TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
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Time to Listen to the Water?

Paying attention can be so hard. According to the National Oceanographic and Atmospheric Administration, August 2023 was the hottest August around the globe since it started keeping track 174 years ago. And dry. Did we mention dry? Yes, way dry, so dry that the Mississippi River and the folks at the lower end of it, for the second straight year are fighting saltwater intrusion from the Gulf that threatens their water supplies, health and commerce.

Farther up the Mississippi, drought conditions are impacting agriculture and limiting navigation. Could we be receiving a message? Maybe, but since it is now autumn, it will be cooler and wetter, why not just get back to doing what we do best—wait for the crisis to abate, let bygones be bygones, and plow ahead comfortably in the knowledge that our waters, like the Giving Tree, will continue to provide and be happy about it. But that would make no sense. According to a new report from the smart folks at Utrecht, growing populations, climate change, and emerging water dependent activities (here's looking at you, Artificial Intelligence), we're facing growing threats to our collective water security. It's going to take lots of data and brain power (looking at you again, AI) to get a handle on things. You may ask yourself: how did we get here? The simple truth is that we make most decisions based on what we want or fear, and based on information that's often missing, incomplete, or at least not in the hands of people who need it to make informed decisions. Same as it ever was.

Is there hope? There's always hope, but the current push to put major data and AI "learning" centers in water stressed areas combined with the historic (and recurring) chronic water woes is not encouraging (even when they're purposeful and aptly named). Maybe the Mississippi River's current misadventure with low water and saltwater intrusion will spawn a new era of multipurpose, data-driven plans and actions that prepare communities, industries, and the maritime sector for the rising seas, floods, and droughts that are certain to come. That would be refreshing and smart, but it would also be a break from the past, which saw projections of saltwater intrusion and threats to public water supplies yield only short-term responses instead of forward-looking plans and investments. Only time will tell, but we can make one prediction: all the data in the world won't lead to better planning and actions if it's nobody's job to put that data to work. In short, the difference between being on a road to nowhere and the path to prosperity and progress is being willing to learn and apply what we learn. So hats off to the folks at New Orleans' legendary Commander's Palace restaurant who chose listening, learning, innovation, and action over sitting around waiting for others to deal with the City's looming salt water crisis—all hail the birth of the Salty Wedge! Hope blooms again.

Don't You Forget About Me

The Colorado River may get more ink, but when it comes the rivers in the American West, the Rio Grande (no relation to Ariana) is no slouch. The Rio is a vital source of water for the states of Colorado, New Mexico, and Texas and has been apportioned among them by a Congressionally approved compact since 1938. If that wasn't enough, by way of a 1906 treaty with Mexico, the U.S. is committed to deliver Rio Grande water to Mexico. To ensure all this

water gets where it's supposed to, the U.S. built the Elephant Butte Reservoir and Caballo Reservoir and acquired all the unappropriated water rights that were available under New Mexico law. As a result, the Federal Bureau of Reclamation ran the reservoirs and dispensed the water, and in the process, the Rio Grande River became the Rio Grande Project. And all was right with the world… until it wasn't. By the 1950s, drought conditions and irrigation demands in New Mexico prompted the Bureau of Reclamation to restrict water withdrawals which in turn prompted resourceful irrigation districts to sink wells and tap the areas aquifers.

Now, it may not be obvious to framers of water laws that groundwater and surface water can be linked, but it certainly became obvious to Texas which saw less and less water reaching its thirsty folks. In 2013, the Lone Star State got permission from the U.S. Supreme Court to file suit against New Mexico for breaching the terms of the compact. The U.S. then intervened as a plaintiff, and the stage was set for a knock down drag out trial—or a settlement compromise at least. Which is where we are today, except that the settlement being recommended to the Supreme Court only included the three states but not the U.S., which is not happy about it, not one little bit. Hence this exception filed by the U.S. seeking to scuttle the settlement until its claims and interests are addressed. Confused? Good, you probably should be. More fun is sure to be in store.

Mama Maya, Here We Go Again

When it comes to building reservoirs, the U.S. Army Corps of Engineers and the Bureau of Reclamation are aces. You know what else is cool? Constructed wetlands, you know, those carefully engineered and operated combinations of plants and water that can turn not so great water into much cleaner water. What if you could put those things together to create a reliable, low energy, supplemental supply of clean water? You can almost hear the Stockholm Water Prize acceptance speeches now. Here's the rub though—you would need a time machine, since apparently that's just what some Mayan cities did during the Classical Era (200-950 CE), according to a paper recently published in the Proceedings of the National Academies of Science (PNAS to those in the know). The author posits that maybe such past practices could be instructive today. Perhaps, but the paper does not suggest how long the feasibility studies took nor how the land rights were secured.

Last Call for Future Fellows' Applications!

One last reminder that we're looking for a senior research fellow to join the Tulane Water Law team starting in August 2024. If you're interested in any combination of water, governance, law or policy, this is the job for you! Because it's intended as a postgraduate career launcher position, it is only open to recent law school grads. Or, given the way time works, also eligible are people who are not yet law school grads but who will have become law school grads when the job begins next August. Anyways, if you earned a JD or LLM in the past year or will graduate in spring 2024, you're eligible. You could even be a future author of these very TUWaterWays! If you're not one of those people, help us spread the word to those who are! Resumes need to be submitted by October 20th.

Coming Up:

Tulane Environmental Law Summit, New Orleans, February 23 & 24, 2024 (save the date!)

Water jobs:

Senior Research Fellow; Tulane Institute on Water Resources Law and Policy; New Orleans, LA

Outreach Coordinator; The Coalition to Restore Coastal Louisiana; New Orleans, LA

Development Coordinator; The Coalition to Restore Coastal Louisiana; New Orleans, LA

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.

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