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**574 FEDERAL PUBLIC LANDS**

**Semester I, 1999-2000**

UNM School of Law  
Final Examination

Professor G. Emlen Hall  
Saturday, December 11, 1999  
Thursday, December 16, 1999  
9:00 a.m. to 12:00 noon

INSTRUCTIONS

This exam consists of three familiar questions. Answer each one of them. In so doing, you may use any material provided to you in the course, any other published material that you may have read, any outlines or notes you may have prepared, and, indeed, any answers that you may already have written out. You are on your honor not to use notes, outlines or answers prepared by anyone else.

You have three hours to complete the exam, but you may turn it in earlier if you like, by delivering your answers to Janet Cox and checking out.

Good Luck.

[END OF INSTRUCTIONS]

[EXAMINATION BEGINS ON NEXT PAGE]

QUESTION I

Pursuant to its Enabling Act and Constitution, the State of Bratton has received from the United States the right to 50,000 acres of unappropriated federal land within certain sections of certain townships. The acres are to be used by Bratton "for the education of the State's citizens."

It turns out that all 50,000 acres lie within lands reserved by the United States for military purposes. At first the Military Reservation acres were thought to be valuable as a bombing and waste site. Recently, however, geologists have located large molybdenum deposits on the reserved acres. The Military Reservation is considering leasing the molybdenum-rich acres to a large manufacturer of hi-brow cooking knives.

As it turns out, Bratton is not interested in the development of hi-grade steel. The State is interested in what it considers to be the promising development of an organic, biodegradable salt industry. The molybdenum has a much higher economic value on the national (or any) market than does organic salt. There are known deposits of both salt and molybdenum on the unappropriated federal public domain in Bratton.

Now Bratton advises the Secretary of the Interior that the State selects as school 'lieu' lands 50,000 acres of federal land on the State's eastern border. The land is administered by the Bureau of Land Management and lies within a Taylor Act grazing district. Bratton advises that its base lands are "mineral in character" (molybdenum) and that its chosen 'lieu' lands are as well (salt). In fact the selected lieu' lands do overlie significant salt beds. The State intends to lease the salt beds to a private developer of organic salt (The Whole Earth Co. Lmt, NSL) and to devote the meager proceeds to the development of an inner-city home economics program designed to teach low-income children how to get well by eating (you guessed it) salt.

The Secretary of the Interior rejects Bratton's selection on the equal value principle and because he does not believe that the State's proposed use of the proceeds of the development of the salt beds meets the terms of the trust under which Bratton will take the 'lieu' lands. Bratton goes to court to force the Secretary of Interior to approve its 'lieu' selection.

You rule, telling why.

## QUESTION II

Sometime in early 1953 Dick Brown located several adjoining 20-acre placer claims in the Lassen National forest in northern California. He correctly marked, recorded and assessed the claims according to California and Federal law. On six of the claims Brown has dug a pit four feet deep and four feet wide at the center of the 20 acres. On the seventh claim, Brown is mining the two substances that he claims are common to all his claims.

Near the surface there lies approximately one foot of peat-like material. Chemical analysis of the substance shows it to contain few organic elements. All agree that the substance is on its way, in geologic time, to becoming coal.

Since 1953 Brown has removed a part of this layer every year from Claim Seven and sold it directly to area green houses for a handsome profit. In 1955, when Congress adopted the so-called "Common Varieties Act," various committees considered adding peat to the list of "minerals" so "common" as thereafter not to be subject to location under the 1872 Mining Act. Congress did not do so.

In addition, Brown also extracts the foot of material immediately beneath the peat on Claim Seven. This material is loosely compacted but is locked into place, at least on Claim Seven, between fairly consistent surrounding country rock.

Chemical analysis of this second substance shows no organic material. Instead, it is composed entirely of sand and gravel, a few trace elements and other substances of extremely common occurrence.

Since 1953, Brown has dug up this material on Claim Seven, too, and sold it to home gardeners in his area. Advertisements claim the substance does wonders for corn growth. A few old folks swear by it and, indeed, have given testimonials as to its efficacy as a plant fertilizer. Brown has made lots of money with this material as well.

Now the State of California comes to Brown's door and demands that he secure a state permit before removing any more peat or magic gravel. The permit would specify the techniques that Brown must use to extract the peat and gravel. Specifically, the California permit would require that Brown only use a shovel in removing the peat and that he "restore the area to its original condition" after he is done. Brown says that working with a shovel will reduce the costs of removing the peat but will reduce even more his profits because he will have to extract the material so much more slowly.

Brown comes to your office and asks two questions. First, does he have to comply with the California permit requirement? Secondly, should he apply for a patent to all seven of his claims? Give him your best shot, explaining your answer.

QUESTION III

Recent critics of federal grazing law and policy suggest that the problem is that from the beginning of grazing on federal public lands neither Congress, the Executive nor the Courts have been able to distinguish between the private interest in grazing and the public interest in grazing. Using the materials from this course, please assess this criticism.

[END OF EXAMINATION]