

Ocean and Coastal Case Alert

~ ~ February 15, 2010 ~ ~

If you are not able to view this properly, please go to <http://nsglc.olemiss.edu/casealert.htm>

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. MASGC 10-002-02

U.S. SUPREME COURT

South Carolina v. North Carolina, 2010 U.S. LEXIS 765 (Jan. 20, 2010).

South Carolina brought an original action in the U.S. Supreme Court against North Carolina seeking equitable apportionment of the Catawba River's waters. A Special Master recommended that motions to intervene by the Catawba River Water Supply Project, Duke Energy, and the city of Charlotte, N.C., be granted. The Supreme Court held that the water district and Duke Energy met the standard for intervention since the water district supplied water to counties in both states and Duke Energy operated dams which regulated flow of river water. The court ruled that Charlotte did not meet the standard for intervention since its interests were the same as other water users in its state. The case is scheduled for the end of March.

<http://www.supremecourtus.gov/opinions/09pdf/138Orig.pdf>

SECOND CIRCUIT

New York

Matter of Port of Oswego Auth. v. Grannis, 2010 NY Slip Op 766 (N.Y. App. Div. 3d Dep't Feb. 4, 2010).

A state appeals court rejected a challenge by shipping interests to New York's ballast water regulations, affirming a lower court ruling. The appellate court found adequate scientific evidence and expert opinion in the New York State Department of Environmental Conservation's (DEC) record to support the implementation of the standards. The court also ruled that the conditions did not violate the Commerce Clause of the U.S. Constitution.

<http://decisions.courts.state.ny.us/ad3/Decisions/2010/507661.pdf>

THIRD CIRCUIT

New Jersey

In re Riverview Dev., LLC, Waterfront Dev. Permit No. 0908-05-0004.3 WFD 060001, 2010 N.J. Super. LEXIS 11 (App.Div. Jan. 27, 2010)

Several townhouse residents sought to challenge the issuance of a waterfront development permit claiming the development would result in their view of a river and city skyline being obscured. The Commissioner of the New Jersey Department of Environmental Protection (DEP) denied the residents an Office of Administrative Law (OAL) hearing to contest the issue. The court found that the residents were not entitled to an OAL hearing, because their desire to maintain unimpeded scenic views was not a constitutionally-protected property interest under N.J.S.A. § 52:14B-3.3.

<http://lawlibrary.rutgers.edu/courts/appellate/a1843-08.opn.html>

FIFTH CIRCUIT

Brannan v. State, 2010 Tex. App. LEXIS 799 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

A Texas appellate court struck down a challenge from several beachfront property owners to the Texas Open Beaches Act. The homeowners filed the action seeking a declaratory judgment for their right to repair, maintain, and access their houses, as well as for damages for the loss of use of the property following Tropical Storm Frances. The appellate court held that evidence conclusively showed an easement by implied dedication on these properties, due to historic public use. The court noted that the Act requires the removal of obstructions, barriers, and encroachments whether or not they existed when the easement first applied. The court concluded that the enforcement of the easement was not a taking, because acts of nature, not the government, moved the line of vegetation landward of where the houses were located.

<http://www.1stcoa.courts.state.tx.us/opinions/pdfOpinion.asp?OpinionID=87500>

NINTH CIRCUIT

Fishermen's Finest Inc. v. Locke, 2010 U.S. App. LEXIS 1111 (9th Cir. Jan. 19, 2010).

In an action filed by a fishing vessel operator challenging the issuance of a final rule adopting Amendment 85 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area, the district court granted summary judgment in favor of the Secretary of the United States Department of Commerce. On appeal, the operator argued that the allocations of the Pacific cod total allowable catches in A85 violated National Standards 2 and 4 of the Magnuson-Stevens Fishery Conservation and Management Act and violated § 211(a) of the American Fisheries Act (AFA). The Ninth Circuit affirmed the district court's decision. The court found that the Secretary's actions were not arbitrary and capricious in violation of National Standard 4 because the allocations were rationally connected to the objectives set forth in the problem statement and resulted in a fair and equitable result. The court concluded that the inclusion of the 1995-1997 years and exclusion of the 2004-2005 years in calculating historical catch data did not violate National Standard 2, because the decision was not a failure to consider the best scientific information available. And, finally, the court found that the allocation did not violate the AFA because the decision was supported by rational and scientific reasons and did not create an adverse impact on non-AFA fishing vessels.

<http://www.ca9.uscourts.gov/datastore/opinions/2010/01/19/08-36024.pdf>

California

Save the Plastic Bag Coalition v. City of Manhattan Beach, 181 Cal. App. 4th 521 (Cal. App. 2d Dist. 2010).

The City of Manhattan Beach, California adopted an ordinance prohibiting the use of plastic bags by certain retailers. When passing the ordinance, the city issued a negative declaration regarding the need for an environmental impact report (EIR) under the California Environmental Quality Act, reasoning that the ordinance would not have a significant effect on the environment. A group of plastic bag manufacturers, "Save the Plastic Bag Coalition," challenged the ordinance claiming that the city should have prepared an EIR. The trial court subsequently vacated the ordinance, agreeing that the ordinance could increase the use of paper bags, which may have a significant negative impact on the environment and require an environmental impact report. The appellate court agreed that the ordinance might have a significant environmental impact and affirmed the judgment.

<http://www.courtinfo.ca.gov/opinions/documents/B215788.PDF>

ELEVENTH CIRCUIT

Aqua Log, Inc. v. Georgia, 2010 U.S. App. LEXIS 1934 (11th Cir. Jan. 28, 2010).

A salvage company filed two *in rem* admiralty actions seeking to salvage sunken logs from the bottom of Georgia's rivers. Georgia intervened, asserting ownership of the "deadhead" logs. The state cited a statutory scheme that grants the state title to all submerged cultural resources and the fact that Georgia DNR had authorized a survey to identify the presence of the deadhead logs. Georgia moved to dismiss the claims, arguing that the Eleventh Amendment to the U.S. Constitution prohibited the federal court from hearing the case. The court concluded that a state must exert physical control over the logs in order to claim sovereign immunity and preempt federal admiralty jurisdiction.

<http://www.ca11.uscourts.gov/opinions/ops/200816225.pdf>

MASGC 10-002-02

To subscribe to the email version, send an email to [Case Alert Subscription](#) with **Subscribe Alert** in the subject line.

To view archives of the Case Alert go to: [Case Alert Archives](#)