

~ ~ **March 15, 2006** ~ ~

FIRST CIRCUIT

Rhode Island

Greco v. Tikoian, 2006 R.I. Super. LEXIS 23 (R.I. Super March 9, 2006)

This case involved an appeal from a decision of the Coastal Resources Management Council (CRMC) to grant an application submitted by the Harbor Island Improvement Association to construct a dock on a lot owned by the Association on Wheatfield Cove Road in the Harbor Island area of the Town of Narragansett. The Rhode Island Superior Court found that the CRMC granting of the application violated statutory and regulatory provisions and exceeded the authority granted to the CRMC, and was arbitrary and capricious. The court also found that the CRMC's decision was affected by error of law and was characterized by an abuse of discretion. The court reversed the CRMC's decision.

SECOND CIRCUIT

New York

Natural Resources Defense Council v. U.S. Army Corps of Engineers, 2006 U.S. Dist. LEXIS 9140 (S.D.N.Y. March 8, 2006).

NRDC sued the Army Corps of Engineers asserting violations of the National Environmental Policy Act with respect to a project to deepen shipping channels in the New York-New Jersey Harbor through dredging and blasting. NRDC claimed that the Corps violated NEPA by not considering the impact of the project on an EPA plan to study pollution and cleanup alternatives in the Harbor. The District Court had previously held that the Corps had violated both NEPA and the Administrative Procedures Act. In the current case, the court denied NRDC's request for an order that the Corps prepare NEPA-compliant documents pursuant to a schedule and remanded the case to the Corps for reconsideration.

SIXTH CIRCUIT

Ohio

Portage County Bd. Of Commissioners v. City of Akron, 2006 Ohio LEXIS 531 (Ohio March 6, 2006).

The Portage County Board of Commissioners sued the City of Akron over the use of river water. The Ohio Supreme Court found that the state of Ohio gave Akron its rights in some rivers, but that these rights were limited to water supplying a canal. Akron's water rights to the river arose from its riparian rights. The Court found that the current water flow from Akron's reservoir and its use was reasonable. Although Portage County had standing on the basis of its riparian rights, Akron had not unreasonably restricted the public use of its water source.

EIGHTH CIRCUIT

Friends of the Boundary Waters Wilderness v. Bosworth, 2006 U.S. App. LEXIS 3514 (8th Cir. Feb. 15, 2006).

The U.S. Forest Service challenged the ruling of the U.S. District Court for the District of Minnesota granting summary judgment to the Friends of the Boundary Waters Wilderness. The district court had found that the Service did not have authority to recalculate the average annual motorboat use during 1976-1978 within certain lake chains. The Eighth Circuit reversed the ruling of the district court as to the issue of the Service's authority to recalculate the base period use. However, the Eighth Circuit affirmed a ruling of the district court that the Service's homeowner and resort non-exempt lake chain use recalculation was arbitrary and capricious. The case was remanded to the district court with directions to remand to the Service for a recalculation of the base period use and motorboat quotas.

Opinion available at <http://www.ca8.uscourts.gov/opndir/06/02/043629P.pdf>.

NINTH CIRCUIT

Turtle Island Restoration Network v. U.S. Department of Commerce, 2006 U.S. App. LEXIS 4090 (9th Cir. Feb. 21, 2006).

Turtle Island Restoration Network and others sued the National Marine Fisheries Service alleging violations of multiple federal environmental laws. The environmental groups moved for a preliminary injunction and the U.S. District Court for the District of Hawaii dismissed the complaint as time barred. NMFS asserted that the claim was barred by the 30-day time limitation in the Magnuson-Stevens Act, 16 U.S.C. § 1801 *et seq.* The Ninth Circuit affirmed the ruling of the district court finding that the groups' challenges were directed to the regulations that reopened the swordfish fishery and not to the other environmental statutes. Therefore, the 30-day time limit applied.

Opinion available at [http://www.ca9.uscourts.gov/ca9/newopinions.nsf/B2A0A4421F2459758825711C005C9F67/\\$file/0](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/B2A0A4421F2459758825711C005C9F67/$file/0).

TENTH CIRCUIT

United States v. Hubenka, 2006 U.S. App. LEXIS 4053 (10th Cir. Feb. 21, 2006).

Hubenka appealed the decision of the U.S. District Court for the District of Wyoming which convicted him of three counts of discharging pollutants into a river in violation of the Clean Water Act. Hubenka had built three dikes by using a bulldozer to move river bottom materials. Hubenka alleged that the federal government did not have jurisdiction because the dikes were built in a river that was neither navigable-in-fact nor adjacent to other navigable-in-fact waters. The Tenth Circuit affirmed Hubenka's conviction, holding that his use of river cobbles and sand to construct dikes in the tributary of a navigable water constituted a discharge of a pollutant. The court also held that the government did not need to prove that the discharge had a deleterious effect upon downstream waterways.

Opinion available at <http://fsnews.findlaw.com/cases/10th/058006.html>.

ELEVENTH CIRCUIT

Florida

Coastal Conservation Ass'n v. Gutierrez, 2006 U.S. Dist. LEXIS 8041 (M.D. Fla. Feb. 28, 2006).

Coastal Conservation Association (CCA) and the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service both sought attorneys fees as the result of an underlying suit in which the CCA challenged an interim rule to reduce the recreational harvest of certain fish. The district court originally granted summary judgment in part for the CCA, finding that the government acted arbitrarily in promulgating the rule. The court, however, also granted summary judgment in favor of the government on three counts of the CCA's complaint. In the current case, the court found that the CCA was the prevailing party and that they were entitled to costs under 28 U.S.C.S. § 1920. As the court could not determine the reasonableness or the portion of the costs that could be allocated to the prevailing issue, the court granted costs only as to filing fees in the amount of \$ 250 for each group.

Movimiento Democracia, Inc. v. Chertoff, 2006 U.S. Dist. LEXIS 8637 (S.D. Fla. Feb. 28, 2006).

Refugees from Cuba filed an action against the Department of Homeland Security challenging a decision of the U.S. Coast Guard to interdict the refugees from a pier in the Florida Keys and return them to Cuba. The court held that the Coast Guard's decision to remove the refugees was not entitled to deference because it was not reasonable for the Coast Guard to conclude that the bridge and the pier was not part of U.S. territory.
