

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
May 10, 2016

## **Class Action is a (MR)GO and the Exposure is Big**

A year ago, the Federal Court of Claims ruled that some of the flooding experienced in the metro New Orleans during Hurricane Katrina constituted a taking of private property by the federal government. Now that same court has issued a [partial final judgement](#) as to the amount of compensation due to the property owners in St. Bernard Parish and New Orleans' Lower Ninth Ward that were inundated during Katrina due largely to the failure on the part of the Army Corps of Engineers to maintain the [MR-GO](#). Further, the opinion states that there is indeed a class of owners that meets the qualification of a class action. Doing some rough math based on the possible size of the class and the amounts awarded to the trial plaintiffs (don't forget that the Court also found that local governments have a property interest in future real estate taxes), the final tab could be over \$6 billion. Though this opinion will almost certainly be appealed, it illustrates what could lie ahead for governments contending with environmental change, underinvestment, and the effects of half-measures. In short, there can be liability—big liability—for governments that invite disaster by doing too little or waiting too long to act. Whatever the final outcome of this turns out to be, some lessons are already becoming clear. First, underinvestment that contributes to flooding private property (or by inference loss of a water supply) may be a taking (take note of projected sea level rise and aquifer depletion predictions). Second, failing to warn people of known risks, while never acceptable, may carry with it costs (take note, governments dismissing climate change as unreal or a hoax). And finally, for those thinking that the costs of dealing with climate change, rising seas, sinking coasts, and crumpling water infrastructure are too high, think again. If this case is a lens to the future, then we can safely say that we have seen the future, and it is going to be costly, one way or another. The question remains whether those costs are just expenses or can be translated into investments in our future well-being.

## **Beware [THE BLOB](#)**

Just off the scenic shores of Lake Erie lurks a monster of blob-like proportions. [A toxic blob](#), covering an area approximately four square miles, is drifting closer and closer to the drinking water intake that provides water to 11 million residents in the Cleveland area. The blob is composed of

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:

### [River Deltas: Sink or Swim](#)

New Orleans, LA  
Woldenberg Art Center  
May 13, 2016

### [River Rally](#)

Mobile, AL  
May 20-23, 2016

### [State of the Coast 2016](#)

New Orleans, LA  
June 1-3, 2016

### [RAE/The Coastal Society Summit on Coastal and Estuarine Restoration](#)

New Orleans, LA  
December 10-15, 2016

## Water jobs:

### [Staff Attorney](#)

Chesapeake Legal Alliance  
[Clean Water Advocate](#)  
Environment America

# Tulane Institute

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dredged sediment dumped into the lake by the Army Corps of Engineers (they just can't catch a break) decades ago from the notoriously toxic Cuyahoga River (remember, the one that [caught on fire](#)? [please also note that this story tries to make said fire better by pointing to the multiple other times the river has caught on fire]). The Blob is full of harmful pollutants called PCBs, which are known carcinogens. Cleveland water managers have assured the city they are addressing the problem and that the water is safe to drink. The Army Corps is [defending](#) its opinion that dumping dredged material into the sensitive lake is good practice. So, things are either fine, or they are not. Or put another way, we are either singing [Lake Erie Love](#) or the [Lake Erie Blues](#). Somehow other we suspect this has to tip one way or the other.

### **Louisiana's Frozen Future**

Well, perhaps melting future. A [recent study](#) shows that if the world fails to cap rising temperatures, the ice sheets of Antarctica will melt, adding at least three more feet to the already predicted 3.5 feet of sea level rise by 2100. This would [drown the lower third of Louisiana](#) and would render the \$92 billion Coastal Master Plan entirely useless, even if it is completed. If, however, the goals of the Paris Climate Talks are met and temperatures are kept from rising more than 2 degrees Celsius, the ice sheets will remain stable and the Coastal Master Plan has a chance for success. Without controlled carbon emissions, the floating ice sheets currently acting as a buffer for the land ice on Antarctica will break apart and basically open a giant continent sized faucet by as early as 2050. And, [interesting factoid](#), without all of that ice on the southern continent, the gravitational pull on Louisiana would increase, compounding sea level rise. Doesn't that sound like fun? So if the Coastal Master Plan to be worth it, the whole of the world will need to work hard at reaching the Paris Climate Talk goals.

### **Pluto's Icy Moon**

Recently, Pluto's smallest moon, Hydra was confirmed to be covered in ["nearly pristine water ice,"](#) which, evidently, is different from ice-ice (question: if Pluto is no longer a planet, but a dwarf planet, shouldn't Hydra be a "dwarf moon"?). Hydra is The-Planet-Formerly-Known-As-Pluto's farthest moon, which has made studying it difficult, but NASA was recently beamed information from an exploration project launched in 2006. Pluto has another moon, Charon that also has water ice, and perhaps may have been attached to Hydra at one point, however it has collected more space dirt than Hydra so its ice has been deemed inferior. Sorry, Charon. In any event, though Pluto wasn't important enough to keep its planet designation, it may yet play an important role in space water development. (Not really a thing. Totally should be). We can move there when we all sink after Antarctica melts; invest in down comforters now!

### **Wetlands + Art = 3<sup>rd</sup> Annual Wetlands Art Tour**

Who doesn't like art? And who isn't wild about wetlands? The answer is nobody, or at least presumably nobody, so expect everyone to head to the [3<sup>rd</sup> Annual Wetlands Art Tour](#) here in New Orleans this weekend. Events will kick off Friday night and continue through Saturday and made all the more pleasant by the ironically dry weather that is expected. For more information, click on the Wetlands Art Tour [facebook page](#).