

TUWaterWays

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

[February 6, 2020](#)

We're Hiring!

The Tulane Institute on Water Resources Law & Policy is in the market for our next postgraduate research fellow to start in August 2020! That's right- if you're a recent (2019) or upcoming law school graduate this spring 2020 (JD or LLM), you could be a part of the team who writes this remarkable newsletter (among other things). If you're interested in the position, check out [this job posting](#) and send your resume on in before February 15th! (Ability to quickly and confidently speak aloud the name of our institute not required.)

The Louisiana Government Dodged a Bullet (Mostly)

(Warning: you can consider this your every-so-often reminder that we are actual lawyers who can get into the weeds of the law and not just quipsters who can get into the weeds of YouTube.)

On January 29, the thing we've all been patiently waiting for finally occurred: the Louisiana Supreme Court released its [opinion](#) in the case of *Crooks v. State of Louisiana, Department of Natural Resources!* Okay, maybe not everyone was following the case as closely as we were, so here's a refresher. The threshold questions were whether Catahoula Lake is really a lake or whether it's actually a river, and where the boundary between public and private ownership is. The answer: It is river despite its name. Of course there was much more at stake than a watery boundary since that boundary could dictate who owned the oil and gas beneath the "lake" and whether how the water levels were managed resulted in a taking of private property. Now, on with our story.

Pursuant to a congressionally-approved navigation project under the River and Harbor Act of 1960, the U.S. constructed various structures in the Catahoula Basin in Louisiana in 1962. In conjunction with the project, the State of Louisiana signed an "Act of Assurances," which obligated the State to provide the federal government with all lands and property interests necessary to the project at no cost to the federal government, and to indemnify the federal government from any damages resulting from the project. Upon completion of the project in 1973 and up until the present day, the U.S. Fish and Wildlife Service has been managing the water levels in and around the Catahoula Basin, thus increasing water levels in the Catahoula Basin and prolonging the natural annual high-water fluctuations. Additionally, the State, through the Department of Wildlife and Fisheries, has also granted mineral leases in the area known as Catahoula Lake—a reminder that much more than water was at stake here.

In 2006, plaintiffs Steve Crooks and Era Lea Crooks filed a petition, in which they alleged to represent a class of landowners in 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 stewardship of water.

Coming up:

[Southern Exposure Film Series Screening](#): February 6, 2020: Talladega, AL

["Water Isn't A Game" Exhibit Opening Night](#): February 6; New Orleans, LA

[Deadline to submit comments regarding the Army Corps plan to elevate hurricane protection & river levees](#): February 7

[Flame Retardant & PFAS Dilemma Symposium](#): February 7; Berkeley, CA

[CA Water Resilience Portfolio Comment Deadline](#): Feb. 7

[Derelict Crab Trap Rodeo Volunteer Days](#):

February 8, 2020: Lafitte, LA

February 15, 2020: Cameron Parish, LA

[Cook-Off for the Coast](#): February 8; Violet, LA

[SOUL Tree Planting Events](#): February 8, 15, and 29; New Orleans, LA

[World Wetlands Day Celebration at Audubon Zoo](#): February 9; New Orleans, LA

[CPRA 2023 Coastal Master Plan New Project Idea Submission Deadline](#): February 14

[Watershed Game Coastal Model Pilot Workshop](#): February 18; New Orleans, LA

Water jobs:

[Senior Research Fellow](#): Tulane Institute on Water Resources Law & Policy; New Orleans, LA

[Legal Fellow](#): Yale & NRDC; Various Locations

[Attorney Advisor](#): NOAA; Silver Spring, MD

[Manager of Water Resources](#): Calaveras County Water District; San Andreas, CA

[Clinical Fellow](#): Emmett Environmental Law & Policy Clinic at Harvard Law School; Cambridge, MA

[President](#): Restore America's Estuaries; Arlington, VA

[International Ocean Wildlife Attorney](#): Earthjustice; San Francisco, CA or Washington, DC

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Catahoula Basin whose property is affected by the increased water levels from the project. Among other things, the State argued in defense that the plaintiffs' claims were long prescribed. In this regard and relevant to the Supreme Court decision, the trial judge cited the case of [Cooper v. Louisiana Department of Public Works](#) to conclude that the one-year prescriptive period for damage to immovable property found in [Louisiana Civil Code Article 3493](#) governed and the [continuing tort doctrine](#) applied to prevent the commencement of the running of prescription on the plaintiffs' claims. Based on his findings, the trial judge awarded appropriation damages of \$28,745,438.40 to one set of plaintiffs and \$9,550,800.00 to the other set of plaintiffs (plus interest); an additional \$4,694,309.68 for oil and gas royalties attributable to the lands; \$22,075,843.77 in attorney fees; and other miscellaneous fees. [On appeal at the Louisiana Third Circuit Court of Appeal](#), the majority agreed with the trial court's conclusion regarding prescription and application of *Cooper*. However, one judge dissented noting that the *Cooper* case should not be followed because the *Cooper* court had erred in applying tort law in the context of an appropriation claim. Under that reasoning the plaintiffs' claims were barred by the three year prescriptive limit applicable to takings claims found in [Louisiana Revised Statutes 13:5111](#). In its opinion, the Supreme Court agreed with Circuit Court Judge Amy's dissenting conclusion that the plaintiffs' claims were prescribed under La.R.S. 13:5111. The Supreme Court reversed the awards for appropriation but upheld the award for oil and gas royalties. There is a lot more to the case, including discussions about whether a particular body of water is a lake versus a river; the ownership implications of that lake versus river determination; and whether the state or the United States is the entity responsible for appropriating the plaintiffs' land. So, we recommend reading the full [opinion](#) if you're interested. We can only do so much justice to this years-long saga in a quick summary.

We're Not in Kansas Anymore

In case you have been living under a rock, Super Bowl LIV took place on February 2, and—spoiler alert—the Kansas City Chiefs took home the coveted Lombardi Trophy. While the Chiefs may be singing, "[Take Me Home, Pat Mahomes](#)" right now, not all aspects of the Super Bowl were, well, super. The Super Bowl's location in Miami called into [question the ability of the city](#) and others, such as New Orleans, Houston, Los Angeles, and Phoenix to host the big game in the future. That is, climate change and sea level rise threaten to make these cities too hot or too inundated (or both) to be future hosts. Even Tampa, which will host next year's Super Bowl, has been deemed [the most vulnerable city in the country to storm surge](#), which will only get worse with rising seas. In fact, a new report released on January 30 titled "[Florida Climate Outlook: Assessing Physical and Economic Impacts through 2040](#)" by Resources for the Future states that in the next couple of decades Miami will become "the most vulnerable major coastal city in the world." The report proffers that though the impacts of climate change will be widespread in Florida, the state's major cities will bear a bigger burden because of their higher populations and densities. For example, Miami-Dade County and the Tampa Bay region are projected to face 8 and 12 inches, respectively, in elevation by 2040 due to sea level rise. As one of the authors of the report [explained](#), "Several major tourist attractions, including the Everglades, Biscayne National Park, and Miami Beach, are largely situated on land less than three feet above the high-water mark and may become permanently submerged by the end of the century." And, other reports released recently explain the likely future devaluation of Florida real estate due to climate change. One of those reports, titled "[Climate Risk and Response: Physical hazards and socioeconomic impacts](#)," concludes that vulnerable Florida homes could be devalued by \$30 billion to \$80 billion (15% to 35%) by 2050; average annual losses from storm surge on residential real estate could increase to about \$3 - \$4.5 billion by 2050 (up from \$2 billion today); and the impact of a 100-year-storm event could increase to \$50 - \$75 billion by 2050 (up from \$35 billion today). The other report, titled "[A Deluge of Risk...and a Looming Crisis](#)," concludes that the percentage of vulnerable oceanfront properties affected by extreme flooding will rise in Miami-Dade County from 5% in 2019 to 98% by 2050. (Of course, when Pat Mahomes does take them home, Chiefs fans will have to worry about [flooding](#), too – whether they're in Kansas or Missouri.)

Yikes. We'll try to end this story with some happy news. To start, Miami recently released its resiliency plan called "[Miami Forever Climate Ready](#)." In addition to plans like overhauling the city's stormwater system, raising sea walls, and cutting down on emissions, the document also discusses how to cover such projects, which are expected to be incredibly expensive all while lower property values and higher insurance costs associated with climate change make it [harder for localities to foot the bill](#). (Shameless plug: some really awesome people have written [papers](#) about that very topic if you're interested in learning more.) In other positive news, on January 30, in conjunction with Super Bowl festivities, Florida Governor Ron DeSantis kicked off "[100 Yards of Hope](#)," which is

an initiative aimed at planting 100 yards of coral in the waters off Key Biscayne. Governor DeSantis also announced a new awareness campaign called "[Florida's Coral Reef](#)," which aims to increase recognition, cultivate a sense of environmental stewardship, and provide information about Florida's Coral Reef. (Though, it should be worth noting that at the same time as these announcements, the [Florida Senate voted in favor of a bill](#) that prevents Florida localities, such as Key West, from banning sunscreens containing ingredients that some researchers say harm coral reefs.) Additionally, one of the initiatives launched by the Miami Super Bowl Host Committee, Ocean to Everglades (O2E), partnered with the Ocean Conservancy and the Everglades Foundation to raise awareness about environmental issues such as invasive species in South Florida. In particular, O2E sponsored a lionfish-catching contest and co-sponsored the "[Python Bowl](#)," which was a state-sanctioned hunting competition designed to catch invasive Burmese pythons in the Everglades. To us, it also sounds like the title of a potential spinoff of the cinematic marvel [Anaconda](#) (shout out to true Super Bowl hero, J-Lo.) At the Super Bowl itself, vendors did not serve any single-use plastic cups or drink bottles. Lastly, as a reminder about a topic [previously discussed in TUWW](#), Governor DeSantis recently announced plans for the state to purchase 20,000 acres of land in the Everglades that were slated for oil drilling. There! At least we gave you *some* sunnier updates from the sunshine state to balance out the earlier climate change doom and gloom.