

Schraff
CAPITAL UNIVERSITY LAW SCHOOL
FALL SEMESTER, 1993
NATURAL RESOURCES LAW

FINAL

INSTRUCTIONS:

Each question is worth 50% of your final grade. Answer each part of both questions. GOOD LUCK!!!

QUESTION NO. 1. Greg Lashootka, a local attorney and Capital Law School alumnus, meets two of his classmates for lunch one day at the Clermont Steak House. His classmates own several bars near the Ohio State University campus. The three men discuss the latest fad which is sweeping campus bars throughout the country allowing patrons, for a hefty price (\$25.00 per round), to wrestle a live, adult bear. Anyone who pins the bear will win \$500.00. However, the three men know that adult bears weigh approximately 650 pounds, and the chance of a "pin" is slim. The three classmates decide that bear wrestling should be introduced as a regular event at the bars owned by Lashootka's classmates. The two men agree to split the profits with Lashootka who will provide the money to acquire the bear, any equipment necessary for the wrestling matches and other necessities.

Lashootka, an avid outdoor sportsman and trapper, arranges to fly to Anchorage, Alaska and search for a bear in the Alaskan wilderness. Upon his arrival, Lashootka ventures deep into the Alaska wilderness, eventually reaching the Chugach National Forest. At the entrance to the National Forest, Lashootka stops to check with Ranger Bob, an employee of the U.S. Forest Service. Lashootka explains that he is searching for a full grown Alaskan Brown bear to capture and take to Columbus for use in bar wrestling matches. Ranger Bob offers to help him trap a bear, observing that bears are "a pain in the neck" and have been harassing visitors to the Forest lately. After searching for a few hours, Lashootka and Ranger Bob, with the help of three Indian guides, locate and capture a fully-grown Alaskan Brown bear. Arrangements are made to ship the bear to Columbus.

Upon his return to Columbus, the bear wrestling matches get underway at Lashootka's friends' bars and are an instant success for three weeks. Suddenly, however, Lashootka receives a telephone call from an Assistant United States Attorney, Bill Barnes, who tells Lashootka that he has received advice that federal wildlife laws may have been violated by Lashootka's capture of the bear. When Lashootka asks Barnes what law has been broken, Barnes tells Lashootka only that the Alaskan Brown bear is a "threatened species" under federal laws.

Lashootka comes to you because of your reputation in Columbus as a natural resources lawyer. He asks you the following questions.

(a) Does the capture of the Alaskan Brown bear violate any federal laws? If so, who has violated these laws?

(b) Lashootka produces an Alaskan hunting license, which authorizes the capture or killing of Alaskan Brown bears. Lashootka wants to know if such a license is valid on National Forest lands?

(c) You telephone Ranger Bob, who tells you that his personal opinion is that the Chugach National Forest has "too many damn bears," and it was "okay" for Lashootka to take the bear. He also tells you that he has been instructed by his superiors at the Forest Service to allow any "extra" bears to be hunted or captured because "the locals don't like bears." Does this information change or reinforce your opinion as to whether any federal wildlife law has been violated?

QUESTION NO. 2. Big Bill Nicozake, the owner of the Nico S Cone & Gravel Company, happens to be hiking in the Wayne National Forest, in southern Ohio, when he stumbles upon an area of the Forest which appears to contain potential deposits of both coal and silver. Nicozake returns with prospecting equipment, and, after taking several borings of subsurface soil and minerals, confirms that coal is present, but is unable to locate any silver. Fearful that his prospecting activities may be discovered and also fearful that he may be "trespassing" on federal land, he comes to you for advice as to how he can "stake a claim" to any coal and silver which may be located in the area he is prospecting.

(a) What advice do you give Big Bill? Assume that the Forest Service has determined, after compliance with the requirements of the National Environmental Policy Act, 42 USC 4321 (NEPA), to allow the Wayne National Forest to remain open to mineral development, including oil and gas exploration and coal mining.

(b) Big Bill owns land adjacent to the Wayne National Forest and immediately contiguous to the Athens River, which flows through Big Bill's property and then into the Wayne National Forest. Big Bill's prospecting activities have occurred close to the bank of the Athens River in Wayne National Forest. Big Bill tells you that he wants to place a dam across the Athens River on his property so he can "dry up the river" and check the river bed in the Wayne National Forest for the presence of valuable minerals. Can he do this? Why or why not?