which is class discussion, and because we will meet only once per week, attendance and active participation in each class is mandatory, and the minimum attendance rule discussed in the Student Handbook will be enforced if necessary. If you must miss a class for a good reason, please let me know, in advance if at all possible, especially if “roles” have been assigned for certain classes. All classes will begin and end on time.

*Research Papers.* Each student will prepare a major research paper relevant to the Colorado River, or to another water system from which lessons for management of the Colorado River system might be drawn (or vice versa). All papers must be submitted in draft, and revised based on the resulting critique by the instructor and peer comments during the paper presentation. Failure to make appropriate revisions based on instructor and peer review will result in a lower grade. Topics must include at least one significant legal issue, but interdisciplinary papers are strongly encouraged. Students should select their own topic, but I would be happy to review and discuss suggested topics at any time. Topic approval is required, based on a brief 1-2 page written abstract or outline. **Papers must meet and be prepared in accordance with all of the requirements specified in the rules for a major research paper to meet the advanced writing requirement (Student Handbook, Graduation Requirements, section 5 B.1).** There is no maximum page limit, but papers will be judged on quality, not size. Papers must reflect original analysis. Proper and complete footnotes are essential, especially when using ideas or information from other sources. Please review carefully all applicable rules and principles regarding plagiarism, which apply to draft as well as final papers. Please ask if you have any
questions about the propriety of using other sources, and how they should be cited. Primary source citations are required whenever reasonably available (e.g., no newspaper citations where case citations are available). So that the entire class can benefit from each paper, and so each student will benefit from constructive peer discussion, each student will give an oral presentation on his or her paper during one of the last several classes. Students will post the most recent draft of their papers on the TWEN site one week before the presentation. (Papers will not be in final form at the time of the presentations; rather, it is hoped that class discussion will help to improve the final products.) Grades for papers will be based on the following criteria: (1) complete research; (2) sound and thorough analysis, which takes into account multiple perspectives; (3) writing (clarity, grammar, spelling, and originality); and (4) creativity in topic selection, ideas and analysis.

The following mandatory deadlines will help you to avoid an end-of-semester rush:

- **Paper topic concept for brief class discussion** September 19
- **Brief abstracts or outlines due** September 26
- **Draft papers due** October 24
- **Class presentations** November 7 – 28
- **Final papers due** December 20 (Last day of exams)

**Perspective Books.** Each student is required to read one “perspective” book relevant in any way to the Colorado River, to make a very brief (5-minute) presentation about that book at the beginning of any class session, and to submit a very brief written report (1-2 pages). The oral and written reports should explain what information you learned or insights you gained from the book as relevant to the seminar. Because the instructor’s book is being used as the primary text, this will help to inject more diverse ideas into the discussion. You should view this as forced pleasure reading, i.e., as a break from all of the more rigorous reading you are assigned during law school (and most students have appreciated that opportunity in past versions of this seminar). The books should be fun and interesting to you, and can be from any discipline (literature, science, public policy, journalism, etc.), so long as they relate in some way to the subject of the seminar. However, each student must choose a different book! Some possible choices include:

Edward Abbey, *Desert Solitaire* (especially chapter entitled “Down the River”).

Mary Austin, *The Land of Little Rain*.


C. Gregory Crampton, *Ghosts of Glen Canyon, History Beneath Lake Powell*.

Jared Farmer, *Glen Canyon Dammed, Inventing Lake Powell and the Canyon Country*. 
Colin Fletcher, *River, One Man’s Journey Down the Colorado, Source to Sea.*


Katie Lee, *All My Rivers Are Gone.*

John McPhee, *Encounters with the Archdruid* (especially Part 3).

Russell Martin, *A Story That Stands Like a Dam, Glen Canyon and the Struggle for the Soul of the West.*

Byron E. Pearson, *Still the Wild River Runs, Congress, the Sierra Club, and the Fight to Save Grand Canyon.*

John Wesley Powell, *The Exploration of the Colorado River and its Canyons.*


Marc Reisner, *Cadillac Desert: The American West and its Disappearing Water* (especially chapters 4 and 8).

Robert Brewster Stanton, *Down the Colorado.*

Wallace Stegner, *Beyond the Hundredth Meridian, John Wesley Powell and the Second Opening of the West.*


Ann Zwinger, *Downriver.*

Ann Zwinger, *Run, River, Run: A Naturalist’s Journey Down one of the Great Rivers of the West.*

D. **Grading.** Grades will be based on class participation (25%), perspective books (5%, pass-fail), and written papers (60%) and paper presentations (10%). Papers will be
judged on originality, completeness and quality of research and analysis, and style (writing and organization). Class participation will be judged based on effectiveness in stimulating more creative and more comprehensive analysis by the instructor and the rest of the class.

**COURSE OUTLINE**

The following list of topics and readings is subject to change. The number of weeks reserved for paper presentations depends on the final course enrollment. In addition, unexpected developments regarding the Colorado River can occur at almost any time, and we will try to address current events whenever possible.

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<tr>
<th>Date</th>
<th>Text</th>
<th>Readings</th>
<th>Issues</th>
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<tr>
<td>8/29</td>
<td>Preface + Chapter 1</td>
<td>- Bureau of Reclamation, Colorado River Status Report, pages SR1 – SR7</td>
<td>- Introduction to the Colorado River System</td>
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<td>- Introduction to ecosystem restoration</td>
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<td>9/6</td>
<td>Chapter 2</td>
<td>- Colorado River Compact</td>
<td>- Introduction to Water Law</td>
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<td>(Tuesday)</td>
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<td>- Boulder Canyon Project Act</td>
<td>- Law of the River Part I</td>
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<td>- California 7 Party Agreement</td>
<td>- Impacts of Dams Part I</td>
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<td>- Upper Colorado River Compact</td>
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<td>- Arizona v. California opinion and consolidated decree</td>
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<td>9/12</td>
<td>Chapter 3</td>
<td>- Colorado River Storage Project Act of 1956</td>
<td>- Law of the River Part II</td>
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<td>- Colorado River Basin Project Act of 1968</td>
<td>- Impacts of Dams Part II</td>
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<td>- Long Range Operating Plan</td>
<td>- Watershed Health</td>
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<td>- 2011 Annual Operating Plan</td>
<td>- Proposed Paper Topics due for class discussion</td>
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<td>9/19</td>
<td>Chapter 4</td>
<td>- Selected provisions of NEPA</td>
<td>- Impacts of Exotic Species</td>
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<td>- EDF v. Higginson</td>
<td>- Restoration Philosophy</td>
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<td>- Selected provisions of ESA</td>
<td>- Introduction to NEPA</td>
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<td>- Introduction to ESA</td>
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<td>9/26</td>
<td>Chapter 5</td>
<td>- RIP-RAP program documents</td>
<td>- Upper Colorado River Endangered Fishes Recovery Program (RIP-RAP)</td>
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<td>- Flaming Gorge Dam Record of Decision</td>
<td>- ESA Recovery Goals</td>
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<td>- Upper Colorado River Restoration Program Highlights 2010-2011</td>
<td>- Restoration and Uncertainty</td>
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<td>- Paper abstracts or outlines due</td>
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### II. QUESTIONS AND READINGS FOR FIRST CLASS

The readings for this week (Preface and Chapter 1) summarize the history of water development in the Colorado River system, along with the major reasons for that development and some of the human economic and other benefits provided. They also describe the major environmental impacts of converting one of the world's wildest and most volatile river systems into a series of huge impoundments with hundreds of miles of attached canals and aqueducts draining and pumping the river into distant watersheds for irrigation and urban and industrial uses. (Those impacts will be discussed in more detail in Chapters 2-4). Based on these readings,
please come to the first class with:

1. A list of all of the societal benefits (economic and otherwise) you think are provided by the extensive system of dams and other human developments in the Colorado River system. Include any benefits you think exist but that are not suggested by the reading.

2. A list of all types of environmental harm you think are caused by these facilities. Include any kinds of harm you think exist but are not suggested by the reading.

3. A list of all of the unresolved policy issues and conflicts you think need to be addressed by the various managers of the Colorado River and its natural and artificially-created or artificially-harnessed resources now and in the future. (Think as broadly as possible.)

4. A list of all of the governmental and non-governmental entities you think are responsible or potentially responsible for use and management of these resources, and what their roles are or may be.

5. A list of all statutes and other sources of “law” which you think might apply to, or be used to address, the problems you identified.

6. Your initial position on the proposal to decommission Glen Canyon Dam. It will be interesting to see if anyone’s views about this proposal change over the semester.

7. Your assessment of the most pressing future issues facing Colorado River managers.