ENVIRONMENTAL LAW’S LAND USE MANAGEMENT

DISCUSSION QUESTIONS FOR FEBRUARY 7, 2006

1. Disclosure of information is essential to the environmental policy-making, but the responsible government agencies tend to hide its plan until the environmentalist bring suit. Should an administrative punishment be imposed on those agencies that do not fully disclose information in violation of NEPA?

2. Should we check the relationship between the relevant authorities and consultants who will do environmental impact statement to ensure that the environmental impact statement serve the best interest of the public?

3. What should be the appropriate definition of “major federal action”?

4. The authors of the commentary following the Grant case mention that typically “agency official tend to measure their accomplishments in terms of how many miles of river were damned or channelized, or how many reactors licensed” while disregarding environmental effects in these assessments. How can policy makers correct this tunnel vision perspective that many agency officials have?

5. It seems in many cases agencies lose in court because rather than comply with NEPA Section 102(2)(C) and fully disclose potential environmental effects of proposed actions, agencies often intentionally ignore or overlook these effects. Why are agencies reluctant to address adverse environmental effects forthrightly, but explain that their main agenda’s importance overrides the significance of the environmental effects? Wouldn’t the courts still have to respect the agency’s discretion?

6. To what extent does the NEPA requirement that an agency prepare an environmental impact statement (if the agency action will significantly affect the quality of the human environment) overlap with the Endangered Species Act requirement that an agency prepare a biological assessment (if the agency action will likely jeopardize an endangered or threatened species)?

   a. Is the preparation of an EIS and Biological Assessment for the same agency action an efficient use of federal resources?

7. Are there circumstances where an EIS should not be required? For example, should the Department of Interior prepare an EIS when it designates the critical habitat of an endangered species?

8. How has the citizen suit provision affected a federal agency’s decision whether to prepare an EIS (or any supplements). Are the agencies more concerned with compliance with the Act as opposed to a genuine effort to evaluate the environmental effects of any federal action? Stated differently, are the agencies more concerned with form over substance?
9. In *Methow Valley*, the Supreme Court held that an Environmental Impact Statement (EIS) need not include a worst case analysis, and that NEPA did not require the inclusion of a mitigation plan in an EIS. If one of the functions of an EIS is "full disclosure" of all known possible consequences of a proposed agency action, is it realistic for the public to expect some discussion of a worst case scenario? If attempts to mitigate environmental impacts will likely affect state/local governments and individuals, does it seem reasonable that the EIS should include at least some discussion of potential mitigation strategies? Or would requiring agencies to include some discussion of these issues in the EIS just lead to even more "paralysis by analysis"?

10. The EIS "must be written in language that is understandable to the nontechnical minds and yet contains enough scientific reasoning to alert specialists to particular problems within their field of expertise." Is this standard even possible? Or is the typical EIS larded with so much legal and technical jargon that a layperson gives up reading and instead relies upon special interest and advocacy groups to tell him/her what the EIS means? Is the EIS an effective means of soliciting public feedback on a proposed agency action?

11. 1990 amendments to CMZA allows the President to exempt from compliance federal agency activity that is inconsistent with an approved state plan "if the President determines that the activity is in the paramount interest of the United States." How far does this extend? Could the President allow wind turbines or drilling rigs to be installed on beach front property? Would the revival/rehabilitation of New Orleans be considered "in the paramount interest of the United States" such that FEMA or other federal agencies would be allowed to carry out activities that would otherwise be inconsistent with Louisiana CMZ plans?