

**Vermont Law School Public Lands Field Seminar  
Missoula, Montana 2023 Summer Session  
Professor Chelsea Colwyn**

## **Overview**

Using a hands-on approach, this field seminar will explore themes of resource utilization versus preservation, the changing legal framework for public land management, current controversies over salvage logging, motorized vehicle use, conflicts between wildlife management and recreationists, ecosystem restoration, the role of fire on public lands, and the impacts of climate change. Missoula, Montana provides an excellent setting for this class; its proximity to National Forest land allows us to visit forest management sites ranging from clearcuts to ecosystem restoration projects, and to view the effects of fire on public lands. In addition, Missoula is home to the headquarters of the Northern Region of the National Forest System, the Lolo National Forest, and the University of Montana School of Forestry, known for its outstanding resources in forestry, wildlife management, and wilderness studies.

The goal of this seminar is to immerse students in the realities of public land management. We won't just read endless NEPA cases about the logging debate, we will discuss forest management sitting amid a 600-acre clearcut, pondering hundreds of square miles of Forest Service lands, a visual patchwork of old harvests, vigorous newly regenerated stands, burned areas, a web-like network of roads, and vast swaths of potential new wilderness areas. Underlying these "traditional" forest management issues is the specter of GHG-driven climate change, which may pose dire consequences for the Northern Rockies. We will hike into a designated Wilderness, explore a roadless area whose management fate is undecided, and visit restoration logging sites, among other experiential education opportunities afforded by holding class in the out-of-doors.

The goals and learning objectives of the course are:

1. To provide an in-depth look at National Forest management from a historical, legal and scientific perspective;
2. To gain a thorough understanding of NEPA, MUSY, NFMA, ESA, the Wilderness Act, statutes governing recreation, and Wilderness Study Acts;
3. To understand the basic principles of judicial review under the APA, principles of deference in the context of environmental law, and the role of the courts in public land management;
4. To examine the legal and philosophical basis of Wilderness in the U.S.;
5. To explore the current controversy over fire management.
6. To appreciate the role of politics in resource management and current debates over public land management
7. To recognize the impacts of climate change on the forest ecosystems of the Western U.S.
8. To appreciate the interaction between law, politics, justice, equality, diversity, and sustainability (or lack thereof) in the context of public land management

Reading assignments are listed below. Unless otherwise noted, the materials will be posted on TWEN. Some additional reading materials may be added; you will be notified by email if that happens.

**Note:** Because web access will be limited during the course, students should download and print the materials from TWEN and the web sites in the Syllabus prior to the class, so that you have the material available to you. This should be done while you are in Vermont. For the days we are in the field, you should bring each week's materials with you. I recommend purchasing a light-weight plastic (waterproof) folder which you can buy at the University Bookstore the morning of the first class.

Internet access can be a challenge. The University has guest access, and many coffee shops downtown have free wifi. But you will be best served by downloading and/or printing the materials before you come out to Montana.

### **Grading**

This is a three credit course. I will use a take home final examination, and perhaps a short quiz or two in the field. The class will be graded 20 % class participation, 20% for the oral presentation, and 60% for the final exam and other short assignments if they are included. The final exam will be a take home final, with page limits for the questions. **It will be due on Friday August 18 at 11:59pm MT.** The finals are graded anonymously. You should upload your final as a word document to the TWEN site with your student number as the only ID.

### **In Class Presentation**

Twenty percent of your grade is based on a presentation you will give in the field during the second week of class. The topic must be relevant to the course, and must be based (at least in part) on something that you have observed in the field or read about. You can be creative (students have written songs, epic poems, created board games) but you also must be informative. We will talk more about this assignment the opening week but you can start thinking about it now. Presentations should be in the 10-15 minute range. Give yourself some time during the weekend break to research your topic.

### **Class Participation/Preparation**

You are expected to come to class prepared so that you can participate in discussions and demonstrate your understanding of the cases and concepts embodied in the materials. The Socratic Method works just fine by a babbling brook, so be forewarned! This will require some extra initiative on your part; during field days you will not have access to your computer or the internet. It is important for you to read this syllabus thoroughly and plan on how you will have the material available when you need it. I strongly encourage you to download the TWEN materials before you leave for Montana, and to print those materials we will discuss in the field. There will be reading

time in the woods during our field days. In addition, the syllabus requires you to view materials on some websites. Since the web has not yet reached the wilderness areas where we camp, you will have to look at those sites before we leave Missoula.

Students should read the opening assignment in the Coggins, Wilkinson and Leshy text book sent via TWEN in June. I have been unable to obtain copyright clearance for the text book from the publisher; otherwise I would post the chapter on TWEN. *The Big Burn*, by Timothy Egan, is optional (highly engaging) background reading. This hour lecture from John Leshy is also highly recommended: [Our Common Ground: A History of America's Public Lands](#).

## **Week 1**

### **Class 1: Public Lands: Background Primer**

Location: University of Montana (location to be determined)

Time: 8:30-11:30

The class will begin with a detailed overview of public lands. The creation of public lands such as national parks and forest reserves is a nineteenth century American idea that remains vibrant today. We will address the historical development of National Forests including the philosophical debate over preservation vs. utilitarian models for public land management. The development of land use planning on National Forests, and the Supreme Court's landmark *Ohio Forestry* decision are also central to understanding how National Forests are managed. In addition to the legal foundations of forest management, the socio-political contexts that shape and are shaped by public land management decisions will be considered. This class will trace the development of forest management practices from the post-WW II emergence of timber dominance within the Forest Service, to Congressional efforts to change the agency through legislation, resulting in the Multiple Use/Sustained Yield Act, the clearcutting crisis, and finally, passage of the National Forest Management Act (NFMA).

We will break for lunch and then leave Missoula at approximately 1:30 p.m., meeting at the dorms. Please show up fully prepared to hit the road. We will begin class this afternoon in a 600-acre salvage-logging clearcut astride the Montana-Idaho border, where we will view and discuss forest management on public and private lands. The area provides a bird's-eye view into the effects of logging, road construction and fire as well as a picture of successful regeneration of lodge pole forests. The seemingly endless waves of forested ridges and snowy peaks - millions of acres of public land - highlight the vastness of the public domain as well as its increasing fragility and limitations. The class will conclude with a hike into a roadless area, open for logging, mining, and motorized recreation, but also nearly pristine, and part of the proposed Great Burn wilderness area. We will see a diverse, "unmanaged" forest.

### **Assigned Readings:**

1. Multiple Use Sustained Yield Act (TWEN – Statutory Supplements Folder)
2. NFMA - 16 U.S.C. 1601-1604 (TWEN – Statutory Supplements Folder)
3. *Ohio Forestry* (TWEN)
4. Selected NFMA Forest Planning Regulations - comparison of 1982 Regulations, 2005/2008 Bush Administration Regulations and the 2012 Obama Administration Regulations (“NFMA and 1982, 2008, & 2012 diversity regulations”) (TWEN).
5. Wildlife Conservation Planning Under the United States Forest Service’s 2012 Planning Rule (“2012 Forest Planning Rule and Wildlife article”) pgs. 1-2; 5-8; 11-15 (TWEN) (feel free to read the entire article, but it is not required).
6. Making Forest Planning Great Again? Early Implementation of the Forest Service’s 2012 National Forest Planning Rule, Susan Jane M. Brown and Martin Nie, [https://www.cfc.umt.edu/bolle/files/Brown\\_Nie\\_NR\\_E\\_2019.pdf](https://www.cfc.umt.edu/bolle/files/Brown_Nie_NR_E_2019.pdf) and TWEN.

Note 1. The reading from the Coggins textbook serves as important background for this lecture and the entire first week of the course. Make sure you have finished it before this class!

Note 2. We may not get to numbers 4, 5, and 6 on day one, so you can read those last. But there is considerable reading for day 2, so if you can read them for today, you will be in better shape for Day 2.

### **Study Questions:**

1. Can you summarize the trends in the management of public lands over the 20<sup>th</sup> and 21<sup>st</sup> centuries?
2. What are the procedural and substantive aspects of NFMA?
3. Be prepared to explain the significance of *Ohio Forestry* in terms of the binding nature of Forest Plans before and after the decision.
4. Under which statutory mandate would the Forest Service prefer to manage National Forests, MUSY or NFMA? Why?
5. Can you explain the significance of the NFMA viability regulation? Do the 2012 regulations represent a major departure from the 1982 regulations?

### **Class 2: Forest Management: NEPA, NFMA, and the APA**

**Location:** Great Burn Roadless Area, Lolo and Clearwater National Forests.

NEPA has been the focus of hundreds of lawsuits over the past three decades; a thorough understanding of NEPA and how it has been applied in the West is central to an informed discussion of how courts have shaped forest management. While Congress is constitutionally charged with making laws to govern public lands, in fact federal courts have had a major hand in shaping forest management. Thirty years ago, every forest plan in the Northern Rockies was appealed and most individual timber sales were litigated.

Two salvage logging cases in the West -- one upholding and the other overruling Forest

Service decisions -- provide a paradigm into NEPA and judicial deference.

### Assigned Readings:

1. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9<sup>th</sup> Cir. 1998) and *Environmental Information Protection Center v. USFS*, 451 F.3d 1005 (9<sup>th</sup> Cir. 2006) (edited, posted on TWEN as one file as “Forest Service NEPA/NFMA cases”).
2. NEPA and Climate Change: Where We Were, Where We Are, and Where Are We Going? Deana M. Bennett (TWEN).
3. 2016 NEPA Climate Change guidance (2016 Final GHG Guidance): [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa\\_final\\_guidance.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_final_guidance.pdf) (TWEN, SKIM)
4. *Wild Virginia v. CEQ*, June 21, 2021 decision (TWEN)
5. The Debt Ceiling Bill’s Substantive NEPA Amendments (TWEN)

### Assigned Readings Part II:

#### Administrative Procedure Act Readings

1. *The Lands Council v. McNair* en banc opinion (C.A.9 (Idaho) (TWEN)).
2. Administrative Procedure Act - Statutory supplement – TWEN – Read sections 551 (definitions) and 701-706.

### Study Questions

1. Given that NEPA is purely procedural, why has it had such a major influence on forest management?
2. Is it reasonable for public land management agencies to incorporate climate change analysis into NEPA documents? Can agencies avoid doing this in the future?

#### Study Questions for McNair:

1. **What is the Forest Service’s area of expertise?** The court stated that it is “to be ‘most deferential’ when the agency is “making predictions, within its area of special expertise.” The founding father of the Forest Service, Gifford Pinchot, stated that forestry means “growing trees as crops.” Do fish and wildlife viability analyses fall within this “area of special expertise?” The Forest Service is divided into two main branches: research and management. Do both of these branches have the same “area of special expertise?”
2. **What level of deference is accorded to wildlife viability analyses?** Does the court’s statement that it will “defer to the Forest Service as to what evidence is, or is not, necessary to support wildlife viability analyses” conflict with its later statement that  
  
“the Forest Service may meet wildlife viability requirements by preserving habitat, but *only where both* the Forest Service’s *knowledge* of what quality

and quantity of habitat is necessary to support the species and the Forest Service's *method* for measuring the existing amount of that habitat *are reasonably reliable and accurate.*" (emphasis added)(internal quotations omitted)?

3. What level of deference do you think federal land managers should receive under judicial review of their NEPA/NFMA decisions? Who is better equipped to interpret and apply these statutes, courts or the agency?
4. Does it matter if agency decisions are responsive to the political persuasions of the administration? Should the Biden or Obama Forest Service act like the Trump or Bush Forest Service?

### **Class 3: Wilderness Management, Recreation and the Law**

**Location:** Great Burn Roadless Area, Lolo and Clearwater National Forests.

The Forest Service has been at the center of the preservation debate, and Montana, home to 3.34 million acres of Congressionally-designated Wilderness, provides an excellent paradigm to address the matter. We begin with the philosophical conflict between preservation and utilitarian ideals within the Forest Service, and move to the Wilderness Act of 1964, another uniquely American contribution to the law and philosophy of conservation.

#### **Assigned readings:**

1. Wilderness Act of 1964. (TWEN).
2. *Sierra Club v. Lyng*, 633 F.Supp. 566 (1987) (TWEN).
3. Long and Biber, Wilderness Act and Climate Change Adaptation, Sections I-II(A), II(B)(5), IV (TWEN).
4. William Cronon, The Trouble with Wilderness, (TWEN and [https://www.williamcronon.net/writing/Cronon\\_Trouble\\_with\\_Wilderness\\_1995.pdf](https://www.williamcronon.net/writing/Cronon_Trouble_with_Wilderness_1995.pdf))

### **Class 4: The Roadless Debate/ESA**

**Location:** Great Burn Roadless Area, Lolo and Clearwater National Forests.

Morning lecture. Lunch and an optional soak at the Lolo Hot Springs Resort, a venerable Montana tradition, back to Missoula by 5 pm.

Roadless Rules, politics of National Forest management as viewed through the roadless rule debate. Weather permitting we will conduct class on the ridgetops and mountain tops near camp. Since we are in the midst of one of the largest and most contentious roadless areas in the National Forest System, our setting will let us see first-hand the issues that are the focus of the roadless

debate. In Part II (evening lecture) of this class we will review the Endangered Species Act and discuss why this particular law has had such a major impact on public land management.

### **Assigned Readings:**

1. Federal Wild Lands Policy in the 21<sup>st</sup> Century: What a Long Strange Trips It's Been; pgs. 1-11 (TWEN)
2. Timeline of the Roadless Rule, Earthjustice, (<https://earthjustice.org/features/timeline-of-the-roadless-rule> and TWEN; skim to get a sense for nature of the conflict)
3. Article by Dr. Reed Noss on the ecological effects of roads at <http://www.wildlandscpr.org/ecological-effects-roads> and on TWEN.
4. Roadless Area Conservation: National Forest System Lands in Idaho Final EIS Summary ([https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsm8\\_036008.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm8_036008.pdf) and TWEN) (focus on understanding differences between 2001 Roadless Rule and the ID state rule).
5. Review and print the maps of the Inventoried Roadless Areas on National Forests and the Clearwater National Forest ("NF Roadless Area Map" and "Clearwater Map," TWEN, print in color if you can).

### **Assigned Readings Part II**

1. *Thomas v. Peterson* (TWEN)
2. Read Section 7 of the ESA in the Statutory Supplement Folder on TWEN.
3. Lives Under the Canopy: Spotted Owls and Loggers in Western Forests; pgs. 1-8 (TWEN)

### **Study questions:**

1. Can you articulate the nature of the political debates that have underscored the roadless rule and NFMA rule litigation?
2. Can you articulate the role of NEPA in both land use planning on national forests, and its role as a litigation tool by both environmental and industry/"multiple use" advocates?
3. You must be able to explain how Section 7 of the ESA applies to Forest Service projects (One or two of you will be asked to explain this to the class!). Can you see why it has become a particularly effective roadblock to stop logging in places where ESA-listed species are present (i.e. every National Forest in the country)?

## **Week 2**

### **Class 5: Timber, Wildfire, and Ecosystem Management Field Tour.**

**Location:** Missoula area. Class begins at 8:30 a.m. We will drive from the dorms up to Pattee Canyon, which is about 15 minutes from the University. The burned areas and/or logging project are also close by.

This first portion of this class is a lecture followed by a field tour and guest lecture. We will visit a logging project designed to restore an old growth Ponderosa Pine ecosystem in close proximity to Missoula. We will discuss the project, one that was locally controversial, but did not end up in court. We will discuss the role of fire in Western forests and how fire suppression has changed native ecosystems. In many parts of the West, residential areas are rapidly expanding into forested areas, often bordering public lands. The Forest Service is spending hundreds of millions of dollars of taxpayer money fighting forest fires protecting the property of these often newly-arrived “settlers.” The fire conundrum increasingly dominates the management of all public lands. A century of fire suppression following the Big Burn has left forests in an unnatural highly burnable condition. Climate change stokes the fires too and that will intensify under all climate change scenarios. Fires consume one half of the agency’s entire budget some years, leaving little funding for other projects.

The second part of this class focuses on judicial review. The *McNair* case offers further insight into judicial review of timber management projects in the 21<sup>st</sup> century - and also highlights the ongoing legal debate over the extent courts should defer to the agency’s expertise on scientific and technical matters. We also use this case and this class to refresh our understanding of the APA.

In the afternoon we will head to the Bitterroots and hike into Bear Creek (aptly named, on the inaugural course we literally bumped into a black bear that had been spooked by a horse), and take a first-hand look at the Urban Wildland Interface on the way in. Bear Creek, in the Bitterroot National Forest, is about 45 minutes south of Missoula. The drive to the trail head will reveal more neighborhoods rapidly expanding in the urban/wildland interface; this will be the initial focus of the discussion. Our hike will take us from an easily-accessible, popular and heavily impacted recreation spot into a wild canyon flanked by 2,000-foot granite walls. We will pass into the Selway-Bitterroot Wilderness, one of the largest federally designated Wilderness Areas in the lower 48. In addition to seeing first-hand the results of fire suppression on forest ecosystems (continuing these topics from earlier in the week), we will discuss the recreation resource on public lands. Even in the Wilderness, which by law should be “untrammeled by man,” human impacts abound. The hike in is about 4 miles, mostly on a gentle trail with a couple of streams to ford. Topics pertaining to management under the Wilderness Act of 1964, and more philosophical digressions regarding the value (or for some, the lack of value) of wild places to the human spirit will be discussed.

### **Assigned Readings:**

3. The 1910 Fires, Forest History Society, <https://foresthistor.org/research-explore/us-forest-service-history/policy-and-law/fire-u-s-forest-service/famous-fires/the-1910-fires/>
4. Miller et al, Planning for Wildfire in the Wildland Urban Interface (TWEN).
5. Land Use Planning Approaches in the Wildland-Urban Interface - An Analysis of Four



Western States: California, Colorado, Montana, and Washington, (TWEN and [https://www.communitywildfire.org/wp-content/uploads/2021/02/CWPC\\_Land-Use-WUI-Report\\_Final\\_2021.pdf](https://www.communitywildfire.org/wp-content/uploads/2021/02/CWPC_Land-Use-WUI-Report_Final_2021.pdf)), Read Executive Summary pgs. 1-3 and Montana section pgs. 24-29 (feel free to read more if interested in any/all of the other states).

6. Forest Management Solutions for Mitigating Climate Change in the U.S., Executive Summary, pgs. 119-121 & 125-128 (TWEN).
7. Pattee-Blue Environmental Assessment & Decision Notice (selected pages, TWEN).

For additional information (all optional – DO NOT PRINT):

1. Miller et al Planning for Wildfire in the Wildland Urban Interface: A Resource Guide for Idaho Communities (TWEN)
2. Miller et al, Informal Governance Structures and Disaster Planning: The Case of Wildfire
3. Elers Koch, The Passing of the Lolo Trail (TWEN or <https://link.springer.com/article/10.1007/BF03400632>) (article from 1935 suggesting we should let fires burn rather than waste lots of money trying to fight them) [OK to PRINT if you want]

### **Fire Study Questions:**

1. Can you articulate the different perspectives of affected parties regarding the wildfire issue? What are the interests of the homeowner, local government, the Forest Service, conservationists, and the timber industry in wildfire policy and salvage logging? Are these positions irreconcilable?
2. It is undeniable that human interference (wildfire suppression) has dramatically altered the natural ecosystems of the Northern Rockies. What will the next round of human interference - climate change - bring to the natural ecosystems? Should we be legislating adaptive management with climate change in mind?

### **Class 6: Recreation on National Forests.**

**Location:** Bitterroot Mountains

**Schedule:** Morning/afternoon lecture/discussion of recreational use of national forests, particularly conflicts between motorized and non-motorized use.

Recreational use of National Forests has skyrocketed in the past 30 years, as our society has become more leisurely and affluent. Recreational conflicts on public lands occur in many dimensions. For example in Missoula there are serious conflicts between hikers and mountain bikers, skiers who want to bring dogs on cross country trails and those that don't want dogs, golf players and bird watchers (yes, with litigation coming!). A large percentage of downhill ski areas (think Vail, Jackson Hole, Alta and keep going...) are on public lands; these areas constantly want to expand, pushing other uses aside. The largest category of recreational conflicts occurs between motorized users (dirt bikes, snowmobiles, ATVs, and jet skis, often lumped together as Off Road Vehicles or ORVs) and human-powered users such as hikers, skiers, and canoeists. Motorized users have a long tradition of access to National Forests, represent a large segment of the recreating public in the West, and are backed by a multi-billion dollar industry. As with every other major resource conflict on public lands, the interplay between law and politics is vital, and constantly shifting. This class will help frame some of those political debates.

### **Assigned readings:**

1. Brooks and Champ, "Understanding the Wicked Nature of 'Unmanaged Recreation' in Colorado's Front Range (TWEN and [https://www.fs.fed.us/rm/value/docs/unmanaged\\_recreation\\_colorado.pdf](https://www.fs.fed.us/rm/value/docs/unmanaged_recreation_colorado.pdf)).
2. "Power Tools" by the Blue Ribbon Coalition (TWEN). Also please spend 15-20 minutes visiting the Blue Ribbon Coalition's website at <http://www.sharetrails.org/>.
3. Executive Orders 11644 and 11898 (TWEN)
4. Bikepacker's Guide to Public Lands, <https://bikepacking.com/plan/bikepackers-guide-to-public-lands/>
5. Ohio Valley Trail Riders case (TWEN)
6. Wild Earth Guardians v. Montana Snowmobile Association (TWEN)

### **Study Questions:**

5. What are your views about recreational use on National Forests and how it should be managed? Should "quiet recreation" have a preference?
6. For ski bums only: is it a legitimate use of NF lands to lease thousands of acres to large corporations for downhill ski resorts?
7. For the WildEarth Guardians case, you should be able to articulate why one NEPA claim succeeded and the other failed. And please, don't just quote the court's opinion. Can you define what a "hard look" entails? Also, how does this case define the status of the current Travel Management Rule?

## **Class 7 - Wilderness Management, WSA's, Judicial Review and Collaboration**

**Location: Bitterroot Mountains**

Morning lecture on WSAs with a focus on judicial review, and the politics of litigation. You will have time for reading and enjoying the wilds of our surroundings. We will break camp in the early afternoon and hike out, followed by a short drive to a delightful spot on a creek on a friend's property, where we will have the pleasure of an outdoor kitchen, refrigerator and pond for dipping. Evening lecture on wildfire policy by a person whose home was nearly engulfed by the big wildfires of 2000.

Readings for this class will address Wilderness Study Areas (WSAs), public lands that have been set aside by Congress for wilderness study, but not afforded the protection of the Wilderness Act. Congress has often used the WSA approach for Forest Service Lands. The Bureau of Land Management also has extensive WSA lands. All WSA lands are governed by a similar statutory command to maintain the suitability of the WSA for formal wilderness designation. The law does not impose the requirements of the Wilderness Act. As a result, motorized use, a popular and fast-growing activity, is still permitted in these areas. Off-road vehicle (ORV) groups have often focused their efforts on preventing wilderness designation by establishing trails and expanding ORV use in WSAs.

WSA management was at the center of one of the most important public land cases addressed in recent years by the U.S. Supreme Court, *Southern Utah Wilderness Assoc. v. Norton*. (SUWA) Professor Tuholske participated in the SUWA case and was lead counsel for a companion case, *Montana Wilderness Assoc. v. Forest Service* that was finally settled in 2007 (the case has been dropped from the readings but will be presented in class and is posted on TWEN as optional). We will also use the WSA litigation to continue our discussion of the conflicts of recreation and preservation on public lands. In both MWA and SUWA, the "real" issue was proliferation of ORVs - a fast-growing use of public lands.

In response to the political deadlock regarding management of public lands, Congress has increasingly promoted collaboration as a potential way to avoid litigation and move forward. The second part of the class will begin the discussion of collaboration as a tool for achieving consensus on national forests, and discuss the pros and cons of the approach.

### **Assigned readings:**

1. *Norton v. Southern Utah Wilderness Association* (TWEN) (edited).
2. Federal Wild Lands Policy in the 21<sup>st</sup> Century: What a Long Strange Trips It's Been; pgs. 12-22. (TWEN – full article posted in Class 3 folder).
3. C. A. Schultz *et. al.*, "The Collaborative Forest Landscape Restoration Program: A History and Overview of the First Projects"
4. McKinney, Whither Public Participation in Federal Land Management? Replicating

Homegrown Innovations in Shared Problem Solving (TWEN)

5. Review Collaborative Planning website: <http://www.fs.fed.us/restoration/CFLRP/>

**Study Questions:**

1. Once again the Courts are asked to resolve legal questions that are simply foils for public policy debates over public lands that have been going strong for 100+ years. How would you propose to resolve the seemingly endless conflicts over the management of public lands?
2. The Montana Wilderness Study Act is now 35+ years old. At the time it was passed its sponsors thought it would be on the books for only a couple of years - to provide some breathing room to resolve the wilderness issue. Seven of the nine WSAs remain subject to the Act - and the wilderness is still unresolved. Why do you think that is the case?
3. Can you explain the difference between the authority of a court to address a challenge to an administrative agency under Section 706 (1) and 706 (2) of the APA?
4. You should be able to explain how the collaborative process operates. Do you think it will provide an effective framework for resolving disputes before they end up in court?

**Class 8: A Different Forest Service? New Challenges in Public Land Management**

**Location:** Blodgett Creek camp.

**Schedule:** In the morning we will hike to a prime viewing spot overlooking Blodgett Canyon, passing through some recently burned areas. Wildfire remains one of the most vexing issues in public land management. We are part of the cause of the current fire “problem” - Smokey the Bear is one of the most successful ad campaigns ever undertaken. As a result, we suppressed fire on public lands with zeal for 60 years, leaving an unnatural forest that inevitably burns with greater intensity than natural wildfire. Humans can’t stop wildfire any more than they can stop a hurricane. Yet now, millions of new homes have been built adjacent to public lands, and those folks want the threat of wildfire eliminated. In 2000 and 2002, millions of acres burned despite hundreds of millions of tax-payer dollars aimed at suppression. Local governments continue to approve development in the WUI even though the federal government (and USFS in particular) bears the greatest burden of protecting this development. Local loggers wanted the dead trees for their mills; conservationists wanted the forests left alone to heal. These controversies always end up in court - Congress can’t, or won’t, act decisively.

The fire “problem” will be more vexing in light of climate change impacts in the American

West that constitute the final readings for this course. The West has already experienced significant warming and drying, and predictions are for it to get worse, especially during the summer months. Climate change poses management challenges for public lands that dwarf the “utilization vs. preservation” debate of the past. Yet many in the environmental community and the pro-logging community are mired in the same debates of 40 years ago. Funding these management activities will become increasingly difficult with more than half of the Forest Service’s budget going to fire-fighting efforts in recent years.

In addition to all of the land management challenges confronting the USFS, the agency is also struggling with contemporary issues, including evolving relationships with Tribes, gender discrimination, diversity challenges, the lands transfer movement, and migrant labor.

We will have a lecture, discussion and lunch at a stunning overlook, a short afternoon wrap up session, and return to Missoula by mid-afternoon.

### **Assigned Readings:**

1. Ruple, The Transfer of Public Lands Movement: The Battle to Take “Back” Lands that were Never Theirs (Section V & VI, pg. 157-177, TWEN).
2. Kenney, Tribes as Managers of Natural Resources (TWEN)
3. The USFS and the #MeToo movement, PBS Newshour, <https://www.pbs.org/newshour/nation/they-reported-sexual-harassment-then-the-retaliation-began> (article and video) (article on TWEN)
4. Hal Herring, The changing politics of woods work, High Country News, ([https://www.hcn.org/issues/49.18/timber-how-the-outsourcing-of-forestry-jobs-seeps-into-our-public-lands-debates/print\\_view](https://www.hcn.org/issues/49.18/timber-how-the-outsourcing-of-forestry-jobs-seeps-into-our-public-lands-debates/print_view) and TWEN).
5. Presidential Memorandum – Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters, Barack Obama, (<https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/presidential-memorandum-promoting-diversity-and-inclusion-our-national> and TWEN)
6. Krakoff, Not Yet America’s Best Idea: Law, Inequality, and Grand Canyon National Park (TWEN and [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3541891](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541891))
7. Wilkinson and Cordalis, Heeding the Clarion Call for Sustainable, Spiritual Western Landscapes: Will the People Be Granted a New Forest Service? (TWEN)

### **Optional:**

8. Podcast: OPB’s This Land is Our Land, about the Malheur NWR occupation
9. David Treuer, Return the National Parks to the Tribes, The Atlantic, May 2021, (<https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395/and> TWEN)