

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

[September 24, 2020](#)

May Her Memory Be a Blessing

Ruth Bader Ginsburg's passing on Friday sent a shock throughout the country that still reverberates days after her death. She touched the lives of many through her professional roles both on and off the Supreme Court. Tulane Law has had the great privilege of [hosting](#) Justice Ginsburg in the past, and the mark she made on the students and faculty is not easily forgotten. If you're still missing her presence (as we are), check out the [many podcasts](#), [special series](#), and [tributes](#) dedicated to her memory.

While she was most known for her trailblazing in civil liberties and gender equality, Justice Ginsburg also left behind a legacy of environmental protection. She wrote the [Laidlaw opinion](#) that granted standing to sue for civil penalties under the Clean Water Act; her vote in [Massachusetts v. EPA](#) gave the federal government authority to regulate greenhouse gas emissions; and she joined in the dissents in [Rapanos](#) and [SWANCC](#) that argued for a broader definition of Clean Water Act jurisdictional waters. We could go [on](#) and [on](#) and [on](#) about how much the movement for environmental protection benefited under her jurisprudence. That is not to say that Justice Ginsburg did not [sometimes disagree](#) with environmentalists during her tenure. But irrespective of on which side she cast her vote, she was seen as a key voice in the Court's environmental law history, and often, that voice was in favor of setting a stage for environmental concerns. Her death leaves the Court missing that crucial piece and, with a slew of environmental law-related litigation being initiated, there is uncertainty and concern as to the direction the Court will move. But with that uncertainty comes a renewed drive to press harder and move further. As RBG said, "Fight for the things you care about, but do it in a way that will lead others to join you."

[Nevada Court Says State Can't Reallocate Water Without Statutory Change](#)

The Nevada Supreme Court [ruled](#) that the State cannot curtail existing water rights to prevent further environmental damage to a deteriorating lake. [Walker Lake](#), which is located in Western Nevada and gets its water from Walker River, suffers from an upstream diversions of the water by farming and ranching operations. Over time, water usage by those operations increased, and the lake shrank. The reduction of water changed the lake's chemistry, causing it to become inhospitable to recreation and fishing, and native fish are struggling to [stay alive](#). This issue has been around for a long time. Litigation surrounding the lake started over a century ago, and in 1994, Mineral County intervened to assert a "public trust" claim and requested that a minimum inflow into the lake be required. However,

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 legal stewardship of water.

Coming up:

[Environmental Law Institute: Citizen Science: Concepts and Applications for Enforcement](#); September 25

[National Coastal and Estuarine Virtual Summit](#); September 29-October 1

[Wildfires and Resulting Impacts to Water Bodies Used as Drinking Water Sources](#); September 29

[CPEX Virtual Growth Summit: Past, Present, and Future: Urban Adaptations for Uncertain Times](#); September 29

[CPRA Board Meeting](#); Aberville, LA; September 30

[Mississippi River/Gulf of Mexico Hypoxia Task Force Virtual Public Meeting](#); October 1

[WEFTEC](#); October 3-7

[Virtual Governor's Advisory Commission Meeting](#); October 7

[Making the Case for Equitable Water Infrastructure Investment, Repair and Upgrades](#); October 8

[ASBPA National Coastal Conference](#); October 13-16

[Deadline to Submit Projects for the Atchafalaya Basin Program](#); October 15

[CPEX Virtual Growth Summit: Time to Define the New Normal: Dr. Michael Oppenheimer on Our Future Climate](#); October 20

[CPRA Board Meeting](#); Baton Rouge, LA; October 21

Water jobs:

[Public Information Specialist](#); Mojave Water Agency; Apple Valley, CA

[Attorney \(Drinking Water Unit\)](#); California State Water Resource Control Board; Sacramento, CA (deadline 9/30/20)

[Attorney III \(Water Rights Unit\)](#); California State Water Resource Control Board; Sacramento, CA (deadline 10/5/20)

[Attorney III \(Drinking Water Unit\)](#); California State Water Resource Control Board, Drinking Water Unit; Sacramento, CA (deadline 10/6/20)

[Staff Attorney, Fossil Fuels Program](#); Earthjustice; New Orleans, LA or Texas

[Policy Specialist \(Resilient Coasts & Floodplains\)](#); NWF; D.C.

[Senior Specialist \(Water Stewardship\)](#); Gap, Inc.; San Francisco, CA

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such a mandate means that the upstream operators (prior appropriators) would have to limit their water usage. It made its way to the 9th Circuit, who then [assigned](#) it to the Nevada Supreme Court to address the issue of whether the public trust doctrine applies to rights that were previously obtained. The Nevada court recognized the public trust doctrine as a legal principle that creates an obligation for the government to preserve natural resources, but found that Nevada's water law, which includes the [doctrine of prior appropriation](#), already incorporates the public trust doctrine and that reallocation of water rights is not permitted without a statutory change. The court's decision conflicts with a [California Supreme Court decision](#), in which the Court held that the public trust doctrine requires the state to supervise division and ensure that trust values are considered. This is a setback to the idea that the public trust doctrine can be a path to greater environmental protection. But fret not! All is not lost. The Nevada court acknowledged that the public trust doctrine applies to the state water regulatory regime. Not only that, but Chief Justice Pickering's dissent argued for the consideration of the public trust doctrine and criticized the majority for creating a precedent that hinders enforcement of the public trust doctrine. And if we've learned anything from Ruth Bader Ginsburg, it's that dissents can set the stage for major changes down the line (or stream).

Life's a Beach

Hurricane Sally decided to take a beach vacation last week and brought with her storm surges and winds. Gulf Shores in Alabama and Florida was one of the first to experience her fury, and the communities around it have not yet fully recovered from previous storms. However, [according to some scientists](#), the damage could have been much worse if not for the beach nourishment projects initiated in the early 2000s. Beach nourishment has been long argued for as a way to build climate resiliency. Sand gets dredged and pumped onto beaches to build them up and increase their size. The idea is that a wider beach absorbs some of the initial brunt force of storms and protect coastal communities. (If you haven't read our [publication on dredging](#) yet, you're missing out. Luckily, we've got you covered.) However, not everyone is onboard the beach nourishment train. The process is expensive, it [wreaks havoc on biological communities](#), and some research shows that nourished beaches just aren't as stable as natural ones. They require upkeep and maintenance every few years. In 2016, Santa Rosa County in Florida's beach restoration project dumped 2 million cubic yards of sand on Navarre Beach, but now [100 million cubic yards were lost](#) as a result of Hurricane Sally. Climate change makes storms more frequent and powerful; coastal communities are faced with a decision of whether to [stay or go](#). In many coastal areas, cities and counties have grown in both population and real estate value—so leaving isn't much of an option. For places like this, climate resiliency is becoming more of a priority for state and local governments that want to keep their communities safe. They're allowed to [talk about climate change in Florida](#) these days, right?

My World's on Fire, How About Yours?

The western U.S. has been plagued by wildfires for weeks now, and not only have the fires affected the air quality in the area, but [it's also affecting the water quality](#). Drinking water [tests](#) show the presence of an abundance of toxic and carcinogenic substances released from the the burning vegetation, buildings, and plastic materials. Anyone who has lived in New Orleans knows the hassle of improperly treated drinking water and is no stranger to "boil water" advisories. In this case, however, boiling the water may make it worse. Some of those compounds evaporate at room temperature and get released into the air, which increases exposure risk. This leaves affected regions [between a rock and a hard place](#). The water can't be boiled, and at-home filtration systems aren't adequate enough. EPA and state and local authorities are still trying to figure out the extent of the contamination and how to address it.

Humans aren't the only ones impacted by the fires. Many species have had their habitats incinerated by the flames. But out of the darkness comes a hero: [the beaver](#). Beavers build dams, form ponds, and dig canals that then become refugia for animals and plants, saving them from the wildfires. Not only that, but wetter landscapes are better at resisting fires and recovering from them. Maybe we shouldn't have spent the last couple of centuries eradicating them and turning them into hats (by the way, people attempting to make articles of clothing out of animal skins is a weird YouTube hole we have decided not to send you down).

