TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
June 10, 2022

Sometimes a river runs high. Sometimes a river runs dry. Sometimes a river breaks on through to the other side.

For years, Louisiana state officials have been toiling through planning stages, public meetings, and permitting processes trying to make sediment diversions that build wetlands happen in South Louisiana. And then the Mississippi River said, "All you had to do was ask."

The Lower Mississippi River is largely channelized to maintain the river's course for navigation, but this goes against the river's nature. Historically, the river changed many times, frequently cutting through its banks to create new paths and abandon old ones. And still to this day, much to engineers' chagrin, it seems no amount of river wrangling can tame the mighty Mississippi. One example is Neptune's Pass, a channel that has formed between the river and Breton Sound across from Buras. The crevasse has grown from 150 feet wide in 2016 to 850 feet wide today and is forming new land lumps in Breton Sound—doing for free exactly what the State wants costly sediment diversion projects to do.

But now the Army Corps of Engineers has announced that it will be closing the entrance to the pass with rocks, allowing only small boats to continue using the channel. Apparently the channel has grown so large that the amount of water funneling through it is slowing water flow down the main channel and causing issues for navigation. The Corps' bread and butter has always been navigation and flood control, not restoration or anything else Congress has put on them in the past few decades. So, despite efforts by other agencies to create diversions and build land, the Corps is channeling Gandalf (pun semi-intended). Perhaps the Corps is just upset the river didn't obtain the necessary permits (as if they want yet more permits to deal with!). Either way, it sure would be interesting to find out how much they're going to spend on closing up Neptune Pass and missing out on all those free wetlands its creating versus what it would cost them to just deal with the navigation issues it's creating. We already know they love to dredge! What's stopping them now?

Great Salt!

Salt Lake City's air quality has never been off the charts impressive, but it's about to get a whole lot worse. Over the past few decades, the Great Salt Lake, the largest natural lake west of the Mississippi River, has shrunk by two-thirds, and as it continues to dry up, Utah is in for some effects of biblical proportion. The economic lifeline of the region will deteriorate and biodiversity in the area will crumble beyond what even a shipwreck could revive. But perhaps scariest of all, the air surrounding Salt Lake City would occasionally turn poisonous. The

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.

Coming Up:

Greauxing Resilience at Home Webinar; June 16

Water jobs:

Litigation Attorney; Florida Department of Environmental Protection; Tallahassee, FL

Water Quality Technician; Pontchartrain Conservancy; Metairie, LA

The Nature Conservancy; Director of External Affairs; Government Relations Program Manager; Coastal Restoration Project Manager; Water Program Specialist; Texas

Fellowship for Climate Change and Environmental Professionals; Atlas Corps; USA

Colorado Water Center Associate Director; Colorado State University; Fort Collins, CO

Expert@ en Derecho Ambiental; American Bar Association; Honduras, El Salvador, and Guatemala

Legislative Analyst, Coastal and Flood Resilience; Environmental Defense Fund; Washington, DC

Manager, Resilient Fisheries Policy; Environmental Defense Fund; Remote

Associate Attorney; Sher Edling LLP; San Francisco, CA

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lakebed contains dangerous toxins including arsenic, antimony, copper, zirconium, and other heavy metals. Typically, these contaminants are kept in place by the lake's water and a hard earthen crust. But, as more land is exposed to wind and therefore erosion, they could become airborne and sweep through communities in dust clouds. This effect isn't unprecedented: At the end of the 20th century, a health crisis emerged in the central Asian communities around where the Aral Sea had once been as the salty lake disappeared. In 1959, the Soviet government began diverting water from the Aral Sea's tributaries to boost cotton production. It worked—but at a dire cost. Fishing and agriculture in the region were decimated and the airborne contaminants caused tens of thousands of cases of tuberculosis, cancer, and lung disease.

In Utah, the story so far has proceeded in much the same way, with the state diverting water from the lake's headwaters. Despite being one of the driest states in the nation, Utah has a history of excessive water consumption. For years, Utah was the only state to allow unlimited use of secondary water. Secondary water is water pulled directly from rivers or reservoirs and sent to cities and towns for use, and because it skips the treatment process, it's really cheap. And we're talking about a significant amount of water—60% of water consumption by Utah households is used outdoors, meaning it is likely secondary water. This year, the state finally passed a bill cracking down on this unfettered use. However, because the situation has gotten so bad, the bill had to be extremely ambitious—some argue so ambitious, it can't be achieved.

And the Utah lawmakers' ambitions didn't stop there—the State legislature is seriously exploring pipelining seawater across 700 miles from the Pacific Ocean to the Great Salt Lake. The idea of pipelining water across the country to manage increasingly dry conditions is not new—and these days comes up more and more—but it typically revolves around transporting Eastern water from, say, the Great Lakes or the Mississippi River. But these freshwater sources wouldn't do much to replenish the drying Great Salt Lake. Utah's plan would be extremely controversial, not to mention insanely costly (remember, Roman aqueducts took water from high places to low places, not vice versa), but with the state in dire straits as the lake continues to shrink, it wouldn't be money for nothing.

This is why I keep my water in my mattress

Speaking of states that have looked east for water… Last year, the Arizona State Legislature wrote to Congress requesting a study on Mississippi River floodwater harvesting. As it turns out, the Grand Canyon State isn't totally tapped out quite yet, but it has gotten itself into quite the pickle. Basically, since the 1990s, Arizona has been "banking" water and saving up for a not-so-rainy day. So, while the rest of the West scrambles to find water, Arizona should be sitting pretty for the time being. Just one problem: the state didn't build any infrastructure to extract or deliver the stored water. Perhaps Arizona thought they had more time. After all, it was less than a year ago the U.S. declared a water shortage on the Colorado River for the first time. Since then, Lake Mead water levels—the trigger for water cuts in the Southwest—have declined faster than anyone predicted. Unfortunately, this means there's a good chance the state also has less time than we currently think it has—which isn't much to begin with. It's also worth remembering that the bank was always intended as merely a stop-gap in times of shortages. But what Arizona—and the rest of the West—is reckoning with is just not a dry period, it's the beginning of a new, increasingly arid, normal. And just like the Colorado River before it, Arizona's water banks will also run out (once the state figures out how to access them). On the bright side, maybe this will take some of the heat off the New Orleans city planners that built an airport without an access road.

Some landslides bring you down, others bring groundbreaking climate lawsuits

Since 2015, a Peruvian farmer, Saúl Luciano Lliuya, has been battling Germany's largest power company in a lawsuit that could change the shape of global climate law. Mr. Luciano Lliuya lives in the city of Huaraz located high in Peru's Cordillera Blanca mountain range near Lake Palcacocha. Residents of Huaraz live in constant fear of an avalanche or landslide crashing into the lake's waters and producing a catastrophic flood. The last time this happened in 1941, the lake held 34x less water than it does now and still killed between 1,800 and 4,000 people. These "glacier-lake outburst floods" are of growing concern in the Himalayas and Andes—just last month one such flood caused a bridge to collapse in Pakistan. The lawsuit alleges that the German utility RWE is liable for 0.47% of Mr. Luciano Lliuya's risk because the company has contributed 0.47% of historical GHG emissions causing increased global temperatures. While the case is ongoing, it recently entered a decisive stage as German court officials made the trek to Lake Palcacocha to investigate. The case couldn't actually provide a solution to Huaraz's

risk, but it could open the door for more climate lawsuits where other strategies have so far been unsuccessful. We'll keep you updated on this one. But until we know the verdict, maybe stay off those carbon footprint calculators or you might wind up in court for the role your emissions have played in glacial melt.