

UNIVERSITY OF CONNECTICUT
SCHOOL OF LAW

Natural Resources Law
Day Division
Spring 2004

Prof. K. Strasser
Mon.–May 17, 2004
9:00am – 12:15pm

Final Exam

There are four questions on this exam. You are to answer three of the four questions and you may choose which question to omit. In addition to the time allocated for each question, I have allowed an extra 15 minutes to read the exam.

- Question 1 – 1 hour (33%)
- Question 2 – 1 hour (33%)
- Question 3 – 1 hour (33%)
- Question 4 – 1 hour (33%)

Be sure to read each question carefully and analyze it before writing your answer; what you write is much more important than how much you write. Discuss all the issues presented by the question even if your resolution of one issue determines the outcome.

As I have announced in class, you may use your casebook, the statutory supplement, copies of assigned photocopied materials, your notes, and any other printed or handwritten material you wish. This is a completely open book exam.

Remember to answer three of the four questions; you may choose which one to omit.

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Question 1. (1 hour)

The Big Rock Candy Mountain is a scenic natural area of federally owned land. It is a 120,000 acre tract in western Wyoming which is currently managed by the Bureau of Land Management, although no land use plan has been completed for the area. This area borders Tall Trees which is a national forest currently planned for logging. As part of the logging plan, the Forest Service is considering building a full service road through the Big Rock Candy Mountain to facilitate logging and also to serve the transportation needs of the area after logging operations are completed.

Your client is People for Preservation (PFP) a citizens group dedicated to preserving the Big Rock Candy Mountain for its scenic beauty and low impact public recreation. PFP has not been at all successful in persuading the Forest Service to change its mind about the road, and it wishes to pursue other strategies to stop the road and control future development. The group has asked your advice about what protection the area would have if it were designated a National Park.

As planned, the road will make 27 crossings of the Milk river, which runs through the center of the area. This will greatly disrupt the river ecosystem in general, and specifically disturb the habitat of the Three Toed Salamander, a listed endangered species. To date, the Forest Service has not done any formal environmental impact assessment of either the road or the logging project.

Advise PFP of the strategies it can pursue to stop or delay the road. Discuss the strengths and weaknesses of each strategy and give your best judgment of the chances for success.

Question 2. (1 hour)

Crystal River is a scenic natural waterway located on 12,000 acres of federally owned land in the Rocky Mountains in Idaho; it is managed by the BLM. The tract is known locally as Crystal Glen. It is frequently traveled by people on rafts and in canoes. Your client, Outdoor Adventures (OA) rents canoes and rafts and offers guided tours of the river. OA has become

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concerned that Crystal River and the Crystal Glen watershed are prime candidates for local agricultural interests to seek to use for irrigation. OA wishes to pursue protection for the area under federal law.

OA is politically active, popular in the area, and likely able to generate considerable public support for any preservation plan. Advise OA of the relative benefits and limitations of designating the Crystal River and Crystal Glen a National Monument, a National Wilderness Area, or a National Forest. You should consider the substantive requirements for such a designation, the procedures to be used in designating it, and the protections likely to come with a designation. You can assume that the designation would include whatever protection for preservation of the river and the Glen is possible.

Question 3. (1 hour)

In question 2, assume that the Crystal River flows through privately owned land. OA began using the river for canoe and raft rental and trip guiding in 1973 and has done so continuously since. OA owns 25 acres of land abutting the river which it uses as its base of operations. Farmer John owns 250 acres of land abutting the river and began withdrawing water from it for irrigation in 1991. In good years, there is plenty of water for all, but about every three years, on average, there is a shortage of water flow in the river which forces OA to discontinue operations during August, September and October.

In 1993 Idaho adopted a permitting plan for use and withdrawals of river water. This scheme grandfathered all existing uses, giving them their pre-existing priority, if they recorded their use within 2 years of the passage of the statute. John duly recorded his use, but OA did not record.

It is now August of a very dry year and OA wishes to get a court to order John to cease withdrawing water from the river and limit future withdrawals to maintain a specified flow level. Advise OA. For purposes of this problem, you may assume that Idaho is a mixed jurisdiction in which courts sometimes use a prior appropriation approach and sometimes a riparian rights one. The Crystal River is navigable water.

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Question 4. (1 hour)

The Locke, Geomet, and Pittsburgh Pacific cases articulate some basic rules for regulation of mining claims located on public lands. Discuss the particular rules these cases announce and the particular policies behind each. To what extent are the cases similar or different in their factual settings and in the policy problems they present? Are their rules and policies consistent or inconsistent in any way or ways?

(End of Exam)