

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
February 19, 2014

Presidentially Certified Drought Brings Cash but No Water to California,

California's deepening drought has attracted the attention of President Obama who came, saw, opined, and played [golf](#) in the parched Golden State. Seeing the [fingerprints of climate change](#) and long range problems in the crisis, POTUS came bearing federal [financial aid](#) and the promise of seeking a [\\$1 billion climate resilience fund](#) that could help communities prepare for and contend with water disasters. As welcome as all of that may have been, it was really not a substitute for the water that California and other places increasingly don't have. Indeed the Bureau of Reclamation has served [notice](#) that it will be slashing water deliveries to "senior appropriators" of the Sacramento and San Joaquin rivers by 40%. Meanwhile, others are taking note that California's dry, sunny days give it the [nicest weather](#) in the land. Proving at the least that weather and climate are not exactly the same things.

Dealing with Dead Zones, Part 1: Tulane Offers \$1 Million Prize for Cracking Hypoxia Nut

The nutrients—i.e. fertilizers—that grow crops and yards have a pesky tendency to run off into rivers, lakes and coastal waters, where they lead to diminished water quality, algal blooms, hypoxia (low dissolved oxygen), displaced fisheries, and even fish kills. Breaking that cycle has been hard, largely unsuccessful work. As daunting as the law and politics may be (see the following story), there is still reason to think innovative thinking could play a role in creating more and better options for trimming the nutrient loads in our waterways. That is the thinking anyway behind a new [Grand Challenge](#) offered by [Tulane University](#). Simply put, Tulane will give \$1 million dollars to anyone who can demonstrate that they have come up with a new, commercially viable way of reducing nutrient runoff without compromising productivity. The rules and metrics are still in being developed by Tulane and its partners but maybe, just maybe, this can lead to something good.

Dealing with "Dead Zones", Part 2. Chesapeake Plan Appealed and Louisiana Releases Draft Nutrient Plan

As noted above the law and politics of protecting water from nutrient pollution is rough sledding, especially when those waters cross state boundaries. Case in point, the Chesapeake Bay where years of failed efforts to restore the Bay to health led USEPA and the seven states in the Bay watershed to develop a

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:

[February 21-22, 2014](#)

[Tulane Summit on Environmental Law & Policy](#)

Tulane Law School
New Orleans, LA

[March 8, 2014](#)

[Louisiana Water Festival](#)

State Capitol
Baton Rouge, LA

[March 12-14, 2014](#)

[Building Resilience Workshop V](#)

Lindy Boggs Conference Center
University of New Orleans

[March 18-20, 2014](#)

[State of the Coast 2014](#)

Ernest N. Morial Convention Center
New Orleans, LA

Tulane Institute

on Water Resources Law & Policy

6329 Freret Street, Suite 155G
New Orleans, LA 70118
504-865-5982

[http://www.law.tulane.edu/tlscenters/
waterlaw/](http://www.law.tulane.edu/tlscenters/waterlaw/)

Total Maximum Daily Load (TMDL) of pollutants for the Bay and its tributaries. Where some saw “cooperative federalism” others saw overreaching by EPA, which led the American Farm Bureau Federation (AFBF) and others to [unsuccessfully challenge](#) the TMDL. American justice being the marvelous thing it is, an [appeal](#) has been filed which has attracted support from [21 state attorneys general](#) (including Louisiana’s) who seem largely motivated by the fear that if EPA can set nutrient and sediment limits on Chesapeake Bay, they can do it elsewhere, like the Mississippi River. Curiously the concern of EPA domination [does not seem to be shared](#) by the Bay states that worked on the TMDL as none of them have raised a challenge (though West Virginia’s AG did join in the 21 AG’s brief). The law of this case will be eventually settled, but the politics likely won’t be anytime soon, which is bad news for nutrient management. Nonpoint source pollution, like nutrient runoff, depends on a cooperative approach between and among the federal government and the states. Finding shared, or even acknowledged, commitments to reduce nutrients has been hard, slow work. That work is not made any easier by the tendency of many states to throw up their hands in the face of interstate pollution, pitching the ball to the feds and the blaming them for catching it. That latter dynamic is well illustrated by the 21 attorneys general brief that Louisiana signed. The brief claims that EPA overreached when it worked with/led the Bay states to set pollution limits, work that the brief says should be left to the states. Meanwhile Louisiana’s new draft [Nutrient Management Strategy](#) leaves the big issue of [interstate pollution](#) to the federal government to handle.

Mercury in Water a Risk to Fish

It is not news that mercury, particularly methyl mercury, is a powerful contaminant that can pose risks to human health. The fact that it can bio accumulate and be passed up the food chain has made it a special concern for seafood. Most mercury remediation has focused on cleaning up contaminated sediments but a new [study](#) suggests that the mercury mixed in the water column may be just as important a risk driver. This, of course, does not make anything easier.

As Federal Prosecutors Investigate Coal Ash Spill, Site Continues to Leak

Earlier this month, 82,000 tons of coal ash and 27 million gallons of contaminated water spilled into the Dan River after the collapse of a pipe running under one of Duke Energy’s North Carolina coal ash pond. As a federal criminal investigation of the spill [is now in full swing](#), it is [reported](#) that a second pipe is now leaking into the Dan with pipe water samples revealing elevated levels of arsenic and other heavy metals. State officials maintain that municipal drinking supplies are safe; however, physical contact with the water and fishing near the spill should be avoided.

As you probably guessed, the people over at Duke Energy say that the company is sorry for the spill and will be accountable. However, just what accountable might mean and who will pay for that [“accountability”](#) remains unsettled. However, Duke’s director of environmental and legislative affairs clarified that at least in the company’s opinion any costs incurred because of the cleanup should be passed on to ratepayers, not shareholders. Ultimately that will be decided by the state’s utility commission,

Come One, Come All to 19th Annual Tulane Environmental Law and Policy Summit, February 21 and 22.

Once again the students of Tulane’s Environmental and Energy Law Society have come up with a socko event. This year’s summit has a strong thread of water panels and speakers in addition to other fascinating topics, panels and field trips. Keynote speakers include **Dr. Marcus Ericksen**, founder of the 5 Gyres Institute and **Dr. Sylvia Earle**, former head of the National Oceanic and Atmospheric Administration and one of the most notable ocean scientists in the world. The summit will be held at Tulane Law School on February 21 and 22. Click [here](#) for more information.