

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
October 27, 2015

High Tide in Miami.

America knows tragedy. It responds to tragedy. It even learns from tragedy. At least that's the case when the tragedy comes as a shock, an act of God, or some other out-of-the-ordinary blow. When a hurricane floods a town or neighborhood we send in FEMA, the National Guard, the Red Cross, and we open our hearts and wallets, as we should. But what happens when the blow becomes ordinary or chronic? Well south Miami, Florida, is in the process of finding out that the [Tide is High](#) is a refrain its neighborhoods sing way too often. Since mid-September, the tides have been [running a good 6-12 inches](#) above the predicted highs. Is this a smoking gun proving global sea level rise? Not exactly. Tides are not uniform, being influenced by orbital, lunar and weather conditions. In Florida, fall tides run higher than spring tides. Tides are higher on full moons, and water temperature and barometric pressure are factors too. So is sea level rise. Sea level sets the foundation that the other tidal conditions work from, and sea levels are rising in Florida; Four inches over the past 20 years and one foot over the past century. When you are low lying, as Miami is, and are built on what is essentially a limestone sponge with no sea walls to protect you, inches matter. With rates of sea level rise expected to increase, flooding is likely to become more of fact of life. These tides are going to be [harder stuff](#).

Take That! State's Mitigation Plans Cross the Line

On one level it was such good plan. We are talking about a plan by the state of Mississippi to compensate for the damage to wetlands caused by the construction of a road near the city of Gulfport. The plan to do mitigation work on 1,638 acres of nearby land was good enough to persuade the Army Corps of Engineers to issue a permit under Section 404 of the Clean Water Act. On another level it was less than a good plan since it turns out that Mississippi had no rights to do anything on 1,300 acres of that mitigation site. Moreover, the owner of those acres had its own permit to develop the site, plans that went on hold while the regulatory aspects of the competing projects combined to form a sort of vortex of despair. As a result, the state's permits were vacated in 2012 and the landowner brought a "takings" suit against the Mississippi Highway Commission for partially taking his property by committing to acquire it for its mitigation project. On Oct 22, the Mississippi Supreme Court [ruled](#) that there had been a

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:

[State of the Coast: Call for Abstracts and Session Proposals](#)

Open until Nov. 30, 2015

[Online Here](#)

[Groundswell Happy Hour](#) (Fundraiser)

November 5, 2015

Courtyard Brewery

1020 Erato Street

New Orleans, LA

Water jobs:

[Clean Water Advocate](#)

Environment America

[Data Analyst](#)

The Data Center

New Orleans, LA

[James McCulloch Chair in Energy Law](#)

Tulane University Law School

New Orleans, LA

[Restoration Programs Director, Habitat Restoration](#)

[Program Coordinator, Science/Technical Director](#)

Coalition to Restore Coastal Louisiana

Baton Rouge, LA

[Virginia Energy Attorney](#)

Southern Environmental Law Center

Charlottesville, VA

[MRD & Natural Infrastructure Economist](#)

(Two Year Postdoc Position)

Environmental Defense Fund

Washington, DC, New York City, or Boston, MA

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partial taking but remanded the case for further consideration of whether there had been a “categorical” or per se taking. The lesson here appears to it is a good idea to be careful when make plans for things you don’t actually own.

The World as It Should Be. Non-lawyer Trustee Can’t Represent Trust in Water Case

Just when it seems like the world has been turned upside down, we get calming news from the Colorado Supreme Court that the natural order still holds. It seems a non-lawyer trustee got the bold notion that under Colorado’s Code of Civil Procedure it was okay for the trustee of a trust to represent that trust in a water rights proceeding even if he/she is not an attorney. Reacting swiftly, the Court [ruled](#) that the law allows no such thing. If you want to represent someone in court, even the trust of which you are the trustee, you must be a lawyer. The Earth’s rotation and orbit once again stabilized, life goes on.

Feds to Court: [We’re Not Gonna Take It](#)

With the announcement from the U.S. Department of Justice that it will [appeal](#) a judgement against it, the long, sad saga of the Mississippi River Gulf Outlet goes on. Following Hurricane Katrina, Congress deauthorized the much maligned navigation channel and ordered the Army Corps of Engineers to develop a plan to remediate the environmental damage done by the channel. Eight years later, there is a \$2.9 billion plan but no remediation. The reason? A difference of opinion about who should pay for it. More precisely, whether the State of Louisiana is required to share the cost of the work. The hash appeared to be settled by a Federal Court [ruling](#) in August 2015 that Congress intended the work to be done fully at federal expense. The firm, clear answer to the question was not the firm, clear answer that DOJ was looking for and they are stepping back in the ring for [another round](#). All the while the sea rises, the land sinks, and danger gets closer. Perhaps the better question to be answered is just what should victory look like in this case and does this appeal get anybody closer to it.

Look, Up in the Sky—Its Super Beaver!

The superhero check list: [Does great things](#). Is [misunderstood and under-appreciated](#). Builds [fortress of solitude](#). Has [great teeth](#). No doubt about it, [beavers are superheroes](#), and we have more evidence to back it up. It turns out that streams with beaver ponds have lower nitrogen levels, often noticeably less. That is the conclusion of a [paper published](#) in the Journal of Environmental Quality last month. If beaver ponds are such good nitrogen sinks maybe there is a lesson there about ways we might better manage our waterways—and beavers—to reduce the persistent hypereutrophication that leads to things like the infamous “Dead Zone” in the Gulf of Mexico. Beavers are apparently standing by waiting to [drop in](#) to the rescue.

Oh Boy, Where Did the Lake Go?

It’s great being a state with lots of water. Long showers, green lawns, and clean cars are all just part of the good life in America’s Dairyland. Wisconsin, we are told, is an [Algonquian word](#) meaning, “don’t be stupid about the water.” Well [maybe \(okay almost certainly\) not](#) but perhaps it should be, because Wisconsin is finding out that even water rich states can have real water problems. In this case, the problems stem from the state’s abundant (some 1,500) lakes. It seems that many of those lakes are connected to aquifers that are being pumped at high rates. As the [aquifers are drawn down, so are the lakes](#). These “western” sorts of water woes are increasingly cropping up in the east where the existing laws, practices, and governance systems are often poorly equipped to deal with them. The simple truth is that no place is so water rich that it can afford to take water for granted.