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Spring 2-1-2022

### ENST 382.01: Environmental Law

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Broberg, Len, "ENST 382.01: Environmental Law" (2022). *University of Montana Course Syllabi, 2021-2025*. 648.

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## **Environmental Law**

### **EVST 382.01- Spring 2022**

**Professor:** Len Broberg  
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243-5209  
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Office Hours: Tu 11am-12 pm, W 1:30-3:00 pm

**Teaching Assistant:** Sarah Rodgers  
M9 Rankin Hall (Mezzanine upstairs from faculty offices)  
[sarah.rodgers@umontana.edu](mailto:sarah.rodgers@umontana.edu)  
Office Hours: Tu 1-3pm, Th 11:30 am-1:30 pm

**Purpose:** The purpose of this class is to introduce the student to the history, law and theory of environmental regulation in the United States using public and private land regulation mechanisms as case studies. Basic principles of constitutional and administrative law relevant to environmental regulation, substantive pollution and public land use law and the history of environmental problems and their regulation will be covered.

#### **Text:**

- Gardner, Royal 2011. *Lawyers, Swamps and Money: U.S. Wetland Law, Policy and Politics*, Island Press.
- Moodle readings- marked with **Moodle** in syllabus

#### **Tentative Syllabus:**

Readings are identified below. The Moodle address is <https://moodle.umt.edu>.

#### **STUDENTS MUST COMPLETE ALL THREE PAPERS TO PASS THE COURSE!!!!**

- Jan 18 Class Intro- Legal research and writing tools and approaches-Why regulate? Review of Government Structure **MOODLE:** *Environmental Law Intro*
- Jan 20-25 Federalism- The balance of State and Federal Power; **MOODLE:** *Power Relationships Between Federal and State Government*;
- Jan 27- Administrative Law and Democracy in Environmental Regulation- The National Environmental Policy Act and Access to Information **Gardner:** Chapter 2 pages 15-34 **MOODLE:** *The Administrative Law of Environmental Law; Chap 02: National Environmental Policy Act (NEPA)*;
- Feb 1- Standing Rock and Keystone Pipeline- NEPA in action (or not!) **MOODLE:** *Standing Rock Decision 2017; Sierra Club v. Clinton 2010; Indigenous Environmental Network v US Dept of State*
- **Feb 3 Paper 1 Due**
- Feb 3- Attempts to rollback NEPA **MOODLE:** Trump Wants to Undo..

- Feb 8- The Clean Air Act **MOODLE:** *Pollution Law*
- Feb 10- The Clean Air Act and Climate Change Regulation **MOODLE:** *Massachusetts v. EPA and EPA Factsheet*
- Feb 15- Climate Change litigation- Our Children’s Trust lawsuit and other legal approaches
- Feb 17- Climate Change- international regulatory approaches: **MOODLE:** *Designing Global Environmental Protection*
- **Feb 17 Paper 1 Returned- Students must meet with paper reviewer prior to revision!**
- Feb 22- National Parks and National Monuments- **Moodle:** *Antiquities Act; How National Park Law Really Works; CRS Authority to Modify National Monuments; Trump Admin Opens Former NM to Development; Yellowstone: Balancing Preservation*
- Feb 24- Wetlands regulation- the importance of definitions: **Gardner** Chap 3 pages 35-56
- Mar 1 Discussion Day
- Mar 3 Dredge and Fill- **Gardner** Chap 4 pages 57-71
- **Mar 3 Paper 1 Revisions Due**
- March 8- Discussion Day
- March 10- The takings clause and environmental regulation: **Gardner** Chap 11 pages 177-190;**MOODLE:** *Regulatory takings; Gest*
- March 15- Discussion Day
- March 17- Guest Speaker-TBD
- March 22-24 No class Spring Break
- March 29- The Endangered Species Act **MOODLE:** *ESA (Listing, Critical Habitat, Consultation & Recovery)*
- March 31- Private Conservation: Habitat Conservation Plans **MOODLE:** *The ESA and Private Land and HCP* and Private Conservation: Land Trusts and Conservation Easements and Mitigation Banking- **Gardner** Chap 6 and 7 pages 93-12
- **March 31 – Paper 2 due**
- March 31- Montana mining regulation- The State Constitution and Reclamation **MOODLE:** *Montana Constitution and Metal Mine Reclamation Act*
- April 5- The Mining Law of 1872 **MOODLE:** *Wilkinson Chap 2*
- April 7- The National Forest Management Act: provisions and implementation

**MOODLE:** *Barker, USFS Planning Rules*

- April 12- Discussion Day
- April 14 Montana's approach - State Trust Lands, the Forestry Practices Act and Streamside Protection Act **MOODLE:** *Managing Montana's Trust Lands; Revenue; SMZ boundaries*
- **April 14 Paper 3 due**
- April 19 Bureau of Land Management and Grazing Regulation
- April 21 Wetland Enforcement; **Gardner** Chap 10 pages 159-176
- April 26 Oil and Gas, NEPA and Cultural Heritage- MOODLE: Badger-Two Medicine case
- April 28 Water resources law **MOODLE:** *Wilkinson 1992-Rivers*
- May 3 TBD
- May 5 The future of environmental regulation
- **May 5 Rewrite of Paper 2 OR Paper 3 Absolute deadline**

**Grading:** Three papers (of at least seven pages each) will be given in the course of the term. The grade will be based on the three scores (30% each) plus 10% class participation and will be on a plus/minus system. **ALL STUDENTS MUST COMPLETE ALL 3 PAPER ASSIGNMENTS TO PASS THE COURSE.** Grading will be on a curve. If all of the class is doing well the curve may be "high" with more students getting higher grades, or if the converse is true the curve may be "low".

Students will also need to complete a discussion leader assignment on one of the Discussion Days noted in the syllabus. The instructor will provide topics and the students will select which topic they would like to organize and lead a discussion after the group presents material on the topic. Each group shall have a student activity on the topic that they will conduct. The activities can include debates, role plays, games or other activities- be creative! The discussion assignment will be part of the class participation grade.

**Papers:**

The paper topics will be supplied by the instructor. They will relate to some aspect of the course covered in that section of the course. Papers will be expected to be approximately 7 pages in length, typewritten and double-spaced. They will require the student to reference outside sources to support the positions taken in the paper. Paper 1 will be revised following comments and resubmitted for final grading. Papers with major writing errors will not receive an "A". All writing is to be the student's own work, with references properly documented to outside sources.

Papers are due at the beginning of class on the due date. Late papers will receive a grade reduction of one "-" per day they are late (an "A" paper will receive an A- for one day late, a B+ for two days late, a B for three days, etc.). No after-the-fact excuses will be accepted. The late paper penalty can only be waived by prior approval of the instructor **before** the beginning of the class in which

it is due. If you are sick, call or email before the due date to get an extension.

**Following the return of the first draft of Paper 1, each student must schedule an appointment with the Teaching Assistant or Instructor to review their comments on the paper before the revision is turned in. Failure to meet with the Teaching Assistant or Instructor that reviewed the first draft will result in a full grade deduction on the final grade for the revision and will result in a lower score for class participation.**

**Plagiarism:** Plagiarism or using unattributed material in your papers is not acceptable. Violations will be dealt with according to the Code of Student Conduct and can include referral to the Dean of Students or other sanctions specified by the Code in the discretion of the teaching staff. See <http://libguides.lib.umt.edu/plagiarism> for more information.

### **Optional Paper 2 or 3 Rewrite:**

Students have the option of rewriting either Paper 2 or Paper 3 (one of the two, not both) to improve their grade for that paper. The rewrite does not substitute for another paper. Students must complete 3 different papers to pass the course. Rewrites will be accepted at any time but no later than May 5 at 930 am. The instructor has the discretion to move that absolute deadline up to earlier in the semester.

### **Class Participation**

Attendance will be taken and participation will be noted and accounted for during the class. A large part of the class participation grade will be based on the student's performance in the class discussion leader role on the assigned day. Each student will be assigned one class day to participate as a discussion leader as part of a group of up to 5 students.

### **Office Hours:**

The Instructor and the Teaching Assistant will be available for consultation during their scheduled office hours. These are the hours where "drop-ins" can see the teaching staff. If you want to meet in another time contact the teaching staff by phone or e-mail or during office hours and schedule an appointment.

**The Final Date to Drop this class with a refund is 2/7/20, the 15<sup>th</sup> day of classes.**

## **Environmental Law**

ENST 382.1

### *Course Goals*

The goals of the course include:

1. Understanding of the need for regulation of environmental impacts.
2. Understanding the various methods of regulation possible and the contexts in which they are appropriate.
3. Developing written communication skills.

4. Understanding the current land use regulatory framework.
5. Understanding the relationship between government and private property.
6. Understanding the relationship between different branches of government under the US Constitution.

### *Expectations of Students*

By the end of the course students are expected to demonstrate the following skills:

1. Coherent, logical writing on topics of environmental regulation.
2. Ability to identify the issues surrounding environmental regulation in a particular context, including the relevant agencies and actors.
3. Ability to discuss and analyze possible regulatory alternatives for environmental regulation.
4. Basic composition and grammar skills at a level commensurate with upper-division undergraduates.
5. Demonstrate an informed knowledge of the regulatory systems currently in use for environmental protection in the United States.
6. Show basic research skills for locating and analyzing outside sources.
7. Ability to formulate and articulate a well-supported and reasoned argument.

### *Niche in the EVST Major*

Environmental problem solving in the United States requires knowledge of regulatory mechanisms and the alternatives for avoiding or mitigating environmental impacts. This course serves as a basic introduction to the regulatory framework for land use and environmental protection in the United States. It also provides basic knowledge of regulation under the governmental system in place in this country. Students in an Environmental Studies major should be knowledgeable of regulation and the options for a given problem in order to be effective problem-solvers.

### *COVID stuff*

The pandemic continues and we have the following requirements and suggestions for everyone's health and safety:

- Mask use is required within the classroom.
- If you feel sick and/or are exhibiting COVID symptoms, please don't come to class and contact the Curry Health Center at (406) 243-4330.
- If you are required to isolate or quarantine, you will receive support in the class to ensure continued academic progress. Class will be offered by Zoom for those in quarantine and the sessions recorded. All assignments will be posted on the Moodle site.
- UM recommends students get the COVID vaccine and booster. Please direct your questions or concerns about vaccines to the Curry Health Center.

- Drinking liquids and eating food is discouraged within the classroom.
- Please note this class may be recorded. It is expected the two weeks of classes will be, you will be notified class by class thereafter.