

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-11-03-09

FIRST CIRCUIT

Maine

McGarvey v. Whittredge, No. WAS-10-83, 2011 WL 3715696 (Me. Aug. 25, 2011).

In a recent decision, the Maine Supreme Judicial Court examined the public use of intertidal lands on the Maine coast. The court affirmed a summary judgment holding that the public has a right to walk across intertidal lands to reach the ocean for purposes of scuba diving. The decision extends public trust rights in Maine to include the public's right to walk across intertidal lands for purposes of scuba diving.

http://www.courts.state.me.us/court_info/opinions/2011%20documents/11me97mc.pdf

Rhode Island

Power Test Realty Co., L.P. v. Sullivan, 2011 R.I. Super. LEXIS 118 (R.I. Super. Ct. 2011).

Despite the absence of causation, a property owner was held strictly liable when his pipes leached oil into the groundwater of the state of Rhode Island. The court found that the Rhode Island Oil Pollution Control Act (OPCA) did not require causation, only that the person "discharge, cause to be discharged, or permit the discharge." The Superior Court of Rhode Island affirmed the Rhode Island Department of Environmental Management's decision sustaining Notice of Violation issued against the property owner for violation of the OPCA.

<http://www.courts.ri.gov/Courts/SuperiorCourt/DecisionsOrders/decisions/10-0404.pdf>

FOURTH CIRCUIT

Maryland

Assateague Coastkeeper v. Md. Dep't of the Env't, 2011 Md. App. LEXIS 120 (Md. Ct. Spec. App. Sept. 6, 2011).

The Court of Special Appeals of Maryland held that the Maryland Department of the Environment's general permit on animal feeding operations' accumulation of poultry waste did not violate state or federal laws. The court noted that although pollutants were discharged, because the permit's net effect was to reduce pollutants, there was not a violation of federal regulations. The court affirmed the trial court's judgment.

<http://www.mdcourts.gov/opinions/cosa/2011/471s10.pdf>

SEVENTH CIRCUIT

Michigan v. United States Army Corps of Eng'rs, 2011 U.S. App. LEXIS 17714 (7th Cir. Aug. 24, 2011).

The Seventh Circuit Court of Appeals denied requests by the attorneys general of Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin for an order requiring the U. S. Army Corps of Engineers to take measures to halt the migration of Asian carp into the Great Lakes. The decision upheld a 2010 district court ruling rejecting the states' motion for a preliminary injunction. Although the court noted that an injunction requiring the closure of the locks and other steps could reduce the risk that invasive carp would gain a foothold in the Great Lakes, the measures would impose substantial costs on the defendants and therefore the harms in granting the injunction outweigh the states' request for relief.

<http://www.ca7.uscourts.gov/tmp/BB0XFUI0.pdf>

NINTH CIRCUIT

Ctr. for Env'tl. Law & Policy v. United States Bureau of Reclamation, 2011 U.S. App. LEXIS 17221 (9th Cir. Wash. Aug. 19, 2011).

The Ninth Circuit held that the proposed incremental drawdown of water from a lake did not violate the National Environmental Policy Act. The case involved the diversion of a total of 82,500 acre-feet of water per year from a lake. The court affirmed the district court's decision, citing, among other reasons, the fact that the agency understood and accounted for the cumulative effects of past projects and that the agency clearly retained the authority to change course or to alter the plan it was considering implementing even after receiving permits.

<http://www.ca9.uscourts.gov/datastore/opinions/2011/08/19/10-35646.pdf>

California

Voices of the Wetlands v. State Water Resources Control Bd., 52 Cal. 4th 499 (Cal. 2011).

An environmental organization challenged the issuance of a National Pollutant Discharge Elimination System (NPDES) permit for a cooling water intake system at the mouth of Elkhorn Slough, claiming the plant did not use the "best technology available to minimize adverse environmental impact" as required by the Clean Water Act. After the trial court denied the petition, the group appealed. The California Supreme Court ruled that the regional water board did not err by basing its best technology available determination on a finding that the costs of alternative cooling technologies for a power plant were wholly disproportionate to anticipated environmental benefits.

<http://www.courtinfo.ca.gov/opinions/documents/S160211.PDF>

ELEVENTH CIRCUIT

City of Riviera Beach v. Unnamed Vessel, 2011 U.S. App. LEXIS 17232 (11th Cir. Aug. 19, 2011).

The U.S. Court of Appeals for the Eleventh Circuit found that an undocumented houseboat was a “vessel” under for purposes of admiralty jurisdiction. The case arose from a municipal marina’s efforts to enforce its rules. The court found that because the houseboat was capable of transportation over water by means of tow, it was not error to find federal admiralty jurisdiction over the vessel.

<http://www.ca11.uscourts.gov/opinions/ops/201010695.pdf>

Florida

St. Johns River Water Mgmt. Dist. v. Molica, 2011 Fla. App. LEXIS 13029 (Fla. Dist. Ct. App. 5th Dist. Aug. 19, 2011).

The Court of Appeal of Florida, Fifth District, reversed a judgment that found the St. Johns River Water Management District lacked the authority to take administrative action against owners for the clearing, dredging, and filling wetlands on three and one-half acres of their land. Although the court conceded that the legislative scheme “is about as clear as ditch water,” the court held that the water district had the authority to create an administrative rule that required a permit in order to fill a wetland. In making its decision, the court cited the fact that the legislature did intend to give, and had given, the water district the authority under ch. 373, part IV, Fla. Stat. to regulate dredging and filling of wetlands.

<http://www.5dca.org/Opinions/Opin2011/081511/5D09-2460.op.pdf>

FEDERAL CLAIMS

Lost Tree Vill. Corp. v. United States, 2011 U.S. Claims LEXIS 1794 (Fed. Cl. Aug. 19, 2011).

The United States Court of Federal Claims held that the denial of a wetlands fill permit did not give rise to a taking under the Fifth Amendment. Instead, the court ruled that the denial resulted in a noncompensable diminution in value of owner’s property. The court concluded that diminution in value of 58.4 percent due to regulatory action was insufficient to give rise to a takings claim, despite the weight of other factors the court considered.

<http://www.uscfc.uscourts.gov/sites/default/files/LETTOW.LOSTTREE082611.pdf>

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