



# TUWaterWays

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

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## An Ounce of Prevention...

may be worth a pound of cure, but how much cure would have made that cure worthwhile? \$11 billion perhaps? That is really the question on the table after the announcements that [Dupont \(and others\)](#) and [3M](#) have agreed to put up \$ 11.4 billion to settle lawsuits against them for the contamination of water resources by the [PFAS products](#) they manufactured and sold. The settlements, which will forestall trials that were otherwise about to begin, will make funds available to communities and water providers to detect, treat and remediate PFAS pollution. New Orleans's own Sewerage and Water Board is one of the plaintiffs.

Given: that EPA has now adopted rules to eliminate PFAS pollution; that there is apparently no safe level of PFAS exposure (and that it is now almost ubiquitous in humans, animals, soils and water); and that the cost of dealing with PFAS pollution—to the extent it can be—has been pegged at around \$63 billion, it is clear these settlements will only close a chapter in the PFAS saga but not the book. Indeed, this settlement doesn't even cover all of the multidistrict-litigation-PFAS cases in front of Judge Gergel in South Carolina, so it's not the end of this matter. Like the chemicals themselves, this could go on [forever](#).

All of this takes us back to the first question. Knowing what is now known, would anybody ever put such risky products into broad circulation again? Well, consider the record. It took more than 60 years to come up with laws and rules to regulate these products. There is [evidence that the manufacturers knew about and repressed information about the risks for most of those 60 years](#). Finally, lots of money was made selling chemicals and PFAS treated products over those years. We suspect the answer is "yes," and that it is quite likely that it is still happening every day. Thank goodness we have [Stuart, Florida](#) to look out for us.

## Trust Us, You Can't Trust Us

Can we all agree that water is a terrific thing to have? Can we also agree that without potable water a community will have a hard time [making it](#)? While we are at it, can we agree that if the federal government creates that community for you and makes (or pretty much makes) you live there that it has some obligation to help you figure out how to get that water? Apparently not, at least on that last one. Oh, if you are assigned to a military base or required to live in a prison, then you can bet access to water is part of the deal. But this not the case if you live on federally recognized Indian reservation according to a new [5-4 ruling from the United States Supreme Court in Arizona v Navajo Nation](#). If you have been paying any attention to TUWW, or life in general, you know that much of the western United States is living beyond its current water means and that who gets how much water from the Colorado River is a big part of charting a path forward for the seven states that share it with the Federal government and Mexico. As complicated as that is, it gets even dicier when the dozens of Native American tribes that depend on that water are factored in. But fair's fair, right? And since the Federal government has created something of a trustee/beneficiary relationship with those tribes it should help them get to the table, right? Nope. Turns out there is no affirmative duty on the Federal government to help them get water and, according to Justice Thomas, there really is no trust relationship. So, what is a tribe to do? That is a very good question since literally everything the

tribe has to do to be included in the West's water planning has been rebuffed as being not raised in the right way, at the right time, or in the right place—a history of Kafkaesque futility nicely spelled out in the dissent authored by Justice Gorsuch. [You can read it all here](#). For our readers who are not members of the Navajo Nation (or not into the whole human dignity thing?), this is still worth your attention since the case is just the latest in recent line of Supreme Court decisions that seem to go out of their way to restrict the authority and obligations of the federal government to with respect to natural resource stewardship. Public trust doctrine mavens should pay special attention to Justice Thomas's shot across their bow. [There is a lot going on here](#).

## They Did What?

Spring is such a lovely time of year, a time of renewal and hope so rife with possibilities it can't be a coincidence that is the time each year that the Louisiana Legislature returns its nesting grounds at the Louisiana State Capitol. This year was no different, and, as always, the now-departed migratory legislators have left their mark. Most of their work is beyond our purview, but water did figure into their agenda. To see how, [take a look at this rundown](#). Tip of the hat to the folks at the Louisiana Water Resources Commission for preparing this analysis. Good job.

## Big Doings at Tulane IWRLP

Talk about [burying the lede](#), we come now to the water story of not just this week but of many weeks. In January 2007, the Tulane Institute on Water Resources Law and Policy hung its shingle with dreams of being useful and a few grant dollars [in its pocket](#). It was [a one-person operation](#), and director Mark Davis was that one person. 16 and a half years have passed, and the Institute has carved a niche for itself as a go-to place for anyone trying to get a handle water law and policy but not having to pay for it. Lots of students, more than dozen postgraduate fellows, and several staff members have come and shaped the Institute, but two things have not changed. Mark Davis is still the director and Christopher Dalbom, since 2012, has been on board to help keep the Institute moving forward. Currently Chris is serving as Assistant Director. All of that changes on July 1 when years and years of continuity and stability are [thrown out the door](#), and life as it has been will be no more! On July 1, [Chris will become director of the Institute](#) and Mark will become an affiliated faculty member of the team (as well as being director of the Tulane Center for Environmental Law. Dizzying stuff, we know. [It is the end of the world as we know it, and we feel fine](#).

### Coming Up:

[14<sup>th</sup> Louisiana Water Conference, Baton Rouge, LA, August 2-3](#)

Tulane Environmental Law Summit, New Orleans, February 23 & 24, 2024 (save the date!)

### Water jobs:

[Senior Campaign Coordinator](#); National Wildlife Federation; New Orleans, LA

[Federal Policy Manager](#), [Senior Counsel](#), [Campaign Director \(Offshore Drilling\)](#), and [Senior Field Representative](#) (NY) Oceana

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

[Deputy Director](#); Bayou City Waterkeeper; Houston, TX

[Water Policy Advisor](#); The Nature Conservancy; Home-based/Remote

[Climate Change & Climate-Resilient Coastal Development Policy Expert](#); DT Global; Belgium

[Research Attorney](#); Roger Williams University (RI SeaGrant); Bristol, RI

[Senior Fellow \(Water Security\)-Global Food Security Program](#); Center for Strategic & International Studies; Washington, DC



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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