



TUWaterWays

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

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We've Got A (Spill) Ways to Go

Marine species deserve protection. Communities deserve protection. But the mechanics of those two goals don't always fit together neatly. All that is to say that, on Monday, a coalition of coastal cities / counties (say that five times fast) in Mississippi, along with commercial fishers and a tourist association, [filed a lawsuit against the Army Corps](#) alleging violations of the Marine Mammal Protection Act in connection with the two openings of the [Bonnet Carré Spillway](#) in 2019. While the Spillway is opened to avert Mississippi River floodwaters from inundating New Orleans, all that water still has to go somewhere. The coalition's [complaint](#) points to the Spillway's openings impacts on salinity levels in Lake Borgne and Mississippi Sound which have negative impacts on [bottlenose dolphins](#). The influx of freshwater alters salinity level, often causing skin lesions and infections that can be fatal. The Mississippi plaintiffs request that the court declare the Army Corps' actions contrary to the law, and going forward it must fully comply with the MMPA and avoid any adverse impacts to dolphins in the operation Bonnet Carré.

This is the latest in several suits against the Army Corps on conservation/species grounds, including [a recent Endangered Species Act suit related to the Mid Barataria Sediment Diversion](#). As flooding events increase and bigger climate adaptation projects become necessary, it's likely these conflicts will continue to emerge.

Taking Things to the Extreme

Freezing temperatures and [ice storms took their toll on water infrastructure across the South](#), especially for residents of Memphis, Tennessee and Jackson, Mississippi, where 145 water pipes broke in the Jackson area alone. And just days later, [freeze warnings are out and flash flood warnings](#) are back in. It's an unfriendly reminder that extreme weather has become more of a norm than an extreme.

In contrary to the weather, we can keep you from feeling so gray. If you're searching for the rare chance at a positive spin on a story about the increasing frequency and cost of natural disasters, here's something: [FEMA is making changes](#) to its disaster assistance program. It also creates a new Displacement Assistance program to support disaster victims living in hotels or with family and friends; this rule will go into effect on March 22nd. [Affordable housing](#) and [environmental justice](#) advocates say that the updates will address barriers that have prevented lower income households from receiving adequate assistance in the past. However, it's not all rainbows and unicorns for disaster funding. Amidst the battle over rising flood insurance premiums, the [National Flood Insurance Program is set to lapse on February 2nd](#), unless Congress moves to reauthorize the program. On second thought, if that comes to pass then maybe [the world of rainbows and unicorns](#) would have more in common with disaster assistance.

For those of us in New Orleans ([or many places in the US, to be honest](#)), it would almost be weird if we didn't have a water infrastructure crisis on a regular basis. This week was no exception. From floods on the Northshore to water main breaks in Jefferson Parish to closed bathrooms at the airport, it's been [one heck of a week](#). It's no secret that the city's infrastructure needs updating; both major and seemingly minor storms overwhelm the drainage

system. And just after [last week's edition of TUWW](#) brought our readers tales from stormwater utility efforts across the country and musings of potential efforts to address drainage, there has been word of such an effort! After several unsuccessful attempts to raise funds, the Sewerage and Water Board is preparing a proposal [to implement a stormwater fee](#) that it hopes to pitch to City Council sometime this year. Fitting that the Sewerage and Water Board's Executive Director referred to 2024 as the year of drainage. Whatever the solution ends up being, we hope those reform efforts don't [circle the drain](#) this go 'round.

And Finally, We Address the [Elephant](#) in the Courtroom

The U.S. Supreme Court agreed to hear the federal government's objection to a proposed settlement among Texas, New Mexico, and Colorado to resolve disputes over water-sharing agreements in the [Rio Grande Compact of 1938](#). Texas filed the original lawsuit in 2014, alleging that groundwater pumping below the [Elephant Butte Reservoir](#) in New Mexico had resulted in Texas getting less than its legally entitled share of Rio Grande waters. It's also subject to the jurisdiction of the [International Boundary Waters Commission](#), which oversees water treaties between the U.S. and Mexico. Severe drought conditions sparked that legal battle, [conditions which persist in the present day](#). Last year, the states attempted to settle the dispute and crafted a compromise plan, recommended for approval by the [8th Circuit](#), that would force New Mexico to cut 17,000-acre feet below Elephant Butte; as a result, it would impact two irrigation districts that support a large agricultural industry.

Enter the feds, who have had a bit of [FOMO in not having a seat at the compromise table](#). Government attorneys argue that federal consent was required, the compromise is an overreach because it would require federal agencies to change operations on the Rio Grande Project, and that it violates the compact by failing to recognize a 1938 baseline of minimal groundwater pumping. No hearing date is set, as SCOTUS is very busy considering all sorts of large questions that could flip the administrative state and executive branch on its head. What a time!

Coming Up:

[Tulane Environmental Law Summit](#); New Orleans, LA; February 23 & 24, 2024

Water jobs:

[Policy Manager, Mississippi River Water Initiative](#); National Audubon Society; Holly Springs, MS

[National Environmental Leadership Fellow](#); Rachel Carlson Council; Washington, DC

[Planet Reimagined New Futures Fellowship](#); Mississippi River Delta

[Law Associate Post-Graduate Fellow](#); Center for Water Law & Policy, Texas Tech University; Lubbock, TX



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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