TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

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You Say Tomato, I Say…Hey Where are All the Tomatoes?

In the case of tomatoes from the normally tomato-rich Rio Grande valley of South Texas, the answer is they ain't dere no more—well, mostly. The valley, long able to produce up to five crops a year, is struggling to produce one. Worse still, according to the Texas Agriculture Commissioner Sid Miller, that means not just fewer tomatoes (and melons and other produce), but fewer and fewer farms. This region of Texas is losing as many as one farm per week, and the reason is lack of water. South Texas is famously dry, but the combination of rain, streams, and ground water was enough to support a thriving produce farming area. But no more, especially since once reliable ground water is no longer so reliable thanks to over-pumping and expanding demand from urban areas and the energy sector, specifically from hydraulic fracking. Commissioner Sid is calling on lawmakers to ramp up water infrastructure spending and—Holy Moly—to restrict the use of potable water for fracking. The prospects of that are not good given the rancorous political climate within the state and the simple fact that spending more money on water is not the same thing as getting more (much less enough) water. Sarah Kirkle of the Texas Water Conservation may have said it best when she was reported to have said, "The vibe is not good." Amen, sister.

The possible role of climate change in Texas's water and farming woes has not gotten much attention because… well, it's Texas. And because other more immediate factors are so apparent. Not so, elsewhere where deeper factors are being acknowledged; case in point, Paraguay where the Paraguay River has dropped to historic lows, crippling shipping and commercial fishing. Yes, the immediate cause is a drought, but the fact that the previous record low water levels was three years ago is raising the specter that something more systemic, specifically climate change, is afoot, a possibility that is being acknowledged. If it is, then the next rains that fall may be a relief but not a solution to the river's troubles and those communities in Paraguay, Uruguay, Argentina, Bolivia and Brazil that rely on it. Acknowledging systemic drivers doesn't make them easier to deal with but it tends to work better than not.

Ground(Water) Control to Major Tom

David Bowie ingested lots of things that probably did him no favors, but through it all we know he was always looking forward to his next refreshing drink of water. If you, like Ziggy presumptively did, drink tap water with any confidence, you should thank your local water professions—and the Safe Drinking Water Act. Dating back to 1974, the SDWA is a federal law that sets standards for more than 90 contaminants (and counting) and guidance for dealing with unregulated contaminants to safeguard public water supplies. While not perfect not always keeping pace with the introduction of new contaminants (looking at you, PFAS) it has allowed most U.S. communities to slake their thirst without anxiety. It stands apart from laws like the Clean Water Act in that it focuses not on the health of "navigable waters" but rather the health of people who drink water from public water supply system whether the source water is surface water or ground water. Because a lot of Americans rely on private wells instead of public suppliers we have a two-tier system—one covered by SDWA and one not. So, how's it working? Is the red tape and bureaucracy worth it? It sure seems so. For systems covered by the Act, it is lot easier to know if your waters are safe to drink and there are options for bringing them into compliance. Private well users, who are not covered, have had to trust good luck unless

they could do their own testing and were prepared to pursue their own remedies (e.g. suing your polluting neighbors), and luck is not enough. It has been known for years that a significant number of private wells are tainted by contaminants at levels that would violate the SDWA if that law applied to them. In California alone, it is also increasingly clear that more recently identified contaminants such as PFAS chemicals are a growing problem for people reliant on private wells. The growing health risks and threats to property values from contaminated well waters are spurring some states to step in where the SDWA can't. Washington state has a Ground Water Management Area project that offers free well water testing and assistance with home filtration systems. Wisconsin's Groundwater Coordinating Council has recommended the state legislature to set health-based groundwater PFAS standards. In Texas, Texas A&M University has been offering water testing through its Texas Well Owner Network. Laudable as the moves are, they are simply not enough to deal with the chronic and growing problem of ground water contamination and private wells, and the fact remains that far too often in far too many places, protecting ground water and its users is simply nobody's job. And even when it is, they often lack the resources and the public will to do it. The contrast between water supplies subject to the SDWA and those that are not suggests that it might be a good idea to up our game. We will be judged.

Oh Captain, My Captain

Here at the Institute, we pride ourselves on a certain freewheeling, independent approach to our work. But that luxury exists because the powers that be at Tulane Law School allow it. So it is with great excitement that we welcome our new Dean Marcilynn Burke to Tulane Law. Not only do we have a new captain at the helm, but she comes to us with a background in land use, environmental and natural resources law, public service (Acting Assistant Secretary of the Interior), and as dean of another law school with a pretty darn good environmental law program (Oregon). Glad to have you aboard, Dean.

Coming Up:

State of the Coast 2025
Proposals Deadline September 23, 2024

How to Prepare Your Wastewater Utility for Disasters; EPA Webinar
September 19, 2024

Public Meetings for the Amite River Basin Commission Master Plan
Ascension - St. James – Iberville – Sept. 16th
East Baton Rouge Parish – Sept. 18th

Water jobs:

Policy Fellow; Louisiana Public Service Commission; Southeast LA

Visiting Professor (Clinical Assistant Professor); Tulane Environmental Law Clinic; New Orleans, LA

The Tulane Institute on Water Resources Law and Policy is a program of the Tulane University Law School. The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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