

Ocean and Coastal Case Alert

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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. NSGLC-10-03-05

SECOND CIRCUIT

New York

Trustees of the Freeholders of Commonalty & the Town of Southampton v Grannis, 2010 NY Slip Op 50840U (N.Y. Sup. Ct. May 3, 2010).

Several towns filed an action challenging New York regulations that required all anglers over the age of 16 obtain a recreational marine fishing license for a fee in order to "take fish from the waters of the marine and coastal district and to take migratory fish of the sea from all waters of the state." The plaintiffs sought a judgment declaring that any person engaged in recreational fishing in the territorial salt waters of the towns are exempt from the regulations, contending that various 17th Century Crown Patents provide them with sole and exclusive right over the fisheries in their respective jurisdictions. In a prior decision, the court imposed a stay to prevent the Department of Environmental Conservation from enforcing the requirement. The state filed a motion to dismiss the complaint, claiming that the towns do not have the right to regulate migratory marine fish. The court denied the motion and upheld the stay, ordering a trial to examine the issues.

http://www.courts.state.ny.us/reporter/pdfs/2010/2010_31117.pdf

THIRD CIRCUIT

Pennsylvania

Found. Coal Res. Corp. v. Dep't of Env'tl. Prot., 2010 Pa. Commw. LEXIS 209 (Pa. Commw. Ct. Apr. 27, 2010).

A coal company and other groups petitioned a decision of the Pennsylvania Environmental Hearing Board (EHB) that upheld the Department of Environmental Protection's issuance of seven oil and gas well permits to Penneco Oil Company, Inc. The permits would allow the company to drill through an area that would intersect the coal company's proposed mine. The coal company filed objections to the permit alleging that the wells would interfere with or endanger its planned coal mines and requested special conditions be imposed on the permits. The EHB held that the coal company did not have standing to object to the permits, because it did not meet the standard of being "projected and platted but not yet operating" since the company did not file a technically complete coal mining application. Further, the court affirmed the EHB ruling and held that DEP did not err by issuing the permits without special conditions, since there was evidence that the conditions were not necessary to protect the proposed coal mine operations.

http://www.courts.state.pa.us/OpPosting/Cwealth/out/619CD09_4-27-10.pdf

FOURTH CIRCUIT

Hollowell v. Va. Marine Res. Comm'n, 691 S.E.2d 500 (Ct. App. Va.. April 20, 2010).

A commercial waterman challenged crab dredging regulations promulgated by the Virginia Marine Resources Commission (VMRC). The trial court agreed that because the statutory scheme prohibited dredging of crabs for an indefinite period of time and the enabling legislation only authorized VMRC to prohibit such dredging one season at a time, the regulations must be amended. The waterman appealed, arguing that the court should have struck down the entire regulatory scheme and, further, that he was entitled to an award of attorney's fees. The court found the appeal with regard to the regulatory scheme moot since VMRC had already amended its regulations to reflect the lower court's decision. However, the court agreed that the waterman was entitled to attorney's fees under Va. Code Ann. § 2.2-4030 because he substantially prevailed in his challenge to the regulation.

<http://www.courts.state.va.us/opinions/opncavwp/0948091.pdf>

NINTH CIRCUIT

United States v. Bell, 2010 U.S. App. LEXIS 8148 (9th Cir. Apr. 20, 2010).

The U.S. filed suit against the Truckee-Carson Irrigation District (TCID) alleging a violation of the federal government's water rights. The U.S. claimed that TCID had diverted excess water and should repay this water to the Pyramid Lake Paiute Tribe with interest. The district court found that TCID had diverted more than 200,000 acre-feet of excess water and ordered it to repay the Tribe in water, along with post-judgment interest in water. On appeal, the Ninth Circuit agreed that TCID was liable for the excess water diversion; however, the court questioned the lower court's requirement that TCID pay interest in water rather than money. The appellate court remanded the case to the district court to explain this portion of the award.

<http://www.ca9.uscourts.gov/datastore/opinions/2010/04/20/05-16154.pdf>

California

Communities for a Better Environment v. City of Richmond, 2010 Cal. App. LEXIS 571 (Cal. App. 1st Dist. Apr. 26, 2010).

After a city issued permits for a project to replace and upgrade oil refinery facilities, several environmental groups filed a petition for a writ of mandate against the city and the oil company. The plaintiffs argued that the environmental review of the project was flawed because the Environmental Impact Report (EIR) failed to disclose, analyze, and mitigate all potential environmental impacts. The trial court agreed and granted the writ, holding that the EIR violated the California Environmental Quality Act (CEQA) based on its failure to provide an adequate project description, its failure to consider the whole project, and its failure to define mitigation measures for greenhouse gas emissions. Chevron appealed the decision. The appellate court affirmed in part and reversed in part. The court agreed that the EIR was inadequate because the project description was inconsistent and obscure as to heavier crude oil, lacked a proper environmental baseline, and improperly deferred greenhouse gas mitigation. Further, the court found that the mitigation measures were formulated after the project was approved, which undermined the goals of CEQA. However, the court reversed the trial court's judgment that the project contained an improper segmentation of a larger project, since the hydrogen pipeline in question was not part of the project.

<http://www.courtinfo.ca.gov/opinions/documents/A125618.PDF>

Washington

Citizens for Rational Shoreline Planning v. Whatcom County, 2010 Wash. App. LEXIS 985 (Wash. Ct. App. May 10, 2010).

Citizens for Rational Shoreline Planning alleged that several provisions in a Whatcom County's newly adopted shoreline master program (SMP) violated Wash. Rev. Code § 82.02.020, which prohibits local governments from imposing direct or indirect taxes, fees, or charges on development. The group argued that the SMP indirectly taxed development by requiring buffers from shorelines and restricting building areas on nonconforming lots. The court dismissed the complaint, noting that the purpose of § 82.02.020 is to prevent local governments from imposing general societal costs of development on developers; therefore, § 82.02.020 does not apply to SMPs.

<http://bit.ly/a7hu2g>

Wild Fish Conservancy v. United States EPA, 2010 U.S. Dist. LEXIS 41838 (W.D. Wash. Apr. 28, 2010).

An environmental group filed suit arguing that the Environmental Protection Agency (EPA) and the National Marine Fisheries Service (NMFS) violated the Clean Water Act (CWA) and the Endangered Species Act (ESA) by approving Washington State regulations which exempt Puget Sound salmon farms from general sediment-management standards. Before approving the salmon farm standards, the EPA and NMFS engaged in informal consultation and concluded that the regulations were unlikely to adversely affect endangered and threatened species or their critical habitat. The plaintiffs claimed that the ESA required the agencies to engage in formal consultation. The court set aside the EPA's approval of the standards, finding that the agencies violated the ESA by failing to use the best data available in determining that formal consultation was unnecessary.

<https://ecf.wawd.uscourts.gov/doc1/19713656714>

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