

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
October 1, 2012

## ***5<sup>th</sup> Circuit Reverses Judgment (and Itself) on Federal Liability for Katrina Flooding***

It is never easy to pin liability on the Federal government when things it builds or does cause harm, but a group of plaintiffs had succeeded in doing just that in the Katrina Canal Breaches Litigation thanks to a record that proved the Army Corps of Engineers' negligent decision to delay armoring the Mississippi River Gulf Outlet shipping channel was entirely a matter of "objective scientific principles and were not susceptible to policy considerations". Accordingly the Corps could not claim immunity under the Federal Tort Claims Act. At least that was the case until the a Fifth Circuit panel reversed that judgment and its own previous ruling (March 2012) by finding that the Corps' decisions were indeed not just about science but also about policy which meant the Federal government is immune from liability. Beyond changing the outcome this case, the ruling also sheds light on just how difficult it may be to use the "scientific principles" exception to overcome the general immunity for discretionary functions under the Tort Claims Act.

<http://www.ca5.uscourts.gov/opinions/pub/10/10-30249-CV1.wpd.pdf>

## ***Louisiana DEQ Notifies Stolthaven of Potential Additional Penalties for Toxic Releases in Isaac***

Louisiana DEQ has sent Stolthaven a notice of potential additional penalties in connection chemical releases from its Braithwaite LA site during and after Hurricane Isaac. According to the notice, "... the written reports submitted detailing this incident did not specify or give mention to any measures taken prior to hurricane landfall to minimize the volume and duration of the unauthorized discharges." Each unauthorized discharge into state waters is a separate violation.

[http://www.nola.com/environment/index.ssf/2012/09/stolthaven\\_new\\_orleans\\_issued.html](http://www.nola.com/environment/index.ssf/2012/09/stolthaven_new_orleans_issued.html)

## ***Science and Water: Is Anybody Listening?***

Taking the best information and turning it into the best decisions is what good management is all about. But when it comes to managing water, it is apparently a lot less common than one might think. At least the is the conclusion of a new report from the United Nations Environment Programme and the Global Environment Facility. The new "Science-Policy Bridges Over Trouble Water" cautions of a "water bankruptcy" in parts of the world unless more scientifically ground decisions are made about water use and management. The report finds a troubling paradox (but not apparently a unique one—see the first story above) in that while there is great amount of good scientific information available, decision makers to don't seem be using it.

<http://www.unep.org/newscentre/Default.aspx?DocumentID=2694&ArticleID=9282&l=en>

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:**

[October 17, 2012](#)

America's Wetland Foundation  
"Big River Thrives"  
Memphis, TN

[October 20-25, 2012](#)

Restore America's Estuaries Conference  
Tampa, FL

[February 22-23, 2013](#)

18<sup>th</sup> Annual Tulane Environmental Summit

**Tulane Institute**  
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## ***Energy and Water: California Desalination Plant Too Expensive to Run***

Desalination is often touted as the solution to dwindling fresh water supplies in many places—including even Louisiana. While it certainly is part of the solution toolbox it has limits one of which is the high cost of turning salt water into fresh. The most recent reminder of how much that matters comes from Marina, California where a desalination plant sits idle due to the high energy costs of running the plant. As the cost of water increases, the economics of alternative supplies changes as conservation proves (up to a point) to be the cheaper alternative.

<http://businessweek.com/ap/2012-09-22/desalination-no-panacea-for-calif-dot-water-woes>

## ***New Reports Consider the Costs of Fracking and the Need to Invest in Dams and Levees***

As states and the federal government come to terms with two of their most vexing issues—energy production and public infrastructure fuel for the public discussion continues to flow from the think-tank and advocacy sectors. Among the more recent additions is a report from the Center for American Progress on “*Ensuring Public Safety by Investing in Our Nation’s Critical Dams and Levees*” and a report from Environment Texas, “*The Costs of Fracking*” (which looks at the impacts of fracking on water supplies, among other things).

<http://www.americanprogress.org/issues/economy/report/2012/09/20/38299/ensuring-public-safety-by-investing-in-our-nations-critical-dams-and-levees/>

<http://environmenttexas.org/sites/environment/files/reports/The%20Costs%20of%20Fracking%20vTX.pdf>

## ***Fresh as the Driven Snow: Arizona Ski Resort to Make Snow from Sewage Effluent.***

Putting aside for a moment the obvious challenges of marketing snow made from sewage (will anyone ever eat a snowball again?), this story from a ski resort near Flagstaff AZ provides an important insight to how resourceful we are going to have to be to maintain our lifestyles in the face of a changing water diet.

<http://www.nytimes.com/2012/09/27/us/arizona-ski-resorts-sewage-plan-creates-uproar.html? r=0>