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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the September 2023 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-23-03-09).

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FIRST CIRCUIT

Puerto Rico

United States v. Jacob, No. CV 21-1594(GMM), 2023 WL 5805856 (D.P.R. Sept. 7, 2023).

In 2006, a tanker carrying over 300,000 barrels of oil stranded in navigable waters in an area containing coral reefs off the coast of Tallaboa, Puerto Rico. The United States filed a complaint seeking reimbursement and recovery of natural resource damages under the Oil Pollution Act (OPA). In 2022, the plaintiffs filed a partial summary judgment on the issue of whether the vessel's grounding constituted a "substantial threat" of an oil discharge into navigable waters, thus establishing that defendants were liable pursuant to OPA. The defendants filed a motion to deny the judgment. The court granted the plaintiffs' partial summary judgment, agreeing that the Coast Guard's determination that the grounding was a "substantial threat" was not arbitrary or capricious under the Administrative Procedure Act.

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FIFTH CIRCUIT

Healthy Gulf v. United States Army Corps of Eng'rs, No. 22-60397, 2023 WL 5742541 (5th Cir. Sept. 6, 2023).

Conservation groups challenged the U.S. Army Corps of Engineers' (Corps) permit for a liquefied natural gas production and export facility in Louisiana. The plaintiffs claimed the Corps violated the Clean Water Act (CWA) and Administrative Procedure Act (APA) by failing to consider an alternative site and by deviating from the statutory hierarchy of compensatory mitigation schemes. The Fifth Circuit denied the petition. First, the court stated that the plaintiffs did not timely raise the alternative site. Second, the court found the Corps adequately explained why it allowed deviation from the default hierarchy.

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Texas

United States v. Abbott, No. 1:23-CV-853-DAE, 2023 WL 5740596 (W.D. Tex. Sept. 6, 2023).

In July 2023, without authorization from U.S. Army Corps of Engineers or Congress, the State of Texas constructed a 1,000 ft floating barrier in the Rio Grande River to prevent illegal immigration into the U.S. via the river. The United States government filed suit against the State of Texas and its Governor, claiming that the construction was an obstruction in a navigable water of the United States in violation of the Rivers and Harbors Appropriation Act of 1899 (RHA). The United States sought an injunction against further construction or maintenance of the structures and to compel Texas to remove the obstructions. The United States moved for preliminary injunction. The U.S. District Court for the Western District of Texas granted the motion, agreeing that the structures were in violation of the RHA. The court ruled that the United States' sovereign power to prevent unauthorized obstacles in navigable waters trumped Texas's policy preference of opposing unlawful immigration. Further, the issue of whether Texas was being "invaded" within the meaning of the Self-Defense Clause was nonjusticiable political question. The court found that preliminary injunctive relief was only viable mechanism for remedying the alleged RHA violations at issue and the traditional factors of irreparable harm, public interest, and harm to the opposing party weighed in favor of granting the injunction.

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SEVENTH CIRCUIT

Michigan

United States v. Michigan, No. 2:73-CV-26, 2023 WL 5444315 (W.D. Mich. Aug. 24, 2023).

In the 1836 Treaty of Washington, two Tribes relinquished a significant portion of their land to the United States while retaining hunting rights in the ceded territory and fishing rights in the waters around the Leelanau Peninsula, northern Lake Michigan, and Grand Traverse Bay. In 1985, the parties reached an agreement concerning the allocation of fishing rights. The parties negotiated a successor decree, the 2000 Great Lakes Fishing Consent Decree ("the 2000 Decree.") In 2022, six parties submitted a proposed successor decree to the 2000 Decree. However, the Sault Ste. Marie Chippewa Tribe and the Coalition to Protect Michigan Resources (CPMR) filed objections to the proposed decree's regulation of fishing operations. The court overruled all objections because the proposed decree promotes both Tribal fishing rights and opportunities while also maintaining the Great Lakes fishery and calls attention to the necessity of resource sharing.

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Buckhalter v. City of Traverse City, No. 165058, 2023 WL 5419705 (Mich. Aug. 22, 2023).

The Michigan Supreme Court declined to hear an appeal of a case challenging a dam modification project in Traverse City, Michigan. A resident had alleged that the project required a city-wide vote before it could proceed because it would result in the disposition of parkland. A trial court had ruled in favor of the plaintiff; however, an appellate court overturned that decision, finding that the project did not result in a disposition of city parkland.

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3M Co. v. Dep't of Env't Great Lakes & Energy, No. 364067, 2023 WL 5418164 (Mich. Ct. App. Aug. 22, 2023).

3M Company filed a lawsuit against the Michigan Department of Environment, Great Lakes, and Energy (EGLE), seeking both declaratory and injunctive relief concerning the drinking water standards for PFAS ("per- and polyfluoroalkyl substances"). The company argued that EGLE violated Section 45 of the Administrative Procedure Act of 1969 (APA) because Michigan law "requires agencies to prepare a Regulatory Impact Statement ("RIS") that includes an estimate of the compliance costs for businesses and other groups." (MCL 24.245(3)(n)). The Michigan Court of Appeals affirmed the lower court's decision in favor of the plaintiff because, even though EGLE estimated the

compliance costs of the proposed drinking water rules on businesses and other groups, it failed to estimate compliance costs concerning groundwater cleanup. Since drinking water rules and groundwater cleanup regulations are interconnected, any changes to the drinking water rules also affect the rules governing groundwater. In other words, the lower court ruled the new drinking water rules invalid because EGLE's RIS failed to address the cost of compliance for businesses and other groups concerning groundwater cleanup.

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NINTH CIRCUIT

California

Cave Landing, LLC v. California Coastal Comm'n, No. 2ND CIV. B322976, 2023 WL 5314598 (Cal. Ct. App. Aug. 18, 2023).

The California Coastal Act of 1976 (Coastal Act) establishes coastal zones and “seeks to protect, maintain, enhance and restore . . . coastal zone environment[s].” A person seeking to develop land within a coastal zone needs a coastal development permit granted by the local government. However, local government actions may be appealed to the California Coastal Commission. The County of San Luis Obispo granted a permit to the McCarthys to move a public easement (hiking trail) on their property to a contiguous parcel. However, the Commission denied the permit on appeal and the Commission found the McCarthys were not entitled by law to remove the easement from their land. The McCarthys petitioned for a writ of administrative mandate to void the Commission's ruling; however, the trial court denied the petition, and the Second Appellate District affirmed.

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ELEVENTH CIRCUIT

Georgia

Glynn Co., v. GL NV24 Shipping Inc., No. 2:22-CV-28, 2023 WL 5671934 (S.D. Ga. Sept. 1, 2023).

In 2021, the *M/V Golden Ray*, a cargo ship carrying nearly 4,200 vehicles, capsized in Saint Simons Sound in Glynn County, Georgia. The County filed suit for damages. Two of the defendants—the vessel's owner and agent—filed motions to dismiss. The court denied the motion to dismiss the Oil Pollution Act (OPA) claims. The court granted the motion to dismiss the federal maritime negligence claim against the defendants, because the OPA displaces those claims. The state law claims remain pending, as the defendants did not seek dismissal of those.

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