

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
May 20, 2015

Now It Can Be Told: An Unauthorized Biography of Water

We have all suspected that there was more to water than meets the eye and tongue, more than the just the bonding of hydrogen and oxygen. Finally, there is a book that purports to tell the true story of water; that reveals the secret ways it has become part of our lives, indeed almost all life. [The Water Book](#) by Alok Jha is that book. According to one [reviewer](#), the book reveals “the vital interplay between the hydrosphere and the cryosphere is laid out in commanding detail, enriched by a careful eye for the technicalities and debates that are intrinsic to the research process, and made all the more compelling by the fact that this complex system of exchange is now threatened by human over-consumption of water and fossil fuels”. That sounds like a thumbs up. While we have not actually read this book yet, it seems to be available only in the UK for the moment, the fact that water is being given the star treatment suggests that there is hope for it to start getting the respect it is due. Our efforts to reach water for comment were unsuccessful by the time TUWW went to press.

Ready, Set, Stop! Florida Shifts Gears on Revamping Water Policy

It is no secret that Florida has water troubles. Pollution, scarcity and growing competition for water had combined to make it appear that 2015 would be water’s turn in the sun—or at least in the Florida state legislature. Apparently not. After a truncated regular session that accomplished very little, the legislature is heading into a special session to focus on getting a budget—and not a water budget—for the state. A water policy [bill](#) did clear the House this spring but could not go the distance through the Senate and is not on agenda for the June 1 special session. The bill called for uniform water planning, permitting and water protection based on “best management practices”, the latter being a bone [contention](#) for those favoring more metric driven protection standards.

Crime (Sometimes) Doesn’t Pay: Guilty Pleas for Water Violations in Louisiana and North Carolina.

Day to day the business of managing water can become routine, which is not by any stretch the same thing as being easy. But when people come to expect water to appear or disappear routinely there can be pressure to make it look as though everything is under control. And often times when corners are cut nothing really bad happens and perhaps no

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:

[ABA Water Law Conference](#)

June 4-5, 2015
Denver, CO

Water jobs:

[Campaign Director](#)

Gulf Restoration Network
New Orleans, LA

[Manager, Coastal Habitat Restoration](#)

National Fish and Wildlife Foundation
Baton Rouge, LA

[Attorney](#)

Community Water Center
Sacramento, CA

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one is ever the wiser. And then there are times when the results are tragic and someone has to take the hit. Two cases in point, [St. John the Baptist Parish](#) (for our nonLouisiana readers, substitute the word “county”) and Duke Energy’s pollution of rivers in North Carolina. The first case, two parish workers have pleaded guilty to criminal charges for failing to test the local water supply for a deadly *Naegleria fowleri* amoeba. Despite certifying that the tests were run, the two workers allowed the water to move to local taps where it turns out that the water was indeed contaminated. The public and the two workers got lucky this time because no one in fact died this time. Since 2011 three deaths in Louisiana have been attributed to contaminated water supplies.

The Duke Energy case is grander in scale. Following a massive coal ash spill into the Dan River back in February of 2014, Duke has [pleaded guilty](#) to nine criminal violations associated with its mismanagement of coal ash. It will also pay a \$68 million dollar criminal fine and \$34 million for mitigation and riparian environmental enhancement projects in North Carolina and Virginia. Compounding Duke’s problems in this case was a history of problems with coal ash pollution that, in the view of prosecutors, if learned from could have avoided the February 2014 spill of more than 39,000 tons of coal ash and 27 million gallons of coal ash waste water. Duke also says it is very, [very sorry](#).

Putting Numbers to Commitments: Congress Looks at Quantifying Native American Water Rights

Long ago in a country not so very far away—the USA in fact—a group of Americans were given plots of land to live on in some very harsh dry places. The idea was that these people, Native Americans, would be mostly out of sight and out of mind on their reservations so the “real” Americans could build towns, farms, families and futures without being bothered. But living anywhere calls for water, especially in places with so little of it, so when those “real” Americans started bumping into those Native Americans again the question came up: Who was entitled to the water and how much? Western states using the doctrine of prior appropriation have doled out lots of water rights, often far more than there is normally water to support. Ditto for interstate arrangements like those covering the Colorado River. Generally, water rights are left to the states to define and, quel shock, states traditionally were not in the business of thinking about the Indians amongst them. But the US Supreme Court took a different tack in 1908 when it held that the tribes had reserved water rights to allow them to live despite the fact that water allocation was usually a matter of state law. The answer to the question of how much water the tribes get has been a work in progress, slow progress. But that might be speeding up soon. The U.S. Senate Committee on Indian Affairs will be holding a hearing today, May 20, 2015, on quantifying tribal rights. The notion is that negotiating those numbers will be easier than litigating them case by case and is supported by a [white paper](#) issued by the Western States Water Council and the Native American Rights Fund in 2014. Rest assured it will take more than a Senate hearing to get anything done, but with so many people and places [singing the water blues](#) these days it is just a matter of time before describing and quantifying reserved water rights gets serious attention.

WOTUS Woes

The Obama administration’s efforts to issue new rules defining what the term “waters of the United States (WOTUS)” means under the Clean Water Act continue to scramble toward the goal line while would be tacklers are closing in. The new rules were triggered by a pair of Supreme Court (SCOTUS) opinions that took a more restrictive reading of the Clean Water Act’s jurisdiction than had previously prevailed. Reaction to the proposed rule has been polarized with many in the development community and Congress viewing the new rule as actually expanding the reach of the Act. Others, including many others in Congress, view the propose rule as a reasonable reading of the Supreme Court’s tea leaves. The most recent developments include Congressional efforts to [derail](#) the rule and a [poll](#) that purports to show broad public support for the rule. As fascinating as those efforts all are they seem to miss two important points. First, that even if the rule is scrapped, the underlying law remains the same and it looks an awful lot like the proposed rule. Second, the next round of judicial challenges to the Act’s jurisdiction are already brewing in the courts. Earlier this week the SCOTUS indicated it is [reconsidering](#) its previous rejection of [Kent Recycling v Army Corps of Engineers](#), a case involving a decision that a parcel of land was a jurisdictional wetland. Since rejecting the case in March, a Federal Appeals Court had [concluded](#) that such decisions were ripe for review.

Attention New Orleans Area Water Entrepreneurs—Yes You!

The New Orleans based business incubator Propeller is currently accepting applications for its [Startup Accelerator](#), a sector-based 12-week intensive program, specifically designed to connect early-stage social entrepreneurs with the resources they need to turn their ideas into tested and viable solutions. One-on-one executive mentorship, access to high-level networks, peer-to-peer learning, pro bono resources, and free office space, are just some of the benefits of being a Propeller Impact Venture. Entrepreneurs working in coastal restoration, urban water management, fisheries, maritime, ports, and water quality are especially encouraged to apply.

Program Dates: September 12, 2015 – December 14, 2015

Application Feedback Deadline: June 9, 2015, 11:59pm CST

Final Application Deadline: July 31, 2015, 11:59pm CST

To learn more you can attend one of Propeller's Q&A [sessions](#) or [read more about the program](#). Or you may contact Ginny Hanusik at ghanusik@gopropeller.org.