

# TUWaterWays

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

[April 16, 2021](#)

## Half of Flood Insurance Claims in 2020 Came from 8 Counties (& Parishes), and That's a Good Thing!

The always reliable (subscription) news service E&E News [reported this week](#) that of the \$1.2 billion paid out in claims last year, half went to Baldwin Co., AL, Escambia, Miami-Dade, Pinellas, and Santa Rosa Cos., FL, & Cameron and Calcasieu Parishes, LA. The report (or at least the headline) had a very *quelle horreur* vibe about it, but in a year with approximately 7,042 hurricanes, for half of the payments to go to eight counties (that's what they call parishes outside of Louisiana) – all of which were hit by at least one hurricane – feels a little bit like a triumph. The flooding caused by hurricanes like Laura & Sally wasn't so common as to make the payments to the insured in those places statistically mundane. Additionally, the people in those places had flood insurance – even in places assessed at a lower risk – and that's much better than flooded properties not being covered by flood insurance.

To be fair to E&E News, much of the article is about the size of the program, its fiscal soundness (why isn't it funded/subsidized like [crop insurance?](#)), and the accuracy of its flood zone mapping. All of them are valid concerns, and much more concerning than the geographical distribution of flood claims paid matching up so well with the geographical distribution of properties that were flooded.

## The American West: Home of Cowboys, Rattlesnakes, and Prior Appropriation... uh, Water Banking?

*Warning: this bit contains water law wonkiness at levels that could induce excitement in some and boredom in others, but you probably wouldn't be here if you fell into the latter category. Here goes nothing.*

The predominant water law system in the Western United States is known as [prior appropriation](#). In broad strokes, under prior appropriation, the right to water is a property right that is established when water is removed from a stream (or aquifer) for some use. That right is recorded with a state office, and the order in which those rights are recorded determines the seniority of the rights holder. If there is more water being claimed by those rights than there is water in the stream, the senior appropriators' rights take precedence over the junior appropriators' rights. There are some weird ticks in the system: if you don't use the water that you claim a right to, you lose the right to it ([yes, if you don't use it, you lose it](#)); you've got to use the water for the uses that you claimed the right for in the first place, and exercising your right to use the water means taking the water all the way outta the stream (or aquifer). In its purest form, prior appropriation is a great way to incentivize

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:

[NACWA Webinar: Security Threats Facing Today's Clean Water Utilities](#); April 20

[EPA Webinar: Addressing and Managing Plastic Pollution](#); April 21

[ABA 50<sup>th</sup> Spring Conference on Environmental Law](#); April 27-30

[Water Week 2021](#); April 25-May 1

### Water jobs:

[Zoning Regulatory Administrator, St John Parish the Baptist](#), LA

[Assistant Director For Policy and Assistant Professor in Environmental Policy and Ecology](#); University of Georgia; Athens, GA

[Executive Director](#); Bayou City Waterkeeper; Houston, TX

[Manager of Equity and Resilience Programs](#); Groundwork USA; New York City, NY and Boston, MA

[Director, Sustainable Land Science](#); Conservation International; Arlington, VA

[Associate Research Scientist, Marine Protected Areas and Climate Change](#); Conservation International; Santa Barbara, CA

[Designer/Planner](#); Center for Planning Excellence; Baton Rouge, LA

Multiple Intern Positions with Conservation International: [Geospatial Trainer](#); [Conservation and Sustainable Development](#); [Climate Adaptation Science Intern](#); [Conservation Atlas Intern](#); [Evidence Review of Natural Climate Solutions Intern](#); [Indigenous and Community Lands & Climate Intern](#); [Wildlife Insights Business Development](#)

[New Orleans Policy Manager](#) and [Climate Coordinator](#); Alliance for Affordable Energy; New Orleans, LA

[Senior Staff Attorney](#); San Francisco Baykeeper; San Francisco, CA

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people (well, white people) to move to the West and farm, ranch, and mine to the fullest extent possible to the point where there's no freshwater making its way to the ocean at all (yes, [Great Basin](#), you were way ahead on this).

There's a fair number of issues that could become [a spanner in the works](#) for prior appropriation. A few of them may have become clear to you already: recognition that there were plenty of people with rights to the water before any of those states were even a twinkle in [John O'Sullivan's](#) eye, increasing urbanization and changing economic drivers, a realization of the inherent ecological value of streams and a desire to protect them and the creatures that depend on them, and changes to and variability in the amount of water in streams from year to year and over time.

Given that all of those spanners have been thrown in the prior appropriation works, there have been lots of legal and policy approaches to creating a [fitter, happier](#) prior appropriation system; but is a new system in the early stages of replacing the system that goes back to the 1849 Gold Rush?

That system would be something like the water markets and water banking approach that is sticking its camel nose under many Western state's tent right now. It has some very real [supporters](#). California began tweaking its prior appropriation rights to allow selling of water on a [market](#) as early as the 1980s and that has recently expanded to a [futures market](#) that tracks the price of water in California – one that's [gone up 48% in three weeks!](#) San Luis Obispo County recently seemed [to pave the way for water banking](#), as well. Colorado is already experimenting with a [water banking pilot program](#). Up in Washington state, [alarm bells started ringing](#) at the Department of Ecology when a private investment company applied for permits that sure seemed like they would set up the Wall Street-backed firm for water banking in the Columbia River Basin. [Similar rumblings are coming out](#) of the Silver State, as well, where bills have been introduced to the legislature to open up water rights to outside investment.

A shift away from prior appropriation might be an overall good. It's a system that prioritizes exploitation of the environment over everything else, and it locks water use and efficiency in place from the [cradle 2 the grave](#). On the other hand, that doesn't mean that everyone should just let water banking [stop, drop, shut 'em down, & open up shop](#). The assumption that the states will consistently limit action (or fund buying the water themselves) enough so that enough water is kept in the streams to avert ecological disaster feels especially tenuous. At the least, prior appropriation assures that water will be put to use to create economic activity where the water is flowing. A shift to markets and banking fully disconnects the water of a place from the economy of the place, sending it wherever the deepest pockets are willing to pay the most for it. Basically, a lot of questions need to be answered about [how's it goin' down](#) before anyone should view water banking as a savior and not just [the boom](#) by another [name](#).