



# TUWaterWays

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

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## **MERCHANDISING! MERCHANDISING! MERCHANDISING! (Last Chance!)**

For 12 years, TUWaterWays has graced the inboxes and spam filters of hundreds, maybe even thousands, of the world's email accounts. Over those years, we have heard back more than once that TUWaterWays is your favorite newsletter. What hasn't been said is that all that's really missing in your life is some awesome merch that would allow you to rep the creators of your favorite newsletter. But we read between the lines and knew you meant to say it. Therefore, we've taken some of the amazing designs [students at Tulane's School of Professional Advancement made](#) for us and turned it into merch! [These bags and hats are currently on pre-sale, but the shop will close by August 12<sup>th</sup>. So go check it out right now!](#) Of course, we are hoping these items are a fundraiser for us, but if you're not into any of these items, you can just [make a donation!](#) That would surely be more satisfying than just waiting until the next round of swaggy-ness drops.

## **Calling All Recent Law School Graduates! (Last Chance!)**

Well, at least two recent law school graduates. This Institute is in the market for our newest postgraduate research fellow. It's a two-year position for someone who graduated law school with a JD or LLM degree in the last two years. This fellow will play an important role in our research, publish on a variety of water law and policy issues, supervise students, and contribute to this very newsletter. It's [a program with a pretty impressive track record](#) at this point. [Find the water law job posting here.](#)

The Water Law postgraduate fellow program has been so successful, that those handsome devils over at the Tulane Center for Environmental Law decided they needed a postgraduate research fellow of their own. This will also be a two-year position, but it will have a purview wider than just water law and concentrate on natural resource and environmental issues that affect Louisiana and related locales. [Find this environmental law job posting here.](#)

And if you have any such bright law school graduate in your life who you think might be a good fit, share this with them over the next week or two. There's a good chance they're currently not reading TUWaterWays after just going through the bar exam. **Resumes will be accepted through this coming Monday, August 12<sup>th</sup>!**

## **Reserved Rights? Sounds Like Orc Mischief to Me!**

It's not mischief. In fact, it might actually be part of responsible resource management that [Treebeard](#) would appreciate. Reserved rights are simply the water rights that are reserved to go along with the federal reservation of land. Essentially, the Federal government automatically reserves enough water to fulfill the purpose of that reserved property. It's a legal [doctrine](#) going back to the early twentieth century when it became apparent that the Native Americans who were sent to reservations had to actually survive there, and that survival was dependent on access to water – water that Western states hadn't accounted for until courts made them.

120 years later, it's a time of western-style [water shortages](#) and [concerns](#) heading east. And that's not even counting people in the west trying to solve their concerns by [taking water from the East](#) ([they've seen it coming up there in the Great Lakes](#), at least). But because, basically, the Eastern US has had plenty of water, many aspects of the West's water

management haven't made their way past the Great Plains. And that includes the application of reserved rights. However, it's time for those of us in the East to quit assuming things away!

Nowhere in the East is it more important to get a full accounting of water and legal tools at our disposal for managing that water than our biggest, longest, most important highway of commerce, er, waterway, er, ecosystem, the Mississippi River. That is why [this Institute published this week an exploration of federal reserved rights, including on tribal reservation and national wildlife refuges](#)! It's part of our ongoing mission to get a grip on the laws and policies that can (and should?) impact a body of water that plays a huge role in the lives of everyone from Bemidji to Biloxi, and beyond!

## The Unnavigability of "Navigable"

As much as this Institute on Water Resources Law & Policy enjoys working on issues like [insurance](#) or [carbon markets](#), sometimes we get to talk about actual water resources law and policy. Just see the above-discussed [reserved rights paper](#)! Well, one of the more cluttered corners of this little legal field deals with navigability. It's [a word with roots that go back thousands of years](#) to the English language's distant Proto-Indo-European roots. It's a word that gets thrown around in lots of different laws, often without much consistency from law to law. Loyal TUWaterWays readers surely haven't forgotten the interminable updates about "Waters of the United States" and "navigable waters." That was about the applicability of the Clean Water Act. Well, just a week or so ago the 5<sup>th</sup> Circuit Court of Appeals announced [an opinion largely centered on the term "navigability,"](#) and whether or not it would be proven by the Department of Justice at trial in its case against Texas's Governor Abbott, who directed [buoys and such](#) be placed in the Rio Grande. To those of us who [swim often in these "navigability" waters](#), the [opinion itself](#) was something of a mess. Among other things, it refers to "navigability" as it determines property title under a river, while the issue of navigability in this case is how it is determined for the purposes of the Rivers and Harbors Act of 1899. It's really easy to get confused by this stuff, even if you're a Federal Circuit Court judge, apparently. Expect to hear more about this if the case goes to the Supreme Court and/or as it gets determined at the upcoming trial. You're going to get sick and tired of "navigable" all over again!

### Coming Up:

#### [Mississippi River Commission Inspection Meetings](#)

Cape Girardeau MO, Aug. 19, 2024

Memphis TN, Aug. 20, 2024

Lake Village AR, Aug. 21, 2024

Morgan City LA, Aug. 23, 2024

#### [Application Deadline for Coastal Leadership Institute](#)

August 23, 2024

#### [State of the Coast 2025](#)

Proposals Deadline September 23, 2025

### Water jobs:

[Senior Research Fellow; Tulane Institute on Water Resources Law & Policy; New Orleans, LA](#)

[Senior Research Fellow; Tulane Center for Environmental Law; New Orleans, LA](#)

[Visiting Professor \(Clinical Assistant Professor\); Tulane Environmental Law Clinic; New Orleans, LA](#)

[Principal Counsel, Environmental Law; Berkeley Lab, San Francisco Bay Area, CA](#)

[Attorney; California State Water Resources Board](#)

[Wildlife Biologist/Ecologist; The Water Institute, Baton Rouge LA](#)



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.

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