

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
July 15, 2022

Water Health IS Public Health?

On July 20 at 12pm (CDT), we'll be joining a webinar with the Tulane School of Public Health on how health of the water of New Orleans impacts the health of the people who live here. Water is a major component of our daily lives, and it's no surprise that water quality and health quality are interrelated. Water policy AND public health? It's like berries AND cream! [You can register here.](#)

Where Has All the Water Gone?

The Legislative Auditor released a report (and [podcast](#)) on the Regulation and Valuation of Surface Water. Among their findings is the conclusion that Louisiana doesn't have a water management system nor a way to accurately regulate surface water withdrawals. Riparian landowners have rights to surface water abutting their lands, but non-riparian owners can enter into voluntary cooperative endeavor agreements (CEAs) with the Department of Natural Resources (DNR) to withdraw surface water—[groundwater is a whole separate issue](#) (don't get us started). There's two problems with this: first, CEAs are voluntary, which means entities don't need to apply for them to withdraw surface water; second, [the total volume approved sometimes surpasses the amount applied for](#). And not by a few extra gallons; by several billions. The audit found errors in 10% of CEAs. In one application, the requested amount was 302.4 million gallons from the Red River; the total volume granted was 302.4 billion, 1000x the amount requested. This problem seems to have resulted from an underfunded DNR. And water withdrawals don't help as the money from CEAs are deposited into the Aquatic Plant Control Fund and state law caps the value of surface water at 15 cents per 1,000 gallons.

Now, you may have heard some rumors percolating about the value of surface water, namely [SB 153](#), which sought to remove the 15 cents ceiling for water reimbursement in favor of a "fair market value" annual assessment. As water scarcity increases across the country, more and more states are trying to sell their water rights to private entities. The most basic [rule of Acquisition](#), *ahem* economics, dictates as demand outpaces supply, prices often rise. Hence, why some state legislators are eager to remove the cap on water reimbursement in Louisiana. But we here at the water castle are old-fashioned and believe that water should be a public resource made available to everyone, not just those who can afford it. After all, it is a public thing [under Article 450 of the Civil Code](#). Because here's the thing: while water privatization may be a side hustle that could generate some extra income for the state, it turns water into an asset that could be sold to alleviate debt burdens. Removing the cap may

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:

[ELI Webinar: The Right to a Healthy Environment, Part 3](#); July 20

[Webinar: Water Health IS Public Health](#); July 20

[Webinar: Integrated Approaches in Community Nonpoint Source Nutrient Management](#); Aug. 24

[ABA SEER 30th Fall Conference](#); Sept 21- 24

[Louisiana Climate Initiatives Task Force Fall Meeting and Workshop](#); October 22

Water jobs:

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

[Legislative Analyst, Coastal and Flood Resilience](#); Environmental Defense Fund; Washington, DC

[Adapting the Existing Built Environment Earth Network Fellowship](#); New York, NY

[Clinical Instructor Tulane Environmental Law Clinic](#); New Orleans, LA

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

[Coordinator – Resisting Dirty Energy Campaign](#); Healthy Gulf; New Orleans, LA

[Legislative Analyst, Coastal and Flood Resilience](#); Environmental Defense Fund; Washington, D.C.

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be a good move, or it may not. But one thing is for sure, [taking that cap off](#) is going to bring about a litany of issues that will need consideration. After all, how does one accurately and fairly determine the market value of a literally life-giving resource? And can you really sell a natural resource that is part of the public trust? [Something, something, good of the many](#). We don't have the answers to this yet, but we're working on it, [darn tootin'](#).

Send in the Water Judges

The Utah Judicial Council has passed a [new rule](#) establishing some district court judges as [water judges](#). These judges will preside over water disputes. Previously, water cases would be randomly assigned to judges, regardless of their expertise, experience, or knowledge, which often led to inconsistent decisions and approaches. Parties can request their cases be heard by a water judge, which will certainly ease some anxiety about getting a judge who is completely unfamiliar with complex water issues. While generally acknowledged as a step in the right direction, this move doesn't come without critics. The rule requires the designation of "at least three judges," which for some people, isn't enough to handle the increasing number of cases. Furthermore, these judges won't hear all water law disputes, but rather their scope is limited to certain issues of water law, so no [Earth-canceling](#) rulings allowed.

Let's Talk [Migration](#)

It's no secret that agriculture is one of the most water-intensive industries, and most of the time, it is granted exceptions from certain environmental regulations. It's hard to argue with the people who feed you. But that doesn't change the fact that people need water to live, gosh darn it, and to that end, California passed the [Sustainable Groundwater Management Act](#) (SGMA) in 2014 to bring their over-pumped aquifers back into balance. What this means, however, is that farmers who have traditionally had access to unlimited groundwater are now having to cut back, which is leaving some farmland permanently fallowed and [putting migration on the table](#). Farm workers have expressed intentions to leave, not only because the work might no longer be sustainable, but also because many lack permanent residency status and access to immigration resources. We often talk about environmental justice, especially when it comes to situations where a "big, bad multinational corporation" decides to plop a polluting facility in the middle of a poor, minority population. But environmental injustice also comes as a result of poor planning by the government, in which case, many people can slip through the cracks—especially for those who can't speak English. There is a distinct sense of powerlessness that comes with [language barriers](#). So far, there have been some conversations among the California agencies and Governor Newsom's Office about job transitions within the agricultural industry, but things aren't happening fast enough for the California Farmworker Foundation, which has started on workforce development.

Speaking of forced migration due to water issues, let's talk about the dead zone. The [2022 forecast](#) for the Northern Gulf of Mexico hypoxic zone predicts that it will cover 5,881 square miles of the bottom continental shelf off Louisiana and Texas by the end of this month. The dead zone has been an issue for decades; the [Hypoxia Task Force](#) was formed in 1997 with the explicit goal of reducing its size. Excess nutrients from the Mississippi River are dumped into the Gulf, and before you can say, "[eww, David](#)," there's a massive marine life die off. And dead fish, understandably, make for unhappy fishermen. Coastal communities depend on fishing as their primary income source. So, it's conceivable that a decades-old dead zone that seems to be there for the long haul would make a career as a fisherman much less attractive. We haven't seen it quite yet with Louisiana, but along the [Bay of Bengal](#), overfishing, climate change, and a growing dead zone are close to spelling collapse for the bay's fisheries. One key thing to remember about Louisiana's commercial fishermen is that, as with the farmworkers of California, a massive chunk of them aren't fluent in English. [Vietnamese fishers represent 2/3 of Southeast Louisiana's commercial shrimping fleet](#), and the percentage rises when you include other immigrant ethnicities, like Latinx and Cambodian. Imagine moving to a new country, working hard to establish a way of life, and forming a community, only for it all to deteriorate for reasons out of your control. And you have trouble expressing your concerns because you can't speak the decisionmakers' language well enough. Then imagine needing to move because your job can no longer sustain a living. Resettlement of coastal communities, [particularly indigenous communities](#), isn't a novel idea. If at some point, the problem can no longer be fixed, it becomes the only option. But resettlement means more than helping people migrate. It means providing them with the support, community, and resource access to help them thrive, including immigration services and translations. It means more than just giving them a new place to live. It means giving them a new place they can call [home](#).

Could We Be Any More Proud?

Whenever we write WaterWays, we hope that it reaches at least a few of our readers and isn't just floating out there in the ether of lost emails. So, imagine our reaction last week when we got all of your comments on how the Rio Grande actually flows into the Gulf of Mexico and *not* the Mississippi River. Congratulations! You passed the test! We're glad to see you're paying attention, we'll keep doing our best to do the same.