These are topic ideas. I have talked to some of you about topics already, which may not be on this list. You can work on those, and I am open to suggestions. We will spend a little time at the beginning of class talking about these.

1) The “marsh fire” in New Orleans east is not actually a marsh fire, but a peat fire under the surface. The land is privately owned. Such fires are very difficult to put out, and the current efforts are not likely to be effective. While this is not strictly a coastal law issue, it poses some very interesting issues because of its location and wetland status. A paper could look at the land owner liability for damages to others and for the cost of government efforts to put out the fire, any regulatory limits on fire fighting under the wetlands provisions of the Clean Water Act, and whether there is a duty for the land owner to put out the fire.

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2) Is it a violation of the public trust or the state constitution to protect private property from inundation and thus escheating to the state? This is the flipside of the question of whether there is any legal duty for the state to protect property from inundation. The main issue would be mineral rights and legislative solutions that allow land owners to keep their mineral rights when their land is lost.

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3) In Louisiana, is there a duty to protect private property from inundation by the rising ocean? What about subsidence, where the ocean remains level but the land sinks? Is there a duty to prevent land from sinking?

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4) What are legal issues if the federal government wanted to use the CWA, or Section 10 of the Rivers and Harbors Act of 1899, to prevent people from building impediments to coastal wetlands retreat? These would include private levees, breakwaters, etc. What if the land is not a wetland now, but will be with predicted ocean rise – can the EPA use the 404 or other regulatory mechanisms to protect future wetlands?

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5) What does the LA right of reclamation really mean in the context of ocean rise? Could a land owner build a silo with grass on the top and use that to keep claim to the whole of the land as it is submerged? Does the LA right of reclamation affect the federal law? This should be coordinated with problem 2).

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6) Should Mississippi be able to block hurricane protection structures in LA that will increase the damage to the MS coast? Is there a legal mechanism to do this? By the same token, may LA block the “Ike Dike” Galveston wishes to build?

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7) What are the implications of requiring the national flood insurance program (NFIP) to charge actuarially sound rates? What are the loopholes that could be used to continue to subsidize insurance rates? (For example, assuming that levees always work so the insurance is not necessary behind levees.) Is there any legal obligation to keep funding the subsidized insurance, i.e., a reliance argument?

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8) The Corps delayed opening the Morganza floodway in 2011 because of the damage it would do to property in the floodway. What are the legal rights of the persons in the floodway? Didn’t the government buy floodage easement rights precisely to allow flooding the floodway? Should the NFIP continue to see these people have flood insurance? What are politics of floodways in a future of greater variations in weather, i.e., more big floods along with more droughts?

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9) Who really owns the sediment in the Mississippi River? Does LA have any legal claim to that sediment behind those out-of-state upstream dams? This is different from the political argument of whether LA can persuade the feds to let more sediment come down the river.

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10) Who really owns the water in the Mississippi? Unlike the western water, which is allocated well beyond the last drop, I do not think there are any allocation schemes for the Mississippi River water. What happens as the climate in the south and central states gets much drier and they start drawing water out of the river and its tributaries? Can the feds assure enough water for navigation? Will there be pressure to shut down the diversions because they divert water from navigation, limiting the water that can drawn down for other purposes? For example, Dallas would like to buy water from Toledo Bend on a 99 year lease. Is such a lease enforceable decades hence under greatly changed climatic conditions?

This is a complex topic and could be split up among students.

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11) What are the state and local government liabilities for allowing development or redevelopment in high risk areas? Should development permits include climate change and ocean rise over the expected life of the project? How about just the current level of ocean rise? In other words, is the publication of a “base flood elevation” any sort of warranty by the federal government that it is “safe” to build a structure only to that height?

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12) Related to 11), does the Coastal Restoration Plan create any reliance arguments for coastal protection? Should landowners who read it and make plans based on its working be able to sue later if the plan fails? Does the state have any duty to make sure the plan is scientifically sound? What reliance is there if the plan is not built? Or if it is built and does not work?

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13) How is New Orleans like or not like Venice? There is a lot of history about ocean rise and adaption in Venice, and some interesting proposed solutions. What can we learn and what will not work because of different threats, geology, or just scale?

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14) How is Louisiana and New Orleans like Holland? Politicians like to say we should learn from Holland. What should we learn? Holland has Draconian land use restrictions, puts a big chunk of its own GDP into coastal protection, and has no hurricanes or coastal wetlands. Is LA ready for this? Just looking at the land use restrictions needed to make their system work and comparing those to LA would be very interesting. This topic could be split among several papers.