

1. In *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, both the majority and concurring opinions agreed on which major point?
  - a. the Endangered Species Act only limits destruction of critical habitat when that destruction directly and intentionally kills or injures a specific member of an endangered species;
  - b. the Endangered Species Act imposes liability for destruction of critical habitat when that destruction will proximately cause the death or injury of members of an endangered species;
  - c. the Endangered Species Act does not apply to the destruction of critical habitat unless the state has laws or regulations to prohibit the destruction of endangered plants on that property;
  - d. the Endangered Species Act does not provide standing to contest destruction of critical habitat unless the claimant can show a direct and concrete interest in the species, a concrete injury-in-fact, and the availability of an effective remedy from the court.
  
2. Who of the following is **least** likely to bring a successful claim?
  - a. an environmental advocacy group seeking to enjoin construction of a federal research laboratory without an environmental assessment or categorical exclusion;
  - b. an individual's public nuisance action against a large mining operation's discharges into a waterway and beachfront property held by the public, where the individual owns land downstream;
  - c. a member of an environmental advocacy group who wants to enjoin the federal government's construction of the U.S-Mexico Border Fence directly through his property (which includes an endangered bird sanctuary) because the Department of Homeland Security did not conduct an environmental assessment or environmental impact statement;
  - d. a person seeking to enjoin construction of a highway that will run through a large forest where she has observed wildlife and migratory birds for many years (and where she has specific plans to observe them in the future), even though she must travel several hours each way to visit the site.
  
3. Private land owners can incur liability under Section 9 of the Endangered Species Act if they:
  - a. stock exotic game species that destroy critical habitat needed for endangered or threatened animals living on their property;

- b. cut down forest required by endangered or threatened birds for nesting habitat on the property;
  - c. plow land containing endangered species of plants in a state that does not prohibit such land use;
  - d. a and b;
  - e. all of the above.
4. Persons wishing to bring an environmental justice administrative claim or lawsuit must prove:
- a. they were victims of intentional discrimination that resulted in a violation of their federal constitutional right to equal protection or due process;
  - b. they were victims of federal agency action that imposed a disparate impact on them in a manner prohibited by Section 602 of Title VI of the Civil Rights Act;
  - c. they were victims of intentional discrimination that resulted in a violation of their rights to judicial review under Executive Order 12,898;
  - d. a and b;
  - e. all of the above.
5. Which of the following federal environmental statutes have a citizen suit provision?
- a. Clean Water Act
  - b. Endangered Species Act
  - c. the National Environmental Policy Act
  - d. a and b

### **Sample Essay Question**

1. After graduating from law school, you embark on a bright career as a staff attorney for Gulf Wetlands Warriors, a creative and energetic environmental advocacy group dedicated to protecting wetlands and valuable species in the Gulf Coast region. Your supervisor brings a member's tip to you for evaluation. The tip says that a commercial developer has announced plans to construct the Prairie Pavilions, which will be a large mall in the Katy Prairie west of Houston.

This mall will occupy land pocketed with "prairie potholes," which are small isolated areas that periodically contain wet soils or shallow pools during rainy spring and fall seasons. These potholes provide a stopping point for millions of waterfowl each year during migration seasons. Some of these migrating waterfowl are listed as threatened or endangered species.

The Pavilions will require the construction of a road spur from a nearby highway. While the road will be privately financed and constructed, the developer will need to obtain permits from the Texas Department of Transportation to link the spur to the highway.

Once constructed, the Pavilions will include several large buildings, square miles of paved parking lot, and a large maintenance facility with a power substation. These buildings will block the view of rural landowners, who had specifically purchased their lands so that they could enjoy the native wildlife and scenery as well as observe the migrating birds.

- a. What claims could Gulf Wetlands Warriors bring to halt the construction of the Prairie Pavilions? What additional facts would you need to make that assessment? Be sure to include an assessment of the relief you could seek under each claim.

Your classmate, upon graduating from law school, has embarked on a bright career as an in-house counsel for the developer constructing the Prairie Pavilions. Her supervisor brings her the complaint from Gulf Wetlands Warriors, and has asked her to analyze the company's litigation risk.

- b. Assess the potential defenses and strategies that Prairie Pavilions can raise against the complaint's claims. Be sure to include an assessment of the relative strength or weakness of both Gulf Wetlands Warriors' claims, Pavilions' defenses, and strategies to minimize Pavilions' environmental risk.