TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
May 17, 2018

Good News for Louisiana Coastal Restoration Budget Could be Terrible News For Oyster Lease Holders

A judgment rendered this week in Louisiana's First Circuit, *Bayou Canard, Inc v. Louisiana*, could have far reaching implications on how Louisiana's Coastal Protection and Restoration Authority (CPRA) deals with oyster leases that could be impacted by the state's efforts to hold onto as much of its coast as possible. CPRA has been buying oyster lease interests under the Oyster Lease Acquisition and Compensation Program, but plaintiffs were unhappy with how much they were getting paid through the program. If this appeals court decision stands, they're really going to wish they took it and liked it.

The court found that stipulations in the oyster lease contracts that prioritize coastal restoration projects bar all oyster lease related claims related to a CPRA project. So, why is CPRA acquiring leases at all? This is surely not the end of this case, but if it stands, as our chum Beaux Jones puts it,

> It is becoming more challenging to read *Bayou Canard*, *Avenal*, and the language of each state-issued oyster lease without wondering under what authority the OLACP program continues to exist and how the payments under the program do not constitute prohibited donations under Article VII, § 14 of the Louisiana Constitution. If an oyster lease is a "limited interest in the water bottom" that "is subservient to the State's past, present or future coastal restoration projects," and lessees are prevented from even challenging the OLACP's application, then why would the state dedicate taxpayer money to acquire oyster leases when it is under no legal or contractual obligation to do so?
>
> It's like the plaintiffs asked for a second cookie at snack time and just got snack time taken away from everyone in the class.

Who's Going to Clean Up Irma's Mess? Not Me, Ida Know, and Nobody!

Remember Hurricane Irma? After flattening several islands in the Lessser Antillies and, after softening up Puerto Rico ahead of Hurricane Maria, it became the first hurricane to hit Florida since Wilma. Well, despite having 13 years of doing whatever it is that people do in Florida, it seems they still don't know whose job it is to clean out the 500 canals in the Florida Keys that were filled with debris during Irma. Monroe County officials have been trying to find agencies to help with the clean up. The Coast Guard has removed wrecked boats and FEMA has agreed to clear the canals down to 6 feet, but no deeper. FEMA's also said they'll only clean debris from Irma, but how they'll determine what debris is from when is anyone's guess. Oh, and 150 of these canals were already slated for clean up

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:

State of the Coast Conference
New Orleans, LA
May 30 – June 1, 2018

Water jobs:

Manager (Water Policy)
Hancock Natural Resource Group
Turlock, CA

Assistant Staff Attorney
Riverkeeper
Ossining, NY

Executive Director
Deschutes River Conservancy
Bend, OR

Innovation Adivsor-Water and Sanitation
RTI International
Durham, NC

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before the storm for not meeting water quality standards (probably need a larger conversation about those canal-riddled property developments generally). The county has secured natural resources conservation funding from USDA, but that only covers about one fifth of the Keys' canals. One would hope this kind of recovery need would be planned for by the county, state, and federal agencies before the next storm rolls in, but skepticism is probably well. Until then, maybe the next time you're wasting away in Margaritaville you should go gigging for chunks of somebody's roof instead of fly casting for a king mackerel. (Apparently Barbuda's doing better, BTW)

We're Number 2! We're Number 2!

Given that a study published in *Science* back in January said that the oceans' dead zones (areas without sufficient dissolved oxygen) have increased fourfold in the past fifty years, maybe it shouldn't be shock, but reports of a newly studied dead zone being the size of the state of Florida are pretty darn surprising. A study just published in *Geophysical Research Letters* measures a dead zone in the Arabian Sea that's seven times the size of our Gulf of Mexico dead zone. No one had measured it yet because of pirates (No pirate jokes here because, between Captain Phillips and the last seven Pirates of the Caribbean movies, they're just not funny anymore).

Despite the headline, the Gulf of Mexico dead zone isn't even number two (Googling "we're number three" doesn't yield much). But a new study says that "legacy nitrogen" is a thing, so the Gulf's Dead Zone isn't going anywhere anytime soon, as nitrogen runoff will continue to seep out of groundwater into streams and rivers for another 30 years. So if the entire Mississippi River Basin doesn't drastically cut down on nutrient pollution very quickly, maybe number two is a possibility. Lookout, Baltic Sea, the Gulf of Mexico could be right behind you! Ugh.

My Tree-Hugger Nalgene with "Save the Bay" Stickers Suddenly Feels So, So Basic

Got a few hundred dollars lying around? Feel like you need to step up your water bottle game? Join that guy from The Hills (or something) and get yourself a crystal water bottle! It's THE status symbol of 2018! Vanity Fair says so! It makes you "feel connected to the earth," or something, probably because those crystals were mined from out of the earth. Surely, you don't have to be told not to fill it with something as basic as Dasani or Fiji. Get yourself a water sommelier so you fill that crystal bottle the right way!