

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
August 24, 2017

## [BASS! How Low Can We Go?](#)

Louisiana's coastal landowning laws have muddied the waters so badly, that the largest professional fishing organization in the world, The Bass Anglers Sportsman Society (BASS), wants nothing to do with our Sportsman's Paradise. BASS recently announced that anglers an upcoming tourney on the Sabine River would be [prohibited](#) from fishing on the Louisiana side because, well, they didn't want their anglers arrested for trespassing. This issue of landowners claiming waterbottoms, and the state allowing, if not encouraging, it to happen has some far-reaching consequences. Luckily, NOLA.com's Todd Masson has tried to [unpack it all](#) (Institute Director Mark Davis is quoted).

Masson notes: in 2003, the Louisiana legislature placed on anglers the responsibility of knowing whether the water they were floating on is private land; the US Supreme Court case [Phillips Petroleum v Mississippi](#) did not change Louisiana law; and the State Land Office (SLO) [maps](#) show many coastal waters that the SLO does not claim. All of this is true, but none of it makes landowners' claims to navigable water bottoms (or the sheriffs enforcing those claims) necessarily correct. [Article 450](#) of the Louisiana Civil Code, black letter law in a civil law jurisdiction where code trumps jurisprudence, states that "Public things that belong to the state are such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore." None of the things Masson notes are stacked up against anglers change that. So why the confusion? Well, it's nearly entirely political and economic and not legal. It comes from local landowners wanting to hold on to oil and gas revenues. It comes from local jurisdictions preferring to receive property taxes for "private" navigable waterbottoms rather than no property taxes for public waterbottoms. It comes from the lack of political power behind the SLO and their corresponding decision not to extend their power nearly as far as their authority. So SLO is left to neither recognize great swaths of coastal waters as state waterbottoms nor as private lands. Hence, [confusion](#) and ad hoc decisions by local law enforcement looking to grease the squeakiest local wheel.

This kind of confusion is going to become more problematic both as more wetlands give way to becoming open waters and as the state undertakes efforts to stop it. These anglers, and the loss of the BASS tournaments that

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:

September 8, 2017

[Fourth Annual River Symposium—Teche-Vermilion Watershed: Building on Regional Progress](#)

Vermilionville  
300 Fisher Road  
Lafayette, LA

Wednesday, August 30, 2017

[Louisiana Water Resources Commission](#)

11:00 a.m.

LaSalle Building  
617 North LaSalle Street  
Baton Rouge, LA

September 14, 2017

[Mayoral Forum on Flood Risk](#)

5:30 p.m.

New Orleans Jazz Market  
1436 OC Haley Blvd

## Water jobs:

[Director of Freshwater and Marine](#)

The Nature Conservancy, Texas  
Austin, TX

[Legal Fellow](#) (position # 12226431-071817)

National SeaGrant Law Center  
Oxford, MS

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would otherwise bring in millions of dollars to the state are the canaries in the coal mine. This mess is going to affect nearly every project in the Coastal Master Plan, and the state is going to have to get a grip on it. Unfortunately, for that to happen, someone – some [Homer Plessy](#) of the waterbottoms – is probably going to have to get arrested, fight the arrest in court, and appeal the local court’s ruling. Of course, that doesn’t mean everybody would then be happy

### **“Mission Accomplished!” for Gov. Jerry Brown? Not So Fast!**

The unending saga that is California water ([A Song of Smelt and Ire?](#)) has reached a new chapter this summer when federal agencies [determined](#) the “California WaterFix” plan wouldn’t violate the Clean Water Act. The WaterFix is the plan forwarded by Gov. Brown to construct two 35 mile long, 40 feet in diameter tunnels to take water from the Sacramento River under the Sacramento-San Joaquin River Delta to supply water to Southern California. [Public hearings](#) are under way, and [lawsuits](#) have poured in. The suits, brought by anglers, Native Americans, environmentalists, farmers, and local governments, rest on the California Environmental Quality Act (CEQA), and many allege that planners haven’t adequately considered alternatives. While these lawsuits alone likely couldn’t end the project; they could cause delays or tweaks by ensuring every procedural hurdle has actually been cleared. On the other hand, the water agencies slated to receive the water could end the project if they don’t vote to pay the \$17 billion it’s expected to cost. Best case scenario? The plan is approved; it has all of the benefits the state government is trumpeting and none of the harm opponents fear; and we get a whole series of [Daylight](#) movies that become the Fast & Furious of tunnel flicks.

### **It’s Date Night! Mayoral Candidates Wade Into Water on September 14**

When you become Mayor of New Orleans you get to do more than toast Carnival Royalty during the Mardi Gras fortnight, you also get to head up the New Orleans Sewerage and Water Board. Now you know why some 18 candidates have thrown their hats into the ring. Heavy rains and massive flooding two weeks ago (and maybe more on the way courtesy of Hurricane Harvey) have brought the water side of the Mayor’s mission into sharper focus, which is important in a town where competent comprehensive water management ought to be not just an obsession but also someone’s job. To find out what the next Mayor might do you can check out the [Mayoral Forum on Flood Risk and Environmental Adaptation](#) on Thursday, September 14. The forum is being hosted by this Institute, the Tulane ByWater Institute, the Urban Conservancy, and others. Are you [ready to rumble](#)?

### **What’s so Funny About Peace, Love, and River Management?**

The San Joaquin-Sacramento Rivers aren’t the only rivers facing major management questions these days. The Tagus River, the longest in the Iberian Peninsula and on whose estuary Lisbon sits, is in danger of [drying up](#). A large engineering [project](#) transfers water from the headwaters of the Tagus into the Segura river basin to supply irrigation water in southeastern Spain, but the amount of waters in both systems was overestimated when the plan was conceived and a recent law doesn’t allow managers to recharge waters in the Tagus system to ensure the system’s viability during droughts. Once again, laws without science ~~save~~ ruin the day! Speaking of rivers drying up, Federal US and Mexican negotiators are [coming to an agreement](#) on managing the Colorado River that allows for the boosting of water levels in Lake Mead – now California, Arizona, and Nevada have to step up and agree to taking less and conserving more.