

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
October 28, 2022

[It's Not Easy Being Green](#)

And it can take a long time, a lot of effort, and even then feel like more should have been possible. This week, the state of Louisiana and several parishes finally signed off on a [settlement agreement](#) with Freeport-McMoRan over oil and gas related damages to the coast. There has been widespread discord, with four parishes refusing to sign on, which meant the Department of Natural Resources stepped in to do so on their behalf. Money will go toward restoration projects, which we all know could use some extra cash flow. But you might take pause after seeing that over \$75 million of the \$100 million settlement will be in the form of carbon credits—which don't actually exist and [don't necessarily translate to real progress](#).

On a more upbeat note, the [Louisiana Supreme Court just issued a ruling](#) which, among other things, held that there is no time limit for a landowner to bring suit to compel the state to enforce environmental regulations requiring property remediation following oil and gas activities. The holding is limited to suits for injunctive relief, not for monetary damages. It may be based on civil procedure, but it could be a big deal for environmental law in Louisiana.

Hold on for one more litigation situation (why is "litigation situation" that not the name of a song? Back to work, T-Swift). Plaquemines Parish has been tangled in court with Chevron, Exxon, BP, Shell, and many other oil and gas companies over liability for wetland damage in coastal Louisiana. Last week, [the 5th Circuit sent this nine-year-old](#) coastal land loss suit back to state court. After an unsurprisingly but dispiritingly large number of attempts by the companies to remove the case to federal court (four if you're counting), the case will proceed to trial, absent further appeals. Whether the same result will apply in the other 42 cases with pending motions remains to be seen. Looks like it's time to [suit up](#).

What's spookier than a monster under you bed?

Another [discovery of skeletal remains](#) in Lake Mead (this makes six). If that doesn't [rattle your bones](#), then maybe another story about western water woes will do the trick. Earlier this week, an [Arizona senator asked the Department of Interior to pause federal funding](#) to clean up toxic dust in [California's Salton Sea](#) until they commit to reducing consumption. Many Colorado River states are putting the pressure on California to step up its efforts and commit to steeper cuts. As the largest user of Colorado River water, it has relied on banking and withdraw credits to meet conservation goals, which has left much to be desired. Lake Mead is as [high and dry](#) as ever. Cue another lofty proposal to divert Mississippi River flows out West.

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 legal stewardship of water.

Coming Up:

[CPRA 2023 Coastal Master Plan Community Conversations](#); November 1-10; Various Locations

[Restore America's Estuaries, 2022 Coastal and Estuarine Summit](#); December 4-8; New Orleans, LA

Tulane Environmental and Energy Law Summit; March 17-18; New Orleans, LA

Water jobs:

[Project Manager, Louisiana Political Affairs](#); Environmental Defense Fund; Remote

[Assistant Professor of Marine Affairs: Fisheries Management and Policy](#); University of Rhode Island; Kingston, RI

[Restoration Programs Director](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

[Regional Watershed Coordinator](#); Capitol Region Planning Commission; Baton Rouge, LA

[Water Quality Technician](#); Pontchartrain Conservancy; Metairie, LA

[Clinical Instructor](#); Tulane Environmental Law Clinic; New Orleans, LA

[Associate Attorney, Senior Attorney, and Paralegal](#); Earthjustice; Multiple Locations

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But wait! Someone took the time to hash out the details of such a proposal. This [recent report](#) found that it actually wouldn't be physically, economically, or politically feasible to first build a 1,500 mile cross-country pipeline with an 88 foot diameter and then send water through it up an elevation of at least 4,600 feet. And the hypothetical proposal becomes even more outlandish considering the [persistent drought conditions](#) across the Mississippi Basin. Perhaps those looking for water conservation motivation could look to the [world's dirtiest man](#) for inspiration. Then again, perhaps not.

What's [Haunting Your House?](#)

It's not ghosts and spirits these days. It's the market. A grim outlook troubles families and communities looking to move out of harm's way. [One South Carolina town's experience with flooding and relocation](#) serves as a microcosm for tough challenges ahead for flood-prone communities. Funding is limited, buyout applications move slow, and rising interest rates all work against so-called "managed retreat." (Hint: [it's often unmanageable](#)).

Before getting to relocation, there's the whole home-ownership prerequisite. Coastal dwellers are starting to get priced out of disaster-prone areas due to a steep rise in insurance premiums, which has ballooned into a crisis for coastal states recently hit by big storms. Insurance premiums are based on the risk involved, and especially along the coast, risk has increased dramatically. When Hurricane Ian slammed Florida's coast last month, [less than 20% of homes in hardest-hit counties had flood insurance policies](#). That's one major problem, but so is the market for homeowners' insurance. Homeowners insurance is provided through private insurers, which cover wind and some storm damages, separate from flood policies. Since the 1950s, flood insurance has been provided through a federal program, where premiums are generally lower than the risk. Recently, the flood maps on which those premiums are based have been revised, resulting in a [significant increase in flood insurance premiums](#). Because of the increasing intensity and frequency of storms, those premiums are increasing as well. To make matters worse, many carriers now require a deductible for wind coverage. And some homeowners' insurance companies won't provide insurance in areas deemed especially dangerous for storms, like south of Interstate 10 in Louisiana.

At least eight home insurance companies have [left Louisiana since Hurricane Ida](#) (mostly by bankruptcy filings of companies located in Florida). Many homeowners can't get coverage, forcing them to Louisiana Citizens Property Insurance Company, the state created and funded insurer of last resort. Louisiana Citizens is legally required to charge 10% more than going rates to avoid interference with private insurers. And on top of that, its rates will soon [increase by 63%](#). Louisiana's Department of Insurance aims to relieve the burden on Citizens by recruiting those smaller home insurance companies to operate in state, [either through tax breaks](#) or whatever incentive you come up with. That raises two problems. First, the incentives offered to the companies ultimately fall on the taxpayers. Second, when those small companies fail, as most have done, the coverage falls to [Louisiana Insurance Guarantee Commission](#) (LIGA). When its funding source is less than the cost which it incurs, that burden shifts to the taxpayers. Oh, [the things we do for the market](#).

Insurance is regulated primarily at the state level, so it's no surprise that the issue is taking a front seat in Florida's [gubernatorial race](#). But due to the nature of companies operating in both Florida and Louisiana, widespread insurance failure in the Sunshine State is sure to affect the market in our neck of the woods too.