WILDLIFE LAW CALL

SUMMER 2019

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Case briefs

a. *Friends of Animals v. Silvey*

On January 25, 2018, Friends of Animals (FOA) sued the Bureau of Land Management (BLM) alleging: 1) violation of the APA based on failure to follow their own internal regulations and policy; 2) violation of the Wild Free-Roaming Horses and Burros Act (WHBA) by failure to rely on current information and updated Appropriate Management Levels (AMLs) and carry out minimum feasible levels of management (MFL); 3) violation of the National Environmental Policy Act (NEPA) by failing to create an environmental impact statement (EIS); 4) "violation of NEPA by failing to consider and address reasonable alternatives to the 2017 Gather Plan"; and 5) "violation of NEPA by failing to take a 'hard look' at the environmental impact of the 2017 Gather Plan."[1]

In February 2016 and March 2017, BLM conducted horse population inventories on the Complexes and discovered over 9,500 wild horses on both complexes, whereas the previously determined AML was 899-1,678 horses.[2] Thus, BLM issued a preliminary gather plan and environmental assessment (EA) to remove "over 9,000 excess wild horses", which received 4,940 comments.[3] BLM then prepared the final EA and Plan as well as a finding of no significant impact (FONSI).[4]

1. APA claim

Addressing FOA's APA claim, the Court clarified that it could not apply the APA's "arbitrary and capricious" standard to statements that are "not binding on the agency."[5] To determine whether an agency's handbook is reviewable, the rule must be substantive in the sense that it affects individual rights and obligations and "conform[s] to certain procedural requirements", such as being implemented by statutory authority or under the power of Congress.[6] Here, the Court stated the Handbook fulfills neither criterion as it is not substantive in nature and was not published in the Federal Register or put through public notice and comment.[7]

2. WHBA claim

The Court concluded, for multiple reasons, that BLM's determination was based on current information. First, the Court held that WHBA does not require "that a separate [and updated excess] determination be made for each individual round up approved under a gather plan."[8] BLM's decision was based on "information available to them at the time of their decision" as "defendants compiled substantial data" on multiple aspects of the Complexes' then-current conditions such as climate and ecological patterns.[9] The Court voiced its understanding that Congress' intent for the WHBA was to promote agency deference for findings of overpopulation.[10]

Second, the Court rejected the claim that the Plan was based on outdated AMLs that couldn't be relied upon for the life of the Plan as the statute "does not create a statutory obligation for BLM to recalculate the AML at every gather."[11] The Court reasoned that this would also run counter to the statute's directive to "immediately remove" any excess.[12]

Finally, the Court concluded that FOA did not raise its claim concerning management at the MFL through castration/gelding initially and could not pursue it during summary judgment motions, but even if it could, such population control measures constituted reasonable management at the MFL under the WHBA.[13]

3. NEPA claim

If an action is "highly controversial" then NEPA requires that a formal EIS be created, which FOA asserts is the case for the 2017 Gather Plan for several reasons.[14] The Court

[1] 353 F.Supp.3d 991, 1002, 1006 (2018).
[2] *Id.* at 1000-01.
[3] *Id.* at 1001.
[4] *Id.* at 1001-02.
[5] *Id.* (quoting *W. Radio Servs. Co., Inc. v. Espy*, 79 F.3d 896, 900 (9th Cir. 1996)).
[6] *Id.* at 1004-05 (quoting *W. Radio Servs.*, 79 F.3d at 901).
[7] *Id.* at 1005.
[8] *Id.* at 1006 (quoting *Colorado Wild Horse v. Jewell*, 130 F.Supp.3d 205, 214 (D. D.C. 2015)).
[9] *Id.* at 1007.
[10] *Id*.
[11] *Id.* at 1008 (quoting *Friends of Animals v. BLM*, 2018 WL 1612836, *18 (D. Or. Apr. 2, 2018)).
[12] *Id.*
[13] *Id.* at 1008-09.
[14] *Id.* at 1011.

found no such controversy, stating that a change to the boundary area of the 2017 Plan, which resulted from correction by public comment to the preliminary gather plan, was not highly controversial because it was promptly analyzed and corrected.[15] The Court stated that gelding and fertility controls were not highly controversial measures and were a "routine practice of BLM."[16] The argument that removal of most of the horses destroying cultural resources was unsubstantiated as the WHBA does not define wild horses as cultural resources.[17] The Court explained that a large amount of public comments on the action does not make an action "significant" or "highly controversial."[18] Finally, the Court reasoned that an EA is "highly specific to the project and locale"[19] and thus, that the Gather Plan cannot create a precedent for roundups of this "scope and intensity."[20] Thus, BLM's release of a FONSI was reasonable and convincing.[21]

The Court dismissed FOA's fourth NEPA claim by illustrating that BLM did consider the three alternatives proposed by FOA during public comment by considering updating the AML, controlling population through natural predators, and improving conditions by reducing the number of cattle and sheep allowed to graze in the complexes.[22] BLM is only required to consider "reasonable, feasible alternatives that are reasonably related to the purpose of the project" and does not have a minimum number of alternatives that must be considered.[23] The Court deemed that BLM did so as it considered updating AMLs and determined it was not appropriate at the time; that control through natural predators was deemed unreasonable as it had previously been attempted and did not help horse overpopulations or health, per WHBA objective; and that control of other livestock "would not meet the purpose and need of the project" and was outside of BLM's authority.[24]

Concerning FOA's fifth and final claim that the BLM violated NEPA by failing to take a "hard look" at the environmental impact of the Plan with respect to release of gelded/castrated horses and its effects on the genetic diversity and dynamics of the herd, the Court also granted BLM summary judgment.[25] The Court found that BLM took the required "hard look" at the "characteristics of the geographic area, impact of returning geldings to the range, and genetic impacts of the wild horse gather" and considered and responded to the comments from the wild horse experts.[26]

Therefore, the Court granted summary judgment to BLM on all claims.[27] FOA appealed this decision to the Ninth Circuit on December 21, 2018; the appeal is currently undergoing briefing.[28]

—353 F. Supp.3d 991 (D. Nevada 2018).

b. *U.S. Bureau of Land Management v. Korman*

In 1973 Montana enacted the Montana Water Use Act, which set a statutory deadline of June 30, 1983 for filing water rights claims with the Department of Natural Resources and Conservation.[29] Later, this deadline was extended to July 1, 1996.[30] The Statute states that "failure to file a claim of an existing right as required by [Mont. Code Ann.] 85-2-221(1) established a conclusive presumption of abandonment of that right."[31] But § 85-2-222(1) exempts claims based on "livestock and individual uses…based upon instream flow or ground water sources…" until June 30, 2019, with no extensions.[32]

Appellants Maxine and Ron Korman (the Kormans) received prior owners' rights in grazing permits and range improvements on the Chevy and Poker Reservoirs in

[15] *Id.* at 1011-12.
[16] *Id.* at 1012.
[17] *Id.* at 1013.
[18] *Id.*
[19] Id. (quoting *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1140 (9th Cir. 2011)).
[20] *Id.* at 1011-13.
[21] *Id.*
[22] *Id.* at 1014-16.
[23] *Id.* at 1014.
[24] *Id.* at 1015-16.
[25] *Id.* at 1017-18.
[26] *Id.* at 1017.
[27] *Id.* at 1018.
[28] *Friends of Animals v. Silvey*, No. 18-17415 (9th Cir. Dec. 21, 2018).
[29] 427 P.3d 72, 75 2018 MT 232, 393 Mont. 1 (2018).
[30] *Id.*
[31] *Id.*; Mont. Code Ann. § 85-2-226 (West).
[32] 427 P.3d at 75.

1977. [33] In 1960 and 1966, the prior owners filed subsequent Range Improvement Applications (RIA) for the Reservoirs.[34] Though these reservoirs were originally approved "for the purpose of watering livestock", the permits allowed the prior owners to build the reservoirs at "capacities larger than required for livestock use" so as to allow the Bureau of Land Management (BLM) to consider the needs of wildlife in addition to livestock under the Taylor Grazing Act and implementing regulations.[35]

This case finds the Kormans on their second appeal from the state's Water Court to the Montana Supreme Court after losing their initial case on partial summary judgment to BLM.[36] The Kormans had filed no claims to the Chevy and Poker Reservoir rights, insisted that the claims were exempt based on § 85-2-222(1) so they had longer to file them, and that the federal government had no rights to store water for wildlife purposes.[37] The Court highlighted the issues on appeal as:

> 1. Whether the Water Court correctly determined that the Kormans forfeited interests claimed for stockwater use in the Chevy Reservoir and Poker Reservoir claims 40M 75208-00 and 40M 75220-00…[and]…2. Whether the Water Court erred when it determined that wildlife claims 40M 75209-00 and 40M 75221-00 were valid claims that did not expand the original appropriation.[38]

The Court dealt succinctly with the first issue by rejecting the argument that their claim came under the exemption in MCA § 85-2-222(1).[39] The Court made clear that this exemption only applies to uses "*based upon instream flow or ground water*", neither of which were at issue with the Water Court as it addressed the Kormans' reservoir storage rights, which had deadline filing dates that have passed and which were not exempt.[40] The Court clarified that because the current claim concerns reservoir storage rights and "the Water Court did not address [] exempt, instream water right[s]", "[a]ny claims that the Kormans could have filed or might yet file under § 85-2-222(2), MCA, were not before the Water Court and [were] not before this Court."[41]

Addressing the more substantial second issue, the Court set forth multiple reasons why claims 40M 75209-00 and 40M 75221-00 were valid and did not expand the original appropriation.

First, the Court explained that statutes such as the Taylor Grazing Act in § 315h, the federal Fish and Wildlife Coordination Act, and the Federal Land Policy Management Act of 1976, gave the Secretary of the Interior the duty to "manage public lands and waters for multiple uses, including fish and wildlife habitat[s]" and the Secretary's initial post-Act regulations ordered that a certain area of federal range be dedicated to protection and propagation of wild game in addition to livestock grazing of the rangeland.[42]

From there, the Court explained that under Montana law, a water-right holder can change the original use of a right as long as it "does not injure or increase the burden on other users."[43] The Court proceeded to clarify that at the time of the original RIAs and the impoundments, water rights were not required by permit.[44] The Court stated that, for all these reasons, "the impoundment of water for wildlife was not an expansion of use" and the federal government has a right to storage for wildlife purposes.[45]

The Court therefore affirmed the judgment of the Water Court on both issues.[46]

—427 P.3d 72, 393 Mont. 1 (2018).

c. *Friends of Alaska National Wildlife Refuges v. Bernhardt*

Friends of Alaska National Wildlife Refuges ("Friends") sued the U.S. Department of the Interior (DOI) pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§

[33] *Id.* at 74.
[34] *Id*.
[35] *Id.* at 74-75, 76.
[36] *Id.* at 73.
[37] *Id*. at 74.
[38] *Id.* at 73.
[39] *Id.* at 75.
[40] *Id.* (emphasis added).
[41] *Id*. at 75.
[42] *Id.* at 76.
[43] *Id*.
[44] *Id*.
[45] *Id.*
[46] *Id*. at 76.

702-06, based on four federal claims including violation of: 1) Section 1302 of the Alaska National Interest Lands Conservation Act (ANILCA); 2) Title IX of ANILCA; 3) the National Environmental Policy Act (NEPA); and 4) the Endangered Species Act (ESA).[47]

These claims arose from a Land Exchange Agreement between the Secretary of the Interior and King Cove Corporation to build a road through the Izembek National Wildlife Refuge "as the only reliable [] means"[48] between King Cove and Cold Bay to deal with social and economic difficulties.[49] These difficulties include inclement weather regularly preventing medical evacuations of King Cove residents to the only close all-weather airport located in Cold Bay, since both cities are only accessible by air and sea.[50] The Exchange Agreement was a reversal of policy by the DOI after four previous declarations, over the decades, that the road would "lead to significant degradation of irreplaceable ecological resources that would not be offset by the protection of other lands to be received under an exchange." [51] The "major adverse effects" would be to ecological resources such as "birds and land mammals"[52] in addition to denying the experience of the "[w]ilderness and habitat that Izembek provides" to "Friends' staff, members, and supporters…"[53]

Defendants challenged Plaintiffs' standing and claimed that procedures such as financing, permitting, and "authorizations from state and federal agencies other than the Secretary's agency" would have to take place before construction of the road could even become imminent.[54] The Court rejected this argument, reasoning that "[i]t is undisputed that the land exchange is intended to facilitate construction of a road"[55] and "the parties involved in the Exchange Agreement have 'expressed their intent to obtain all necessary permits and construct the road.'"[56] The Court further found redressability as the Agreement would "transfer Izembek lands to King Cove Corporation for the express purpose of facilitating construction of a road"; and rejected the argument that Plaintiffs merely had a "generally available grievance" because they alleged harms specific to their members' use and enjoyment of Izembek lands.[57]

The Court rejected Defendants' claim that the Exchange was based on a reasoned explanation showing awareness of the reversal—specifically arguments prioritizing economic benefits to human life developed only in briefing before the Court—and vacated the Exchange Agreement.[58]

The Court explained that the Secretary's decision was arbitrary and capricious because the agency did not explain its reversal based on the claimed "economic and social hardships" caused by transportation difficulties or "rebalancing of the facts in light of new policy goals" in the Agreement; though an agency may "reverse its course" and "arrive at a new policy", it may not do so "without providing a reasoned explanation for doing so." [59] The agency must 1) display "'an awareness that it is changing position,' 2) show[] that 'the new policy is permissible under the statute,' 3) 'believe[]' the new policy is better, and 4) provide[] 'good reasons' for the new policy, which, if the 'new policy rests upon factual findings that contradict those which underlay its prior policy,' must include 'a reasoned explanation…for disregarding facts and circumstances that underlay or were engendered by their prior policy.'"[60]

Defendant's request for the Court to decline to vacate the Exchange on equity grounds was denied because no "disruptive consequences" would ensue without vacatur and the errors were sufficiently grave.[61] Plaintiffs' request for injunction of the Exchange Agreement was denied

[47] 381 F.Supp.3d 1127, 1133 (2019).
[48] *Id*. at 1131.
[49] *Id*. at 1131-33.
[50] *Id*. at 1131, 1140-41.
[51] *Id*.
[52] *Id*. at 1132.
[53] *Id*. at 1135 (quoting Docket 32 at 6, ¶ 17).
[54] *Id*. at 1134.
[55] *Id*. at 1135.
[56] *Id*. (quoting Docket 71 at 11).
[57] *Id*.
[58] *Id*. at 1138, 1140-42 (quoting Docket 65 at 25-26).
[59] *Id*. at 1142-43.; *Organized Vill. of Kake v. U.S. Dep't of Agric*., 795 F.3d 956, 967-69 (9th Cir. 2015) (quoting *FCC v. Fox Television Stations*, *Inc*., 556 U.S. 502, 537, 129 S.Ct. 1800 (Kennedy, J., concurring)); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).
[60] 381 F.Supp. 3d at 1138; *Kake*, 795 F.3d. at 966 (quoting *Fox*, 556 U.S. at 515–16, 129 S.Ct. 1800).
[61] 381 F.Supp. 3d at 1143 (quoting *Cal. Cmtys. Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 992 (9th Cir. 2012).

because the Court believed vacatur would be sufficient relief.[62] DOI appealed the ruling on May 24, 2019.[63]

On July 22, 2019, DOI dropped its appeal, and on July 24 DOI and King Cove announced that a new deal had been reached and signed to build the road through Izembek.[64]

—2019 WL 1437596, Case No. 3:18-cv-00029-SLG (D. Alaska 2019).

d. *Bullock v. Fox*

This case concerns a key question of statutory interpretation—the intended meaning of "land acquisition" in Montana Code Ann. § 87-1-209(1).[65]

This issue arose when Montana's Governor and Montana Fish, Wildlife, and Parks (FWP) requested declaratory relief for the question of "[w]hether 'land acquisition' per § 87-1-209(1), MCA, requires FWP to bring conservation easement transactions of more than 100 acres or $100,000 in value before the Land Board for final approval."[66] The dispute concerned the 5,000-acre Horse Creek Conservation Easement. [67] Gov. Steve Bullock, after the Land Board "indefinitely postponed consideration" of the Horse Creek Easement, with a final approval deadline by the Board of Jan. 1, 2019, directed FWP to finalize the easement without the Board's approval even though MCA § 87-1-209(1) requires such approval for acquisitions involving more than 100 acres or $ 100,000 in value.[68]

Gov. Bullock argued that the meaning of "land acquisition" did not include conservation easements and therefore he was not obligated to have the easement approved by the Board.[69] Through Montana's Habitat Montana Program, FWP has purchased conservation easements and other interests after "[y]ears of upfront costs and collaboration between private landowners and FWP"; successful collaborations "often, but not always" were brought before the Board for final approval.[70] Attorney General Timothy C. Fox protested this course of action on the grounds that conservation easements are intended to be considered under the statute as "land acquisitions":

> Subject to 87-1-218 and subsection (8) of this section, the department, with the consent of the commission or the board and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and *may acquire easements* upon lands or waters for the purposes listed in this subsection.[71]

The Court considered the Legislature's purpose by examining the language's plain meaning, looking first to the dictionary as well as prior case law, and other statutes, and found that "land acquisition" is "gaining *actual* possession over land" or possessory interests in land.[72] While A.G. Fox argued that it meant "acquiring an interest in land"[73], the Court stated that this interpretation is not cohesive with the rest of the Code, such as MCA § 87-1-218(1) where "land acquisition" implies an actual possessory interest in land through taxes or MCA § 76-6-201(1) where "an interest in land less than fee"[74] by a public body is expressly equated to a conservation easement.[75]

The Court also found that the Legislature purposefully distinguished types of land acquisition requiring Board approval from conservation easements by structuring the sentence so that the word "and" separated land acquisition (purchase, lease, agreement, gift, or devise) from interests in land, or easement acquisition.[76]

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[62] *Id*. at 1144.
[63] *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt*, No. 19-35451 (9th Cir. May 24, 2019).
[64] Dan Joling, *Deal reached on land swap for road through Izembek wildlife refuge*, ANCHORAGE DAILY NEWS (August 2, 2019 11:56 AM), https://www.adn.com/alaska-news/rural-alaska/2019/07/24/deal-reached-for-land-swap-for-road-through-izembek-wildlife-refuge/.
[65] 435 P.3d 1187, 1190, 1197, 395 Mont. 35 (2019).
[66] *Id.* at 1190.
[67] *Id.* at 1191.
[68] *Id.* at 1190-91 (citing MCA § 87-1-209(1)).
[69] *Id.* at 1191.
[70] *Id.* at 1190.
[71] *Id.* at 1197 (emphasis added).
[72] *Id.* at 1197-98 (emphasis added).
[73] *Id.* at 1198 (citing 57 Op. Att'y Gen. at 6).
[74] *Id.* (citing MCA § 76-6-201(1)).
[75] *Id.*
[76] *Id.* at 1198-99.

Therefore, the Court's final holding was that § 87-1-209(1) does not include conservation easement acquisitions within its definition of "land acquisition" and therefore FWP is not required to approve conservation easements with the Land Board.[77]

—435 P.3d 1187, 395 Mont. 35 (2019).

e. *Vermont v. Dupuis*

In a trial on charges of illegal taking of big game, the State of Vermont filed appealed the grant of a motion to suppress evidence, arguing that game wardens as law enforcement officials are not prohibited under Chapter I, Article 11 of Vermont's Constitution from conducting warrantless searches of open fields to enforce game laws per Chapter II, § 67 of the Constitution when the owner of the field in question has not complied with 10 Vt. Stat. Ann. § 5201.[78]

Section 5201 states: "Notices prohibiting the taking of game shall be erected upon or near the boundaries of lands to be affected with notices at each corner and not over 400 feet apart"[79] as well as requiring the notices to be legible, dated yearly, "of a standard size and design"[80], and recorded annually.[81]

A warden had entered Defendant's property in September, October, and November of 2016 through a neighbor's property and by taking purposefully difficult and circuitous routes to avoid detection.[82] Defendant had posted between 25 and 30 signs around his property 100-150 feet apart that read "no trespassing" or "keep out" as well as multiple signs on the gate that blocked the main entrance to his property.[83] While on the property the warden found evidence of illegal baiting with a "blind built of timber at ground level with a salt block, apples, and acorns placed nearby."[84] Therefore the State charged Defendant with "taking big game by illegal means as well baiting and feeding deer."[85] Defendant filed a motion to suppress evidence based on lack of a search warrant and reasonable suspicion, which the trial court granted.[86] The trial court rejected the State's argument that because Defendant neglected to follow § 5201 for posting against hunting he did not possess an expectation of privacy by finding he "took the steps necessary to clearly communicate to the reasonable person that the public was excluded from his…property."[87]

The State argued on appeal that: 1) Defendant did not possess an expectation of privacy on his field during enforcement of hunting regulations because he did not abide by § 5201 and 2) the warden had the viewpoint of a reasonable person despite taking a circuitous route onto Defendant's property.[88]

The Court affirmed both holdings by the trial court based on Chapter 1, Article 11 of the Vermont Constitution and the Court's prior holding in *State v. Kirchoff*.[89] (*Kirchoff* held that law enforcement officials are required to obtain search warrants for open fields if the landowner "demonstrates an expectation of privacy" by displaying "indicia…that demonstrates to a reasonable person that the public is not welcome."[90])

Chapter II, § 67 allows for entry onto "unenclosed" lands to hunt, fish, and trap. Lands are "enclosed" when they comply with § 5201.[91] The State argued that because Defendant did not comply with § 5201, a warrant was not required because any citizen hunting could enter his property and, therefore, no expectation of privacy existed preventing wardens entering to enforce gaming laws.[92] The Court rejected that argument by reasoning that: first, this conclusion did not change *Kirchoff's* standard of whether *law enforcement* can search open fields without a warrant[93]; second, that *Kirchoff* specifically addressed Ch. II, § 67 and concluded that it does not create an exemption for the warrant requirement in open fields; and third, that just because § 67 creates a limited right of entry for limited

[77] *Id.* at 1199.
[78] 197 A.3d 343, 344 (2018)
[79] *Id*. at 348-49 (citing 10 V.S.A. § 5201(b)).
[80] *Id.* at 349.
[81] *Id.* (citing 10 V.S.A. § 5201(b),(c), (d)).
[82] *Id.* at 344-45.
[83] *Id*. at 345.
[84] *Id*. at 344.
[85] *Id*.
[86] *Id*. at 344-45.
[87] *Id.* at 345 (quoting *State v. Kirchoff*, 156 Vt. 1, 10, 587 A.2d 988, 994 (1991)).
[88] *Id.*
[89] *Id*.
[90] *Id*. at 347-48.
[91] *Id*.
[92] *Id.*
[93] *Id.* at 349 (emphasis added).

purposes does not mean that *anyone* can enter Defendant's property for *any reason*.[94] Finally the Court declined to provide game wardens with privileges or exemptions to the warrant requirement allowed in other states.[95]

The Court read Chapter 1, Article 11 to "shield[] against 'unreasonable government intrusions into legitimate expectations of privacy'"[96] and reinforcing the principle that "warrantless searches are presumptively unreasonable."[97] A warrant requirement arises when an area possesses a reasonable expectation of privacy by an individual having a "subjective expectation of privacy" and that expectation being "objectively reasonable."[98] *Kirchoff* held Vermont's Constitution to require that law enforcement "secure warrants before searching open fields when the landowner demonstrates an expectation of privacy"[99] and an expectation in open fields exists "where indicia would lead a reasonable person to conclude that the area is private."[100]

Here, Defendant's property possessed an abundance of signs that would have clearly objectively indicated to a reasonable person that outsiders were not welcome, yet the warden did not enter from the same vantage point as a reasonable person and claimed he didn't see them.[101]

The Court explained that the trial court did not err in using the topography of the land to describe the warden's viewpoint as not reasonable, and therefore, the warden's warrantless search as not reasonable.[102]

—197 A.3d 343 (2018).

ABOUT THE WILDLIFE LAW CALL

These case briefs were composed by the Association of Fish and Wildlife Agencies' (AFWA) summer law clerk, Christina Micakovic. **The *Wildlife Law Call* does not report every recent case or issue,** but we hope you will find these briefs, selected from recent fish- and wildlife-related decisions, interesting and informative.

NWTF is a nonprofit organization dedicated to the enhancement of wild turkey populations and habitat, and recruitment, retention, and reactivation of hunters. AFWA is a professional organization whose members are the fish and wildlife agencies of the 50 U.S. states as well as territories, several Canadian provinces, some U.S. federal agencies, and a number of conservation-focused organizations.

1100 1st Street, Suite 825
Washington, D.C. 20002
(202) 838 3460

Post Office Box 530
Edgefield, SC
29824-0530

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[94] *Id.* (emphasis added).
[95] *Id.* at 350.
[96] *Id.* at 346 (quoting *State v. Bryant*, 2008 VT 39, ¶ 10, 183 Vt. 355, 950 A.2d 467).
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.* at 348 (quoting *Kirchoff*, 156 Vt. at 10, 587 A.2d at 994).
[101] *Id.* at 354.
[102] *Id.*