

~ ~ September 16, 2005 ~ ~

FIRST CIRCUIT

Maine

***Griffin v. Town of Cutler*, 2005 U.S. Dist. LEXIS 17366 (D. Me. August 18, 2005).**

The Town of Cutler prevented two lobstermen from maintaining commercial moorings in the town harbor because they were not residents. The U.S. District Court for the District of Maine denied the town's motion to dismiss because the lobstermen sufficiently alleged commerce clause and equal protection violations. A procedural due process claim was dismissed.

Massachusetts

***DiCicco v. Department of Environmental Protection*, 2005 Mass. App. LEXIS 830 (Mass. Sept. 2, 2005).**

The Appeals Court of Massachusetts held that the Department of Environmental Protection has the discretion to approve a town's plan to compensate for illegally filling wetlands by restoring wetlands in another location, as opposed to returning the destroyed wetlands to their original condition.

SECOND CIRCUIT

Connecticut

***Lewis v. Planning & Zoning Commission of Clinton*, 2005 Conn. LEXIS 333 (Conn. Sept. 6, 2005).**

Plaintiff did not have standing under Connecticut law to bring an action against the Clinton inland wetlands and conservation commission. The Connecticut Supreme Court held that Conn. Gen. Stat. § 22a-16 does not confer standing on plaintiffs seeking to challenge the validity of the permitting process.

FOURTH CIRCUIT

***National Audubon Society v. Department of the Navy*, 2005 U.S. App LEXIS 19277 (4th Cir. Sept. 7, 2005).**

The Fourth Circuit affirmed the finding of the U.S. District Court for the Eastern District of North Carolina that the Navy failed to comply with the National Environmental Policy Act in its decision to build a new landing strip for its "Super Hornet" aircraft. The Navy must complete a Supplemental Environmental Impact Statement to address the procedural deficiencies in the original EIS.

FIFTH CIRCUIT

***Lakes of Gum Cove Hunting & Fishing L.L.C. v. Weeks Marine, Inc.*, 2005 U.S. App. LEXIS 18072 (5th Cir. Aug. 22, 2005).**

The Fifth Circuit affirmed the dismissal of Gum Cove's trespass claim against Weeks Marine because the district court correctly found that Gum Cove consented to Weeks Marine's entry onto the property. Gum Cove claimed that Weeks Marine illegally deposited dredged material from a government channel maintenance project on its land.

EIGHTH CIRCUIT

***In re Operation of the Missouri River System Litigation*, 418 F.3d 915 (8th Cir. Aug. 16, 2005).**

The Eighth Circuit affirmed the dismissal of North Dakota's suit to enjoin the U.S. Army Corps of Engineers from releasing water from Lake Sakakawea to support downstream navigation on the Missouri River. The court held that the enforcement of state water quality standards against the Corps is preempted by federal law and the Corps is immune.

***Bunch v. Canton Marine Towing Co.*, 2005 U.S. App. LEXIS 18017 (8th Cir. Aug. 23, 2005).**

The Eighth Circuit held that a cleaning barge was a vessel for the purposes of the Jones Act even though it was moored to the riverbed and had no means of self-propulsion. The plaintiff was therefore eligible for benefits as a seaman.

NINTH CIRCUIT

***Defenders of Wildlife v. EPA*, 2005 U.S. App. LEXIS 17983 (9th Cir. August 22, 2005).**

The Ninth Circuit found that the EPA has the authority to consider the impact of its decision to transfer water pollution permitting authority to state governments on endangered and threatened species and their habitat. The court vacated EPA's decision to transfer permitting authority to Arizona because the prepared biological opinion failed to consider such impacts.

***National Resources Defense Council v. NMFS*, 2005 U.S. App. LEXIS 18143 (9th Cir. August 24, 2005).**

The Ninth Circuit found that the National Marine Fisheries Service's 2002 darkblotched rockfish quota was impermissible because the agency did not comply with the Magnuson-Stevens Fishery Conservation and Management Act's mandate that the rebuilding period be "as short as possible." The court upheld NMFS's limits for bocaccio, cowcod, and canary rockfish.

COURT OF FEDERAL CLAIMS

***Klamath Irrigation Dist. v. United States*, 2005 U.S. Claims LEXIS 256 (Ct. Cl. August 31, 2005).**

The Court of Federal Claims held that the water rights at issue are contractual, not property, rights. The proper remedy for water districts and individual farmers seeking compensation for temporary reductions in water deliveries from the Klamath Basin is, therefore, in contracts, not takings.