

NRM 431 - WILDLIFE POLICY AND ADMINISTRATION

Instructor: Harry R. Bader
Time: MWF 9:10 - 10:10 AM in Bunn 313
Text: Rights Talk

COURSE OUTLINE

UNIT ONE: WILDLIFE MANAGEMENT JURISDICTION & AUTHORITY

A. State Wildlife Ownership Doctrine (Rise and Fall)

1. Wildlife is a unique property type beyond the scope of federal authority. 1821 - 1896
2. Wildlife is a public trust resource managed by the state as a fiduciary for the public interest. *Owsich v. State (1988)
3. Wildlife is a discrete property interest “owned” by the state. Geer v. Connecticut

B. Wildlife is a common resource and cannot be considered a “property”.

1. States cannot exercise ownership over wildlife. *Hughes v. Oklahoma (1979).
2. States retain a conservation interest in wildlife. Maine v Taylor (1986).
3. Federal statutes may restrict state wildlife management discretion
*Sierra Club v Clark (1985).

C. Allocation of Current Wildlife Management Responsibility

1. Domestic legislation implementing international treaties is a valid exercise of federal authority, Missouri v Holland (1920)
2. Commerce Clause in Constitution supports intensive federal management authority. *U.S. v Helsley (1982)
3. Property Clause in Constitution supports intensive federal management authority.
*Kleppe v NM (1976)
4. *”Resurrection of the Migratory Bird Treaty Act” 50 Colo. Law Review 165 (1979)

UNIT TWO: WILDLIFE POPULATION MANAGEMENT ON THE FEDERAL LANDS

A. Authority of the National Park Service within conservation units.

NRA v. Potter (1986)
NM v Udall (1969)

B. Authority of the U.S. Fish and Wildlife Service in managing wildlife interests within refuges.

1. Must follow state law when compatible with federal goals.
16 USC 668 (d)
2. Authority over hunting on non-refuge lands.
*Baisley v Holland (1942)
California v Hodel (1987)
3. Federal Pre-emption over incompatible state law.
California v Granite Rock (1987)

C. Wildlife Management on B.L.M. lands. The Alaska Wolf Litigation.

D. Migratory Bird Management

- U.S. v Chandler (1985)
*Alaska Fish and Wildlife Federation v Dunkle (1987)

UNIT THREE: ALASKAN SUBSISTENCE LAW

A. Scope of the Subsistence Priority

1. Lands subject to or immune from the subsistence mandate.
 - (a) Federal Conservation Unites
 - (b) State lands
 - (c) Outer Continental Shelf Lands
Amoco v Gambell (1987)
*”Subsistence Ends at Alaska’s Border” Environ. Law Review (1988)
 - (d) Navigable Streams
 - (e) Public Domain Lands
2. Qualification Criteria
 - (a) Rural Residency
*Kenaitze Indian Tribe v Alaska (1988)
 - (b) Customary and Traditional Uses
*US v Clark (1990)
3. Extent of Priority
 - (a) Allocation of Resource over other uses.
Bobby v State
 - (b) In relationship to other wildlife goals.
Kwethluk v Alaska (1990)
4. Considerations in general natural resources planning.
Kunaknana v Clark (1984)

*Sierra Club v Penfold (1988)
Hanlon v Barton (1990)

B. Demise of State Subsistence Management on Federal Lands

Madison v Alaska (1985)
*McDowell v Collingsworth (1989)
*Kluti Kah v Alaska (1990)

C. International Treaties and Alaskan Subsistence Management

*Fouled Up Waterfowl Management on the Yukon-Kuskokwim Delta”
Environmental Law Review (1989)

UNIT FOUR: WILDLIFE HABITAT MANAGEMENT ON FEDERAL LANDS

A. National Park Service and Wildlife

*Protecting National Parks from External Threats” Land and Water Law
Review (1987)

B. Wildlife and Multiple Use Lands

UNIT FIVE: ENDANGERED SPECIES MANAGEMENT

A. The Listing Process

1. Discretion in deciding what species to list. Northern Spotted Owl v Hodel (1988)
2. Challenging a listing decision. Los Vegas v Lujan (1990)

B. Section 7 Consultations

1. General Duties
2. Duty to Avoid Jeopardy Thomas v Peterson (1985)
3. Affirmative Obligation to Enhance Species Population
 - *Naturists v. Larsen (1988)
 - Friends of Endangered Species v Jantzen (1985)
 - *Palia v Hawaii Fish and Game (1981)

C. Defining a “Taking” of endangered wildlife.

Defenders v Administrator (1989)
Sierra Club v Lyng (1988)

UNIT SIX: THE ANTI-HUNTING MOVEMENT AND WILDLIFE LAW

Humane Society v Hodel (1988)
*Dorman v Satti 1988
*Connor v Andrus 1978)
Christy v Hodel (1988)

UNIT SEVEN: WILDLIFE VALUATIONS

A. Resources Damage Assessment and CERCLA

*"Natural Resource Damage Valuation" Vanderbilt Law Review (1988)

*"Recovery of Damages to Fish and Wildlife" Ecology Law Quarterly (1982)

B. Liability for Damage by Wildlife

American Farm Bur. v Block (1984)

*U.S. v Dorst (1989)

*Green Acres v Missouri (1988)

SUMMARY OF CLASS