Dead Zone Litigation Keeps on Living

TUWaterWays readers are likely familiar with the “dead zone” in the Gulf of Mexico, but may have wondered what’s being done about it. Surveying the landscape, it appears like the “kitchen sink” approach has been employed. Voluntary nutrient reduction efforts and Tulane’s Grant Challenge Prize are in the mix, but litigation has been plodding along as well.

Back in 2011, environmental groups petitioned EPA to issue regulations pursuant to the Clean Water Act (CWA) to clean up the Mississippi River, which is causing the Gulf dead zone. EPA declined to issue regulations, opting to stick with its voluntary program. The environmental groups filed a complaint against the EPA, claiming that EPA did not properly explain why revised or new water quality standards were not necessary to meet the requirements of the CWA. Judge Zainey of the Eastern District of Louisiana agreed with the environmental groups that EPA needed to make a “necessity determination”, but he also stated that EPA is not limited to basing that determination on science alone.

EPA appealed the decision, and last week, the 5th Circuit Court of Appeals heard a hearing on the matter. Look for further developments and the 5th Circuit’s decision here in the future. Full disclosure: the Tulane Environmental Law Clinic, which is independent and across the street from this Institute, represents some plaintiffs in this case.

Louisiana’s Moonshot

For those of us working or supporting the work to solve Louisiana’s collapsing coastal ecosystem, it’s easy to get caught up in one aspect or another, and for good reason. The impending RESTORE dollars, for example, will provide funding for crucial projects that help to address the problem, and they must be spent wisely. However, we appreciate the continuing work of The Lens and ProPublica, which allows us to pull back and regain some perspective on the aspirations and scale of this undertaking.

Whatever Happened to Those Parish Lawsuits against Oil, Gas, and Pipeline Companies?

Even for those keeping up with the flood authority lawsuit against oil, gas, and pipeline companies for damages to the wetlands that protect the Greater New Orleans area, the similar lawsuits filed by Jefferson and Plaquemines Parishes shortly thereafter have flown under the radar, relatively
speaking. While last week’s vote in Plaquemines Parish on whether to halve its lawsuits did have an air of theatrics. Act 544 isn’t aimed at the parishes’ lawsuits, there’s no poison pill clause in the attorneys’ fee agreements, and there’s no exotic “servitude of drainage” claim.

Rather, the parish lawsuits are tightly tailored to seeking damages from violations of state permits. Judge Zaney (yes, the same one as mentioned above) just last week remanded the Plaquemines Parish lawsuits back to state court because, in his opinion, the requirements for federal jurisdiction were not met. The Jefferson Parish lawsuits may go the same way; however, Judge Brown denied a similar motion to remand made by the Southeast Louisiana Flood Protection Authority – East in its case. Perhaps the drama isn’t lost on the parish lawsuits after all.

BP Reaches End of the Line in Attempt to Get Out of Settlement Agreement

For nearly the last two years, BP has worked its way through the justice system to reinterpret the settlement agreement it signed in the wake of the 2010 oil spill. The settlement agreement was meant to be an expedited avenue to pay out damage claims submitted by businesses and individuals. The claims administrator interpreted that the agreement merely required certain claimants show a dip in revenue. In other word, causation was presumed for those claimants living in certain areas proximate to the spill. That interpretation was upheld in federal district court and again by the 5th Circuit Court of Appeals. With the U.S. Supreme Court denying review yesterday, BP is out of appeals. The claims administrator Patrick Juneau will now continue to review, process, and pay claims. A final date to submit claims will be set sometime in the future, now that the appeals process is complete.

Resolution Finally Nears in Water Dispute between Native American Tribe and Mining Company

Water is scarce out in Arizona, and protracted disputes over access and use are not uncommon. But with President Obama’s signature, one dispute can be put to rest. This dispute takes place in the Bill Williams River Watershed, where Freeport Minerals Corp. bought a ranch and wants to transfer the associated water rights to a water well field along a tributary of the Bill Williams River for use at its Baghdad copper mine. The Hualapai tribe opposed the transfer, fearing it would restrict its reserved water rights and access. Pulling state and federal stakeholders into the negotiations, the parties have reached an agreement that sailed through both Chambers of Congress and is awaiting the president’s signature. Under the agreement, Freeport will cap its pumping of well water and acknowledge the rights of the tribe on nearby parcels. 3,400 acres of the ranch will be managed by the state for habitat conservation. The tribe will not object to Freeport’s transfer application and will get hundreds of acre-feet of water each year as well as $1 million from Freeport to further develop its infrastructure and basis for securing additional water rights.

A presidential veto could derail the settlement. The feds objected back in September to a previous version of the legislation, claiming the waiver of sovereign immunity would open them up to future litigation; however, the Hualapai, Freeport, and Congress are hoping the changes to that section now meet the president’s approval.

Is California’s Historic Drought Linked to Climate Change? No. Maybe. Kinda?

We knew the three year drought was bad, but we just learned that it might be the worst California has seen in 1,200 years. Yes, the Mayan civilization was thriving in Central America when what is now the state of California was last this parched. So, you might be wondering, “Is this a 1 in 1,200 year event or part of the new normal due to global warming?” Well, right on cue, the National Oceanic and Atmospheric Agency (NOAA) release a report yesterday on the causes of California’s historic drought. In the report, NOAA says that the current drought is not part of a long-term change in California precipitation. In other words, a changing climate is not the culprit. Under climate change models, California is expected to have wetter winters and drier springs, not year-round dryness. Some scientists have criticized the report, saying that it doesn’t take into account the effect of record high temperatures on the drought conditions. To be clear, peer reviewed studies, which the NOAA report is not, are split on whether greenhouse gases are a factor in the drought. Only further study will tell for sure, but one thing we do know is that Californians are welcoming any water coming in on the Pineapple Express.