

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
August 1, 2017

## WOTUS Rule—Time for Citizens to Weigh In.

It has been a [long strange trip](#) figuring out what waters are covered by the Clean Water Act (Waters of the United States), and it'll get longer before it's settled (if it ever really is). Following an [confused ruling](#) from the US Supreme Court and an effort by EPA and the Army Corps of Engineers to turn judicial tea leaves into a coherent rule (followed by more judicial wrangling that has stalled the implementation of that rule), the Trump administration is taking a [Mulligan](#) will try to redo the rule. Before it can do that though, it formally has to withdraw the old WOTUS rule, and that demands a public process. On July 27, they announced that the game was officially afoot with a [rulemaking to undo the 2015 rule](#) and that the public has 30 days to submit comments. So, if you have [thoughts](#) or even just [opinions](#), about that, here's your chance to be a good citizen and help your government make an informed decision.

## WOTUS Rule—Thanks Just the Same, Maybe.

So, you have [read all 41 pages](#) of the Administration's announced "rule -unmaking", pondered the implications and composed thoughtful comments and managed to submit them within the 30-day window. Well done, now all that remains is for the Federal government to consider all of the comments, reflect on them and decide on a path forward. Or [not](#)!

It turns out that the formal "rule-unmaking" is not the only game in town. Elsewhere in the WOTUS [multiverse](#), Congress has been coming up with its own approach to undoing the 2015 WOTUS rule. The Energy and Water Appropriations bill ([HR 3266, Section 108](#)) would allow the Corps of Engineers and EPA to summarily repeal the 2015 rule "*without regard to any provision of statute or regulation that establishes a requirement for such withdrawal*". Because who needs transparency or procedural clarity?

In short, the July 27 rule-unmaking tracks the requirements of the Administrative Procedures while HR 3266 says there are no such requirements. The upshot: your carefully crafted comments may never be read, and the promulgation of a new rule could come much sooner than one might have thought.

## And Now a Word from...Science.

When it comes to wetlands it seems that science all too often is the last refuge of the politically weak. Which is too

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:

September 8, 2017

[Fourth Annual River Symposium—Teche-Vermilion Watershed: Building on Regional Progress](#)

Vermilionville  
300 Fisher Road  
Lafayette, LA

October 6, 2017

[The 20th Annual Conference on Litigating Takings Challenges to Land Use and Environmental Regulations](#)

University of Minnesota Law School  
Minneapolis, MN

## Water jobs:

[Executive Director and Riverkeeper](#)

Ogeechee Riverkeeper  
Savannah, GA

[Planning Division Manager](#)

Puget Sound Partnership  
Tacoma, Washington

[Legal Fellow](#) (position # 12226431-071817)  
National SeaGrant Law Center  
Oxford, MS

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bad because when it comes to taking care of—and benefiting from-- water resources it really helps to know how things work. Maybe dilution is the solution to pollution and maybe it isn't. Maybe small injuries to waters don't matter, or maybe they do. These are things that policy wonks should not take lightly which is why a [recent study out of Waterloo University](#) published in the [Water Resources Research](#) journal caught our eyes. Lake Erie, [which should be sublime in the summertime](#), has had a rough time dealing with over-nuttrification that has led to [dramatic algae blooms](#). Pursuing the whys and hows of those blooms led researchers to ask what role wetland might play in that. Wetlands are often the kidneys of water systems, but surprisingly little is known about just how they work. Does one 10 acre equal the work of ten 1-acre wetlands? We had no idea, but thanks to the Waterloo study we do now, and it seems multiple small wetlands can do more than one larger one. Maybe there is something to this [science stuff](#).

### **There's No Place Like Home**

Here at Chateau de Eau we see lots (trust us, lots) of studies, musings, and warnings about how rising seas or droughts are going to make people have to pull up stakes and move. We also see most people staying put—including ourselves—at least for now. [What's up with that?](#) Are the warnings wrong? Are we just nuts? Is there more at play here? Apparently, we aren't the only ones wondering. A [study](#) published recently in the journal *Nature Climate Change* finds that when faced with moving or adapting to sea level rise, most of the people in the study preferred to stay put and adapt to the coming changes. Admittedly, the study focused on small communities in the Philippines, but it does seem that most Louisianians, Floridians, and Manhattanites (to name but a few) lean the same direction. The researchers conclude that despite dire environmental projections people who have social and financial reasons to stay put prefer to do just that. There are limits to that, of course, but given the difficulty of actually planning and pulling off a mass relocation (keep in mind, where would they all go and what would they do), can it really be surprising that [Dorothy had it right](#) in her seminal 1939 PowerPoint presentation?