

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
October 13, 2015

Whoa WOTUS. Court Blocs Implementation of New Water Rule

The US Court of Appeals in Cincinnati (that's in [Ohio](#) for those readers [less familiar](#) the nation's great midsection) has thrown a spanner into the Obama Administration's effort to implement its new rule defining Waters of the United States for purposes of setting the jurisdictional boundaries of the Clean Water Act. The Court's [ruling](#) barred EPA and the Army Corps of Engineers from implementing the new rule anywhere in the U.S. until after the Court could hear the case on its merits. The challenge to the rule was filed by 18 states who argue that the rule as adopted is "manifestly illegal." The Court (in a 2-1 decision) concluded that there is a substantial likelihood that challenge will succeed on the merits, and that it would be harmful to have the rule inconsistently implemented among the states during the legal proceeding. Elsewhere in America, the WOTUS rule is being [challenged](#) by environmental groups for not covering enough waters and wetlands. Ultimately, this is headed back to the United States Supreme Court, whose [muddled decisions](#) regarding the reach of the Clean Water Act are the authors of this confusion. If more people actually understood what the Supreme Court did—and didn't—say in its 2006 landmark [Rapanos v. U.S.](#) decision(s), then there might be more sympathy for EPA, the Corps of Engineers, and the various litigants. To that end, TUWaterways would give a shout-out to anyone who could breathe life into Supreme's decision by matching the release of the Rapanos decisions with John Oliver's [Supreme Court Dogs](#) footage. It would be a true public service.

From the Climate Change Hopper: Bummer, Bummer, and a Glimmer

We are going to Hell in a handbasket, according to two new reports released this week. The first is a [study](#) published in the Proceedings of the National Academy of Sciences (PNAS) that projects the virtual or actual inundation of much the coastal U.S. from climate change related sea level rise. The projections for [South Florida](#) (yes you, Miami), [Boston](#), [Norfolk](#) and our own [New Orleans](#) are particularly bleak, especially in the absence of dramatic curbs on global warming. A companion [tool](#) from [Climate Central](#) lets you see what the researchers expect over a still uncertain time line. A note of clarification is in order for the Big Easy. The projections do not take into account the massive levee system around the city or

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 stewardship of water.

Coming up:

[8th Annual Anba Dlo Water Symposium and Halloween Festival](#)

October 17, 2015

New Orleans Healing Center
New Orleans, LA

[State of the Coast: Call for Abstracts and Session Proposals](#)

Open until Nov. 30, 2015

[Online Here](#)

Water jobs:

[James McCulloch Chair in Energy Law](#)

Tulane University Law School
New Orleans, LA

[Coalition to Restore Coastal Louisiana](#)

Restoration Programs Director, Habitat Restoration Program Coordinator, Science/Technical Director
Baton Rouge, LA

[Virginia Energy Attorney](#)

Southern Environmental Law Center
Charlottesville, VA

[MRD & Natural Infrastructure Economist](#)

(Two Year Postdoc Position)

Environmental Defense Fund

Washington, DC, New York City, or Boston, MA

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the possible effects of aggressive coastal restoration efforts that are moving into the implementation phase. In the near term, those levees would make a big difference; if seas rise 23 feet, [as some predict](#), then clearly not so much. Regardless the message is to take climate change and sea level rise [seriously](#) now and to make plans to deal with them.

The second study is bad news for sea life and those who [love](#) and depend on it. Also published in the PNAS, this [study](#) suggests that the warming and acidification of our oceans could result in a “[collapse](#)” of major ocean food chains.

On the other hand, a prominent scientist at the Stockholm Resilience Center is feeling better about the world’s chances of getting global warming under control. Johan Rockstrom made news in 2009 when he issued some pretty dire predictions for the future, and he is making [news again](#) by announcing that improvements in renewable energy and efficiency have accelerated to such an extent that he thinks the climate problem might be manageable.

South Carolina: The Piper Comes Calling

The worst of the flooding in South Carolina may be over, but the hard work of recovering and learning lessons is just beginning. That task is going to be harder than it might otherwise have been due to the state’s chronic under investment in public infrastructure. At least that is the view of an [article in U.S. News and World Report](#). South Carolina has long been state that favored low taxes and low government spending. One victim of that tendency has been dams, roads, and bridges public assets that are going to cost a bundle to fix or replace. While Governor Nikki Haley has been clear that the state [will do what it has to do](#), the climb will be steep. The state’s history of [troubled and unregulated dams](#) is a case in point. The past practice of spending less than \$200,000 a year on dam safety may look less like a cost saver after 21 dam failures and another 200 listed has “high hazard.” Federal aid may also not flow as it did following Hurricanes Katrina and Sandy. The first reason is that this was no hurricane, a factor that really shouldn’t matter but probably will. The second is that Katrina and Sandy implicated failed federal project and programs in ways that the rains in South Carolina don’t seem to have. Finally, there is the matter of the fact that most of the South Carolina congressional delegation [voted against federal assistance](#) for Northeastern States post Hurricane Sandy. When one does the frugality dance to that degree it is not a happy day when the piper comes to call...maybe the [safety-dance](#) next time?

Honor the Water: Anba Dlo Water Symposium and Festival Coming at You

[Anba Dlo](#) (Oct. 17, 2015) is a Halloween Festival that reflects on New Orleans’ complicated relationship with the water that surrounds us (or it’s a water conference that reflects the City’s exuberant relationship with music, costuming and Halloween, take your pick). Anba Dlo is Haitian Kreyol for ‘beneath the water’ (Francophiles, note the similarity to ‘en bas de l’eau’). Entry is free to this year’s festival, which features a [water symposium](#) (featuring our own [Mark Davis](#)) followed by a [parade](#) and a night of [live music](#).