

CAPITAL UNIVERSITY LAW SCHOOL
Natural Resources Law
Fall Semester, 1989

FINAL EXAM

Instructions: This final examination accounts for 100% of your grade in this course. Each question is worth 50% of your final grade. Answer each part of each question. Good Luck!

QUESTION NO. 1: The Ohio Sand & Gravel Company (OS&G) has produced high grade sand, gravel and stone from a variety of quarries in the Central Ohio area for more than fifty years. In early 1989, in response to increasing demand for sand, OS&G purchases a 300 acre parcel of property in southern Delaware County, just off State Route 315 and contiguous to the Olentangy River. The property is noted for its sandy soil and high quality sand deposits. Beginning in April, 1989, OS&G begins operations to quarry sand and some gravel from the Delaware County property.

In July, 1989, OS&G conducts soil borings in the bed of the Olentangy River, and discovers extensive deposits of sand under the bed of the River. The sand under the River is of precisely the grade needed to supply several architectural glass manufacturers in the Central Ohio area. After making this discovery, OS&G brings a barge upstream from Columbus and begins to dredge sand from the bed of the Olentangy River. The dredging operations extend across four-fifths of the width of the Olentangy River's channel.

As a result of OS&G's sand dredging operations, the channel of the Olentangy River becomes wider and considerably deeper in the area where dredging operations are being conducted. In addition, OS&G begins to withdraw approximately one-fifth of the River's natural flow. The combined effect of OS&G's dredging activities and withdrawals is to substantially diminish the flow of the River downstream of OS&G's property. While not interfering with any other commercial uses of the River, OS&G's activities prevent several members of the public from using the River in the Franklin County area for fishing and boating. In particular, members of the Ohio State University men's and women's crew teams no longer are able to use the Olentangy River for crew practices. The crew teams take their complaints to the President of OSU, who in turn retains you as legal counsel. Ohio State owns property contiguous to the Olentangy River in the university area.

The President asks you to answer the following questions:

- a. What rights does Ohio State have in the use of the Olentangy River?
- b. Can Ohio State seek to prevent OS&G's dredging operations? What legal theories could be used to block OS&G's dredging operations?
- c. Does federal or state law govern OS&G's use of the Olentangy River?

QUESTION NO. 2a: In September, 1989, OS&G seeks to lease an additional parcel of property in Delaware County from Megan Baker, a prominent local chiropractor. OS&G also intends to recover sand deposits from Dr. Baker's property. Dr. Baker retains you to negotiate the lease with OS&G's attorney. What provisions do you recommend be included in such a lease?

QUESTION NO. 2b: If OS&G sought to quarry sand and gravel deposits on federal lands, what laws, if any, would govern OS&G?