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California Land Use & Development Law Report

All About Drakes Bay and Oysters, Little Oysters.

In a case the court described as pitting "an oyster farm, oyster lovers and well-known 'foodies' against environmentalists," the Ninth Circuit has upheld denial of a preliminary injunction against the Interior Secretary's decision not to extend a permit for commercial oyster farming at Point Reyes National Seashore. [Drakes Bay Oyster Company v. Jewell](#), No. 13-15222 (Ninth Cir., Sept. 2, 2013). Drakes Bay Oyster Company sued to block a decision by Interior Secretary Ken Salazar not to extend its lease for commercial oyster farming at Point Reyes National Seashore. The 40-year permit -- originally issued to the Johnson Oyster Co. in 1972 and assumed by Drakes Bay -- got a new lease on life in 2009 when a provision attached to an appropriations bill gave the Interior Secretary discretion to extend the permit an additional 10 years. In November 2012, the Secretary declined to extend the permit, citing "legal and policy factors" and expressing the view that a commercial oyster operation was incompatible with a wilderness area. Over a strong dissent, the appellate court held that it lacked jurisdiction to review the Secretary's "ultimate discretionary decision" whether to extend the permit. It also found that Drakes Bay was unlikely to prevail on its other claims, and therefore was not entitled to a preliminary injunction. A more extensive discussion of the case appears [here](#).

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