

TUWaterWays

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

[July 9, 2021](#)

[Good Gracious, Is It Just Us or Is It Getting Hot?](#)

[June 2021 was the hottest on record](#) in North America, and the second-warmest in Europe. No one is safe; not [Topeka](#), [not the Arctic](#). The West has been experiencing [heat wave after heat wave](#), with temperatures breaking more records than an Olympic athlete and forcing [states](#) and [federal](#) governments to take emergency measures. As if heat wasn't enough, we're going through one of the worst droughts the U.S. has experienced in the past century. [More than 93% of the land in Western states is in drought conditions](#), and the drier soil heats up faster and acts like one giant furnace. The droughts are also exacerbating water shortages all over the region. [Lake Mead is shrinking](#) (though legislators are working on a [possible solution](#)), as is the [Klamath River Basin](#), and several cities and towns in California are finding themselves facing restrictions for water usage—[some have no water at all](#). Utah's [Great Salt Lake](#), which gets most of its water from snowfall, is experiencing decreases in water level due to abnormally dry soil and less-than-usual snowfall. Lakes are like well-oiled machines—you mess with one component, and it might be all over. While some states are drying up, the ones that do have water are finding that the water temperature may pose a risk to organic life. But the good news is that they're trying to do something about it. After discovering that the warming water is dangerous to the salmon population in the Columbia River, Washington State's Department of Ecology set temperature standards pursuant to its CWA Section 401 authority, and the Washington Pollutions Control Hearings Board recently released a [decision](#) siding with the Department of Ecology.

Things are looking bad on the West Coast. Well, what about the East? It can't be as bad, right? Well...[it's not worse](#), but it [isn't faring much better](#), though in a different way. The East sees more moisture, which traps the heat, so while the water vapors help absorb of the sun's heat and cools things down during the day, that heat gets trapped in the air at night. And to our Midwestern friends, don't worry! We didn't forget about you. [Lake Michigan's water levels are showing signs of swinging](#) to either extremes. High levels are getting higher, and low levels are getting lower, and as a city that sits on the literal edge of the lake, that uncertainty is certainly going cause some anxiety.

Moral of the story: no matter where you live, the heat will find you.

With all that heat, why not go to the beach? Well, before you do, check out the [report](#) by Environment America on the presence of [fecal bacteria](#) to make sure you're going to a safe one.

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:

[Wetland Education Teacher Workshop](#); LDWF Grand Isle Research Lab; July 11-16

[NALMS Harmful Algal Blooms Drinking Water Webinar Series](#); July 14

[National Marine Educators Conference](#); July 13-17

[AWWA: Digital Transformation in the Water Sector](#); July 20

[EPA Small Drinking Water Systems: Drinking Water Microbes 201](#); July 27

Water jobs:

[Economic Development Manager](#) or [Program Director](#); Louisiana Bucket Brigade; River Parishes, LA and New Orleans, LA

[Assistant or Associate Scientist in Hydrogeology](#); The Jones Center at Ichauway; Newton, GA

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

[Water Policy Manager](#); Conservancy of Southwest Florida; Naples, FL

[Law Clerk](#); San Francisco Baykeeper; San Francisco, CA

[Senior Policy Advisor, Natural Climate Solutions](#); The Nature Conservancy; Arlington, VA

[Water Policy Advisor](#); Tuvli; Washington, DC

[Senior Manager, Environmental Policy \(EMEA\)](#); Amazon; Brussels, Belgium

[Program Officer – Plastics Initiative](#); The Ocean Foundation; Washington, DC

[Strategic Program Director – Water, Climate Change, and Resilience](#); International Water Management Institute; Colombo, Sri Lanka or other regional office

6325 Freret Street, 1st Floor
New Orleans, LA 70118
504-865-5982

tulanewater.org

TWITTER: [@TulaneWaterLaw](#)

Court Cases Galore

We're probably going to need [a million lawyers](#) to handle all of the litigation coming up. Courts are finding themselves increasingly involved in environmental issues (perhaps because legislative bodies seem unwilling to handle the challenges).

First, let's talk about the big one. The U.S. Supreme Court announced that it will be hearing [Mississippi vs. Tennessee](#), its first-ever state vs. state groundwater case. At the center of the case is Tennessee's pumping of water from the Sparta-Memphis Aquifer, part of which lies beneath Mississippi. So, Mississippi said, "[Good for you](#), but that's our water," and filed a complaint for declaratory relief. The Supreme Court will hear oral arguments during its October 2021-2022, which means we can likely expect a decision in summer of 2022. Until then, you can at least listen to some [songs about Tennessee and Mississippi](#) to get you hyped up.

Next up is Iowa! Earlier in the year, Iowa Citizens for Community Action filed suit against the State of Iowa for neglecting to set numeric criteria and develop a plan to address nutrient pollution in the Raccoon River. The plaintiffs sought, among other things, declaratory relief establishing that the state has an affirmative responsibility under the public trust doctrine to manage nutrients. In June, the Iowa Supreme Court [declined](#) to provide it and dismissed the case. The narrow 4-3 decision yielded no less than three dissenting opinions, with the majority holding that the plaintiffs lacked standing and that the case involved a "nonjusticiable political question." Unsurprisingly, the plaintiffs have filed a [petition for rehearing](#) on the grounds that the Iowa Supreme Court overlooked certain issues, particularly ones related to the public trust doctrine. This case impacts not only Iowa but may give other states insights as to their options in addressing nutrient pollution. **cough** Louisiana **cough** Not to mention, the Raccoon River flows into the Des Moines River, which flows into the Mississippi River.

Iowa Citizens v. State of Iowa is one of many cases attempting to bring the courts into the fight for increased environmental regulation. Last week, the [Center for Biological Diversity](#) filed a petition for review of EPA's approval of a general permit covering stormwater discharges. Earlier in the year, EPA issued a Multi-Sector General Permit (MSGP) that allows discharges in waterways. The Center's [complaint](#) alleges that EPA violated the Clean Water Act and Administrative Procedure Act (and a litany of other statutes) by allowing stormwater discharges from industrial facilities, which they argue will lead to increased plastics pollution, as many of the facilities include chemical manufacturers.

Lastly, the Conservation Law Foundation added a few more cases onto the courts' dockets, filing suits against [Gulf Oil](#) and [Shell](#) that allege that the companies violated the CWA and the Resource Conservation and Recovery Act (RCRA) by failing to prepare their facilities for flooding by extreme storms caused by climate change. These lawsuits come shortly after the 1st Circuit Court of Appeals lifted a stay and allowed the organization's case against Exxon (with many of the same claims) to proceed. Whew! This sounds like the upcoming months will be eventful for the courts and they'll eventually have to grapple with their developing roles as not only law interpreters, but lawmakers—and [we love that journey for them](#).

Don't be Salty!

Okay, enough of the bad news. Let's turn to new scientific advances - that always cheers us up. Scientists may have developed a [new desalination technique](#) that can make seawater drinkable. The technique uses a nanofiber membrane to filter salt out. Membranes have been used to desalinate before, but this method runs into obstacles because the membrane eventually becomes too wet to reject the salt. However, this new membrane has a superhydrophobic surface that allows it to work for up to 30 days, all because of the magic of [SCIENCE!](#) Now, this is all very new, and potential uses are still [just a dream](#), but the highly trained material scientists here at Chateau d'Eau are cautiously optimistic.