

# TUWaterWays

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

April 29, 2013

## ***There's Gold (and Copper) in Them Hills—and Fish in Them Waters: EPA Issues New Draft Assessment of Bristol Bay Mining on Fisheries***

The saga of the proposed massive Pebble LP copper and gold mine took a new turn with the release by EPA of a new draft assessment of the potential impacts of the mine on salmon fisheries in and around Bristol Bay, Alaska. The new [assessment](#), which revises and expands upon previous analyses, concludes that the proposed mine could result in the loss of 20 miles of streams and over 1,000 acres of wetlands thus damaging the world's largest sockeye salmon fishery. EPA is taking comments on the new draft assessment until May 31, 2013.

## ***Study Shows American's Willing to Pay to Save Coastal Louisiana (Depending on How the Question is Asked)***

It is widely known that the wetlands and estuaries of coastal Louisiana are among the nation's most productive and valuable. It is also well known that they are in deep trouble from rising seas, subsiding soils and a host of other natural and induced causes. Louisiana and the federal government have developed ambitious plans to "restore" or rehabilitate Louisiana's coast with cost estimates now starting at \$50 billion and rising. But do those dollars exist? Some may but no financing plan actually exists for most of it. A recent economic [study](#) funded by the Northern Gulf Institute and the Mississippi Agriculture and Forestry Experimentation Station—which are not in Louisiana—provides some insight into the question of whether American's are willing to chip into save Louisiana's coast.

The answer was yes, or no depending on how respondents were asked the question. They were most generous when asked if they would support one or two restoration projects with different benefits or doing nothing. In that case 60% said they would be willing to financially support coastal restoration to tune of \$105 billion to \$201 billion. When asked the question more abstractly the percentage supporting restoration dropped to 43%. There is probably a lesson in there somewhere.

## ***Save the Date for Urban Water Series***

The excitement in New Orleans does not end with Jazz Fest. Starting on May 15 and continuing through four informative sessions, the Greater New Orleans Foundation in partnership with the Urban Institute (and an assist from this Institute) will be hosting the [Urban Water Series](#). The series aims to improve the level of thinking and discussion of urban water management in the New Orleans region.

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:

[May 10, 2013](#)

**Coalition to Restore Coastal Louisiana's Coastal Stewardship Award Banquet**  
Baton Rouge, LA

[May 15, 2013](#)

**GNOF Urban Water Series**  
**New Orleans BioInnovation Center**  
1441 Canal Street  
New Orleans, LA

[June 6-7, 2013](#)

**American Bar Association's 31st Annual Water Law Conference**  
Las Vegas, NV

[June 16-21, 2013](#)

**EPA Region 6 Stormwater Conference**  
New Orleans, LA

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## ***In Their Own Words: What the Oral Argument in Red River Case Reveal***

The U.S. Supreme Court did not tip its hand during oral arguments in the case of *Tarrant v Hermann*, a dust up over the Red River and the application of the Red River Compact, but it did reveal some of the challenges states and their advocates can face when trying to construe multi-state compacts in an era where notions of state sovereignty and water demand can be very different from those in the minds of the compact framers (or at least some of them). Since compacts are essentially contracts between states one might think that enforcing them is a simple (but not necessarily easy) matter of gleaning the intent of the states and construing the terms. Would that it were so, as demonstrated by the [transcript](#) of the oral arguments held on April 23.

The Court's efforts to understand the Red River Compact and the dispute at hand were compounded by the fact that the Compact involves states from both "prior appropriation" and "riparian" traditions and that it was negotiated before the Supreme Court limited state water sovereignty in *Sporhase v. Nebraska* in 1982. It also came as a bit of a surprise to the Justices that there is precious little data to base any kind of water allocation on. To wit:

Justice Breyer: "I mean there must be some system of measurement going on or how does this all work?"

Ms. Blatt (attorney for the Oklahoma interests): "Justice Breyer, you have to trust me. There has never been an accounting ever, ever, ever, ever under this Compact."

If there are any lessons already taught by this case it might be that water Compacts are planes best not flown on autopilot.