Video Recordings from the Tulane Environmental Law Summit Now Available Online

If you couldn’t make it to the 20th Annual Tulane Environmental Law Summit a couple of weeks ago, recordings from fourteen panels and keynote addresses are now available on the summit’s YouTube channel.


As Louisiana’s coast continues to lose a football field of land every hour (“why is it measured in football fields?” you ask? Be glad you did.), planning and funding coastal restoration continues to be a highly contentious process. When Louisiana unveiled its 2012 Coastal Master Plan, one of the largest jewels in its 109-projects crown was the Mid-Barataria Diversion. The plan called for a project to dump up to 250,000 cubic feet per second of sediment-laden freshwater into the rapidly-eroding Barataria Bay, the site of much of the worst impacts of the Deepwater Horizon spill. Now, the Coastal Protection and Restoration Authority is backing off of design work for the project, taking the position of being “hopeful” that diversions in general are part of the plan, and citing the cost of the Mid-Barataria diversion as the reason for the change in attitude. Given that costs estimated in the 2012 Costal Master Plan are somewhat meaningless, the change in the estimate once the actual design work was being done shouldn’t have been a surprise nor a reason for stopping work. Also, it may be a good time to point out that the new top-end estimate of 1.2 billion dollars for the project is almost exactly the amount of money available to Louisiana for river diversions and barrier islands to remedy damage from the Deepwater Horizon. That money is administered by the National Fish and Wildlife Foundation and comes from BP’s and Transocean’s Deepwater Horizon criminal settlements, so Mid-Barataria is one project from the 2012 Coastal Master Plan that actually could be fully-funded today without state dollars.

Whether or not the river actually carries enough sediment to allow the Mid-Barataria or any other diversions to recreate the good old days of coastal Louisiana is another issue. The simple answer seems to be “no.” The Delta will never be as big as it was 150 or 100 years ago. However, it does carry enough to save a fair chunk of imperiled delta, and hydrologists across the region and the country continue to work to see how to
maximize the sediment the river does have and how to even increase the sediment load without major infrastructure changes upstream.

Also, a new study at the USGS’s National Wetlands Research Center shows that not only is the sediment good for the delta, but that an increase in the freshwater itself can boost coastal wetlands. Her study found that when freshwater pulses were released in 2010 to try to push oil away from the coast, the wetlands receiving the pulses were much more productive over growing seasons the next two years. Maybe there is something to treating natural ecosystems to the natural influences that they grew in response to.

**States Up and Down the Mississippi River Trying to Get Nutrient Pollution under Control**

Nutrient pollution flowing from tributaries into and down the Mississippi River doesn’t just cause problems offshore with the Dead Zone. It also causes local problems that state and local authorities have to deal with. In Des Moines, IA that means a Clean Water Act suit by the water utility against upstream counties for not regulating and reducing the flow of nitrates from farmland into the Raccoon River, the source of the state capital’s drinking water. The sixty-day notice the utility had to give the counties is up, and today its board is expected to vote in favor of proceeding with the suit.

Upstream from Iowa, Minnesota is still trying to minimize nutrient pollution through voluntary methods and farmer education. They hope that voluntary pollution reduction rewarded with amnesty from future regulatory changes and a publicized “good grade” will do the trick. There is still widespread resistance, however, since environmentalists worry that the program will be too little, too late, and fiscal conservatives are uncomfortable with the costs. The program depends on whether or not the state will pony up the money to match already-offered Clean Water Act federal funds. Its future at this point, like the water in many Minnesota streams flowing through farm and pasture, is unclear.

In Arkansas, they are embarking down the road of cap and trade to limit nutrient pollution. Last week they passed a law to allow trading of nitrates, phosphorous, and carbon pollution within watersheds. The trading will be supervised by a division of the state’s Environmental Quality Department, the Pollution Control and Ecology Commission. This may become the first example of a state in the entire Mississippi River basin embracing nutrient trading (a few states on the Ohio River are experimenting with the process, but in a smaller, pilot program). This program’s development and results will be something for the rest of the basin to watch, but the passage of the law hasn’t garnered the attention it deserves, so spread the word!

Meanwhile, the EPA has developed a new model, the Coastal General Ecosystem Model, to be exact. This new model is intended to help determine just how much reduction in nitrogen and phosphorus will be needed to reduce the size of the Dead Zone by two-thirds. Good luck to all working on this. Justice Brandies’ line of states being the laboratories of democracy comes to mind, and hopefully these are the first steps in larger basin-wide progress in cleaning up the Mississippi River and the Gulf of Mexico.

**The Clean Water Act, Waters of the United States, and the Supreme Court of the United States. The Uncertainty Continues.**

All right. Deep breath. Let’s go. Last spring, the EPA and the Corps of Engineers proposed a rule change to clarify the term “waters of the United States” in the Clean Water Act (CWA), especially where the agencies could enforce the law intended to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The applicability of the CWA was muddied after two Supreme Court cases, Solid Waste Agency of Northern Cook County v. Army Corps of Engineers (2001) and Rapanos v. United States (2006). Since Rapanos, just exactly when and where the boundaries of the “waters of the United States” where the CWA could be applied lay hasn’t been clear. Cue the great wailing and gnashing of teeth that this constituted a federal power grab. The outcry was so great that the Cromnibus passed in December forced the EPA and Corps of Engineers to withdraw the interpretive rulemaking associated with the effort (the Cromnibus funded the government through September 2015. Only six more months – less in Louisiana – until your next budget crisis, kids!). Now, it seems that that was all for nothing. This week, the Supreme Court ruled that interpretive rules don’t even need to go through public notice and comment. Of course, they do still need to go through notice and comment for legislative rules, so the EPA and the Corps of Engineers continue to work through the process so that everyone might have a clue as to exactly what the waters of the United States are and just why they and their associated wetlands matter.