

is a monthly listserv highlighting recent court decisions impacting ocean and coastal resource management. Each Case Alert will briefly summarize the cases and provide a link to the opinion. 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, just send an email to waurene@olemiss.edu with "Case Alert" on the subject line. MASGC 06-003-06

~ ~ June 16, 2006 ~ ~

FIRST CIRCUIT

Quincy Commerce Center v. Maritime Administration, 2006 U.S. App. LEXIS 14186 (1st Cir. June 9, 2006).

Quincy Commerce Center filed suit against the Maritime Administration (MARAD) alleging violations of the Merchant Marine Acts (MMA) and the Coastal Zone Management Act for actions associated with the auctioning off of a defunct shipyard. Quincy argued that, in awarding the shipyard's assets to the highest bidders, MARAD had violated its statutory duty under the MMA to foster a merchant marine since MARAD knew, or should have known, that Quincy intended to use the assets for shipbuilding and repair and the highest bidder did not. The First Circuit held that because Quincy did not inform MARAD that, under the circumstances, the MMA required it to be treated as a preferred bidder, or that the CZMA required a consistency determination, its claims were precluded. The court found that forfeiture of the claims was appropriate because third parties had relied on the presumed legitimacy and finality of the auction.

Massachusetts

Friends & Fishers of the Edgartown Great Pond, Inc. v. Department of Environmental Protection, 2006 Mass. LEXIS 325 (Mass. June 1, 2006).

A Department of Environmental Protection Commissioner had granted a groundwater discharge permit to a town upon concluding that the permit complied with various statutes and regulations. The Friends & Fishers of the Edgartown Great Pond claimed that the commissioner did not apply the correct legal standards and excluded relevant evidence relating to limiting additional sources of nitrogen. The Massachusetts Supreme Court concluded the correct standards were applied and that the discharge permit comported with the department's statutory mandate to protect the environment.

SECOND CIRCUIT

Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 2006 U.S. App. LEXIS 14629 (2nd Cir. June 13, 2006).

The Catskill Mountains Chapter of Trout Unlimited sued the City of New York alleging that the City's use of the Shandaken Tunnel as part of its water management system for the delivery of drinking water without a permit violated the Clean Water Act. In an October 21, 2001 opinion, the Second Circuit held that the CWA requirements apply to the Tunnel discharges. On remand, the district court assessed a \$5,749,000 civil penalty against the City, which appealed. The Second Circuit affirmed, except as to the total amount of the penalty which it determined was the result of a calculation error.

New York

United Boatmen v. Gutierrez, 2006 U.S. Dist. LEXIS 31131 (E.D. N.Y. May 17, 2006).

Several commercial and recreational fishermen filed suit challenging a regulation that controlled the amount of fluke that could be taken from waters off the eastern coast of the United States during the 2006 fishing season. The district court concluded that the contested rule for the 2006 fluke quota was properly promulgated and granted summary judgment in favor of the government.

FIFTH CIRCUIT

Gulf Restoration Network v. U.S. Department of Transportation, 2006 U.S. App. LEXIS 14172 (5th Cir. June 8, 2006).

Environmental groups and a boating association sought review of a decision by the Secretary of the U.S. Department of Transportation granting a license for a liquefied natural gas facility in the Gulf of Mexico under the Deepwater Port Act. Petitioners argued that the Environmental Impact Statement prepared by the Secretary as required by the National Environmental Policy Act was deficient and that the Secretary violated the DPA by failing to require the facility to use a closed loop system, which they asserted was the best available technology to prevent adverse impact on the marine environment. The Fifth Circuit held that the Secretary was not arbitrary or capricious by including only two of the five proposed LNG plants in the EIS and that the Secretary's cost-analysis of the technology complied with Congressional intent. The court denied the petition for review.

Louisiana

Alleman v. Omni Energy Services Corporation, 2006 U.S. Dist. LEXIS 36711 (E.D. La. June 7, 2006).

An accident occurred when a helicopter attempted to land on an oil platform in the Gulf of Mexico. The owner of the helicopter argued that the contracts between it and the platform owner were governed by general maritime law. The district court determined that state law applied to the contracts through the Outer Continental Shelf Lands Act because the contracts were non-maritime in nature and the Louisiana Oilfield Anti-Indemnity Act (LOAIA) did not conflict with federal law. The court denied the parties' motions for summary judgment, however, because it could not be determined whether the LOAIA barred the helicopter owner's claims since there had been no judicial determination of fault.

SIXTH CIRCUIT

Michigan

Civic Association of Hammond Lake Estates v. Hammond Lakes Estates, 2006 Mich. App. LEXIS 1678 (Ct. App. Mich. May 18, 2006).

A homeowners' association filed a civil action against a property development subdivision and various lot owners, seeking injunctive relief to enforce deed restrictions barring the use of motorboats on a lake in the development. The Michigan Court of Appeals found that the circuit court properly granted summary judgment to the homeowners' association as the deed restrictions were binding on owners whose deeds lacked the restriction through the negative reciprocal easement doctrine. The subdivision was part of a comprehensive plan and the restriction applied to all lot owners in the development.

NINTH CIRCUIT

Center for Biological Diversity v. U.S. Fish and Wildlife Service, 2006 U.S. App. LEXIS 13794 (9th Cir. June 5, 2006).

The Center for Biological Diversity sued the Fish and Wildlife Service (FWS) claiming it violated the Endangered Species Act by determining that the renewal of a sand and gravel mining contract would not jeopardize the unarmored threespine stickleback. The stickleback, a freshwater fish, was listed as an endangered species in 1970. Although the FWS issued a proposed rule designating three stream zones as critical habitat, it never completed the designation. The Ninth Circuit affirmed the district court and found that the proposed designation of critical habitat for an endangered species listed prior to the 1982 Amendments did not create a mandatory duty to make the designation. The court deferred to the FWS and held that the agency was not required to ensure compliance with federal and state law before issuing an Incidental Take Statement for the mining operation.

Alaska

City of St. Paul v. Alaska, 2006 Alas. LEXIS 48 (Alaska April 21, 2006).

Central Delta Water Agency filed suit against the Bureau of Reclamation asserting violations of the Central Valley Improvement Act. Central Delta claimed the Bureau was violating the Act by operating the Central Valley Project in a manner that would violate the Vernalis Salinity Standard in the future. The Ninth Circuit found that the water agencies failed to show that the Bureau would violate the state standard in the foreseeable future. The court determined that the Bureau had complied with the standard for more than a decade, and although the project's current operating plan projected some future violations, the Bureau deviated from the plan when necessary to meet its various obligations.

California

Laine v. U.S., 2006 U.S. Dist. LEXIS 34765 (N.D. Cal. May 19, 2006).

Laine, a commercial fisherman, brought an action against the United States under the Federal Tort Claims Act (FTCA) alleging that several federal agencies negligently released contaminated water into the San Francisco Bay, which had a negative effect on the wildlife and his livelihood. The District Court for the Northern District of California framed the issue as follows: Could the fisherman hold the U.S. liable for negligence under the FTCA where the alleged injury was purely economic and the fisherman had suffered no property damage or physical injury? The court held that his economic injuries were not cognizable as injury to property under the FTCA and granted the government's motion to dismiss.

D.C. CIRCUIT

Humane Society of the United States v. Department of Commerce, 2006 U.S. Dist. LEXIS 34006 (D. D.C. May 26, 2006).

The Humane Society challenged the issuance and amendment of permits that authorized research on threatened and endangered populations of Steller sea lions. The District Court for the D.C. Circuit held that the National Marine Fisheries Service (NMFS) failed to take a "hard look" at the relevant environmental issues. The court found that a relationship existed between potential research-related deaths and the western stock's potential biological removal level, a substantial controversy regarding the research's effects, unknown risks and uncertain effects stemming from the approved activities, and the possibility of a cumulatively significant impact on the environment. Because significant environmental impacts might result from the issuance of the contested permits, an Environmental Impact Statement (EIS) was required before the action was taken. The court vacated the permits and remanded the case to NMFS for preparation of an EIS.

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