

**Public Land Law and Policy**  
**NRM 204, 3 Credits**  
**Spring Semester 2019**

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hours by appointment

**Course Summary**

This course examines the major federal laws and policies affecting the exploitation and conservation of resources on public lands in the United States. We will study the conflicting values and interests that underlie policy debates over the management of natural resources and analyze 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 Endangered Species Act; the roles of various federal agencies in managing federal lands; the mineral, timber, wilderness, and preservation resources; and the unique Alaskan context, including subsistence.

**Readings**

The textbook for this course is a casebook entitled *Federal Public Land and Resources Law* by George C. Coggins *et al.* (Foundation Press, 2014, 7th Edition). Copies should be available at the UAF Bookstore for purchase and one copy will be placed at the Rasmuson Library on Reserve for short term use. Prior years' students have been successful renting the book from an online vendor. As yet another option, the readings from the casebook have been scanned and posted on Blackboard along with a variety of mandatory outside readings – news articles, excerpts from scholarly pieces, and regulatory materials. A copy of the Statutory Supplement to the casebook has been placed on reserve also.

The readings, while short, require close attention and careful notetaking. Do note that the readings and other assignments are due by the class period with which they are associated, unless the syllabus indicates otherwise. This includes coming prepared to the first class of the semester. Please bring the readings and your notes to class in a readily accessible form.

**Class Structure and Course Grade**

Class will be run small section style: part lecture, part Socratic method, part discussion, part student-led teaching. 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 all 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, rounded in the usual fashion. Proof of completion of the course evaluation at the end of the semester (screen shot) yields a bump of a third of a letter grade.

**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 extra support to any interested student.

## Course Syllabus (Subject to Change)

### 1. Tuesday, January 15th – COURSE INTRODUCTION

Course Introduction: a working definition of public land; instructor and student introductions; review of syllabus. Lecture: thinking about public lands. 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); b) read "Sitka couple proposes naming lake after dog that died in 2013 landslide," *Anchorage Daily News* (November 25, 2018); c) review the fact sheet, "Land Ownership in Alaska"; c) prepare to share a photograph, personal artefact, or story relating to a particular unit of public land; and d) prepare to explain why you are taking this course.

### 2. Thursday, January 17th – WORKING WITH CASES

Lecture: an introduction to the American legal system; efficiency in rules of law. Assignment: a) read the handout, *How to Brief a Case*; b) brief *Edwards v. Sims*, 24 S.W.2d 619 (Ky. 1929), as edited. Follow up reading: excerpt from Mersky, *Fundamentals of Legal Research* (2002, 8th edition). Bonus follow up reading: "The Idea of Efficiency" from Farnsworth, *The Legal Analyst: A Toolkit for Thinking about the Law* (2007).

### 3. Tuesday, January 22nd – ACQUISITION OF THE PUBLIC DOMAIN

"Thus in the beginning all the world was *America*." John Locke, *Two Treatises of Government* (1690). Lecture: European powers in early America; interests in land and the bundle of sticks; the doctrine of discovery and aboriginal title. Assignment: a) read excerpt from Wilson, *The Earth Shall Weep: A History of Native America* (1999); b) review *Coggins* pp. 46-52; c) brief *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), as edited in the Dukeminier & Krier property casebook. Follow up readings: excerpt from Case & Voluck, *Alaska Natives and American Law* (2012, 3d edition) and excerpt from Vecsey & Venables, *American Indian Environments* (1980).

### 4. Thursday, January 24th – SURVEYING THE PUBLIC LANDS

Guest Lecture: **tentative** – Surveying the Public Lands. Background materials: *Coggins* pp. 58-61.

Friday, January 25th – last day for student- and faculty-initiated drops with refund (no record)

5. Tuesday, January 29th – DISPOSITION OF THE PUBLIC DOMAIN

“In states like Utah and Nevada, where more than half the land within state borders is managed by the federal government, the feds have become convenient scapegoat for an impossible climate, an unattainable cultural ideal, and a changing economy.” Nijhuis, “What Will Become of Federal Public Lands under Trump?” *The New Yorker* (January 31, 2017). Lecture: the mechanics of land conveyances – title and deeds; the historic disposition of federal public lands to states and private individuals; the Equal Footing doctrine and navigability. Assignment: a) read *Coggins* pp. 61-66; b) brief *PPL Montana, LLC v. Montana*, 132 S.Ct. 1215 (2012), excerpted in *Coggins* pp. 66-71; c) read “Alaska sues feds over ownership of land under Fortymile River,” *Anchorage Daily News* (November 25, 2018). Class will close with a feedback request.

6. Thursday, January 31st

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #1-5) (40 mins.)  
Guest Lecture: **tentative** – *Adaptive Management in our National Parks*. Background materials: Hannah Rothstein Interview by Neal Mann, *The Project Magazine* (April 27, 2017) (linked on Blackboard) and examples from her National Parks 2050 series (posted on Blackboard). Resource: Allen *et al.*, “Adaptive management for a turbulent future,” *Journal of Environmental Management* 92 (2011).

7. Tuesday, February 5th – FEDERAL LAND MANAGEMENT (SCOPE OF THE PROPERTY CLAUSE)

Lecture: working with statutes; the Property Clause. Discussion: true cowboys or conspiracy theorists? Assignment: a) read *Coggins* pp. 91-102; b) review the Unlawful Inclosures Act of 1885, 43 U.S.C. § 1061; c) brief *Camfield v. United States*, 167 U.S. 518 (1897), excerpted in *Coggins* pp. 103-06; d) brief *Kleppe v. New Mexico*, 426 U.S. 529 (1976), excerpted in *Coggins* pp. 142-48; e) read *Comment: The Sagebrush Rebellion and States’ Rights* in *Coggins* 72-74; f) watch *American Patriot: Inside the Armed Uprising Against the Federal Government* (PBS Frontline Documentary linked on Blackboard). Additional resources: “Select Federal Land and Resources Statutes” handout (posted under Course Documents on Blackboard).

8. Thursday, February 7th – NO CLASS

Assignment: submit by 5 p.m. via Blackboard a single typed page with your name, the topic of your proposed research paper, and a few brief sentences explaining: a) the specific question you hope to

answer; b) the reason for your interest in the topic; and a suitable framework for your topic.

Background reading: Laitos & Zellmer, "The Four Troubled Eras of Natural Resources Law."

9. Tuesday, February 12th – WITHDRAWALS AND RESERVATIONS; EXECUTIVE ORDERS

Lecture: withdrawals and reservations; the power of the executive over public lands. Assignment: a) read *Coggins* p. 108; b) brief *United States v. Gettysburg Electric Railway Co.*, 160 U.S. 668 (1896), excerpted in *Coggins* pp. 110-12; c) read *Coggins* pp. 382-83; d) brief *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915), excerpted in *Coggins* pp. 383-89; e) read Executive Order 13754, "Northern Bering Sea Climate Resilience" (December 9, 2016) and review the associated map; f) read Executive Order 13795, "Implementing an America-First Offshore Energy Strategy" (April 28, 2017).

10. Thursday, February 14th

Guest Lecture: **tentative** – *Writing a Research Paper*. Discussion: scope of and rubric for the ten-page research paper, which is due by the beginning of class Tuesday, March 19th. The grading rubric is posted under Course Documents on Blackboard.

11. Tuesday, February 19th – THE DEPARTMENT OF THE INTERIOR AND ITS SUBDIVISIONS

Lecture and PowerPoint: the Department of the Interior and its subdivisions; organic legislation.

Assignment: a) watch video: (former) Secretary of the Interior Sally Jewell at the Alaska Federation of Natives Convention in Fairbanks, October 21, 2016; b) read Kolbert, "The Damage Done by Trump's Department of the Interior," *The New Yorker* (January 22, 2018); c) read Eilperin, Dawsey, and Fears, "Interior Secretary Ryan Zinke resigns amid investigations," *The Washington Post* (December 15, 2018); d) take notes of the things you find interesting or surprising about how government policy is made . . . and about the people who make it; e) read *Coggins* 416-20.

Additional resources pertaining to the legislative charters for agency management of federal lands: National Park Service Organic Act, 16 U.S.C. §1; the Federal Land Policy and Management Act of 1976, also known as the Bureau of Land Management Organic Act, 43 U.S.C. § 1701 et seq. – §§ 101-103, 201-203, 301-303, 402-404, 701, 702; the National Wildlife Refuge Administration Act, commonly understood as the organic act for the U.S. Fish and Wildlife Service, 16 U.S.C. §§ 668dd & ee; and the Forest Service Organic Administration Act of 1897, 16 U.S.C. §§ 472-478, 479-482, 551.

12. Thursday, February 21st – THE ADMINISTRATIVE STATE

“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 barriers to judicial review; the Administrative Procedure Act and administrative rulemaking; *Chevron* deference. Assignment: a) review the Administrative Procedure Act, 5 U.S.C. §§ 551, 701-706; b) read *Coggins* pp. 206-09; c) brief *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), excerpted in *Coggins* pp. 209-11; d) read *Coggins* p. 215; e) brief a portion of *Ohio Forestry Association, Inc. v. Sierra Club*, 523 U.S. 726 (1998), excerpted in *Coggins* pp. 215-17, skipping the last paragraph on p. 217; f) read *Coggins* pp. 226-28; g) review Hollander, “Climbers’ poop is making a Denali glacier toxic,” *Anchorage Daily News* (April 24, 2018). Follow up reading: *A Guide to the Rulemaking Process* (prepared by the Office of the Federal Register).

13. Tuesday, February 26th

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #7-12) (40 mins.)  
The remainder of class time will be reserved for individual consultations on the research paper.

14. Thursday, February 28th

Assignment: submit by 5 p.m. via Blackboard an outline and preliminary bibliography for the ten-page research paper. Guest Lecture: **tentative** – *A Wildlife Biologist in Federal Employment*.

15. Tuesday, March 5th – THE NATIONAL ENVIRONMENTAL POLICY ACT

“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) brief *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000), excerpted in *Coggins* pp. 242-47; b) review Notice of Intent and Extension of Time to Prepare an Environmental Impact Statement for the

Proposed Ambler Mining District Industrial Access Road, Alaska, 82 Fed. Reg. 12119-21 (February 28, 2017); c) review “Issues Identified During Scoping” in *Ambler Road Environmental Impact Statement Scoping Summary Report* (April 2018) pp. 18-23. Follow up reading: Salzman & Thompson, Jr., “The National Environmental Policy Act,” *Environmental Law and Policy* (2013, 4th Edition).

16. Thursday, March 7th – THE ENDANGERED SPECIES ACT

Lecture: passage and scope of the Endangered Species Act, focus on §§ 3, 4, 7, and 9. Assignment: a) read excerpt – “March: The Geese Return” – from Leopold, *A Sand Country Almanac and Sketches Here and There* (1949); b) read Interview with Ursula Heise, “Human Tales on Extinction and Endangered Species,” in *UCLA Review* (August 26, 2016); c) read Hollander, “U.S. Supreme Court rejects appeal of protections for Alaska’s bearded seals,” *Alaska Dispatch News* (January 22, 2017); d) read Coggins pp. 263-68; e) brief *In re Polar Bear Endangered Species Act Listing*, 709 F.3d 1 (D.C. Cir. 2013), excerpted in Coggins pp. 268-71; e) read Coggins pp. 273-75 – comments #5-7. Follow up reading: Salzman & Thompson, Jr., “The Endangered Species Act,” *Environmental Law and Policy* (2013, 4th Edition).

Tuesday, March 12th & Thursday, March 14th – NO CLASS (SPRING BREAK)

17. Tuesday, March 19th – THE MINERAL RESOURCE I

Lecture: the General Mining Law of 1872; locatable minerals; location; *pedis possessio* and discovery. Assignment: a) read Coggins pp. 474-76; b) read Coggins pp. 478-79 comments #2 and 3; c) read Coggins p. 489; d) brief *Union Oil Co. v. Smith*, 249 U.S. 337 (1916), excerpted in Coggins pp. 489-90; e) review *United States v. Coleman*, 390 U.S. 599 (1968), excerpted in Coggins pp. 496-97; f) read Coggins p. 498 comment #7, 501-02, 505-06, 510-12. Follow up reading: Coggins pp. 486-89.

18. Thursday, March 21st – THE MINERAL RESOURCE II

Due: ten-page research paper with possibility of a one-week extension upon written note. Lecture: environmental regulation of hardrock mining under Forest Service and BLM regulations.

Assignment: a) read Coggins pp. 522-23; b) brief *United States v. Weiss*, 642 F.2d 296 (9th Cir. 1981), excerpted in Coggins pp. 523-24; c) read Coggins pp. 528-29; d) review part of *Mineral Policy Center v. Norton*, 292 F.Supp. 2d 30 (D.D.C. 2003), excerpted in Coggins pp. 533-35; e) read Coggins pp. 539-40.

19. Tuesday, March 26th – THE TIMBER RESOURCE

Discussion: Student presentations on natural resource statutes, which will be scheduled for April 16th, 18th, 23rd, and 25th. Lecture: The Multiple Use and Sustainable Yield Act; the National Forest Management Act – harvesting methods, physical suitability, and the diversity mandate. Assignment: a) read *Coggins* pp. 651-57, p. 658 comment #4, pp. 660-61; b) briefly review *West Virginia Div. of Izaak Walton League of America, Inc. v. Butz*, 522 F.2d 945 (4th Cir. 1975), excerpted in *Coggins* pp. 661-64; c) read *Coggins* pp. 665-66, 669-72, 677-78.

20. Thursday, March 28th

Due: ten-page research papers that were given a one-week extension. Guest Lecture: Dr. Roger Kaye – *The Arctic National Wildlife Refuge, Wildness, and the Anthropocene*. Background materials: Kaye, “What Future for the Wildness of Wilderness in the Anthropocene?,” 13 *Alaska Park Science* 41 (2016).

Friday, March 29th – last day for student- and faculty-initiated withdrawals (W grade on transcript)

21. Tuesday, April 2nd – 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). 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), and the National Historic Preservation Act (1966). Assignment: a) read *Coggins* pp. 394-97; b) brief *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002), *cert denied*, 540 U.S. 813, excerpted in *Coggins* pp. 397-99; c) review Presidential Proclamation, “Establishment of the Bears Ears National Monument” (December 28, 2016); d) review Eilperin & Fears, “Interior secretary recommends Trump alter at least 3 national monuments, including Bears Ears,” *The Washington Post* (August 24, 2017); e) review Turkewitz, “Trump slashes size of Bears Ears and Grand Staircase monuments,” *The New York Times* (December 4, 2017); f) review Lipton & Friedman, “Oil was central in decision to shrink Bears Ears National Monument,”

*The New York Times* (March 2, 2018); g) read *Coggins* pp. 1010-11; h) read *Coggins* p. 1016 comment #7; i) read *Coggins* pp. 1033-34; j) read *Coggins* p. 1040 comment #9. Follow up reading: National Park Service, "Introduction," *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1998).

22. Thursday, April 4th – 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. Assignment: a) read Sahagun, "Feral cattle terrorize hikers and devour native plants in a California national monument," *Los Angeles Times* (March 2, 2018); b) read Ruane, "For years, families have left cremated remains at the Vietnam Wall," *The Washington Post* (undated); c) skim for content *Lyng v. Northwest Indian Cemetery Protection Association*, 485 U.S. 439 (1988); d) review excerpt – "Wilderness" – from Leopold, *A Sand Country Almanac and Sketches Here and There* (1949); e) read *Coggins* pp. 926-30; 939-40; e) brief *Wilderness Watch v. Mainella*, 375 F.3d 1085 (11th Cir. 2004), excerpted in *Coggins* pp. 940-43; f) read *Coggins* pp. 931-32 – omitting the last paragraph of the section; g) review 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"). Follow up reading: Marris, "The Yellowstone Model" in *Rambunctious Garden: Saving Nature in a Post-Wild World* (2011).

23. Tuesday, April 9th – MOVIE

Movie: *Wrenched* (2014).

24. Thursday, April 11th

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #15-22).  
Discussion of the film.

25. Tuesday, April 16th – STUDENT PRESENTATIONS I

26. Thursday, April 18th – STUDENT PRESENTATIONS II



27. Tuesday, April 23rd – STUDENT PRESENTATIONS III

28. Thursday, April 25th – STUDENT PRESENTATIONS IV

29. Tuesday, April 30th – 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”); subsistence and connection to public lands law; *Sturgeon*; brief review of the 1998 *Venette* decision and current issues in land into trust (fee to trust). Assignment: a) view Alaska Department of Education, *ANCSA: Caught in the Act – The Struggle* (1987) (linked on Blackboard); b) read *Getches, Wilkinson & Williams, Jr.* 906-11, 924-28; c) skim for content *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. Resource: Pensley, “Existence and Persistence: Preserving Subsistence in Cordova, Alaska,” 42 *Environmental Law Review* 10368 (2012) – Introduction and Part I (excepting Section C).

Thursday, May 3rd, 8-9:30 a.m. – In-Class Final Exam: Open Book, Open Note