I have been teaching water law at the William S. Boyd School of Law since 1999. When I decided to join the Boyd faculty, a friend who had an extensive water law practice before going on the federal bench asked, “How are you going to teach water law at a place where there is no water to apply the law to?” That question, though facetious, was insightful. Nevada is more arid than most of the west.

Jim Davenport, longtime water division chief of the Colorado River Commission of Nevada, observed in his book on Nevada water law that “the law of water in the west is often interchangeable between western states, the law having primarily developed in a common social milieu during the same period of American history.” He also noted, however, that “[t]he unique natural setting of Nevada, the Great Basin, Lake Tahoe, and the Colorado River...has driven the formation of Nevada’s water law.” I fully agree with both points, and they shape the water law course at Boyd.

The heart of the course is the appropriation doctrine, a common law property rights system for water, built on the principle that “first in time is first in right.” The system began in California in 1855 and spread rapidly to other western states. It was supplemented by a water code, enacted in Wyoming in 1890, which other western legislatures soon embraced, for the most part. The Boyd water law course interweaves supplemental Nevada cases and statutes with national casebook materials that develop the “often interchangeable” appropriation doctrine rules and consider how modern environmental regulations affect them.

Lake Tahoe, its tributaries and the Colorado River are interstate waters, so they pose issues of allocation between states. No state can impose its law on another state, because they are equal sovereigns. Consequently, interstate water issues are addressed mainly by federal law. State appropriation rules apply only so far as federal law allows.

The Boyd water law course gives significant attention to interstate issues.

U.S. Bureau of Reclamation projects have played a major role in developing water supplies throughout the west, but these projects have special importance in Nevada. Due to the leadership of Congressman (later Senator) Francis G. Newlands of Nevada in securing passage of the Reclamation Act of 1902, the Truckee-Carson Project (now Newlands Project) in northern Nevada was one of the first projects authorized and built under that act. In southern Nevada, nearly 90 percent of the water supply for the metropolitan Las Vegas area comes from the Bureau of Reclamation’s Lake Mead reservoir. The Boyd water law course includes federal reclamation law and its modern evolution.

Although the Boyd water law course is designed for law students, the law school is pleased to make the course available to students in UNLV’s master of science program in water resources management. The master’s degree students, unlike law students, are evaluated on a pass/fail basis, rather than on a letter-grade basis, because their inexperience in analyzing judicial opinions and statutes would put them at a disadvantage compared to the law students enrolled in the course.

In addition to the water law course, the law school’s Saltman Center for Dispute Resolution also has an interest in water issues. The center sponsored a symposium in the fall of 2007 titled “Collaboration and the Colorado River.” The well-attended symposium featured 19 speakers and commentators. They came equipped with expertise in water law, water policy or dispute resolution, and had backgrounds in academia, government and practice. Twelve of the speakers and commentators wrote papers published in a symposium issue of the Nevada Law Journal. From the Boyd faculty, Saltman Center director Jean R. Sternlight wrote “Introduction: Collaboration Good or Bad: How Is It Working on the Colorado River?” Bret C. Birdsong wrote “Séances,
Ciéñegas, and Slop: Can Collaboration Save the Delta?” and I wrote “Collaborative Solutions to Colorado River Water Shortages: The Basin States’ Proposal and Beyond.”

Returning to my friend’s facetious question, the serious answer is that, despite the aridity of Nevada, teaching water law at Boyd is not an impossible task, but rather an enjoyable one. Nevada and other western states have changed greatly in recent decades. Urban populations have exploded. Commerce and industry have expanded to challenge or surpass mining and agriculture in economic importance. Public support for environmental protection has grown. As an attorney for the Southern Nevada Water Authority wrote regarding these changes: “Simply put, the urban and environmental interests who are ‘last in time’ are not willing to accept the proposition that, as supplies become fully allocated, western water law always places their interest ‘last in right.’” This point calls to mind a theme of famed business management consultant, the late Peter Drucker. He thought that tension between the need for continuity and the need for change was central not just in business but in society. There is no better law school course for students wishing to explore the tension between continuity and change than western water law.

DOUGLAS L. GRANT is the E.L. Cord Foundation Professor of Law at the William S. Boyd School of Law, where he teaches property and real estate finance in addition to water law. He is the author, along with George A. Gould and Gregory S. Weber, of Cases and Materials on Water Law (7th ed. 2005), and he wrote the six chapters on interstate water allocation in the multivolume treatise “Waters and Water Rights.” He has written numerous law journal articles that collectively address a wide variety of water law topics.

2 Id. at 1.