

# Baton Rouge Business Report

## Getting tough on water

By David Dodson, Published Feb 17, 2014 at 6:00 am (Updated Feb 18, 2014)

In the 1970s, a concept known as the "broken window" theory popped up on the East Coast. To oversimplify, the notion was that if there is an abandoned building and you see a few broken panes of glass, the smart thing from a public safety and welfare standpoint is to fix those windows as soon as possible.

Why?

The theory went that if you don't, a certain element in the community will see societal acceptance of a missing pane of glass as a green light to break a few more windows and then engage in other unsavory conduct that lack of law enforcement invites. Let it go on long enough, and you wind up with squatters in your abandoned, windowless buildings, which ultimately become safe houses for all manner of perversity and crime.

### ZERO TOLERANCE

Notwithstanding that the broken windows theory was later debunked, it ushered in an era in local policing called "zero tolerance," the targets of which were small crimes committed by petty criminals. Nab the panhandler. Arrest the guy who expectorates (or worse) in public. Jail the jaywalker. Show that you mean business, and you reduce the potential criminal's enthusiasm for graduating from misdemeanor to felony. In short, the potential criminal loses his sense of impunity and changes his behavior as a result.

Long after exhaustive studies showed that heavy-handedness on small crime was less a deterrent to misbehavior than the trifecta of having a job, an overall healthy economy and a place to live, the "get tough" model marches on, notably in New York City's "stop and frisk" campaign. The public can't get enough of bringing the power of the state down on those whom society blames for its woes.

At one point in the waning years of the last century, New York City made a big deal of the bite it had taken out of crime by getting police officers out of their patrol cars and onto the streets busting the chops of small-time offenders. New York City deployed zero tolerance right at street level, for all to see.

Inspired by that success (ephemeral though it was), New Orleans decided to try the same thing, even hiring "experts" from New York City to show them how it's done.

The result?

It would be funny if it weren't so sad. The New York guys gave it the old college try, but they threw in the towel when they realized that the stuff they were busting people for all over New York City simply wasn't illegal in New Orleans.

### OUR FAVORITE THINGS

Public nudity? You're joking, of course. That's one of our favorite things. Public urination? Not sure that one's on the Big Easy's books. Plus my uncle (I don't have an uncle) has been known to disappear into the oleanders now and again during Mardi Gras parades. Public drunkenness? OK, now. Get serious.

So all of this came rushing to mind when retired Lt. Gen. Russel Honoré brought his Green Army brand of environmentalism to the Rotary Club of Baton Rouge. Honoré's case in chief is that we need to get

tough with industry regarding its reckless consumption of the mineral-free and readily available water sitting directly beneath their plant sites.

But we can't, because we don't have the laws on the books to manage groundwater consumption, he said.

Honoré built his case craftily. First, he asked if anyone in the room had running water. Then he asked if they had to pay for it. Yes, and yes. The lieutenant general then asked how many were aware that industry pays nothing for the billions of gallons of pristine water it removes from the Southern Hills aquifer each year.

Well, he had me there. Like the New York police officer suddenly set adrift in New Orleans, I was stunned to learn that Louisiana law sets no limits on who can access groundwater and how much they can take. And from where.

Like others before him, Honoré metaphorically threw up his hands in disbelief. "We want water to be treated as water," he said in a reference to the reality that groundwater (essentially subsurface water down to a depth of about 2,500 feet) is treated in Louisiana law in the same sections as its mineral law.

## **TAKE IT, IT'S MINE**

To my astonishment, Honoré pointed out that groundwater in Louisiana is subject to the "rule of capture," much as oil and natural gas used to be. Otherwise known as the "rule of the biggest pump," it meant that if you could get a drill head into a pocket of oil or natural gas, it was yours.

For hydrocarbons, the folly of that approach became apparent soon enough. I might be sitting on a black gold mine, but under the rule of capture, my neighbor could drain my reservoir by drilling a slant hole under my property. And I was out of luck.

Enlightened minds realized this was a bad deal, and the law was changed to base mineral rights on surface ownership (more or less). You might be able to drain my reservoir, but you're going to pay me for all the minerals you take underneath my land.

Where Honoré shed light is that the rule of capture was never altered where water rights are concerned. If you can get to it, the water is yours—for free—as long as it is subsurface.

In Louisiana, groundwater belongs to nobody. Surface water, on the other hand, belongs to the state (or to somebody), and you have to pay to get your share of it. Honoré's point is that "water is water," and distinctions between surface and groundwater are archaic and unsupportable scientifically.

## **GOING IT ALONE**

Honoré was very careful—as was author and environmental activist John Barry when he addressed the same Rotary crowd weeks earlier—to say he has nothing against industry and that industry is vital to the health of our state and community. But he said the threats to the Southern Hills aquifer posed by salt-water intrusion should be solved by industry alone. Industry should be required to take its water from the Mississippi River, he insisted, so the rest of us can enjoy exclusive rights to superior subsurface water.

I'm missing something. What is industry doing that is wrong that the rest of us aren't also doing when we turn on the tap?

In essence, Honoré and others like him are accusing industry in north Baton Rouge of obeying the law. How do you get tough with that?