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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the January 2021 issue of *Ocean and Coastal Case Alert*.

The Case Alert is a monthly newsletter highlighting recent court decisions impacting ocean and coastal resource management. (NSGLC-21-03-01).

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FIRST CIRCUIT

Maine

Sierra Club v. U.S. Army Corps of Eng'rs, 2020 WL 7389744 (D. Me. Dec. 16, 2020).

Environmental groups challenged the U.S. Army Corps of Engineers' (Corps) decision to issue a permit under § 404 of the Clean Water Act and § 10 of the Rivers and Harbors Act for an electricity transmission project. The Corps found that the permitted activities were not likely to have a significant adverse environmental impact on waters of the United States and did not require an environmental impact statement. The environmental groups filed a Motion for Leave to Supplement the Complaint and a Motion for Preliminary Injunction. The U.S. District Court for the District of Maine denied the Motion for Preliminary Injunction because the environmental groups were unable to demonstrate a likelihood of success on the merits, as they could not show that the Corps' finding was arbitrary, capricious, an abuse of discretion, or otherwise unlawful. The court granted the environmental groups' Motion for Leave to Supplement the Complaint.

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Puerto Rico

America Cruise Ferries, Inc. v. Governor of Puerto Rico, 2020 WL 7786939 (D.P.R. Dec. 17, 2020).

Plaintiff America Cruise Ferries, Inc. (America Ferries) transports passengers and vehicles between ports in Puerto Rico and the Dominican Republic. Citing the COVID-19 pandemic, the government cancelled the company's authorization to transport passengers between the ports. The plaintiff sought a preliminary injunction and the government sought a motion to dismiss the claim. The U.S. District Court for the District of Puerto Rico denied America Ferries' request for injunctive relief and granted the motion to dismiss. The request for injunctive relief was denied because America Ferries was unable to demonstrate that the case would likely succeed on the merits. The motion to dismiss was granted because American Ferries failed to state a claim for which relief could be granted and failed to join the Puerto Rico Port Authorities as a party.

Opinion Not Available

FIFTH CIRCUIT

Louisiana

United States v. E.R.R. LLC, 2020 WL 7396516 (E.D. La. Dec. 17, 2020).

As a result of an oil spill in the Mississippi River in May 2015, the United States sought to recover cleanup and removal costs totaling $632,262.49 from Evergreen Resource Recovery LLC (E.R.R). The United States contended that the oil spill originated from a wastewater storage and treatment facility in Belle Chasse, Louisiana, owned and operated by E.R.R. The company denied all liability and objected to being designated as a responsible party under the under the Oil Pollution Act (OPA). The OPA imposes strict liability on any party responsible for the discharge of oil, regardless of fault. Multiple experts confirmed that E.R.R.'s barge was the source of the oil spill. As a result, the U.S. District Court for the Eastern District of Louisiana held that E.R.R. was liable for removal costs, administrative costs, interest, and attorney's fees resulting from the 2015 spill.

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Texas

Sustainable Texas Oyster Res. Mgmt., L.L.C. v. Hannah Reef, Inc., 2020 WL 7502493 (Tex. App. Dec. 22, 2020).

The Chambers–Liberty Counties Navigation District issued a Coastal Surface Lease to Sustainable Texas Oyster Resource Management, L.L.C. (STORM), authorizing STORM to cultivate and harvest oysters on 23,000 acres of submerged land in Galveston and Trinity Bays. When the lease was issued, part of the 23,000 acres covered by the lease was already subject to six oyster-production permits and accompanying oyster leases issued by the Texas Parks and Wildlife Department (TPWD). After STORM began to treat the permit holders ("the Oystermen") as trespassers, litigation ensued. The trial court rendered declaratory relief requested by the Oystermen and declared that the Oystermen were not trespassers as a matter of law and ordered STORM to take nothing on its counterclaims. The trial court also determined that the Oystermen were entitled to recover attorney's fees from STORM. On appeal, the court agreed that the judgment regarding attorney's fees should be reversed and rejected STORM's remaining arguments.

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EIGHTH CIRCUIT

Minnesota

White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res., 2020 WL 7690268 (Minn. Ct. App. Dec. 28, 2020).

White Bear Lake Restoration Association filed suit alleging that groundwater pumping by municipalities, pursuant to permits issued by the Minnesota Department of Natural Resources (DNR), impaired the lake and aquifer and contributed to the low lake levels reached in the early 2010s. Following a district court judgment and injunction in favor of the plaintiffs, a divided panel of the Minnesota Court of Appeals issued a decision reversing the judgment and remanding for further proceedings. The court held that the district court erred by 1) allowing the association's claims to proceed under Minn. Stat. § 116B.03 of the Minnesota Environmental Rights Act (MERA) instead of Minn. Stat. § 116B.10, and 2) applying the public trust doctrine to groundwater outside the confines of the lake and lakebed. The Minnesota Supreme Court granted review, reversed the appellate decision in part, and remanded for consideration of issues that were raised on appeal but that were not reached in the previous proceeding. In the instant case, the appellate court affirmed the district court's judgment with regard to the remaining issues remanded to the court. The court held that the district court did not err by denying the DNR's joinder motion or motion for summary judgment. The court also held that the district court did not exceed its authority under MERA nor violate separation of powers. Lastly, the court held that the district court's finding was not erroneous because there was no clear error in the district court's decision.

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NINTH CIRCUIT

Alaska

Gwich'in Steering Committee v. Bernhardt, 2021 WL 46703 (D. Alaska Jan. 5, 2021).

Gwich'in Steering Committee and others (plaintiffs) brought three actions challenging the Bureau of Land Management's (BLM) planned January 6, 2021 sale of leases on the Arctic National Wildlife Refuge. The plaintiffs filed motions for a preliminary injunction that would prevent BLM from issuing oil and gas leases or authorizing seismic exploration in the Arctic Refuge until a final judgment is entered. The U.S. District Court for the District of Alaska denied the motions without prejudice. The court noted that injunctive relief was not an adequate remedy at this time because BLM had not yet taken final agency action on the proposal. The court also noted that the plaintiffs were unable to show that absent a preliminary injunction, they would suffer imminent irreparable harm.

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California

San Francisco Baykeeper v. City of Sunnyvale, 2020 WL 7696078 (N.D. Cal. Dec. 28, 2020).

San Francisco Baykeeper (Baykeeper) initiated an action against the City of Sunnyvale under the Clean Water Act (CWA) to address the discharge of bacteria pollution by the city from its municipal separate storm sewer system. Baykeeper alleged that the city's repeated discharges were unlawful and adversely affected the water quality and beneficial uses of local waterways. The city filed a motion to dismiss the complaint. The U.S. District Court for the Northern District of California denied the motion. The court found that Baykeeper provided the city proper notice in accordance with the CWA and an opportunity to identify and correct the problem. Further, the court rejected the city's claim that the case was moot because the city was in compliance with discharge prohibitions and water limitations. The court noted that injunctive relief could not properly be assessed until the evidentiary record was developed further. Finally, the primary jurisdiction doctrine was not applicable.

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ELEVENTH CIRCUIT

Alabama

Breland v. City of Fairhope, 2020 WL 7778223 (Ala. Dec. 31, 2020).

A property owner brought an action against the city of Fairhope, Alabama, seeking a declaration that he is entitled to fill wetlands on the property, which is located outside of the city's corporate limits but within its police jurisdiction. The property owner asserted that the city had acted negligently regarding his application for a land-disturbance permit. The property owner also sought an expungement of his criminal citation for beginning work without a permit. The Baldwin County Circuit Court entered summary judgment in favor of city. The property owner subsequently appealed, and the Supreme Court of Alabama reversed and remanded. On remand, the circuit court entered judgment holding that property owner and his corporation had not obtained a vested right to fill the wetlands, state law did not preempt the city's ordinances at issue, the city's ordinances were not improper zoning ordinances, and the negligence and expungement claims of the property owner were moot. On appeal, the Supreme Court of Alabama affirmed the circuit court's judgment.

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Florida

Florida Beach Advertising, LLC v. City of Treasure Island, Florida, 2021 WL 50466 (M.D. Fla. Jan. 6, 2021).

The City of Treasure Island cited Florida Beach Advertising (Florida Beach) for its use of a digital advertising screen on the city's waterways. Florida Beach filed a facial First Amendment challenge and an as-applied First Amendment challenge. He also alleged preemption of the local sign code. Both parties filed motions for summary judgment. The City argued that Florida Beach lacked standing to assert a claim and the court granted the City's motion for summary judgment with respect to the First Amendment claims against the entire sign code because Florida Beach did not suffer an injury in fact. However, the court granted Florida Beach's motion for summary judgment with respect to the facial First Amendment challenge and prohibited the City from enforcing the specific section of the code at issue.

With respect to the preemption of a specific section of the local sign code, the court denied Florida Beach's motion for summary judgment because the court was unable to conclude whether the section at issue was preempted by Florida state law.

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