

WATER RIGHTS AND PROTECTIONS IN THE UNITED STATES

HISTORY AND PUBLIC POLICY BRIEFING PROGRAM
NATIONAL HISTORY CENTER



Water donations for Flint, Michigan residents, 2016. Image courtesy of Associated Press.

[Institution]
[Course Name, Number]
[Instructor Name]
[Semester, Year]

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INTRODUCTION

The History and Public Policy Briefing Program is designed to show students how to bring historical perspectives to contemporary policy issues. It provides a curricular model that educators can apply to their existing history classes to better illuminate the myriad ways we can learn from the past.

Understanding history is essential to all policymaking. Every issue has a history and we make better policy decisions when we understand that history. Designed to be adaptable to many courses and teaching styles, the History and Public Policy Briefing Program provides a guide for history educators to develop and host briefings about the historical dimensions of current policy questions.

The History and Public Policy Briefing Program Overview

The History and Public Policy Briefing Program provides a guide to enable educators and students to craft a briefing on the historical background of a policy question at the local, state, or national level, following the National History Center's model.

At these briefings, students work as a team to (1) identify a specific issue relating to water rights confronting policymakers at the local, state, or national level; (2) research the historical roots of the issue or some closely related issue that arose in the past; (3) prepare a briefing paper and presentation to an invited audience (from parents to local policymakers) that highlight the insights we can gain from an historical perspective on the present. Working both individually and collaboratively, students will engage in historical inquiry, research, and analysis as they investigate particular policy questions. They will also develop written and oral presentation skills as they prepare for and present the public briefing. Finally, they will deepen their civic knowledge and engagement as they grapple with the roots of issues that are relevant to their own lives.

The program is designed to be integrated by educators into existing history classes at the college or high school level. The policy briefings will not drive the course but rather will provide a fresh framework for addressing topics that already relate to the course material. Educators can integrate the program into their classrooms in several ways: from start to finish, it can serve as a capstone research project; broken into its component parts, it can be used to spur discussion or encourage student debate; if a wider audience is invited, it can be a way for student-historians to showcase the value of their history education.

Learning Outcomes

- Developing a methodological practice of gathering, sifting, analyzing, ordering, synthesizing, and interpreting evidence.
- Exploring the complexity of the human experience by evaluating a variety of historical sources for their credibility and perspective.
- Learning to value the study of the past for its contribution to lifelong learning and critical habits of the mind that are essential for effective and engaged citizenship.
- Engaging a diversity of viewpoints in a civil and constructive fashion as students apply historical knowledge and analysis to contemporary policy conversations.
- Building and improving upon oral and written skills essential to academic success.

WATER RIGHTS AND PROTECTIONS IN THE UNITED STATES OVERVIEW

Summary

The birth of federal regulation of water usage and protections can be traced back to Article 1 of the United States Constitution, which grants the federal government the power to regulate navigable (as opposed to non-navigable) waterways. From the late eighteenth to mid nineteenth century, federal water regulations as well as waterway ownership and access were determined on the basis of riparian rights; a general abundance of water east of the Mississippi River influenced the federal government to treat water and riverways as common, shared “property,” incapable of being owned by either the state or private individuals, thus allowing the federal government plenty of opportunities to regulate commerce, transportation, resource use, and other economic behaviors dependent upon inherently public waterways. While the federal government enforced the doctrine of riparian rights, state law dictated the extent of riparian and public rights.

As the borders of the United States expanded throughout the nineteenth century, so did the language and nature of water rights and protections. Semi-arid and arid lands west of the Mississippi forced the federal government to enforce an appropriative system, a system of water access contingent upon competitive resource exploitation. As white Americans colonized the continental west, access to water became a major point of contention between Native Americans and white migrants. During the early reservation period, the federal government, functioning under the doctrine of appropriative rights, refused to recognize indigenous access to traditionally significant water sources. The diversion of water sources from the Fort Belknap Reservation to white citizens is the most prominent example of the appropriative system working against Native American interests during the late nineteenth century. The Fort Belknap Reservation water conflict led to *Winters v. United States*, a significant 1908 court case that established a precedent for water rights and protections granted specifically to Native American communities living on reservations.

Since then, various levels of the federal judiciary have ruled on several cases concerning water law in the United States, establishing important precedents for all water users, from private individuals and small communities to corporations. Throughout the second half of the twentieth century, rising pollution levels and the expansion of industry pressured Congress to assuming more regulatory responsibility over water pollution and usage. The passage of sweeping protection laws in the 1970s - namely the Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act - increased federal accountability as well as spending in an effort to combat pollution, overuse, and water-related crises.

Despite increased federal oversight of water use and access, environmental protection groups as well as proponents of improved public health have remained steadfast in opposing major industries and institutions that continue to contribute largely to polluting public and private water sources across North America. Grassroots movements against industrial pollution - especially the oil and mining industry - have played a considerable role in shaping public opinion and expanding the fight to protect access to resources.

Contemporary Application

From Flint, Michigan to the Standing Rock Reservation, North Dakota, access to and protection of water resources in North America continues to significantly influence both policy and history in the United States. While water protections may seem an inherently non-partisan issue, the influence of major industries responsible for large amounts of pollution in water sources has been a major force in determining state and federal policy. Though historical contextualization cannot prevent special interests from influencing policy, it can help policymakers make more informed decisions that will better ensure all people have access to clean water.

Historiographical Objectives

Often, the history of water and environmental protection policy in the United States has coincided with major economic, social, political, and racial landmarks in American history. This project allows students to explore how housing policies have influenced or been influenced by other political forces, and how these influences inform water and environmental protection policy today.

Historical Questions to Consider

How has water and resource protection policy shaped major moments or trends in American history (and vice versa)?

What is the current state of the historiography surrounding the history of water and resource protection policy? Where is there room for more research and literature?

Does federal or state policy regarding water access and protections seem to dictate or follow other social, political, or economic trends?

Where have federal and state efforts to protect shared or private water sources coalesced and collided? Similarly, when has partisanship hindered housing reform, and how can policy makers avoid partisan deadlock over nonpartisan issues like water?

ASSIGNMENTS AND DEADLINES

This sample schedule, drawn from the NHC's [History and Policy Education Program Guidebook](#), can help instructors in creating a syllabus and schedule designed specifically for their own class(es).

UNIT 1 | Getting Started

Week 1

Familiarize students with National History Center's Congressional Briefing program. Have them watch one of the NHC's briefing videos and read a summary of the one of the NHC's briefings. Videos of NHC briefings can be found [here](#); summaries of NHC briefings can be found [here](#)

Weeks 2 – 3

Students may begin conducting individual research at local institutions to refine research approach. By the end of week 3, each student should refine their research to one or two subtopics.

UNIT 2 | Individual Research

Weeks 4 – 5

Have each student prepare and submit a **2-3 page paper** on the selected topic that outlines the history of some aspect of the issue. Subtopics may include (but are not limited to) any of the following: riparian rights versus appropriative systems; commerce, trade, and transportation; industrial pollution; environmental racism; international waterways; Clean Water Act.

Week 6

Have students research which committee or subcommittee of the legislature or municipal government has jurisdiction over the legislative issue the class is considering. Have them identify which legislators sit on the committee and make initial contact with those policymakers' offices. In addition, students should draw up a list of other interested parties, such as representatives of non-profit organizations and journalists, to invite to the briefing (see page 8-9 of the [HPEP Guidebook](#)). If the instructor would like to hold the briefing in a room in a state legislative or municipal office building, the instructor and/or students should begin arranging for a room this week (see page 10 of the [HPEP Guidebook](#)).

Students should also continue preparing for individual presentations on their subtopics to present to the class during weeks 7-8.

UNIT 3 | Individual Presentations

Week 7 – 8

Have students present on their individually researched subtopics. Presentations need not exceed five minutes. Students should be prepared to give a brief history of the subtopic and how it influences the larger legislative issue today.

UNIT 4 | Preparing for the Class Briefing

Weeks 9 – 10

Working collaboratively in small groups, students prepare for the formal briefing. The three presenters coordinate and hone their presentations with feedback from other students. Different groups work on: crafting a **one-page briefing handout** that offers a succinct synopsis of the history of the topic; crafting and issuing **formal invitations**; pursuing a **social media campaign** to promote the briefing; and **arranging logistics** such as videography and audio-video equipment as needed.

Week 11

Dress rehearsal for formal briefing. The three presenters practice their presentations to the class. The other students stand in as audience members, asking questions during the question-and-answer portion.

UNIT 5 | The Briefing

Week 12

Formal briefing to state or local policymakers, journalists, student leaders, etc.

UNIT 6 | Reflection and Follow-Up

Week 13

Students submit a **1-to 2-page reflection** on the questions audience members raised at the briefing. In considering the discussion at the briefing, they may draw on material from weeks 4 - 5 and 7 - 8 that was not presented at the formal briefing.

You may submit a video recording of the event and/or a blog post about your experience with the History and Public Policy Briefing Program for possible inclusion in the National History Center's or American Historical Association's online or print publications.

PRIMARY SOURCES

Finding Primary Sources

Several United States agencies and bureaus maintain resource collections pertaining to water law, rights, and protections:

- [United States Environmental Protection Agency: Water Topics](#)
- [United States Department of Agriculture National Agricultural Library](#)
- [United States Department of the Interior Bureau of Indian Affairs: Branch of Water Resources](#)

Online libraries, universities, and other academic and scholarly institutions maintain comprehensive primary source collections for easier research. These collections and other related resources can be accessed through the following sites:

- [Oregon State University Online Library Guide: Water Resources](#)
- [Western Waters Digital Library](#)
- [University of California-Riverside Water Resources Collections and Archives](#)

The National Congress of American Indians provides [vital resources](#) for any student studying the effect of federal water regulations on Indigenous communities.

Sample Primary Sources

A number of significant court cases have influenced water policy and protections, especially for Native American tribes:

- [Winters v. United States](#)
- [Arizona v. Colorado](#)
- [Colorado River Water Conservation District v. United States](#)
- [Wyoming v. Colorado](#)

[Clean Water Act](#)

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. In 1972, a series of amendments reorganized and expanded the 1948 Federal Water Pollution Control Act, creating one of the most significant items of water legislation in United States history. The Environmental Protection Agency maintains a helpful [historical overview](#) of the CWA on its website.

SECONDARY SOURCES

Finding Secondary Sources

There are a number of policy- and law-oriented academic journals devoted to the study of water law, rights, and protections. Students may consult any of the following journals for articles and essays pertaining to their area of interest:

- [University of Denver Water Law Review](#)
 - [California Water Law Journal](#)
 - [Water Law](#)
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Sample Secondary Sources

Burton, Lloyd. [American Indian Water Rights and the Limits of Law](#). Lawrence, KS: University of Kansas Press, 1991.

Outwater, Alice. [Water: A Natural History](#). New York, NY: Basic Books, 1996.

Pisani, Donald J. [Water and American Government: The Reclamation Bureau, National Water Policy, and the West, 1902-1935](#). Berkley, CA: University of California Press, 2002.

Reisner, Marc. [Cadillac Desert: The American West and Its Disappearing Water](#). London, UK: Penguin Books, 1993.

Salzman, James. [Drinking Water: A History](#). New York, New York: The Overlook Press, 2012.

GRADING RUBRIC(S)

Final Presentation Rubric:

Mock Components	Excellent 4	Good 3	Fair 2	Poor 1	Students Score	Comments
Visual Aids						
Was the handout clear and concise?						
Was the PowerPoint (or other presentation aid) easy to follow?						
Presentation Delivery						
Did presenters organize and present information clearly and effectively?						
Did presenters speak clearly?						
Were speakers engaging?						
Historical Content						
Did the historical content help the audience understand the current issue?						
Question and Answer Session						
Did presenters answer questions clearly?						
Did presenters demonstrate knowledge about the history?						
Did presenters manage the session effectively?						