

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
June 24, 2015

## The Big Sip? Piping Water From the Mississippi River to Texas

It was bound to happen. The demand for water in Texas is so big, and there is just so much water in the Mississippi, if only someone could move it hundreds miles from where God put it to where untold numbers of Texans wish he/she had put it. Enter BWG Inc. to remedy that. According to an [application](#) for a nonriparian water use permit from the State of Arkansas, BWG would like to send 840 thousand acre feet of water to Texas each year for through a pipeline that would operate continuously for “up to 75+ years.” Arkansas allows nonriparian transfers (i.e. for uses not adjacent to a stream or river) if there is excess surface water. In the short run Arkansas has ample surface water for most uses, but whether there is any excess in the Mississippi remains to be seen. And 75+ years is a long time to commit water. Complicating the picture are the overlay of Federal authorities that apply to the Mississippi River and its tributaries and the interests of Mississippi and Louisiana, who have their own plans for those river flows. Thanks to a requirement in Arkansas law that out of state transfers be approved by the legislature, no permit could be issued to BWG until at least 2017. Whatever the outcome of BWG’s permit one thing is certain: This won’t be the last or the smallest proposal to tap the Mississippi or the waters of the states along her.

## Aransas Whooping Cranes Strike Out at SCOTUS

While the twenty-three [whooping cranes](#) of the Aransas-Wood Buffalo flock died during the winter of 2008-09, the lawsuit seeking to prevent future whooping crane deaths realized the same fate just earlier this week when the U.S. Supreme Court [denied a writ of certiorari](#) and missed its chance to follow in [Bobby Hill’s footsteps](#). Backing up a bit, this flock, the last wild flock of whooping cranes in the world, winters in the Aransas National Wildlife Refuge, TX. Part of the flock’s critical habitat and source of food is the Guadalupe Estuary, which is supplied with fresh water from the San Antonio and Guadalupe River systems. Concerned citizens sued after these twenty-three whooping cranes were found dead, claiming they died from starvation because reduced freshwater flows created a food shortage. These reduced flows, they argued, violated the Endangered Species Act (ESA) by harming the cranes’ feeding grounds.

Who was to blame? According to the plaintiffs, the State of Texas was because it issued the water withdrawal permits on

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:

[Ready for Anything: Building Economic Resilience into your Business Model](#)

June 30, 2015

New Orleans, LA

[18<sup>th</sup> Annual Conference on Litigating Takings Challenges to Land Use & Environmental Regs.](#)

September 25, 2015

University of Maryland School of Law  
Baltimore, MD

## Water jobs:

[President and CEO](#)

Bureau of Governmental Research  
New Orleans, LA

[Communications Director](#)

Gulf Restoration Network  
New Orleans, LA

[Policy Director, MD and DC](#)

Potomac Conservancy  
Silver Spring, MD

[Manager, Coastal Habitat Restoration](#)  
National Fish and Wildlife Foundation  
Baton Rouge, LA

[Attorney](#)

Community Water Center  
Sacramento, CA

[Water Collaborative Coordinator](#)  
New Orleans, LA

# Tulane Institute on Water Resources Law & Policy

6325 Freret Street, 1<sup>st</sup> Floor

New Orleans, LA 70118

504-865-5982

<http://www.law.tulane.edu/tlscenters/waterlaw/>

TWITTER: [@TulaneWaterLaw](https://twitter.com/TulaneWaterLaw)

the river systems. While the [Southern District Court of Texas agreed](#) that the state violated the ESA through its water management practices, the [Fifth Circuit Court of Appeals reversed](#), holding that the deaths were not foreseeable by nor sufficiently connected to the Texas regulators and their issuance of permits for water withdrawal from the rivers (e.g. the watershed was also experiencing drought). While the Fifth Circuit ruling was not the aspired outcome, whooping crane advocates are viewing the outcome as a partial victory for environmental in-stream flows, considering that the Fifth Circuit found the plaintiffs had standing, the federal government had a strong interest in the intrastate river flows pursuant to the ESA, and that the federal courts were a proper venue for hearing such cases.

### **Apocalypse Now?**

When it comes to assessing risk, Lloyd's of London has been doing it for over three hundred years now. Needless to say then, its [recent "stress test"](#) assessing the effect of an acute shock to the food system on populations worldwide should be taken seriously. With global food demand projected to double by 2050 and nearly two-thirds of the world's population expected to be living in water stressed regions by 2025, Lloyd's envisioned what would happen if in one year certain key agricultural regions were to all lose about 10 percent of their staple crops like maize, soybean, wheat, and rice due to either drought, flood, plant disease, or pest. The expected chain reaction isn't pretty: food riots, civil and political unrest, terrorism, business interruption, and environmental degradation. One only needs to [look at Malawi](#), the predominantly agrarian country that experienced significant flooding earlier this year, to understand how slow, expensive, and painful recovery can be.

According to Lloyd's, minimizing the knock-on effects and hastening recovery would depend on the ability of insurance companies to quickly pay claims. While that's not the most reassuring road to recovery, perhaps even more disconcerting was the conclusion that, "the probability of occurrence is estimated as significantly higher than the benchmark return period of 1:200 years applied for assessing insurers' ability to pay claims against extreme events." To put that in perspective, that means catastrophic global food crisis and the resulting domino effects on society are about as likely as New Orleans experiencing another [Katrina-strength hurricane](#) or more likely than the [Cincinnati Reds winning the World Series](#) this year. Lloyd's purportedly released this study to the public with the hope that it will catalyze risk reduction actions, which the U.S. Department of Agriculture [conspicuously decided](#) to take up this month, but perhaps also it should be seen as a signal that these catastrophic scenarios will be better incorporated into policies, coverage, and premiums.

### **New Mexico's "Copper Rule" – Sensible Regulation or Insensible Pollution of Groundwater?**

In 2013, New Mexico's Environmental Department [finalized a rule](#) on how copper mining companies should protect (or pollute, depending on who you ask) groundwater under and around their mines. Opponents of the rule, including the state's attorney general, [argue](#) that it allows widespread pollution and places too much faith in the belief that hazardous mining waste will not migrate out of the areas exempt from the state's Water Quality Act. The state Court of Appeals [upheld](#) the regulation, finding that the regulation sufficiently balanced environmental concerns with economic the necessities of mining. Undeterred, the opposition is taking its case to the [New Mexico Supreme Court](#).

### **Calling All Interested in Water, Sewerage, and/or Drainage (Who Live in District B)**

The Sewerage & Water Board of New Orleans is looking for a civically engaged resident living in [District B](#) to serve on its board of directors for a four-year term. Thanks to [reforms to the board](#) back in 2013, the nominee must have "experience in architecture, environmental quality, finance, accounting, business administration, engineering, law, public health, urban planning, facilities management, public administration, science, construction, business management, community or consumer advocacy, or other pertinent disciplines." Click here to learn [how to submit](#) your application. While board members do not receive financial compensation, they serve a vital role in helping to keep our community hydrated and at least relatively dry and sanitary. The deadline to apply is July 16. Helpful tip: you'll need a notary, so don't wait until the last minute.