

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
September 5, 2018

Say Apalachicola-Chattahoochee-Flint three times fast

A new special master was [appointed this month](#) to adjudicate a long-running water rights dispute between Florida and Georgia. The litigation focuses on [whether Florida has a right to equitable apportionment](#) of the Apalachicola-Chattahoochee-Flint river basin, the rivers of which flow through Florida, Georgia, and Alabama. Water rights in the basin have been disputed for decades, and previous negotiations between Florida and Georgia have failed to produce any lasting results. Much of the dispute relates to [the Army Corps of Engineers' administration of the reservoirs](#) within the basin, as well as both states' increasing need for water as their populations grow. Florida has asked the special master for equitable apportionment of the waters, which essentially amounts to [judicial apportionment of the basin](#). The previous special master rejected Florida's request, stating that there was not clear and convincing evidence that a limit on Georgia's consumption of water in the basin would, in fact, cause an increase in water flow to the Apalachicola River. However, the Supreme Court [held in June](#) that the previous special master "applied too strict a standard in concluding that Florida failed to meet its initial burden of demonstrating that the Court can eventually fashion an effective equitable decree." So, everyone is basically now back to square one after [five years](#) of litigation. Those concerned about the future of [Florida Georgia Line](#) in light of this dispute need fear not! Glory be to [Bocephus](#), the band released a [new single](#) in June.

Oh, good! Fracking producing increasing amounts of wastewater

Toxic wastewater produced by fracking is becoming a growing problematic in Texas, with drilling operations producing enough wastewater to cover [the entire state of Rhode Island](#) in almost a foot of water. This is backed up by a recent [Duke study](#) which found that the amount of wastewater created as a byproduct of fracking has increased in recent years. Fracking is a process by which pressurized water (or some other liquid) is used to break apart rock, making the oil and gas below easier to reach. The wastewater produced by fracking is usually stored underground in disposal wells, which can be problematic as this method has been known to cause earthquakes (the science is [disputed](#), but, notably, not by [the state of Oklahoma](#)). Not only is the cost of disposing this wastewater becoming burdensome for the oil companies, but the water is also dangerous for [humans](#) and the environment if not discarded properly. Water at and downstream of these disposal wells has been found to have [increased levels](#) of endocrine-disrupting chemicals, which can have an adverse effect on humans and aquatic life. The U.S. Geological Survey has also already found that there is a ["definitive link"](#) between the use of

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:

[CPRA Board Meeting](#)

October 17, 2018

Cameron, LA

[Volunteer Oyster Shell Bagging](#)

September 9, 2018

Buras, LA

Water jobs:

[Water Policy Outreach Coordinator](#)

The Center for Environmental Law & Policy
Seattle, WA

[Program Associate \(Water\)](#)

Pisces Foundation
San Francisco, CA

[GIS Professional](#)

Dewberry
Baton Rouge or New Orleans, LA

[Director of Finance and Administration](#)

Coalition to Restore Coastal Louisiana
New Orleans, LA

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disposal wells and [diminution in water quality](#). Take all of this as grist for the mill that will surely feed the definitive law journal opus what we are all waiting for: why and how produced groundwater could or should be treated differently from all other groundwater.

Public schools increasingly responding to problem of lead in public schools' water

The New Orleans public school district has begun [placing water filters](#) on all school water fountains and kitchens out of a concern that there might be lead in the schools' water pipes. It is unclear, however, if that is actually the case, as it is believed the schools in Orleans Parish were last tested for lead in 1989. As lead levels can change over time, experts suggested that the school simply go ahead and install filters without first testing the water fountains for lead contamination. This is all after lead rates in Tensas Parish schools were found to be over [27 times the legal limit](#) prior to school starting (however, the school system appears to have fixed the problem, at least temporarily). Lead poisoning has a number of deleterious effects on children, including [developmental delays, hearing loss, and seizures](#). It is widely agreed that there is [no safe level](#) of lead exposure for children.

New Orleans is not the only city that has been confronted with lead in the water supply lately. Recently, [the public school district in Detroit](#) found high rates of copper and lead in its water, prompting the district to completely turn off the water at all of its schools. There has also been a recent push in [Newark, New Jersey](#), for the local government to do more about the high levels of lead in the city's water. Schools in [Maryland](#), [California](#), [Florida](#), and [Indiana](#), have also recently tested positive for high levels of lead in their water. Considering the critique the Sewerage and Water Board has received on this issue, as well as [Tropical Storm Gordon](#) (might this be the first named storm to feel [Canadian?](#)), the [new executive director](#) probably wishes he had picked a later start date.

California court applies the public trust doctrine to groundwater, state regulators doubly obligated to protect resource

A state appellate court in California held last week in [Environmental Law Foundation v. State Water Resources Control Board](#) that the state's 2014 Sustainable Groundwater Management Act [does not supplant](#) California's public trust doctrine with respect to groundwater. The court also held that the state's public trust doctrine applies to, at minimum, a portion of California's groundwater. Both were issues of first impression in the state. California's public trust doctrine had previously only been applied to [navigable waterways](#), but the doctrine's bounds have proved to be greater in the last few decades and covers other water bodies as well, it would seem. The state Supreme Court had previously held in [National Audubon Society v. Superior Court](#) that the public trust doctrine is applicable to water rights generally, and the court in [ELF v. State Water Resources Control Board](#) has now clarified this to apply to groundwater as well. The Sustainable Groundwater Management Act was adopted after the litigation had already started, and it created a new consolidated system for managing groundwater throughout the entire state. The court nonetheless held that the statute did not preempt the entire field of groundwater regulation, and therefore did not displace the public trust doctrine.

The dispute at issue here centers around the Scott River, the surface water of which has been drastically reduced in recent years as farmers have drilled wells in the river's aquifers for agricultural uses. At times, the wells have completely drained the river. This has had far-reaching impacts, as the Scott River is a habitat for endangered salmon and is used for recreation by the public. [Several environmental groups](#) banded together to bring the lawsuit, which makes sense because they're safer from the bears if they traverse the legal system in large numbers.