

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
February 25, 2014

## Levee System Accredited... and Sinking, While Flood Insurance Set to Drop... or Rise.

Last week FEMA [accredited](#) the Southeast Louisiana levee system as meeting the protection standard against a 100-year storm. For purposes of the National Flood Insurance Program (NFIP), this means that most properties within the system should be available for lower rates. Unfortunately, the big picture is not so simple—for the levee system or NFIP.

Although the levee system is now accredited, how long it can remain accredited is unknown. Some of the levees are [sinking](#). Even where it is not sinking, maintenance and operation of the system will be in the millions of dollars per year. The state and federal governments are at odds over how and when that duty will be transferred. It is still unclear how the state will pay for it. Sen. David Vitter (R-LA), at least, is still pushing for future levee lifts to remain a Corps of Engineers duty. Whether or not that duty would be consistently funded is another issue.

NFIP's future remains unclear, as well. This week the House of Representatives is expected to [take up a bill](#) to alter reforms made by the 2012 Biggert-Waters flood insurance reform act. The Senate passed a bill to delay the institution of reforms last month. The two bills (should the House pass its one this week) are different enough that they would then meet in conference to iron out the differences. It is questionable just how much change these bills can make in the long term – either in making NFIP sustainable or preventing the [collapse](#) of real estate markets in flood zones.

## Groundwater, Drought, and Pollution.

People have almost always used water to get rid of things they don't want. An expired goldfish. A business associate who turns out to be an FBI informant. People in Dallas have largely standardized the courtesy flush thanks to the mantra "Flush twice, Houston needs the water." This approach used to work fairly well. Unfortunately, it can have dire consequences, and those consequences are becoming harder and harder to avoid. Just look at this week's oil spill on the Mississippi River (see below), the Dead Zone in the Gulf, or Ukrainian President Yanukovich's [classified documents](#).

California's ongoing drought is giving us [examples](#) of what happens when there isn't water to carry away or to dilute our problems. The difference between contaminated groundwater and acceptable groundwater is not the contaminants; it's the

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:

**March 8, 2014**

**Louisiana Water Festival**

State Capitol

Baton Rouge, LA

**March 12-14, 2014**

**Building Resilience Workshop V**

Lindy Boggs Conference Center

University of New Orleans

**March 18-20, 2014**

**State of the Coast 2014**

Ernest N. Morial Convention Center

New Orleans, LA

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amount of water. So areas that used to have safe groundwater are having trouble meeting drinking water standards when the same arsenic that has always been in the groundwater is mixing with much, much less water. The state has been working with small water systems to improve their capacity to make drinking water safe. In other areas, chemicals aren't being carried away from industrial/agricultural sites. How California's emergency [drought legislation](#) addresses these problems, we are not sure.

### **Inevitable Legislation to Re-Politicize "Non-Political" Levee Board Introduced in Baton Rouge**

Last summer, when the Southeast Louisiana Flood Protection Authority-East's lawsuit against dozens of oil and gas companies for wetlands damages was met with resounding criticism by Governor Jindal's office, it was immediately clear that legislation would be introduced this spring to increase gubernatorial control over the body. Senate Bill 79, [introduced](#) by Sen. Robert Adley, does just that. Currently, when there is an opening on the board, the nominating committee must nominate two candidates for each position. The Governor may then either choose one or reject both. Currently, a candidate who is rejected by the Governor may be re-nominated by the committee. Sen. Adley's bill would change that. Rejected candidates could only be considered later for other vacancies.

While it has already been proven that the existing board selection process is hardly removed from power politics (the Governor already has a great deal of power given that he sets the committee's calendar and apparently can refuse to appoint anybody to a vacancy) the pending bill would memorialize that trend rather than buttress the independence of the Authority and its nominators.

### **USAID Reports Water Insecurity Leads to Conflict but Can Also Provide Opportunity for Cooperation**

The United States Agency for International Development (USAID) has made water development a cornerstone [strategy](#) for its development mission. To further that strategy, USAID has released a [new study](#) highlighting the variety of ways in which water instability can lead to disputes and armed conflict. Issues such as poor water service or the failure of a water management project can harm people's faith in the state. Changes in pricing or policy can lead to protests, and shortages can cause people to take up arms. Relations over any of the world's 276 transboundary river basins can also play a major role in international dealings. USAID (and others) are now trying to transform international water relations from zero-sum games to cooperative efforts that provide for all parties (including the rivers themselves). We can look to Israel, Palestine and Jordan's nascent efforts to come together over the Jordan River as an example of the win-win efforts USAID is trying to encourage (and for an example of the difficulties in creating said efforts, google "Israel Palestine Jordan water").

### **Barge and Tugboat Collision Causes Oil Spill on Mississippi River between New Orleans and Baton Rouge. So What Could Possibly Go Wrong if We Move Fracking Wastewater on Barges?**

Moving oil, natural gas, their byproducts, or their waste has the potential for disaster no matter what the mode of transportation. However, this week's [collision](#) near Vacherie, LA closed down river traffic for two days, and it reminded us that inland shipping on our rivers that also serve as our drinking water sources is not without special risks that should give us all pause. A few months ago we reported on a proposed U.S. Coast Guard [plan](#) to allow wastewater from hydrofracturing ("fracking") processes to be shipped on barges – primarily from Pennsylvania to... downriver sites. Presumably that waste would be taken to disposal sites or wells. Who can say "no" to receiving such waste? Well, according to last month's Louisiana Supreme Court [case](#), not local governments in Louisiana. Companies that would like to drill disposal wells just have to comply with state laws. State Rep. [Dove](#) of Houma has [stated](#) that he would like to change that and will file legislation to give local authorities supremacy in siting such wells, but as of today that bill has not been filed. Department of Natural Resources' Office of Conservation regulates how water must be handled and disposed and how facilities that do that must be constructed, but they do not have any jurisdiction over river transportation and for any agency to explicitly limit our disposal of exploration and production (E&P) wastewater to in-state waste would plainly be in violation of the commerce clause of the US Constitution. That waste has been determined to be "nonhazardous" via legislation regardless of what chemistry says. So who you gonna call? Ghostbusters! For now, they're just as helpful as anyone else on this. (RIP Harold Ramis).

## **Building Resilience IV Workshop March 13-14 at University of New Orleans**

With rising seas, iffy insurability, and waning water supplies facing so many people and communities one might be tempted to grab a stiff drink and head for the bunker. Or one might do something more worthwhile like signing up for the [Building Resilience Workshop IV](#) being held at the University of New Orleans Lindy Boggs Conference Center March 13 and 14. These workshops have emerged as an important vehicle for educating people about the challenges and opportunities they are, or will be, facing on the natural hazards front. We know which choice we will be making.