

TUWaterWays

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

July 2, 2013

The End of a Long Strange Trip: SCOTUS Denies Cert on Katrina Flood Case

It is now official. The decision by the Army Corps of Engineers to defer the armoring of the levees/spoil banks along the Mississippi River-Gulf Outlet may have caused some of the flooding and destruction spawned by Hurricane Katrina but the Federal government can't be held liable for it. When the U.S. 5th Circuit Court of Appeals reversed itself in 2012 and concluded that the decision was a matter of discretion and not the negligent misapplication of scientific principles (as the trial court and the 5th Circuit had originally held) it set up an interesting issue for the Supreme Court to consider and hash out. With no fanfare the Supreme Court [declined to hear](#) an appeal and the case came to end. The final rule: Sometimes under the law there are wrongs that have no remedy.

Obama Climate Policy Calls for Water and Flood Resilience

When President Obama [announced](#) his [Climate Action Plan](#) it garnered the lots of attention—pro and con—aimed at its energy choice and transportation policy provisions. Commentators largely skated over the provisions of the Policy calling for plans and actions to deal with climate driven threats to water infrastructure, water habitats, coastal communities and insurance. The Policy also continues the long-standing trend in federal thinking to exclude anything that floats from the transportation category, a distinction that may make sense when drawing lines between the jurisdictions of the Department of Transportation and Army Corps of Engineers but it little to no sense in real world transportation planning.

A Wet but Thirsty Future for Miami? Yes, Says Rolling Stone

Everyone knows (or should by now) that south Florida wonderful place with some real sustainability challenges. Just how deep those challenges may be is the topic of troubling look in the crystal ball in [Rolling Stone](#) magazine. The combination of water demand, geology, topography, sea level rise, and a harsh political environment spell trouble according to the piece. Is it really so bad? We can't say, but it is an interesting read.

"Extortionate" Demands Trigger Takings Says SCOTUS

Protecting wetlands is never easy. "Takings" law is not easy. Put those two together in the U.S. Supreme Court and you have the recipe for drama and confusion. Wetlands are inherently dynamic and their values are rarely expressed in terms that are easily translated into market values or property rights. Federal "takings" law (which deals with the application of the Constitution's Fifth

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 stewardship of water.

Coming up:

[July 10, 2013](#)

Greater New Orleans Foundation
[Urban Water Series](#)

"Creating Local Change: Making a Commitment to Next Steps"

New Orleans BioInnovation Center
New Orleans, LA

[October 24-26 2013](#)

Lake Pontchartrain Basin Foundation
Basics of the Basin 2013

New Orleans, LA

[Call for papers](#)

Tulane Institute
on Water Resources Law & Policy

6329 Freret Street, Suite 155G
New Orleans, LA 70118
504-865-5982

<http://www.law.tulane.edu/enlaw/>

Amendment restriction on the government's power to take private property without paying for it) strives for consistency but often proves to be consistent only in its changes. Case in point: the Court's recent decision in [Koontz v. St. Johns River Management District](#). A divided Court overruled the Florida Supreme Court (5 to 4) and found that a local government's attempt to require a property owner to fund an off-site environmental project as a condition of issuing a building permit was such an "extortionate" demand as to qualify as a compensable taking of Mr. Koontz's cash since there was not a sufficient nexus or proportionality between the precondition to the permit and the District's regulatory. The fact that no property was taken or cash paid was irrelevant to the majority—but not to the dissenters or the underlying Florida decision. How one actually determines these nexus and proportionality questions or draws the lines between "exactions" and regulatory takings will keep lawyers blissfully busy for years.

Trouble in Waterville (Part 1): Drought and Water Sales Stress Ground Water in New Mexico

As the Southwest continues to bake, the demands for and uses of water continue to change too. In New Mexico farmers are finding that there is not enough water for their crops but that there is [water enough to sell](#) to oil and gas frackers, who always seem to be in need. When those sales are done without reporting them the end result can be to draw aquifer levels down to unsustainable levels, and compromise drinking water wells.

Trouble in Waterville (Part 2): King Water? China's Coal Boom Drives Water Scarcity

Coal may not be king in America right now but it has a new throne in [China](#) where it is rapidly growing in importance. But getting coal out of the ground and into the energy cycle takes more than shovels; it takes water and lots of it (apparently more than all other industries combined according to one source). Unfortunately for China, the places that have lots of coal don't have lots of water so the drive to mine coal is fueling a scramble for water.

Fears of depleted water resources for human consumption, agriculture and the environment are spurring bold ideas like water trading systems and massive desalination plants with salt water pipelines more than 600 kilometers long. Sounds like the real king is water.

Public Meetings on Toledo Bend Hydropower EIS Set

The Federal Energy Regulatory Commission has set two public meetings to take comments about the Draft Environmental Impact Statement it released covering Toledo Bend Hydroelectric Project Number 2305-36. The Toledo Bend dam and reservoir straddle the Sabine River that marks the border between Texas and Louisiana. The meeting logistics are:

DATE : Tuesday, July 30, 2013
TIME : 10:30 am
PLACE : Orange Public Library
ADDRESS : 220 North Fifth Street, Orange, Texas 77630
(409) 883-1086

DATE : Wednesday, July 31, 2013
TIME : 7 pm
PLACE : Cypress Bend Conference Center
ADDRESS : 2000 Cypress Bend Parkway, Many, Louisiana, 71449
(877) 519-1500

For more information about the project and the Draft Environmental Impact Statement you can go to [FERC's website](#) where you will need to type in "Toledo Bend" into the search window. Pack up the family and go.

Governor Appoints Gautreaux and Davis to Louisiana Water Resources Commission

Louisiana Governor Bobby Jindal has made two new [appointments](#) to the Louisiana Water Resources Board. The new appointees are Karen Gautreaux of The Nature Conservancy and Mark Davis, director of the Tulane Institute on Water Resources Law and Policy.