

**Public Lands & Natural Resources
Professor Rechtschaffen
Fall 2006**

INSTRUCTIONS

1. You have **three (3)** hours to complete this exam.
2. This is a closed book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of three (3) essay questions, including subparts. The time allocated for each question is as follows:
 - Question I: One Hour
 - Question II: One Hour, 10 minutes
 - Question III: 50 minutes
4. Please make sure to fully answer all parts of each question. Please pay careful attention to the call of the questions.
5. Please take your time to think about each question before answering it. I am more interested in how you apply and analyze various rules and principles than in having you simply repeat the rule back to me. Please also keep in mind that I expect you to discuss general statutory and regulatory provisions (not necessarily precise sections or subparts). If there are insufficient facts for you to give a more definitive answer, please state what additional facts you would need to answer the question more completely.
6. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments. Typed answers also should be double spaced.
7. Write your exam number on your exam envelope. Put your student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
8. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK, AND HAPPY HOLIDAYS!

**Question I
(One Hour)**

Sunridge National Park is located in northern Colorado. For the past fifteen years, Sunridge has allowed snowmobiling on most of the park's (frozen) lake surfaces and many of its trails, up to 1000 snowmobiles per day. Last year, a study found that the snowmobiling is having a significant adverse affect on wildlife in the park. Some wildlife are pushed out of their normal winter habitat, while others are killed or injured by direct interactions with snowmobilers. The study also found that snowmobiling in the park is causing significant noise and air pollution during the winter months. Snowmobiling also occurs seemingly round the clock on private land adjacent to the park's southern-most area. Several popular winter backcountry camping sites are located in the park's southern-most area.

Environmental groups recently wrote to the National Park Service (NPS) demanding that it reduce the number of snowmobiles allowed in Sunridge. The NPS responded that it would not do so, stating that the impacts of snowmobiling on park resources were "more than balanced by the enjoyment snowmobiling brings to the larger number of winter visitors who visit the park as a consequence of snowmobiling," and that any abrupt halt to snowmobiling would harm local businesses in the area. The environmental groups also demanded that the NPS take action to limit snowmobiling activities outside the park's southern boundary, because this snowmobiling is interfering with the ability of visitors to use and enjoy the camping sites. The NPS refused, stating that it lacked authority to do so.

Plaintiff is a regional outdoor sporting association that advocates for non-motorized winter sporting activities in the national parks in northern Colorado, including in Sunridge. Plaintiff alleges that its members snowshoe and cross-country ski in various other parks in the region, and that these parks have become overcrowded and suffered environmental harm because snowmobiling in Sunridge is pushing so many users to these other parks.

Please evaluate whether plaintiff will be successful if it (1) sues the NPS to force it to reduce the number of snowmobiles allowed in Sunridge; and (2) sues the NPS to force it to limit snowmobiling activities outside the park's southern boundary. Please also discuss whether plaintiff would have constitutional standing to pursue these claims. Do not discuss the issue of ripeness.

Question II
(One Hour, 10 Minutes)

Goldmining Company has unpatented mining claims for gold in State A that it would like to develop. The claims are located in part on land managed by the Forest Service, and in part on land managed by the Bureau of Land Management (BLM).

Goldmining submits a proposed plan of operations to the Forest Service. The Forest Service says that Goldmining must post a large bond to cover the costs of site cleanup. Additionally, the Forest Service says that Goldmining cannot use any motorized vehicles to access the site because nearby the Goldmining site is an area that for several hundred years has been a sacred place of worship and an important cultural symbol for the native Kava Indians. Specifically, the Forest Service has just announced that because of noise, litter, and other disruption around the Kava site, it is no longer allowing motorized vehicles on the road that runs to the Kava site and to the site of Goldmining's claim. Goldmining argues that without the use of motorized vehicles, its operations cannot be competitive with other gold mining operations. Goldmining also argues that it is unconstitutional for the Forest Service to "favor" the Kava religious practices by closing the road to motorized vehicles.

Goldmining also submits a proposed plan of operations to BLM. BLM concludes that the operations will result in environmental harm that is customary and necessary for gold mining activities of this size, and that the operations can be conducted in compliance with various performance standards and other federal and state laws. However because Goldmining's operations "will cause severe harm to a unique wildlife habitat," BLM refuses to grant approval to Goldmining's plan of operations.

State A has adopted a statute requiring that a permit be obtained for mining activities in any national or state forest located within the state. State A informs Goldmining that to receive a permit, it must adopt controls limiting its discharges of water pollutants into a nearby river. Additionally, Goldmining cannot conduct any mining activity within 200 yards of the various wetlands on-site because of the potential harm to the wetlands. If Goldmining does not meet these requirements, State A will not issue it a permit.

Please discuss whether (1) the Forest Service can impose its proposed restrictions on Goldmining's plan of operations; (2) whether it is constitutional for the Forest Service to close the road to motorized vehicles to protect the Kava site; (3) the BLM can refuse to grant approval to Goldmining's plan of operations; and (4) State A can impose its proposed requirements as a condition of granting a permit to Goldmining for its mining activities.

Question III
(50 minutes)

Pacific National Forest ("Pacific") is located in the Pacific Northwest region. The forest is a mix of various age tree stands, with about 30 % consisting of old growth, giant Douglas Fir trees.

Pacific recently adopted a new Land Management Plan for the forest. The plan authorizes a high level of timber harvesting, including harvesting on most of the old-growth tree stands within Pacific. As a result, the percent of old growth trees in Pacific will decline to 5% of the forest, with the mix of remaining trees similar to the mix of trees found in regions of the mountain West.

Consistent with the Land Management Plan, the supervisor of Pacific last month approved a timber harvesting sale allowing Timber Company to log on 3000 acres within the forest. The method of harvesting approved by the Forest Service is a new type of clearcutting, selected in part because it is 50% less costly than non-clearcutting methods of timber harvesting. The Forest Service claims that this method could enhance the long term regeneration of the forest, but the method is disfavored by most conservation biologists. One study found that this method may deplete organic matter in soil, substantially impairing the productivity of the forest land. Another study found that this method could contribute to soil erosion, greater sedimentation in streams, and adverse impacts on fish habitat.

The Forest Service prepared an Environmental Assessment (EA) for the timber sale. The EA noted that the impacts of the clearcutting method on forest regeneration and on soil, water and fish habitat are uncertain. It further stated that mitigation measures to address these impacts would be devised after the Forest Service carried out a monitoring and research program assessing the impacts of the clearcutting, and that these measures could be implemented by Timber Company. The Forest Service concluded that based on these mitigation measures, the timber sale would have no significant adverse impact on the environment, and that therefore an Environmental Impact Statement (EIS) was not necessary.

An environmental group wishes to challenge the Forest Service actions.

1. Please evaluate what claims the group potentially could bring against the Forest Service under the National Forest Management Act (NFMA) for (a) approving the Land Management Plan; and (b) approving the timber sale. Please discuss the ripeness of such claims. Please do not discuss the issue of standing.
2. Please evaluate whether the group could successfully challenge the Forest Service's decision not to prepare an EIS for the timber sale based on the mitigation measures discussed in the EA. Please do not analyze any other issues relating to the National Environmental Policy Act (NEPA). Please do not discuss the issue of standing.

END OF EXAM

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