

**Public Land Law and Policy**  
**NRM 204, 3 Credits**  
**Spring Semester 2017**  
**Irving 201**  
**MW 6:00-7:30 P.M.**

Instructor: Danielle Pensley, Adjunct  
O'Neill 302  
office hours by appointment  
pensley.ds@gmail.com  
cell: 202.957.7994

**Course Objectives**

This course examines the major federal laws that address public lands and natural resources, as well as the history, values, and legal authorities that have shaped our country's approach to public lands management. Additionally, we will cover important issues that affect public lands in Alaska.

Besides gaining familiarity with the substance of public land statutes and the jurisdiction of federal land management agencies, students of this course are expected to learn how to apply the principles of administrative law and to use close reading skills to resolve conflict situations.

If you have a physical or learning disability, please advise me in writing by the second week of class of any special consideration necessary. I will do everything possible to accommodate you in accordance with the UAF Disability Services Policies and Procedures and the Americans with Disability Act of 1990.

In teaching this course, I do not mean to offend. If anything I say or imply is howsoever problematic, please mention something to me directly and as soon as possible so that we may air out the issue to mutual satisfaction.

Please note that readings and other assignments are due by the class period with which they are associated. The readings, while short, require close attention and considerable thought.

Plagiarism and other serious violations of the UAF Honor Code will earn a failing grade for the course.

Last, I do travel in my day job, and I have very little say over when that travel occurs. Depending on class majority preference, I should like to reserve either the following Friday evening or Saturday morning as a makeup period for when we miss a class in the week immediately prior.

**Public Land Law and Policy**  
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**Course Summary**

This course examines the major federal laws and policies affecting the exploitation and conservation of resources on public lands. We will analyze the conflicting values and interests that underlie policy debates over the management of natural resources and the legal authorities that attempt to reconcile them. Anticipated topics include the history of public lands acquisition and disposition; the National Environmental Policy Act; the roles of various federal agencies in managing federal lands; the mineral, timber, and preservation resources; and the unique Alaskan context, including subsistence.

**Readings**

The textbook for this course, which students must purchase, is a casebook entitled *Federal Public Land and Resources Law* by George C. Coggins et al. (Foundation Press, 2014, 7th Edition). Mandatory outside readings will be posted as a PDF on Blackboard. You are expected to check Blackboard regularly for updates to the syllabus and for newly posted readings. I will try to post any changes no later than the end of the day Friday prior to the week in which the assignments apply. Please note that readings and other assignments are due by the class period with which they are associated. The readings, while short, require close attention and considerable thought.

**Class Structure and Course Grade**

Class will be run small section style: part lecture, part Socratic method, part discussion, part student-led teaching. Attendance is required unless otherwise excused. Students will be expected to have completed their readings and assignments prior to the class for which they are assigned, including the first class. Your course grade will be comprised of the following evaluations: attendance and participation for 10%, one presentation for 15%, three in-class quizzes for 10% each, a ten-page paper for 20%, and a cumulative in-class final for 25%. I will provide more information about each of these evaluations as the time for them nears. Late work will lose 10% of available points each day it is late.

**Grades**

This course is graded with a +/- letter grade corresponding to the weighted numerical average of the evaluations above.

**Extra Help**

If you find, at any time during the semester, that you are having trouble understanding the concepts discussed in class, please see me before you fall behind. I am happy to provide additional explanations and other help to any interested student.

**Technology Policy**

Use of laptops, phones, tablets, and other electronic devices is prohibited during class unless specifically and individually permitted.

**Class Scheduling**

From time to time we may need to reschedule a class due to my work-related travel. To do so, I will take a poll at the earliest possible opportunity to ascertain students' convenience. Available overflow blocks will likely be Friday evening or Saturday morning.

## Course Syllabus (Subject to Change)

### 1. Wednesday, January 18th – COURSE INTRODUCTION

Course Introduction: a working definition of public land; instructor and student introductions; review of syllabus. Lecture: thinking about natural resources. Assignment: a) read excerpt of *One Third of the Nation's Land: A Report to the President and to Congress by the Public Land Review Commission* (1970) which is being sent via email to all registered students; b) prepare to share a photograph, personal artefact, or story relating to a particular unit of public land; and c) prepare to explain why you are taking this course.

### 2. Monday, January 23rd – WORKING WITH CASES

Lecture: an introduction to the American legal system. Assignment: a) review your notes from Class #1 and capture any questions for today; b) read the handout, *How to Brief a Case*, which is posted on Blackboard; c) try your hand at briefing *Edwards v. Sims*, 24 S.W.2d 619 (Ky. 1929) and *Marengo Cave Co. v. Ross*, 10 N.E.2d 1917 (Ind. 1937), which are posted on Blackboard in their entirety.

### 3. Wednesday, January 25th – ACQUISITION OF THE PUBLIC DOMAIN

"Thus in the beginning all the world was *America*." John Locke, *Two Treatises of Government* (1690). Lecture: aboriginal title; doctrine of discovery, doctrine of conquest. Assignment: a) review your notes from Class #2 and capture any questions for today; b) review *Coggins* 46-52 (Chapter 2, Section A); c) read excerpt from Wilson, *The Earth Shall Weep: A History of Native America* (1999), which is posted on Blackboard; d) brief *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), an excerpted version of which is posted on Blackboard.

### 4. Monday, January 30th – DISPOSITION OF THE PUBLIC DOMAIN

Lecture: an overview of the mechanics of land conveyances; disposition to states and private individuals; the Sagebrush Rebellion. Assignment: a) review your notes from Class #3 and capture any questions for today; b) read *Coggins* 58-66; c) brief *PPL Montana, LLC v. Montana*, 132 S.Ct. 1215 (2012), excerpted in *Coggins* 66-71; d) read *Comment: The Sagebrush Rebellion and States' Rights* in *Coggins* 72-74; e) brief *United States v. Gardner*, 107 F.3d 1314 (9th Cir.), cert. denied, 522 U.S. 907 (1997), excerpted in *Coggins* 74-76; f) read *Coggins* 91-102; g) brief *Camfield v. United States*, 167 U.S. 518 (1897), excerpted in *Coggins* 103-06.

5. Wednesday, February 1st – FEDERAL LAND MANAGEMENT

Lecture: background principles – the Enclave and Property Clauses; access issues. Assignment: a) review your notes from Class #4 and capture any questions for today; b) brief *Kleppe v. New Mexico*, 426 U.S. 529 (1976), excerpted in *Coggins* 142-48; c) read *Coggins* 347-48; d) review the Unlawful Inclosures Act of 1885, 43 U.S.C. § 1061, which is posted on Blackboard; e) brief *Leo Sheep v. United States*, 440 U.S. 668 (1979), excerpted in *Coggins* 349-53; g) read *Coggins* 360-61; h) brief *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d 735 (10th Cir. 2005), excerpted in *Coggins* 361-70.

6. Monday, February 6th – WITHDRAWALS; EXECUTIVE ORDERS AND WITHDRAWALS

Lecture: withdrawals and reservations; executive withdrawals. Video: (former) Secretary of the Interior Sally Jewell at the Alaska Federation of Natives Convention in Fairbanks, October 21, 2016 (posted by KTVA CBS 11 News). Assignment: a) review your notes from Class #5 and capture any questions for today; b) read *Coggins* 108; c) brief *United States v. Gratiot*, 39 U.S. (14 Peters) 526 (1840), excerpted in *Coggins* 109; d) brief *United States v. Gettysburg Electric Railway Co.*, 160 U.S. 668 (1896), excerpted in *Coggins* 110-12; e) read *Coggins* 382-83; f) brief *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915), excerpted in *Coggins* 383-89; g) read *Coggins* 391-97; h) brief *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002), *cert. denied*, 540 U.S. 813, excerpted in *Coggins* 397-99; i) read Office of the White House Press Secretary, “President Obama Signs Executive Order on Northern Bering Sea Climate Resilience” (December 9, 2016); j) read Martinson, “Obama Prohibits Offshore Oil Drilling in Most U.S. Arctic Waters,” *Alaska Dispatch News* (December 21, 2016); j) prepare to discuss, based on your readings, how you would contest these executive orders from the Obama Administration.

7. Wednesday, February 8th

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #1-5). Guest Lecture: Surveying the Public Lands.

8. Monday, February 13th – THE DEPARTMENT OF THE INTERIOR AND ITS SUBDIVISIONS

Discussion: rubric for the ten-page research paper, which is due by the beginning of class Monday, March 20th. PowerPoint: the Department of the Interior and Its Subdivisions; public lands in Alaska. Lecture: comprehensive planning and organic legislation; sales and exchanges. Assignment: a) review your notes from Class #6 and the guest lecture on surveying the public lands and capture any

questions for today; b) read *Coggins* 416-419; c) review the following organic acts – that is, the legislative charters for agency management of federal lands, all of which are posted on Blackboard: National Park Service Organic Act, 39 Stat. 535, 16 U.S.C. §1; the Federal Land Policy and Management Act of 1976, also known as the Bureau of Land Management Organic Act, 90 Stat. 2743, U.S.C. §§ 1701-82 – §§ 101-103, 201-203, 301-303, 402-404, 701, 702; the National Wildlife Refuge Administration Act, 80 Stat. 927, 16 U.S.C. §§ 668dd & ee (commonly understood as the organic act for the U.S. Fish and Wildlife Service) (as currently written); the Forest Service Organic Administration Act of 1897, 30 Stat. 11, 16 U.S.C. 472-478, 479-482, 551; d) prepare to answer the who/what/when/where/why/how for each statute; e) read *Coggins* 420-21; f) brief *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004), excerpted in *Coggins* 421-23.

#### 9. Wednesday, February 16th – ADMINISTRATIVE RULEMAKING

“First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, . . .” *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). Lecture: the Administrative Procedure Act and administrative rulemaking; *Chevron* deference; the barriers to and the scope of judicial review of agency action. Assignment: a) review your notes from Class #8 and capture any questions for today; b) review the Administrative Procedure Act, 5 U.S.C. §§ 551, 701-706, which is posted on Blackboard; c) read *Coggins* 206-09; d) brief *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), excerpted in *Coggins* 209-11; e) read *Coggins* 215; f) brief *Ohio Forestry Association, Inc. v. Sierra Club*, 523 U.S. 726 (1998), excerpted in *Coggins* 215-19; g) read *Coggins* 226-28; h) brief *Northern California River Watch v. Wilcox*, 633 F.3d 766 (9th Cir. 2011), excerpted in *Coggins* 229-36 – skipping Section B on 233 and Section D on 235.

#### 10. Monday, February 20th

Assignment: a) review your notes from Class #9 and capture any questions for today; b) prepare to present briefly to the class on your chosen paper topic (answering the questions “what” and “why”). Guest Lecture: Climate Change and Federal Lands.

11. Wednesday, February 23rd – OVERARCHING LEGAL ISSUES I

“The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man . . . .” National Environmental Policy Act (NEPA), 42 U.S.C. § 4331(a). Lecture: how does NEPA work, the timing and scope of NEPA analyses, the requirements under NEPA for mitigation and range of alternatives. Assignment: a) review your notes from Class #9 and from the guest lecture on climate change and federal lands and capture any questions for today; b) read Chapter 10, “The National Environmental Policy Act,” in Salzman & Thompson, Jr., *Environmental Law & Policy* (2013, 4th Edition), which is posted on Blackboard; c) read Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court*, 100 Georgetown L.J. 1507 (2012), which is posted on Blackboard – skipping Part II in its entirety; d) brief *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000), excerpted in *Coggins* 242-47; e) brief *Oregon Natural Desert Association v. Bureau of Land Management*, 625 F.3d 1092 (9th Cir. 2010), which is posted on Blackboard – Part I.A.2.c , II.B.2, and Part II.C.

12. Monday, February 27th – OVERARCHING LEGAL ISSUES II

Lecture: passage and scope of the Endangered Species Act. Assignment: a) review your notes from Class #11 and capture any questions for today; b) read excerpt from Leopold, *A Sand Country Almanac and Sketches Here and There* (1949), which is posted on Blackboard; c) read *Coggins* 263-68; d) brief *In re Polar Bear Endangered Species Act Listing and §4(d) Rule Litigation*, 709 F.3d 1(D.C. Cir. 2013), excerpted in *Coggins* 268-71; e) read *Coggins* 273-75 – Comments #5-7; f) brief *Greater Yellowstone Coalition v. Servheen*, 665 F.3d 1015 (9th Cir. 2011), excerpted in *Coggins* 275-80 – skipping Section B and J. Thomas’s concurrence/dissent; g) read *Coggins* 291-92; h) brief *Babbitt v. Sweet Home Chapter*, 515 U.S. 687 (1995), excerpted in *Coggins* 292-99 – skipping J. O’Connor’s concurrence; i) Barlett, “Evaluating Environmental Policy Success and Failure” in Vig & Kraft, *Environmental Policies in the 1990s* (1996, 2d Edition), which is posted on Blackboard; j) read Interview with Ursula Heise, “Human Tales on Extinction and Endangered Species,” in *UCLA Review* (August 26, 2016), which is posted on Blackboard.

13. Wednesday, March 1st – THE MINERAL RESOURCE I

“If it can’t be grown, it must be mined.” Lecture: the General Mining Law of 1872; locatable minerals; location; *pedis possessio* and discovery. Discussion: hypothetical based on *Strubel v. United States*, No. 06-112C (Fed. Cl. June 10, 2009). Assignment: a) review your notes from Class #12 and capture any questions for today; b) read *Coggins* 474-76; c) brief *Andrus v. Charlestone Stone Products Co.*, 438 U.S. 604 (1978), excerpted in *Coggins* 476-78; d) read *Coggins* 489; e) brief *Union Oil Co. v. Smith*, 249 U.S. 337 (1916), excerpted in *Coggins* 489-90; f) brief *Geomet Exploration, Ltd. v. Lucky Mc Uranium Corp.*, 601 P.2d 1339 (Az. 1979), *cert. dismissed*, 448 U.S. 1917 (1980), excerpted in *Coggins* 491-93; g) read *Coggins* bottom 494; h) brief *Castle v. Womble*, 19 L.D. 455 (1894) (Opinion of the Secretary of the Interior), excerpted in *Coggins* 495-96; i) brief *United States v. Coleman*, 390 U.S. 599 (1968), excerpted in *Coggins* 496-97; j) read *Coggins* 501-02, 505-06, 510-12; 519-21.

14. Monday, March 6th – THE MINERAL RESOURCE II

Lecture: more hardrock mining – modern environmental regulation; split estates. Discussion: hypotheticals based on Comment #4, *Coggins* 546 and Comment # 6, *Coggins* 547. Assignment: a) review your notes from Class #13 and capture any questions for today; b) read *Coggins* 522-23; c) brief *United States v. Weiss*, 642 F.2d 296 (9th Cir. 1981), excerpted in *Coggins* 523-24; d) read *Coggins* 528-29; e) brief *Mineral Policy Center v. Norton*, 292 F.Supp. 2d 30 (D.D.C. 2003), excerpted in *Coggins* 529-36; f) read *Coggins* 539, 539-40; g) brief *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983), excerpted in *Coggins* 544-46; h) read *Coggins* 549-50.

15. Wednesday, March 8th

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #6-12). Guest Lecture: Establishing the Arctic National Wildlife Refuge.

16. Monday, March 20th – THE TIMBER RESOURCE

Due: ten-page research paper. Lecture: multiple use management; the National Forest Management Act – harvesting methods and physical suitability and the diversity mandate; wildfire management. Assignment: a) review your notes from Class #14 and the guest lecture on establishing the Arctic National Wildlife Refuge and capture any questions for today; b) read *Coggins* 651-57, 660-61; c) brief *West Virginia Division of Izaak Walton League of America, Inc. v. Butz*, 522 F.2d 945 (4th Cir.

1975) (the *Monongahela* Decision), excerpted in *Coggins* 661-64; c) read *Coggins* 665-66, 669-72; d) brief *Sierra Club v. Epsy*, 38 F.3d 792 (5th Cir. 1994), excerpted in *Coggins* 672-75; e) read *Coggins* 677-78; f) brief *Sierra Club v. Marita*, 46 F.3d 606 (7th Cir. 1995), excerpted in *Coggins*, 679-85; g) read *Coggins* 706-08; h) brief *People ex rel Lockyer v. United States Forest Service*, No. C 04-02588 (N.D. Cal. Jul. 11, 2005), which is excerpted and posted on Blackboard.

#### 17. Wednesday, March 22nd – MOVIE NIGHT

Movie: *Dinosaur 13* (2014). Assignment: a) review your notes from Class #16 and capture any questions for today; b) read *Coggins* 1010-11; and c) read Indian Land Tenure Foundation, “History of Allotment,” which is posted on Blackboard.

#### 18. Monday, March 27th – THE PRESERVATION RESOURCE I

“Traditional Cultural Properties aren’t marked by stelae of significance, crumbs of culture. Their significance is lodged in the brains of people, the collective consciousness of communities, and it’s those people and communities that can tell you whether a given district, site, building, structure, or object has it. They may not use archaeo-lingo or architect-speak, or recite National Register criteria, but if they value a place, they can probably tell you that they do, and then you can inquire about WHY they value it.” King, CRM+ blog post (August 13, 2016). Discussion: rubric for the student presentations, which will take place April 5th, April 10th, and April 12th. Lecture: Why do we care about preservation? And what, exactly, do we wish to preserve? The Antiquities Act (1906), the Archaeological Resources Protection Act (1978), the National Historic Preservation Act (1966), and the Native American Graves Protection and Repatriation Act (1990). Assignment: a) review your notes from *Dinosaur 13* and capture any questions for today; b) brief *United States v. Shivers*, 96 F.3d 120 (5th Cir. 1996), excerpted in *Coggins* 1011-14; c) read Comment #7 in *Coggins* 1016; d) brief *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), excerpted in *Coggins* 1017-22; e) read *Coggins* 1033-34; f) read the National Historic Preservation Act, 80 Stat. 915, 16 U.S.C. 470-470w-6, as excerpted and posted on Blackboard; g) read Comment #9 in *Coggins* 1040; h) review National Park Service, “Introduction,” *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1998), which is posted on Blackboard; i) read King, “A Traditional Cultural Place for All Citizens?,” CRM+ blog post (September 1, 2016), which is posted on Blackboard; j) brief *Bonnichsen v. United States*, 367 F.3d 864 (9th Cir. 2004),



excerpted and posted on Blackboard. For your information: a one-page handout on public speaking tips by Communication Coach Bill Smartt, which is posted on Blackboard.

19. Wednesday, March 29th – THE PRESERVATION RESOURCE II

Fun facts: Eight Alaskan Park Service wilderness areas comprise more than 80% of the total park system wilderness acreage; 21 of the Fish & Wildlife Service's 71 designated wilderness areas are in Alaska, containing over 90% of the total acreage in the refuge system. Lecture: where the wild things are/once were/may be in the future – the Wilderness Act of 1964; wilderness management; the Roadless Rule; wild and scenic rivers. Assignment: a) review your notes from Class #18 and capture any questions for today; b) read *Coggins* 926-31 (including "Notes and Questions"); c) read *Coggins* 931-32 – omitting the last paragraph of the section; d) read *Coggins* 939-40; e) brief *Wilderness Watch v. Mainella*, 375 F.3d 1085 (11th Cir. 2004), excerpted in *Coggins* 940-43; f) read *Coggins* standalone paragraph 953; g) brief *Sierra Club v. Lyng (I)*, 662 F. Supp. 40 (D.D.C. 1987); h) read the Roadless Rule, 66 Fed. Reg. 3244-47 ("Introduction" through and including "Need for Action") and 3272-73 ("Subpart B – Protection of Inventoried Roadless Areas"), which is posted on Blackboard; i) briefly review *amicus brief* of the City of Craig, Alaska in *State of Alaska v. Organized Village of Kake, Alaska* (November 12, 2015), which is excerpted and posted on Blackboard; j) read Marris, "The Yellowstone Model" in *Rambunctious Garden: Saving Nature in a Post-Wild World* (2011), which is posted on Blackboard. Bonus: check out the Walrus Cam – on Round Island, part of a newly designated National Historic Landmark – at <https://www.youtube.com/watch?v=oYQykhLjzrQ>.

20. Monday, April 3rd

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #13-19). Guest Lecture: #NDAPL.

21. Wed, April 5th – STUDENT PRESENTATIONS I

Assignment: a) review your notes from the guest lecture on #NDAPL and capture any questions for today; b) prepare to listen respectfully and carefully to your fellow students' presentations.

22. Monday, April 10th – STUDENT PRESENTATIONS II

Assignment: prepare to listen respectfully and carefully to your fellow students' presentations.

23. Wednesday, April 12th – STUDENT PRESENTATIONS III

Assignment: prepare to listen respectfully and carefully to your fellow students' presentations.

24. Monday, April 17th – SUBSISTENCE IN ALASKA

Guest Lecture: Subsistence in Alaska. Assignment: a) briefly review Pensley, "Existence and Persistence: Preserving Subsistence in Cordova, Alaska," 42 *Environmental Law Review* 10368 (2012), which is posted on Blackboard; b) read Mooney, "Obama Administration Moves to Protect Some of the Most Remote Areas of Alaska," *Alaska Dispatch News* (January 6, 2017).

25. Wednesday, April 19th – ANCSA AND ANILCA

"What I am trying to say and emphasize is I am one in modern day attempting to live a double life – and from that, my life is filled with confusion. I have a wanting deep within myself to live the life of my ancestors, but the modernized world I was raised in is restricting me from doing so." Polly Koutchak, quoted by Berger, *Village Journey: The Report of the Alaska Native Review Commission* (1985). Lecture: the passage and scope of the Alaska Native Claims Settlement Act ("ANCSA") and the Alaska National Interest Lands Conservation Act ("ANILCA"); connection to public lands law; brief review of the 1998 *Venette* decision and current issues in land into trust (fee to trust).

Assignment:\* a) read *Getches, Wilkinson & Williams, Jr.* 906-11; b) brief *Cape Fox Corporation v. United States*, 456 F.Supp. 784 (D. Alaska 1978), reversed on other grounds 646 F.2d 399 (9th Cir. 1981), excerpted in *Getches, Wilkinson & Williams, Jr.* 912-14; c) brief *North Slope Borough v. Andrus*, 642 F.2d 589 (D.C. 1980), excerpted in *Getches, Wilkinson & Williams, Jr.* 916-21; d) read *Getches, Wilkinson & Williams, Jr.* 924-28; e) brief *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1998), *cert. denied* 1187 U.S. 517 (1996), excerpted in *Getches, Wilkinson & Williams, Jr.* 928-33.

\* The following readings and case excerpts are taken from Getches, Wilkinson & Williams, Jr., *Cases and Materials on Federal Indian Law* (1998, 4th Edition) and are all posted on Blackboard.

26. Monday, April 24th – REVIEW

Question & Answer Session in Preparation for the In-Class Final Exam. Assignment: bring your questions and be prepared to learn from others' questions.

27. Wednesday, April 26th

In-Class Final Exam: Open Book, Open Note