

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
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Bay Delta Wetlands Tax

If our increasingly dim memories of basic economics courses remind us of anything, it is that a good way of showing something has value is having people show they are willing to pay for it. By that standard, the folks in the San Francisco Bay region value their wetlands...at least enough to [tax themselves](#) to help conserve and restore them. Not content to be merely [sittin' on the dock of the bay, wasting time](#), voters agreed to a \$12 parcel tax, estimated to produce around \$500 million over 20 years. The funds are administered by the San Francisco Bay Restoration Authority (SFBRA), a government entity comprised of representatives from across the nine bay area counties. The SFBRA distributes the funds based on a competitive grant process.

When the Going Gets Tough, The Tough Get Lawyers

In Louisiana, it is easier to be against Mom and [crawfish pie](#) than against "coastal restoration"* these days. Hundreds of people spent 3 days at a State of the Coast conference in New Orleans learning how that work is going and how much harder sea level rise is making it. The message from Louisiana's Governor, New Orleans' Mayor, and lots of other places was this, "Do smart, effective things faster." Exactly nobody then added, "but first go to court." Maybe they should have. Because when it comes to spending m(b)illions of dollars and impacting people's lives and livelihoods the consensus has a way of disappearing in a hurry. Case in point: Restoring the wetlands around the now defunct Mississippi River Gulf Outlet, or more accurately [who has to pay for that](#). The State of Louisiana and the Federal government disagree on the answer to that question, with the Feds saying a 1986 law requires the State to cost share the work to the tune of \$3 million and the State saying a 2007 law puts it all on the Feds. Add to that a claim by the Feds that the State waited too long to lawyer up and sue and you get the picture. The State won the first round of this last year when a Federal District Court judge ruled in its favor. Undeterred, the Federal government appealed and oral arguments were heard by the Fifth Circuit Court of Appeals last week. Regardless of who wins it won't make any actual dollars appear and won't add back the 4 to 8 years (depending the state or federal math) lost while the dispute has been festering. Two takeaways: First, there will be disputes that need to be resolved, so getting about it sooner rather than later is important. And second, when you turn this

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:

The 18th Annual Conference on Litigating Takings Challenges to Land Use and Environmental Regulations
New Orleans, LA
November 4, 2016

[RAE/The Coastal Society Summit on Coastal and Estuarine Restoration](#)
New Orleans, LA
December 10-15, 2016

Water jobs:

[Associate Attorney](#)
Northwest Office of Earthjustice
Seattle, WA

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over to lawyers, make sure they really understand what victory needs to look like. It is hard to believe that taking 8 plus years to figure out who owes \$3 million dollars to do urgently needed work is victory in anybody's book.

Coming to a Tap Near You: Cleaner Water?

Clean, safe water is a great thing and it is comforting to know that our waters comply with Federal safety standards. But is that enough? Truth be told you can't know because the list of chemicals Federal law regulates has not changed in 40 years, during which time lots of new chemicals including pharmaceuticals have found their way into our waters. But lo and behold, just when you thought Congress could not do anything and the President could not agree with Congress, [HR 2756](#) is headed to the President for signature. The bill passed by the House and Senate updates the Toxic Substance Control Act of 1976.

Inland [Empire of Dirt](#)

In 1905, after a blizzard-heavy winter and a wet spring, the Colorado river tumbled down from the Rockies swollen and swift. When it reached the agricultural flatlands of California's Imperial Valley, it refused to be contained. It burst through the headgates of an irrigation structure and rejoined the Alamo River where it flowed into the Salton Sea, an ancient lakebed formed by a rift at the southern tip of the San Andreas Fault. The lake filled up fast, becoming the largest in California. By the 1960s, [Hollywood elite](#) were rubbing shoulders with cotton barons at the [yacht clubs](#) and lakefront homes that lined the shore. Since then, however, population growth in neighboring states like Arizona and Nevada has reduced the freshwater flows needed to replenish the basin. The freshwater in the lake began drying up, leaving behind salt and heavy minerals and [a less glamorous California](#).

The final blow came in 2003 when California enacted the Quantification Settlement Agreement (QSA). Under California law, water that flowed into the lake was not being put to a "reasonable and beneficial use." The QSA, among other things, required the Imperial Irrigation District to put the water to a beneficial use by diverting large quantities to the thirsty cities of Palm Springs and San Diego. Diverting those inflows helped the state maintain its allotted portion under the [Colorado River Compact](#). Without those inflows however, the lake is rapidly drying up. The dust left over as the lake dries out contains a toxic mix of lead, selenium, cadmium and other harmful elements; once windborne, inhalation or other ingestion of the dust can be extremely harmful. Since 2003, officials have proposed [plans to deal with the drying](#) out of the lake and prevent the looming public health catastrophe, but few good options have emerged, and [airborne toxins](#) and a [rotten-egg stench](#) have grown more common. Regardless of how (or whether) the issue is resolved, the saga stands as a good example of the fact that water sitting in a basin isn't necessarily going unused, and that diverting it to a "useful" purpose can have costly unintended consequences.

* Coastal restoration in this sense can only mean restoring some semblance of functional stability to the coast. It does not and cannot mean bringing back the way it once was or even keeping it as it now is.