

ESPM 4256/5256
NATURAL RESOURCE LAW AND THE MANAGEMENT OF
PUBLIC LANDS AND PUBLIC WATERS
3 Credits
Tuesday 5:10-8:10 P.M.

Public concern about environmental quality is beginning to be felt in the courtroom. Private Citizens, no longer willing to accede to the efforts of administrative agencies to protect the public interest, have begun to take the initiative themselves. One dramatic result is a proliferation of lawsuits in which citizens, demanding judicial recognition of their rights as members of the public, sue the very governmental agencies which are supposed to be protecting the public interest.

Sax, Joseph L., *The Public Trust Doctrine in
Natural Resource Law: Effective Intervention*,
68 Mich.L.Rev. 471 (1970)

Course Description:

This course is intended to provide non-law students with an understanding of the role of the judiciary in the management of public lands and public waters. The course will examine Constitutional provisions affecting the management of public resources, the concept of property rights, major principles of water law, the role of the legal system in environmental review, the scope of legal authority granted to administrative agencies, and limitations of private property rights to protect public lands and public waters. The class will introduce students to the concepts of legal reasoning including case synthesis and analysis. The class will be taught using a combination of lecture, guest lectures, written exercises and class participation.

Prerequisites: ESPM 3241 or Instructors Permission

Instructor: Sherry A. Enzler, JD, PhD
General Counsel
Minnesota Department of Natural Resources
651-259-5066
senzler@umn.edu

I am available to meet by appointment. You may also call or e-mail me as needed although my preferred method of contact is e-mail.

TA: Megan Butler
Butle553@umn.edu
Green Hall 14

Megan's office hours are Tuesdays: 3:00- 5:00, Thursdays 9:00-11:00 AM

Audience:

Juniors, seniors, and graduate students with an interest in environment and natural resource issues.

Web Access:

Available through Moodle, which can be accessed through the University's web site through your MyU portal (My Courses).

Active Learning and Course Learning Objectives:

(This section is modified from syllabi and resources of Dr. Rebecca Montgomery, UMN, Forest Resources)

Learning is not a passive activity in which you simply absorb and repeat back facts given by the instructor. Rather, learning requires you to take an active role. In order to truly understand the interplay between the courts, the law and our natural resources you must understand and be fluent in the way lawyers think and reason in a way that is meaningful to you.

As your instructor, I am here to help you and to facilitate your learning about the law in an active way but ultimately you bear the responsibility for understanding the material and making it your own. Although this class will involve some lecture it is my intent to actively involve you in the learning process. During the class we will all be involved in working toward the common goal of learning legal concepts involving the management of natural resources. Although facts, vocabulary and legal rules are important in this discipline, I ask that you go beyond simple memorization and interconnect facts with legal concepts, legal reasoning, legal analysis, legal synthesis, legal reasoning on multiple sides of an issue using applicable legal rules. In addition I expect you to develop a range of intellectual abilities including critical thinking, logical reasoning, appropriate uses of fact and law and the ability to communicate your understanding of the materials and legal arguments both orally and in writing.

Your Personal Goals

- What do you want to know and be able to do by the end of this course?
- Are you prepared to achieve these goals?
- How will you attempt to achieve these goals?

As a result of your experience in this class you will have an opportunity to:

- Develop a basic understanding of the role of the judicial branch of government in the management of public lands as expressed through the decisions of federal and state courts.
- Develop an understanding and be able to explain the legal framework from which federal laws governing the management of public lands and waters originated including the U.S. Constitution, common law, federal and state statutes and the federal and state Administrative Procedures Act;

- Learn and be able to articulate the Constitutional parameters surrounding the management of public lands;
- Develop an understanding and be able explain the relationship between the judicial, executive and congressional branches of government as it pertains to the management of public land and public waters within the framework of federal and state law;
- Reason through the interaction between the Constitution, statutes, regulations and case law in order to articulate the scope of and the government's authority over public lands and waters;
- Read a case, extract the legal rule and explain in writing how the court has applied the rule to the facts in the case;
- Use the process of legal reasoning to synthesize the development of a legal rule through a series of cases;
- Analyze facts and apply legal reasoning to those facts to develop a legal argument and express that argument both in writing and orally;
- Develop a basic understanding of some of the fundamental laws and legal principles pertaining to the management of public lands and waters;
- Reason logically and critically to evaluate legal arguments; and
- Improve your capacity to work as a member of a productive, collaborative team.

Faculty Goals

- As the course facilitator I will encourage and create a learning environment in which all students are actively engaged in the process of exploring the law, developing their analytical skills and developing their ability to reason and to articulate their reasoning.
- I will guide your development toward higher-order thinking and reasoning skills so you can successfully explore and demonstrate achievement of each of the goals above.

Achieving Course Learning Goals

To go about achieving these goals I will ask you:

- To actively participate in our class meeting;
- To participate in cooperative group work during our class meeting, for assigned homework and for independent projects;
- To do the reading in advance of class meetings; and
- To reflect on and evaluate your own understanding.

Format of Instruction:

Lecture, class discussion, case analysis, group learning activities, written assignments and exam.

Course Materials

Required Textbooks:

Glicksman, Robert L. and George Cameron Coggins. Modern Public Land Law in a Nutshell. St. Paul: West Group, 2001.

Assorted statutes, cases and other readings posted on Moodle

Course web site <https://www.myu.umn.edu.mycourses>.

Class Management:

The class Moodle site will be the primary tool for managing course announcements, handouts, and readings and may be used for class exercises and submissions of papers. You can log into the Moodle site through your my site using the “my course” tab.

Credits and Assignments:

Class handouts will be provided for all papers, presentations, and applicable participation assignments describing the specific requirements and expectations. These will be posted on the course Moodle site for reference prior to and after assignments are due. Late assignments will be docked one grade.

Assignment		% of Grade Undergrads	% of Grade Grad Students
Case Briefs (5)	Brief 1 Brief 2 Brief 3 Brief 4 Brief 5	20%	15%
Exam 1 (Midterm)		20%	20%
Exam 2 (Final)		25%	25%
Case Synthesis		0%	15%
Mock Argument Outline		5%	
Mock Argument		20%	
Judicial Opinion			20%
Class Participation		10%	5%

Course Requirements:

1. The two major grading systems used are the A-F and S-N. ESPM majors must take this course on the A-F system; non-majors may use either system. The instructors will specify criteria and achievement levels required for each grade. All students, regardless of the system used, will be expected to do all work assigned in the course. Any changes you wish

to make in the grading base must be done in the first two weeks of the semester.

2. **Incompletes are given only through prior arrangement with instructor.** Incompletes are assigned at the discretion of the instructor and are only given when extraordinary circumstances prevent completion of course work on time. The instructors will set dates and conditions for makeup work. "I" grades will automatically lapse to "F"s at the end of the next semester of a student's registration.
3. Inquiries regarding any changes of a final grade should be directed to the instructor of the course; you may wish to contact the Student Conflict Resolution Center (SCRC) in 211 Eddy Hall (624-7272) for assistance.
4. Students are responsible for all information disseminated in class and all course requirements, including deadlines and examinations. These will be posted on the course Moodle site.
5. A student is not permitted to submit extra work in an attempt to raise his or her grade.
6. Scholastic misconduct is broadly defined as "any act that violates the right of another student in academic work or that involves misrepresentation of your own work. Scholastic dishonesty includes, (but is not necessarily limited to): cheating on assignments or examinations; plagiarizing, which means misrepresenting as your own work any part of work done by another; submitting the same paper, or substantially similar papers, to meet the requirements of more than one course without the approval and consent of all instructors concerned; depriving another student of necessary course materials; or interfering with another student's work."
7. Students with disabilities that affect their ability to participate fully in class or to meet all course requirements are encouraged to bring this to the attention of the instructors so that appropriate accommodations can be arranged. Further information is available from Disabilities Services (230 McNamara).
8. University policy prohibits sexual harassment as defined in the December 1998 policy statement, available at the Office of Equal Opportunity and Affirmative Action. Questions or concerns about sexual harassment should be directed to this office, located in 419 Morrill Hall.

Expectations of Students:

Showing up on time and prepared is a clear sign that you care about this class and came here to learn. It is extremely important that you attend the classroom sessions **and read the material prior to the class period. Attendance is**

taken and poor attendance (more than three unexcused absences) will affect your grade. You are allowed to miss a session only in extenuating circumstances, which must be made clear to me prior to the session or immediately following the session (in emergency situations)—making this clear means you have emailed or left a voice mail for me. In the event of absence, even excused absence students are responsible for obtaining notes on class presentations from classmates. Handouts may be obtained from the Moodle site. Please consult me if you are having difficulty with the subject material (sooner rather than later). I encourage you to meet with me on more complex issues or if you have had not previous introduction to the class material and you are having trouble organizing your notes and understanding concepts.

Grading:

The course will be graded from A through F (with pluses and minuses). All exams, written assignments, participation, and presentations will be given a numerical grade out of X/100 and multiplied by their respective contribution as a percent of the calculated grade.

A 93%	C 73%
A- 90%	C- 70%
B+ 87%	D+ 67%
B 83%	D 60%
B- 80%	F Below 60%
C+ 77%	

A= Outstanding achievement that demonstrates superior mastery of the material and exemplary performance on tests and exercises. The distinction between and A and B will depend upon the student's ability to understand, articulate and use explicit and implicit concepts.

B= Achievements that significantly exceeds the level necessary to meet the course requirements.

C= Achievement that meets all course requirements at an average level.

D= Achievement worthy of credit, but does not fully meet course requirements.

F= Failure to complete the course requirements, not worthy of credit without pre-arranged agreement between the student and the instructor regarding a grade of incomplete.

Special notes:

Academic integrity:

As a member of the University community you are expected to engage in the highest level of academic integrity. Academic dishonesty or plagiarism will not be tolerated. ALL students should read the attachment: Academic Integrity at the University of Minnesota. Also, please visit the University's academic integrity site at <http://www.osai.umn.edu/>

Honor system:

The College of Natural Resources honor system "...governs all aspects of academic activity in the University, including taking examinations and quizzes, writing papers, and performing research to name only a few...." (CNR, 2003). Plagiarism is cheating. Anyone who copies the work of other professionals, authors, or students and doesn't cite their sources in the body of the report and in the reference section of the report will receive a grade of 'F' and the final report may receive a grade of 'F'. If you are unclear about what this means, ask your instructor to explain it to you.

Disability statement:

Any student with a documented disability condition (e.g. physical, learning, psychiatric, vision, hearing, etc.) who needs to arrange reasonable accommodations should contact me as soon as possible at the beginning of the semester. Students with special needs should also contact Disability Services on campus. Their phone number is (612) 624-3316 and website is <http://www.ds.umn.edu>.

Weekly Class Schedule ESPM 4256/5256

Week 1 January 16

Introduction to Law and the Federal and State Court System Legal Reasoning

Key Concepts:

- An introduction to the course and the judicial branch of government including the concept of sovereign, Constitutional Frame, the court structure, and concept of jurisdiction. Discussion of case law, how to read a case and legal reasoning (*stare decisis*).
- How do courts reason. Inductive and deductive reasoning. Reasoning by analogy

Participation Assignment: Personal course goals

Readings

Burton, Steven J. Law and Legal Reasoning. 1-7 (Ch. 1) pdf on inductive and deductive reasoning.
Posted material reasoning by analogy.

Week 2 January 24 The Public Trust Doctrine and the Wildlife Trust

Key Concepts:

- What is the Public Trust Doctrine and the Wildlife Trust Doctrine
- Some modern applications
- The Minnesota Environmental Rights Act

Readings:

S. Enzler, *How Law Mattered to the Mono Lake Ecosystem (Wm & Mary Environmental Law and Policy Journal)*(Pgs. 1-8 and 17-22).
National Audubon v. Alpine County, 658 P.2d 709 (Cal. 1983) (Pg. 4-12 begin reading at **Opinion**)
Greer v. Connecticut, 161 U.S. 519 (1896) (pg 2-12)
Bruskotter, Enzler and Treves, *Rescuing Wolves from Politics: Wildlife as a Public Trust Resource*, 333 Science 1828-1829 (2012)
Minn. Stat. Ch. 116B <https://www.revisor.mn.gov/statutes/?id=116b>

Week 3 January 31

Property, Property Rights & Takings. How to Prepare a Case Brief and Synthesize Cases.

Key Concepts: What is “real property”? What are property rights? The 5th Amendment Takings Clause. Two types of taking (physical and regulatory). Why should resource managers care about takings? How to brief a case.

Readings

Glicksman, Robert L. and George Cameron Coggins. Modern Public Land Law in a Nutshell (2001). Chapter 1.
Coggins, Wilkinson et al, *Federal Public Lands and Resources* (Pgs. 1-19 and 328-30)
Penn. Central Transportation Co. v. New York City, 438 U.S. 104(1978)(Read 2650-2666 Justice Brennan's Opinion only)
Pennsylvania Coal Co. v. Mahon, 42 S.Ct. 158 (1922) (Begin Reading at 412 and read to the end of the case)

Participation Assignment: Case Briefing & Takings

Week 4 February 7 The Management of Wildlife and the Endangered Species Act

Key Concepts: The Law and the Management of Wildlife. Preserving species and ecosystems.

Readings

Goble & Freyfogle, *Wildlife Law* (Pgs. 426-34; 831-37; and 1164-73)

Assignment

Case Brief 1.

Guest Speakers

Dr. L. David Mech, Sr. Scientist Biological Resources Division. U.S. Geological Survey and Chair of the IUCN Wolf Specialist Group

And

Dr. Lou Cornicelli, Wildlife Research Manager Minnesota Department of Natural Resources.

Week 5 February 14 Takings II, Case Synthesis and Some Basic Legal Concepts

Key Concepts: Key Concepts: How to read cases together (case synthesis and legal reasoning). What does synthesizing several cases tell us about takings and how the court might rule in a given case? Jurisdiction, the relationship between the courts, congress and the executive branch. When can the court exercise jurisdiction. The constitutional frame. The property clause. The Delegation Doctrine. Jurisdiction of the court including ripeness, mootness, exhaustion of remedies, and standing. Administrative Law and the role of the agencies and the role of the courts.

Assignment

Case brief 1 due 2/21

Case brief 2 assigned

Readings

Glicksman, Robert L. and George Cameron Coggins. Modern Public Land Law in a Nutshell (2001). Chapter 2.

Coggins, Wilkinson et al, *Federal Public Lands and Resources* (pgs. 208 – 216)

Lucas v. So. Carolina Coastal Council, 112 S.Ct. 2886 (1992).

Dolan v. City of Tigard, 114 S.Ct. 2309 (1994).

Participation Assignment: Case Synthesis

Participation Assignment: Standing Exercise

Week 6 February 21

The Property Clause

Key Concepts: Congressional authority under the Property Clause. Delegations to Federal Agencies. Public domain lands, acquired lands, withdrawn lands, reserved lands. Scope of authority over private lands under the property clause.

Assignment

Case Brief 2 due February 28.

Readings

Glicksman, Robert L. and George Cameron Coggins. Modern Public Land Law in a Nutshell (2001). 39-48; 350-53.

Kleppe v. New Mexico, 96 S.Ct. 2285 (1976).

State of Minnesota v. Block, 660 F.2d 1240 (8th Cir. 1981) (1244-1251).

Week 7 February 28

Property Clause Continued.

Key concepts: Federal Preemption. What is environmental review really? Procedural v. substantive statutes.

Assignment

Case Brief 3 Due March 07.

Readings

Glicksman, Robert L. and George Cameron Coggins. Modern Public Land Law in a Nutshell (2001). 48-54; 108-28.

Coggins, Wilkinson et al, *Federal Public Lands and Resources*. (pgs. 180 – 205)

Week 8 March 07 -- Midterm Exam

Exam March 07
Case Brief 4 Due March 21

Week # March 14
Spring Break

Week 9 March 21
Environmental Review

Assignment
Case Brief 5 Due March 28.

Readings
Coggins, Wilkinson et al, *Federal Public Lands and Resources*. (pgs. 244 -62)
Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991) (pgs. 3-19)
Minn. Stat. 116D <https://www.revisor.mn.gov/statutes/?id=116d>
In re North Dakota Pipeline Co., 869 N.W.2d 693 (Minn. Ct. App. 2015)

Guest Speaker
Kathryn Hoffman, Exec. Dir. Minnesota Center for Environmental Advocacy

Week 10 March 28 Tribes and the Management of Natural Resources
Key Concepts: Tribal rights to natural resources both on and off reservations.

Readings
Goble & Freyfogle, *Wildlife Law* (Pg. 582-89 and 599-641)
Mille Lacs Band of Chippewa v. Minnesota, 952 F.Supp.1362 (1997) (pg 5-32)

Guest Speaker: Dr. Don Pereira, Fisheries Chief, DNR

Week 11 April 4

Water Part I
Key Concepts: How should we allocate water? What are the options?

The Pros and Cons. The prior appropriation doctrine and its implications. Reserved Federal Water Rights.

Prior Appropriations and Reserved Federal Water Rights. The Colorado Water Compact.

Assignment

Case Synthesis Due April 11 (Graduate Students Only)

Readings

Tarlock et al, *Water Resource Management* (pgs. 1-15, 19-23, 154-67 and 182-95)
National Audubon v. Alpine County, 658 P.2d 709 (Cal. 1983)

Week 12 April 11

Water Part II: The Riparian Rights Doctrine

Key Concepts: The riparian rights doctrine and its implications. What about Groundwater?

Assignment

Mock Argument Outline due April 16.

Readings

State v. Kuluvar, 129 N.W.2d 699 (Minn. 1963).
Application of Orr, 396 N.W. 2d (Minn. Ct. Ap. 1986).
Bloomquist v. Commissioner of the Department of Natural Resources, 704 N.W.2d 184 (Minn. 2005).
Tarlock et al, *Water Resource Management* (pg. 112-154)

Week 13 April 18

Water Part III – Water Quality Issues and Wetlands

Key Concepts: Jurisdictional waters under the Clean Water Act, management of wetlands under federal and state law, Section 404 and Section 404 assumption under the Clean Water Act.

Readings

Tarlock et al, *Water Resource Management* (657-14)
Enzler & Coleman, *Wetlands and Drainage After Rapanos: A “Series of Unfortunate Events”*, 40 Wm Mitch College of Law 78 (2013)

Guest Speakers – Jean Coleman MPCA General Counsel’s Office and Doug Norris, DNR Wetlands Program Coordinator

Week 14 April 25

Wilderness Preservation & River Preservation

Key Concepts: Why preserve wilderness. Federal roadless areas.
Recreation v. wilderness. The Wild and Scenic Rivers Act.

Readings

Coggins, Wilkinson et al, *Federal Public Lands and Resources*. (1007-1028, 1031-37, 1060-66, 1090-1109)

Week 15 May 2

Mock Arguments

Judicial Opinions due May 9 4:00 pm. (Grads Students Only)

Final Exam: Tuesday May 9, 5:10 – 7:10 pm.