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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the February 2020 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-20-03-02).

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SECOND CIRCUIT

Friends of Animals v. Romero, No. 18-2481-CV, 2020 WL 521850 (2d Cir. Feb. 3, 2020).

The U.S. Court of Appeals for the Second Circuit affirmed the dismissal of a case filed by an animal rights group challenging the National Park Service's (NPS) white-tailed deer management plan for the Fire Island National Seashore. The plaintiffs claimed that the NPS violated the National Environmental Policy Act in adopting the plan. The appellate court found that the NPS considered all information relevant to making a reasoned choice among alternatives. Next, the court held that NPS took the requisite hard look at the differences between the deer population on the eastern and western portions of the island. Further, the NPS presented a rational basis for its decision to employ a seashore-wide target deer density, rather than a site-specific target. Finally, the NPS adequately considered all reasonable alternatives in adopting a plan for dealing with overpopulation of deer.

[Opinion Here](#)

THIRD CIRCUIT

New Jersey

Lincoln Harbor Enterprises, LLC v. Hartz Mountain Indus., Inc., No. CV21912520KMMAH, 2020 WL 563634 (D.N.J. Feb. 4, 2020).

The U.S. District Court for the District of New Jersey ruled on a complaint alleging that the operation of a ferry on the Hudson River was no longer consistent with the scope of operations under its 1988 U.S. Army Corps of Engineers permit. The plaintiffs argued that the ferry activity violated the New Jersey Environmental Rights Act, as well as common law. The defendants filed a motion to dismiss. The court granted the defendants' motion to dismiss the environmental statutory claims, but it denied the motion with regard to other claims. The court denied the defendants' motion for attorneys' fees.

[Opinion Here](#)

FIFTH CIRCUIT

Louisiana v. United States, No. 19-30213, 2020 WL 288231 (5th Cir. Jan. 21, 2020).

The State of Louisiana sought injunctive relief under the Administrative Procedure Act (APA) against the United States alleging that the U.S. Army Corps of Engineers failed to maintain the Gulf Intracoastal Waterway in compliance with the River and Harbor Improvements Act. The United States filed a motion to dismiss for lack of subject matter jurisdiction based on its sovereign immunity. The district court adopted the report of the magistrate judge recommending that the United States' motion be granted and dismissed Louisiana's complaint. The state appealed. On appeal, the Fifth Circuit found that, under the two separate requirements in § 702 of the APA, the state failed to show that the United States waived its sovereign immunity. Further, Louisiana failed to identify a specific agency action and failed to demonstrate that it either suffered legal wrong or was adversely affected or aggrieved. Because the state failed to meet its burden of establishing that § 702 provided for a waiver of the United States' sovereign immunity, the Fifth Circuit affirmed the dismissal of the state's complaint.

[Opinion Here](#)

Louisiana

Crooks v. Dep't of Nat. Res., 2019-0160, 2020 WL 499233 (La. Jan. 29, 2020).

The Louisiana Supreme Court recently ruled on an inverse condemnation claim filed by property owners in the Catahoula Basin based on increased water levels from a U.S. Corps of Engineers navigation project. The court had to determine whether the claim was prescribed by time periods outlined in state and federal law. The lower courts concluded the one-year prescriptive period governed and the continuing tort doctrine applied to prevent the time period from running. The Louisiana Supreme Court disagreed, finding that a three-year prescriptive period applied, and the plaintiffs were prevented from bringing that claim because the time period had elapsed.

[Opinion Here](#)



NINTH CIRCUIT

Juliana v. United States, No. 18-36082, 2020 WL 254149 (9th Cir. Jan. 17, 2020).

A group of young citizens, an environmental organization, and a representative of future generations sought declaratory and injunctive relief against the United States, the President, and federal agencies and officials. The plaintiffs alleged that the United States violated their constitutional rights by continuing to permit, authorize, and subsidize fossil fuel use that resulted in climate-change related injuries. The United States moved for summary judgment and judgment on the pleadings. The district court denied the motions, holding that the plaintiffs had standing and had presented sufficient evidence to preclude summary judgment. Following the denial of the motions, the United States requested that the district court certify the orders for interlocutory appeal. The district court initially declined the request, but after an invitation from the Ninth Circuit to revisit certification, it certified the orders denying the motions for interlocutory appeal. The Ninth Circuit granted the petition for permission to appeal. On appeal, the Ninth Circuit concluded that the plaintiffs lacked Article III standing because of issues with redressability. The Ninth Circuit determined that a court order for the United States to develop a plan to remediate the constitutional violations was beyond the power of an Article III court, because the relief would involve extraordinary supervision. Therefore, the Ninth Circuit reversed the certified orders of the district court and remanded with instructions to dismiss for lack of standing.

[Opinion Here](#)



TENTH CIRCUIT

WildEarth Guardians v. U.S. Army Corps of Engineers, No. 18-2153, 2020 WL 253557 (10th Cir. Jan. 17, 2020).

WildEarth Guardians (WildEarth) sought review of a U.S. Army Corps of Engineers' (Corps) decision to withdraw from consultation with the U.S. Fish and Wildlife Service (FWS) regarding the effect of the Corps' Middle Rio Grande dam and reservoir maintenance operations on two endangered species—the Rio Grande Silvery Minnow and the

Southwestern Willow Flycatcher. The district court withheld judgment, remanded to the Corps for determination of whether the maintenance operations affected the endangered species, and denied WildEarth's motion for reversal of the Corps' decision. On appeal, the Tenth Circuit stated that the Endangered Species Act (ESA) only requires consultation if an agency has discretion over its operations. The Tenth Circuit determined that the Corps must operate in accordance with the Flood Control Acts of 1948 and 1960 and the Rio Grande Compact, and neither act provides for agency discretion. Because the Corps lacked discretion in the way it operated the dam and reservoir maintenance, the Tenth Circuit held that the Corps did not have to formally consult with FWS under the ESA.

[Opinion Here](#)



D.C. CIRCUIT

District of Columbia

Hawkins v. Bernhardt, No. CV 19-1498 (BAH), 2020 WL 516036 (D.D.C. Jan. 31, 2020).

A group of property owners in the Upper Klamath Basin in Oregon sought declaratory and injunctive relief against federal officials in the Bureau of Indian Affairs (BIA) and the Department of the Interior to prevent enforcement of the Klamath Tribes' reserved water rights. The property owners challenged two protocol agreements executed by the Klamath Tribes and the BIA, arguing that the BIA unlawfully delegated federal power to the tribes and violated the National Environmental Policy Act. The U.S. District Court for the District of Columbia held that the plaintiffs lacked standing and dismissed the case.

[Opinion Here](#)



FEDERAL CLAIMS

State v. United States, No. 19-231L, 2020 WL 580914 (Fed. Cl. Feb. 6, 2020).

In a consolidated claim, plaintiffs, including the State of Mississippi, several school districts, and private property owners, alleged a taking based on flooding from a U.S. Army Corps of Engineers' (Corps) flood control structure on the lower Mississippi River. The structure was designed to prevent the waters of the Mississippi from being captured by the Atchafalaya River. The plaintiffs claimed that construction and operation of the structure resulted in flooding of their properties. The government moved to dismiss for lack of standing. The court ruled that other than the private property owners, all remaining plaintiffs had standing to pursue their claims.

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