Sources of Environmental Law

1) Legislative Branch
   - Enact environmental laws by passing bills

2) Judicial Branch
   - Impact environmental laws through statute interpretation

3) Executive Branch
   - Proposes, supports, or opposes legislation
   - Treaties
   - Executive orders

4) Administrative Law
   - Rule making
   - Enforcement
How a Bill Becomes a Law

1. Introduced in House
   - Referred to Committee/Subcommittee
     - Hearings, Studies
     - Reported by Committee
       - Debate, Vote
     - Conference Action
   - Sent to White House (Signed/Vetoed)

2. Introduced in Senate
   - Referred to Committee/Subcommittee
     - Hearings, Studies
     - Reported by Committee
       - Debate, Vote
     - Conference Action
   - Sent to White House (Signed/Vetoed)
Judicial Branch

LAW INTERPRETATION

- Constitution
- Statute
  (plain meaning)
- Legislative History

- Example: “Waters of the United States”
Executive Branch

- Propose/Support/Oppose and Veto Legislation
- Appointments
  - Supreme Court/
  - Agency Heads
- Budget Proposals
- Treaties
- Executive Orders
Law Enforcement

- **Criminal Law**
  - Federal and state statutes
  - Burden of proof: beyond a reasonable doubt

- **Civil Law (eg. contracts, torts)**
  - Laws between individuals/corporations
  - Tort; a civil wrong for which a remedy can be obtained
  - Negligence/nuisance (IBM/Del Webb v. Spur Ind.)
  - Burden of proof: preponderance of evidence

- **Environmental Prosecutions**
Regulatory Takings

- **Lucas v. S.C. Coastal Council (1992) – Beachfront Management Act**
  - SC Supreme Court held that no compensation due when regulation designed to prevent serious harm
  - U.S. Supreme Court reversed and held that regulations that prohibit virtually all economically beneficial use of land require compensation

- **Dolan v. City of Tigard (1994) – storm drainage and bike pathway exactions**
  - OR Supreme Court held that the drainage and pathway ok to offset increased runoff and some of the increased traffic from the project
  - U.S. Supreme Court reversed and held; 1) there must be a nexus between the regulation and the property restriction, and 2) there must be a reasonable relationship between the requirement and the impact of the proposed regulation

The Litigation Process

- Litigation is the process of carrying on a lawsuit
- Dual Court System
- Standing
- Alternatives to Civil Litigation
  - Arbitration
  - Mediation
Alternatives to Civil Litigation
Alternative Dispute Resolution

- **Arbitration**
  - Resolution of dispute by a neutral 3rd party
  - Each side presents witnesses and evidence to arbitrator
  - Final decision is likely to be some sort of compromise solution
  - Decision is legally binding

- **Mediation**
  - 3rd party is designated to facilitate communication
  - Mediator does not make a final binding decision
  - Creative solutions possible
  - Less adversarial than arbitration or a trial
Administrative Law

- Administrative agencies have legislative, judicial, and executive powers
- Rule making
  - Informal
  - Formal
- Problems with rule making
  - Objectivity (or lack thereof)
  - Uncertainty
- Adjudication
Environmental Protection Agency

- Created in 1970 to control pollution in the areas of air, water, solid waste, pesticides, radiation, and toxic substances

- The EPA performs environmental research, standard setting, monitoring, enforcement, and policy setting
Other Agencies with Environmental Responsibilities

- Department of the Interior
  - Bureau of Land Management
  - U.S. Fish and Wildlife Service
  - National Park Service

- Department of Agriculture
  - U.S. Forest Service

- Occupational Safety and Health Administration (OSHA)