

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
December 10, 2013

## **Crossing the Burning Water: Nelson Mandela**

The idea of [crossing the burning water](#) became a powerful metaphor for overcoming the challenges South Africa and Nelson Mandela faced as they each came to terms with the realities—and necessities—of ending apartheid. Without being overly dramatic, we believe that both the metaphor and Mr. Mandela’s legacy hold lessons for anyone interested in the fate and management of our water resources. Growing populations, rising seas, a changing climate, and the sheer exhaustion of many of our traditional water resources lead to the inescapable conclusion that dramatic changes are coming, changes that will require vision, courage, leadership to manage to any outcome that we should feel proud of. All too often those changes are faced by denial or the fatalistic view that even if better outcomes are possible, they just too much to expect, too expensive, too inconvenient, too hard. It is that notion that Mr. Mandela’s legacy defies. If he stood for anything, it was for opting for the necessary over the easy and for making the necessary possible. Our challenges are different but the value of that lesson is no less important. We too have burning water to cross.

## **This Ain’t Gonna Be Easy: Corps Commander Warns of Sea Level and Climate Impacts on Coastal Louisiana**

Saving coastal Louisiana—and many other coastal regions—has never figured to be easy or cheap work. Rising seas and changing climates are making the job even harder, according to the commander of the Army Corps of Engineers Mississippi River Division. Speaking to the Association of Levee Boards of Louisiana, [Gen. Duke Deluca](#) acknowledged the sobering possibility that sea levels could rise by up to five feet by the end of the century (compounded further by soil subsidence) and called for a “moon shot” level of science—and a corresponding level of financial and political commitment—to contend with and adapt to such changes.

## **Going Deep—Could the Future of Water Supply Be Offshore?**

First the good news. There may be lots more freshwater around for people to take advantage of than was previously thought. And now the bad news (or the very challenging news). It lies [beneath the ocean](#). A new [study](#) published in the Journal Nature estimates that there is half a million cubic kilometers of fresh/low salinity water beneath the continental shelves around the world. That is a big number, which to put into context is,

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:

**January 14, 2014, 5:30 PM**  
**Early NRDA PEIS Public Meeting**  
Belle Chasse Auditorium,  
8398 Louisiana 23, Belle Chasse, LA

**January 15, 2014**  
**Early NRDA PEIS Public Meeting**  
Warren J. Harang Jr. Municipal Auditorium,  
310 N. Canal Blvd, Thibodaux, LA

**January 16, 2014**  
**Early NRDA PEIS Public Meeting**  
Spring Hill Suites Lake Charles  
1551 West Prien Lake Rd, Lake Charles, LA

**February 21-23, 2014**  
Tulane Environmental Law Summit  
Tulane Law School  
New Orleans, LA

# Tulane Institute

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according to the study's lead scientist, about [100 times the total amount of ground water withdrawals since 1900](#). Tapping these reserves won't be cheap or easy but the task seems to be more practical than lassoing icebergs

### **It Might Be, It Could Be, It Is! Fed Court Rules That Flooding from Corps of Engineers Project is a Taking**

Following a ruling by the United States Supreme Court saying temporary flooding caused by releases from an Army Corps of Engineers might be a "taking" of property, a recent Court of Appeals [decision](#) finds that those releases did indeed constitute a taking. The court ruling is the latest in the saga between the Arkansas Fish and Game Commission and the Army Corps over the impacts to timber in the Commission's Black River Wildlife Management Area from increased releases from the Black River Dam. The net effect of all of this was put the parties back where they had been after the initial trial (the additional cost of lawyers and such notwithstanding) which found for the Commission and awarded \$5,602,329.56 for the lost timber and \$176,428.34 to restore the Management Area. For those interested in the lawyering of cases like these, the Corps raised several interesting arguments on appeal that might have had led to a different outcome had they been raised at trial. This is also a good reminder that the case you have is only as good as the case you argue.

### **Albuquerque 1, Downstream 0 as Court Allows Rio Grande Diversion**

While the game is not over, the odds of the city of Albuquerque N.M. getting to continue to draw drinking water from the Rio Grande River improved markedly following a ruling by the New Mexico Court of Appeals. The [dispute](#) between the city and downstream environmental and agricultural interests dates back to 2006 and involves a complex arrangement of moving water between the Rio Grande and San Juan Rivers to relieve pressure on ground water in the Albuquerque area. The court found that downstream interests were not provably being harmed. The City still needs a permit from the state to continue the diversion, but since the issues governing the issuance of that permit are largely the same as those resolved by the court, this one game may not be headed into extra innings.

### **Arctic Turf War Heats Up, or At Least Continues to Thaw**

The Canadian government submitted a partial application to the United Nations this past Friday for [exclusive rights over an expansive area of the Arctic](#), which includes the North Pole. The application is partial because the Canadian government decided last minute to continue to gather evidence demonstrating the seabed of the North Pole is really an extension of the Canadian continental shelf, a requirement under the U.N. Convention on the Law of the Sea. While the Arctic is generally thought to contain vast reserves of oil and gas deposits, the area that Canada is claiming appears to be more of a political statement than an immediate play for oil and gas rights. To varying degrees, the U.S., Norway, Russia, and Denmark are each conducting research to determine the extent of their own claims to Arctic seabed. With a backlog of forty applications for waterways across the globe and a review rate of four per year, the U.N. commission is not expected to make a decision for many years. Santa's workshop has yet to weigh in on the dispute, but be on the lookout for [loonies](#) in your Christmas stockings.

### **The One Thing Israel, Jordan, and the Palestinian Authority Can All Agree On: Water**

Leaders from the three countries signed a [Memorandum of Understanding](#) yesterday, December 9, 2013. The agreement provides for: freshwater produced at a Jordanian desalination plant on the Red Sea to be shared between Israel and Jordan; increases in water released to Jordan from Israel's Lake Tiberias; the sale of desalinated water from Israel to the Palestinian Authority for the West Bank; and a pipeline from the Red Sea desalination plant to the Dead Sea to move brine with the intent studying the effects of mixing brine with the Dead Sea water. Though water levels the Dead Sea has been dropping by 4 feet a year, many are [concerned](#) about the prospect of disturbing its unique ecosystem with outside water or brine. We feel pretty confident that even if the mixing of brine with the Dead Sea doesn't work out, that pipeline will be put to good use moving drinking water, creating irrigation, and even hydropower at some point in the future.