

**UNIVERSITY OF DENVER  
STURM COLLEGE OF LAW**

Professor Roberto Corrada  
Administrative Law

Spring Semester 2012  
April 12, 2012

**Administrative Law Midterm Examination  
Take-Home Portion**

1. Place your exam number on the top right hand corner of each page of your response. Do not sign your name or otherwise indicate identification on any other part of your exam response. **THIS EXAMINATION MUST BE COMPLETED SOLELY BY YOU. THE EXAMINATION MUST BE COMPLETED WITHOUT THE AID OR ASSISTANCE OF ANY OTHER PERSON OR PERSONS. FROM THE TIME THIS EXAMINATION IS AVAILABLE TO YOU UNTIL THE TIME THAT IT IS DUE, *YOU MUST NOT DISCUSS THE EXAMINATION OR ADMINISTRATIVE LAW WITH ANYONE.* ANY VIOLATION OF THIS RULE WILL BE VIEWED AS AN HONOR CODE VIOLATION. IN ANY CASE OF VIOLATION, THE PROFESSOR WILL ARGUE FOR THE HARSHTEST PENALTY, POSSIBLY INCLUDING EXPULSION FROM LAW SCHOOL.**

2. MATERIALS TO BE USED IN ANSWERING THE PROBLEM:

You may use any materials for this exam, but please understand that the exam is written with the following materials in mind, and no citation credit will be given for cases or laws mentioned outside of the assigned materials or website postings for the class:

- 1) Schwartz, Corrada, Brown, Administrative Law Casebook;
- 2) Fox, Understanding Administrative Law;
- 3) Class Handouts or any material from the Class Website through 4/11/12;
- 4) GEEPS Statute as of 4/11/12.



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### 3. EXAMINATION FORMAT

This portion of the midterm exam consists of two (2) short answer essay questions. Each question is worth approximately 33% of the grade for the midterm. The midterm is worth 25% of the grade for Administrative Law. The exam problem will be available electronically through the Registrar's Office on Thursday, April 12, at noon and the response is due back to the Registrar (jgordon@law.du.edu) **no later than 12:00 p.m. (noon) on Monday April 16.** Any responses turned in after the noon April 16 deadline will not be graded *regardless of excuse*, and a grade of "F" will be entered.

### 4. PAGE & TYPEFACE LIMITS/REQUIREMENTS

**Each** response to each of the two problems must be no longer than 500 words. The exams must be double-spaced, typed, 8 1/2" x 11" pages in length with 1" margins all around. Typeface must be 12 point, New Times Roman script (or same-sized script). **ANY RESPONSE THAT IS LONGER THAN ALLOWED OR OTHERWISE DEVIATES FROM THESE REQUIREMENTS IN ANY WAY WILL RISK THE POSSIBILITY THAT THE PROFESSOR WILL CHOOSE TO IGNORE THE ENTIRE RESPONSE, RESULTING IN A GRADE OF 0% FOR THE RESPONSE.**

### 5. PROCESS QUESTIONS & WEBSITE MORATORIUM

Do not ask Professor Corrada any questions about this examination. Any questions about process should be handled by you, with no assistance, to the best of your ability.

***TWEN Class Website Moratorium: During the term of this examination there shall be no new postings on TWEN.***

### 6. EXAM COVERAGE

This problem tests only material that has been covered in Administrative Law up

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to and including the material on Adjudication (Trial-Type Hearings). Do not discuss issues that we have not yet covered in the course.

**There are five (5) pages in this packet, including the instruction sheet.**

## **PROBLEM I**

Assume that Congress is considering legislation to allow the creation and regulation of dinosaur parks. The current draft, GEEPS (“Genetically Engineered and Extinct Prehistoric Species” Act), can be found at the TWEN website for Professor Corrada’s Administrative Law Class, though you should have a copy in your possession. Assume that you are a lawyer for Biosyntec Corporation, a company with a very keen interest in GEEPS legislation. In fact, Biosyntec is currently making plans to apply for a dinosaur park license as soon as allowed by statute. Dan Ross, the new General Counsel for Biosyntec and your boss, suspects that the current draft of the “Inspection: Information and Investigation” provision of the draft law is unconstitutional. He has asked you to draft a memorandum assessing the constitutionality of the section. Please analyze fully all aspects involving the constitutionality of the “Inspection: Information and Investigation” section of the draft GEEPS law. Also, if the inspection and investigation section of the statute is unconstitutional, how would you modify it to make it constitutional, but at the same time maintain its enforcement effectiveness?

## **PROBLEM II**

Assume that the United States Congress passed legislation allowing the creation and regulation of dinosaur parks, entitled the Genetically Engineered and Extinct Prehistoric Species Act (GEEPS). A draft of relevant portions of the legislation can be found at the wiki for Professor Corrada’s Administrative Law Class, but should already be in your possession.

On January 3, 2012, the GEEPS Commission published in the Federal Register a Notice of Proposed Rulemaking that would ban predator dinosaur species, like the TRex and the Velociraptor, from being developed by any private company, whether that company is licensed by GEEPS or not. The notice invited written comments from all interested parties and announced that the GEEPS would conduct a hearing to receive testimony on the proposal. The published notice

included the time, place, and nature of the public hearing, the legal authority of the Commission in conducting the hearing, and the terms of the proposed predatory species ban. The Chairman of the GEEPS Commission, Dr. Alan Grant appeared on national television (and was quoted in various newspapers) to publicize and praise the proposed ban on predator dinosaur species.

Biosyntec, Inc. is one of only three companies with a license issued by GEEPS to develop a dino park. Its license is not due to expire until the year 2050. GEEPS employs approximately 1500 employees, many reportedly involved in the active development of predator dinosaur species. The company maintains that it would suffer financially if the “NP” (No Predator) rule were adopted. Docile Dinosaur Development (DDD) is a small nonprofit group that has gained national attention since making prohibition of predatory dinosaur cloning and development its cause. DDD was formed by the current Chairman of GEEPS, Dr. Grant, in 2005. Dr. Grant personally witnessed the destructive capacity of these types of dinosaurs in an incident involving Ingen some years ago. Dr. Grant has made a predatory dinosaur ban his cause and has continued to consult extensively with DDD. The Chairman is no longer a member of DDD but allows DDD to use his name and picture in publications. The Chairman occasionally appears at DDD fundraising events. Both Biosyntec and DDD submitted written comments in the hearing proceeding, which took place on January 20, 2012.

At the January hearing before GEEPS officials, parties were permitted to speak by invitation only. The witnesses included the following:

- the GEEPS investigator who read into the record a highly technical report on the impact of the predator species ban;
- a noted biologist who testified, based on complex eco-system models, that predator species cause vast ecological destruction in addition to being exceedingly dangerous;
- DDD's executive director who pleaded for the adoption of the predatory species ban by maintaining that chaos theory suggested these species could not be contained once released into the environment.

Biosyntec representatives were not invited to testify. However, after the hearing, GEEPS permitted Biosyntec to submit written responses to the testimony. The entire record in the proceeding ran in excess of 300,000 pages. On April 10,

2012, GEEPS issued a final rule banning all development of predatory dinosaur species. Despite the clear and definitive rule, Biosyntec has continued working on developing predatory dinosaur species, in particular T Rexs and Raptors.

Analyze and discuss the issues regarding Biosyntec's ability to prevail in contesting the GEEPS Commission's actions. Is there any way to challenge the Agency's actions? Explain fully. Also, is there any way to find out about the Agency's other enforcement activities without court action? How? Analyze fully.



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