

Public Land & Resources Policy, NRSM 595

Fall 2023, 4 credits, Lectures on T, Th 9:30—10:50 am, Interdisciplinary Science Bldg. 110 (with undergraduate students taking NRSM 422); and graduate student discussions on Tuesdays 3—3.50 in Health Science 410.

Instructor Information:

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about: [Martin Nie](#)

Office hours: I encourage students to talk to me and visit after class sessions on T, TH. We can do this in the nice open foyer outside of the classroom. I will also hold office hours from 12-2.30 on Tuesdays and 3-4 on Wednesdays. If these times don't work, we can just schedule something else that does. Please email at martin.nie@umontana.edu.

Course Description: This course provides an intense introduction to the laws, regulations, policies, planning and decision making processes that govern federal public lands and resources in the U.S. Topics covered include the historical and constitutional context of federal public lands, federalism and intergovernmental relations, Tribal sovereignty and treaty rights on public lands, a primer on administrative rulemaking and judicial review, NEPA, hard rock mining and mineral leasing, public rangelands managed by the BLM, the National Forest System, the Endangered Species Act, and protected lands designated as National Monuments, Parks, and federal Wilderness.

Course structure: The course consists of two parts. Graduate students enrolled in NRSM 595 Public Land & Resources Law will attend lectures and class discussions in NRSM 422, which includes a mix of undergraduate and graduate students (the latter taking this as a U/G class). These lectures are on T, TH between 9.30—10.50. All students will be reading the same material in this regard. Those students enrolled in NRSM 595 will also attend a one hour discussion group on Tuesdays between 3.00—3.50. Put it all together, and we have four credits focused on public lands and resources law and policy! Topics and discussions for Tuesdays will be determined by student interest and questions about the material. Included in each unit (described below) is a particular topic, issue, case study and/or reading that we can use for discussion purposes as well.

Required Reading:

(1) James Rasband, James Salzman, and Mark Squillace, *Natural Resources Law and Policy*, 3d ed. (New York: Foundation Press, 2016). 1539 pp.

*The textbook is outrageously expensive and I apologize for the cost. Please feel free to use a cheaper first or second edition of the text if you can find it elsewhere. It also can be rented from Amazon.com for a much more reasonable price (\$70.00). The UM Bookstore has paid students a little under half the price of the text during book buyback. I have decided to stay with this textbook because of feedback from multiple classes that strongly recommended its continued use.

(2) Lecture notes: my lecture notes are available in bound, printed form at the UM bookstore. They are

required and students will not be able to follow class sessions without them. The notes are also available on moodle.

Supplemental Reading: Also available in Moodle are additional readings and materials that can be read to supplement the text and prepare for exams. Several of these are primers on topics prepared by the non-partisan Congressional Research Service. I will keep adding to these folders in moodle throughout the semester.

Course Moodle Page & Course YouTube Channel: The course has a moodle page that will be used to organize readings and materials, post exam material, and host open forums, among other functions. The course also has a YouTube channel with associated playlists that track the units and topics covered in this class and other law and policy courses taught in the W.A. Franke College of Forestry and Conservation and the Alexander Blewett III School of Law. See moodle page for YouTube link and subscription information.

The case law discussed in class can be most easily accessed by using [Google Scholar](#) (case law search).

The best news coverage of natural resource policy issues is provided by *Greenwire*, through [Environment & Energy Publishing](#) (can be accessed for free through the library).

Learning Outcomes:

Students successfully completing the course will:

1. Acquire a substantive understanding of natural resources policy and management in the U.S.
 - Understand the relationship between law and policy and resources management in the U.S., with a focus on the primary majors in the College of Forestry and Conservation (forestry—as required by SAF, wildlife biology, resource conservation, recreation, restoration, and other environmental sciences).
 - Understand basic decision making/planning processes
 - Understand key environmental laws and policies and how they work on-the-ground in a management setting
 - Understand various approaches to different sets of policy problems
2. Be able to think critically about a number of natural resource policy problems and solutions.
 - Understand the nature of various policy disputes
 - Evaluate the assumptions, strengths, and weaknesses of various reform measures and policy proposals
 - Approach problems and issues in an integrated and intellectually rigorous fashion
3. Have the ability to apply acquired knowledge to their field of study or professional/personal interest(s)
 - To make connections between policy and law to real-world management problems in forestry, resource conservation, wildlife management, recreation, and the environmental sciences.

Student Responsibilities & Grading:

Class Participation: My classes are proactive and conversational in nature. Thus, *all* students must not only have read the reading assignment *prior* to class but must be ready to discuss the readings on a regular basis. I am seeking input from the entire class, not just from a few committed students. Thus, students need to know when to speak up and when to stay quiet. If discussion is poor, unannounced pop-quizzes may be given. Therefore, it is in the collective interest of the class to participate. Any student who misses class for any reason will be held responsible for all materials covered and all announcements made during his/her absence. Don't ask me for missed handouts or about material that was covered unless you have a validated excuse. Chronic tardiness is rude. Please turn off your cell phones before entering class. Given the amount of discussion expected in this course, showing respect for others is paramount and is taken very seriously. We will strive towards an engaging but respectful open forum in which numerous opinions can be discussed and explored.

Grading: Graduate students have an option for how they would like final grades determined but each option concludes with an oral examination.

Option A. Exams. Final grade is determined by three exams worth 100pts each, a total of 300pts. Graduate students will take the exam given to students enrolled in NRSM 422. The exams are all written, mostly short answer. I will provide a thorough study guide, at least two weeks before the exam, that lists all potential material that may be tested. This approach encourages students to create detailed study outlines, individually or in teams, to prepare for the exams and we will work through the study guide as a team in order to actively engage in the material. No curve is used to determine final grades and I encourage students to study with others and to create shared study outlines that we can dissect in class and in dedicated study sessions. The third exam is scheduled for **Monday, December 11, 10-12.**

Option B. Papers. Final grade is determined by two short (~5-6 pages) papers and one longer final exam paper (~10-12 pages). Papers are based on the required and recommended readings for class and may involve application to a contemporary issue in public lands and resources law and policy. The questions will be structured with the objective of helping you learn and apply the material. The papers will be graded for substance and style. The two short papers are worth 50 points each and the final is 100pts, 200 pts total.

Final Oral Exam: A 30 minute final oral exam will be administered over the final two weeks of the course. The exam is worth 25 pts and will be structured as an open-ended discussion, with a focus on materials tested in either Option A or B. This means that I'll use test questions for Option A or the essay questions for Option B to gauge a student's depth of understanding.

Option A: Exams	Option B: Papers
3 exams @ 100pts each: 300pts Oral exam: 25 pts Total: 325 pts	Two short papers: 50 pts each, 100 pts total Final paper: 100pts Oral exam: 25pts Total: 225pts

Academic Honesty: All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code. The Code is available for review online at [Student Conduct Code](#).

Grading Scale: The following scale will be used to translate points into grades (rounded up if the next decimal is 5 or above, down if it is four or less).

93-100: A
90-92: A-
88-89: B+
83-87: B
80-82: B-
78-79: C+
73-77: C
70-72: C-
68-69: D+
63-67: D
60-62: D-
59- F

COURSE READINGS & CLASS SCHEDULE

This syllabus is very tentative and may regularly change. Bring this schedule to each class session for regular updates and additional or subtracted readings. *All readings are to be done before class.* Given time constraints, some areas may have to be sacrificed, and individual reading will have to take its place. Students must be willing to read and be responsible for text material that may not be covered in class. Dates have been left open in order to increase flexibility and allow for maximum class participation and discussion. This type of open schedule, however, requires that students come to class to find out where we are and where we're going. I will inform students before upcoming sections of what readings they should pay particular attention.

Reading the Text: I'm sure you have noticed the density of our text for this semester. I have chosen it because of its integrated and comprehensive approach to public land and resources policy, law and administration. Previous surveys of this course also informed me that a majority of students wanted a comprehensive and detailed text that they could keep and use as a future resource and reference. Please don't be intimidated by this book: we will work our way through it and I will tell you exactly what you are to read and understand. In general, though, it's a good idea to read the selected sections while skipping the extended question sections and case law sections, as this will make the reading much lighter. Those students really interested in the subject matter can of course read all of it and then some. You are also not expected to memorize the cases, nor understand the intricacies of the American legal system. Again, I will tell you what you need to know and why it is important. I've also placed on e-reserve a few tutorials on how to read legal cases, see "An Introduction to Legal Research and Citation," and "Understanding Legal Citations."

*Unless otherwise noted, case law and question sections in the following readings are optional.

*If you found a cheaper first or second edition textbook, please see required reading in parentheses (e.g., 1st ed. pp. x-x).

TOPICS & READINGS

Before reading, be sure to check what edition of the text you are using. Readings from the second and first editions of the text are in parentheses.

1. The Historical Context of Federal Public Lands & Resources

Reading: Chapter 2 focusing on:

I. Introduction, pp. 91-93 (2nd ed. pp. 80-82) (1st ed. 79-80)

II. Acquisition of the Public Lands, pp. 93-100 (2nd ed. pp.82-88) (1st ed. 80-89)

III. Federal Disposition of the Nation's Resources, pp. 129-144; (2nd ed. pp. 94-95, 115-126, 129-133, 139-141 (#s 4, 5)). (1st ed. 94-95, 115-126, 129-132, 139-140)

Recommended Reading: Monte Mills & Martin Nie, "Bridges to a New Era: A Report on the Past, Present and Potential Future of Tribal Co-Management on Federal Public Lands," 44 *Public Land & Resources Law Review* 49 (2021). See pp. 64-78 for a more thorough treatment of the indigenous roots of federal public lands.

Case Study: Landlocked public lands and corner crossing in Wyoming litigation. Please see moodle page and folder for most up-to-date materials, including court briefs, media updates and the latest decision from the U.S. District Court in Wyoming (*Iron Bar Holdings v. Cape et al*, 2023).

2. The Constitutional Context of Federal Public Lands & Resources

IV. Federal Power Over Natural Resource Management, pp. 146-150, 159-165, 174-177 (including *Kleppe v. New Mexico* 1976) (2nd ed. pp. 146-148 (*Kleppe v. New Mexico*), 156-157, 184-185) (1st ed. 144-146 (*Kleppe v. New Mexico*), 154-157, 182-184)

3. Administrative Law Primer

Administrative rulemaking and regulations; Administrative Procedure Act; Judicial review and agency decision making

Reading: Chapter 3 focusing on:

I. The Federal Natural Resource Agencies, pp. 231-240 (2nd ed. pp. 214-220) (1st ed. pp. 207-216)

II. Improving Agency Decision-making—The Administrative Procedure Act, pp. 245-247, 249-259 (2nd ed. pp. 223-233, including *Northern Spotted Owl v. Hodel* (but not including section on 2. Adjudication)) (1st ed. pp. 220-227)

Northern Spotted Owl v. Hodel, 716 F. Supp. 479 (1988) (available in text and Moodle).

II (B). The Role of Nongovernmental Organizations, pp. 263-271 (2nd ed. pp. 236-241) (1st ed. pp. 233-240, 251-253)

Case Study: The precarious future of the *Chevron* Doctrine and administrative discretion in public lands management. Please skim *Chevron* Deference: A Primer (Washington, D.C.: Congressional Research Service, 2023) and I'll post the most updated Supreme Court developments as they emerge this fall.

4. The National Environmental Policy Act (NEPA)

III. Improving Agencies' Environmental Decision-making (NEPA), pp. 291-302, 314-316, 324-330 (2nd ed. pp. 258-268, 277-279 (Essential Elements of an EIS), 285-286, 288-289, 290-292) (1st ed. pp. 253-263, 271-273, 283-294)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989) (Moodle)

Case Studies: (1) NEPA and the Proposed Expansion of Holland Lake Lodge. Please see moodle page and folder for most up-to-date materials (2) President Biden's proposed revisions to NEPA Implementing Regulations (July 31, 2023). Please see moodle folder for proposed regulations in Federal Register and I'll add additional materials throughout the semester.

Exam I: TBD (with 2 weeks notice)

5. Hardrock Mining & Mineral Leasing: History, Law, and Politics

1872 Hardrock/General Mining Law; the politics of reform; contrast to Mineral Leasing Act

Reading: Chapter 9 focusing on:

I. An Introduction to Mining, pp. 1134-1140 (2nd ed. pp. 1022-1026) (1st ed. 980-984)

III. The General Mining Law of 1872, pp. 1183-1193 (2nd ed. pp. 1077-1086) (1st ed. 1033-1041)

V. Environmental Regulation of Mining, pp. 1269-1277 (2nd ed. pp. 1170-1174) (1st ed. 1121-1136)

& read also public choice section on pp. 72-73, 241-242 (2nd ed. pp. 219-220 (1st ed. 58-62) and Chapter 10 focusing on The Mineral Leasing Act, pp. 1305-1310.

Note: An option to reading the textbook chapter on mining are the following reports prepared by the Congressional Research Service: *Policy Topics and Background Related to Mining on Federal Lands* (2020) and *Mining on Federal Lands: Hardrock Minerals* (2008). Available in Moodle.

Recommended reading: Sam Kalen, "Mining Our Future Critical Minerals: Does Darkness Await Us?" 51 *Environmental Law Reporter* 11006 (2021) (reviewing the development of critical minerals in the context of the 1872 GML).

Case Study: The exploration and development of critical minerals in Sheep Creek, West Fork of Bitterroot River, on Bitterroot National Forest. See moodle for up-to-date developments.

6. Public Rangeland Law & Policy (BLM)

Public rangelands managed by BLM; introduction to multiple use law and management

Reading: Chapter 8 focusing on:

II. Home on the Range, pp. 1012-1036 (2nd ed. pp. 913-934) (1st ed. 880-896)

III-IV, pp. 1036-1080 (2nd ed. pp. 949-973, 1011-1015 (including *National Wildlife Federation et al. v. BLM* (1997)), (1st ed. 915-921, 937-938)

V. Rangeland Reform, pp. 1082-1122 (2nd ed. pp. 975-983) (1st ed. 940-969)

Required case reading: *Natural Resources Defense Council v. Hodel*, 624 F. Supp. 1045 (D. Nev. 1985) and *National Wildlife Federation et al. v. BLM*, 140 I.B.L.A. 85 (1997) (both cases found in textbook and also available in moodle)

Case Study: The BLM's proposed FLPMA regulations on Conservation and Landscape Health, 88 Federal Register 19,583 (Apr. 3, 2023). Please see moodle folder for proposed regulations and associated public, industry and tribal comment).

7. National Forest System

The National Forest System; National Forest planning

Reading: Chapter 11—please skim all of this chapter, but read carefully Part IV. Forestry Law—the National Forests.

And Chapter 3 focusing on: Resource Planning on Public Lands, pp. 332-361 (2nd ed. pp. 292-319) (1st ed. 283-294)

Case Study: Revision of the Northwest Forest Plan and Lolo National Forest Plan. Please see moodle page and folder for most up-to-date materials.

Exam II: TBD (with 2 weeks notice)

8. Endangered Species Act (ESA)

Reading: Chapter 4 focusing on:

I. Life on Earth, pp. 365-377 (2nd ed. pp. 320-338) (1st ed. 310-328)

III. The Endangered Species Act, pp. 395-491 (2nd ed. pp. 348-426) (1st ed. 339-425)

Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)

Recommended: Center for Conservation Innovation @ <https://home.cci-dev.org/directory/> the CCI Directory includes a rich and accessible database on most things ESA, with great tables, graphs, maps and explanatory materials—highly recommended).

9. Protected Lands Policy

Politics of preservation; National Parks and Monuments; The Wilderness Act and contemporary wilderness politics.

Reading: Chapter 6 focusing on:

I. Introduction, pp. 635(2nd ed. pp. 577-582) (1st ed. 553-558)

II. The Case for Preservation/Darker Side of Preservation, pp. 641-658(2nd ed. pp. 582-599) (1st ed. 558-572)

III. National Parks, pp. 661-684 (2nd ed. pp. 599-619) (1st ed. 574-593)

IV. National Monuments, pp. 686-702 (2nd ed. pp. 619-635) (1st ed. 593-609)

VI. Wild and Scenic Rivers, and LWCF, pp. 743-746 (2nd ed. pp.662-673) (1st ed. 641-648, 644-645)

V. Wilderness, pp. 707-735 (2nd ed. pp. 636-661) (1st ed. 609-641)

VII. Preservation on Multiple Use Lands, pp. 748-750

Case studies: See moodle page for several cases focused on managing federal wilderness areas (natural conditions and untrammeled), including fish restoration efforts in wilderness lakes, Whitebark pine ESA listing and management in wilderness, wolf management in wilderness and lots more.

Exam III: Monday, December 11, 10-12