

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
November 19, 2013

Jefferson and Plaquemines Parish Councils Sue Oil & Gas Industries

The two coastal parishes are following the Southeast Louisiana Flood Protection Authority East's lead and [filed](#) a combined twenty-eight lawsuits against over one hundred oil and gas companies. The [complaints](#) do not include claims involving the crowd-intriguing natural servitude of drain; instead, they rely on the State and Local Coastal Resources Management Act of 1978 and the associated regulations, rules, orders, and ordinances. The parishes claim that, as a condition of the right to conduct oil and gas operations, each defendant was required to ensure that its site was "cleared, revegetated, detoxified, and otherwise restored as near as practicable to [its] original condition upon termination of the operation to the maximum extent practicable."

While some [observers](#) believe a snowball effect will cause increased pressure towards a global settlement for coastal restoration, not everyone is getting swept into the litigation mindset. Lafourche and Terrebonne parish leaders have [indicated](#) that they do not plan to pursue similar lawsuits at the moment, and the Association of Levee Boards of Louisiana has [come out](#) against the flood authority's lawsuit. However, if the Jefferson and Plaquemines parish lawsuits can weather a surge by oil and gas lobbyists calling for [tort reform](#) (despite the fact these cases are largely based on contract law or property law) other parishes may end up following suit in the end.

Louisiana to Receive nearly \$68M for Coastal Restoration

The result of plea agreements in the criminal cases against BP and Transocean for the 2010 oil spill, this [first installment](#) will fund the planning and design of river diversion and barrier island restoration projects in Louisiana. Along with an additional \$44M to be divided amongst the other four Gulf Coast states adversely impacted by the disaster, this first phase of funding allocation constitutes only a fraction of the total \$2.544B over the next five years. Under the plea agreements, the congressionally-chartered National Fish and Wildlife Foundation will channel a total of \$1.2B to Louisiana, which is earmarked for barrier island restoration and river diversion projects along the Mississippi and Atchafalaya Rivers. Shortly after the announcement, Executive Director and CEO of NFWF Jeff Trandahl [expressed](#) "hope that these investments will prove integral to the historic undertaking that Louisiana has embarked upon in the implementation of its

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:

November 22, 2013
Soil Subsidence Seminar
Tulane University
New Orleans, LA

February 21-23, 2014
Tulane Environmental Law Summit
Tulane Law School
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/)

Coastal Master Plan.”

House Conferees Appointed to Resolve WRDA Differences

Last week, John Boehner and Nancy Pelosi named the [House conferees](#) who will serve on the House-Senate conference committee to reconcile the two water resource development bills that each chamber separately passed. Perhaps the most important issue up for discussion is whether to impose a 150-day statute of limitations on claims seeking judicial review of permits, licenses, or other approvals issued by a Federal agency for an Army Corps water resource project study. A close second might be whether to keep the word “Reform” in the title of the Act. Once the conference committee reconciles these differences, the House and Senate must approve the conference report before it is sent to the President for his signature.

Obama Administration Creates National Drought Resilience Partnership

Prompted by the 2012 drought that affected nearly two-thirds of the continental United States, the [new partnership](#) is “designed to provide communities with a single point of contact to help them navigate various Federal programs to find the right one for their needs.” With the Department of Agriculture and National Oceanic and Atmospheric Agency at the helm, the partnership will initially focus on creating a web-based portal to facilitate access to Federal agency drought resources. As far as we can tell, [www.drought.gov](#) has not experienced the same server crashes as [www.healthcare.gov](#), but time will tell as it is only winter.

Bridging the Financial Gap for U.S. Infrastructure through Private Investment?

A bipartisan group of ten senators introduced legislation last week that would create an independent Infrastructure Financing Authority to oversee a multi-billion dollar fund targeted at repairing bridges, highways, sewer systems and other infrastructure. The Building and Renewing Infrastructure for Development and Growth in Employment Act, or [BRIDGE Act](#), calls for \$10B in upfront Federal funding, which would then spin off interest to cover the cost of loans to the Federal Government as well as administrative costs. Eligible projects would generally cost at least \$50M, have national or regional significance, and have a federal cap of 49 percent of the total cost of the project.

Wyoming’s Answer to Protecting Groundwater: Sample It

The [state-wide rule](#), which goes into effect March 1, 2014, will require oil and gas drillers to take multiple [samples of the groundwater](#) within a half-mile radius of the proposed well before installing production casing or liner, within one to two years after such casing or liner is installed, and again three to four years after the casing or liner is installed. The rule also delineates specific procedures and parameters for sampling, as well as additional testing and notifications requirements elevated levels of contaminants are discovered. The new groundwater testing rule has the rare support of both the oil and gas industry and environmental groups. However, as is often the case, the devil is in the details. As John Robitaille, vice president of the Petroleum Association of Wyoming in Casper, put it, “How the state reacts to minor changes that could very easily be attributed to a natural change in groundwater, and how that's handled is really the big test going forward.”

Future of the Oceans: Hot, Sour, and Breathless

In a [report](#) issued last week by the United Nations and several scientific research organizations, the warming and acidification of the world’s oceans, while individually worrisome for marine life and those who depend on marine life, are effectively amplifying each other. The warming waters are moving less oxygen around and thus becoming more acidic. In the U.S. Pacific Ocean, for example, the latest studies show “80 percent more acidification than what was originally predicted.” The adjusted models, therefore, predict acid levels in the next fifty years that will corrode the shells of mollusks, like clams and mussels, and temperatures that no longer support certain marine life.

Good News for Our Marine Mammal Readers (Well, Sort of)

The National Marine Fisheries Service issued its [final rule](#) to protect marine mammals during Navy training and testing in the Atlantic Ocean and Gulf of Mexico. In its [final determination](#), NMFS found

that such activities pose a negligible threat to affected marine species. However, the Navy must now take certain mitigation measures, like shutting down sonar operations if a marine mammal comes near, to minimize effects on marine mammals.

If Not for De-Icing Roads, What Is Radio-Active Brine Good For?

Preliminary research by the U.S. Geological Survey indicates that the use of wastewater from oil and gas extraction for de-icing Pennsylvania roads may be the cause of elevated [levels of radium](#) (subscription only) in certain parts of the state. While Pennsylvania typically does not permit the use of brine generated from the Marcellus Shale on roadways, it does allow brine generated from conventional drilling, despite the two byproducts' nearly identical chemical composition. Other states, like Ohio, allow the application of both types on its roadways. The USGS warns that the radium detected is bioaccumulative, meaning that it can damage the genetic material if ingested. A word to the wise, maybe it is not such a good idea not to eat roadkill from Ohio or Pennsylvania.