

October

15
2012

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the October 2012 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-12-03-10).

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SECOND CIRCUIT

New York

***Jeffrey v. Ryan*, 2012 N.Y. LEXIS 4684 (N.Y. Sup. Ct. Oct. 2, 2012).**

Recently, a New York state court struck down the City of Binghamton's ordinance placing a two-year moratorium on hydraulic fracturing. Several residents filed suit contesting the ordinance, alleging that the law was invalid because the city should have submitted the ordinance to the county planning board prior to enactment. The city argued that it issued the ordinance under its local police powers, not as a zoning law, and therefore was not required to submit it to the board. The court ruled that the city failed to meet the requirements of a properly enacted moratorium. For a moratorium enacted under the police power to be upheld, the city must show the moratorium is 1) in response to a dire necessity; 2) reasonably calculated to alleviate or prevent a crisis condition; and 3) that the city is presently taking steps to rectify the problem. The court found that there was no showing of dire need for the ordinance since the Department of Environmental Conservation has not yet issued natural gas drilling or exploration regulations. There was not a crisis condition, since the Department had not yet issued any permits. Finally, there was no evidence that the moratorium was enacted so that the city could take steps to study or alleviate any problems that may be caused by gas drilling, exploration, or storage.

http://decisions.courts.state.ny.us/fcas/fcas_docs/2012oct/300012542012100sciv.pdf »



THIRD CIRCUIT

***United States v. Maury*, 2012 U.S. App. LEXIS 19474 (3d Cir. 2012).**

The Third Circuit Court of Appeals upheld convictions of Atlantic States Cast Iron Pipe Company and several employees for conspiring to commit a host of environmental pollution and worker safety violations, attempting to cover up or impede federal investigation of those violations, and substantive violations of the Clean Water Act and the Clean Air Act. A jury found that the company and its workers had illegally pumped contaminated water into storm drains that lead into the Delaware River, burned 50-gallon paint drums in violation of the Clean Air Act, and attempted to cover up the work-related accident resulting in the death of an employee. On appeal, the defendants argued that the "invited error doctrine" did not apply to the defense's offered jury instruction of negligence and that conspiracy and negligence are mutually exclusive charges. The court rejected the arguments and upheld the convictions.

<http://www.ca3.uscourts.gov/opinarch/092305po.pdf> »



FOURTH CIRCUIT

North Carolina

***Southern Four Wheel Drive Assoc. v. United States Forest Serv.*, 2012 U.S. Dist. LEXIS 133639 (W.D.N.C. Sept. 18, 2012).**

A nonprofit recreation group contested the U.S. Forest Service's decision to prohibit recreational vehicular access to a trail system in the Tellico River watershed to recreational vehicles, such as four wheelers and other ATVs. The closure was an attempt to limit impacts to area waters and aquatic resources caused by sediment from the trail system. The U.S. District Court for the Western District of North Carolina upheld the Forest Service's decision finding that its decision was in compliance with the Clean Water Act, the National Forest Management Act, and the National Environmental Policy Act.

<https://ecf.nwd.uscourts.gov/doc1/13512027774> »



FIFTH CIRCUIT

***Robinson v. United States*, (In re Katrina Canal Breaches Litig.), 2012 U.S. App. LEXIS 20031 (5th Cir. 2012).**

The Fifth Circuit Court of Appeals dismissed a lawsuit against the U.S. Army Corps of Engineers for flood damage during Hurricane Katrina, overturning an opinion by the same panel of judges issued six months ago allowing the plaintiffs to proceed with the case. The plaintiffs alleged that the Corps' failure to timely armor the Mississippi River Gulf Outlet (MR-GO) aggravated the flooding effects of Hurricane Katrina. The court held that the discretionary-function exception to the Federal Tort Claims Act barred claims arising from the Corps design, construction, and maintenance of the MR-GO. Further, the court ruled that NEPA did not override the Corps' discretion.

<http://www.ca5.uscourts.gov/opinions/pub/10/10-30249-CV1.wpd.pdf> »



NINTH CIRCUIT

Grand Canyon Trust v. United States Bureau of Reclamation, 2012 U.S. App. LEXIS 19625 (9th Cir. Sept. 17, 2012).

A district court dismissed an environmental group's claim that the U.S. Bureau of Reclamation violated the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA) in its issuance of an annual operating plan (AOP) for the Glen Canyon Dam along the Colorado River. On appeal, the Ninth Circuit affirmed the decision in part. The court found that the Bureau did not violate the ESA by issuing each AOP without formally consulting with U.S. Fish and Wildlife Service, because the Bureau did not exercise discretion that inured to the benefit of the humpback chub, an endangered fish.

<http://www.ca9.uscourts.gov/datastore/opinions/2012/09/17/11-16326.pdf> »

Native Village of Kivalina v. ExxonMobil Corp., 2012 U.S. App. LEXIS 19870 (9th Cir. 2012).

The Ninth Circuit affirmed dismissal of a Native village's claim alleging that massive greenhouse gas emissions from several oil, energy, and utility companies had contributed to climate change, resulting in the disappearance of Arctic sea ice which, in turn, will result in erosion that will force the village to relocate. The court found that the Clean Air Act, and the Environmental Protection Agency action that the Act authorized, displaced appellants' common law nuisance claims.

<http://www.ca9.uscourts.gov/datastore/opinions/2012/09/25/09-17490.pdf> »

California

Voices for Rural Living v. El Dorado Irrigation District, 2012 Cal. App. LEXIS 1046 (Cal. App. 3d Dist. Oct. 4, 2012).

An environmental group filed suit to vacate an irrigation district's approval of an agreement to provide water to a casino on tribal land. In approving the agreement, the irrigation district had determined that it was not limited in the amount of water it could provide, since the project fit a small project exemption. The court disagreed, finding that the project's scope was large enough to be considered unusual and had the potential for environmental impact. The irrigation district had also mandated the irrigation district to prepare an environmental impact report. The court found that the district exceeded its authority in requiring the report and remanded the case, ordering the irrigation district to conduct further proceedings in accordance with CEQA.

<http://www.courts.ca.gov/opinions/documents/Co64280.pdf> »

