

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
September 6, 2013

## Happy World Water Week!

September 1-6 is [World Water Week](#) hosted by the Stockholm International Water Institute. While there are a variety of events and a full program, we can't help but notice a lack of parade, but at least the King and Queen (of Sweden, not Carnival) attend the water prize ceremony.

## Update on Flood Protection Authority Lawsuit Against Oil & Gas: "Nothing Has Changed"

Many have asked us for an [update](#) on the Southeast Louisiana Flood Protection Authority-East lawsuit against the oil and gas industry. The update is that, legally, nothing has changed since Chevron filed a motion to [remove](#) the lawsuit from state to federal court. Outside of the courtroom, the Jindal administration and trade groups have continued to call the suit both frivolous and a billion dollar jackpot for trial [lawyers](#) and are working to introduce legislation to change/clarify the Authority's authority to bring such suits and are likely lining up new board members. The Authority's Vice-President, John Barry, has been the [public face](#) defending the lawsuit, and maintains the only reason for the lawsuit is "[so New Orleans can survive.](#)"

## State Approves Coastal Permit for Plaquemines Coal Terminal

Despite protests from environmental and community groups, last Friday the Department of Natural Resources [approved](#) a coastal use [permit](#) for RAM Terminals to build a coal terminal facility at Myrtle Grove in Plaquemines Parish. That is the same Myrtle Grove that is identified as the location for large river reintroduction project in Louisiana's Coastal Master Plan. The CPRA and RAM have reached an operating agreement that will restrict RAM activities when the river is carrying the most delta-building sediment. Opponents remain skeptical that the agreement will allow the river reintroduction project to work fully and that the terminal will cause both air and water pollution.

## Water Continues to Present Florida with (So) Many Challenges

In Miami, millions of tons of partially treated sewage are pumped into the ocean daily, but that's not what has people up in arms (somehow). The [problem](#), according to Biscayne Bay Waterkeeper, is that climate change and sea level rise are not being considered for a planned half-billion dollar upgrade to the wastewater plant supplying that partially treated sewage. The upgrade is part of a \$1.6 billion agreement among Miami-Dade County, the Department of Justice, and the EPA. As sea levels rise, the chances increase that the treatment plant on Virginia Key could get shut down like it did for month after Hurricane Andrew in 1992.

Farther up the Atlantic Coast, the Indian River Lagoon has seen [widespread](#) marine mammal and pelican deaths this year. Nitrogen and phosphorus from leaking septic tanks and fertilizer

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:

**September 6, 2013**  
[Greater New Orleans Water Plan Release Port of New Orleans](#)  
9-11 a.m.

**September 23-26, 2013**  
U.S. Water Alliance  
[One Water Leadership Summit](#)  
Los Angeles, LA

**October 24-26, 2013**  
Lake Pontchartrain Basin Foundation  
[Basics of the Basin 2013](#)  
New Orleans, LA

**February 21-23, 2014**  
Tulane Environmental Law Summit  
New Orleans, LA

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runoff pollutes Lake Okeechobee, and that water has been pumped to the Indian River Lagoon where a once thriving estuary is now a full-fledged environmental catastrophe, where toxic algal blooms kill manatees and dolphins and pelicans are starving to death. That same polluted water from Lake Okeechobee used to flow south to the Florida Keys where it helped to kill the Keys' coral reefs. Governor Scott recently [announced](#) a plan to widen the access for Lake Okeechobee water to flow south again through the Everglades. The hope is that the 'Glades will be able to filter out or trap toxics and nutrients that kill the estuaries to the east, west, and south.

Meanwhile, a [report](#) from the Public Employees for Environmental Responsibility says that environmental enforcement in the state has dropped across the board and that the Department of Environmental Protection has essentially ceased to function. DEP begs to differ. Good luck, Florida.

### **Coastal Habitat Study + NJ Dunes**

Following the 2005 hurricane season many in Louisiana's environmental community and the state itself adopted a "multiple layers of defense" strategy using coastal habitats to provide protection from storms. A new [study](#) published in [Nature](#) finds that coastal habitats provide risk reduction nationwide for people and property by buffering waves and storm surge. The study's modeling showed that 16% of the US coastline is "high hazard," but twice as much coastline would be so vulnerable without coastal habitats. Coastal habitats are needed now more than ever; *National Geographic's* [cover story](#) this month showed the worldwide impacts sea level rise has. On the other hand, [nationalgeographic.com](#) [shows](#) how one coastal habitat, dunes, protected a New Jersey neighborhood and how such protection can be passively built with just grasses and fences.

### **Now We're Cooking Fracking with Gas!**

Hydrofracking has transformed the oil and gas industry and world energy markets but the fact that it uses lots of water and can lead to water contamination has led to persistent conflict. But what if one could do hydrofracking without the hydro? Actually you can but now one company has proposed an innovative way of getting away from fracking's dependence on water; instead of injecting millions of gallons of water into a well to unlock the natural gas, why not use more natural gas? The [idea](#) is that compressed natural gas would be mixed with other materials to form a foam to open up the shale to release natural gas without contaminating the gas with something that has to be extracted and treated. It is beyond us to judge the merits of this but we offer this up in the spirit of noting that the fracking technology horizon is shifting.

### **Groundwater in Texas and Kansas Not Long for This World**

A new [study](#) published by the National Academy of Sciences shows the Ogallala (or High Plains) Aquifer could be mostly depleted within 50 years. The Aquifer lies beneath parts of seven states, and while it has been almost entirely emptied in the Texas portion, the [Kansas portion](#) supports a huge corn and beef production [complex](#). The study shows that it would take between 500 and 1,300 years to recharge the one third of the Aquifer that has been drained, and another 39 percent is likely to be drained by 2060. Although greater efficiencies in corn production are expected, greater efficiencies have not led to reduction in water use as much as increase in production. Kansas is left trying to figure out how to balance groundwater use, but the state already implemented water limits in the 1980s, so it is unclear where the state will go from here.

Meanwhile, in Texas, the greatest threat for groundwater conservation may well be state groundwater law. Last week, a Texas appeals court [found](#) that the state cannot limit groundwater pumping without paying landowners. In *Edwards Aquifer Authority v. Bragg Pecan Farm*, the court found that the Aquifer Authority owes landowners money for "taking" their right to pump all the groundwater they can suck up. The opinion states "we conclude the 'property' actually taken is the unlimited use of water to irrigate a commercial-grade pecan orchard." This case follows the *Edwards Aquifer Authority v. Day* Texas Supreme Court case from last year which seems to have used language of the absolute ownership groundwater property but that case and this case follow the rule of capture regime borrowed from oil and gas ("if I can suck it up from my land, it's mine no matter whose land it came from" or "I drink your milkshake!"). Where Texas will go from here, and how it will regulate groundwater extraction, is anybody's guess.

### **South Africa Begins Process of Overhauling Entire Water Policy**

One thing Texas (and some other states, including Louisiana) might do is follow South Africa's lead and create an entirely new water policy. The South African Department of Water Affairs [released](#) for public comment new policies to overhaul the country's water policy. The changes will do away with the water allocation process that had allocated 98% of the country's water as well as the free drinking water allocated to everyone in the country. The lack of flexibility in water resources was creating a drag on development and job

creation and the hope is that the new system will allow for a more flexible and efficient deployment of the country's water resources.

**Finally, One More Reminder that Without Water, There is no Beer.**

*"...because without beer, things do not seem to go as well..." -Diary of Brother Epp, Capuchin Monastery, Munjor, KS, 1902*

Well, Brother, without water, things do not seem to go as well either, and major brewers are [realizing](#) just that. While, craft beer companies have organized with the Natural Resources Defense Council to toughen enforcement of the Clean Water Act, MillerCoors has signed onto the [UN's CEO Water Mandate](#), is working to further reduce the water needed at breweries, and is trying to ensure that barley and hops farmers have sufficient water for their crops.