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Examination No. _____

574 FEDERAL PUBLIC LANDS

Semester II, 2000-2001

UNM School of Law
Final Examination
9:00 A.M. to 12:00 Noon

Professor Em Hall
Wednesday, May 2, 2001
Friday, May 11, 2001

INSTRUCTIONS

This exam consists of four familiar questions. Answer three 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, and any outlines or notes you may have prepared. You are on your honor not to use notes or outlines 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 or her assistant.

Good Luck.

(END OF INSTRUCTIONS)

EXAMINATION BEGINS ON NEXT PAGE

QUESTION I

Stealing the Archuletas' Land

In the meantime, just across the mountains from the Tillymook timber dispute, another battle boils to the surface, this time between the Forest Service and a Spanish-American family named Archuleta. The fight involves the Juan Jose Lovato land grant. The Spanish crown made the grant in 1736 to Lovato as a reward for military and political heroism. No one lived on it until the 1830's when a town sprung up near its center. The town's residents were not heirs of Juan Jose Lovato and had no deed from him or anyone connected to his estate. The residents never bothered to make claims to the land they occupied under Mexican law.

In 1854, the newly arrived United States Surveyor General recommended approval of the Juan Jose Lovato Grant. Congress confirmed it in 1856 to the heirs and legal assigns of Juan Jose Lovato. In 1860 the government surveyed the Grant and found that it contained 236,000 acres. The General Land Office patented that princely Grant to the "heir and legal assigns" of Juan Jose Lovato. All the while the small town that had sprung up in the 1830's continued to grow. By the 1860's 100 families lived there, all Archuletas. By the 1940's, local tax records showed no real estate taxes were ever paid on the Grant. The State of New Mexico threatened to confiscate the whole Grant for non-payment of taxes.

The Department of Agriculture, the United States Forest Service, stepped in to the rescue, paid the taxes, bought out the heirs of Juan Jose Lovato it could find, filed a quiet title suit in the State courts, got a decree in its favor, and became, on paper at least, the proud owner of the Juan Jose Lovato Grant. The Forest Service immediately attached the Grant to the Carson National Forest. In the meantime, the town where the Archuletas lived continued to grow.

The Forest Service discovered the town there after conducting a satellite remote sensing study of the area in the late 1990's. The Forest Service asked the Archuletas if they could show a connection between their family and the heirs of the Juan Jose Lovato. The Archuletas said "no." The Forest Service offered to sell to the Archuletas the small tracts within the Grant. The Archuletas said "no." The Forest Service then sued to evict the Archuletas in the United States District Court. Assume the Archuletas said "no" once more but still cannot show a title connection to the named patentees, the heirs and assigns of Juan Jose Lovato.

What result? Why?

QUESTION II

Joe C. Blocks the Solstice Sun

By executive order, the President of the United States in 1934 withdrew 160 acres from the public domain and established the Tewa National Monument in New Mexico. The 160 acres contain the ruins of an ancient southwestern Pueblo. The Proclamation making the withdrawal noted the Tewa site was set aside as a national monument “for the preservation of the unusual features of scenic, scientific, and educational interest therein contained.”

Those features include the ruins of an ancient Pueblo religious building. National Park Service astronomers have determined that the single window in the east wall of this building is directly aligned with the sun as it rises on the horizon on the summer solstice. On that day, and only that day, each year, the rising sun sends a single shaft of light through the window and illuminates a sacred text on the far wall.

Joe C. owns in fee simple ten acres immediately adjoining the eastern boundary of the Tewa National Monument. Last winter Joe C. erected a tower of solar panels, 150 ft high, on his property after receiving all the proper building permits. Joe C. sells the electricity generated by the solar panels to electric utilities in California for big bucks. His tower of solar panels is directly in the path of the rising solstice sun and the window in the Tewa religious building. On the summer solstice the tower completely blocks the passage of direct sunlight through the ruin’s windows.

Tewa National Monument Superintendent Marianne Firestone tries to negotiate with Joe C. about the tower. Joe C. tells her to go see “Raiders of the Lost Ark” or to consult with Frank Hibbens and walks away. Superintendent Firestone now comes to your office and asks you what the government can do about Joe C.’s tower of solar panels.

What do you tell her?

QUESTION III

BROWN’S PEAT BOG BLUNDER

Sometime in early 1953 Dick Brown located seven 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 of 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 materials. 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 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, 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? Second, should he apply for a patent to all seven of his claims?

Give him your best shot, explaining your answer.

QUESTION IV

Big Dog Ranch Tilts at Windmills

In April of 2001, Billy Bob just finished a windmill and fencing installation project on the public lands he leases from the BLM. With permission from the BLM, he installed 8 new windmills at \$10,000 apiece and 10 miles of new fencing at \$5000/mile in anticipation of the renewal of his grazing lease next month. Ten years ago, with permission from the BLM, he

had similarly installed 5 windmills on his leased public lands for \$8000 each prior to his last grazing lease renewal.

On May 1, 2001, clutching a letter he just received from the BLM, Billy Bob died of a massive heart attack after reading of the agency's final decision to reduce the allowable AUMs associated with his grazing permit by 25 percent upon his lease renewal next month. The decision to reduce the AUMs came after the BLM completed an Environmental Assessment of the health of these public lands.

Trustees for Billy Bob's estate put the Big Dog Ranch, its associated BLM grazing lease and range improvements up for sale. The ranch has been appraised at \$1,000,000 including the BLM grazing lease without the 25 percent reduction in AUMs. Windmills and fencing installed by Billy Bob on the public lands have yet to be appraised.

There are two interested buyers for the ranch. The first party is the Organic Cattle LLP. This group wants to take advantage of the burgeoning market for organic beef products. They insist that the Trustees appeal BLM's decision to reduce the AUMs allowed under the Big Dog Ranch's grazing permit, as there is a market for as much organic beef as they can produce. The second interested buyer is the Arid Ranch Lands Resort Co. This company wants to turn the Big Dog Ranch into a destination resort ranch managed for fishing, hunting, and bison viewing modeled after Ted Turner's successful Vermejo Park Ranch in northern New Mexico. The Resort Co. wants to rest as much land as possible, plans to graze only a few herds of bison and insists the Trustees get the BLM to agree to pay for the 15 miles of fencing needed to protect the riparian areas on the public lands from the roaming bison.

Rebecca DeSanto, Trustee for the Billy Bob's estate, has come to you for advice on how to negotiate with the two interested buyers for Big Dog Ranch, its associated BLM grazing lease and range improvements. She knows little about ranching on arid lands or the laws that cover grazing on public lands managed by the BLM.

What advice do you give her? Why?