

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
October 8, 2021

## Stop Me If You've Heard This One Before: A State Walks into the Supreme Court and Says, "This Other State Is Stealing My Groundwater!"

You aren't going to stop me, are you? It's because it's never happened before, until this past Monday. That's when the SCOTUS justices met in person [for the first time in 19 months](#) to hear the oral arguments in Mississippi's suit against Tennessee for its use of [too much groundwater](#) near the state border. Mississippi, in a legal strategy that seems fairly unanimously questioned and unsupported by the special master for the case, other states, and law professors, chose to argue this case as Tennessee invading the state and stealing water to the point that the Magnolia State is seeking damages in the amount of \$600 million. Many others, including Tennessee and the US Solicitor's office [at the oral arguments](#), felt that the real way to deal with this would be an equitable apportionment case. That would be the first equitable apportionment of an interstate groundwater resource. It's what had all the water lawyer types [curious like a cat](#). Instead, Mississippi just kept coming back to a case that turned on the water in question being subject to an interstate compact, something that does not apply to this aquifer at all.

What we [the water-curious](#) are left with is [anticipating what the justices will come back with](#): a short opinion that just dismisses Mississippi's claim or one that expounds on the question of equitable apportionment for interstate groundwater resources. Approximately no one is anticipating a big win for Mississippi.

## NEPA's Comeback Trail Begins Now

Maybe. Way back in 2020, the Trump Administration [instituted new regulations](#) regarding implementation of the country's bedrock environmental law, the National Environmental Policy Act. You may recall many, including us here at Chateau d'Eau, were [less than pleased](#). Well, as part of the Biden Administration's [ongoing effort](#) at undoing the [previously-taken undoing](#) of environmental protections (the ones that didn't [already lose in court](#), at least), they have released the first of [two proposed rules](#) aimed at [bringing NEPA back](#) out of the closet it was shoved into last year. [The proposed rule is available online now](#) and public comments about the proposal will be taken until November 22<sup>nd</sup>. So, you've all got about six weeks to figure out if this new rule does a good enough job of implementing NEPA and closing the gaps created last year in the name of speeding

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:

[ABA SEER Fall Conference](#); Oct. 13-15

### Water jobs:

[Summer Associate](#) and [Associate Attorney](#); Sher Edling LLP; San Francisco, CA

[TMDL and Water Quality Improvement Lead](#); State of Washington Water Quality Program; Lacey, WA

[Program Operations Associate](#); The Ocean Foundation; Washington, DC

[Senior Attorney, Fossil Fuels Program](#); Earthjustice; New Orleans or Texas

[Senior Manager, Environmental Policy \(EMEA\)](#); Amazon; Brussels, Belgium

Louisiana Bucket Brigade; [Campaign Director](#), New Orleans, LA; [Economic Development Manager](#), River Parishes, LA; [Liquefied Natural Gas Campaign Coordinator](#), Lake Charles, LA

[Staff Attorney](#); Great Rivers Environmental Law Center; St. Louis, MO

Sierra Club; [Gas Exports Campaign Representative](#), New Orleans/Gulf Coast, LA; [National Distributed Organizing Representative](#), LA/TX/DC.

[Adaptation Program Director](#); Georgetown Climate Center; Washington, D.C

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up the process (because the quickest way to speed up a process is to not have to do it at all in the first place).

### **Why Water? Because Water Is Where Weird, Wild, Amazing Stuff Happens. Like “Dinosaur Shrimp”**

What is it about water that keeps our interest? We’re supposed to be lawyers around here. Shouldn’t we be more worried about good ol’ law stuff like “duty” or “standing?” Sure, we’re worried about those things, but they just have trouble captivating our imaginations like all of the things that water does and all of the things that can be done only because of water. Things like the Tabasco, Mexico [mangrove ecosystem persisting in freshwater](#) 200 km from the ocean because that’s where the ocean used to reach 125,000 years ago. How aquatic ecosystems respond for better or worse to stressors like [heatwaves](#) or [invasive species](#). But, really, it’s the truly mind-blowing, question-the-meaning-of-life stuff like dinosaur shrimp. What’s that? That’s triops shrimp [hatching out of eggs that lay dormant for decades](#) at the first chance they get when monsoon rains happen to be strong enough to create temporary ponds in the Arizona desert. Such lengths life will go to just to keep propagating their DNA on down the line until the next chance for the stars to align. That’s what keeps us coming back to the water.