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Examination No. _____

574 FEDERAL PUBLIC LANDS

Semester II, 2002

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

Professor Em Hall
Tuesday, April 30, 2002

INSTRUCTIONS

This exam consists of three familiar questions. Answer all 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

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 II

Pecos Wilderness Reserved Water

Pursuant to the Organic Administration Act of June 4, 1897, the President withdrew in 1903 what in 1972 became part of the Pecos Wilderness Area. The original forest withdrawal included most of the then unappropriated federal public domain west of the crest of the Sangre de Cristo mountains. All the streams on the mountain's western slopes headed there.

In 1937 Ranger Rick's grandfather, district Ranger Rick I, in response to local and vocal pressure, leased 500 acres of the highest land on the mountain's western slope to a privately-owned skiing corporation. The lease runs until 2036.

In the center of the 500 acres a spring rises. The spring feeds a small creek which runs through the leased area, down through the rest of the national forest and then into private land where it meets a couple of private irrigation headgates.

Before 1937 the Forest Service used the spring's waters to fight forest fires high in the reserve. In addition, the forest has depended on regular flow in the creek in order to sustain a unique species of willow, used by native Americans and several more recent arrivals in making wicker furniture.

After 1937 upstream lessees at the ski area began to use water from the same spring. At first the area depended on the spring water for domestic purposes at the ski area. As the area grew and demand increased, the ski area began to use the water increasingly for snow making. Now the area uses the water mostly for snow-making and only sparingly for domestic use.

In 1968, the area just below the ski area was established as a wilderness area within the national forest. The road to the ski area above skirts the area. The creek from the spring runs right through it. In recent years Ranger Rick III, the current district ranger, has noticed that the flow of the creek through the wilderness area has steadily dropped.

The New Mexico State Engineer has never either recognized or objected to either the ski corporation's or the forest service's water uses. The State Engineer's jurisdiction over the area's surface water was established in 1907 and over the ground water in 1941. Neither the Forest nor the ski corporation has a permit from the State for any water uses.

Now the State Engineer has instituted an adjudication suit to determine all water rights in the Pecos stream system of which the National Forest is a part. Ranger Rick III has just "visited," as they say, with the State Engineer's Office. Bureaucrats there have told him that neither the corporation nor the Forest Service have any water rights in the stream system.

Panicked, Ranger Rick comes to your office and asks what kinds of claims the private corporation may make to the water and what claims the Forest service may make. Ranger Rick III would like to know the basis of each claim by the corporation and the Forest and the priority

and quantity of water that it might yield. He'd also appreciate your frank assessment of the possible success of each theory.

You tell him.

QUESTION III

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?