“Humans think that they are smarter than dolphins because we build cars and buildings, and start wars, etc., and all that dolphins do is swim in the water, eat fish, and play around. Dolphins believe that they are smarter for exactly the same reasons.” Douglas Adams, The Hitchhiker’s Guide to the Galaxy. (1981)

The environment is under pressure and many of the current threats to the environment are the product of human decisions to build, produce, and materially prosper. In our quest for human development, we have left a large footprint. In the United States, the social mechanism of law has responded to environmental concerns by reducing conventional air and water pollution and by conserving scarce ecological resources. This class is focused on federal environmental law and will cover the common law, constitutional, and statutory frameworks that are applied in the United States to address environmental pollution, liability, and conservation.

We will explore over the coming three months, how law has responded to environmental pressures and consider how law may still need to respond to new and emerging environmental challenges. Some of the questions that I hope we can discuss include:

- Can law think about the environment as a system? Can we handle problems at the appropriate local, national, or regional level at which they arise? Do we have a right to be free of environmental harms? Can we create an economic market without environmental externalities and is there a role for environmental markets?

Grades

1) 65% of your grade will be a research paper or a case note
   Your paper should be based on a specific case, statutory section, or regulation.

2) 20% of your grade will be the class that you prepare for the other students
3) 15% of your grade will be the group 5-10 “movie” that you will have 1 week to prepare.

Classes: 75 minute classes

Attendance: You may have two excused absences. Based on my discretion, I may grant additional excused absences. If you have one or more unexcused absences, your final grade will be reduced by one grade slot (e.g. A to A-, B+ to B). Please inform me if you cannot attend class.

My Expectations of You

1) I expect you to be “present” for the entire class.
2) I expect you to read the assigned pages and be ready to participate.
3) I expect you to respect each other. On some matters that we will discuss in class, you may have a strong personal opinion. I ask each of you to focus your class comments on the legal opinions before us and not your personal opinions.
4) I expect you to succeed.

Office Hours

I will be available every Tuesday, Wednesday, and Thursday to meet with you. If you want to meet me for office, please either let me know before or after class so that we schedule an appointment that will work with both of our schedules. You can also email me to set up an appointment.

Academic Code of Conduct

Every member of the law school community is bound by the honor code obligations. In particular, I take plagiarism very seriously. If you use a source and do not provide proper citations, you will have plagiarized. You will receive an F in this class. I check papers using an external plagiarism detection software.

Credit Hours for Coursework

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

Civility

In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors,
guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the College of Law Dean of Students (jdodge@uidaho.edu), the University Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Civil Rights & Investigations (885-4285).

Additional Resources for succeeding

**Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:**

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at [http://www.uidaho.edu/current-students/cdar](http://www.uidaho.edu/current-students/cdar). Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

**Writing**

For students needing additional basic assistance with writing- there are university resources through the university writing center.

**Stress**

For students experiencing stress during the semester due to either law school or other external stressors, please consider consulting the Counseling Center on campus. I will be happy to help you facilitate contact with the center if necessary.
Assignments:

Class Readings (Subject to possible revision)

Class One - Introduction to Semester

Casebook 10-23

Please bring to class one recent newsworthy story from a reputable journalism source (e.g. New York Times, Wall Street Journal ABA article, The Economist, major paper, trade journal, The Atlantic, Time, Newsweek—no blog pages please) that describes either a dispute over a U.S. environmental law or the creation or amendment of a U.S. law.

Please identify any specific environmental issue of interest to you and reflect on it in the context of the following commentary by environmental law Professor Jaye Ellis from McGill University

“Many of the greatest difficulties encountered in attempts to craft environmental law and policy spring from the fact that the environment is everywhere. It cannot be confined to a narrow category and delegated to authorities or scientists holding a certain type of expertise. Environmental protection requires coordination and integration among different types of actors, different political authorizes and various bodies of knowledge and expertise. Environmental policies must span great distance in time and space, and must be developed and implemented under conditions of uncertainty. Environmental degradation brings to light vast and complex networks of cause and effect, responsibility and obligation. Reining in environmental degradation requires us to mobilize all of our social institutions, and depends on the capacity of these systems to work together. Yet coordination among social systems is an immensely difficult task.”

Class Two – Public Trust and Common Law

Casebook 28-45

Locate a copy of a common law environmental complaint filed in a federal court,

In class problem: Working together in a group draft a legal complaint based on the following fact pattern: Your client is a fisherman who owns a fishing boat and a coastal fish processing plant. On September 1, 2013, a Liberian flagged oil tanker ran aground on a reef. The tanker was a single-hulled oil tanker. In 2013, transporting oil in a single-hulled tanker is considered to involve a high degree of
risk. Oil leached into the water killing fish and has begun to come ashore onto your client’s property such that your client is now unable to safely land his boat. Your client does not expect to be able to fish or process fish from the waters for at least one year due to the oil pollution.

Class Three- **Novel Approach to Common Law**


Pacific Coast Federation of Fishermen’s Association v. Chevron complaint filed (November 2018)

Class Four- **Introduction to Federal Resource Conservation and Recovery Act (RCRA)**

Casebook 44-77

Class Five- **RCRA and Non-hazardous Solid Waste**

Casebook 77-104

Class Six- **RCRA and Hazardous Solid Waste**

Casebook 104-120

Class Seven- **RCRA Permitting and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Introduction**

Casebook 121-156

Class Eight- **CERCLA Liability**

Casebook 157-192

Class Nine- **CERCLA Liability and Response Costs**

Casebook 193-230

Class Ten- **CERCLA Damages**

Casebook 231-272

Class Eleven- **National Environmental Policy Act Introduction**

Casebook 279-316

Class Twelve- **National Environmental Policy Act and Climate Change/ Categorical Exclusions**

Casebook 317-358
Class Thirteen- **Endangered Species Act- Introduction and Section 4 (Listing)**

Casebook 385-426

Class Fourteen- **Endangered Species Act – Section 4 (Critical Habitat) and Section 7**

Casebook 427-473

Class Fifteen- **Endangered Species Act- Section 9 Prohibition on “Taking” of Species, Section 10 “Incidental Take Permits”**

Casebook 474-523

Case Sixteen- **Clean Air Act- Introduction: Criteria Pollutants, National Ambient Air Quality Standards and State Implementation Plans**

Casebook 583-633

Class Seventeen- **Clean Air Act- Regulating Criteria Pollutants from Mobile Sources**

Casebook 634-667

Class Eighteen- **Clean Air Act- Regulating Criteria Pollutants from Stationary Sources**

Casebook 667-719

Class Nineteen- **Clean Air Act- New Source Review and Regulation of Hazardous Air Pollutants**

Casebook 719- 758

Class Twenty- **Air Pollution- Regulation of Greenhouse Gas Emissions as Pollutants and Regulation of Greenhouse Gases from Mobile Sources**

Casebook 787-818

Class Twenty-one- **Air Pollution- Regulation of Greenhouse Gas Emissions from Stationary Sources**

819-850

Class Twenty-two- **Clean Water Act: Introduction to concept of “discharge of a pollutant” for purposes of CWA** A discharge of a pollutant include (1) an “addition” of (2) a “pollutant” to (3) jurisdictional waters” from a (4) “point source.” 33 U.S.C. Section 1362(14). In terms of the definition of “discharge of a pollutant”, what does it mean to have an “addition” of a “pollutant”?

Casebook 851- 890

Class Twenty-three- **Clean Water Act: Jurisdictional Waters and Point Sources** In terms of the definition of “discharge of a pollutant, what constitutes jurisdictional waters and what is point source?
Casebook 890-947

Class Twenty-four- **Clean Water Act: National Pollutant Discharge Elimination System** How do NPDES permits operate in regard to technology-based effluent limitations and water-quality related effluent limitations? How do States and tribes exercise their jurisdiction in relation to water quality issues?

Casebook 947-1011

Class Twenty-five- **Clean Water Act: Section 404-Dredge and Fill Permits** What is the Section 404 permitting program and how does it operate in practice?

Casebook 1011-1055

Class Twenty-six- **Clean Water Act: Nonpoint Source Pollution, TMDLs, and Section 401**- What are other regulatory mechanisms under the Clean Water Act designed to improve water quality?

Casebook 1056-1113

Class Twenty-seven- **Standing** How have courts approached standing for environmental plaintiffs (including states)?

Casebook- 1139-1189

Class Twenty-eight **Standing**-Can environmental groups sue violators for past violations of statutes? How do citizen suits interact with government enforcement? OR POSSIBLE FIELD TRIP

Casebook- 1189-1221

Class Twenty-nine **CLASS PRESENTATIONS OF NOTES**

Class Thirty- **CLASS PRESENTATION OF NOTES**- Please turn in notes by the end of class.

Case Note (adapted from Georgetown University Case Note Comments):

Choose a case. You will need to read not just this case but also cases that are also referred to in your selected case.

A case comment describes, reflects on, and critiques the decision in a particular case. Do not simply rehash the court’s opinion point by point or mimic the dissent. The heart of your paper is your own analysis.

You can take any of several approaches:

1. The case was decided incorrectly, and you explain why.

This method is common, but be careful. You do not want to simply mirror a dissent or get into the rut of saying “The court’s wrong here” again and again. What you need to do is attack the court’s Analysis and explain why, even though the court applied the correct law, it applied it incorrectly when compared with other precedential cases usually referred to in the case.
2. The court is correct, but for the wrong reasons. While you agree with the court’s decision, you believe that the court used the wrong approach to reach it. This approach means that while the decision is correct, the court applied the wrong law. You will need to identify for the reader what the proper law was, where you identified it in precedent, and why it is more proper for use in a given court.

3. This whole area of law is a mess, and you can do better. This is the most ambitious approach, but you really must know the material to suggest a whole new type of approach to the area. New approaches to the law should be logical, yield consistent results, and have public policy support. Use the principal case to illustrate how the new method would work and compare it to the prior, flawed outcome.

4. The court missed the point. Maybe the court missed an important issue that courts facing the issue in the future should consider. You may want to argue that policy or equity considerations override a given law or otherwise influence the outcome in a way that the court itself did not decide.

5. The court is correct. It is possible that you just might agree wholeheartedly. To go through your comment agreeing with the court is extremely dangerous; the only way to do it without writing a book report is to write from a defensive posture, anticipating any counterarguments and demonstrating to the reader why they are without merit.

ELEMENTS AND FORMAT OF A CASE COMMENT
A case comment should include the following elements:
1. Facts of the Case (approx. 2 pages or less) Include the relevant facts and the procedural history of the case.
2. Holding (approx. 1 page or less) Your analysis of the court’s holding in the principal case.
3. Roadmap (1/2 page) Explain the structure of the comment.
4. Analysis (several pages)
5. Conclusion (approx. 1/2 page)

Generally, the structure of the comment will follow one of two patterns:
1. Introduction
The introductory portion of the comment includes the three elements listed below. The introduction must catch the reader’s interest and let the reader know what the comment is about and why it is important. The introduction will introduce and state how you will prove your thesis. Remember that you are writing for someone who, presumably, does not yet know the problem as well as you do, and may in fact have no knowledge of the area of law you are addressing.

Two approaches to the introduction:
a. Statement of Facts- Starting with the facts is effective when the facts are important to the outcome of a case, provide a good illustration of the problem, or are simply exciting.
b. Holding
c. Roadmap- The roadmap is a necessary part of the comment. It is perfectly appropriate to say, “This comment will argue” or “Part one of the comment will analyze.” The roadmap never comes first. It explains why the issue is important and describes the discussion and thesis. Its primary purpose is to inform the reader about what is coming so that subsequent material will seem relevant and fall into place.

OR

a. Holding: You may want to use this structure if the facts are not crucial to the comment, or the general rule of law overshadows the importance of the specific facts.
b. Statement of Facts
c. Roadmap

Footnotes:

1. To give a citation
This is the simplest footnote. When you cite an authority in the text, you must include a footnote with the technical citation. You do not need to give the name of the case in the citation if you have given the full name in the text. When appropriate include a pinpoint or jump cite in the citation.

2. When necessary to back up a proposition

When citing a case in the text, you have to italicize the full name of the case. The first time you cite it, you must use the full name. When citing a case in footnotes, you do not italicize the case name if giving the case name in full along with the citation.

Note that to use a short cite of a case already cited, you have to have cited the case in the same general textual discussion or within one of the preceding five footnotes. If you cite a case in footnote #6, do not short cite it thirty footnotes later.

Note that you can only use id. if the preceding footnote has only one case in it.