

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
April 16, 2013

Louisiana Senate Bill Seeks to Establish Limits on Groundwater Use

State Senator Dan Claitor has submitted a [bill \(S 203\)](#) to establish limits on groundwater withdrawal. The bill cites the legislature's constitutional duty to protect the state's water resources and would establish the "Constitution of Louisiana Article IX, Section 1 Water Policy Enforcement Act of 2013." In a state that has previously ignored groundwater regulation entirely, groundwater withdrawals would be immediately limited to 40,000,000 gallons a day. That limit would gradually decrease to 20,000,000 gallons a day by August 2017. The Act would also give the Commissioner of Conservation the duty to enforce water policy. Such an act could be a huge step towards preserving and properly utilizing Louisiana's water resources and towards fulfilling the Legislature's constitutional public trust duties. The bill has been referred to the Senate Committee on Natural Resources.

Hyper-Nutrifcation Studies Warn of Potential Downfall of State Master Plan – State Loses an Opportunity to Make Stand Against Nutrient Pollution

Two studies, one in [New England](#) on fertilizer pollution and one in [Louisiana](#) on freshwater diversions, are questioning the basic premise at the heart of the Coastal Master Plan – putting the river back into the marsh. These studies show that the nutrient pollution in river water could actually weaken salt marshes, an important but not historically dominant feature of Louisiana's coastal ecosystem. The concern is that the abundant nutrients in Mississippi River water will spark unsustainable above-ground growth of marsh grasses, the root system will not be able to keep up, and the imbalance will lead to failure of the marsh vegetation. The diversion (we prefer the term "river reintroduction") study was commissioned by the Coastal Protection and Restoration Authority, but then [dismissed](#) by CPRA head Garret Graves as being unresponsive to the state's needs. Without refereeing what the study does or doesn't say or whether it was what the state ordered or not, we do note that aim of the ongoing federal/state Hypoxia Task force is to actually reduce the nutrient levels in rivers feeding the coast so they are fit to use. At the least the studies seem to reinforce the importance of that work.

Congratulations to Friend of the Institute, Bob Marshall

Former *Times-Picayune* outdoors editor and current The Lens environmental reporter Bob Marshall [received](#) the Distinguished Service Award in Sports Journalism from the Louisiana Sports Writers Association. Bob's environmental reporting work has been so good that it has won him a sports reporting award. Congratulations, Bob.

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

[June 6-7, 2013](#)

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

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Red Snapper Management Sparks Jurisdiction Conflict Between Louisiana and Federal Fisheries

In what some would consider a bold move, Louisiana legislature extended state fisheries jurisdiction in 2012 from 3 miles to 10 miles. Subsequently, LA extended its red snapper season from March 23 to September 1; however, both steps directly contradict federal law. A [temporary emergency rule](#) has been issued, giving NOAA Fisheries the authority to set separate closure dates for each state for recreational red snapper season in federal waters, allocating a [mere 9 days](#) to Louisiana anglers. The Coast Guard [patrols](#) the disputed 7 miles of water, issuing citations to anyone violating the dates for the red snapper federal season. In an effort to avoid implicating the commerce clause, House Representative Jo Bonner introduced the [Gulf Fisheries Fairness Act](#). If passed, the bill would extend state jurisdiction to 10 miles for the purposes of managing reef fish.

Other government officials, like State Senator Bret Allain, are taking a more radical approach. Sen. Allain recently filed [SB-157](#), which prohibits the harvest, sale, or transportation of red snapper in Louisiana. According to Sen. Allain, if the situation is this dire as to warrant a 9 day season, then [“we should take drastic steps.”](#) Sen. David Vitter also sees this as an opportunity to [resurrect](#) a newer version of the Offshore Fairness Act; U.S. Rep. Bill Cassidy is expected to introduce a similar version in the near future.

Such moves are worth watching as they have implications stretching far beyond red snapper and would move many more square miles of offshore mineral leases under the control of the state.

Kansas Still Showing Progressive Roots in its Water Management

When it comes to science, Kansas politicians have had a habit of making a mockery of the state over the last decade or two. Most recently, a state representative introduced a bill making it illegal for the state public funds to implement any [sustainable development](#). The bill has received little support and not received any hearings, but it was enough to get many a Kansan emigrant worked up.

In its water management practices, however, Kansas is managing to be [innovative](#) despite its other issues with science. After the state passed a series of water management bills last year, farmers in a groundwater management district over the Ogallala aquifer have agreed to a [self-imposed restriction](#) of 20% on groundwater extraction. The farmers are making changes to more efficient field-management and seeing the big-picture benefit to reducing groundwater extraction. If these practices become the blueprint, then water management across the Great Plains could see a leap in improvement, and water laws could have a path towards local buy-in and flexibility already charted.

Water Continues to Be All-Consuming Issue in Texas

In Texas water may even now be trumping oil and gas. Two bills in Austin would require [water recycling](#) at all oil and gas wells in the state.

[Ranchers](#) in Texas are beginning to revisit how to raise cattle in a droughty, unpredictable climate. One way is to return pasture to native grasses more adapted to such conditions than Kentucky blue grass.

Everyone from Colorado to Brownsville, on both sides of the border, has been clamoring for more of the [dwindling water](#) in the Rio Grande. A water-use treaty exists between the United States and Mexico that governs the allocation of Rio Grande waters, but Texans have been claiming that Mexico has not held up its end of the bargain and is storing too much water in reservoirs. Mexico has responded and agreed to [release](#) water. However, some are claiming it is [not enough](#). An international water war may be delayed, if not entirely avoided just yet.

Fracking Waste Could Be Shipped on the Ohio

A few months ago fracking operations in the Ohio Valley proposed shipping waste offsite via Ohio River barges. It appears as though the Obama administration might be amenable to the plan. The OMB is [reviewing](#) a potential plan for shipping fracking waste via barge. When the plan goes from here could indicate where the administration is heading with fracking regulations in general, its confidence in Ohio River navigation infrastructure, and its confidence in offsite facilities to treat and/or dispose of fracking wastes.

Follow ups from last week: New Mexico Priority Call & Senate WRDA Bill

Last week we reported on the possibility of the Senate WRDA coming to the Senate floor as early as April 10th, but it was [shelved](#) due to gun control debate and will likely come to the Senate floor in May. The House Transportation and Infrastructure Committee is having its first hearing on its WRDA bill today, April 16.

We also reported on the possibility of water appropriations on the Pecos River in New Mexico facing “the nuclear bomb” of a priority call. The Carlsbad Irrigation District did move for a [priority call](#). The state can now choose to enforce the priority call or face the prospect of a lawsuit by the District.