ENERGY & NATURAL RESOURCES POLICY

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COURSE DESCRIPTION AND OBJECTIVES

This course provides an introduction to energy policy in the United States, with a focus on federal natural resources issues. The course will explore the federal regulatory framework for leasing oil, natural gas, and coal, including an overview of the primary statutes that govern energy production. The course will also examine the balance among federal, state, and local government in regulating natural resources. Finally, the course will survey renewable energy development, international energy and climate policy, and the role of politics, media, and non-governmental organizations.

The course will also provide an overview of the federal rulemaking process and recommendations for effective engagement in regulatory and policymaking process. Case studies and discussion will draw on timely topics to illustrate general principles, including Arctic leasing, fracking moratoria, and political rhetoric on energy and climate policy. Students will leave this course with a greater understanding of historical and modern trends in energy production, relevant regulatory frameworks, methods for engaging in the regulatory process, and regulatory design.

COURSE PREREQUISITES: Introduction to Public Policy

COURSE READINGS: Assigned readings include reports, academic articles, and media sources.

COURSE REQUIREMENTS:

Participation: Students are expected to attend all class sessions, contribute to class discussions, and give a short (5 to 10 minute) final presentation. Student may also be asked to prepare for mini "debates" or panel discussions for select class sessions.

Reaction Paper and Op-ed: Early in the semester, students will draft a one-page reaction paper, commenting on any of the readings and class discussion thus far. The reaction paper should reflect your own critical thinking, but you can and are encouraged to cite to outside research to support your points or raise questions for class discussion. Each student will also draft a short op-ed (approx. 500 to 700 words) on a timely environmental or energy policy topic. Students are not required to submit this op-ed for publication, but may choose to do so.

Research Report: Each student is required to prepare and submit a final report addressing an emerging or existing challenge in energy or natural resources policy. The paper should describe the issue in detail and offer an approach for managing or mitigating the environmental, social, or economic challenge through existing law, policy incentives, and/or regulatory reform. The paper
should be between 8 and 12 pages (1.5 spacing) in length, excluding title page, references and appendices.

**GRADING:** Your course grade will be determined as follows:

- Active and thoughtful participation: 20%
- Reaction paper: 15%
- Op-ed: 15%
- Final paper: 50%

**SYLLABUS**

1. **Wednesday, Sept. 7, 2016: Introduction to Natural Resources Ownership in United States**
   - Introduction to themes of course
   - Overview: federal, state and private land and mineral ownership in United States
   - The “shale boom” and recent trends in oil, gas, and coal production
   - **Reading:**
     - U.S. Energy Information Administration, Annual Energy Outlook 2016, Executive Summary
     - Edwin Dobb, “The New Oil Landscape The fracking frenzy in North Dakota has boosted the U.S. fuel supply—but at what cost?,” *National Geographic* (March 2013)

2. **Wednesday, Sept. 14, 2016: Statutory Framework for Federal Natural Resources**
   - Overview: Federal Land Policy Management Act (FLPMA), Mineral Leasing Act, and Outer Continental Shelf Lands Act (OCSLA)
   - Department of the Interior's Bureau of Land Management (BLM) and Bureau of Ocean & Energy Management (BOEM)
   - National Park Service and Protected Lands
   - **Reading:**
     - U.S. Extractive Industries Transparency Initiative, *Federal laws and regulations* (skim)
     - Mineral Leasing Act of 1920: §§ 2 - 8 (coal); 13 – 20 (oil and gas)
     - Outer Continental Shelf Lands Act, §§ 1331; 1332; 1334(a); 1344; 1346
     - National Park Service, *National Park Service Overview* and *Evolution of an Idea*
     - The *Wilderness Act*, Sections 1 and 2

3. **Wednesday, Sept. 21, 2016: BLM Onshore Regulatory Framework and Current Issues**
   - BLM planning process and regional management plans
   - Fiscal terms of coal, oil, and gas leases: bids, rental payments, and royalties
   - Case study: 2016 federal coal moratorium and programmatic environmental review. What are the most salient critiques of BLM's leasing programs? How would you change the way BLM leases coal?
   - **Reading:**
     - BLM Grand Junction Field Office, Resource Management Plan: *Background*
     - Secretary of the Interior, *Secretarial Order No. 3338* (Jan. 2016)
• Jayni Hein & Peter Howard, *Reconsidering Coal's Fair Market Value*, Policy Integrity, NYU School of Law (Oct. 2015) (read report; skim economic appendices)

4. **Wednesday, Sept. 28, 2016: Federal Offshore Regulatory Framework and Current Issues**
   - Department of the Interior’s planning process
   - Fiscal terms of leases
   - Case study/discussion: What are the differences between BOEM and BLM’s planning process and lease sale process, and what are the pros and cons of each approach? What factors led BOEM to cancel upcoming Arctic lease sales? What changes would you propose to BOEM’s planning and leasing regime?
   - **Reading:**
     - Interior, Executive Summary: 2017-2022 Proposed Program for Offshore Leasing (March 2016)
     - Barry Yeoman, "*The Inside Story of Shell’s Arctic Assault*," *Audubon* (Jan. 2016)
     - Michael Livermore, *Patience is an Economic Virtue: Real Options, Natural Resources, and Offshore Oil*, 84 Col. Law Rev. 581 (2013) [read pp. 581-596]
     - U.S. Forest Service, *Land and Water Conservation Fund – About the Fund*

   - *Reaction paper due*
   - The Social Cost of Carbon (SCC)
   - Accounting for the cost of externalities of fossil fuel production
   - Option value, or the informational value of delay
   - Case study/discussion: The “fair market value” of federal energy leases. Are taxpayers currently earning “fair market value”?*
   - **Reading:**
     - US. EPA, *The Social Cost of Carbon*
     - Jayni Hein & Peter Howard, *Illuminating the Hidden Costs of Coal* (Dec. 2015) (read report; skim appendices)
     - Livermore, *Patience is an Economic Virtue*, pp. 630-650

   - Introduction to the federal rulemaking process: timeline, research tools, and requirements
   - OMB Circular A-4, Executive Orders, and cost-benefit analysis
   - Snapshot: judicial standards of review
   - **Discussion:** Effective regulatory advocacy
   - **Reading:**
     - OMB Circular A-4 (skim entire document; focus on pp. 1-14)
     - Exec. Orders 12,866 and 13,563
     - James DeLong, *How to Convince an Agency*
   - **Read lightly:**
     - U.S. EPA, Guidelines for Preparing Economic Analysis
     - Institute for Policy Integrity at NYU School of Law, Comments on Oil and Natural Gas Sector: Emission Standards for New and Modified Sources (Dec. 2015) (skim for structure, tone)
7. Wednesday, Oct. 17, 2016: Environmental Review Process

- The National Environmental Policy Act (NEPA)
- **Discussion:** Does NEPA analysis for new coal, oil, and gas leases require disclosure of downstream greenhouse gas emissions? Upstream greenhouse gas emissions? Is the way in which cumulative impacts are handled sufficient in the case of fossil fuel leases?
- **Reading:**
  - U.S. EPA, *What is the National Environmental Policy Act*
  - National Environmental Policy Act of 1969, Statement of Purpose and Title I
  - Selected NEPA Regulations: 40 C.F.R. §§ 1502.14 - 1502.16; 1502.19 - 1502.23; 1508.8; 1508.25
- **Skim:**
  - BLM, *Final Environmental Impact Statement* for the Wright Area Coal Lease Applications (Vol. 1) (July 2010)

8. Wednesday, Oct. 24, 2016: Clean Air Act Regulation and Energy Production

- **Guest Lecturer:** TBA
- EPA’s Clean Power Plan: overview, market dynamics, and industry challenges
- **Avoiding** grandfathering issues - lessons from powerplant regulation
- **Discussion:** Regulatory design options: performance standards, market mechanisms, and voluntary measures; optimal treatment of new, modified, and existing sources
- **Reading:**


- Energy development on state lands
- State and local land use and “police powers”
- **Federal preemption**
- **Case studies and discussion:** City and state fracking moratoria. Should states and cities be able to ban fracking? Should fracking, or specific aspects of fracking, be regulated at the federal, state, or local level? What theoretical and/or legal justification supports your position?
- **Reading:**
  - Scott Waldman, “*The Impact of Cuomo’s Fracking Ban,*” *Politico* (Jan. 5, 2015)
• Bruce Finley, “Colorado High Court Hears Cases on City Oil and Gas Fracking Ban,” Denver Post (Dec. 9, 2015)

10. Wednesday, Nov. 9, 2016: Renewable Energy: Overview of Regulatory Framework and Projections
   • *Op-ed due*
   • Renewable energy development on federal lands
   • Development on state and private lands: renewable portfolio standards and other policies
   • Case study/discussion: Incentives and subsidies for renewable energy versus fossil fuels production. Should any natural resource receive production subsidies?
   • Reading:
   • BLM, Solar Energy Program
   • Interior, Secretary Jewell Announces Competitive Leasing Policy to Encourage Solar and Wind Energy Development on Public Lands, Create Greater Certainty for Developers (Sept. 25, 2014)
   • National Renewable Energy Laboratory, Renewable Portfolio Standards
   • Skim:
   • BLM, Renewable Energy Projects (skim to get a sense of current and recent projects)

11. Wednesday, Nov. 16, 2016: The International Context and Paris Agreement
   • Emerging economies: future projections for energy production, consumption, and GHG emissions
   • UNFCCC and commitments to reduce GHG emissions
   • Next steps post-Paris COP
   • Discussion: What responsibility do more developed economies have to assist developing economies with emission reductions? As the United States, how would you encourage or persuade other countries to reduce emissions, especially smaller countries and emerging economies?
   • Reading:
   • Intergovernmental Panel on Climate Change, Climate Change 2014: Synthesis Report Summary for Policymakers
   • Center for Climate and Energy Solutions, Outcomes of the U.N. Climate Change Conference in Paris (Dec. 2015)
   • Additional reading TBA

Wednesday, Nov. 23, 2016: Thanksgiving recess. No class held.
12. Wednesday, Nov. 30, 2016: Partisanship and Energy Policy
   • Rhetoric of energy policy and climate change in politics and elections
   • Hot issues: “keep it in the ground,” lifting crude oil export ban, posturing over Clean Power Plan, jobs and environmental regulation
   • Class activity: Democrat and Republican debate and consensus exercise
   • Reading:
     - Additional reading TBA

13. Wednesday, Dec. 7, 2016: Advocacy and Media
   • Challenges to fossil fuel lease approvals, environmental review process, and energy infrastructure
   • Role of media in advocacy: defining target audience; distilling your message
   • Role of amicus curiae
   • Case studies/discussion:
     - Citizen suits and activism to stop expansion of coal export terminals and other energy infrastructure
     - Amici in Clean Power Plan litigation
   • Reading:

14. Wednesday, Dec. 14, 2016: Short Presentations and Class Conclusion
   • Short presentations by each student on their individual research paper
   • Review of key topics in course and integration of course themes