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CATALYSTS FOR CHANGE.**

## **NATURAL RESOURCES LAW - ENV 5235**

**Spring 2024**

**3 Credits**

**Professor Delcianna J. Winders**

Debevoise 212

[dwinders@vermontlaw.edu](mailto:dwinders@vermontlaw.edu)

802-831-1107

**Teaching Assistant Clara Derby**

[claraderby@vermontlaw.edu](mailto:claraderby@vermontlaw.edu)

### **SYLLABUS AND COURSE INFORMATION**

(updated Jan. 11, 2024)

#### **Course Description**

This course examines the statutes and regulations governing the management of federal lands and their resources. It considers the historical, political, and ecological influences on the law and management of these resources and includes an introduction to the agencies with jurisdiction over the components of the federal estate.

#### **Course Materials**

The required casebook for this course is **JOHN D. LESHY, ROBERT L. FISCHMAN, & SARAH A. KRAKOFF, COGGINS & WILKINSON'S FEDERAL PUBLIC LAND AND RESOURCES LAW (8th Ed. 2022) (hereinafter Casebook).**

Occasional supplemental assigned materials will be posted on the course Canvas page.

Optional texts and study aids:

- [Orin S. Kerr, \*How to Read a Legal Opinion: A Guide for New Law Students\*, 11 GREEN BAG 2d 51 \(2002\).](#)
- [INTRODUCTION TO CASE BRIEFING.](#)
- [GEORGE COGGINS & ROBERT GLICKSMAN, PUBLIC NATURAL RESOURCES LAW](#) (continually updated), available to you free of charge via Westlaw

### **Class Meeting and Learning Management System Information**

We meet on **Tuesdays and Thursdays, 11:20AM-12:35PM.**

You will receive an invitation for a **Microsoft Team** for this class.

**Classes will be livestreamed and recorded via Microsoft Teams.** Livestreaming class doesn't count as class attendance under the VLGS Attendance Policy, but it is nevertheless the next-best option to attending in person if you are unable to be physically present. Please note that I am not able to pay attention to the chat in Teams while teaching.

**Canvas** is the primary learning management system for this course. I will provide updates to the syllabus, reading assignments, and more via Canvas.

**Please make sure you are familiar with and able to access this course on *both* Teams and Canvas.**

### **Course Objectives and Learning Outcomes**

Upon completing this course, students will be able to:

- explain the key constitutional, statutory, regulatory, and common law frameworks governing natural resources allocation;
- describe the relationship between the federal government, states, and federally recognized Indian Tribes in natural resources management;
- evaluate legal issues and recommend legal reforms dealing with natural resource allocation; and
- analyze novel natural resources fact patterns implicating multiple legal issues and sources of law.

### **Class Preparation Expectations**

Pursuant to [VLGS's Credit Hours Policy](#), in addition to in-class time, for this three-credit class **you are expected to spend at least six hours a week outside of class preparing for class.** That outside work may include, but is not limited to, completing assigned readings, briefing assigned cases, reading supplemental materials,

outlining, participating in study groups, attending office hours, and meeting with ASP mentors about work for this course. If you find that it is taking you significantly more than six hours a week to prepare for class, please reach out to the me as soon as possible.

### **Inclusive Classroom**

In this class, we will work together to develop a learning community that is inclusive and respectful. Our diversity may be reflected by differences in race, ethnicity, culture, age, religion, sexual orientation, gender identity/expression, socioeconomic background, and myriad other social identities and life experiences. We will encourage and appreciate expressions of different ideas, opinions, and beliefs so that conversations and interactions that could potentially be divisive turn, instead, into opportunities for development.

### **Attendance Policy**

VLGS requires regular and punctual attendance in all classes.

As this is a residential class, attendance must be in person. Joining the course online does not count as attendance, though I nevertheless encourage it to support your learning if there are times that you are not able to attend in person.

Missing classes or arriving late to class may also impact your participation and professionalism grade in this class (see Grading below).

VLGS [Academic Regulations](#) provide that “[s]tudents who are absent from twenty (20%) percent of the regularly scheduled classes . . . shall be automatically withdrawn from the course with a grade of F-Wd.” Thus, if you miss this class six times you will be automatically withdrawn with a grade of F-Wd.

If you have questions about VLGS’s attendance policy, contact Vice Dean for Students Professor Joe Brennan, [jbrennan@vermontlaw.edu](mailto:jbrennan@vermontlaw.edu), 802-831-1244.

You are responsible for monitoring your compliance with this policy.

### **Grading**

- **Participation and Professionalism (15%):** Regular and punctual attendance, demonstrated engagement with assigned materials, and respectful engagement with your peers is required. Absences, tardiness, and low class participation will impact your grade. To succeed in this class, you need consistent engagement. Pedagogical studies show that the more you contribute to conversation, the more you will learn and remember. In other words, what you retain is not what the

professor said. It is what you, yourself, expressed in your own words. In addition to being physically present in class sessions, I expect students to read all assigned materials before class and come to class prepared to engage in active, thoughtful, and productive discussion. To ensure that we have a productive discussion of the material every day, I will use various methods of calling on students and structuring our class activities in a way that ensures the greatest possible class participation. If I call on you in class, I expect you to contribute to the discussion in a substantive manner. If I assign you to participate in a group, I expect you to contribute to the group's discussion and final work product. You may also earn participation credit emailing one-page substantive reading reflections to me at [dwinders@vermontlaw.edu](mailto:dwinders@vermontlaw.edu) no later than 5PM the evening before any class. The reflection should *not* summarize the readings; instead, it should demonstrate engagement with them—for example, reflecting on why a decision (of a court, agency, legislature, etc.) is counterintuitive, unjust, illogical, unethical, poor policy, or supportive/contradictory of some principle we covered or in contrast to some other law/case we've covered. The key is explaining why and showing some analysis. You are not required to submit reading reflections, they are simply one way of earning participation credit, particularly for those who may be more reluctant to speak up in class.

- **Midterm Exam (30%):** Open book, open note.
- **Final Exam (55%):** Open book, open note.

### Accommodations

Vermont Law and Graduate School encourages students with disabilities, visible or hidden, to seek appropriate accommodations. If you have a disability and would like to request an accommodation, please review The Vermont Law and Graduate School Disability Policy and Disability Accommodation Request Form at <https://www.vermontlaw.edu/community/students/academic-success/accommodations>. If you have questions, please contact the Associate Dean of Diversity, Equity, and Inclusion, Lisa Ryan, [lryan@vermontlaw.edu](mailto:lryan@vermontlaw.edu), 802-831-1079.

### Office Hours

My office hours are **Mondays and Wednesdays, 4-5PM**, in my office, **Debevoise 212**, in the Environmental Law Center suite. You can also schedule an appointment by emailing [dwinders@vermontlaw.edu](mailto:dwinders@vermontlaw.edu).

You can arrange a time to meet with our TA, Clara Derby, at <https://vermontlaw.sharepoint.com/sites/ASPWebsite/SitePages/ASP-Mentors.aspx>, or by emailing [claraderby@vermontlaw.edu](mailto:claraderby@vermontlaw.edu).

## **Course Outline and Assignments**

These reading assignments are tentative. Most will take one class period, but some may extend beyond that. I will note modifications as we proceed. Be sure to monitor announcements in class and via Canvas for updates to the reading assignments and other announcements.

### **Class 1, Tuesday, January 16**

- Public Land Law: An Introduction, Casebook 1-32

### **Class 2, Thursday, January 18**

- Principles of Resource Allocation and Management, Casebook 32-41
- Acquisition of the Public Domain, Casebook 43-58

### **Class 3, Tuesday, January 23**

- [David Treuer, \*Return the National Parks to the Tribes: The Jewels of America's Landscape Should Belong to America's Original Peoples\*, ATLANTIC \(May 2021\).](#)
- Disposition of the Public Domain, Casebook 58-80

### **Class 4, Thursday, January 25**

- Disposition of the Public Domain cont'd, Casebook 80-109

### **Class 5, Tuesday, January 30**

- Withdrawal, Reservation, and Reacquisition, Casebook 109-40

### **Class 6, Thursday, February 1**

- Federal Powers Applied Through the Supremacy Clause, Casebook 141-50
- The Property Clause, Casebook 150-73

### **Class 7, Tuesday, February 6**

- Federal Preemption, Casebook 173-99

### **Class 8, Thursday, February 8**

- Federal Immunity and Cooperative Federalism, Casebook 199-226

### **Class 9, Tuesday, February 13**

- The Administrative Procedure Act and Judicial Review, Casebook 227-68

### **Class 10, Thursday, February 15**

- The National Environmental Policy Act, Casebook 268-300

**Class 11, Tuesday, February 20**

- The Endangered Species Act, Casebook 300-32

**Class 12, Thursday, February 22**

- The Endangered Species Act cont'd, Casebook 332-53

**Class 13, Tuesday, February 27**

- Access Across Non-Federal Land, Casebook 385-97
- ANILCA Permits, Casebook 412-21
- FLPMA Title V Permits, Casebook 421-22

**Class 14, Thursday, February 29 - Midterm**

**SPRING BREAK: NO CLASSES MARCH 3-8**

**Class 15, Tuesday, March 12**

- Organic Legislation and Planning, Casebook 451-60
- The Special Case of Alaska, Casebook 460-66

**Class 16, Thursday, March 14**

- Water Rights, Casebook 467-516

**Class 17, Tuesday, March 19**

- Hardrock Mining, Casebook 517-43, 555-68

**Class 18, Thursday, March 21**

- Mineral Leasing, Casebook 597-602, 609-17, 630-58

**Class 19, Tuesday, March 26**

- Solar and Wind Energy, Casebook 670-84

**Class 20, Thursday, March 28**

- Hydropower Licensing, Casebook 684-709

**Class 21, Tuesday, April 2**

- Traditional Forest Service Management, Casebook 711-17, 720-25
- The National Forest Management Act, Casebook 725-29, 738-69
- [Decision Memo, Fremont-Winema National Forest, Forest Plan Amendment \(Feb. 5, 2019\).](#)
- Wildfire Management, Casebook 786-89.

**Class 22, Thursday, April 4**

- Livestock Grazing, Casebook 791-801, 807-28, 833-34, 837-51

**Class 23, Tuesday, April 16**

- The National Wildlife Refuge System, Casebook 853-82
- Wildlife Management on Multiple-Use Lands, Casebook 883-93
- The Migratory Bird Treaty Act, Casebook 893-905

**Class 24, Thursday, April 18**

- Acquisition of Land for Recreation, Casebook 907-17
- The National Park System, Casebook 917-49
- Motorized, Off-Road Recreation, Casebook 966-72

**Class 25, Tuesday April 23**

- Wilderness Preservation, Casebook 993-1039, 1045-50

**Class 26, Thursday, April 25**

- National Monuments and Antiquities Act, Casebook 1079-90
- Archaeological and Historical Resources, Casebook 1110-25