After our two and a half week hiatus, we’re excited to jump back into providing you with the latest news in water law and policy.

Public Trust Derails Louisiana Coal Terminal Project

Coal may not be the fuel of the future for much of the United States, but that doesn’t mean that there are not markets for American coal elsewhere. A new coal terminal on the Mississippi River south of New Orleans was intended to help reach those emerging markets. The State of Louisiana thought it was a good enough idea to issue the RAM terminal a “coastal use permit” under its Coastal Zone Management Program. The fact that the terminal could interfere with a previously approved coastal restoration project, bring more coal dust and train and truck traffic to an area with less-than-robust infrastructure, and have more than its share of challenges were factors, but those concerns were not enough to trump the economic development aims of the project.

The law, specifically Louisiana’s public trust doctrine, said otherwise, however, at least according to Louisiana’s 25th Judicial District Court. The Court overturned the permit on the grounds that the Department of Natural Resources had failed to adequately meet its duties as a public trustee of the state’s natural resources in assessing the impacts of and alternatives to the siting of the terminal. The public trust doctrine is a powerful but too often poorly understood creature. The Court’s opinion is well worth reading for anyone interested in that doctrine and how it works. For a trip to the frontiers and the roots of public trust law (not just Louisiana’s version of it) take a look at University of Oregon law professor Mary Christina Wood’s interview with journalist Bill Moyers.

New Jersey Legislature Approves Expedited Sale of Public Water Systems

Two things can safely be said about private ownership of utilities that deliver public water supplies. The first is that private ownership is not uncommon. The second is that privatizing public utilities comes with controversy. Case in point, New Jersey. Faced with under-maintained public water utilities and persistent private sector interest, the New Jersey legislature has passed the Water Infrastructure Protection Act that, upon the Governor’s signature, will allow certain public systems to be sold without the public having a say on it.

Happy 2015 to All!
Presently, sales are subject to a public referendum. Sometimes they pass, sometimes they don’t. The idea behind the Act is to encourage private investment in public water infrastructure. The new fast-track process only applies to water systems that are at risk of salt water intrusion or that are declared by the utility to be losing water, a description that apparently covers many if not all of New Jersey’s remaining publicly owned utilities. Of course, the nagging question behind the privatization option is just what value does the private sector see in water supply that governments apparently don’t—or can’t?

**Diabetes Drug Made Available to All, and, No, Not Via Your Health Plan**

Should you need metformin, a popular prescription drug for controlling diabetes, (or any number of other drugs, for that matter) perhaps you can just stroll over to your tap instead of bothering your pharmacist. Researchers at the University of Wisconsin-Milwaukee’s Fresh Water Institute are reporting that water samples taken in Lake Michigan are showing surprisingly high levels of metformin in the water discharged from the a local sewage treatment plant. It turns out that both our bodies and conventional sewage treatment practices do not screen out pharmaceuticals as well as we—and the fish, frogs, etc. in the receiving ecosystems—might like. While the prospect of free medication may seem to be innocuous lagniappe, it isn’t necessarily so. FWI’s findings bolster earlier studies that suggest that pharmaceutical waste can lead to genetic mutations and increased resistance to antibiotics, things that just might end up mattering.

**Kick Off the New Year (and Carnival Season) 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.