Ocean and Coastal Case Alert

~ ~ February 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-11-03-02

FIRST CIRCUIT

Rhode Island

DeCaporale v. Zoning Bd. of Review of Narragansett, 2011 R.I. Super. LEXIS 14 (R.I. Super. Ct. Feb. 7, 2011).
A Rhode Island appellate court upheld a zoning board decision denying a request by property owners for a special use permit and dimensional variance. The zoning board had denied the property owners permission to construct a single-family residence on their property, which was a substandard lot within a coastal and freshwater wetlands overlay district. The board determined that the construction would be a detriment to the property's wetlands and contrary to the town's comprehensive plan. On appeal, the court found that the board's decision contained the necessary factual determination, it applied the proper legal principles, and it outlined the evidence used in reaching a decision.
http://www.courts.ri.gov/superior/pdf/08-0934.pdf

SECOND CIRCUIT

Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n, 2011 U.S. App. LEXIS 2645 (2d Cir. Feb. 10, 2011) .
The United States Court of Appeals for the Second Circuit ruled that Connecticut's state laws and regulations imposing permit requirements on land use were not preempted by federal law. An airport challenged the laws, seeking declaratory and injunctive relief to establish and protect its right to cut trees on its property, part of which consists of protected wetlands. The court found that although Congress intended to occupy the entire field of aviation safety, the Connecticut Inland Wetlands and Water Courses Act, the Connecticut Environmental Protection Act, as well as municipal regulations, were not expressly nor impliedly preempted by federal law. Therefore, the court ruled that the airport was required to follow state procedures.
http://bit.ly/fs6AVF

THIRD CIRCUIT

In re Chevron Corp., 2011 U.S. App. LEXIS 2112 (3d Cir. Feb. 3, 2011).
In a $113 billion dollar lawsuit regarding environmental pollution in the Amazon, the United States Court of Appeals for the Third Circuit affirmed in part and vacated in part the district court's rulings regarding the company's application to engage in discovery. The appellate court ruled that Chevron was entitled to engage in discovery of materials transmitted from a consultant to a court-appointed damages expert, reasoning that work-product protection and the attorney-client privilege had been waived. However, the court vacated the district court's decision with regard to a crime-fraud exception.
http://www.ca3.uscourts.gov/opinarch/102815p.pdf

FOURTH CIRCUIT

Precon Dev. Corp. v. United States Army Corps of Eng'rs, 2011 U.S. App. LEXIS 1475 (4th Cir. Va. Jan. 25, 2011).
The United States Court of Appeals for the Fourth Circuit reversed a district court decision upholding the U.S. Army Corps of Engineers' jurisdiction over 4.8 acres of wetlands under the Clean Water Act. The court used Justice Kennedy's significant nexus test from *Rapanos* to determine whether the Corps has jurisdiction over the wetlands. The court ruled that the Corps' record did not contain enough physical evidence to show that a significant nexus existed between the wetlands and a navigable river. The court remanded the case to the Corps.
http://pacer.ca4.uscourts.gov/opinion.pdf/092239.P.pdf

NINTH CIRCUIT

Barnum Timber Co. v. United States EPA, 2011 U.S. App. LEXIS 2123 (9th Cir. Cal. Feb. 3, 2011).
The United States Court of Appeals for the Ninth Circuit reversed the dismissal of a timber company's complaint challenging the Environmental Protection Agency's retention of a watershed as an impaired water body. The court ruled that the company's amended complaint demonstrated that the company had standing as a landowner whose property values were adversely impacted. The company was able to show that it suffered a reduction in the economic value of its property in the Redwood Creek watershed by submitting testimony from forestry experts on property value reductions. The company was also able to establish a causal connection between its injury-in-fact and the agency's declaration that the creek was an impaired water body. Finally, the court ruled that court could redress the injury through a declaratory judgment and injunctive relief. The case was remanded to the district court.
http://www.ca9.uscourts.gov/datastore/opinions/2011/02/03/08-17715.pdf

California

Ecological Rights Foundation v. Pacific Gas and Elec. Co., 2011 WL 445091 (N.D.Cal. Feb. 4, 2011).
The United States District Court for the Northern District of California ruled that an environmental group, Ecological Rights Foundation, may proceed with its Clean Water Act claim regarding Pacific Gas and Electric Company's unpermitted stormwater discharges; however, the court dismissed the plaintiff's Resource Conservation and Recovery Act claim. The court rejected the company's claim that its discharges were exempt from NPDES permitting requirements, finding that the company failed to show that its service yards qualified for an exemption for nonindustrial uses. The court rejected the RCRA claim, finding no basis for allegations that the company is a generator of solid waste.
https://ecf.cand.uscourts.gov/doc1/03517690812

Hawaii

Turtle Island Restoration Network v. United States, 2011 U.S. Dist. LEXIS 9778 (D. Haw. Jan. 31, 2011).

Environmental groups filed a lawsuit challenging the National Marine Fisheries Service's (NMFS) Final Rule implementing Amendment 18 to the Fishery Management Plan increasing the annual number of allowable incidental interactions that occur between the Hawaii longline fishery and loggerhead sea turtles. The lawsuit also challenged a Biological Opinion prepared by NMFS to assess the impact of the Final Rule on threatened and endangered species as well as an associated Incidental Take Statement. In January, the United States District Court for the District of Hawaii approved a consent agreement between the environmental groups and the federal agencies. The agreement reduced the fishery's bycatch limit of loggerhead sea turtles from 46 to 17.

https://ecf.hid.uscourts.gov/doc1/06111248057

Washington

Hughes v. Friends of the San Juans, 2011 Wash. App. LEXIS 298 (Wash. Ct. App. Jan. 31, 2011).

A Washington appellate court reinstated a property owner's permit to build a single-family residential dock. The Shoreline Hearings Board had overturned the permit, reasoning that the dock did not protect vegetation and aquatic life around Pearl Island. On appeal, a superior court rejected the board's decision, finding that the board went too far in overturning the permit. Friends of the San Juans appealed, and the appellate court agreed that the Board erred in its decision, finding that the Board's decisions were not supported with adequate evidence.

http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=643266MAJ

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