

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
March 11, 2014

## Water Quality Trading Opens as Battles over Numerical Limits for Nutrient Pollution Continue Across the Country

While the implementation of cap & trade for air emissions continues in fits and starts, an interstate water quality cap & trade market [emerged](#) today. Focused on the stretch of the Ohio River within the borders of Kentucky, Ohio, and Indiana, the market allows industrial polluters to buy “stewardship credits” from farmers. The farmers then employ best management practices to cut back on their nutrient pollution. Backers of the market note that, if successful, it could expand to all nine states party to the Ohio Valley Compact. Critics of the market, such as Sierra Club and Natural Resources Defense Council, note that such a market can institutionalize bad practices and even violates the Clean Water Act’s mandate to protect all waterways from pollution.

Over the Appalachians, efforts by states and the EPA to stem the tide of nutrients into the Chesapeake Bay continue. Various environmental groups have [rallied](#) to support these efforts after the American Farm Bureau Federation and 21 state Attorneys General filed a brief supporting opponents of the work to save the Bay with numerical nutrient limits. However, Maryland may succumb to internal pressure, as state senators are trying to [protect](#) the state’s phosphorous-producing poultry industry.

The struggle to institute numeric criteria for water pollution in Florida has another chapter. Earthjustice has [filed an appeal](#) of a district court decision to accept a state plan to institute numeric pollution limits on some water bodies. It was a plan that EPA was supposed to write, but they turned it over to the state. The state then cut a number of water bodies out of the plan – too many according to Plaintiffs.

## Guess Your Monthly Water Use. Now Double it for the Right Answer

A [paper](#) published in the Proceedings of the National Academy of Sciences found that Americans underestimate their water use by 50%. We also underestimate how much water it takes to make food (up to 2,264 gallons for a pound of coffee). 1,020 Americans surveyed online also greatly underestimated the amount of water used by flushing toilets (28% in an average household) and overestimated the impact shorter showers could have. In short, be more conscious of how much water we all use and need, stop feeling so guilty about showers, and install low-flow toilets and/or institute the “if it’s yellow, let it mellow” rule.

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:

**March 12-14, 2014**  
[Building Resilience Workshop V](#)  
Lindy Boggs Conference Center  
University of New Orleans

**March 18, 2014**  
[Prof. Jed Purdy Lecture](#)  
Loyola University College of Law  
New Orleans, LA

**March 18-20, 2014**  
[State of the Coast 2014](#)  
Ernest N. Morial Convention Center  
New Orleans, LA

**March 24, 2014**  
[2014 Water Challenge](#)  
Gallier Hall  
New Orleans, LA

**April 7-11, 2014**  
[Meetings of Mississippi River Commission](#)  
Tiptonville, TN, Helena, AR, Greenville, MS, & New Orleans, LA

**April 8, 2014**  
[Horizon Initiative Water Committee](#) Meeting  
Garden Study Center, City Park  
New Orleans, LA

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## **Supreme Court Reaches Out to Solicitor General for Florida Suit Against Georgia for Apalachicola Water**

In what is now becoming standard operating procedure in interstate water disputes, the Supreme Court has [asked](#) the Solicitor General to file a brief in Florida's appeal for equitable apportionment of the Apalachicola-Chattahoochee-Flint (ACF) River Basin. The Supreme Court has recently asked the same of the Obama administration in water disputes between Texas & Oklahoma and Texas & New Mexico.

The greatest victim of the ACF dispute has been the Apalachicola Bay oyster industry, which has recently been [awarded](#) a \$6.3 million disaster grant from Department of Commerce for job training and oyster bed restoration. If fresh water outflow from the ACF doesn't change, it is hard to imagine how helpful oyster bed restoration will be. Perhaps the job training is for jobs unrelated to the oyster industry.

Elsewhere along the Florida-Georgia border, a "[conceptual proposal](#)" for a Florida water district to remove 33 million gallons of water daily from the St. Marys River is meeting vocal resistance from the Georgia side. Opponents have pointed out that the proposal would be an illegal inter-basin transfer. We are unfamiliar with specific inter-basin transfer laws for Florida or Georgia, but would be surprised to learn none of the water serving metro Atlanta was not part of some inter-basin transfer. At any rate, the swift reaction serves notice that others along the border have learned from the ACF experience (a good progressive rock band name, no?).

## **Coming to Grips Climate Change's Impacts on Farms, Infrastructure, and Cultural Heritage**

Climate change, the history of which can be [traced](#) in shifting rivers, is bringing with it a wide-array of changes. Some changes are behavioral; Wisconsin farmers don't believe in it, but they are [adapting](#) to it and planting earlier each year. Other changes are still in the offing and potentially disastrous.

The US Department of Energy released a [report](#) assessing the country's infrastructure and its vulnerability to withstand climate change. The report calls it a national crisis and notes that systems from electricity to drinking water are especially vulnerable to multiple stresses expected to accompany climate change and that disruptions in one infrastructure can cause cascading failures in others. Change will require commitment from decisionmakers and money – lots and lots of money.

Problems won't be limited to the United States, either. Global warming and sea level rise will also threaten one fifth of the sites on the UNESCO World Heritage List. A [study](#) published this month shows that 136 of 720 sites could be underwater in the long run.

## **Idaho Bill Proposes Aquifer Recharge Effort Funded by Cigarette Tax**

As part of a suite of efforts to recharge the Snake River Plain Aquifer, Idaho's lawmakers have [proposed](#) diverting funds from a cigarette tax away from roads towards aquifer rehabilitation. What the projects are, how they would recharge the aquifer, and whether or not they would affect the use of groundwater on more than a million acres of farmland irrigated by aquifer water, we don't know. However, as more and more states come to grips with their groundwater shortages, they will have to come up with creative ways to fund their efforts to preserve or rehabilitate water resources. On a completely unrelated note, the state of Colorado [earned](#) \$2 million in marijuana tax revenues in the month of January. While the demand for pot in Louisiana could never approach the levels seen in other states the day is coming when Louisiana will have to find new revenue sources to fund its water management (and other needs). Food, munchies perhaps, for thought.

## **Spotlight Continues to Shine on West Virginia Coal Industry**

The EPA and Department of Justice reached a consent decree with Alpha Natural Resources, the coal company that bought Massey Energy Co. in 2011. The negotiations had been ongoing for months, but given the increased pressure on the industry following the Elk River drinking water disaster, the timing for the \$227 million [settlement](#) makes sense. In a more direct response to the Elk River spill, the West Virginia legislature [passed](#) new safety standards for chemical spill regulations.

## **In memoriam: Pioneering Environmental Lawyer Joseph Sax**

We were saddened to hear of the passing of environmental and natural resource legal scholar Joseph Sax. For more on his life and work, see [here](#). We are pleased to have hosted Joe for a talk here at Tulane in 2010 at the annual Tulane Environmental Law and Policy Summit. His kind come along all too rarely.