

FINAL EXAMINATION

ENVIRONMENTAL LAW

P.N. Davis

Friday, December 9, 2005

1:00 - 4:00 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS FIVE (5) PAGES.

THIS EXAMINATION CONTAINS FOUR (4) QUESTIONS.

I = 45 min. II = 60 min. III = 45 min. IV = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENT, BUT NOTHING ELSE. You may write in the margins and on the blank pages of the supplement.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 3 hours. You will be given 3 hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I
(45 minutes)

In 2005, the U.S. Army Corps of Engineers announced its intention to construction a flood control reservoir on a tributary of the Missouri River in south central Missouri. It will be known as Lake Symington, named after the late mid-century Missouri Senator (Democrat) who was a strong supporter of the Defense Department. (Assume that this reservoir has been properly authorized by Congress, but that so far money has been appropriated only for planning and design.)

Lake Symington will be located on the Gasconade River in an area of karst typography, a porous limestone rock geology infiltrated with solution channels, caves, and springs. The Corps intends to plug all fissures and openings within the reservoir footprint with hydraulic cement, since Lake Symington otherwise would flood all caves located beneath the bed of the reservoir and raise the water table of surrounding caves up to the level of the reservoir, about 100 feet higher than the mean high water level of the Osage River at that location.

The Corps prepared a study which discloses the following. The common brown bat lives in many of the caves along the Osage River, as well as elsewhere in Missouri and the midwest. The caves they occupy along the river would be plugged and would be rendered unuseable by the bats. The river ecology would be altered by the reservoir by warming, deepening, and volume enlargement of the water in it. It is predicted that the cool-water trout ecology would be replaced by warm-water bass ecology, completely altering the mix of fish and other aquatic species there.

Construction of Lake Symington is supported by local businesses and individuals which anticipate greater recreational tourism, by the construction industry, and by the Missouri State Department of Natural Resources. It is opposed by the Sierra Club, by local environmental groups, and by canoeing groups and individuals.

The Corps of Engineers's announcement indicated that its study has been completed and that there are no legal impediments to construction.

A. (15 min.)

What study would the Corps have completed? What basic items would be included in that study? What procedures must be followed in preparing this study. Explain.

B. (15 min.)

Some groups and individuals have argued that the Corps's plan to seal all limestone fissures will be ineffective. The Corps's study merely states the conclusion that fissure sealing will be effective and complete. Who could challenge in court the Corps's conclusion that there are no legal impediments to construction? In what court would such a suit be brought? Explain.

C. (15 min.)

Suppose a month after the Corps made its reservoir construction announcement, a couple of spelunkers from the University of Missouri-Rolla discovered a fresh small dinosaur carcass in a cave near the Osage River, but below the planned reservoir level. Scientists named it the "blind pink pygmy godzillasaur." It was about one-foot long carnivore whose stomach contents indicated it eats crustaceans (like crawfish) in the caves. It resembles a small crocodile in appearance, but pink in color. Apparently, the species is a survivor of the dinosaur die-off 75 million years ago.

What can be done to protect this hitherto unknown species? Can the Corps proceed with the project without modification? Explain.

END OF QUESTION 1.

II.
(60 minutes)

Tiger Rock Company operates a limestone rock quarry in Missouri. It crushes the rock into gravel and washes it to remove rock dust before transport to construction sites. The wash water, containing rock dust in suspension, is discharged into a sediment pond on the quarry site. During moderate to heavy rains, the pond overflows, causing water and suspended rock particles to flow down a swale into a wetland full of cattails and other swamp plants. Over a period of time, the suspended rock particles have precipitated out of the water in the wetland to form a gradually increasingly thick sediment on the bed, causing aquatic plants to be smothered and killed. Thus, the wetland is becoming less productive as a fish spawning area and less desirable as habitat for birds, aquatic insects, turtles, crayfish, and minnows. The wetland is located next to Slow Creek, a small creek in the Missouri River watershed, but separated from it by a 20-foot wide natural berm. That berm is overtopped during minor and larger floods. The level of the wetland is supported in part by a hydrological connection between the creek and the wetland. During very heavy rains, when the creek floods, some of the sediment in the wetland washes over the berm into the creek.

Fishermen, environmentalists, and downstream property owners have become concerned that Tiger's discharge into the wetland is beginning to harm the physical integrity and ecology of the wetland and of the creek itself. They wish to find a way to stop Tiger's discharge. You are a lawyer in the firm of Ever & Faithful, from whom they seek advice. Are there any ways in which they can sue to compel Tiger to stop its discharge into the wetland? Discuss all relevant legal theories.

END OF QUESTION 2.

III.

(45 minutes)

A 40-acre field on a farm in Boone County, Missouri, has been used “informally” for many years as an open dump. (The dump is “open” because it does not have an earthen cover.) It contains *inter alia* household waste (including rotten food), tires, demolition debris, insulation, asphalt and asbestos shingles, abandoned automobiles, jugs and bottles labeled “sulfuric acid” and “nitric acid”, 55-gallon drums containing various liquids, and syringes and other medical wastes. Rats, flies, mosquitos, and other vermin are attracted to and sometimes live in the sump. Adjacent to the dump is a rural residential subdivision. The dump is easily accessible by children in the neighborhood. County deputies have occasionally sought to catch and arrest the dumpers, but have been largely unsuccessful. Since most of the wastes do not have names and addresses attached, dumpers cannot be traced. The farm owner, who is an absentee owner, has posted the field with “No Trespassing” signs, but otherwise has taken no significant steps to stop the dumpers. Nor has the farmer attempted to clean up and close the dump. Dumping continues by persons unknown. The field containing the dump is not leased to anyone, although other fields on the farm regularly are leased for farming. Those lessees do not use the dump.

Residents in the neighboring subdivision are tired of complaining and having nothing done about the dump. Assume they have standing. Who can they sue to have the dump cleaned up? Discuss all relevant legal issues.

END OF QUESTION 3.

IV.
(30 minutes)

Briefly define the following terms:

- (1) effluent limitation
- (2) Prevention of Significant Deterioration
- (3) cooperative federalism
- (4) Total Maximum Daily Load
- (5) State Implementation Plan
- (6) point source
- (7) National Contingency Plan
- (8) NAAQS
- (9) Potentially Responsible Parties
- (10) FIFRA

END OF QUESTION 4.