TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
May 31, 2017

A Sea of Troubles

Folks, we need to talk about the ocean. It does so much to help humanity and well, frankly, we haven't done a good job of reciprocating. The ocean covers nearly three quarters of the planet, holds 90% of the heat trapped by greenhouse gases, and provides nearly half the world's humans with nutrients essential to survival. It's also a source of limitless beauty and a nonpareil backdrop for reflection and solitude. Despite its importance, we treat it like a bottomless dump, throwing nauseating amounts of waste into it every year. By some estimates, the ocean will contain more plastic than fish by 2050, perhaps fulfilling humanity's fundamental purpose per one theory. All the heat trapped in the ocean could spell the end of coral reefs in the next twenty years. These are problems for the ocean and for the species, including people, which depend on it.

The ocean's sheer immensity and remoteness have long prevented the kind of monitoring and management needed to correct problems like pollution and overfishing. Governance is subject to a patchwork of national laws and international agreements, many of which operate on an honor system of self-policing for maritime nations. Advances in technology and a growing understanding of the natural processes that rule the ocean are making comprehensive monitoring and managing more feasible. The United Nations will take steps towards a more sustainable relationship between humans and the ocean next week at its Ocean Conference. Hopefully, the convening can develop a plan to treat mother ocean better. If not, we might be in for more retaliation like this.

The Continuing Adventures of the WOTUS Rule

The western-themed television show *Gunsmoke* ran for twenty glorious years before finally going off the air. The CBS game show *The Price is Right* has aired over 8,000 episodes since it began in 1972 and is still going strong (though its apex is indisputably this moment of TV gold). When all is said and done, the Homeric saga of the "Waters of the United States" may well have a longer run than either.

As we've chronicled here before, the legal definition of 'Waters of the United States', or WOTUS, sets the boundaries for federal regulatory jurisdiction under the Clean Water Act (CWA), making it kinda sorta really important to pin down a precise meaning. Courts have tried, and tried, and tried again

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:

St. Bernard Coastal Panel
Meraux, LA
June 1, 2017
One Water Summit
New Orleans, LA
June 27-29, 2017

Water jobs:

Water Law & Policy Fellow
UC Berkeley School of Law
Berkeley, CA
Senior Manager (State Policy)
Ceres
Boston, MA
Water Scarcity & Markets Strategy Director
The Nature Conservancy
Washington, DC

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to distill a working definition, but mostly they've only added to the confusion. In 2015, the EPA and Army Corps jointly took a crack at a rulemaking to set a precise definition where so many before had failed. As is tradition, litigants lined up to challenge the rule. One of those challenges is currently in front of the Supreme Court.

Alongside that ongoing legal challenge, President Trump recently ordered the EPA and Army Corps to reconsider the rule along the lines of the late Justice Scalia's opinion in *Rapanos v. United States*. A new WOTUS rule would likely require first rescinding the current rule, followed by a separate rule-making for a replacement. Prof. Dan Farber does a nice job of laying out the potential plot lines for upcoming episodes. Spoiler alert: However it shakes out, both the rescission *and* the new rule will almost certainly be challenged in court. Will WOTUS ever get a definition? Will the Supreme Court defer to the agencies' interpretation of the CWA? And will Timmy ever get out of that well?! Tune in next week for another exciting installment of…The Continuing Adventures of the WOTUS Rule!

Iran So Far Away

It's a sad fact that when Iran makes headlines in western media, it's not usually good news. Between Iran's role in the Syrian civil war, its nuclear ambitions, and its internal identity crisis, there is plenty of trouble to go around. It's not surprising that Iran's environmental concerns often get short shrift. This week, however, we're happy to report that the country has taken a significant step towards protecting some of the worlds most imperiled wetlands with a new law. Newly re-elected President Hassan Rouhani signed the bill into law last Sunday, a month after approval by Iran's parliament. President Rouhani is apparently looking to build on his earlier success restoring Lake Urmia, the sixth-largest salt lake in the world and a UNESCO biosphere reserve. The wetlands restoration bill requires the Department of Environment to consider the importance of wetlands in their decision-making process, prohibits importation and cultivation of invasive species within wetland watersheds, and provides for fines against individuals or companies that cause wetland degradation.

Batten Down the Hatches

Like most of the world, life in South Louisiana is dictated by the rhythm of the four seasons. But where the rest of the world recognizes winter, spring, summer, and fall, we do seasons a little differently. The four seasons of South Louisiana are football, Mardi Gras, crawfish, and hurricane. June 1st marks the official start of hurricane season, which stretches all the way into November. Forecasters at the National Hurricane Center are predicting a 45% chance of an above-normal hurricane season, with 11-17 named storms and potentially 2-4 major hurricanes.

If 45% doesn't seem like a very certain prediction, that's because it isn't. This year's hurricane season has been difficult to predict, in part because of disagreement on the potential for El Nino to affect storm formation. While the National Hurricane Center discounts the impact El Nino conditions, forecasters at Colorado State University predict it could dampen storm formation and result in a slightly *below* average hurricane season. Regardless of how many named storms form, we know all too well that it only takes one to wreak havoc. Officials at FEMA are imploring people to prepare now for hurricane season, whether above or below average. And if you won't listen to FEMA, listen to us. Prepare.