



TUWaterWays

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

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In This Era of Climate Uncertainty, One Thing Remains Consistent for South Louisianans

Whether it's over land loss or land creation, you can count on there being litigation. A possible new lawsuit could throw a wrench in the state's coastal protection and restoration plans. The Mid Barataria Sediment Diversion, which [officially broke ground in August](#), could get caught in a legal battle. Earlier this week, [oyster companies in Plaquemines Parish sent a notice of intent to sue](#) to the state's Coastal Protection and Restoration Authority and the Army Corps of Engineers. And, just today, [Plaquemines Parish has sued the state](#), alleging that the permitting process for the project was flawed.

Throughout the that process, much of the opposition to the project has come from the fishing industry, as the increased sediment and freshwater flows into Barataria Bay will have long-term adverse impacts, especially to oysters, as noted in the [Army Corps' environmental impact statement](#). However, the oyster companies' notice of intent alleges violations of the Endangered Species Act, specifically regarding listed bird species and sea turtles. The oyster plaintiffs are joined by the Earth Island Institute. It's too soon to tell how this will play out for either suit, but it can't help but call to mind that the single most precious resource in all these efforts to preserve the Louisiana coast is time.

Meanwhile, there's been yet another development in the coastal erosion lawsuits! This week, the [U.S. Supreme Court declined oil defendants' application to stay the Cameron Parish trial](#). BP, Shell, and Hilcorp, in a final effort to delay the November 27th trial date, turned to SCOTUS for help so the companies could seek review of a state court decision to transfer the case. They said they can't get a fair trial in Cameron Parish because the \$7 billion in damages sought would all go to the local government, so parish residents couldn't be impartial fact finders. The trial date has been set for a while, but no one knew whether it would actually happen given the oil companies' extensive procedural delays and attempts to dismiss the suit. While it's just a minor detail, it's worth noting that the companies [filed their application](#) with none other than [Sackett majority author Justice Alito](#). If he won't hear you out in a wetlands controversy, who will?

Well, Well, Well.... What Do We Have Here?

Nope, Nope, Nope. Or so said the [Capital Area Groundwater Conservation Commission when it rejected three new well applications](#) that would have drawn from the Southern Hills Aquifer, the primary source of drinking water for the Baton Rouge area. However, [decades of overpumping have threatened the water source](#). Yes, it's a saltwater issue, but unlike the salt wedge on the lower Mississippi River, this salt is creeping [up from below](#). Rejecting a well application may not seem like big news, but it's the first time in recent history that the commission has done so. It's been exercising more legal authority as of late. The commission is already in a legal battle with Baton Rouge Water, one of the rejected applicants, which challenged the Commission's authority to require pumping meters. Its executives say these denials will threaten economic development. Yet data and science yield models showing additional wells and pumping in some areas could increase saltwater intrusion, which could compromise municipal supply. Seems like a threat to economic development, too, no?

It goes without saying, but using science and data to inform water management is the best practice. Now, what happens when you make decisions based on falsified data? Well, you just might ask the Sewerage and Water Board of New Orleans. Public records reveal [a handful of S&WB employees have routinely falsified data](#) and departed from standard lab procedures, casting doubts on the reliability of tests that were conducted. The Safe Drinking Water Act, which sets drinking water standards nationwide and is administered by EPA requires public water systems to collect a minimum number of monthly samples; these include individual bacteriological samples, as well as testing for chlorine and coliform. GPS records reveal some employees routinely skipped testing sites but reported results, nonetheless. Other records reveal discrepancies between chlorine sampling results and lab results, the latter of which are reported to federal regulators and the state health department. Roughly 8% of samples over the six-month period were falsified. It's unclear whether the falsified samples were contaminated, but there will definitely be more to follow on this.

Wondering How to Beef Up Your Water Rights?

All you have to do is get born into the right [family](#)! It especially helps if that family has been in the cattle farming business for generations, having secured the rights to massive amounts of water to grow hay to feed not only your cows, but [cows around the world](#). A new [investigation from ProPublica and The Desert Sun reveals some startling information about water use along the Colorado River](#), specifically California's Imperial Irrigation District. As it turns out, Imperial is quite the fitting name for the district—with all the water it's entitled to, you might think it was running an empire (well, it might be an empire in terms of prior appropriation royalty). The district is the largest user of Colorado River water, but the report found that most of its water is consumed by members of twenty families with farming operations in the Imperial Valley. Thanks to [historic claims that date back a century](#), these families use more water than is allotted to some Western states; one family in particular uses more water than the city of Las Vegas. No, that's not an exaggeration. A large percentage of that water isn't used to grow crops to feed people—rather for hay to feed cattle. As the Colorado River states grapple with figuring out water cuts, it raises fundamental questions about how we distribute water and what industries and users we value. Last month, federal officials gave their [stamp of approval to a plan proposed by California, Arizona, and Nevada](#) to voluntarily reduce water use, meaning that the states can avoid forced cuts in their allotments under the Compact for the time being. California stands to lose the least, as the water rights priority scheme benefits California the most. [Las Vegas has been making great strides in its efforts](#) to decrease water use and adapt to a drier future. Colorado is [considering banning certain kinds of grass](#) in an effort to limit unnecessary water consumption. All these new policies and programs to conserve water are important steps for adaptation, but it stings to be reminded that Imperial Valley Irrigation hasn't faced mandatory cuts in the past twenty years.

Nevertheless, the Biden administration is pushing forward its conservation goals, the latest coming in the announcement of [\\$64 million for water conservation agreements on the lower Colorado River](#). This funding will support seven new agreements in Arizona as part of a broader effort to incentivize water conservation. Basically, state and local water [authorities commit to take less of their Colorado River allotments](#) in exchange for money. For example, Phoenix will cede 50,000-acre feet in exchange for \$20 million a year until 2025. It might seem unfair that a few farmers in California get 1/7th of the lower River's allotment and that people are getting paid to not use water, but that's just how the prior appropriation cookie crumbles.

Coming Up:

[Mississippi River Basin Survey Webinar](#),
November 14, 2023

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

Water jobs:

[Associate, Programs](#); Restore America's Estuaries; Remote (US)

[Senior Policy Manager, Water](#); National Audubon Society; Sacramento,
CA

[Law Fellow \(2024 – 2026\)](#); Environmental Law Institute; Washington, DC

[Research Fellow and Policy Engagement Leader](#); Resources for the
Future; Washington, DC

[Assistant Director of Water Policy – Environmental Analyst V](#); Mass.
Executive Office of Energy and Environmental Affairs; Boston, MA



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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