

TUWaterWays

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

June 4, 2021

Hurricane Season

With this issue of TUWW we officially usher in the Atlantic/Gulf of Mexico hurricane season. We wish everyone well. Of course, it is wind that makes a hurricane. Rain—too much or too little—delivers more pain more often but, somehow, until we figure out how to give names to those events, we will likely continue to underplay the importance of preparing for and responding to them. Must be [human nature](#).

Flood? What Flood?

Remember Harvey? The hurricane, not the [Pooka](#). Think back: Harris County, Texas. Houston. 2017. Thirty-plus inches of rain and more than \$125 billion in damages. Oh, *that* Harvey. You can be forgiven if you forgot, because lots of people in the Houston area are feeling like it has been forgotten, and maybe selectively so. You see, following Harvey, the federal government via the Department of Housing and Urban Development promised lots of aide to patch things up and reduce future flooding risks. The Texas General Land Office (GLO) has now decided which communities will get a piece of the first \$1 billion of federal aid and [Houston, the biggest impacted city, got zero. It just worked out that way, according to GLO, but others are not so sure, citing the demographics and political leanings of Houston as being not in line with those allegedly favored by GLO Commissioner George P. Bush](#). Work arounds are already being discussed, but time and trust are in short supply. One thing is certain though....

Got Flood Plans? Walls and Rates Going Up

With hurricanes, floods, and infrastructure investments on the tips of so many tongues (How did [you celebrateate “Infrastructure Week”](#) last month?) this a good time to ask: what is the single most effective thing individuals can do to reduce their risk of catastrophic flooding loss? Other than not buying a slab-on-grade house in a floodplain, the answer is: purchase flood insurance. Even if you don't have to. That's because increasingly it is not average precipitation that you have to plan for, but extreme events—[events of which there is a growing consensus are becoming more common](#). But as flood events increase, so do flood losses and flood insurance claims—which means that somebody has to pay for those. After years of wrangling and delay, that somebody is about to be most flood insurance policy holders as [FEMA's Risk Rating 2.0](#) kick in. Initially planned to take effect in 2019, the Trump administration delayed the changes, but now they are poised to take effect—though [not without push back](#).

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 and Mueller: Advancement of Water Quality Initiatives Through Monitoring, Analytics, and Mitigation](#); June 8

[Atchafalaya River Basin Restoration and Enhancement Task Force Meeting](#); June 10

[AWWA ACE21](#); June 14-17

[Basics of the Clean Water Act](#); June 22

Water jobs:

[EarthJustice-Texas/Louisiana Fossil Fuels Program](#).

[Federal Policy Manager – Plastic Pollution Campaign](#); Oceana; Washington, D.C.

[Director, Sustainable Land Science](#); Conservation International; Arlington, VA

[Vice President of Regional Conservation](#); American Rivers; Washington, DC

[Climate Adaptation Planner](#); Center for Planning Excellence; Baton Rouge, LA

[Attorney](#); State Water Resources Control Board; Sacramento, CA

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But all the insurance in the world won't hold back rising seas—there is ultimately a difference between flooding and inundation—and that reality is sinking more broadly and deeply. Case in point, Miami, where a new [Army Corps study puts a wall 20 feet high and 6 miles long](#) on the table. That won't come easy, cheap, with potable groundwater, or without a [profound reckoning between the city, its people, and their relationship with the sea.](#)

Our Most Precious

If water is so important, why do we have so much trouble actually taking care of it or even agreeing on whose job it is to do so? The answer seems to be, because we would rather just use water and hope that it will somehow be safe, secure, and available. How else can the arc of water protection be explained? Long the province of state law, from the 1890s through the 20th century, the federal government was prevailed on to do what states could not or would not do. This led to a blend of federal and state laws, not perfect but comparatively effective. Over the past two decades the pendulum has swung back with court decisions taking progressively more limited views of the reach of the federal Clean Water Act, leaving it to states to pick up the slack. That trend was reinforced by the Trump administration which, by rule, took an even narrower view of the federal role than courts had, but even then it did not say that the now looming deregulation meant water ways were not worth protecting, just that it was the states job to do it. But then it took additional acts to reduce the [role of states under the Clean Water Act, specifically with regard to water quality certifications under Section 401 of that Act](#). And did states step up to be fill the regulatory void? Not yet, and in some places—[Ohio for example-- legislation is moving to scale back even existing state laws to mirror the new federal standard](#). If that were not confusing enough, [some states are suing to overturn the Trump rule on water quality certifications](#), and the Biden administration has announced it is looking at unwinding the Trump rule and [it is seeking public comments on that](#). At the end of the day, the question is whether there is really any consensus that water resources are worth taking care of. If those regulations are judged by how little they burden businesses rather than how well they protect vital resources, then no one should count on them when things turn out badly. Who else could use a drink?