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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the December 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-19-03-12).

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FIRST CIRCUIT

Massachusetts

Conservation Law Found., Inc. v. Longwood Venues & Destinations, Inc., No. CV 18-11821-WGY, 2019 WL 6318530 (D. Mass. Nov. 26, 2019).

A Massachusetts federal district court recently ruled on whether a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit is required for pollutants released from a wastewater treatment facility into groundwater that then flows into navigable waters. The facility, which services a large beach club, has a Massachusetts Department of Environmental Protection individual groundwater discharge permit but not a NPDES permit. An environmental group filed suit claiming that the wastewater treatment facility required a NPDES permit, because it was a point source that discharged pollutants into groundwater that flowed into Wychmere Harbor. Last April, while the case was pending, the Environmental Protection Agency (EPA) issued an “interpretive statement” on the issue, concluding that the release of pollutants from a point source to groundwater is excluded from the CWA’s NPDES program. The district court ruled in favor of the defendants, granting deference to the EPA’s stance “even when (as is plainly the case here) the groundwater is hydrologically connected to navigable waters.”

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FOURTH CIRCUIT

Maryland

Blue Water Baltimore v. Wheeler, 2019 WL 6464974 (D.D.C. Dec. 2, 2019).

An environmental group claimed that the Environmental Protection Agency’s (EPA) approval of Maryland’s integrated water quality report reclassifying nearly 140 impaired waterbodies was arbitrary and capricious and that

the agency exceeded its authority. The plaintiffs claimed “Congress [] did not intend for the states or [the] EPA to remove water bodies from the list of [impaired] waters ... based solely on the fact that they have established a [total maximum daily load] to address water quality problems in a different, downstream water body.” The court disagreed, finding “that the EPA did not rely on factors Congress did not intend it to consider.” The environmental group also claimed “there is no evidence in the Administrative Record that the [Chesapeake] Bay [Total Maximum Daily Load] addresses the localized impairments in [Maryland’s] water bodies themselves.” The court again disagreed, deferring to the agency’s findings that the TMDL did address local water quality standards. The court concluded that the agency’s approval of the report was not arbitrary and capricious and granted summary judgment in favor of the EPA.

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FIFTH CIRCUIT

Texas

Pedestrian Beach, LLC v. State, No. 01-17-00870-CV, 2019 WL 6204838 (Tex. App. Nov. 21, 2019).

Several plaintiffs owned beach houses constructed landward of the vegetation line in the Village of Surfside Beach. A 1998 hurricane swept away much of the beach, leaving the houses between the vegetation line and the water. The Village refused to grant the owners permission to repair their houses, and the state ordered them to be removed. A trial court dismissed the cases for lack of jurisdiction, and an appellate court affirmed. On appeal, the court affirmed the dismissal of the cases. The court concluded that the trial court correctly dismissed the declaratory judgment claims, because the plaintiffs lacked standing, many of the claims were moot or not justiciable, and the requested declarations sought prohibited advisory opinions. Many of the property owners had sold their properties before filing suit or were not littoral owners of the properties. Further, claims related to the easements were moot, because the state abandoned claims for the easement following the Texas Supreme Court’s ruling in *Severance v. Patterson*.

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Steinhaus v. Beachside Emtl., LLC, No. 14-18-01048-CV, 2019 WL 6317686 (Tex. App. Nov. 26, 2019).

A beach cleaning company brought a defamation suit against Turtle Island Restoration Network, a nonprofit wildlife protection group, and its director. The suit was based on statements made by the director that indicated the company was not operating in compliance with permit conditions related to the “take” of certain endangered species. The trial court denied the nonprofit’s motion to dismiss. On appeal, the court dismissed the claim. The court held that the company did not show that the director acted with malice in making statements; the company did not show that the director communicated statements to those who did not have an interest or duty in the matter to which the communications related; and the company did not establish a prima facie case for its tortious interference claims.

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NINTH CIRCUIT

In re Blue Water Boating, Inc., No. 18-55575, 2019 WL 6525202 (9th Cir. Dec. 4, 2019).

After a man drowned in the Santa Barbara Harbor while using a rented stand-up paddleboard (SUP), his survivors filed a wrongful death and survival action against the company and its owner in California state court. The rental company then filed an admiralty action in federal court seeking to limit its liability to the value of the SUP. The district court dismissed the admiralty action for lack of subject matter jurisdiction. The Ninth Circuit affirmed, finding “the general character of the activity giving rise to the incident” did not have “a substantial relationship to traditional maritime activity.”

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California

Gardner v. StarKist Co., No. 19-CV-02561-WHO, 2019 WL 6698109 (N.D. Cal. Dec. 2, 2019).

Purchasers of StarKist tuna from various states brought a class-action lawsuit alleging that StarKist's promises that its tuna products are 100% "dolphin-safe" and sustainably sourced are false and misleading. The court ruled that the plaintiffs met the pleading standard for their state law fraud claims and denied StarKist's motion to dismiss those claims. However, the court dismissed the Racketeer Influenced and Corrupt Organizations Act (RICO) claim, finding the plaintiffs did not adequately plead the enterprise claim between StarKist and its alleged co-conspirators. Finally, the court held there was a lack of personal jurisdiction over StarKist's South Korean parent company.

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Washington

Puget Soundkeeper All. v. Wheeler, No. C15-1342-JCC, 2019 WL 6310562 (W.D. Wash. Nov. 25, 2019).

The U.S. District Court for the Western District of Washington dismissed an environmental group's claim concerning the EPA's exclusion of particular waste treatment systems from the definition of "Waters of the United States" under the Clean Water Act. The court found that the plaintiffs lacked representational standing, because the members could not show injuries in fact that could be fairly traced to the exclusion of the waste treatment systems. The plaintiff also lacked organizational standing, because they could not show an injury in fact from the exclusion.

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FEDERAL CIRCUIT

Ministerio Roca Solida, Inc. v. United States, No. 16-826L, 2019 WL 6167463 (Fed. Cl. Nov. 20, 2019).

The U.S. Fish and Wildlife Service (FWS) rerouted spring waters that previously flowed through a church's property during a restoration project in an effort to save a native fish species. The church filed suit against the United States, seeking just compensation under the Fifth Amendment due to the taking of the church's vested water rights and property due to flooding. The U.S. Court of Federal Claims held that the restoration project did not effect a taking as the church lacked a vested right to use water for irrigation.

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