

# TUWaterWays

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

May 8, 2013

## ***Early NRDA Projects for all 5 Gulf States Announced: Range from Barrier Island Restoration to Beach Front Hotel. Wait, What?***

Acknowledging that the Natural Resource Damage Assessment (NRDA) process can take years (read: decades), BP marked \$1 Billion to pay for early projects intended to compensate for damages to natural resources caused by the *Deepwater Horizon* disaster. These early projects have been slow coming, but now, two years after setting up this early-NRDA fund, several new projects totaling over \$600 million have been [announced](#).

In [Louisiana](#), BP is slated to spend nearly \$320 million to restore four barrier islands (Whiskey Island, the Cheniere Ronquille headland, Shell Island, and North Brenton Island) and \$22 million on fish stock research and enhancement centers (one in Pointe a la Hache and one in Lake Charles). [Florida](#) projects include dune restoration, a hatchery, reef creation, and seagrass recovery.

However, [Alabama](#) has found a way to use \$85 million in funds to improve Gulf State Park, a number that includes building a hotel and conference center at the park. Alabama claims that the hotel and conference center will help make up for public use and access that was impaired by the spill. Others don't see it that way, saying that NRDA dollars need to go more for [environmental](#) needs. At the least this highlights the complexity of balancing the goals of habitat restoration and loss of public function aspects of NRDA. Ideally, that can be buffered by public outreach and education about the NRDA process, but things are rarely ideal in that realm. Indeed, [Ocean Conservancy](#) has noted that public input and participation have been lacking in the decision-making regarding these early-NRDA projects.

## ***Senate's WRDA Status Update***

The Water Resources Development Act ([S. 601](#)) finally hits the Senate floor this week, but opposition from environmentalists has spread to several senators and the White House. Fiscal concerns have been raised by Senate appropriators, as well.

The Obama administration voiced [objections](#) over the streamlining language in the WRDA bill on Monday. Previously, Sens. Wyden (D-Ore.) and Rockefeller (D-W.Va.) had objected to the language (as had many an environmental group). The Office of Management and Budget has written that the permitting provisions are counterproductive and may actually slow approval of WRDA projects. The OMB also raised concerns over the bill's cost of harbor maintenance and the need for increased user fees to fund the Inland Waterways Trust Fund. The bill could take up the [Senate floor](#) for much of the week. Sen. Coburn (R-Ok.) plans on introducing [gun amendments](#) to the bill, and Sen. Landrieu (D-La.) plans on introducing an amendment blocking [federal flood](#)

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:

[May 10, 2013](#)

[Coalition to Restore Coastal Louisiana's Coastal Stewardship Award Banquet](#)  
Baton Rouge, LA

[May 15, 2013](#)

[GNOF Urban Water Series](#)  
[New Orleans BioInnovation Center](#)  
1441 Canal Street  
New Orleans, LA

[June 6-7, 2013](#)

[American Bar Association's 31st Annual Water Law Conference](#)  
Las Vegas, NV

[June 16-21, 2013](#)

[EPA Region 6 Stormwater Conference](#)  
New Orleans, LA

**Tulane Institute**  
on Water Resources Law & Policy

6329 Freret Street, Suite 155G  
New Orleans, LA 70118  
504-865-5982

<http://www.law.tulane.edu/enlaw/>

[insurance](#) premium rates.

Senate appropriators, who have questioned the adequacy of the Army Corps' budget, will review Corps and the Bureau of Reclamation budgets in a hearing Wednesday night. Senators Boxer and Vitter claim they have reached a compromise with the Appropriations Committee that will involve using more money from a waterways trust fund on navigation projects.

## ***Of Salt, Diversions and Coastal Restoration Dollars: The Latest from Coastal Louisiana***

Just about everyone agrees that action needs to be taken quickly to save Louisiana's rapidly disappearing coast. The broad consensus expressed in Louisiana's coastal Master Plan is that reintroducing Mississippi River water to the coast is crucial to that achieving success. But consensus is not unanimity; a group of mostly saltwater fishermen in St. Bernard and Plaquemines Parishes has begun to protest the heart of the Plan – returning the Mississippi River back to the delta. The timing of this opposition may seem odd given the broad support for the Master Plan when it was approved by the Legislature in 2012, but, the arrival of BP Deep Water Horizon dollars designated for river reintroduction projects and recent studies [questioning](#) the effects nutrient rich waters on salt marshes seems to have combined to coalesce the opposition. The State has made it clear that it is absolutely positively still committed to using the River, a position echoed by others such as the [National Wildlife Federation](#).

Also on the money front, last week the Louisiana House [unanimously passed](#) a bill to protect oil spill funds for coastal restoration out of concern that those dollars might prove too tempting a dish for a state government hungry for ways to plug budget holes. Perhaps the two take-aways here are that there will always be new information and voices to contend with and that the imminent availability of dollars does wonders to focus one's attention.

## ***From the Perception is Not Reality Department: Local Officials Found Guilty of Lying About Water Quality***

Should water managers take more pride in providing clean water or cheap water? The obvious answer (clean) was not so obvious for water managers in Crestwood, Illinois. For more than twenty years, officials in Crestwood, IL, a village near Chicago, proudly saved about \$400,000 a year by diluting expensive, clean Lake Michigan water with [carcinogen-tainted well water](#) and then lying about it to state and federal regulators and to residents.

Last week, Theresa Neubauer, a city worker who has been both water department supervisor and police chief, was [convicted](#) on 11 counts of making false statements to environmental regulators. Another official pled guilty earlier this year, proving once again that when it comes to water quality, chemistry is reality.

## ***Chinese Hydropower Plans Affect Entire Continent***

One of China's [last free-flowing rivers](#) is now slated to be the site of several hydroelectric dams. The Yu flows through Yunnan in southwest China and through Thailand and Myanmar (where it is known as the Salween). The plans for the Yu fit within the greater Chinese water policy "[to fight for every drop of water or die.](#)" China's economic ambitions depend on water resources to the degree that Beijing refuses to work with any of its neighbors to collectively manage or govern any of the continents major transnational rivers.

## ***As Groundwater Becomes Less of "an Unknowable Thing," Underground Water Storage is Becoming More of an Option***

More large cities are exploring using [underground reservoirs](#) instead of manmade lakes to store large amounts of drinking water. Underground reservoirs provide an option for water storage that is not limited by evaporation, but they might not work everywhere. Issues with salt or chemicals leaching into the water can hinder storage. Also, the state legal regime might interfere. In Texas, the rule of capture means that the injector loses ownership over the water and someone else could extract it from a well on their own land.

## ***Conflicts between Fracking and Water Continue to Play at State and Local Levels***

Hydraulic fracturing of shale oil and gas plays continues to but up against water resources and local concerns across the country. Fracking takes water out of the hydrologic cycle, and drillers would prefer to use fresh water over saline or waste water. In [Texas](#), each well can use 4 to 5 million gallons of water, surface water rights have long since been appropriated, and groundwater laws encourage depletion of aquifers. In [New Mexico](#), Mora County banned all oil and gas extraction – primarily in order to protect the county's water resources. In New York, towns have banned fracking only to be challenged in court by the oil and gas industry. However, last week the [NY Supreme Court](#) upheld oil and gas development bans within town limits.

## ***Chicago: Where the Mississippi River Meets the Great Lakes, for Better or Worse***

The Chicago Sun-Times ran an [editorial](#) last week reminding Chicagoans of the importance of the Mississippi River for their health and economy. The Institute's Mark Davis was cited in the editorial for noting that no single agency oversees the entire Mississippi River watershed.

On the other hand, one single entity does oversee the Great Lakes Watershed. The Great Lakes are subject to an interstate compact and international treaty. And, generally, diversions out of the basin are not allowed. However, 3,200 cubic feet per second of Lake Michigan water moves through Chicago's shipping canal into the Mississippi River system. Now that water levels are so low in Lake Michigan, despite flood-causing rains, some, including Rep. Miller of Michigan are [questioning](#) this leak out of the Great Lakes system.