

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
August 7, 2013

Wowza, part III. Governor Moves to Formally Block Flood Protection Authority Suit Against Oil and Gas

It has been two weeks since the Southeast Louisiana Flood Protection Authority – East filed suit against 97 oil and gas companies to enforce permit conditions and other rights that could mitigate the damage done to coastal wetlands east of the Mississippi River and which impact on the duties of the Authority to provide effective flood protection. Louisiana Governor Jindal administration is moving forward in its [opposition](#) to the lawsuit. Gov. Jindal has asked the Coastal Protection and Restoration Authority (CPRA) to look into intervening in the lawsuit similar to how former Gov. Foster and then-Department-of-Health-and-Hospitals-Secretary Jindal attempted (unsuccessfully) to intervene in the Attorney General’s lawsuit against tobacco companies. The defendants, on the other hand, have been mum, allowing [trade associations](#) and others handle to do the heavy lifting in opposition to the suit.

On the other side, those lining-up to [support](#) the Flood Protection Authority range from a prominent [oysterman](#), a Louisiana Public Service [Commissioner](#), and [environmental groups](#).

Exactly where things go from here remains unsettled though one can expect [political wheels](#) will [continue](#) to turn behind the scenes and the purported evils of [trial lawyers](#) to be trotted out. For those looking for more information about the hows and whys the behind the suit, check out this [interview](#) with Flood Protection Authority Vice President John Barry on Harry Shearer’s radio program, Le Show.

Kansas Faces the Looming Loss of a Friend, the High Plains Aquifer

Every mining town knows that one day the mine plays out, the gold, copper, iron, coal or whatever will be exhausted. How that day is planned for can determine whether the town survives or withers away. But what happens when the treasure being mined is water and the “mining town” is a big part of America’s agricultural heart land? That is the question facing the farms and communities in Kansas that have come to rely on the [High Plains Aquifer](#) for the water that has fueled the growth and prosperity of this region over the past 60 years. Irrigation has transformed the region from one that supported a narrow range of dry tolerant crops into region that can grow all manner of wheat, corn, soy beans and other crops.

Water mining is the term used when an aquifer is being pumped at a rate that exceeds its recharge rate. There is nothing inherently unwise about water mining, but wisdom does demand clear eyed management. A former coal town can reinvent itself around other economic anchors. A town without water, however, is different kettle of fish.

After 60 years of intense pumping, the aquifer is [giving out](#). The aquifer once held as much water as several of the Great Lakes and

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 23-26, 2013](#)
[U.S. Water Alliance](#)
[One Water Leadership Summit](#)
Los Angeles, LA

[October 24-26 2013](#)
[Lake Pontchartrain Basin Foundation](#)
[Basics of the Basin 2013](#)
New Orleans, LA

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stretched beneath 8 largely dry Western states, but, unlike the Great Lakes and many aquifers, the High Plains Aquifer is not a renewable resource. As the aquifer shows the strains of pumping and the region faces the prospects of a hotter, drier climate, the need for greater conservation and more careful management are becoming clearer.

The limits of aquifers are not confined to the High Plains and are a major factor in water planning in much of the country, from Baton Rouge to Las Vegas and Miami. The lesson from Kansas is to always remember that if you live in a water mining town, one day the mine will close.

Needed RESTORE Act Regs Move from Treasury to OMB

The Gulf Coast Ecosystem Restoration Council continues to move forward with the Initial Comprehensive Plan for Gulf restoration called for in the RESTORE Act. However, no one, not the Council and not Gulf Coast states, counties, or parishes, can move forward implementing projects under RESTORE until the Department of the Treasury produces regulations for how the funds are to be distributed and monitored. Treasury has been very quiet about these regulations since the RESTORE Act was passed 13 months ago, but now those regulations have left Treasury for [review](#) by the Office of Management and Budget (OMB). Once these regulations are confirmed and released, we could have a much better idea of how the RESTORE Act will play out.

Water Management Strategy Plan Contains Many changes for Uptown New Orleans

David Waggoner and the Management Strategy Plan recently hosted a [meeting](#) at Xavier University. In Uptown, the plan calls for expanded canal parks and greenspace and reversing drainage to be pumped into the adjacent Mississippi River instead of the far-away Lake Pontchartrain. Political support of the plan is not assured, and City Councilwoman Susan Guidry questions how this plan would fit with the Corps of Engineers projects taking place across Uptown now, but the Sewerage and Water Board have expressed complete support for the plan to expand water management from just flood protection to include “quality and sustainability.”

New Mexico Drought Creating Strain on State Water Law

The New Mexico Supreme Court has preserved the right of residents to drill for domestic water needs by separating the right to drill from the right to pump. The [decision](#) places on the State Engineer the obligation to prevent new, licensed domestic wells from reducing the water available to those with [higher-priority rights](#). So just because you can get a permit to drill a well to supply water to your [new home](#) in the Land of Enchantment doesn't mean you'll be allowed to actually use that well.

Meanwhile, the drought is threatening the state's entire landscape. Shortgrass prairie is dying off and [desertification](#) is threatening. New Mexico voters appear to be staying strong and supporting the long-term health of the state over potentially harmful short-term strategies to increase water supplies. A recent poll showed New Mexicans [opposed](#) to diverting water from the Gila River, the state's last free-flowing river.

Disconnect Between Groundwater and Surface Water Law Wreaks Havoc in Birthplace of Riparianism

England, a place as famous for rain as Seattle or Hawaii's Mt. Waialeale, is experiencing water shortages in some of its famous chalk streams. As BBC Radio [report](#) highlights how groundwater policy has impacted some of the country's most iconic features (the report begins at the 1:00 mark). Chalk streams occur where there is underlying chalk rock. Chalk is extremely porous and so the streams are closely tied to the underlying water table. Groundwater extraction (“abstraction” in the UK), often by water utilities, is lowering the water table in many of these places. England is the home of the riparian doctrine that gives landowners on streams the right to the same stream their upstream neighbors receive, but England's laws, like the laws in many states here (including Louisiana), seem to ignore the connection between surface water and groundwater. So, although destruction of the river by means of surface water extraction would be illegal, groundwater abstraction has been licensed (often in perpetuity and without limits). Groundwater use is not metered and considered free. Now, in an order to get abstraction under control and after not charging a shilling for groundwater extracted over decades, the Environment Agency is attempting to buy back licenses from major groundwater users. Lessons for water policy: the hydrologic connection between surface water and groundwater can not be ignored and a public trust doctrine can be highly useful.

Alabama Moving Towards Comprehensive Water Policy

One state that could learn from England's issues is Alabama, where the state legislature recently [approved](#) funds for a study examining options for a comprehensive state water policy. Alabama, like England,

receives plenty of rainfall but has water shortage issues of its own. A comprehensive water policy for the state would help protect it from neighboring states collecting surface and ground water resources for urban and agricultural growth.

Water Protest in Sri Lanka Turns Deadly & Millennia-Old Reservoirs may be Answer to Resource Issues

One person was killed and more than a dozen were injured when they were [protesting](#) for clean water after factory emissions polluted drinking water in several villages. Authorities have yet to close the factory. In addition to water quality issues, Sri Lanka is facing water quantity issues. Like the rest of South Asia, Sri Lanka is dependent on increasingly variable monsoon patterns. The answer to this problem might be thousands of small [reservoirs](#) built between 300 and 400 BC. The government has estimated that \$15 million to make the reservoirs useable again.

“Hot” off the Presses! (Boo!): NOAA Report Finds 2012 one of Planet’s Ten Warmest on Record

A [report](#) released August 6 by the National Oceanic and Atmospheric Administration found 2012 to be one of the 10 hottest since 1880. 2012 also saw a [record-low](#) summer ice pack, widespread melting across the Greenland ice Sheet, and record high carbon dioxide concentrations in the atmosphere. An all-the-tools-in-the-toolbox approach, including 2400 year old Sri Lankan reservoirs, seems to be the only acceptable answer going forward.