

TEXAS WATER LAW & POLICY

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SPRING 2021:

TEXAS WATER LAW AND POLICY

SYLLABUS

(PA 5380A)

Thursdays 6:30 -9:20 P.M.

Via Zoom

CHRISTOPHER BROWN, J.D., M.P.A.

OFFICE HOURS: UAC 345: MONDAYS 4:00-6:00 P.M.; ALSO BY APPOINTMENT. Contact me at cb56@txstate.edu

SPECIAL NEEDS: Students with special needs (as documented by the Office of Disability Services) should identify themselves to the professor at the beginning of the semester.

DEPARTMENT OF

POLITICAL SCIENCE: UAC 355: Tel. (512)245-2143; Fax (512) 245-7815; website <http://www.polisci.txstate.edu> [Links to an external site.](#)

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In twenty-first century Texas, no single public policy problem will be more urgent than maintaining a water supply for the state's burgeoning population. The singular importance of this increasingly scarce resource compels everyone planning a career in public service to learn the fundamental principles of Texas ground and surface water law, the responsibilities of state and local governments charged with water-related responsibilities, and the regulatory framework that governs the Texas water supply. At a minimum, this course seeks to convey these concepts. Hopefully, we will also gain an understanding of our collective responsibility as problem solvers for the public who relies on government for water.

GRADING:

- ATTENDANCE,
PARTICIPATION: 30%

Attendance. Unexcused absences will negatively affect your grade.

Readings and Discussion. Reading for each class is crucial for the class to function as it should. Also, student participation will constitute part of the grade for the course. Also, during each class I will call on students, at random, to explain the reading for the day and offer their analysis of it. If you have not done the reading and are called upon, you will receive a failing participation grade for that day.

- WRITTEN REVIEW QUESTIONS,
QUIZZES: 40%

Some weeks I will distribute review questions for the following weeks' readings. Other times there will be quizzes to make sure everyone is doing the reading.


- PROJECTS: 30%

There will be two written projects assigned during the course that require you to address a policy question that arises from the topics we discuss in class. Late unexcused projects are penalized fifteen points; late excused (documented) projects are penalized five points.

NOTE: UNLESS YOU HAVE AN IN-CLASS PROJECT, SUBMIT ALL ASSIGNMENTS TO CANVAS SITE (UPLOAD DOCUMENT) FOR THIS COURSE.

READINGS:

Essentials of Texas Water Resources, ed. Mary K. Sahs (5th Ed. 2016) (“Sahs”).

This book contains chapters on different subjects pertaining to Texas water law and policy. With a few exceptions, all of your readings will consist of chapters in the Sahs book. I will provide you with the link to this book so you can do most of your readings electronically. Here is the link: [Texas Water Resources 2016.pdf](#). 

The book on this link contains the vast majority of your readings for the entire semester. **All chapters identified as from the Sahs book can be found at this link. Check the table of contents for the assignments in this syllabus. If a reading is not in the Sahs book, I will provide you with a different link.**

Handouts and articles distributed through the course of the semester.

ADDITIONAL READINGS, ASSIGNMENTS, OR SCHEDULE CHANGES WILL BE ANNOUNCED ON A TIMELY BASIS.

(The course will also use in-class handouts and the Announcements function in Canvas on the course website to make sure you receive materials not found in your books).

CALENDAR OF TOPICS, READINGS, AND ASSIGNMENTS:

- **1/21/2021:**

Introduction and review of syllabus.

Suggested first-day readings (optional):

<https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?TX> (Links to an external site.)

https://www.thecentersquare.com/texas/gov-abbott-issues-emergency-proclamation-for-counties-suffering-from-drought/article_b9213c4c-066e-11ea-9856-17bfbeacb0e1.htm. (Links to an external site.)

Overview of current Texas water: science, law, and ethics in the context of water policy.


Distribute review questions for next week's reading:

Sansom pp. 187, 203-225: [Sansom Questions pp. 203-225.docx](#) 

([2021 Sansom Texas Water Overview .pdf](#)) 

[2021 Sansom 1 Power Point.pptx](#) 

Readings through 1/28/2021:

Handout: Sansom pp. 187, 203-225 (Excerpt from "Does Texas Have Enough Water?" and "Planning for the Future") [2021 Sansom Texas Water Overview .pdf](#) 

Review questions for 1/28/2021:


Sansom reading. Assignment One: [Sansom Questions pp. 203-225.docx](#) 

- **1/28/2021:**

Overview of Texas water: surface and groundwater supply, current and future demand.

Review Questions for 2/4/2021:

Turn in Sansom questions.

Distribute review questions over Eckstein, and Hardberger: [Water Eckstein Hardberger Discussion Questions.docx](#) 

Readings for 2/4/2021:

Sahs: Eckstein and Hardberger, “Scientific, Legal, and Ethical Foundations for Texas Water Law,” pp. 1-1 through 1-29.

- **2/4/2021:**


Turn in review questions over Eckstein and Hardberger.

Lecture and discussion: scientific, legal, and ethical foundations.

Readings for 2/11/2021:

Sahs: Rochelle, Castleberry, and Vassar, “Meeting Water Supply Needs” Planning, Permitting, and Implementation (pp. 2-1 through 2-19)

Review questions for 2/11/2021:

Rochelle, Castleberry, and Vassar review questions: [PA 5380A Rochelle and Castleberry Review Questions.docx](#) 

- **2/11/2021:**

Lecture and discussion: planning, permitting, and implementation.

Turn in review questions over Rochelle, Castleberry, and Vassar.

Readings for 2/18/2021:

Power point presentation: history of surface water permitting in Texas.

Sahs: Douglas G. Caroom and Susan M. Maxwell, “Surface Water Rights Permitting,” pp. 9-1 through 9-18.

Sahs: Kathy Alexander Martin, “Determining Surface Water Availability,” pp.12-1 through 12-10.

Review questions for 2/18/2021:


Caroom and Maxwell: [Surface Water Caroom Questions.docx](#) 

- **2/18/2021**

Turn in review questions over Caroom and Maxwell reading.

Lecture: surface water permitting: a usufruct dependent on supply.

Readings for 2/25/2021:

Handout: Sansom: “Who’s Who in Water,” pp.151-171. [Sansom Who's Who in Texas Water word.docx](#). 

Optional reading: Sah: Shana L. Horton and Constance Courtney Westfall, “State and Federal Entities with Water Resource Jurisdiction,” pp. 6-1 through 6-27.

- **2/25/2021:**

Lecture: the role of different governmental entities in regulating Texas water

Readings for 3/4/2021:

Sahs: Russell S. Johnson and Mary K. Sah, “Groundwater Law and Regulation,” part one: pp. 4-1 through 4-11

Review questions (due 3/11/2021):

Johnson, Sah:[Groundwater Review Questions Johnson and Sah PA 5380A TEXAS WATER LAW AND POLICY.docx](#) 

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
- **3/4/2021:**


Lecture and discussion: Texas groundwater law: the legal structure.

Readings for 3/11/2021:

Sahs: Johnson and Sah part two: pp.4-11 through 4-19.

Handout:

Handout: *Edwards Aquifer Authority v. Day*, 369 S.W. 3d 814 (Tex.2012): [EAA v Day.docx](#) 

Handout: *Edwards Aquifer Authority v. Bragg*, 421 S.W.2d 118 (Tex. 2013): [Bragg v Edwards Aquifer Authority.rtf](#) 

- **3/11/2021:**

Turn in review questions over (parts one and two) Johnson and Sahs reading.

Texas groundwater law: the rule of capture; statutory regulation; regulatory takings of groundwater.

Readings for 3/25/2021:

Sahs: Robert E. Mace and Cynthia K. Ridgeway, “Forecasting Underground Rain: Groundwater Availability Modeling,” pp. 19-1 through 19-13.

Sahs: Monique Norman and William R. Hutchison, “Groundwater Management Area Joint Planning,” 21-1 through 21-21.

Review questions for 3/25/2021:

Mace, Ridgeway, Norman, and Hutchison. [Mace and Ridgeway Texas Water Law and Policy Review Questions.docx](#) 

- **3/25/2021:**

Turn in review questions over readings (Mace, Norman, and Hutchison).

Lecture and discussion: Texas groundwater regulation on local, regional, and state level. Conflict between rule of capture and regulation.

Distribute Project One: Groundwater. Due 4/22/2021.

Reading for 4/1/2021:

Sahs: Excerpt from Charles Irvine, “The Endangered Species Act and the Texas Law of Natural Resources:” pp. 32-1 through 32-6; 32-14 through 32-21

Sahs: Darcy Alan Frownfelter, “Edwards Aquifer Authority,” pp. 17-1 through 17-18; 17-23 through 17-36.

- **4/1/2021:**

Lecture:

Sierra Club v. Lujan

The Edwards Aquifer Authority: unique groundwater regulator in Texas.

Reading for 4/8/2021:

Sahs: Cynthia Smiley, “State Water Planning,” 20-1 through 20-12.

Review questions for 4/8/2021:

Smiley reading questions: [Smiley chapter 20 state water plan questions .docx](#) 

- **4/8/2021:**

Turn in questions over Smiley reading.

Lecture and discussion: The Texas State Water Plan.

Reading for 4/15/2021:

Sahs: Linda Horng, “Drought Planning and Response,” pp. 22-1 through 22-15.

Sahs: Karen Guz, “Water Conservation,” pp. 23-1 through 23-21.

Review questions for 4/15/2021:

Guz reading [Ch 23 Conservation Guz.docx](#) 

- **4/15/2021:**

Turn in questions over Guz reading.

Lecture and discussion: Texas State Water Plan, continued.

Drought management planning, water conservation.

Readings for 4/22/2021:

Sahs: Jorge Arroyo, Mary K. Sahs, and Van Kelley, “Desalination,” pp. 25-1 through 25-20.

Sahs: Hope Wells and Colette Baron Bradsby, “Environmental Flows”, pp. 11-1 through 11-29.

- **4/22/2021:**

Turn in Project One.

Lecture and Discussion: Major contemporary issues: desalination policy and environmental flows.

Reading for 4/29/2021:

Sahs: Robert F. Adams, Ellen T. McDonald, Alan H. Plummer, Robin Smith, “Water Reuse,” pp. 24-1 through 24-45.

Review Questions:

[Ch 24 and 25 Reuse and Desal Review Questions.docx](#) 

- **4/29/2021:**

Turn in Reuse and Desal Review Questions.

Lecture and discussion: Major contemporary issues: water reuse.

Distribute Project Number Two: Due May 12, 2021 by midnight. Submit to Canvas.

Discussion of Project Number Two: Climate Change and Texas Water Planning.