

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

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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

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 *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), an excerpted version of which is posted on Blackboard.

5. Wednesday, February 1st – FEDERAL LAND MANAGEMENT
Lecture: background principles – the Enclave

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 -0.001 p 1-3 c)

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

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 and 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)

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

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=oYQyhkLjzrQ>.

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 –

23. Wednesday, April 12th – STUDENT PRESENTATIONS III

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

24. Monday, April