



TUWaterWays

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

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If You (Let Them) Build It, They Will Come—For Your Water

The namesake of Corpus Christi, TX may have been able to walk on water, but the [city may be in need of its own water miracle](#). Going green does not mean going [blue](#), and the law's inability to keep up with the pace of adapting to climate change, energy transition, and the demands on water resources only make that worse. But we are getting ahead of ourselves.

Texas is known for lots of things, but nothing is more Texan than the energy business. Oil and gas of course, but [it doesn't end there](#). Texas is preparing to be a big player in "green hydrogen" fuels that are touted as a substitute for diesel. The only thing industry needs now is something to rip hydrogen atoms from water and ways to make that hydrogen transportable. Oh, it also takes lots of money! Money that was hard to come by until the Inflation Reduction Act of 2022 offered up generous subsidies. The old-fashioned way was to strip hydrogen from natural gas (which Texas has in spades) but that carries its own carbon emissions and disposal problems. The cool new way is to leave oil and gas behind and strip hydrogen from water using electrolysis, which is great if you have enough water and electricity (ideally from carbon friendly sources). Water and Texas are not synonymous, so just where will the needed water come from? "Good question!" say the folks in Corpus Christi. Originally, it was supposed to come from desalinated Gulf of Mexico water, but those plans have been bogged down (or "hung out to dry"?). Instead, the project developer, Avina Clean Hydrogen, has made a deal for Nueces River water with the Nueces County Water Control District #3 for water that was originally intended to support agriculture. The [District apparently could not say no to the water request under the applicable Texas law](#), so the deal was struck and millions of gallons of water that could go to folks in and around Corpus won't. Not only won't they get it, but since the green hydrogen is intended for export, the fact that they are effectively exporting the water is sinking in. In the end, the residents of Corpus could end up paying more for water and for creating new water sources. Maybe that desal plant? If the views of one informed local observer about that are any indication "[They spent millions of dollars pushing desalination](#)" we might hold off on that suggestion. At least, some of that money seems to have been well spent (on lawyers).

Hey Buster, Hands Off

Wetlands have had a rough go of it lately with laws regulating development in them being rolled back at the Federal level and in some states. Lucky for them, there are other Federal programs that can encourage their conservation, such as the "[Swampbuster](#)" [provisions in Food Security Act of 1985](#) that discourages the farming of areas designated as wetlands, lest the farmer lose certain Federal benefits such as disaster assistance and loans. Well, that has been the case, but it could change if a [lawsuit filed by the Pacific Legal Foundation and the Liberty Justice Center on behalf of an Iowa farmer is successful](#). That suit is challenging the classification of the land as wetlands and the constitutionality of conditioning of Federal benefits on the farmer's agreement not to farm the acreage. Whether the land in question is actually a wetland is a threshold question that is always fair to ask. Its Though its answer could be specific to each parcel of land. Whether the conditioning of federal benefits amounts to

a taking of the farmer's property rights that demands that he be compensated is a very different question, and its answer will matter to lots of people and governmental bodies across the country. An even bigger question raised by the suit is whether Congress's power to regulate interstate commerce even allows them to do what Swampbuster does. That would not have been an argument worth taking seriously not so long ago, but recent jurisprudence, including the [concurring opinion of Justice Thomas in *Sackett v EPA*, indicate a desire by some courts to revisit and narrow the reach of Congress under the Commerce Clause of the U.S. Constitution.](#)

Show Me the Water

[Missouri was just fine being the gateway to the West](#), but apparently it has no intention of being the water enabler of the West, if a [bill advancing through the Missouri legislature](#) is any indication. The proposed legislation aims to prohibit most out of state exports of water unless they are authorized by a permit. [It reflects a growing understanding that water is both a facilitator and limiter of growth and that if Missouri water is going to help somebody grow and prosper that somebody should be Missouri.](#) Whether the bill is enacted and whether it survives judicial challenge is too early to tell. It is not too early to say that Missouri is exactly right about the increasingly important role water is playing and that high time "water rich" states woke up to that fact. [When they do, they will find themselves in the company of drier western states that are already grappling with how to make future growth, water, and water law better bedfellows. It is not easy.](#)

Coming Up:

[New Orleans Jazz and Heritage Festival](#); New Orleans, LA; April 25-May 5

Water jobs:

[Communications Senior Coordinator](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

[Policy and Partnerships Manager](#); Bayou River City Water Keeper
Houston, TX



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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