TUWaterWays

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

Authors: Christopher Dalbom, Mark Davis, and Haley Gentry

May 12, 2023

Car bon temps roule?

Those also spending their late spring following the Louisiana legislative session may have noticed quite a few bills relating to carbon capture and sequestration (or CCS if you want another acronym in your wheelhouse). CCS, which is a hot topic in the energy and climate debate as a means to reduce carbon emissions, involves injecting carbon into deep wells to be stored for, well, forever. Few places have seen such intense debate than in the LA House Committee on Natural Resources and Environment.

You may be wondering, "What is a carbon capture story doing in a water newsletter?" We like to think most everything has a connection with water, but there actually are several specific issues to watch here. First, CCS injection are regulated under the Safe Drinking Water Act due to the potential risks that drilling and injecting pose to drinking water sources. Louisiana is applying to assume responsibility from EPA to regulate a Class VI well program. Second, one of the several CCS projects on the way in Louisiana is planned for Lake Maurepas, and has sparked considerable opposition. This project, which would store 5 million tons of CO_2 annually beneath the lake would be the largest CCS operation in the world and the first sited beneath a shallow body of water. Unfamiliarity of potential risks to our water resources, geologic and seismic impacts, and lack of experience with these types of projects is driving the narrative in the legislative session. It's even got Governor Edwards calling for outside help in educating the Louisiana public and hopefully garner support, as it's a major component of the Climate Action Plan. No matter what side of the CCS debate you land on, might as well read up on the basics— it doesn't seem like it's going away anytime soon.

Speaking of carbon neutrality, an upcoming pilot project will test the Mississippi River's ability to generate zero-carbon electricity at various sites between New Orleans and Baton Rouge. An energy company headquartered in Maine has partnered with Shell Technologies to operate the project demonstrations at sites along the industrial corridor. The RivGen technology can connect to existing grids, generating power from river and tidal currents. Because the Mighty Mississippi serves critically important ecological and economic functions, there are concerns that the project might impede navigation or harm fish and other aquatic habitat. Or the amount of debris that already exists in the river will render it ineffective. To be clear, these generator devices are small in scale and are most used to support small communities' electricity needs. However, if the demonstrations show promising results, it might supplement other research and efforts to diversify Louisiana's energy sector.

Leave It All on the Court

Earlier this week the D.C. Circuit Court of Appeals ordered EPA to set regulatory standards for perchlorate in drinking water. The chemical commonly used in jet fuel, has been regularly found near military and contractor sites, and poses some serious health risks for infants and pregnant women. EPA determined the chemical met criteria for regulation in 2011—but that determination was revoked during Donald Trumps' presidency—which has been continued under the current administration. That will no longer be the case. However, it is both difficult and

expensive to monitor, raising feasibility concerns at the municipal level. Sound familiar? You must be a PFASt thinker.

How and when EPA proceeds with both drinking water rulemakings, as well as a wide spectrum of other regulatory matters, now has an even bigger question mark. Last week, the Supreme Court announced it's taking up a case that could narrow or overturn the Chevron deference, a doctrine by which courts afford deference to agency interpretations of ambiguous terms or gaps in federal statutes (so, a large majority of rules and regulations). If the Court throws out the doctrine, it could be detrimental to EPA's regulatory efforts to combat the climate crisis. Yet the implications reach far beyond EPA, as Chevron deference is applicable to all federal agencies. This particular case, arising from a U.S. Fish and Wildlife Service regulation, just happened to be environmentally related. This latest development just adds to the growing list of decisions that could severely limit federal agencies from addressing pressing issues, especially given the fact that virtually no substantive federal environmental laws have been passed in the 21st century. Even if the Chevron Doctrine survives its visit to the high court that doesn't mean that it continue to play the major role it has in environmental law. That is because there are cases out in the hustings that have concluded that the rule of lenity trumps agency deference when the law in question carries the possibility of criminal penalties—which many environmental laws do. Brace yourself—there could be trouble ahead.

No Drought About It

For the first time in almost two decades, California's main water systems will be able to deliver all water requested by farms, business, and municipalities. High precipitation levels and increased snowpack are keeping reservoirs full. Even though drought conditions are on hiatus, water scarcity will still remain an issue, especially given how the situation on the Colorado River is playing out. Nevertheless, it's good to know California farmers can take a breather for a bit.

Unfortunately, those in Europe have not found themselves with the same luck. Current drought conditions are threatening to be worse than last year's historic drought. Especially for Spain, having just experienced its driest and hottest April on record. Spain leads Europe in exports of fresh and produce, and the extreme conditions have pushed some growers to take drastic measures. The Spanish government is responding to the crisis with some serious measures. Wednesday, it announced it would ban outside work during periods of extreme heat. And Thursday, the cabinet approved €2.2 billion in funds to address the growing crisis. This financial package includes €1.4 billion to increase water availability by supporting construction of desalination plants and increasing urban water reuse. The remainder of funds will go to supporting struggling farmers. With reservoir levels across the country hovering around 25% capacity, planning for the near future will be critical.

Coming Up:

Blue Carbon Law Symposium; May 17-18; Athens, GA

2023 State of the Coast Conference; May 31-June 2; New Orleans, LA

Water jobs:

Multiple Associate Positions, Mitigation Program; Georgetown Climate Center; Washington, D.C.

Policy Coordinator; The Water Collaborative; New Orleans, LA

Legislative Director, Healthy Communities; Earthjustice; Washington, D.C.

Drinking Water Policy Coordinator; National Wildlife Federation; various Great Lakes offices

Lead Policy Advocate; James River Association; Richmond, VA

TU WL

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.

6325 Freret Street, 1st Floor

New Orleans, LA 70118
504-865-5982

tulanewater.org