

Notre Dame Law School
 Spring 2023
 Classroom: Biolchini 1310
 M/W, 11:00am - 12:15pm

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NATURAL RESOURCES LAW

This course examines the law of natural resource management, and especially the many tensions between public and private interests in the natural resources owned and managed by the federal government. A sizable fraction of our nation's land is owned by the United States, and these lands are home to extraordinary resources—resources which are useful for a host of purposes, including energy, mineral, and timber production, as well as ranching, agriculture, recreation, and conservation. Fierce battles over the guiding principles of resource management have yielded a complex body of law that structures the day-to-day decision making of the federal land management agencies. This course will be of interest to anyone considering a career in energy, environmental, or natural resources law, as well as those seeking a better general understanding of federal natural resource policy.

Course materials:

- The required casebook is Leshy, Fischman, & Krakoff, *COGGINS AND WILKINSON'S FEDERAL PUBLIC LAND AND RESOURCES LAW* (Foundation Press, 8th ed., 2022). All page numbers on the reading schedule below refer to this casebook.
- I may distribute other materials via email. I will also maintain a bare-bones course website at sites.nd.edu/bruce-huber. The syllabus, slides, supplemental readings, etc., will be posted there.

Course requirements:

- 25% of your grade will be based on your week-to-week class participation, in two respects:
 - Weekly question/comment. Once per week, you must submit a short comment or question about the assigned reading. The email only needs to be a few sentences long, but it must arrive in my inbox no later than 8:00am on the day of class. You may ask a question about the reading assignment, or you may write a few sentences about what you found most interesting, confusing, counter-intuitive, etc.
 - Class discussion. Our weekly meetings presuppose that you are thoroughly prepared for a productive discussion. This includes careful reading, thoughtful comments/questions, and a willingness to speak to the class about what you learn from your own research.
- 75% of your grade will be based on a research paper. Details about the paper assignment will be provided in class. If you are enrolled for two credits, the paper must be 6,000 words in length; if for three credits, the paper must be 10,000 words in length and must conform to Section 4.3.3 of the Hoynes Code (discussing the Upper Level Writing Requirement).
 - I will gladly discuss your papers with you throughout the term, but I will not be able to read entire drafts during the semester. If you'd like comments on your writing, please send no more than one page of text at a time and allow a full 7-10 days for me to reply.
 - *Only* those enrolled for two credits may elect a take-home exam option in lieu of a paper.

My availability:

- My office hours for Spring 2023 will be variable and will be announced in class. I will gladly meet with you at other times as well. Don't hesitate to contact me to set up a time, or just stop by.
- I'm swamped with email. If you have a question or problem, please try first to speak in person. If you do send me email, be aware it may take a while for me to respond.

TENTATIVE SCHEDULE OF READING ASSIGNMENTS

Jan. 18. NO CLASS but read pp. 1-5 to psych yourself up for this course.

Jan. 23. Overview. Read pp. 15-32, 40-41.

Jan. 25. The Truly Necessary History, Part I. Read pp. 43-62.

Jan. 30. The Equal Footing Doctrine. Read pp. 62-80.

Feb. 1. Land Grants to States and Settlers. Read pp. pp. 84-101.

Feb 6. The Truly Necessary History, Part II. Read pp. 101-123.

Feb. 8. The Truly Necessary History, Part III. Read pp. 123-140.

Feb. 13. Federalism on the Public Lands. Read pp. 141-161; skim pp. 161-173.

Feb. 15. Enough Admin Law to be Dangerous. Skim pp. 227-241; read pp. 241-253.

Feb. 20. NEPA, *n'est-ce pas?* Read pp. 268-283.

Feb. 22. Endangered Species. Read pp. 300-303, 323-343.

Feb. 27. Accessing Public Lands. Read pp. 385-393, 397-413.

Mar. 1. Alaska Kicks A\$\$\$. Read pp. 460-466 + supp.

Mar. 6. Hardrock Minerals: The Mining Law. Read pp. 517-526, 534-546.

Mar. 8. Energy Minerals: The Mineral Leasing Act and Its Ilk. Read pp. 597-608 + supp.

Mar. 20. NO CLASS.

Mar. 22. National Forests. Read pp. 711-718, 720-729, 735-736, 738-740.

Mar. 27. Rangelands. Skim pp. 791-797; read pp. 797-817; skim pp. 849-851.

Mar. 29. National Parks. Read pp. 917-928; skim pp. 929-949; read pp. 962-967, 979-981.

Apr. 3. Wilderness. Read pp. 993-998; skim pp. 998-1014; read pp. 1015-1030, 1046-1050.

Apr. 5. The Antiquities Act and National Monuments. Read pp. 1079-1090.

Apr. 12. TBD.

Apr. 17. TBD.

Apr. 19. TBD.

Apr. 24. TBD.

Apr. 26. TBD.

May 1. TBD.

SUPPLEMENTAL and COMPLETELY OPTIONAL READINGS

- *The High Country News* is a bi-weekly periodical (online too) that covers natural resource issues in the Mountain West. The level of journalism is outstanding. Highly recommended.
- Charles Wilkinson, *CROSSING THE NEXT MERIDIAN: LAND, WATER, AND THE FUTURE OF THE WEST* (1992). A bit dated, but still the best single book on public natural resources law.
- John Leshy, *THE MINING LAW: A STUDY IN PERPETUAL MOTION* (1987). An epic history of the immortal Mining Law of 1872, written by a former solicitor of the Department of Interior.
- Wallace Stegner, *BEYOND THE HUNDREDTH MERIDIAN* (1953, rev. ed. 1992). A professional biography of John Wesley Powell and his trailblazing explorations of the Colorado River.
- Stephen Ambrose, *UNDAUNTED COURAGE* (1997), or *THE JOURNALS OF LEWIS & CLARK* (Bernard DeVoto ed., 1997). If you don't know anything about the Lewis & Clark expedition, it'll blow your mind. And teach you a great deal about the American West.
- Marc Reisner, *CADILLAC DESERT: THE AMERICAN WEST AND ITS DISAPPEARING WATER* (1993). An absolute classic. A real-life political thriller about government corruption and western water.