

# **Author's Commentary on "The Lease of Their Problems"**

## Commentary On The Lease of Their Problems

In this case, the long- and short-term needs of a private company are at odds with a locally rare animal. Several issues are at play here - the legal issue between landlord and tenant (which we will leave to the legal department of WPP); the integrity of data of the vandalized tests; and the possible incompatibility of this type of research with justifiably (although not legally) protected wildlife.

Private industry may not be subject to the same checks as academe. Financial backing is provided by shareholders, and may not be supported by federal or competitive grant money. Findings are proprietary, and publications may be limited to internal documents, reports and strategies for doing bigger and better things (or doing the same ones faster or more cheaply) rather than peer-reviewed journals.

### **Discussion Questions:**

- What are Zilgett's responsibilities to Rubens, Spruce, WPP and the cutenfuzzies?

Zilgett's primary responsibility and concern is for good quality data. While he may not have been involved with the establishment of the study, it is his job to bring it to completion and make recommendations for the benefit of WPP. Unless these tests are in the district managed by Spruce, Zilgett's only responsibility to him is to provide accurate and timely information for Rubens to relay. As the cutenfuzzies are not listed for special protection, Zilgett has a fairly neutral responsibility toward them. He should have minimal interaction with them.

Spruce demands respect due to his long-standing involvement with WPP; he expects access to his leased property. As employees with considerably less tenure than Spruce, Rubens and Zilgett both fear retribution. Rubens expects lessees to abide by the terms of the lease. She maintains correspondence with tract managers so she

can relay pertinent and accurate information to the lessees, and communicate their concerns to the tract managers.

WPP anticipates that research and supervisory staff will work in its (and its stockholders') best interests. The Endangered Species Act (ESA) protects threatened and endangered species from becoming endangered or extinct. Although the cutenfuzzy is not aware it has this protection, we expect it to be protected should it become listed. In any case, it should be treated humanely and be free from harassment.

- Should Spruce, as the club's representative, have cleared his decision with WPP before the club took action?

Both Spruce and Zilgett are bound by the codes of ethics of their professional organizations, and Spruce by that of his Sportsmen's Association. State and national codes of ethics for foresters and forest workers stress consultation and cooperation with other specialists on matters beyond their own competence. Zilgett demonstrated this standard when he directly questioned Spruce. Spruce indicated that he attempted to gain support in the past, but hasn't requested assistance recently.

Spruce likely would never have decided vandalism was his only course of action if the company had been proactive in conservation of the cutenfuzzy, or if it were already legally listed as threatened or endangered under the Federal Endangered Species Act (or state equivalent). Penalties for knowingly violating the ESA include criminal fines, prison sentences and civil damages for each violation in addition to forfeiture of illegally taken species and any equipment used in the taking (Kohm 1991).

In the best case scenario, Spruce would have requested a meeting with representative stakeholders within WPP - Zilgett, Rubens, the Research Supervisor and the company's newly hired wildlife biologist. Four courses of action are possible.

If a cleaning really is warranted as Spruce indicated, qualified WWP personnel should be assigned this task. If WPP lacks this expertise, a licensed and reputable contractor should be retained.

Several of these studies are at the near end of their research usefulness. In 1979 the Senate set the precedent for moving a species (snail darter) rather than the

industrial act that threatened its habitat (Dingell 1991). WPP could relocate either the cutenfuzzies or their nemesis in conjunction with training sessions for clubs on their rights, responsibilities, and the Endangered Species Act (ESA; federal, and any state or local contingencies).

Tests could be established elsewhere, and negotiations opened with state and environmental groups. If the cutenfuzzy is truly a unique feature, these parties can assist the company in promoting the species' continued presence on this property. It is also feasible the company can reduce its tax burden by deeding the property to the state or a responsible not-for-profit environmental group like the Nature Conservancy once WPP no longer needs access. Further, it is likely that nondestructive access can be negotiated during the deed transfer.

WPP could have legally determined that no action was required except continued monitoring. While uncommon to this region, the cutenfuzzy is not a protected species.

Option 3 has great advantages. With a good relationship with the environmental group, WPP could maintain access to the tests and could negotiate permission to measure the trees and collect some sample tissues (increment cores, leaves, pollen and seed). WPP could reduce some of their research costs by eliminating the tax burden of this area. Some extremists could see the "donation" as a publicity stunt that allowed WPP to save face. In truth, however, this decision would be environmentally and economically sound.

The Society of American Foresters (SAF) (1993) has taken the position that the ESA is too restrictive; human economic needs should be considered as well as the biological needs of plant and animal species. Further, the organization maintains that landowners who cede control of their property to society in the name of conserving threatened or endangered species should receive just compensation. My personal position is that each case must be considered on its own merit. Depending on the status of cutenfuzzies throughout their range, option 4) may very well be viable.

## **Discussion Questions:**

- Should Spruce's actions "off the clock" affect his professional life?

Registered foresters in Mississippi deem untrained persons and those who "lack good moral character" as unqualified (Mississippi Board of Registration for Foresters). At first glance, this position seems overly harsh. The most morally bankrupt individual can have the technical expertise to write and execute a stellar management plan or research proposal. However, the best interests of the landowner, employer or funding agency may never be represented. Spruce put great thought into the actions against WPP, and deliberately destroyed company assets. This should not be overlooked, even if the activity occurred after hours.

- What should Rosa Rubens do?

The decision on what to do should have been made prior to any action by Spruce's club. They have already taken action, however, and Rubens and Zilgett must determine the proper next step in terms of the lease and the tests. Rubens has one easy answer: There is no question that the lease has been violated, and severely so. Termination of this club's lease is most certainly warranted. It is more difficult to decide whether charges should be brought against the "Boys" for their vandalism. This step could be determined by the extent of damage, and whether or not WPP presses charges.

Zilgett needs to involve his own supervisor as soon as possible. Not much can be salvaged from this particular study as it was designed. It can be used to monitor the effects of the cleaning "treatment." If these same seed sources (clones) are replicated elsewhere in untampered "control" plantings, that could show that a more active role in competition control is helpful (or a complete waste of time and resources) in meeting the company's goals.

Sportsmen are responsible for their own safety and for any damages they cause to the property of others (Bromley 1997). WPP, or any landowner that grants recreational hunting rights, would be wise to require the club to demonstrate proof of sportsman insurance. These policies cover the club against any damage they may cause, and are available through insurance companies and national sportsmen's associations (Bromley 1997). With luck, the club's insurance policy will cover the cost of repeating this study. It would be a nice gesture for the club's members to volunteer labor they are qualified to do.

- How would your responses differ if tests were to determine the likelihood of reintroduction of equally uncommon plant species and Spruce had sacrificed

one protected species for another?

The four main commands of the Endangered Species Act are to conserve listed species, to avoid jeopardization of said species, to avoid destruction of critical habitat, and to avoid taking (Coggins 1991). There is a difference between protected animals and plants. Traditionally, trees and grass belong to the landowner; wildlife is a common good held in trust by the state for the benefit of people (Rolston 1991).

Making the area attractive to the common competitor to increase the likelihood of physically removing them is probably a less effective measure than making it unattractive to turkeys so that they just stayed away. This solution to the problem was risky because the 1973 law declares it unlawful to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture" protected species. While Spruce could argue the attempt was to harass the competitor, he could easily have destroyed the population he wished to protect.

Experience has shown that conservation of endangered species and promotion of long-term human welfare can be accomplished without significantly harming short-term economic interest (Dingell 1991). This goal is partially accomplished when political pressure leads to complicating amendments to the ESA to slow listings (Bean 1991). Further, the Senate has set the precedent for moving the endangered species rather than the industrial act that threatened habitat (TVA vs. Hill, 1979).

## **Discussion Questions:**

- How would your responses differ if Mr. Spruce's club just wanted to improve his hunting success and hadn't recognized the cutenfuzzy habitat?

The first tenet of the National Rifle Association's Code of Ethics (NRA undated) reminds hunters that they are invited guests that they should conduct themselves in such a way that they will be welcome in the future. The Canadian Camo Company (2001) warns that it is not enough to ask for permission to hunt; hunters must respect all buildings, fences, livestock, and crops. In addition, hunters should learn and respect the landowners' concerns.

As employees of WPP, this club had intimate knowledge of which plantings were of special concern, and what the landowner's interests were. They cannot plead ignorance.

- What responsibility does WPP have to its lessees and to the environment to have a sound contract without loopholes?

A sound contract protects all parties, especially WPP.

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