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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the January 2022 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-22-03-01).

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FIRST CIRCUIT

Massachusetts

Fore River Residents Against Compressor Station v. Off. of Coastal Zone Mgmt., No. 21-P-149, 2021 WL 5969793 (Mass. App. Ct. Dec. 16, 2021).

A city's mayor sought review of a Massachusetts Office of Coastal Zone Management decision allowing the construction of a natural gas compressor station on the Fore River. A group of residents, the Fore River Residents Against Compressor Station, intervened. The plaintiffs alleged that the station would be inconsistent with the state's Coastal Zone Management Program. A lower court dismissed the suit. On appeal, the appellate court affirmed the dismissal. The court found that the agency's decision was not subject to review under the state law authorizing judicial review to a person aggrieved by a final agency decision. The court also rejected the claim that the decision was subject to *certiorari* review. Finally, the court found that the residents group lacked standing to seek declaratory relief.

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FIFTH CIRCUIT

Texas

Texas v. Biden, No. 3:21-CV-65, 2022 WL 61157 (S.D. Tex. Jan. 6, 2022).

Texas and 22 other states sued President Biden and ten agency heads challenging the President's authority to revoke a permit granted for the construction of the Keystone XL pipeline. The plaintiffs claimed that such a decision is committed exclusively to Congress under the Commerce Clause of the U.S. Constitution. The U.S. District Court for the Southern District of Texas granted the defendants' motion to dismiss the claim, finding the case was moot following the termination of the project by its developer.

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NINTH CIRCUIT

Food & Water Watch v. U.S. Env't Prot. Agency, 20 F.4th 506 (9th Cir. 2021).

Environmental organizations sought review of a U.S. Environmental Protection Agency (EPA) order issuing a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit for concentrated animal feeding operations (CAFO) in Idaho. The groups claimed that the issuance of the NPDES permit was arbitrary, capricious, and in violation of law. The Ninth Circuit agreed that the permit lacked sufficient monitoring provisions to ensure compliance with effluent discharge limitations. The court remanded the permit to the EPA for further consideration.

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California

Pappas v. State Coastal Conservancy, No. 2D CIV. B304347, 2021 WL 6124277 (Cal. Ct. App. Dec. 28, 2021).

A ranch owners' association and its members brought a class action suit against the California Coastal Commission (CCC) and Coastal Conservancy, disputing the public's right to use the shoreline along a gated ranch community's property. In a proposed settlement, the state agencies agreed to quitclaim the state's interest in the previous landowner's "offer to dedicate" a public access easement granted to the state. A coastal access advocacy group intervened and filed a cross-complaint and petition for writ of mandate alleging violations of the California Coastal Act (CCA) and the Bagley-Keene Open Meeting Act against the state agencies. A lower court granted the advocacy group's motion for judgment against the Coastal Conservancy for the CCA claim and dismissed the Bagley-Keene Act claim for being time-barred. All of the parties appealed. The appellate court affirmed the trial court's ruling with the exception of its finding that only the Coastal Conservancy violated the CCA. The court held that both the CCC and the Coastal Conservancy violated the CCA by agreeing to quitclaim their interests in the easement.

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Washington

Wild Fish Conservancy. Washington Dep't of Fish and Wildlife, No. 99263-1, 2022 WL 120903 (Wash.

Jan. 13, 2022).

Wild Fish Conservancy (WFC) challenged an aquaculture permit issued by the Washington Department of Fish and Wildlife (WDFW) authorizing Cooke Aquaculture Pacific to change from farming Atlantic salmon to steelhead trout in Puget Sound. WFC sought to reverse the permit approval and asked the court to order an environmental impact statement (EIS). The group alleged 1) WDFW's conclusion that an EIS was not required was clearly erroneous and 2) WDFW violated the State Environmental Policy Act (SEPA) by failing to consider and disclose appropriate alternatives to the proposal under RCW 43.21C.030(2)(e). The Washington Supreme Court upheld the permit, affirming the lower court's ruling that WDFW's SEPA analysis was not clearly erroneous and the steelhead permit application did not trigger RCW 43.21C.030(2)(e).

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W. Towboat Co. v. Vigor Marine, LLC, No. C20-0416-RSM, 2021 WL 5937166 (W.D. Wash. Dec. 16, 2021).

In 2016, a decommissioned drydock being transported from Seattle to Mexico sank inside the boundaries of the Monterey Bay National Marine Sanctuary. Western Towboat, the company contracted to transport the drydock, and Vigor Marine, the company that contracted for the tow, filed cross-motions for breach of contract. Vigor also filed a counterclaim for maritime negligence arising from the sinking of the drydock. The court found that both parties failed to prevail on their cross-claims for breach of contract. The court also entered judgement in favor of Vigor on its cross-claim for maritime negligence, with Vigor bearing 60% of the fault for the drydock sinking inside the marine sanctuary and Western bearing 40%.

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Nw. Env't Advocs. v. U.S. Env't Prot. Agency, No. C20-1362 MJP, 2021 WL 6134785 (W.D. Wash. Dec. 29, 2021).

Northwest Environmental Advocates (NWEA), an environmental group, petitioned the U.S. Environmental Protection Agency (EPA) to issue new and revised water quality standards (WQS) for the State of Washington to protect aquatic life under the Clean Water Act (CWA). EPA denied the petition, and NWEA appealed. The court found that EPA acted arbitrarily and capriciously in denying the petition. The court found no justification for EPA's refusal to make a necessity determination when the evidence showed that Washington had not performed its duties under the CWA. The court also rejected EPA's argument that limited resources justified its decision not to undertake the necessity determination process. The court also found the EPA's reliance on existing WQS and criteria was not sufficiently robust to comply with the CWA. The court remanded the NWEA petition, requiring the EPA to issue a new

decision within 180 days.

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FEDERAL CLAIMS

Campo v. United States, No. 20-44, 2021 WL 6102151 (Fed. Cl. Dec. 23, 2021).

Several Louisiana oyster farmers filed suit against the U.S. government alleging a taking of oysters and oyster reefs. The plaintiffs alleged the U.S. Army Corps of Engineer's release of freshwater from the Bonnet Carré spillway resulted in a permanent taking of their property for public use without payment of just compensation in violation of the Takings Clause of the U.S. Constitution. The government moved to dismiss the takings claim, claiming the farmers do not have a compensable property right in the oysters. Citing Louisiana law, federal common law, and Lockean labor theory, the court concluded that the shellfish farmers have compensable property rights in their oysters. The court denied the motion to dismiss the claim.

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