Public Land Law and Policy
NRM 204, 3 Credits
Spring Semester 2018

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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 in the United States. 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 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. From time to time there will be mandatory outside readings, which I intend to post as PDFs on Blackboard.

You are expected to check Blackboard regularly for updates to the syllabus and for newly posted readings. I will try to post 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. From time to time I will send out follow up readings, which will explain and amplify a prior lecture.

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.
Course Syllabus (Subject to Change)

1. Tuesday, January 16th – 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); b) 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 18th – WORKING WITH CASES

3. Tuesday, January 23rd – 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) review your notes from Class #2 and capture any questions for today; b) read excerpt from Wilson, The Earth Shall Weep: A History of Native America (1999); c) review Coggins 46-52; d) 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 25th – 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.” Michelle 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; the Sagebrush Rebellion and beyond. Assignment: a) review your notes from Class #3 and capture any questions for today; b) review Nathaniel Herz, “King Cove and feds sign deal to advance proposed road through wildlife refuge,” Alaska Dispatch News (January 22, 2018); d) read Coggins 58-66; e) brief PPL Montana, LLC v. Montana, 132 S.Ct. 1215 (2012), excerpted in Coggins 66-71. Class will close with a feedback request.

Friday, January 26th – last day for student- and faculty-initiated drops with refund (no record).

5. Tuesday, January 30th – FEDERAL LAND MANAGEMENT (SCOPE OF THE PROPERTY CLAUSE)
Lecture: working with statutes; the Property Clause. Discussion: real cowboys or a conspiracy to impede federal employees? Assignment: a) review your notes from Class #4 and capture any questions for today; b) read Coggins 91-102; c) review the Unlawful Inclosures Act of 1885, 43 U.S.C. § 1061; d) brief Camfield v. United States, 167 U.S. 518 (1897), excerpted in Coggins 103-06; e) brief Kleppe v. New Mexico, 426 U.S. 529 (1976), excerpted in Coggins 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).

6. Thursday, February 1st
In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #1-4) (40 mins.)
Background materials: National Park Service – Alaska Region, State of Change: Climate Change in Alaska’s National Park Areas.

7. Tuesday, February 6th – WITHDRAWALS AND RESERVATIONS; EXECUTIVE ORDERS
Lecture: withdrawals and reservations; the power of the executive over public lands. a) review your notes from Class #5 and the guest lecture and capture any questions for today; b) read Coggins 108; c) brief United States v. Gettysburg Electric Railway Co., 160 U.S. 668 (1896), excerpted in Coggins 110-12; d) read Coggins 382-83; e) brief United States v. Midwest Oil Co., 236 U.S. 459 (1915), excerpted in Coggins 383-89; f) read Executive Order 13795, “Implementing an America-First Offshore Energy Strategy” (April 28, 2017); g) read Office of the White House Press Secretary,

8. Thursday, February 8th
Discussion: rubric for and scope of the ten-page research paper, which is due by the beginning of class Tuesday, March 20th. Guest Lecture: Michael Schoder – Surveying the Public Lands.

Assignment: a) review your notes from Class #7 and the guest lecture and capture any questions for today; b) watch video: (former) Secretary of the Interior Sally Jewell at the Alaska Federation of Natives Convention in Fairbanks, October 21, 2016 and read Juliet Eilperin & Darryl Fears, “Interior Department plans to move thousands of workers in its biggest reorganization ever,” The Washington Post (January 10, 2018) and take notes of the things you find interesting or surprising about how government policy is made; c) read Coggins 416-20; d) review the following specific sections from 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; the Forest Service Organic Administration Act of 1897, 16 U.S.C. §§ 472-478, 479-482, 551; and e) prepare to answer the who/what/when/where/why/how for each statute.

10. Thursday, February 15th – 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: turn into the class a single sheet with your name, the topic of your research paper,
and a brief sentence explaining either the specific question you hope to answer or the reason for your interest in the topic; b) review your notes from Class #9 and capture any questions for today; c) review the Administrative Procedure Act, 5 U.S.C. §§ 551, 701-706; d) read *Coggins* 206-09; e) brief *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), excerpted in *Coggins* 209-11; f) read *Coggins* 215; g) brief a portion of *Ohio Forestry Association, Inc. v. Sierra Club*, 523 U.S. 726 (1998), excerpted in *Coggins* 215-17, excepting the last paragraph on 217; g) read *Coggins* 226-28; h) review *Northern California River Watch v. Wilcox*, 633 F.3d 766 (9th Cir. 2011), excerpted in *Coggins* 229-34.


Tuesday, February 20th – NO CLASS
Work on your quiz re-writes (if you so choose, due in class on Thursday, February 22nd) and on refining your paper topic and starting an outline and bibliography (due Tuesday, February 27th).

11. Thursday, February 22nd – OVERARCHING LEGAL ISSUES I


Tuesday, February 27th – NO CLASS
Due: outline and preliminary bibliography for the ten-page research paper. These must be typed up and stapled and have your name on the top sheet. Bring to Ms. Donaldson in O’Neill 302 by the end of the day.
12. Thursday, March 1th – SUBSISTENCE IN ALASKA


13. Tuesday, March 6th – OVERARCHING LEGAL ISSUES II


14. Thursday, March 8th – THE MINERAL RESOURCE I

In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #5-12).


Tuesday, March 13th & Thursday, March 15th – NO CLASS (SPRING BREAK)

15. Tuesday, March 20th – THE MINERAL RESOURCE I

Lecture: the General Mining Law of 1872; locatable minerals; location; pedis possessio and discovery. Assignment: a) read Erica Martinson, “The Interior Department is preparing for a massive overhaul – and Alaska is its model,” Anchorage Daily News (March 15, 2018); b) read Coggins 474-76; c) read Coggins 478-79 comments #2 and 3; d) read Coggins 489; e) brief Union Oil Co. v. Smith, 249 U.S. 337 (1916), excerpted in Coggins 489-90; f) read Coggins 490 comment #2; g) review Castle

16. Thursday, March 22nd – 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) review your notes from Class #15 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) review part of Mineral Policy Center v. Norton, 292 F.Supp. 2d 30 (D.D.C. 2003), excerpted in Coggins 533-35; f) read Coggins 539-40. Follow up reading: Strubel v. United States, No. 06-112C (Fed. Cl. June 10, 2009), highlighted portions only.

17. Tuesday, March 27th – THE TIMBER RESOURCE

Discussion: Student presentations on natural resource statutes, which will be scheduled for April 17th, 19th, and 24th. Lecture: The Multiple Use and Sustainable Yield Act; the National Forest Management Act – harvesting methods, physical suitability, and the diversity mandate. Assignment: a) review your notes from Class #16 and capture any questions for today; b) read Alex DeMarban, “Army Corps plans mine comment period that Pebble calls ‘workable’ and opponents call ‘absurd,’” Anchorage Daily News (March 22, 2018); c) read Coggins 651-57, 658 comment #4, 660-61; d) briefly review West Virginia Div. of Izaak Walton League of America, Inc. v. Butz, 522 F.2d 945 (4th Cir. 1975), excerpted in Coggins 661-64; e) read Coggins 665-66, 669-72, 677-78; f) brief part of Sierra Club v. Marita, 46 F.3d 606 (7th Cir. 1995), excerpted in Coggins 681 (paragraph beginning “Taking its diversity analysis into consideration . . . .”) -85.

18. Thursday, March 29th


Friday, March 30th – last day for student- and faculty-initiated withdrawals (W grade on transcript)
19. Tuesday, April 3rd – 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).


20. Thursday, April 5th – 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) review your notes from Class #19 and capture any questions for today; b) read Louis Sahagun, “Feral cattle terrorize hikers and devour native plants in a California national monument,” Los Angeles Times (March 2, 2018); c) read Michael Ruane, “For years, families

21. Tuesday, April 10th – MOVIE

22. Thursday, April 12th
   In Class Quiz: Definitions and Short Answers (10%) (subject matter covered: Classes #13-20).
   Discussion of the film.

23. Tuesday, April 17th – STUDENT PRESENTATIONS I

24. Thursday, April 19th – STUDENT PRESENTATIONS II

25. Tuesday, April 24th – STUDENT PRESENTATIONS III

26. Thursday, April 26th – 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 (“ANSCA”) and the Alaska National Interest Lands Conservation Act (“ANILCA”); subsistence and connection to public lands law; brief review of the 1998 *Venetie* decision and current issues in land into trust (fee to trust). Assignment: a) read Erica Martinson, “Trump administration launches process to lease

Tuesday, May 1st, 8-9:30 a.m. – In-Class Final Exam: Open Book, Open Note