

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
January 20, 2023

## Extra, Extra, Read All About It! Everything You Need to Know About Big Wetlands Case Explained (Mostly)

We understand. Really. We have all been to parties and family gatherings where the hipsters in the room start talking about [Sackett v. EPA](#) and what it means for our waters and wetlands. [It can get awkward smiling, nodding, and hoping that nobody asks what you think](#) about the case that may well determine how protected our nation's waters will be for years to come. If only there was a way to be better informed. Well now there is. The [latest white paper from the Tulane Institute on Water Resources Law and Policy](#) may be just the thing you have been looking for. Concise, well researched, and with no axe to grind, it can help make you more confident and attractive in professional and social settings when the topic of water stewardship comes up. Feel free to quietly suggest it to those hipsters as well. They may need it too.

## Light a Candle, Cross Your Fingers, and Turn on the Tap

We take lots of things for granted that we really shouldn't. Friendships, airplanes, [Irma Thomas](#), and the [Giving Tree](#), for example. Oh yeah and the water we drink, for example. Day after day, year after year, they are there for us and our pleasure and comfort, but do we really appreciate them? Do we ever say thanks? In the case of water, the answer is most likely no. It takes time, talent, money, and sometimes [clams](#) to bring you cheap, clean water. But just how good is that water? Well, the list of places that don't really have acceptable water service (which is not the same as saying the water is not safe to drink) is longer than most people think—at least here in Louisiana. A [recent preliminary report from the Louisiana Department of Health](#) (pursuant to a program created by the legislature in 2021) found that the water systems of 130 communities (out of 954) rated a D or F grade. Sure, 87% of all communities got passing grades, but that is cold comfort to folks and businesses in those with scarlet letters. Help may be on the way though thanks to recent federal legislation that is focused on upgrading public infrastructure. We hope.

But what if the problem is not aging infrastructure, poor administration, or contaminants in your water, but no water in your water? That is the reality now facing some communities in Arizona where wishful thinking, under regulated development, and booming populations have outstripped water supplies. [That is exactly what is happening in Rio Verde](#), which had counted on Scottsdale, AZ to provide it with water. But [Scottsdale has stopped those deliveries](#) (as it had warned of) and the resulting shock and disbelief is forcing a reckoning and, of course, lawsuits. Who's going to win? Who knows.

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:

Tulane Environmental and Energy Law Summit; March 17-18; New Orleans, LA

[Blue Carbon Law Symposium](#); May 17-18; Athens, GA

[2023 State of the Coast Conference](#); May 31-June 2; New Orleans, LA; [Proposal Submission Deadline](#), January 31

### Water jobs:

[Communications Director](#); Healthy Gulf; Multiple Locations

[Assistant Professor of Marine Affairs: Fisheries Management and Policy](#); University of Rhode Island; Kingston, RI

[Restoration Programs Director](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

[Regional Watershed Coordinator](#); Capitol Region Planning Commission; Baton Rouge, LA

[Water Quality Technician](#); Pontchartrain Conservancy; Metairie, LA

[Associate Attorney, Senior Attorney, and Paralegal](#); Earthjustice; Multiple Locations

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But lawyers are not alchemists and even the best ones can't turn earth into water. Even the Giving Tree had its limits.

### **Opening the Floodgates of Litigation**

Ever notice how often courts and public officials refuse to act because it would “[open the floodgates of litigation](#)”? Somehow the threat of people seeking redress at a large scale [gives some folks the vapors](#). Indeed it suggests that they don't actually know what floodgates are and that there are usually reasons for opening them. If that is the reaction to metaphorical floodgate openings, imagine what happens when actual floodgates open. If you imagined a court saying “Fine, we can deal with this,” then you imagined right because that is just what happened in a case brought against the US Army Corps of Engineers by the Mississippi Sound Coalition for injuries arising from the opening of the Bonnet Carré Spillway during the historic Mississippi River flood stages in 2019. In the name of saving lives and property, the Army Corps opened the spillway just upriver from New Orleans and diverted lots and lots of river water into Lake Pontchartrain, Lake Borgne, and Mississippi Sound. The plan worked as intended but the resulted in massive algae blooms, fish and dolphin deaths, and significant disruptions to the fisheries and tourist economies of coastal Mississippi. The plaintiffs did not seek money damages but did urge that federal law requires that the Corps of Engineers seek to avoid damaging “[Essential Fish Habitat](#)” and to consult with [National Marine Fisheries Service](#) before operating the Spillway. [Judge Louis Guirola Jr. agreed and ordered the Corps to engage in consultations with NOAA before the end of summer](#). Just what the Corps can do differently remains to be seen but the suggestion of plaintiff's lawyer, Robert Wiygul, that [pollution loads in the river](#) be reduced seems like a good place to start.