

# WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium

Volume 34, Number 4

December 2014



## The Tri-State Water Wars: Is the End In Sight?

*Also,*

---

Funding for New Alabama Gulf Convention Center Challenged by GRN

U.S. Supreme Court Considers Fish Shredding Case

The Importance of Neighborhood Context in City Stormwater Policies

---

# WATER LOG

## Inside This Issue . . .

The Tri-State Water Wars:  
Is the End in Sight? ..... 3

Funding for New Alabama Gulf  
Convention Center Challenged  
by GRN ..... 8

U.S. Supreme Court Considers Fish  
Shredding Case ..... 11

The Importance of Neighborhood Context  
in City Stormwater Policies ..... 13

*Cover photograph of sunset over Apalachicola Bay;  
courtesy of Rachel Kramer.*

*Contents photograph of a sunset over Apalachicola Bay;  
courtesy of Saxon McClamma.*

## • UPCOMING EVENTS •

### **20th Annual Summit on Environmental Law & Policy**

February 27 - 28, 2015  
New Orleans, LA

<http://bit.ly/tulanelaw20>

### **Key Environmental Issues in U.S. EPA Region 4**

March 3, 2015  
Atlanta, GA

<http://bit.ly/usepa>

### **24th Annual Southeastern Environmental Law and Regulation Conference**

June 19, 2015

Sandestin Beach & Golf Resort  
West Miramar Beach, FL

<http://bit.ly/alstatebar24>

# The Tri-State Water Wars: Is the End In Sight?

Austin Emmons



Photograph of oyster boats on Apalachicola Bay; courtesy of Rachel Kramer.

For over twenty years, the use of water in the Atlanta metropolitan area has been the center of a debate between Florida, Alabama, and Georgia.<sup>1</sup> After years of litigation in the federal court system, the Tri-State Water Wars has reached its final chapter. The U.S. Supreme Court will hear Florida's lawsuit against Georgia.

## Setting the Stage

In October 2013, Florida requested that the U.S. Supreme Court hear its lawsuit against Georgia. Florida alleged that the Atlanta metropolitan area's excessive water usage has decreased the flow of freshwater into the Apalachicola River and Apalachicola Bay. Florida



Photograph of the Apalachicola River; courtesy of Chris M. Morris.

further alleged that the decreased freshwater flow has caused the Apalachicola oyster harvest to plummet in recent years. Georgia, on the other hand, argued that its water usage is not excessive and that conservation measures have reduced Atlanta's water usage. Additionally, Georgia argued that decreased freshwater flow is not the cause of the Apalachicola Bay's problems and that Florida is just trying to find "a bogeyman to blame for its poor management of Apalachicola Bay."<sup>22</sup>

### **Harm of a Serious Magnitude**

In order for the Supreme Court to exercise its original jurisdiction, Florida must show that it has been significantly harmed by Georgia's water usage. The U.S. Supreme Court is generally thought of as an appeals court because it primarily reviews decisions made by lower courts. But in disputes between two states such as this, the Supreme Court exercises original jurisdiction, meaning that it is the first and only court to hear disputes between states. In other words, this is not an appeal from a lower court but an original action.

Florida alleges that Georgia's excessive water usage has resulted in "serious injury to [Florida's] economy, its environment, and its people—not simply to threatened or endangered species as Georgia suggests."<sup>23</sup> Specifically, Florida alleges that Georgia is causing low water flows into the Apalachicola River and Bay, and due to the low flows, the size of Apalachicola River habitats are being reduced and the salinity of the Apalachicola Bay is increasing. According to Florida, these effects have resulted in severe and irreparable harm to Florida's ecology and economy. For example, "Oyster landings in 2012 were the lowest in the last 20 years in Apalachicola Bay. The surrounding economy suffered severe contraction which continued into 2013."<sup>24</sup> In August 2013, U.S. Secretary of Commerce Penny Pritzker declared a commercial fishery failure for the oysters in Apalachicola Bay because of concerns about the bay's "depleted oyster resource that has traditionally supported a viable fishery."<sup>25</sup>

In response, Georgia points to a study conducted by the U.S. Fish and Wildlife Service (FWS) that evaluated many of Florida's claims. The FWS study found that the



Photograph of the Jim Woodruff Dam in Chattahoochee, FL; courtesy of J.S. Clark.

current flow rates “will not jeopardize the continued existence’ or ‘destroy or adversely modify designated critical habitat’ for threatened and endangered wildlife in the Apalachicola Bay.”<sup>6</sup> Georgia then notes that Florida did not challenge any of the FWS findings. Therefore, Georgia contends that Florida has not sufficiently alleged harm or causation.

#### **Revised Master Water Control Manual**

Currently, the U.S. Army Corps of Engineers (Corps) is revising its Master Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin (Master Manual). The revision would determine to what extent

Atlanta can use Lake Lanier for water storage and also update the minimum flow rates required at Woodruff Dam. The Corps expects to release a draft manual in September 2015 and the final manual in March 2017.<sup>8</sup> Because the Master Manual and Florida’s lawsuit both pertain to the flow of water in the Apalachicola-Chattahoochee-Flint River Basin (ACF Basin), the parties disagree on whether Florida’s lawsuit should proceed before the revised Master Manual is issued.

Florida contends that its lawsuit should not be delayed because the Corps does not have “authority to grant water rights or to allocate water among several states.”<sup>9</sup> Because Florida’s lawsuit is about water rights

and the allocation of water, Florida contends that the revised Master Manual would not resolve its lawsuit, and therefore, its lawsuit should not be delayed until the revised Master Manual is issued.

Georgia argues that Florida's lawsuit should be delayed until after the revised Master Manual is issued. As part of the revision process, the Corps may decide to update the minimum flow rate of water into the Apalachicola River at Woodruff Dam.<sup>10</sup> Because the flow of water into the Apalachicola River impacts Florida's alleged harms, Georgia argues that an updated minimum flow rate could mitigate or eliminate all of Florida's alleged harms, which could then make Florida's lawsuit unnecessary. Additionally, Georgia argues that the revised Master Manual would provide relevant information that the Supreme Court would need when deciding the lawsuit.

Like Georgia, the United States also believes that the Supreme Court should not hear Florida's lawsuit until after the revised Master Manual is issued. First, the process of revising the manual encompasses "much of the factual development and assessment that would ordinarily be conducted" during the lawsuit proceedings.<sup>11</sup> Second, if the Corps updates the minimum flow rate, it could change Florida's alleged harms.

### The Final Chapter

On November 3, 2014, the Supreme Court agreed to hear Florida's lawsuit against Georgia. When it granted Florida's request, the Supreme Court did not issue any reasoning for why it decided to hear the case. Florida must now file a bill of complaint with the Supreme Court that sets forth Florida's allegations against Georgia and Florida's request for relief. Georgia will then have thirty days to file its answer to Florida's complaint.

### Lake Allatoona: A New Water War?

On November 7, 2014, Georgia filed a lawsuit against the Corps in federal court. In the lawsuit, Georgia alleges that the Corps has failed to properly address current and future water supply needs by not updating the water control plans and manuals for the Alabama-Coosa-Tallapoosa river basin.<sup>13</sup> Georgia further alleges that its ability to properly manage its water resources has been hampered by the out-of-date water control



Photograph of Lake Lanier in Georgia; courtesy of Brian Hursey.

plans and manuals. As a result, Georgia is requesting that the federal court compel the Corps to update the water control plans and manuals which, in turn, would allow Georgia to properly manage its water resources.<sup>14</sup>

### Conclusion

Now that the Supreme Court has agreed to hear Florida's lawsuit against Georgia, the Tri-State Water Wars may finally be coming to an end. However, oral arguments have not been scheduled. Until the Supreme Court hears the oral arguments and issues its opinion, Florida and Georgia will have to wait a little longer to see who is the winner of the Tri-State Water Wars. Furthermore, although there are a lot of unknowns about the lawsuit given the recentness of Georgia's lawsuit, it appears Georgia may be starting a new water war. On November 19, the Court appointed Ralph I. Lancaster, Jr., of Portland, Maine, as the special master to review the matter and make recommendations to the Court. 🐼

*Austin Emmons is a 2016 J.D. candidate at the University of Mississippi School of Law.*

### Endnotes

1. See Catherine M. Janasie, *Florida's Oyster Industry Continues to Struggle*, 34:1 WATER LOG 3 (2014) for a more in-depth discussion of significant events in the Tri-State Water Wars prior to March 2014.
2. Dennis Pillion, *Florida governor: U.S. Supreme Court to take up 'Water Wars' case against Georgia*, at [http://www.al.com/news/beaches/index.ssf/2014/11/florida\\_governor\\_us\\_supreme\\_co.html](http://www.al.com/news/beaches/index.ssf/2014/11/florida_governor_us_supreme_co.html).
3. Florida Reply Brief at 13, Florida v. Georgia, No. 220142 (2014).
4. *Id.* at 20.
5. Dennis Pillion, *NOAA declares fishery disaster for Apalachicola oysters*, at [http://blog.al.com/gulf-coast/2013/08/noaa\\_declares\\_fishery\\_disaster.html](http://blog.al.com/gulf-coast/2013/08/noaa_declares_fishery_disaster.html)
6. Georgia Supplemental Brief at 7, Florida v. Georgia, No. 220142 (2014).
7. Brief for the United States as Amicus Curiae, at 14.
8. *Id.* at 9.
9. Florida Reply Brief, at 7.
10. Georgia Supplemental Brief, at 2.
11. Brief for the United States as Amicus Curiae, at 19.
12. Florida v. Georgia, 2014 U.S. LEXIS 7236 (2014).
13. Kate Brumback, *Georgia sues Corps over water supply requests*, MONTGOMERY ADVERTISER (Nov. 18, 2014), <http://www.montgomeryadvertiser.com/story/news/local/alabama/2014/11/09/georgia-sues-corps-water-supply-requests/18752867/>.
14. *Id.*

# SAVE THE DATE

## GULF OF MEXICO ALLIANCE 2015 ALL HANDS MEETING

June 16 - 18, 2015

IP Casino  
Biloxi, MS

June 16

Plenary Presentations  
and Team Meetings

June 17

Team Meetings

June 18

Team Meetings

Registration will be available January 1, 2015.

[www.gulfofmexicoalliance.org/announcements](http://www.gulfofmexicoalliance.org/announcements)

# SAVE THE DATE

# Funding for New Alabama Gulf Convention Center Challenged by GRN

Phoenix Iverson



Photograph of the Alabama Convention Center in Mobile, AL; courtesy of James Willamor.

In 2004, Hurricane Ivan wreaked havoc across the Gulf Coast. The beaches of Alabama were hit especially hard. The damage was horrific and widespread. Through resiliency and hard work the beaches and infrastructure

were rebuilt. Some things, however, did not survive Ivan's wrath. One of those things was the lodge at Gulf State Park. Since losing the lodge to Ivan, Alabama's state officials have struggled to make a new lodging destination a reality.<sup>1</sup>



Photograph of Gulf State Park in Alabama; courtesy of Ken Ratcliff.

Recently, Alabama Governor Robert Bentley signed a bill that pushed forward Alabama's plans to develop the site of the destroyed Gulf State Park lodge. During the signing ceremony Alabama Lieutenant Governor Kay Ivey said that rebuilding at the site of the lodge "is going to be a crown jewel for the Gulf Coast."<sup>22</sup> Lieutenant Governor Ivey's comment reflects the high level of importance the state of Alabama places on this piece of real estate. In spite of this, attempts to build on the site of the old state lodge have faced continuous opposition.<sup>3</sup>

### Alabama's Current Plans

As one of the five states most affected by the 2010 Gulf oil spill, Alabama received money to help the state's natural resources recover. Recently, Alabama received approval to use nearly \$60 million dollars of that money for the construction of a new hotel and conference center on the site of the old state lodge.<sup>4</sup> This money takes up a large portion of the \$85 million that is to be spent on restoring and improving Gulf State Park.<sup>5</sup>

The Gulf State Park Project is designed to partially compensate for the lost use of natural resources resulting from the BP oil spill. The project will help compensate for these losses by "improving the public's access and enjoyment of the Gulf State Park's natural resources."<sup>26</sup> The construction of the new hotel and convention center will also provide Alabama with a destination on its coast that can draw visitors and compete with similar centers in surrounding Gulf States.

### Natural Resource Damage Assessment

The Oil Pollution Act (Act) is the statute that governs the federal government's response to oil spills.<sup>7</sup> The Act also imposes liability on responsible parties for damages caused by the incident, including damages to natural resources.<sup>8</sup> Natural resources are defined by the Act as "land, fish, wildlife, biota, air, water, ground water, [and] drinking water supplies."<sup>9</sup>

Following an oil spill, the Act empowers "certain federal agencies, states, and Indian tribes to evaluate the impacts of oil spills on natural resources."<sup>10</sup> This group is referred to as the natural resource trustees. The trustees are responsible for managing and distributing the money paid as a result of an oil spill to the affected states. The trustees evaluate the impacts of oil spills through a process called the Natural Resource Damage Assessment (NRDA). This assessment process is intended to "ensure an objective and cost-effective assessment of injuries – and that the public's resources are fully addressed."<sup>11</sup>

### GRN's Challenge

The natural resource trustees for the BP oil spill recently approved allocation of NRDA funds for the construction of a new hotel and convention center at Gulf State Park.<sup>12</sup> This seemingly cleared the way for Alabama to proceed with seeing its "crown jewel" destination on the Gulf Coast realized. On October 23, 2014, the Gulf Restoration Network (GRN) filed suit in D.C. District Court to prevent the restoration money from being spent in this way. GRN is asking the court to invalidate this allocation of funds and prevent any further funding of the convention center through NRDA funds.

GRN believes that the funds allocated for the convention center should go towards restoring damage done to the ecosystem and labels the decision a "shocking misuse of restoration dollars."<sup>13</sup> GRN takes

issue with the categorization of the project as a restoration project. According to the trustees, this project constitutes restoration because it will compensate for the recreational opportunities lost through improved access to those opportunities.<sup>14</sup> GRN argues that this reasoning is wrong because a convention center will not compensate for the injuries suffered by the natural resources.<sup>15</sup> GRN argues that if Alabama is allowed to spend the funds in this way, then the public's loss of natural resources will not be fully restored. In their complaint against the trustees, GRN alleges legal improprieties in the decision making process.<sup>16</sup>

**According to the trustees, this project constitutes restoration because it will compensate for the recreational opportunities lost through improved access to those opportunities.**

GRN alleges that the trustees failed to follow the requirements of the National Environmental Protection Act (NEPA) in making their decision.<sup>17</sup> NEPA requires that an impact statement be completed for all major federal actions.<sup>18</sup> This document, known as an Environmental Impact Statement (EIS), provides information on how a project will impact the surrounding environment and discusses alternatives to the proposed action. GRN alleges that the trustees failed to properly conduct an EIS for the Gulf State Park Project.<sup>19</sup>

The uncertainty of the convention center's success is another issue that GRN raises in its complaint.<sup>20</sup> According to the complaint, the trustees failed to adequately address this issue by reaching their decision prior to the conclusion of a separate study conducted by Alabama regarding the feasibility of the Gulf State Park Project.<sup>21</sup>

## Conclusion

The construction of a new hotel and conference center on the site of the old state lodge would bring significant benefits to the State of Alabama and the communities along the Gulf Coast. The problem is that the resources

made available through the NRDA process are limited. It is therefore necessary for the trustees to ensure that those funds are spent effectively and efficiently. The lawsuit by GRN seeks to ensure that this result is achieved. It will be interesting to see if Alabama's attempt to build on this site is thwarted yet again. 🐦

*Phoenix Iverson is a 2015 J.D. candidate at Cumberland School of Law in Birmingham, Alabama.*

## Endnotes

1. Kati Weis, *Special Report: A Long Wait to Rebuild* (April 30, 2014), <http://fox10tv.com/2014/04/30>.
2. George Talbot, *Governor Bentley Signs Bill Creating 'Crown Jewel' Conference Center in Gulf Shores* (May 14, 2014), [http://blog.al.com/wire/2013/05/gov\\_robert\\_bentley\\_signs\\_bill\\_2.html](http://blog.al.com/wire/2013/05/gov_robert_bentley_signs_bill_2.html).
3. Bob Morgan, *Judge Says No to Gulf State Park Proposal*, GULF COAST NEWS TODAY (July 9, 2008), [http://www.gulfcoastnewstoday.com/area\\_news/article; See also, Gulf Beach Hotel, Inc., v. Gulf State Park Authority, and Charley Grimsley v. Governor Bob Riley, et al., Civil Action Nos. 2005-1409 and 2005-1804 \(consolidated\) \(Circuit Court of Montgomery County, AL 2008\)](http://www.gulfcoastnewstoday.com/area_news/article; See also, Gulf Beach Hotel, Inc., v. Gulf State Park Authority, and Charley Grimsley v. Governor Bob Riley, et al., Civil Action Nos. 2005-1409 and 2005-1804 (consolidated) (Circuit Court of Montgomery County, AL 2008)).
4. Dennis Pillion, *Gulf State Park Convention Center Project Approved by BP Oil Spill Trustees*, (Oct. 6, 2014) <http://blog.al.com/news/beahces>.
5. Dennis Pillion, *Gulf State Park Convention Center Challenged in Lawsuit*, (Oct. 24, 2014), <http://blog.al.com/news/beaches>.
6. *Deepwater Horizon Oil Spill Natural Resource Damage Assessment: Gulf State Park Enhancement Project*, <http://gulfspillrestoration.noaa.gov>.
7. 33 U.S.C. §§ 2701-2762.
8. *Id.* § 2702(a).
9. *Id.* § 2701(20).
10. *Gulf Spill Restoration: Damage Assessment*, NOAA (2014), <http://www.gulfspillrestoration.noaa.gov/assessment>.
11. *Id.*
12. Dennis Pillion, *Gulf State Park Convention Center Project Approved by BP Oil Spill Trustees* (Oct. 6, 2014), <http://blog.al.com/news/beaches>.
13. *Use of BP Oil Spill Money for Alabama Convention Center Challenged in Lawsuit*, THE TIMES-PIYAYUNE (October 23, 2014), <http://www.nola.com/news/gulf-oil-spill>.
14. *Id.* at 3.
15. *Id.*
16. Complaint, Gulf Restoration Network v. Department of Interior, #1:14-cv-01773-RJL (D.C. Oct. 23, 2014).
17. *Id.* at 3.
18. 42 U.S.C. § 4332(2)(c).
19. Complaint, Gulf Restoration Network v. Department of Interior, #1:14-cv-01773-RJL (D.C. Oct. 23, 2014).
20. *Id.* at 28-30.
21. *Id.* at 30.

# U.S. Supreme Court Considers Fish Shredding Case

Terra Bowling



Photograph of a grouper fish; courtesy of Craig O'Neal.

In November, the U.S. Supreme Court heard a case on whether a federal law intended to prevent document shredding could be used to convict a commercial fisherman who dumped undersized fish to avoid a fine. Federal prosecutors argued that the law was properly used to punish someone who destroyed evidence. The fisherman claimed that he should not be prosecuted under a law intended to regulate business practices.

## Background

John Yates was the captain of a 47-foot commercial fishing boat, “Miss Katie.” In 2007, John Yates was fishing for grouper in federal waters in the Gulf of Mexico when he was stopped for inspection by a state conservation officer. Upon examination of Yates’ catch, the officer noticed that several of the grouper in the haul appeared to fall short of the legally required 20-inch

length. He measured the fish and found that 72 of the grouper were clearly under the legal limit. The officer issued Yates a citation and ordered him to crate the fish and bring them to shore.

Yates, hoping to avoid a federal fine, allegedly ordered his crew to dump several of the fish and replace them with larger fish. When they arrived back at port, the officer measured the fish again, and, to his surprise, found that the fish measured longer than they had at sea. Upon questioning by federal agents about the discrepancy, the crew confessed to dumping the fish under the captain's order. Yates was subsequently indicted on several charges, including under a provision of the Sarbanes-Oxley Act for destroying evidence.

### Tangible Objects

Passed in 2002, the Sarbanes-Oxley Act was intended to address corporate fraud by reforming business practices. Section 1519 of the Act penalizes anyone who “knowingly ... destroys, conceals, [or] covers up, ... any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States.”<sup>1</sup> The provision is often called the “anti-shredding provision” because it was intended to combat document shredding rampant in the Enron fraud scandal.

The U.S. District Court for the Middle District of Florida found that the term “tangible object” was broad enough to include the fish Yates threw overboard.<sup>2</sup> A jury subsequently found Yates guilty of destroying or concealing a “tangible object with the intent to impede, obstruct, or influence” the government's investigation into the undersized grouper. He was sentenced to thirty days in prison.

On appeal, Yates argued that the term “tangible object” should only apply to records, documents, or tangible items that relate to recordkeeping and not fish.<sup>3</sup> The Eleventh Circuit disagreed, finding that a fish is a “tangible object” within the meaning of 18 U.S.C. § 1859. The court reasoned that undefined words in a statute, such as tangible object, “are given their ordinary or natural meaning.”<sup>4</sup>

### Supreme Court

In April, the U.S. Supreme Court granted certiorari in the case.<sup>5</sup> The Court will consider whether Yates was deprived of fair notice that destroying fish would fall under the purview of § 1519. Yates' brief to the court argued that he did not have fair notice that he could be convicted under the provision.<sup>6</sup> He noted that the term “tangible object” is ambiguous and undefined. Yates had amici briefs in support of his arguments, including briefs from a group of criminal law professors, the National Association of Criminal Defense Lawyers, several commercial fishing associations, as well as Michael Oxley, one of the co-authors of the Sarbanes-Oxley Act. Generally, the amici briefs alleged that the government was overzealous in using the law to prosecute the fishermen, as the law was intended to prevent shredding of business records, not fish.

In response to Yates' arguments, the government maintained that the phrase “tangible object” should be construed to include any physical evidence relevant to a federal investigation.<sup>7</sup> The government argued that the law is a “straightforward ban on destroying evidence.” The government also cited instances in which it had used § 1519 to prosecute the destruction of evidence, including most recently to convict a friend of the Boston Marathon bombing suspect for helping conceal supplies linked to the bombing.

Following oral arguments on November 5th, many legal commentators noted that the Court seemed inclined to rule in Yates' favor.<sup>8</sup> The court will issue its decision in the spring. 🐟

*Terra Bowling is Sr. Research Counsel at the National Sea Grant Law Center at the University of Mississippi.*

### Endnotes

1. 18 U.S.C. § 1519.
2. *United States v. Yates*, 2011 WL 3444093 (M.D. Fla. Aug. 8, 2011).
3. *United States v. Yates*, 733 F.3d 1059, 1064 (11th Cir. 2013).
4. *Id.*
5. *Yates v. United States*, 134 S. Ct. 1935 (2014).
6. Brief for Petitioner *Yates v. United States*, No. 13-7451 (June 30, 2014).
7. Brief for the United States *Yates v. United States*, No. 13-7451 (Aug. 19, 2014).
8. Lyle Denniston, *Argument analysis: Building to a Scalia crescendo*, SCOTUSblog (Nov. 5, 2014, 1:26 PM), <http://www.scotusblog.com/2014/11/argument-analysis-building-to-a-scalia-crescendo/>.

# The Importance of Neighborhood Context in City Stormwater Policies

Stephen Deal

Oak Park in Ocean Springs is a prime example of how you can create an environmentally sustainable community that can also grow in place to fit the community needs of future residents or expand to accommodate future growth pressures.

---

*“The vast amount of parking available is a result of municipal codes trying to balance economic interests with a need to have an efficient transportation network. Getting the consumer to the destination as quickly as possible and then providing them with a space to park their car has been the philosophy. Retailers don’t want a lack of parking and city planners do not want congested roadways. As a reaction to both of these fears, parking lots are often over-sized, particularly outside of dense urban areas.”*

**-Quote from the New Orleans Urban Water Plan<sup>1</sup>**

---

The concept of resilience can be a tricky one for many policymakers to wrap their heads around. A city or town can spend tons of money buttressing itself against one unfortunate scenario, and still not be resilient. A resilient system is one that adapts itself to address a wide array of potential setbacks or calamities. A resilient system is concerned, first and foremost, with achieving a steady state of things, even if that system is distinctly different from the one prior.

Cities are perhaps the ultimate exercise in systems management, with an incredibly complex arrangement of inputs and outputs. Stormwater management is one particular component of the city system. The topic of stormwater management has gotten considerable play in urban planning circles recently, in part because of a perceived knowledge gap in how it is managed. Bioswales, filter strips, and rain barrels have now entered the urban planning lexicon and many cities have started incorporating these ideas into their stormwater management policies.<sup>2</sup> These “plug and play” policy strategies are no substitute though for a clear understanding of urban context and the varying degrees of infrastructure needed for different parts of the city.

One of the lessons is that it is not always optimal to impose the peak urban condition on all areas of the city at once, which is what many cities' existing stormwater regulations attempt to do. While a new development on the fringes of town cannot be as self-sustaining as, say a downtown business district, it is definitely not going to be as sustainable if its residential streets are treated the same way as large commercial thoroughfares. Urban redevelopment is also put at a disadvantage by existing regulations, as they are unable to offer the full range of mitigation techniques that suburban communities can.

Roads and parking, like any basic services or utilities, also require continual maintenance. It does not take long for a poorly maintained asphalt or concrete parking lot to turn from an asset to a liability. Impervious surfaces can be hard to maintain and while they may look more suited to the urban experience, they pose an obstacle for properties entering the more mature phases of their commercial life cycle. While gravel and crushed limestone parking lots are probably not optimal along Main Street, an impervious surface parking lot can be overkill in a suburban neighborhood or low-rise office district. Consider the Oak Park development in Ocean Springs as an example.

### Oak Park

The Cottages at Oak Park are located along a semi-urban stretch of Government Street in Ocean Springs.<sup>3</sup> The traditional engineering approach to infrastructure is largely abandoned here for a more simple, streamlined approach. The hard impervious surfaces and curb and gutter system have been replaced with a simple gravel driveway.<sup>4</sup> The sidewalks are also level with the road and are articulated just enough so that the pedestrian realm is distinguished from the automotive realm. The development also received LEED Platinum certification, the highest designation given by the U.S. Green Building Council.

The biggest selling point of Oak Park, though, is the measure of flexibility it adds to the long-term maintenance of the community. If the area urbanizes in the future and residents decide to pave the street they can do so, without having to shell out a ton of money from their pocketbook. By comparison, if the traditional suburban community falls out of fashion and cannot maintain its infrastructure, it is essentially stuck. One can choose to maintain the infrastructure at its peak condition in the hope that it will eventually find full use again or, in the more likely scenario,

the street or parking lot will simply deteriorate and further underscore that a neighborhood is obsolescent.

### Contextual Approach to Stormwater

So how do cities begin to move towards a more contextual approach to stormwater?<sup>5</sup> One basic policy change would be to reduce or waive minimum parking requirements. Cities could also unbundle parking's correlation with individual land uses by writing in language that encourages shared parking lots. Both of these would serve to reduce the amount of impervious surface, thereby improving stormwater conditions. A better approach to pervious paving is also a must, and cities can promote that in their zoning ordinance by elevating gravel, crushed limestone, and other pervious pavements as viable alternatives in low and medium density residential areas. Finally we need a more systematic and regional approach to stormwater. Some form of regional land banking or a fee in lieu of services arrangement, with money going towards regional mitigation strategies, would be a considerable improvement over our current attempts to regulate stormwater on a site by site basis.<sup>6</sup>

Planning and community development is an art, not a science. A set of policy directives that is good for one neighborhood may not be good for another neighborhood one mile over. Good neighborhoods evolve and grow over time and can adapt to a number of different scenarios and economic conditions. Most important of all, though, is that in land use planning, context is key, which is why city stormwater management plans need to contextualize their approach and get away from the standardized site by site management approach.<sup>7</sup> 🦋

*Stephen Deal is the Extension Specialist in Land-Use Planning for the Mississippi-Alabama Sea Grant Legal Program.*

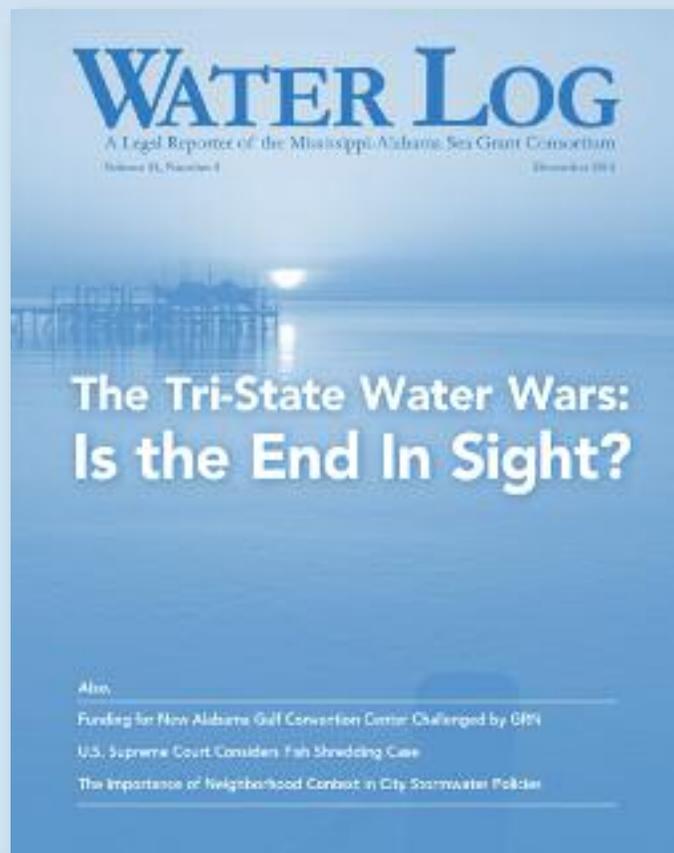
### Endnotes

1. Dana Brown and Associates, *Greater New Orleans Urban Water Plan*, October 2013.
2. Environmental Protection Agency, *Stormwater Management Best Practices*, Nov. 5, 2012.
3. Cherie Ward, *Sen Roger Wicker Tours Ocean Springs Cottage Community that was Awarded LEED Platinum Certification*, GULFLIVE, Feb. 24, 2012.
4. Lisa Nisenson, *The High Cost of Free Curb and Gutter*, Planetizen, July 15, 2013.
5. Congress for the New Urbanism, *Rainwater-in-Context*.
6. Erica Hollis and Heather Nix, *Upstate banking on stormwater program*, Uptown, January 2014.
7. Laurence Aurbach, *Dense and Beautiful Stormwater Management*, Ped Shed Blog, May 14, 2010.

# WATER LOG

## IMPORTANT ANNOUNCEMENT

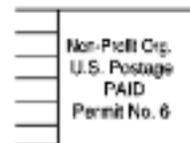
*Water Log* will be transitioning from print to an online-only format. If you do not already subscribe to *Water Log* electronically, go to: <http://masglp.olemiss.edu/subscribe>. Thanks for continuing to read!



**Subscribe to Water Log online**  
<http://masglp.olemiss.edu/subscribe>



The University of Mississippi  
**WATER LOG**  
 Mississippi-Alabama Sea Grant Legal Program  
 Kinard Hall, Wing E, Room 258  
 P.O. Box 1848  
 University, MS 38677-1848



**WATER LOG** (ISSN 1097-0649) is supported by the National Sea Grant College Program of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration under NOAA Grant Number NA10OAR4170078, the Mississippi-Alabama Sea Grant Consortium, the State of Mississippi, the Mississippi Law Research Institute, and the University of Mississippi Law Center. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Mississippi-Alabama Sea Grant Legal Program, the Mississippi-Alabama Sea Grant Consortium, or the U.S. Department of Commerce. The U.S. Government and the Mississippi-Alabama Sea Grant Consortium are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon.

Recommended citation: Author's name, *Title of Article*, 34:4 **WATER LOG** [Page Number] (2014).



The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, disability, veteran or other status.

MASGP-14-003-04

*This publication is printed on recycled paper of 100% post-consumer content.*

ISSN 1097-0649

December 2014



**WATER LOG** is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its goal is to increase awareness and understanding of coastal issues in and around the Gulf of Mexico.

To subscribe to **WATER LOG** free of charge, contact us by mail at Mississippi-Alabama Sea Grant Legal Program, 258 Kinard Hall, Wing E, P. O. Box 1848, University, MS, 38677-1848, by phone: (662) 915-7697, or by e-mail at: [bdbarne1@olemiss.edu](mailto:bdbarne1@olemiss.edu). We welcome suggestions for topics you would like to see covered in **WATER LOG**.

*Editor:* Niki L. Pace

*Publication Design:* Barry Barnes

**Contributors:**

Terra Bowling  
 Stephen Deal  
 Austin Emmons  
 Phoenix Iverson



Follow us on Facebook!

Become a fan by clicking  
 Like on our page at  
<http://www.facebook.com/masglp>