

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
January 25, 2017

[I Got Credits in the Bank](#)

There are many different and important banks. Philip Banks, for example, was a talented civil rights attorney who became a [judge](#) in Los Angeles. He and his wife generously opened their home to a [nephew](#) fleeing West Philadelphia. He also played a [mean game of pool](#). Adam Banks was a peewee hockey star and alleged [cake-eater](#) who, owing to [redistricting](#), was forced to change teams from the first-place Hawks to the dead-last Ducks (don't worry, [it worked out](#)). Restoration Banks are a tool Louisiana's Coastal Protection and Restoration Authority (CPRA) plans to use to build projects paid for by future oil spills.

Under the Oil Pollution Act of 1990 (OPA), parties responsible for releases of oil must pay for restoration of the natural resources they damaged (NRD). Flipping that concept, CPRA is [rolling out a rule](#) to create restoration banks that would allow private entities to restore natural resources *before* an oil spill occurs by putting restoration credits in a bank. When an oil spill does occur, the responsible party can simply purchase credits from the bank, rather than undertake their own restoration. In theory, this will encourage construction of larger consolidated projects rather than smaller diffuse ones. By giving preference to projects contained in or complimentary to the [Coastal Master Plan](#), CPRA hopes to further the State's goals and cut down on the "administrative costs associated with the design and development of multiple spill-specific restoration projects." Here's to hoping lots of these banks are created and nobody needs them. If ever market failure was something to root for, this might be it.

Our Man in Washington

Louisiana Representative Garret Graves, recently elected to his second full term, will head up the House Transportation and Infrastructure [Subcommittee on Water Resources and Environment](#). The subcommittee oversees EPA programs under the Clean Water Act. Critical for Louisiana, the panel also oversees water infrastructure projects carried out under the Army Corps of Engineers. President Trump has [promised](#) to invest billions of dollars to modernize America's failing infrastructure (though it is [unclear](#) how he plans to pay for it). Rep. Graves will play a major role in drafting legislation to make that possible. Graves' last job was running CPRA, and

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:

[CRCL Coastal Restoration Road Show](#)

Abbeville, Lafitte, Cameron & Lacombe, LA
February & March, 2017

[Tulane Environmental Law & Policy Summit](#)
New Orleans, LA

[March 10-11, 2017](#)

Water jobs:

[Senior Analyst/Water Resources](#)

Abt Associates

Cambridge, MA

[AgCenter Assistant/Associate/Extension Agent \(Fisheries/Coastal Issues\)](#)

Louisiana State University

Terrebonne Parish, LA

[AgCenter Assistant/Associate Professor \(Natural Resource Economics\)](#)

Louisiana State University

Baton Rouge, LA

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Coastal Restoration has been a [central focus](#) of his campaigns. Hopefully, he can leverage his new position to pave the way for increased federal investment in Louisiana's coast.

When it Rains, [it Pours](#)

After five years of insufficient rain, water restrictions, and [Tom Selleck villainy](#), the worst of California's drought woes may be [washing away](#). The [good ol' Pineapple Express](#) has brought a series of major storms that wracked the Golden State over the last two weeks, bringing wet weather to much of the state, along with ever-important snowfall to the Sierra Nevada Mountains. While this does not mean the drought is over, it does mean that areas designated as suffering from extreme drought can be moved to severe and severe drought areas can be [downgraded to moderate](#).

Of course, too much of a good thing can cause problems. As Allan Parish noted, a little rain never hurt anyone, but [a lot can kill you](#). Gov. Jerry Brown declared a [state of emergency](#) yesterday as the torrential rains caused multiple [mudslides](#), especially in the more arid southern parts of the state. Still, given the hardship inflicted by the prolonged drought, even too much rain is a welcome change.

The Talented Mr. Damon

Actor [Matt Damon](#) is best known for his roles as [Jason Bourne](#), [Will Hunting](#), and now, apparently, an armor-clad [dragon-fighter](#) on the Great Wall of China. But, he's also making headlines for something much more important. Damon is the co-founder, along with engineer Gary White, of [Water.org](#). The organization is an international non-profit dedicated to bringing clean water and sanitation to the billions worldwide who lack access to these basic human needs. They recently partnered with brewer Stella Artois for the "[Buy a Lady a Drink](#)" campaign. The partnership uses proceeds from beer sales as well as limited edition chalices to help pay for clean water programs in developing nations. Despite his support of Hilary Clinton in the 2016 presidential election, Damon hopes to [pitch President Trump](#) to gain support for Water.org and foreign aid for clean water infrastructure.

Permits? We Don't Need No Stinking Permits

At least you don't need an NPDES permit if you are taking water from "water of the United States" to another without adding anything during the trip. So says the [2nd Circuit Court of Appeals](#) in much a watched for test of EPA's [water transfer rule](#). Under the Clean Water Act (CWA) you need a National Pollutant Discharge Elimination System (NPDES) for point source discharges of pollutants into waters of the United States (WOTUS). Running a pipe from one water source to another may look a lot like a point source. The water may even be carrying stuff that is no good for the receiving water. So why not require a permit? Why not indeed EPA, said a raft of plaintiffs who challenged EPA's rule which said if the pollutant was in the source WOTUS it was okay to ignore its discharge into the receiving WOTUS. For good reasons, said EPA's rule. After all the U. S. of A. is crisscrossed by aqueducts, pipelines, canals and other things that have been moving water around for a very long time, certainly longer than the CWA has been around. It is no simple thing knowing what pollutants are in those waters from day to day either. The 2nd Circuit's decision to defer to EPA's reading of an ambiguous portion of the CWA was a marked change of fortune for EPA which had lost at the trial court level. What's next? Who knows. But keep one thing in mind. If the definition of WOTUS changes as [President Trump](#) and others want and a source water falls outside it, then the NPDES requirement would come roaring back. Just saying.