

University of Montana
College of Forestry and Conservation

Advanced Problems in Environmental Policy
RSCN/FOR 622, 2:40—4:00 TR. Jour #113. Fall 2009.

Prof. Martin Nie
Clapp #402
Telephone: (406) 243-6795
email: martin.nie@umontana.edu
about: <http://www.forestry.umt.edu/personnel/faculty/mnie/>

Office hours: TR 11:30-1:00. If this is not convenient, please set up an appointment.

Course Description: The seminar examines a number of policy problems and contemporary issues in environmental policy, law, and administration. Problems and opportunities related to public land conflict and governance, environmental planning, science and decision making, tribal resource management, and private land development, among others, are analyzed. It is a readings-based seminar and students lead most reviews and discussions.

*There is no prerequisite for the seminar. Students with little or no policy background are advised to first take RSCN/FOR 422 Natural Resource Policy and Administration (for graduate credit) or another environmental policy/law course.

Required Reading: All required reading has been placed on electronic reserve at <http://eres.lib.umt.edu>. Password: llovetoread.

*We will also discuss a number of contemporary issues in environmental policy. An excellent way to stay up-to-date is provided by the Center for the Rocky Mountain West's *Headwaters News* online at www.headwatersnews.org; *High Country News* online at www.hcn.org; and the *Land Letter* online at <http://www.eenews.net/ll/>

Course Objectives: This course is designed to provide students with the following:

- (1) Reading, Writing and Critical Thinking Skills: This is a reading and writing-intensive class that asks students to think critically about a number of different issues.
- (2) Information and Knowledge: Students will acquire a fundamental understanding of some of the most persistent and advanced problems in environmental policy.
- (3) Conceptual and Analytical Skills: Students will also better understand the various approaches, strategies, and tools to environmental policy problems.
- (4) Research skills: Students will acquire policy-legal research skills and familiarize themselves with various tools and resources available for academic and non-academic policy-legal research.
- (5) The Student as Citizen & the Environmental Professional as Reflective Practitioner: Students should leave this course with a better understanding of environmental politics and policy from a citizen and professional perspective.

Student Responsibilities & Assignments:

Seminar Participation (25pts): *informed* participation is worth 25pts when determining final grades.

Although subjective, students can earn these points by never missing class and becoming an informed class participant on a regular basis. In short, be fully engaged or at least try to pretend and act as though this is the most exciting and enlightening class you have ever taken and that you never want it to end.

My classes are proactive and conversational in nature. Thus, *all* students must not only have read the reading assignment *prior* to class, but must be ready to discuss the readings on a regular basis. I am seeking input from the entire class, not just from a few committed students. Thus, students need to know when to speak up and when to stay quiet. If discussion is poor, unannounced pop-quizzes may be given. Therefore, it is in the collective interest of the class to participate. Any student who misses class for any reason will be held responsible for all materials covered and all announcements made during his/her absence. Don't ask me for missed handouts or about material that was covered unless you have a validated excuse. Chronic tardiness is rude and please shut off your cell phones.

Respect: Given the amount of discussion expected in this course, showing respect for others is paramount and is taken very seriously. We will strive towards an engaging but respectful open forum in which numerous opinions can be discussed and explored. Personal attacks will not be tolerated.

Reading Review, Analysis & Student-led Seminar(s) (50pts): Students (individually or in groups) will be assigned a particular week's readings and asked to lead the discussion (over one or more seminar sessions). A quick oral summary (roughly 10 minutes) of the readings will first be provided. Although there are a number of ways that the review and discussion can proceed, make sure to cover the following points in your review:

- (1) What are the major questions addressed in the reading?
- (2) What argument (if any), theoretical or applied, is being presented and how is it being defended by the author?
- (3) What concepts are introduced?
- (4) How is the reading related to others done this semester?
- (5) Who cares? So what? What insights and contributions does the reading make?

Students will then lead a formal class discussion by posing 4-6 analytical questions to the class based on that day's reading assignment. Students will also be graded on how well constructed and facilitated this student-led discussion proceeds; thus, students must be well prepared for the quiet and not-so-quiet seminar session. **There are no make-ups.**

The review & discussion will be graded using the following criteria: (1) Does the student seem knowledgeable and comfortable with the readings being discussed and reviewed—grasp of issues and important related points? (2) Did the student prepare well? Did the student recognize the primary issues addressed in the readings? Was the requisite work put into the assignment? (3) Was the presentation effective and organized? Was the summary of the readings clear and well-stated? (4) Did the student tie-in and integrate class materials and discussions (especially important as the semester progresses), e.g., course readings, discussions, etc.? (5) Did the student do a good job facilitating the class discussion? Did they help us work through difficult questions? Were they able to respond to other student's questions and concerns? (6) How well organized, constructed and analytical were the student's questions for class discussion?

*This component of the seminar will be determined by how many students enroll in the class. If the seminar is small (10-12 students), most of the review and discussion can be done individually. If the class is larger, however, we will move to groups of students (2-3) doing the review and leading the discussion.

Research Paper (100pts): Please choose one of the options listed below. They are designed to help students master the field of environmental policy while providing enough flexibility to make them worthwhile for the academic and non-academic track student. All papers should be roughly 12-15 pages in length (double-spaced, 11/12 pt. font).

Papers will be graded on the basis of (1) writing and style (including clarity, level of articulation, and grammar), (2) level of critical analysis, research, specificity and detail, and (3) amount of synthesis and integration of course readings and discussions. I am also looking for formal citation (whatever style you prefer, e.g., parenthetical reference, footnote, endnote, legal, etc., just make sure you are consistent throughout, citing author, title and all publication information).

*Students will present their papers during the final two weeks of the seminar (time permitting)

Option 1: Policy Background Paper: Students are to choose a focused topic, field, or policy problem most relevant to their professional careers and/or research interests and provide comprehensive policy background. The paper can be approached and written in a number of different ways, but students must explain and analyze the most relevant laws, administrative rules, policies, and court decisions important to the chosen area of study. Some context and historical perspective is also necessary, and please be sure to answer the “so what” and “who cares” questions as you move through the paper. This option is designed for students who want a more comprehensive understanding of the policies important to their field of study and/or professional expertise.

Option 2: Conflict Analysis Paper: Students are to choose a particular environmental conflict and write a paper about it. The conflict can be as contemporary or historical as the student wishes. Once a conflict is chosen, students are to ask the following questions:

- What is this conflict about?
- What type(s) of conflict is this?
- Who are the major stakeholders and participants in this conflict?
- What drives this conflict?
- How has this conflict been dealt with in the past?
- How might this conflict be dealt with in the future?

Option 3: Conservation Strategy or Conflict Approach Paper: This option allows students to write a paper focused on a particular approach, strategy or tool that can be applied to an environmental policy problem and/or conflict (e.g., collaborative/participatory techniques, adaptive management, ecosystem services, conservation trusts, resource certification, public interest litigation, conservation easements, market-based strategies, etc.) . Once a particular approach is chosen, please consult the following list to help guide your research and analysis:

- Provide a general problem statement: what is the problem/challenge the approach/strategy/tool is designed to address?
- Provide a general overview of the approach/strategy/tool, e.g., what is it and what is it designed to do? Where has it been used? With what success and/or failure? Problems and challenges? Examples?
- What types of cases has it been applied to in the past? With what effect(s)?
- How might it be applied to a policy problem/conflict in the future?
- Place the approach in its appropriate political-legal-administrative context
- What are its potential promises and pitfalls?
- If international, could it be applied in the U.S.?

Research Tools

I will also spend some time going over a few basics regarding policy analysis and research. In the meantime, here are a few useful policy-legal research internet links that you will be using for the paper assignment:

Library of Congress: Thomas: <http://thomas.loc.gov/> (comprehensive legislative information)

GPO (Government Printing Office) Access: <http://www.gpoaccess.gov/index.html> (comprehensive federal government information).

GPO Access Federal Register site at <http://www.gpoaccess.gov/fr/index.html> (federal rulemaking)

FirstGov: <http://www.firstgov.gov/> (U.S. Government's official web portal)

Regulations.gov: <http://regulations.gov> (federal rulemaking site)

Legal Information Institute: <http://www.law.cornell.edu/> (very useful site, with access to U.S. Code, case law, federal regulations, etc.)

Lexis Nexis: <http://web.lexis-nexis.com/universe/> (for basic legal research and law review access)

HeinOnline: <http://www.heinonline.org/front/front-index> (excellent law review library (in PDF format) and legal/historical research materials)

Congressional Research Service: <http://www.cnie.org/NLE/CRS/> (see for some very helpful topical overviews)

The National Archives: <http://www.archives.gov>

Find Law: <http://lp.findlaw.com/>

State Law Library of Montana: <http://www.lawlibrary.state.mt.us/>

Montana State Legislative Site: <http://leg.state.mt.us/css/default.asp>

Montana Code Annotated: http://data.opi.state.mt.us/bills/mca_toc/index.htm

*See the following for links to court sites, agencies, and other useful resources

Rocky Mountain Mineral Law Foundation Natural Resource Links:
<http://www.rmmlf.org/geninfo/links.htm#Fed%20Govt>

Environmental Law Net: <http://lawvianet.com/index.html>

University of Denver's Natural Resources Weblinks: <http://www.law.du.edu/naturalresources/weblinks/>

Law Library of Congress: <http://www.loc.gov/law/guide/uscong.html>

Wildlaw site: <http://www.wildlaw.org/links.html>

**Please note that I've also placed two tutorials on eres focused on reading legal research and citations.*

Reading Analyses (100pts, 10pts each): Students are to write a short 1-2 page review and analysis of ten reading assignments. Each weekly reading analysis should include the following: (1) A short paragraph summarizing the readings, (2) A “so what, who cares?” section answering this question, (3) Your position and initial response to the readings, (4) Any questions that you have about the readings. These short analyses are due at the beginning of the seminar session and I will not accept late papers.

Academic Honesty: All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code. The Code is available for review online at www.umt.edu/SA/VPSA/index.cfm?page?1321.

Grading Scale: The following scale will be used to translate points into grades.

93-100: A	<u>Points</u> Seminar participation: 25pts Student-led discussion: 50pts Research paper: 100pts Reading analyses: 100pts Total points: 275pts
90-92: A-	
88-89: B+	
83-87: B	
80-82: B-	
78-79: C+	
73-77: C	
70-72: C-	
68-69: D+	
63-67: D	
60-62: D-	
59- F	

COURSE READINGS & CLASS SCHEDULE

This syllabus is very tentative and may regularly change. Bring this schedule to each class session for regular updates and additional or subtracted readings. *All readings are to be done before class.* Given time constraints, some areas may have to be sacrificed, and individual reading will have to take its place. Students must be willing to read and be responsible for material that may not be covered in class. Dates have been left open in order to increase flexibility and allow for maximum class participation and discussion. This type of open schedule, however, requires that students come to class to find out where we are and where we’re going. I will inform students before upcoming sections of what readings they should pay particular attention.

INTRODUCTION

Policy analysis & research

1. Problems in Federal Lands & Natural Resources Policy

A. Conflict, Decision Making & Reform

Robert B. Keiter, “Public Lands and Law Reform: Putting Theory, Policy, and Practice in Perspective,” *Utah Law Review*, 2005, no. 3 (2005): 1127-1226.

Kristina Alexander and Ross W. Gorte, *National Forest System Roadless Areas Initiatives* (Washington, D.C.: Congressional Research Service, 2009)

Case Study: (a) Roadless Rules

*Seminar by: Nie

B. Climate Change & Federal Lands Management

Robert Glicksman, "Ecosystem Resilience to Disruptions Linked to Global Climate Change: An Adaptive Approach to Federal Land Management," *Nebraska Law Review* 87 (2009): 401-460.

Or

Robert Glicksman, "Facing Unprecedented Stewardship Challenges: Climate Change and Federal Land Management," in W. Rodgers & M. Robinson-Dorn, eds., *Climate Change Reader* (forthcoming 2009) (this is a shorter book chapter version of his Article)

Recommended: Thomas C. Maness, "Forest Management and Climate Change Mitigation: Good Policy Requires Careful Thought," *Journal of Forestry* (Apr/May 2009): 119-124.

Seminar by: _____

C. New Directions in Environmental Policy Making

David J. Sousa and Christopher McGrory Klyza, "New Directions in Environmental Policy Making: An Emerging Collaborative Regime or Reinventing Interest Group Liberalism," *Natural Resources Journal* 47 (2007): 377-444.

Seminar by: _____

D. Alternative Approaches to National Forest Management

Martin Nie and Michael Fiebig, "Place-based Legislation as Method of Resolving Multiple-Use Conflicts on National Forests," *Ecology Law Quarterly* (forthcoming 2010)

Case Study: The Beaverhead-Deerlodge Partnership Proposal (see www.bhdpartnership.org)

Recommended: Ray Ring, "Taking Control of the Machine," *High Country News* (July 20, 2009), available at <http://www.hcn.org/issues/41.12/taking-control-of-the-machine>

Senator Tester's "Forest Jobs and Recreation Act of 2009" on e-res and available at <http://tester.senate.gov/Legislation/forestresources.cfm>

Class Exercise: National Forest management and rural communities in Montana

Seminar by: Nie

2. Science & Decision Making

Holly Doremus, "The Purposes, Effects, and Future of the Endangered Species Act's Best Available Science Mandate," 34 *Environmental Law* 397-450 (2004)

Daniel Sarewitz, "How Science Makes Environmental Controversies Worse," *Environmental Science & Policy*, 7 (2004): 385-403.

Case Study: Wolf delisting

Recommended Reading:

Defenders of Wildlife v. Hall, 565 F. Supp. 2d 1160 (D. Mont. 2008)

U.S. Fish and Wildlife Service: www.fws.gov/mountain-prairie/species/mammals/wolf/ (see for final rule, recovery plans, litigation, overviews, and questions and answers).

Defenders of Wildlife:

http://www.defenders.org/programs_and_policy/in_the_courts/legal_docket/northern_rockies_gray_wolf-delisting_challenge_2009.php (see for background, perspective and delisting complaint)

Natural Resources Defense Council: <http://switchboard.nrdc.org/blogs/lwillcox/>

Seminar by: _____

3. Environmental Planning

J.B. Ruhl, "Adaptive Management for Natural Resources—Inevitable, Impossible, or Both?" *Rocky Mountain Mineral Law Institute Proceedings*, 54, Ch. 11 (2008): 11-1—11-33.

Bradley C. Karkkainen, "Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance," 102 *Columbia Law Review* 903-972 (2002)

Recommended: B.T. Borman, R.W. Haynes, J.R. Martin, "Adaptive Management of Forest Ecosystems: Did Some Rubber Hit the Road?" *BioScience* 57, no. 2 (2007): 186-191.

G.H. Stankey, et al., "Adaptive Management and the Northwest Forest Plan: Rhetoric and Reality," *Journal of Forestry* 101 (2003): 40-46.

Thomas H. DeLuca, Gregory H. Aplet, and Bo Wilmer, *The Unknown Trajectory of Forest Restoration: A Call for Ecosystem Monitoring* (Washington, DC: The Wilderness Society, 2008)

Case Study: National Forest Planning (see <http://www.fs.fed.us/emc/nfma/index.htm> for background, rules, and orders)

Seminar by: _____

4. Tribal Reserved Rights & Co-Management

Martin Nie, "The Use of Co-Management and Protected Land Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands," *Natural Resources Journal*, 48 (2008): 1-63.

Recommended: Ed Goodman, "Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Co-management as a Reserved Right," *Environmental Law* 30, no. 2 (2000): 279-362.

Holly Spiro Mabee and George Hoberg, "Equal Partners? Assessing Comanagement of Forest Resources in Clayoquot Sound," *Society & Natural Resources*, 19 (2006): 875.

Case Study: The Badger-Two Medicine (see http://www.fs.fed.us/r1/lewisclark/projects/rmrd_travel_plan_feis/index-rods.shtml for travel management decision)

Seminar by: Nie

5. Land Ownership & Property Rights

Eric T. Freyfogle, *On Private Property: Finding Common Ground on the Ownership of Land* (Boston: Beacon Press, 2007).

Seminar by: Nie

6. Conservation Policy Tools/Instruments

Holly Doremus, "A Policy Portfolio Approach to Biodiversity Protection on Private Lands," *Environmental Science & Policy* 6 (2003): 217-232

Barton H. Thompson, Jr., "Providing Biodiversity Through Policy Diversity," *Idaho Law Review* 38 (2002): 355-384.

Recommended: LeRoy C. Paddock, "Green Governance: Building the Competencies Necessary for Effective Environmental Management," *Environmental Law Reporter* 38 (2008): 10609-10642.

Seminar by: _____

7. Ecosystem Services

Barton H. Thompson, Jr., Ecosystem Services and Natural Capital: Reconceiving Environmental Management, *New York University Environmental Law Journal* 17 (2008): 460-489.

Trista M. Patterson and Dana L. Coehlo, Ecosystem Services: Foundations, Opportunities, and Challenges for the Forest Products Sector, *Forest Ecology & Management* 257 (2009):1637-1646.

Case Study: Applications to National Forest management (see <http://www.fs.fed.us/ecosystems-services>)

Recommended: www.naturalcapitalproject.org; www.katoombagroup.org

Seminar by: _____

8. Environmental Regulation & Conservation Easements/Land Acquisition

John D. Echeverria, "Regulating Versus Paying Land Owners to Protect the Environment," *Journal of Land, Resources, & Environmental Law*, 26 (2005): 1-46.

Federico Cheever and Nancy A. McLaughlin, "Why Environmental Lawyers Should Know (and care) About Land Trusts and Their Private Land Conservation Transactions," *Environmental Law Reporter*, 34 (2004):10223-10233.

Nie, M. "The Underappreciated Role of Regulatory Enforcement in Natural Resource Conservation," *Policy Sciences*, 41, no. 2 (2008): 139-164.

Recommended: John H. Davidson, "The New Public Lands: Competing Models for Protecting Public Conservation Values on Privately Owned Lands," *Environmental Law Reporter* 39, no. 5 (2009): 10368-10375 (helpful introduction to the "new public lands")

Leigh Raymond and Sally K. Fairfax, "The 'Shift to Privatization' in Land Conservation: A Cautionary Essay," *Natural Resources Journal* 42 (2002): 599-639.

Case Study: Montana Legacy Project (<http://www.themontanalegacyproject.org/>)

Seminar by: _____

9. Student Paper Presentations