NOTES OF DECISIONS

*Jon Schutz**
*Eli R. Makus***
*Johnny Tran****

The selected cases were decided between July and October 2001.

TABLE OF CASES

* J.D. Candidate, 2003, University of California, Davis; B.A. 2000, Brigham Young University.
** J.D. Candidate, University of California, Davis 2004; B.A. 1999, California State University, Hayward.
*** J.D. Candidate, University of California, Davis 2004; B.A. 1999, University of California. San Diego.

PALAZZOLO V. RHODE ISLAND
121 S. Ct. 2448 (2001)

Plaintiff, Anthony Palazzolo, (Palazzolo) filed an inverse condemnation action against the Rhode Island Coastal Resources Management Council (Council) in state court asserting that the Council's wetlands regulations constituted a taking without compensation of his land in violation of the Fifth Amendment's Takings Clause. The Rhode Island Supreme Court rejected Palazzolo's takings claim.

The firs issue on appeal was whether Palazzolo had a right to bring his action even though the regulations at issue became effective before he became legal owner of the property. The Court held that Palazzolo's claim was not barred even though the regulation predated his acquisition. Secondly, the Court determined that Palazzolo's claim of total economic deprivation was invalid because the development value in his land was estimated at $200,000 despite the regulatory prohibitions.

WHITMAN V. AMERICAN TRUCKING ASS'N INC.
531 U.S. 457 (2001)

Whitman arose from the Environmental Protection Agency's (EPA) revised national ambient air quality standards (NAAQS) for ozone and particulate matter. On certiorari, the court considered, *inter alia*, whether the Clean Air Act permitted cost considerations in establishing NAAQS. The appellate court's determination that cost is an impermissible consideration in setting NAAQS was affirmed.

EDWARDSEN V. UNITED STATES DEP'T OF THE INTERIOR
268 F.3d 781 (9th Cir. 2001)

The U.S. Army Corps of Engineers approved a development plan for an oil and gas development off the coast of Alaska. Petitioners, individual native Alaskans and environmental organizations, challenged the approval arguing that it would threaten their ability to continue hunting, fishing, and gathering traditional subsistence resources. Specifically, they alleged that the Department of the Interior's Minerals Management Service erred by relying upon an Environmental Impact Statement that didn't comply with National Environmental Policy Act requirements. The Court held that direct and indirect effects of the project had been adequately analyzed and rejected petitioners' request for additional review. As to petitioners' assertion that the spill response portion of the plan was defective, the Oil Pollution Act, 33 U.S.C.§ 1321, invests District Courts with sole jurisdiction over claims arising from its violation. The Court therefore declined to review this portion of the appeal.

PACIFIC COAST FED. OF FISHERMEN'S ASS'N, INC v.
NAT'L MARINE FISHERIES SERV.
265 F.3d 1028 (9th Cir. 2001)

Concern over the impact of twenty-three proposed timber sales on Umpqua River cutthroat trout and Oregon Coast Coho salmon prompted six environmental organizations to sue the National Marine Fisheries Service (NMFS) for declaratory and injunctive relief. Led by the Pacific Coast Federation of Fishermen's Associations (Pacific Coast), the organizations claimed the NMFS had inappropriately adopted several biological opinions to enable the timber sales. The District Court granted summary judgment to Pacific Coast, holding the NMFS had "acted arbitrarily and capriciously" by concluding the timber sales were not likely to jeopardize these species. The Ninth Circuit affirmed the District Court's ruling with regard to all but two of the proposed sales.

SIERRA CLUB v. WHITMAN
263 F.3d 898 (9th Cir. 2001)

Does the Environmental Protection Agency have a duty to enforce the Clean Water Act, 33 U.S.C. § 1319, if evidence shows a waste water treatment plant is knowingly violating the Act? The Sierra Club sued the EPA for not taking action against the City of Nogales, Arizona and the International Boundary and Water Commission. Together the entities controlled a waste water plant which discharged pollutants under an expired 1996 EPA permit. Addressing the broader issue of when courts should review an administrative agency's enforcement decisions, the Ninth Circuit relied on a Supreme Court opinion which held that "[agencies are] far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities". *Heckler v. Chaney*, 470 U.S. 821 (1985). While recognizing that the Clean Water Act obliges the EPA to act against such forms of pollution, the Court relied on legislative history in determining that the Act allows the EPA discretion and does not mandate specific enforcement actions.

UNITED STATES v. ELIAS
269 F.3d 1003 (9th Cir. 2001)

Defendant, Allen Elias, required four employees to empty between one and two tons of cyanide-laced sludge from a holding tank and into the ground without proper safety equipment. One of the employees collapsed in the process and had to be medically treated. All four employees suffered respiratory injuries. Elias was convicted of, inter alia, criminal violation of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6928, in the Idaho District Court for attempting to dispose of hazardous waste without a permit, knowing that the attempt

placed others in imminent danger of death or serious bodily injury. The Ninth Circuit upheld the §6928 criminal charge against Elias, resulting in a possibility of a seventeen year federal prison sentence. However, the Court vacated the portion of the judgment which ordered Elias to pay $6.3 million in restitution to the most seriously injured employee.

WETLANDS ACTION NETWORK V. UNITED STATES ARMY CORPS OF ENG'RS 222 F.3d 1105 (9th Cir. 2001)

In developing 1,000 acres of one of the largest undeveloped sites in a portion of west Los Angeles for residential and commercial use, Playa Capitol Group (Playa) will have to dredge and fill 21.4 acres of natural wetlands. To compensate for the loss of wetlands, they plan to create a separate 52-acre freshwater wetland complex. To begin the first phase, Playa applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill 16.1 acres of wetlands. Based on extensive prior research, the Corps concluded the project would not "significantly affect the quality of the human environment" because the "freshwater wetland system [would] result in a net environmental benefit." An Environmental Impact Statement was determined unnecessary and the Corps issued the permit to Playa. Plaintiffs attained summary judgement against the Corps for not demanding an EIS. The Ninth Circuit reversed, holding that "an agency's decision to forego issuing an EIS may be justified in the presence of mitigating measures." The Court accepted the "net environmental benefit" as a sufficient mitigating factor.

ALSEA VALLEY ALLIANCE V. EVANS 161 F. Supp. 2d 1154 (D. Or. 2001)

This case began when the National Marine Fisheries Service (NMFS) decided to list only naturally spawned coho salmon as "threatened" under the Endangered Species Act, thereby excluding hatchery bred coho. Plaintiff sued challenging this final NMFS ruling. The court held that the challenge to the ruling was timely and that the NMFS ruling was arbitrary and capricious.