

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
October 12, 2012

## ***Testing the Waters: The Great Lakes Compact Faces its First Challenge in Waukesha, Wisconsin***

Four years after its inception, the Great Lakes Compact faces its first test to determine its effectiveness. The compact, originally signed by President George W. Bush, applies to the states and Canadian provinces contiguous to the lakes and allows cities to apply for water access. Waukesha, Wisconsin (near Lake Michigan but not in its drainage basin) recently approved purchasing drinking water from nearby Oak Creek and sending back treated wastewater to the Great Lakes basin; the state plans on completing an environmental review of the proposal by next year at the latest.

[Great Lakes Compact Faces First Test, Joe Barrett, The Wall Street Journal, Oct. 3, 2012.](#)

## ***Flooding and the Fifth Amendment***

No private property can be taken for public use without fair compensation. The takings clause of the Fifth Amendment is well-known by attorneys, but its actual boundaries remain a bone of contention. The U.S. Supreme Court has noted in prior cases that flooding from dams, even if through a controlled release by the government for a public use, is merely a “temporary invasion” and does not rise to the level of a taking. This has not deterred the Arkansas Game & Fish Commission from pressing forward. The state agency recently won a damage judgment of \$5.8 million that was later reversed by The United States Court of Appeals for the Federal Circuit. The Supreme Court heard oral arguments last week with the central question: *Is the United States liable under the Fifth Amendment’s taking clause for physically taking property through temporary flood invasions?*

[When Flooding is Not a Taking, Editorial, The New York Times, Oct. 5, 2012.](#)  
[Arkansas Game & Fish Commission v. United States of America, Oral Arguments, www.oyez.org, Oct. 3, 2012.](#)

## ***The “New” Threat to National Security (and the Colorado River): Climate Change & Water***

At the request of Secretary of State Hillary Clinton, the National Intelligence Council launched an assessment to better understand the impacts of global water challenges on our nation’s security. The result: an unclassified Intelligence Community Assessment (ICA) that identified the Colorado River as a water source at risk of drying up by 2057 “due to climate change and overuse.” The Pentagon is not the first to warn about the inevitable impacts of climate change. The Center for Naval Analyses’s Military Advisory Board previously warned about the impacts of climate change as a threat to national security. Although generally vocal and quick to react, deniers of climate change have yet to respond to the Pentagon’s ICA or the CNA.

[Pentagon Study Cites Climate Change as National Security Threat, Renee Parsons, The Huffington Post, Oct 3, 2012.](#)

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:**

[October 15, 2012](#)

Prof. E.O. Wilson and Alex Harris  
“Why We are Here”  
Dixon Auditorium  
Tulane University  
7:30 pm

[October 17 2012](#)

America’s Wetland Foundation  
“Big River Thrives”  
Memphis, TN

[October 20-25, 2012](#)

Restore America’s Estuaries Conference  
Tampa, FL

[December 6, 2012](#)

America’s Wetland Foundation  
“Big River Lives”  
St. Louis, MO

[February 22-23, 2013](#)

18<sup>th</sup> Annual Tulane Environmental Summit

**Tulane Institute**  
on Water Resources Law & Policy

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## ***EPA: Health Risk from Pharmaceuticals is “Very Low”***

A critical report issued in May by the U.S. EPA’s Office of Inspector General stated that EPA had failed to exercise its authority or provide a process for regulating pharmaceuticals; this prompted an investigation by the OIG. EPA responded at the outset by stating it had taken the necessary steps and conducted research to determine whether pharmaceuticals pose a hazardous risk to human health and the environment. At the heart of the investigation was whether these pharmaceuticals warrant being listed as hazardous waste under the Resource Conservation and Recovery Act. The OIG recently closed their investigation after EPA agreed with OIG’s recommendations and made certain revisions, stating they were satisfied despite EPA’s notable absence of policies for determining whether pharmaceutical residue poses harm to human health and the environment. Prepared at the end of August, the memorandum was released on October 8.

[Research in Action: Relative Risk of Pharmaceuticals in Waste Water. www.epa.gov.](http://www.epa.gov)  
[Environmental Protection Agency Memorandum, Aug. 24, 2012.](#)

## ***The Next Generation of Cap and Trade: Nutrient Credits***

Faced with federal and state budget cuts and problems, entrepreneurs have developed a new cap and trade market in an effort to reduce pollution and continue restoring the Chesapeake Bay. Similar to the carbon market, businessmen in Virginia are performing environmental restoration projects that reduce the amount of nutrients that enter the bay. Acting as offset bankers, they receive one “nutrient” credit for every pound of phosphorus and two pounds of nitrogen that do not wash into the bay from farmland, lawns, roads, or parking lots. The credits are then resold to developers or government agencies that are required to reduce their pollution under stormwater regulations. This innovative approach to reducing nutrients has been challenge by two Washington-based environmental groups, Food & Water Watch and Friends of the Earth. Wenonah Hauter, president of Food & Water Watch believes that “if trading is allowed to move forward it’s going to allow new and increased pollution discharges into the bay’s watershed.”

[Entrepreneurs jump-start market-based cleanup system, Paul Quinlan, E&E, Oct. 8, 2012.](#)  
[Fighting Pollution Trading to Preserve the Clean Water Act, Wenonah Hauter, Food & Water Watch, Oct. 5, 2012.](#)

## ***Carbon Markets: UN Panel Outlines the Pros and Cons***

A United Nations Panel recently outlined the pros and cons of today’s carbon market. Consistently criticized, the carbon market has faced some difficulty getting off the ground, particularly in light of the Kyoto Protocol aftermath. With key developed countries missing from the Clean Development Mechanism (CDM), the carbon market is now flooded with carbon credits, whereby reducing their overall value by up to 70%. However, all is not lost. The same UN Panel highlighted the positive impacts of the carbon market, particularly volunteer markets such as the Verified Carbon Standard or American Carbon Registry. The panel’s research emphasizes a need for developed countries to increase their mitigation ambition levels and whereby save the carbon markets in general, particularly the CDM. In related news, the Verified Carbon Standard has announced its recognition of blue carbon as a trading category for carbon credits; blue carbon is carbon that is stored in mangroves, seagrass, and coastal wetlands.

['Carbon markets on verge of collapse; require immediate rescue by nations', suggests UN Panel, The Energy and Resources Institute, AlertNet, Oct. 10, 2012.](#)  
[Wetlands Requirements Add to Eligible AFOLU Categories, Verified Carbon Standard Program Announcement, Oct. 4, 2012.](#)  
[VCS Recognizes Coastal Blue Carbon as New Trading Category, Steve Emmett-Mattox, Restore America's Estuaries.](#)

## ***Unified Front against BP: Senators and Environmental Organizations Voice their Concerns for a Fair Outcome***

Due in part to continuous rumors that the BP Oil Spill will settle in the next few months, and with a less than ideal amount, senators from the Gulf Coast States and the National Wildlife Federation have issued out similar statements requesting that BP be held accountable. Links to the bipartisan letter from the senators to the President as well as NWF’s to the Attorney General are listed below:

[BP Oil Spill Settlement: Gulf Coast Senators Sign Bipartisan Letter Seeking Fair Deal, Roberta Rampton, Reuters, Oct. 6, 2012.](#)  
[Letter from Gulf Coast State Senators to President Obama, Oct. 5, 2012.](#)  
[Letter to Attorney General: Hold BP Accountable, Jaclyn McDougal, The National Wildlife Federation, Media Center, Oct 10, 2012](#)  
[Letter to Attorney General Holder from The National Wildlife Federation, Larry Schweiger, Oct. 10, 2012.](#)

## ***Tensions Over Water Rights Escalate Between Two Indian States***

Drought, state governments, federal commissions, and age old cultural tensions have led to an explosive mix in Southern India. When the Indian state of Karnataka sent extra water down the Cauvery River to neighboring Tamil Nadu, it was following the orders of the Cauvery River Authority. When Karnataka stopped sending extra water downstream, Tamil Nadu sued Karnataka in the Indian Supreme Court. At the center of this debate are farmers in both states who have suffered through a poor monsoon season and two neighboring states with cultural tensions running deeper than those between Kansas and Missouri.

[Two States Split Bitterly by One River, Manu Joseph, The New York Times, Oct. 10, 2012.](#)  
[Cauvery Water Row: TN moves SC for Contempt Action against Karnataka, The Times of India, Oct. 11, 2012.](#)