

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
December 10, 2021

## **\*Klaxons Blast\* The Proposed Rule to Define the Waters of the United States Has DROPPED!**

Many are tired of hearing about it. Some are probably tired of writing about it, but as long as the fight over the extent of the Clean Water Act continues to be focused on the regulatory definition of “Waters of the United States,” the TUWaterWays editorial staff knows the work here must continue.

On December 7<sup>th</sup> (because why make another day [live in infamy?](#)) [the Federal Register published the proposed rule](#) put forth by the Army Corps of Engineers and the Environmental Protection Agency to succeed the rule they put forth just two years ago. That rule may or may not be in place for you now, depending on which state you live in, but [probably not](#).

So, what of this new proposed rule? We’ve all got 57 days (give or take) to figure that out. The public comment period closes February 7<sup>th</sup>, 2022. Rest assured that Tulane’s best and brightest are diving into this new rule at this very moment. As we draw together our reactions into a cogent analysis, we’ll be sure to share with you, dear TUWaterWays readers, but we’d be very happy to hear your impressions over the next two months, as well. This sea is too rough not to have all hands on deck.

## **Peter’s Broke. So, How Can We Pay Paul?**

Widespread drought in [the American West](#) has wreaked havoc on many water supply systems, and each are having to deal with it in their own way. The San Francisco Public Utilities Commission, for example, has [declared a water shortage emergency](#) and is asking residential and commercial users to cut back their use. However, because the utility still has financial costs to run the system, the utility is going to add a surcharge to the bill to offset the money lost by selling less water. It’s a peep into the weird super-niche area of water utility law where the question is often, “What is being paid for: the water or the service?”

Who knows how long this emergency will last in San Francisco or how successful the effort will be. Given that the State of California set a goal of 15% reduction in overall water usage through voluntary cuts last year and fell short with just a 6% reduction (despite an impressive 13% reduction in October) and [mandatory cuts are looming](#) on the horizon, reduction of water use in San Francisco is hardly a done deal, no matter how many [toilet-sinks](#) get installed.

While the utility in [The City](#) tries to manage a shortage while still owing money, far away but still in [the American West](#) a water administrator is trying to deal with shortage while still owing water, not to customers, but to another state. The Pecos River has surely been on your mind ever since TUWaterWays [reported](#) on it last 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:**

[Virtual 2021 Hypoxia Task Force Meeting](#); Dec. 14

### **Water jobs:**

[Associate General Counsel](#); National Wildlife Federation; Reston, VA

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

[Adaptation Program Director](#); Georgetown Climate Center; Washington, D.C

[Sustainability/ESG Director](#); PwC; multiple locations

[Research Associate](#); University of New Orleans; New Orleans, LA

[Communications Specialist](#); Environmental Defense Fund; Multiple

[Research Associate 1](#); University of Louisiana Lafayette; Lafayette, LA

[Organizing Representative](#); Sierra Club; New Orleans, LA

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Well, the fun hasn't stopped. The Pecos still runs through [a staggering landscape](#) that features [its very own Dead Sea](#), and other wonders in [an area dominated by oil and gas extraction](#) in a way familiar to those of us [along the Gulf Coast](#). On the New Mexico end of the Pecos, the State Engineer has issued an [order of administration](#) to begin the process of figuring out who can have what water cut off so that New Mexico can meet its obligation to Texas under the Pecos River Compact. New Mexico has pushed this off for as long as possible by supplementing shortages in Pecos River water with pumped groundwater, but that was never a permanent solution. It's all one last bit of "fun" for the Land of Enchantment's top water official who is [resigning at the end of the year](#) in protest over the state's unwillingness to adequately support the office.

## [Under The Sea](#)

How often do you ever think about the bottom of the ocean? Or what's under the bottom of the ocean? Not often, right? We've all got plenty going on up here as it is. So maybe it's not surprising that it's often said that we know more about the surface of the moon than the seafloor (despite [James Cameron's best efforts](#)). That doesn't stop some people from having big plans for the world's seabeds, despite how disheartening many of our glimpses into that world have been lately.

For instance, the idea for using brine solutions to achieve carbon sequestration has been around for a little while now, and there are massive sub-oceanic briny aquifers around the world. Why not send the carbon down there? Well, partially because we have no idea how adding carbon to those aquifers would change them given that they're under enormous pressure and often at very high temperatures. A [new study](#) by researchers at the University of Bath is trying to solve some of those questions right now. Carbon sequestration in a manner that might actually trap the greenhouse gas for centuries or more? That's good. Undertaking major geoengineering projects without understanding their consequences while also setting up a prequel to [Pacific Rim](#)? That's not so good. Other big plans for seabeds include [sinking Big Tech data storage centers under ocean](#) to absorb the heat they create and save on the energy and water needed to cool them on land. What effect all that heat would have on the ocean in those areas is unknown. Seemingly, a whole bunch of companies (and countries?) are interested in mining seabeds for minerals, especially those needed for lithium ion batteries that are going to power the transition away from carbon-based fuels; one Canadian company [assures everyone](#) that they have enough money to do the job, even though they have \$200 million less than they were supposed to. Not worrisome at all. Someone check with BP to see if they have any thoughts about doing work at the bottom of the ocean without the money or technology in place to deal with it [when something goes wrong](#). There's even an entire International Seabed Authority meeting in Jamaica right now that is supposed to set up rules for the whole world to follow when it comes to seabed mining. Countries with small economies and big seabeds, [like Cook Islands](#), are trying to navigate the coming onslaught without getting swallowed whole, while researchers warn about the [potential devastation to deep sea biodiversity](#) or [bringing back dangers](#) that were once dealt with by simply dumping them overboard. But those are potential problems, there are already real problems aplenty playing out around the world. [Bottom trawling](#) is proving to do to seabeds what F5 tornadoes do to towns in the Midwest and Alabama. Also, our trash seems to just [pile up down there](#) in a terrible way, so much so [that a robot to clean human trash from the ocean floor](#) has already been taken out for a spin in Croatia. But, hey, if seabed mining, ocean data storage, and sub-oceanic aquifer carbon sequestration can solve all our problems today, how much should we worry about [yeti crabs](#) and [tubeworms](#)? [What's the worst that could happen?](#)