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~ ~ April 16, 2007 ~ ~

UNITED STATES SUPREME COURT

Massachusetts v EPA, 127 S. Ct. 1438 (U.S. Apr. 2, 2007).

Several states and organizations brought suit against the Environmental Protection Agency (EPA) regarding its determination that the EPA was not required to regulate motor vehicle emissions under the Clean Air Act. The U.S. Court of Appeals for the District of Columbia upheld the EPA's determination. In an opinion by Justice Stevens, the United States Supreme Court reversed the ruling. The Court found that the petitioners had standing to challenge the ruling, given that Massachusetts would suffer direct harm from the further loss of its coastal land due to climate change. The Court further ruled that the EPA has the statutory authority to regulate greenhouse gas emissions from new motor vehicles and that the EPA rejected the rulemaking petition on impermissible grounds.

<http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf>

SECOND CIRCUIT

New York

Lockheed Martin Corp. v Unknown Respondents, 2007 U.S. Dist. LEXIS 23663 (D.N.Y. Mar. 29, 2007).

Rocco Morganti drowned while working on a vessel, Little Toot II, owned by Lockheed Martin. In a separate suit, his heirs were awarded relief under the Longshoreman's Act. Lockheed brought suit to limit its liability to the value of the vessel under the Limitation of Vessel Owner's Liability Act. The U.S. District Court for the Northern District of New York determined that the company was not entitled to limit its liability, finding the accident was the result of negligence and that the company had knowledge of the negligence that contributed to the accident. The court denied the company's motion for summary judgment and granted Morganti's heirs' motion for summary judgment.

<https://ecf.nynd.uscourts.gov/cgi-bin/login.pl>

FOURTH CIRCUIT

United States v Cooper, 2007 U.S. App. LEXIS 7146 (4th Cir. Mar. 28, 2007).

D.J. Cooper operated a sewage lagoon for a trailer park. Although Cooper had a permit from the Virginia Department of Environmental Quality to discharge waste from the sewage lagoon into a creek that flowed into a river, he violated that permit more than 300 times. A jury convicted D.J. Cooper of nine counts of knowingly discharging a pollutant into waters of the United States in violation of the Clean Water Act. The United States District Court for the Western District of Virginia sentenced Cooper to 27 months of imprisonment and assessed a fine of \$270,000. Cooper appealed, alleging that the district court did not prove that he knew the jurisdictional status of the waters he affected. The United States Court of Appeals for the Fourth Circuit upheld the lower court's conviction, as the CWA does not require the government to establish knowledge of the jurisdictional status of the waters affected.

<http://pacer.ca4.uscourts.gov/opinion.pdf/054956.P.pdf>

West Virginia

Ohio Valley Environmental Coalition v United States Army Corps of Engineers, 2007 U.S. Dist. LEXIS 21613 (D. W. Va. Mar. 23, 2007).

Environmental groups filed suit against the United States Army Corps of Engineers (Corps) for the issuance of permits that allowed coal mining companies to fill headwater streams in conjunction with mountaintop removal coal mining. The United States District Court for the Southern District of West Virginia found that the Corps failed to comply with the CWA and NEPA when it issued the permits and the Findings of No Significant Impact (FONSI). The court granted the groups an injunction, rescinded the permits, and remanded the permits to the Corps for further proceedings.

https://ecf.wvwd.uscourts.gov/cgi-bin/login.pl?340178477996014-L_835_0-1

SIXTH CIRCUIT

Kentucky

United States v Cundiff, 2007 U.S. Dist. LEXIS 22832 (D. Ky. Mar. 29, 2007).

The Cundiffs owned two adjacent tracts of land situated adjacent to tributaries of the Ohio River via the Green River. In a case brought to determine jurisdiction of the tracts, the Cundiffs argued that the plurality opinion in *Rapanos* controlled and that the wetlands did not meet the jurisdictional requirements of "waters of the United States." On a limited remand from the United States Court of Appeals for the Sixth Circuit, the district court determined that the wetlands at issue were "waters of the United States" under *Rapanos*. The court decided that the wetlands met the plurality's test of requiring the tributaries to be relatively permanent bodies of water connected to a traditional interstate navigable water and because the wetlands had a continuous surface connection with the tributaries. The court found that the wetlands also met Justice Kennedy's "significant nexus" test. Since the wetlands in question met both tests, the court held that the government has jurisdiction over the wetlands.

<https://ecf.kywd.uscourts.gov/cgi-bin/login.pl>

SEVENTH CIRCUIT

Rockstead v City of Crystal Lake, 2006 U.S. App. LEXIS 32553 (7th Cir. Apr. 10, 2007).

When the city of Crystal Lake installed a pipeline, it cut off drainage from a property used as farmland, turning it into wetlands. The property owners filed an inverse condemnation action in state court and then filed suit in federal court seeking just compensation under federal law, citing that state law was clearly against them and that a remedy would be unobtainable in state court. The United States District Court for the Northern District of Illinois dismissed the federal action. The Seventh Circuit affirmed the district court's judgment, noting that if a state statute had precluded a remedy, the federal action would be viable; however, in this instance, the obstacle was not a statute, but state common law, which was subject to change. In making its decision, the court recognized the antiquity of the ruling state supreme court decision, which made the common law more apt to change, and the fact that there has been a change in the legal status of wetlands.

<http://caselaw.lp.findlaw.com/data2/circs/7th/061286p.pdf>

Illinois

Robinson v Alter Barge Line, Inc., 2007 U.S. Dist. LEXIS 18191 (D. Ill. Mar. 15, 2007).

A deckhand brought suit against his former employer, Alter Barge Line, claiming that he was fired for reporting that his coworkers were using illegal drugs, in violation of the Illinois Whistleblower Act. The United States District Court for the District of Illinois ruled that the Whistleblower Act was preempted by federal law 46 U.S.C.S. § 2114, which provides relief for seamen who were dismissed for reporting safety law violation to federal authorities. Additionally, the application of Illinois law would have destroyed the uniformity of rules applicable to commerce on inland waterways. The court further held that the employee lacked a viable claim under § 2114. The court found that the employee's claim was also preempted under common law by general maritime law. The district court therefore granted summary judgment in favor of Alter Barge Line.

<https://ecf.ilsd.uscourts.gov/cgi-bin/login.pl>

EIGHTH CIRCUIT

Arkansas

State v Hatchie Coon Hunting & Fishing Club, Inc., 2007 Ark. App. LEXIS 210 (Ark. Ct. App. Mar. 21, 2007).

A portion of riparian property in the St. Francis River in Poinsett County, Arkansas, was granted to the Hatchie Coon Hunting and Fishing Club in 1892; however, a small island located within the riparian property did not appear on any land surveys until 1932. In a case to determine ownership of the island, the Poinsett County Circuit Court in Arkansas ruled that hunting club owned the forty-six acre tract of land, not the state of Arkansas. The state appealed the decision to the Arkansas Court of Appeals. The court held that the lower court had correctly determined that the island had formed as a result of accretion to and avulsion from the club's property. Additionally, the state failed to prove that it had acquired the property through adverse possession and laches. The trial court's judgment was affirmed.

<http://courts.state.ar.us/opinions/2007a/20070321/CA06-797.pdf>

NINTH CIRCUIT

National Wildlife Federation v National Marine Fisheries Service, 2007 U.S. App. LEXIS 8181 (9th Cir. Apr. 9, 2007).

The United States District Court for the District of Oregon held that a biological opinion (BiOp) issued by the National Marine Fisheries Service (NMFS) was structurally flawed under the Endangered Species Act (ESA). The BiOp examined the potential effects of the Federal Columbia River Power System dams and facilities on salmon and steelhead listed under the ESA. NMFS and the State of Idaho appealed the decision to the Court of Appeals for the Ninth Circuit. The Ninth Circuit upheld the district court's ruling, finding that the BiOp's jeopardy analysis was structurally flawed and, therefore, in conflict with the ESA. The Ninth Circuit further agreed that the NMFS' critical habitat determination was arbitrary and capricious and affirmed the district court's judgment.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0635011p.pdf>

Columbia Snake River Irrigators Association v National Wildlife Federation, 2007 U.S. App. LEXIS 8452 (9th Cir. Apr. 6, 2007).

The United States District Court for the District of Oregon held that the National Marine Fisheries Service (NMFS) correctly included tribal and state-regulated fish harvest in a biological opinion (BiOp) involving the potential effects of the Federal Columbia River Power System operations on salmon and steelhead listed under the Endangered Species Act. Two irrigators associations appealed the decision. The United States Court of Appeals for the Ninth Circuit affirmed the decision. The appeals court held that NMFS correctly determined that tribal treaty fishing rights were present effects of past federal action and, therefore, had to be included in the environmental baseline. The court also held that NMFS correctly projected and considered future harvests of the fish in the BiOp.

Pacific Coast Federation of Fishermen's Associations v United States Bureau of Reclamation, 2007 U.S. App. LEXIS 7268 (9th Cir. Mar. 22, 2007).

The United States District Court for the Northern District of California enjoined the U.S. Bureau of Reclamation (BOR) from making irrigation diversions from a reclamation project until a new biological opinion consistent with the provisions of the Endangered Species Act (ESA) had been produced. The Klamath Water Users Association appealed the decision, claiming that the court exercised its authority beyond what it had been granted under the ESA. The Ninth Circuit held that the district court did not abuse its discretion, because it properly considered all of the factors relevant to whether the project would harm the protected coho salmon and because the district court had broad discretion to establish a remedy.

California

Friends of the Earth, Inc. v Mosbacher, 2007 U.S. Dist. LEXIS 24268 (D. Cal. Mar. 30, 2007).

Two non-profit organizations and three cities filed suit against federal government organizations that provide financial support to international fossil fuel projects that emit greenhouse gases. The plaintiffs alleged that the agencies were in violation of the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA) by failing to perform an Environmental Impact Statement for their actions. The court denied the plaintiffs' motion for summary judgment.

Feduniak v California Coastal Commission, 148 Cal. App. 4th 1346 (Cal. Ct. App. Mar. 27, 2007).

The California Coastal Commission ordered the Fundiaks to remove a three-hole, pitch-and-putt golf course from their coastal property and restore the original landscape of native dune vegetation. The Superior Court of Monterey County, California, estopped the commission from enforcing those orders and the Commission appealed. On appeal, the court reversed the trial court's judgment since three elements of estoppel were not met. The court held that the evidence did not show: 1) that the Commission knew or should have known of the golf course's violations before the owners purchased the property, 2) that since the Commission took no action at another prominently located golf course, it had constructive knowledge of the violation, and, 3) that since the Commission had failed to enforce the restriction over a number of years that the owners could have reasonably believed that the Commission did not intend to take action.

<http://www.courtinfo.ca.gov/opinions/documents/H028931.PDF>

ELEVENTH CIRCUIT

Georgia

DBL, Inc. v Carson, 2007 Ga. App. LEXIS 351 (Ga. Ct. App. Mar. 26, 2007).

DBL had purchased an upland lease from a corporation that had acquired the lease from the Carson family. DBL applied for the water bottom lease. The Carson family sought a declaratory judgment with regard to the water bottom lease. The trial court held that the Coastal Marshlands Protection Committee had illegally granted the water bottom lease and granted partial summary judgment in favor of the Carson family. On appeal, the court held that Georgia state law did allow a holder of an upland lease to apply for a water bottom lease; however, the upland lease could not be construed as an assignment of rights to the water bottom or as permission to apply for the lease of the water bottom from the CMPC. Furthermore, the court held that the laws allowing the CMPC to lease the water bottoms did not go into effect until 1972, the year that the family had entered into the original lease agreement. The court of appeals affirmed the trial court's ruling.

DC CIRCUIT

District of Columbia

American Wildlands v Kempthorne, 2007 U.S. Dist. LEXIS 20851 (D.D.C. Mar. 26, 2007).

American Wildlands and other environmental groups filed suit against the Secretary of the Interior in federal district court, claiming that the Fish and Wildlife Service acted arbitrarily in its refusal to list the westslope cutthroat trout as a threatened or endangered species under the Endangered Species Act (ESA). The court found that the FWS's decision was arbitrary, since it had included a hybridized fish in its assessment of geographic distribution. The FWS reached the same conclusion after conducting a new status review. On remand, the court found that the new status review was not arbitrary, because it had correctly applied the five factors of potential threat to the species, as required by the ESA. The court rejected the environmental groups' contention that the FWS had incorrectly included fish that were morphologically similar to the westslope trout, but displayed twenty percent hybridization with nonnative rainbow trout. The court granted the Secretary of the Interior's motion for summary judgment and dismissed the case with prejudice.

<https://ecf.dcd.uscourts.gov/cgi-bin/login.pl>

Defenders of Wildlife v Gutierrez, 2007 U.S. Dist. LEXIS 25161 (D.D.C. Apr. 5, 2007).

The National Marine Fisheries Service denied a formal petition brought by several environmental groups and an individual asking for emergency rulemaking for the North Atlantic right whale. The groups claimed that the denial resulted in violations of the Administrative Procedures Act and the Endangered Species Act, because the Coast Guard did not consult with NMFS before requiring commercial vessels to travel within six east coast traffic separation schemes inhabited by the right whales. The United States District Court for the District of Columbia ruled that the agencies' decision was not arbitrary and capricious, because it was engaged in permanent rule-making to protect the segment of the whales' critical habitat that intersected current TSSs. The court further held that the Coast Guard was not violating the ESA or the APA, because it was not responsible for designating the existing TSSs, but merely for codifying the TSSs established by the International Maritime Organization.

<https://ecf.dcd.uscourts.gov/cgi-bin/login.pl>

UNITED STATES COURT OF FEDERAL CLAIMS

Casitas Municipal Water District v United States, 2007 U.S. Claims LEXIS 95 (Ct. Cl. Mar. 29, 2007).

Pursuant to a license granted by a state board, the Casitas Municipal Water District operated a federal water project that supplied river water for irrigation, recreation, and various other uses. After species listed in the Endangered Species Act were discovered in the river, the federal government reduced the amount of water that the water district was allowed to divert. The water district claimed that the reduction constituted a taking and sought just compensation. The court agreed with the United States' contention that the claim had to be evaluated under the three-part Penn Central takings test, not evaluated as a "per se" taking. The court granted the United States' motion for partial summary judgment.

<http://www.uscfc.uscourts.gov/Opinions/Wiese/07/WIESE.CASITAS032907.pdf>

Klamath Irrigation District v United States, 2007 U.S. Claims LEXIS 71 (Ct. Cl. Mar. 16, 2007).

Agricultural landowners and water and irrigation districts alleged that the United States Bureau of Reclamation (Bureau) breached water distribution contracts when it made temporary reductions in water available to those groups for irrigation. The United States Court of Federal Claims found that the sovereign acts doctrine provided a complete defense to the breach of contract claims. The court granted the Bureau summary judgment and dismissed the plaintiff's claims with prejudice.

<http://www.uscfc.uscourts.gov/Opinions/Allegra/07/ALLEGRA.Klamathsovopd.pdf>

<http://www.olemiss.edu/orgs/SGLC/casealert.htm>