

TUWaterWays

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

[December 19, 2019](#)

Drip, Drip, KABLAM!

So, you think you know what water risk looks like, do you? Sure, you and all your fancy knowledge about floods, tsunamis, droughts, busted pipes, crumbling dams and dikes have it all figured out. Well did you ever think about [this](#)? Yup, an explosion in the French Quarter that sent manhole covers soaring and that set two cars ablaze. Not your average water problem. To be fair, water needed some help with this one. First, it needed to be more than just pure clean water, and second it needed to meet a spark. In this case a [leaking sewer line is suspected of flooding an underground electric utility vault with both water and methane gas, the latter of which exploded when it met the electricity that lived in the vault](#) (we apologize for using such technical language). Fortunately no one was injured. This time.

And, lest you think “only in New Orleans,” please see exhibits [A](#), [B](#), [C](#), and [D](#).

First in Time, First in What?

Water law has something in common with every other law ever made by anyone anywhere, namely that hardly anyone pays them any mind until they are applied to them. Our scene now shifts to [Quivira National Wildlife Refuge](#) in Kansas where whooping cranes frolic in Big Salt Marsh and Little Salt Marsh nestled amongst the grass covered sand dunes—yes, in [that Kansas](#). [It is a special place, but a place with troubles—neighbor troubles. The reason is water](#). Specifically, there’s not enough of it. The Refuge and those whoopers and other birds need water and so do the farmers in the area who have been irrigating their fields with water that would otherwise be available to the Refuge. The Refuge has formally filed an “impairment complaint” which could lead to some of the farmers reducing their water use.

So, who should get to [carry on](#) using the water—birds or farms? To answer that question you need to know something about Kansas hydrology and law. First, Rattlesnake Creek (the source of water for Quivira, not [the song](#)) and the aquifers tapped by the farmers are linked, so taking water from a well can reduce stream flow to the [point of no return](#). Second, Kansas water law is based on prior appropriation where the rule of “first in time, first in right” holds sway. In this case, Quivira got there first (for the most part). [Nobody disagrees with that, or that the Refuge tried for nearly 30 years to get their neighbors to use less water](#), they just disagree about whether that should really matter. After all, farm families vote and support local schools and shops in ways that whooping cranes just don’t (though [birders](#) might make a counter-argument).

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:

[Water Collaborative Happy Hour & Toy Drive](#)
December 19; New Orleans, LA

[Request for Qualifications: Gentilly Resilience District Public Art](#); December 20

[Draft Fiscal Year 2021 CPRA Annual Plan Public Hearings](#)

January 6; New Orleans, LA

January 7; Houma, LA

January 8; Lake Charles, LA

Communities Restoring Urban Swamp Habitat Planting Event; January [10](#) & [11](#); Akers, LA

[Coastal Stewardship Awards Nomination Deadline](#)
January 13

[Draft Fiscal Year 2021 Atchafalaya Basin Annual Plan Public Hearing](#)

January 14; Plaquemine, LA

January 16; Henderson, LA

[CPRA Board Meeting](#); January 15; Baton Rouge, LA

[Navigating Legal Waters: A Symposium on the Future of Water Resources Law by the LSU Journal of Energy Law and Resources](#); January 24; Baton Rouge, LA

Water jobs:

[Intern](#); Global Water 2020; Washington, DC

[Assistant Professor- Environmental Science & Policy](#)
University of California-Davis; Davis, CA

[Operations and Land Management Assistant Bureau Chief](#); SW Florida Water Mgmt; Brooksville, FL

[Water Policy Advisor to the Office of the Los Angeles Mayor](#); Liberty Hill Foundation; Los Angeles, CA

[Riparian Restoration Director](#); Forterra; Seattle, WA

[Bailey Conservation Fellow](#)

The Nature Conservancy; Lansing, MI

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Legally speaking not only should the Refuge's earlier right matter, but it should decide the matter. But, having the law on your side is not always enough when the politics and community sentiment are on the other side. Water law is no exception, and unfortunately there is not an [endless sea](#) of freshwater in Kansas. (The Kansan in the office wants it known that there are other artists from Kansas besides the band named Kansas. He just can't think of any right now.)

Meet the New Boss, Same as the Old Boss

The rivalry between Florida and Georgia [goes way beyond the gridiron](#), which is actually pretty genteel stuff when you get down to it. If you want [the real deal](#), a [rivalry that goes to the bone](#), cast your eyes on the custody battle between Florida and Georgia over the Apalachicola River being waged in the Supreme Court of the United States. It is an offshoot of a broader dispute between Alabama, Georgia, and Florida over use of the Apalachicola, Chattahoochee, and Flint Rivers that dates back to 1990, the case appears to be limping to an end. At least if the [report of the Special Master Paul Kelly, Jr.](#) is any indication. Florida's hopes had risen last year when SCOTUS rejected the recommendation of the previous Special Master to dismiss the case and sent it back for further consideration. But a second bite at that apple did not work out any better than the first. The first Special Master, Ralph Lancaster, Jr., recommended dismissal because he did not believe a remedy could be confected without the involvement of the U.S. Army Corps of Engineers, which could not be compelled to participate. Special Master Judge Kelly went further and concluded that the equities and evidence were in favor of Georgia and that Florida should lose. [Ouch](#), at least they've still got their [pride](#). Whether SCOTUS will agree with the Special Master is an open point, but odds are that the end of the line is near for Florida (and [the old Apalachicola Bay](#)). Judge Kelly's [report](#) is recommended reading for any other states thinking of suing their neighbors over water and winning. It is not an easy row to hoe, but, then again, there's no [substitute](#) for water.

Catch You On The Flippity Flip!

This will be the last TUWaterWays of 2019. Thank you all so much for reading every week – even when we strain the English language to the breaking point just to throw in a stupid reference to a song or Simpsons joke. We have been writing this thing 51 weeks a year or so since the summer of 2012, and it's been a wild decade in the world of “water news and more.” We feel privileged for getting to share it with you.

Who knows what the 2020s will have in store, or if we'll be able to keep documenting it in this style. Surely, though, the need for us all to keep water (and more!) on our minds won't be going anywhere. If you want to send us a present, send your friends and colleagues our newsletter and tell them to [subscribe](#) (or just sign them up yourself! We won't be able to tell the difference!). So, spread the word. If you can't do that, well, [cash works, too](#).

Checks “fundraising” off of to-do list