

Ocean and Coastal Case Alert

~ ~ July 15, 2011 ~ ~

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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-11-03-07

U.S. SUPREME COURT

Am. Elec. Power v. Conn., 564 U.S. --- (2011).

Eight states, three private land trusts, and New York City filed two separate federal common law public nuisance claims in 2004 against five electric power companies, alleging that the companies' carbon dioxide emissions contributed to global warming and constituted a nuisance under tort law. The U.S. Supreme Court held that the Clean Air Act and the Environmental Protection Agency's actions under the Act displace any federal common law nuisance claim for interstate air pollution. The Court's decision, however, leaves the plaintiffs the option of petitioning the EPA for an administrative rulemaking as authorized by the Administrative Procedure Act.

<http://www.supremecourt.gov/opinions/10pdf/10-174.pdf>

FIRST CIRCUIT

Massachusetts

City of New Bedford v. Locke, 2011 U.S. Dist. LEXIS 70895 (D. Mass. June 30, 2011).

Several plaintiffs filed suit challenging Amendment 16 to the Northeast Multispecies Fishery Management Plan, claiming that the Amendment violated the Magnuson-Stevens Act and the National Environmental Policy Act. The Amendment establishes science-based annual catch limits for cod, haddock, flounder, and other groundfish. The district court found that the Amendment violated neither act and denied the plaintiffs' motion for summary judgment, upholding the regulations.

<http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=zobel/pdf/city%20of%20new%20bedford-%20v%20locke%20june%202011.pdf>

THIRD CIRCUIT

New Jersey

In re N.J.A.C. 7:15-5.24 & N.J.A.C. 7:15-5.25(e), 2011 N.J. Super. LEXIS 135 (App.Div. June 29, 2011).

A New Jersey Appellate court upheld the validity of two provisions of the state Department of Environmental Protection's Water Quality Management Rules. The two provisions prohibited the extension of sewage lines in environmentally sensitive areas and set a minimum nitrate level for septic system discharge. A developer had claimed that the provisions were beyond the Department's authority and resulted in non-water-related regulation. The court ruled that the DEP was authorized to set water quality standards and to consider related environmental, social, and land use policies when doing so. The court found that the agency's decision represented a valid and reasonable exercise of the DEP's statutory authority.

FOURTH CIRCUIT

South Carolina

Risher v. S.C. Dep't of Health & Envtl. Control, 2011 S.C. LEXIS 199 (S.C. June 20, 2011).

The Supreme Court of South Carolina upheld an Administrative Law Court's decision approving a property owner's critical area permit application to construct a bridge over a portion of wetlands on his property. The court agreed that the owner's lot was exempt from South Carolina Coastal Island Regulation since it was part of an island exempt from the state definition of coastal island in S.C. Code Ann. Regs. 30-12. The court concluded that the finding that the lot was a part of an island, based on the tidal datum introduced at trial, was reasonable and supported by substantial evidence.

<http://www.scalc.net/decisions.aspx?q=4&id=11392>

Virginia

Historic Green Springs, Inc. v. Louisa County Water Auth., 2011 U.S. Dist. LEXIS 70515 (W.D. Va. June 30, 2011).

A U.S. district court has ruled that a land trust holding a conservation easement has standing to sue under the Clean Water Act, finding that the alleged injury to the property rights of the land trust provide a basis for standing. The court granted the Water Authority's motion to dismiss, since the land trust and land owner failed to provide the required notice for the alleged violations; however, the court gave the plaintiffs ten days to file a motion for leave to file a second amended complaint.

<http://www.vawd.uscourts.gov/OPINIONS/MOON/3.09CV79HGSIV.LOUISA%28GRANTMTDCANAMEND%29.PDF>

NINTH CIRCUIT

West Coast Seafood Processors Ass'n v. NRDC, 2011 U.S. App. LEXIS 13664 (9th Cir. July 6, 2011).

The Ninth Circuit Court of Appeals dismissed a seafood processor's appeal of the denial of its motion to intervene in a case challenging the National Marine Fisheries Service's program to preserve groundfish species off the coast of California, Oregon, and Washington. The court found that the appeal was moot, since the underlying litigation had ended, and the appellate court could not grant the processor any effective relief by allowing it to intervene now. The court also found that the "capable of repetition, yet evading review" exception did not apply.

http://www.ca9.uscourts.gov/opinions/view_subpage.php?pk_id=0000011552

ELEVENTH CIRCUIT

Florida v. United States Army Corps Eng'r (In re MDL-1824 Tri-State Water Rights Litig.), 2011 U.S. App. LEXIS 13183 (11th Cir. June 28, 2011).

In the latest development in the "Tri-State Water Wars," a case regarding the U.S. Army Corps of Engineer's denial of Georgia's water-supply request, the Eleventh Circuit found that the denial was improper. The court found that the Corps erred in concluding that water supply was not an authorized purpose under the Rivers and Harbors Act of 1946. The case will be remanded to the Corps for reconsideration.

<http://www.ca11.uscourts.gov/opinions/ops/200914657.pdf>

D.C. CIRCUIT

Polar Bear Endangered Species Act Listing v. Salazar, 2011 U.S. Dist. LEXIS 70172 (D.D.C. June 30, 2011).

The United States District Court for the District of Columbia upheld the Fish and Wildlife Service's listing of the polar bear as a threatened species under the Endangered Species Act. Several claimants, including the state of Alaska, Safari Club international, hunting groups, and environmental groups challenged the listing. The state and others claimed that the FWS decision was arbitrary and capricious and an abuse of agency discretion, while the environmental groups claimed that the polar bears should have received more protection. The court found that the agency's decision to list the species as threatened was rational.

<https://ecf.dcd.uscourts.gov/doc1/04513463236>

FEDERAL CIRCUIT

Mildenberger v. U.S., 2011 U.S. App. LEXIS 13561 (Fed. Cir. June 30, 2011).

The United States Court of Appeals for the Federal Circuit affirmed the dismissal of claims seeking compensation for the alleged taking of riparian and upland property rights. The plaintiffs consisted of twenty-two individuals who owned property along the St. Lucie River and land abutting the St. Lucie Canal. The plaintiffs sought fifty million dollars for the "intentional and repeated discharge of pollutants" into the St. Lucie River and estuary system. The court held that the takings claims were barred by six-year statute of limitations in 28 U.S.C. § 2501 and the plaintiffs failed to establish that Florida law recognized compensable property interests in riparian rights.

<http://www.cafc.uscourts.gov/images/stories/opinions-orders/10-5084.pdf>

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