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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the May 2019 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-19-03-05).

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THIRD CIRCUIT

New Jersey

Matter of Lacey Twp. CAFRA Permit, 2019 WL 1869027 (N.J. Super. Ct. App. Div. Apr. 26, 2019).

The New Jersey Department of Environmental Protection (DEP) issued a Coastal Area Facility Review Act (CAFRA) permit to the Township of Lacey to rebuild a waterfront park destroyed by Superstorm Sandy. An environmental group appealed the permit approval, primarily objecting to the installation of a gabion wall instead of a living shoreline. The group claimed that the project 1) negatively impacted a diamondback terrapin nesting habitat, as well as habitat for endangered or threatened species in the area; 2) violated the public trust doctrine; and 3) deprived the plaintiff of “due process” by delaying the publication notice of the permit’s approval. The court concluded that the DEP’s decision to issue the CAFRA permit was not arbitrary, capricious, nor unreasonable. The court agreed with the agency’s findings that a living shoreline was not feasible or practicable. Further, the agency made appropriate mitigation measures for the terrapin habitat, and the project did not impact endangered or threatened species habitat. Finally, the gabion wall did not infringe on public access to the water.

[Opinion Here](#)

FOURTH CIRCUIT

Maryland

Montgomery Cty. v. Complete Lawn Care, Inc., 2019 WL 1950756 (Md. Ct. Spec. App. May 2, 2019).

A Maryland court recently ruled that Maryland state law did not preempt a county ordinance concerning pesticides. County residents, local businesses, and pesticide companies filed suit against Montgomery County claiming that its ordinance restricting the use of certain pesticides was preempted by state and federal law. The county circuit court

ruled in favor of the plaintiffs. On appeal, the court concluded that the ordinance was not impliedly preempted or in conflict with state or federal law. The court reversed and remanded the case back to the circuit court.

[Opinion Here](#)

FIFTH CIRCUIT

Texas

Chambers-Liberty Ctys. Navigation Dist. v. State, 2019 WL 2063575 (Tex. May 10, 2019).

The State of Texas sued the Chambers–Liberty Counties Navigation District (District) and a company that leased submerged land in and around Galveston Bay for oyster production. The state sought to invalidate the lease, arguing that under state law, the Texas Parks and Wildlife Department alone may authorize oyster cultivation in the area. The state also sought monetary relief. An appellate court allowed both claims to proceed, and the District and company appealed. The Texas Supreme Court concluded that the District was immune from the claim for monetary relief; however, the claim that the District exceeded its authority by entering into the oyster lease may proceed.

[Opinion Here](#)



SIXTH CIRCUIT

Michigan

Burgess v. United States, 2019 WL 1746114 (E.D. Mich. Apr. 18, 2019).

Residents of Flint, Michigan brought a Federal Tort Claims Act (FTCA) regarding the U.S. Environmental Protection Agency's (EPA) response to the city's lead contamination crisis. The EPA moved to dismiss. The court ruled that the residents' claims were not barred by the FTCA's discretionary function exception. The court also held that the plaintiffs' claims sufficiently pleaded state law liability and could therefore proceed under the FTCA.

[Opinion Here](#)



EIGHTH CIRCUIT

Minnesota

White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res., 2019 WL 1757999

(Minn. Ct. App. Apr. 22, 2019).

A Minnesota appellate court held that the public trust doctrine did not apply to groundwater that was a source for White Bear Lake. A nonprofit claimed that permits issued by the Minnesota Department of Natural Resources (DNR) had caused the lake's water levels to drop in violation of the Minnesota Environmental Rights Act (MERA). A homeowners association intervened and alleged that the DNR's actions resulted in a violation of the public trust doctrine. The trial court ruled in favor of the plaintiffs. On appeal, the court reversed. The court found that the public trust doctrine did not apply to groundwater near the lake.

[Opinion Here](#)



NINTH CIRCUIT

Washington

Wild Fish Conservancy v. Cooke Aquaculture Pac. LLC, 2019 WL 1880035 (W.D. Wash. Apr. 26, 2019).

Cooke Aquaculture has Atlantic salmon net pen facilities located throughout Puget Sound. In 2017, one of its pens collapsed, releasing thousands of Atlantic salmon into the sound. An environmental group filed a complaint against Cook Aquaculture alleging several Clean Water Act violations for the company's remaining pens. The group claimed that the company violated its National Pollutant Discharge Elimination System (NPDES) permits. Cooke Aquaculture alleged that the plaintiff's notice letter was insufficient. The court found that the plaintiffs provided sufficient notice of four of its five claims. The court denied summary judgment for one claim; however, it found that the aquaculture company violated four conditions of its permits and granted summary judgment on those claims.

[Opinion Here](#)



ELEVENTH CIRCUIT

Alabama

Black Warrior River-keeper, Inc. v. Drummond Company, Inc., 2019 WL 2011396 (N.D. Ala. May 7, 2019).

A federal district court granted partial summary judgment in a case alleging that a mining company violated the Clean Water Act (CWA) by illegally discharging mining waste into the Locust Fork of the Black Warrior River. An environmental group brought the suit, claiming that discharges from a pile of mining waste left at an abandoned mine violated both the CWA and Resource Conservation and Recovery Act. The court granted summary judgment to the plaintiffs on several CWA claims; however, it noted that questions remained. The case was stayed pending the U.S. Supreme Court ruling in *Hawai'i Wildlife Fund v. Cty. of Maui, Hawai'i*.

[Opinion Here](#)



DC CIRCUIT

District of Columbia

Conservation Law Found. v. Ross, 2019 WL 1598428 (D.D.C. Apr. 15, 2019).

An environmental group brought suit claiming that the National Marine Fisheries Service's (NMFS) approval of an amended fishery management plan for the Gulf of Maine that opened up a large area to commercial and recreational fishing fleets violated the Magnuson-Stevens Fishery Conservation and Management Act and the National Environmental Policy Act. Both parties moved for summary judgment. The court held that the NMFS's approval of the amended plan was not arbitrary and capricious.

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