

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
March 28, 2018

## [Treading Water & Keeping Afloat](#)

A federal judge in North Dakota has [lifted the stay](#) on litigation over [WOTUS](#), the first to do so since the Supreme Court [decision](#) holding that district courts have jurisdiction over the case. In making this decision, the [Roughrider/Flickertail/Peace Garden](#) State court set aside the Trump administration's request to maintain the stay until they had time to repeal and replace the rule. The administration argued that the cases would become [moot](#) if they were to repeal and replace the rule, but the North Dakota court didn't seem to agree, for now, noting it was not a "forgone conclusion" that the EPA would even rewrite rule. The response to the Supremes' ruling has been varied across the country, with some courts issuing continuing stays on the rule, others hearing arguments and pontificating over their next move, and the [Oklahoma](#) judge simply closing up shop on the case to allow the EPA to rewrite. What comes next for the WOTUS? Will EPA rewrite the Clean Water Act? Will we ever know what in the world a WOTUS is? The answer is likely to get more confusing before it becomes clear. Just in case, [tune in next week for the exciting conclusion!](#)

## ~~Good Things~~ More Responsibilities Come to Those Who (Won't) Wait

In an effort to streamline permitting processes across the state, the Florida legislature has passed a [bill](#) that would change responsibility for the permitting process for wetland developments from the Army Corps of Engineers to the state Department of Environmental Quality. This change, lauded by those in favor of development and criticized by environmentalists, would act on a small provision in the Clean Water Act which allows states to take over permitting responsibilities. Florida won't be completely off the leash; in order for the program to take effect, it will have to gain EPA's approval. Until this legislation comes into effect, Michigan remains the only state to do so.

This effort to simplify permitting processes by removing a layer of federal protection is not unique these days, with the RESTORE Council and Louisiana itself exploring different ways it can streamline permitting processes for coastal restoration, a category of projects designed to repair the coast, not encourage development (such as this [exemption](#), or this [Florida permit](#)). In this case, however, enviros are particularly worried about the legislation's emphasis on development, and its potential effect on wetland conservation, an important part of coastal restoration and preservation. Furthermore, they are concerned about the DEQ's ability to handle an increased workload. The Florida DEQ, on the other hand, feels that it is ready to handle the

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:

### [36<sup>th</sup> ABA Water Law Conference](#)

Orlando, Florida  
April 16-18, 2018

## Water jobs:

### [Coordinator](#)

Raise the River Coalition  
Not location specific

### [Water Policy Analyst](#)

Kyl Center for Water Policy  
Phoenix, AZ

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“[slight change](#)”, and are capable of managing for both conservation and development.

### **If Sally Sells Suffocated Seashells by the Seashore, the Shells Sally Sells Are Surely from the Gulf**

A new [study](#) is showing that the [Dead Zone in the Gulf](#) may be even harder to recover from than previously thought. The Zone, which last summer reached the size of the [State of New Jersey](#), is the result of hypoxia caused by agricultural and sewage runoff in the Mississippi River Basin and climate change. The study found that even if all agricultural runoff ceased now, it would still take roughly 30 years to recover. With no decline of runoff in sight, the effort will probably take much longer, or not be possible at all. This, along with the [growing patch of garbage](#) in the Ocean, can be taken as a sign we are putting a whole lotta stuff into the ocean that wasn't there before, and it is impacting the ecosystems, ecosystems we depend on for [fishing](#), [tourism](#), and [pure childhood wonder](#). If we take action now (like [California's ban](#) on plastic straws and silverware or improving [wetlands](#) that filter out toxins at the mouths of rivers), then we can expect big changes down the road.