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Spring 2-1-2018

ENST 382.01: Environmental Law

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Environmental Law

EVST 382.01- Spring 2018

Professor: Len Broberg Teaching Assistant: Dara Fedrow
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len.broberg@umontana.edu Ofc. Hours: W 10-1130 & Tu 11-1230
Ofc. Hours: M 11-12:30 W 1:00-2:30 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. There is a copy of an old hard copy Faculty Pac on reserve-some but not all of the readings are in that faculty pac. The readings are on E-Reserve and there are no new hard copies for sale. The E-Res web address is <http://Moodle.lib.umt.edu>. The password is "warming".

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

- Jan 23 Class Intro- Legal research and writing tools and approaches-Why regulate? Review of Government Structure **Gardner:** Chapter 2 pages 15-25 **MOODLE:** *Environmental Law Intro*
- Jan 25-30 Federalism- The balance of State and Federal Power; **MOODLE:** *Power Relationships Between Federal and State Government;*
- Feb 1- Administrative Law and Democracy in Environmental Regulation- The National Environmental Policy Act and Access to Information **MOODLE:** *The Administrative Law of Environmental Law; Chap 02: National Environmental Policy Act (NEPA); Gardner:* Chapter 2 pages 25-34
- Feb 6- Standing Rock and Keystone Pipeline- NEPA in action (or not!) **MOODLE:** *Standing Rock Decision 2017; Sierra Club v. Clinton 2010*
- **Feb 8 Paper 1 Due**
- Feb 8- The Clean Air Act **MOODLE:** *Pollution Law*
- Feb 15- The Clean Air Act and Climate Change Regulation **MOODLE:** *Massachusetts v. EPA and EPA Factsheet*

- Feb 20- Climate Change litigation- Our Children's Trust lawsuit and other legal approaches
- Feb 22- Discussion Day
- Feb 27- Open Space Issues Guest Speaker: Liz Erickson Discussion Day
- March 1 Water resources law **MOODLE:** *Wilkinson Chap 6*
- **March 6 Paper 1 Returned- Students must meet with paper reviewer prior to revision!**
- March 6 Climate Change- international regulatory approaches: **MOODLE:** *Designing Global Environmental Protection*
- March 8- Discussion Day
- March 13- Wetlands regulation- the importance of definitions: **Gardner** Chap 3 pages 35-56
- **March 15 Paper 1 Revisions Due**
- March 15- Dredge and Fill- **Gardner** Chap 4 pages 57-71
- March 20- Discussion Day
- March 22- The takings clause and environmental regulation: **Gardner** Chap 11 pages 177-190;**MOODLE:** *Regulatory takings; Gest*
- March 27-29- No class Spring Break
- April 3- The Endangered Species Act **MOODLE:** *ESA (Listing, Critical Habitat, Consultation & Recovery)*
- April 5- 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 93-126
- **April 5 - Writing Assignment #2 due**
- April 10- Discussion Day
- April 12 The Mining Law of 1872 **MOODLE:** *Wilkinson Chap 2*
- Montana mining regulation- The State Constitution and Reclamation **MOODLE:** *Montana Constitution and Metal Mine Reclamation Act*
- April 17 Discussion Day
- April 19 Discussion Day

- **April 24- Paper 3 due**
- April 24 The National Forest Management Act: provisions and implementation
MOODLE: *Barker, USFS Planning Rules*
- April 26 Discussion Day
- May 1 Montana's approach - State Trust Lands, the Forestry Practices Act and Streamside Protection Act **MOODLE:** *Managing Montana's Trust Lands; Revenue; SMZ*
 - *boundaries*
- May 3 Wetland Enforcement; **Gardner** Chap 10 pages 159-176
- **Tuesday, May 8, 8-10 am, Test 1**

Grading: Three papers (of at least seven pages each) and one test will be given in the course of the term. The grade will be based on the three best scores (30% each) plus 10% class participation and will be on a plus/minus system. **All students must complete 3 papers to pass the course.** The final exam will be cumulative over the material for the entire term. It is optional, for those seeking to improve their grade following the papers. 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 5 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 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.

Final:

The optional final will be short answer essay. No early or late makeups will be allowed, unless specifically authorized by University policy (e.g., multiple exams on the same day). *The final cannot substitute for completion of the 3 papers assigned in the course.* It can only be used to replace a lower grade on one of the papers.

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 without a late fee is 2/9/18

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.