Ocean and Coastal Case Alert

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The National Sea Grant Law Center is pleased to offer the ***Ocean and Coastal Case Alert***. The ***Case Alert*** is a monthly listserv highlighting recent court decisions impacting ocean and coastal resource management. Each Case Alert will briefly summarize the cases. Please feel free to pass it on to anyone who may be interested. If you are a first-time reader and would like to subscribe, send an email to waurene@olemiss.edu with ***"Case Alert"*** on the subject line. NSGLC-10-03-07

U.S. SUPREME COURT

Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection et al., 560 U.S. ___ (2010).
The U.S. Supreme Court affirmed the Florida Supreme Court's decision upholding beach renourishment permits and held that the Florida Court's decision did not unconstitutionally deprive plaintiffs of littoral rights without just compensation. The action stemmed from the Florida Department of Environmental Protection's issuance of a permit to restore 6.9 miles of critically eroded beaches and dunes under Florida's Beach and Shore Preservation Act (BSPA). A nonprofit organization comprised of six beachfront homeowners objected to the renourishment project and brought a suit, claiming a taking without just compensation. The Florida Supreme Court disagreed and ruled against the homeowners. The group appealed the Florida Supreme Court's opinion and argued that the court's decision resulted in a judicial taking. While the Court agreed that the issuance of the permit under the BSPA did not result in a taking, it was split on the question of a judicial taking.
http://www.supremecourt.gov/opinions/09pdf/08-1151.pdf

FIRST CIRCUIT

Massachusetts

Ten Local Citizen Group v. New Eng. Wind, LLC, 2010 Mass. LEXIS 397 (Mass. July 6, 2010).
The Massachusetts Supreme Judicial Court upheld the Department of Environmental Protection's approval of a developer's access road project over several inland stream banks that would allow construction and maintenance of twenty wind turbines. The court found that the agency's decision was supported by substantial evidence, since its interpretation of the relevant regulations underlying the Wetlands Protection Act was not unreasonable and was consistent with the regulatory scheme.
http://www.massreports.com/slipops/default.aspx

FIFTH CIRCUIT

Coastal Habitat Alliance v. Patterson, 2010 U.S. App. LEXIS 12392 (5th Cir. June 17, 2010).
In an action contesting agency approval of a private wind farm, the Fifth Circuit ruled that the Coastal Zone Management Act (Act), 16 U.S.C.S. § 1451 et seq., does not preempt state law and does not provide a private cause of action. An advocacy group had contested the construction the wind farm, alleging that several Texas state agencies had failed to perform an environmental consistency review or allow public comment for the project. The court noted that "nothing in the act expressly requires Texas to provide for public participation and environmental consistency review in wind farm construction." The court held that the group failed to show any concrete or particularized legally cognizable harm and therefore lacked standing to bring its claims.
http://www.ca5.uscourts.gov/opinions%5Cunpub%5C09/09-50553.0.wpd.pdf

Hornbeck Offshore Services v. Salazar, No. 10-30585 (5th Cir. June 25, 2010).
Following the Deepwater Horizon oil spill, the federal government ordered an evaluation of the safety of deepwater drilling operations in the Gulf of Mexico. The Department of the Interior (DOI) and the Minerals Management Service (MMS) subsequently issued a six-month moratorium on deepwater drilling in the Gulf. A federal district court in Louisiana lifted the moratorium, noting that the suspension of deepwater drilling was an arbitrary exercise of authority. The U.S. Court of Appeals for the Fifth Circuit later rejected the federal government's request to restore the moratorium pending the appeal of the lower court's decision.
http://www.laed.uscourts.gov/GENERAL/Notices/10-1663_doc67.pdf
http://bit.ly/dpWPSW

NINTH CIRCUIT

Stacy v. Danielsen, 2010 U.S. App. LEXIS 13222 (9th Cir. June 29, 2010).
The U.S. Court of Appeals for the Ninth Circuit ruled that a fishing boat captain could bring a claim for negligent infliction of emotional distress, despite the fact that the captain did not witness the incident at issue. The case arose after a merchant vessel nearly missed the plaintiff's vessel and shortly after collided with another fishing vessel, killing the captain of that vessel. The plaintiff filed suit, alleging that he suffered emotional distress from fright caused by negligence of the owners and operators of the merchant vessel. The trial court dismissed the claim. On appeal, the Ninth Circuit found that when a negligent party has severely injured or killed a third party, a plaintiff does not have to witness the incident to have a cause of action, but only must be within the zone of danger created by the defendant's conduct.
http://www.ca9.uscourts.gov/datastore/opinions/2010/06/29/09-15579.pdf

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California

Enforcers v. Department of Water Resources, 185 Cal. App. 4th 969 (Cal. App. 1st Dist. June 17, 2010).
A California appellate court affirmed a trial court's grant of a peremptory writ of mandate to compel the California Department of Water Resources to stop taking three endangered species without permit authority. The court held that a state agency is a "person" within the meaning of Fish & G. Code, § 2080, which prohibits any person from taking an endangered or threatened species without appropriate permit authority from the California Department of Fish and Game. The court found that interpreting 2080 to exclude state agencies "would lead to the unreasonable result that major actors, whose operations resulted in the taking of endangered and threatened species, would be exempt from the general take prohibition."
http://www.courtinfo.ca.gov/opinions/documents/A117715.PDF

San Diego Navy Broadway Complex Coalition v. City of San Diego, 185 Cal. App. 4th 924 (Cal. App. 4th Dist. 2010).
An appellate court affirmed a denial of a petition for a writ of mandate to require a city to prepare an updated environmental impact report (EIR) to include greenhouse gas emissions and global climate change impacts. The court found that the city had only performed consistency reviews and did not grant a discretionary approval, which would provide it with the authority to address the project's impact on global climate change.
http://www.courtinfo.ca.gov/opinions/documents/D055699.PDF

Hines v. California Coastal Commission, 2010 Cal. App. LEXIS 1140 (Cal. App. 1st Dist. June 17, 2010).
A court ruled that the Sonoma County Board of Supervisors did not abuse its discretion under the California Coastal Act of 1976 in approving a permit that allowed the reduction of the riparian setback from 100 feet to 50 feet for the construction of a residence. The court noted that local coastal program standards allow the board to approve a reduced riparian setback where the applicant can show that 100 feet is unnecessary to protect the resources of the habitat area. The court also rejected the plaintiffs' challenge to the California Coastal Commission's refusal to exercise jurisdiction over their appeal on the grounds that the appeal presented "no substantial issue."
http://www.courtinfo.ca.gov/opinions/documents/A125254.PDF

ELEVENTH CIRCUIT

Florida

Curd v. Mosaic Fertilizer, L.L.C., 2010 Fla. LEXIS 944 (June 17, 2010).
The Florida Supreme Court recently held that commercial fishermen may seek economic damages for lost income resulting from spilled pollutants, despite the fact that the fishermen had suffered no property damage from the spill. The trial and appellate courts had dismissed the fishermen's claims, finding that neither Fla. Stat § 376.313(3) nor common law permitted them to recover economic damages unless they also suffered property damage from the pollution. On appeal, however, the Florida Supreme Court found that the state statute in question was broad enough to support private causes of action to anyone who could demonstrate damages and that the fishermen were not barred from bringing a common law negligence action.
http://www.floridasupremecourt.org/decisions/2010/sc08-1920.pdf

Miccosukee Tribe of Indians of Fla. v. U.S., 2010 U.S. Dist. LEXIS 69770 (S.D. Fla. July 12, 2010).
The Miccosukee Tribe of Indians of Florida filed a complaint alleging that water management actions of the South Florida Water Management District, the U.S. Army Corps' of Engineers, and others infringed on their constitutional and statutory rights by permitting high water levels to exist in the Tribe's leased area. The court found that the Tribe failed to demonstrate that there was a genuine issue of material fact that the agency's decisions were made with a racial object or purpose. The court granted summary judgment in favor of the United States, finding that the agency decisions survived rational-basis scrutiny, since the decisions were based in legitimate goals.

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