Take It Back!

The Clean Water Act is by all accounts one of America’s most important—and successful—environmental laws. Though it is a federal law, administration and enforcement of a number of its provisions can be delegated to the states. State-level management and enforcement have the benefit of bringing the law closer to the ground and the people, but there is also the possibility that the state will protect certain interests and purposefully fail to carry it out. The latter is just what the Sierra Club and the Ohio Valley Environmental Coalition are saying about Kentucky and West Virginia, and they are petitioning EPA to rescind the delegated programs to those states. The law provides for that unhappy possibility by allowing EPA to reacquire the delegated programs, but it does not follow that EPA has the extra people and dollars lying around to pick up the slack. Indeed EPA today is a smaller agency than it was just a few years ago, weighing in at about 15,000 employees compared to 17,000 in 2012 and most previous years. Without prejudging the outcome of this petition, it is safe to say that no one is going to be terribly happy with the outcome.

Tis the Season to Nominate Somebody

Yes, it is awards season again, and it is time to honor those who have done good work in the past year (or more). No, we are not talking about the Oscars, Grammys, or the Golden Globes, but rather the prestigious recognition events sponsored by the Coalition to Restore Coastal Louisiana and the Louisiana Wildlife Federation. LWF is accepting nominations for its 51st annual State Conservation Achievement Awards, while CRCL is accepting nominations for its 20th annual Coastal Stewardship Awards.

Dead Zone Solutions, Get Your Dead Zone Solutions Here—Only $2.7 Billion a Year

1,930 square miles is a large area. That is the approximate size of the area of low oxygen that forms each year creating “dead zones” that cannot support normal sea life. The problem may be in the Gulf, but most of the causes—and solutions—are upstream. But there are solutions, generally in the realm of modifying fertilizer use and land management. It just requires someone to do those things. But at what cost? A new study published in the Proceedings of the National Academy of Science suggests that the hypoxic “dead zones” in the Gulf of Mexico could be eliminated through a variety of
practices and actions—practices and actions that would cost about $2.7 billion each year. Even assuming that the benefits would exceed those costs (and they very well could), dollars of that scale will be hard to come by. Which is not to say that creative possibilities don’t exist that could make better solutions possible. Keep your eyes on this newsletter in coming weeks for more on that.

**For Many States, 2015 May Be a Year of Water Reckoning**

It has long been said that everyone complains about the weather, but no one does anything about it. The same can be said for water in many ways, except that somebody can and should do something about it. 2015 may be the year many states begin the doing. Years of drought, climate change, shifting demands, and threatened supplies are coming to the table. Florida is grappling with the need to upgrade its vast network of levees and canals while also contending with rising seas, environmental demands, and water management budgets that have been cut by 30%. According to the always-worth-reading Circle of Blue, states across the nation, from California to Texas to Maine, are coming to terms with the fact that water is essential, limited, and often very, very expensive to keep it where you want it.

**Reminder: Learn All About It With ELI’s Webinar on Deepwater Horizon Litigation**

What better way to keep your New Year’s resolution to keep up to date on the Deepwater Horizon Litigation than to tune in the Environmental Law Institute’s webinar on "Deepwater Horizon Litigation: Where Things Stand and What’s Next" on Wednesday, January 14 from 2:00-3:30 pm EDT. Click here to RSVP.

For those who cannot wait another week to know, the third phase of the BP oil spill trial is set to start on January 20. This phase (the “Penalty Phase”) is focused on the eight penalty factors set out in the Clean Water Act (CWA), which the court must take into account in determining civil liability under the CWA. The eight factors to be considered are “the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.” This has important implications for the 80% of CWA penalties that will be channeled through the RESTORE Act. For those interested in learning more, the webinar will bring together a panel of experts, including Tulane’s own Professor Ed Sherman to discuss the first two phases of the trial and preview some of the major issues that will be addressed in the third phase.