

TUWaterWays

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

[November 6, 2020](#)

Darn Tootin, Parties are [Cooperating Here!](#)

After seven long years of legal troubles, the Army Corps is [resuming](#) the largest inflood flood control project in the United States. The project, called the Fargo-Moorhead Area Diversion project, consists of a \$2.75 billion dam, embankment structure, and diversion channel, will protect Fargo, North Dakota, and Moorhead, Minnesota from Red River flooding. After seven major floods on the Red River from 2000-2009, Congress authorized the project in 2013. Then, in 2017, a federal judge halted the project with an injunction due to concerns over local impacts on upstream communities. This wasn't the project's only source of trouble – Minnesota authorities had also denied a permit for the project. A settlement agreement has finally been reached and the project will continue. The “monumental” agreement has set up a fund for upstream farmers, landowners, business owners, and others who may be affected by the massive project, as well as funding for other flood control projects to be completed, and several other programs. In addition to the agreement, some components of the structural design has been changed, leading to Minnesota approving the permit for this new version of the project. As the project moves forward, officials will be compensating those upstream communities for land takings associated with the project, as well as mitigating other flood impacts from the project, such as seasonal farmland flooding. After such a long legal battle, it's nice to see compromise as opposed to lengthy litigation or [physical altercations](#).

[Whose Water is it Anyways?](#)

It's one of our favorite questions in the water law world – who has rights to this water? It sometimes can feel as though everything is made up and the law doesn't matter. That is especially the case regarding the [Fresno River](#). But, Californians may soon be getting a clearer answer, as the waterway will be the first river in 40 years to go through a rights settlement by the California State Water Resources Board. The Fresno River has a 230 square mile watershed, and has been the source of contention for years, primarily due to its Hidden Dam that creates stored water in Hensley Lake. The Water Board issued a license to the Bureau of Reclamation for some of that water, and that license is managed by the Madera Irrigation District (“MID”), an agency that also has rights to some of the Fresno River water. Management of the license allows MID to control distribution of the river water, and downstream landowners claim that MID is not giving them their fair share of water to which they have rights. Under California water law, riparian rights holders can use however much water is “reasonable,” but because MID allocates the water each year,

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:

[AWWA: Swan International Smart Water Symposium](#); Virtual/Denver, CO; November 10-11

[Drinking Water Webinar: Creating Resilient Water Utilities](#); November 17

[Property Values and Water Quality: Supporting Decisions with the Hedonic Model](#); November 18

[Drinking Water Models and Tools](#); November 18

[CPEX Virtual Growth Summit: Green Infrastructure in the Delta](#); November 18

[Rocky Mountain Mineral Law Foundation: Water Law Institute](#); November 19

Water jobs:

[Water Rights and Instream Flow Specialist](#); Montana Dept. of Fish Wildlife and Parks; Helena, MT

[Programme Associate](#); Global Water Partnership; Stockholm, Sweden

[Associate Attorney](#); Earthjustice; Seattle, WA

[Staff Attorney](#); Delaware Riverkeeper Network; Bristol, PA

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

[Hydraulics and Hydrology Lead](#); Dewberry; Raleigh, N.C.

[Great Lakes Equity and Justice Partnerships Senior Coordinator](#); National Wildlife Federation; Chicago, IL

[Surface Water Storage Fellowship](#); EPA; Cincinnati, OH

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it is essentially deciding how much is reasonable. MID claims that its hands are tied by previous Water Board orders, one of which directs it to apportion water contrary to California water law - based on proximity to Hidden Dam, as opposed to senior vs. junior water rights; therefore, it filed a [petition](#) for adjudication by the Water Board in 2018. Since then, the Board has ordered mediation between all the parties, which failed, and the parties requested a third party administrator to apportion the water, which the Board denied. In a letter sent last month, MID claims that, “without addressing critical issues, managing the waters of the Fresno River will be an impossible task for any water master,” again calling for intervention by the Board. In a recent meeting by the Water Board, it voted 5-0 to begin the [statutory adjudication](#) process. Now that the door for legal action has been opened, many more players may step in to fight for their own water rights, and the rights of the environment, on the Fresno River. For example, environmental groups and the California Department of Fish and Wildlife have also expressed interest in more apportionment for downstream riparians, because that would create more habitat for native fish in wetter years. The last time the State Water Board went through this process it took 13 years to determine water rights on a creek, so it could be awhile until we have answers.

Who Wants to Live Forever?

Per- and polyfluoroalkyl substances (“PFAS”), that’s who. Although we haven’t written about PFAS in awhile, it feels as though they are constantly in water news. Good thing there are a lot of songs with “forever” in the title and lyrics! In case you need a reminder, PFAS are highly water-soluble chemicals, sometimes known as “forever chemicals” due to how long they last in water and humans, that cause various [public health and environmental concerns](#). Last week, the Santa Clarita Valley Water Agency (“SCVWA”) [filed a lawsuit](#) against several companies that they alledge are responsible for contaminating southern California water with PFAS. In the [complaint](#), SCVWA claims that these companies have known for decades the dangers of PFAS to public health and the environment, but provided no warnings and continued to produce and sell their products. The lawsuit is a response to the agency finding PFAS in 17 of their wells in August 2019, causing them to have to close 19. The agency claims that trace amounts of PFAS get into their groundwater due to product manufacturing and use, as well as wastewater discharge. SCVWA is asking for monetary damages as relief, possibly suing for millions of dollars for fees associated with investigation, remediation, treatment, removal, disposal, and monitoring. SCVWA also opened a PFAS treatment facility this month, with more on the way. As more states put PFAS regulations in place, these types of lawsuits may be [on the rise](#) in the future.