



TUWaterWays

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

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Groundwater in the Desert

If you've been with us for a while, this [won't be the first you're hearing about the Arizona's ongoing struggles to manage groundwater](#). Like all its neighbors, increasing aridity and growing populations have forced some difficult conversations about who can use how much water and for what purposes. As some cities across the Grand Canyon state face cutbacks of up to 96% from surface water sources, groundwater has become a saving grace. However, residents getting 100% of their [tap water](#) from aquifers are finding themselves increasingly at odds with [agricultural and industrial users who want to take advantage of the state's lax groundwater regulations](#).

Now, a bill before the Arizona Senate has all eyes on [another international corporation notorious for sucking up American groundwater to the disdain of locals](#). Last year, [Nestlé announced plans to build a \\$675 million beverage facility](#) in Glendale, but it turns out there may not be enough water to make all the coffee creamer Nestlé planned to. The bill, which passed the Arizona House last month, would [amend the definition of "effluent" to allow industrial plants to treat wastewater on-site, inject the treated water into underground storage facilities, and receive long-term storage credits which Nestlé could later use to re-withdraw 75% of the treated water](#). The bill's co-sponsors—1/3 of whom were Nestlé representatives—argue that it equates to a net gain of 25% for other groundwater users. However, detractors note that Nestlé would be allowed to withdraw the stored water in addition to the amount it's already permitted to withdraw. People are also concerned that allowing Nestlé to treat its own wastewater is a loophole around water quality regulations.

So, what do you think? Does it sound like a terrible idea? Are you worried about the precedent it would set? Well, if it makes you feel any better (or worse)—the idea isn't new, and the precedent is kind of already there. If you thought heading to the desert to grow [alfalfa](#) and produce coffee creamer sounded silly, you must have forgotten about one of [Arizona's fastest growing and most water-intensive industries—data centers](#). Data centers also utilize long-term storage credits for their many water needs, although there are a few key differences including that the water is stored by water management entities and data center water usage is largely non-consumptive. Either way, the backlash around Nestlé's new plant is a strong reminder that sometimes water policy can be a stronger driver of decision-making than actual water availability.

If you're wondering why all these international companies are clamoring to get their hands on what scarce water the U.S. is hiding beneath its deserts, it's because the rest of the world is in an equally dire situation. For example, in Spain, water levels have dropped so low in the Sau reservoir, which has provided for cities and towns all over Catalonia for half a century, that they're [consolidating what's remaining with another reservoir to avoid contamination](#). (A similar approach has been suggested for [Lake Powell and Lake Mead](#)). And [Africa isn't fairing any better](#). In Tunisia, they've responded to years of drought by imposing bans on water uses like irrigation and car washing, as well as [rationing water supplies in major cities](#). And in Morocco they've [responded to the water crisis by \(*checks notes*\) reaching an "almost" all-time record of avocado production](#). Don't worry, they've pledged to actually break the record next season. [Seems like a bold move](#), but as the old saying goes, "When the well is dry, we know the worth of guacamole."

WOTUS Love, Baby Don't Hurt Me

The Supreme Court's decision in the [Sackett case over which "waters of the United States" \(WOTUS\) should be covered under the Clean Water Act](#) could come along any day now, and we wouldn't want you to have WOTUS burnout when that day finally comes. But, we take our role as bearers of WOTUS updates very seriously, so there's a few things we are ethically obligated to share in preparation of the big reveal. We promise to keep it brief.

Basically, back in December, EPA and the Army Corps decided they weren't going to wait around for SCOTUS to make a decision before getting their word in on WOTUS. And with EPA and the Corps being the [trendsetters](#) that they are, everyone else decided not to wait around either. Right off the bat, a lot of states and businesses filed suits asking for preliminary injunctions, and courts from [Texas](#) to [North Dakota](#) to [Kentucky](#) have been anything but consistent in dealing with them. Meanwhile, the Senate [couldn't stand being left out](#) and decided to [vote down the rule itself](#), which [Biden unsurprisingly vetoed this week](#). Finally the House was also feeling the [FOMO](#) and reintroduced the [Define WOTUS Act](#). Given that all the back and forth between the judicial and executive branches over the last decade has been about trying to figure out what the legislative branch meant when it passed the CWA, this could actually be a productive development. Of course, that would require a Congress that actually agrees on passable legislation, so...

Your Life is Pipes, Your Love is Pipes

The good news is, by getting the WOTUS rule off its plate, EPA was able to turn its attention to the [estimated 9.2 million lead pipes](#) moving that WOT all over the US. It's a blissful existence to switch on the kitchen tap and not think about how your water got there, especially because the answer might be via [100-year-old corroding pipes](#). On Tuesday, EPA gave its best count of how many lead pipes carry water across the U.S. and announced it would be putting \$3 billion towards identifying and replacing lead service lines across the country. This will come out of the \$15 billion provided by the bipartisan infrastructure law for lead pipe replacement. You remember the BIL, also called the Infrastructure Investment and Jobs Act—one of the enormous bills (Democratic) Senator Joe Manchin allowed to squeeze through Congress thinking it would buy him some good faith for fossil fuel projects in the future? He may be regretting his support of those bills this week after the 4th Circuit concluded that [EPA's issuance of a CWA permit for the Mountain Valley Pipeline that would deliver natural gas from Manchin's home state of West Virginia to southern Virginia was arbitrary and capricious](#). It's too late now though—Joe will just have to deal with less lead in his water, whether he likes it or not!

Don't Go Taking My Heart

Could the U.S. government do it if they tried? An upcoming panel will discuss just that, addressing the background, practicalities, and challenges of takings claims and flooding litigation. [The free event, which offers CLE credit to in-person attendees, will be held at Tulane Law School on April 21st from 2:00-4:10](#). See you there!

Coming Up:

[CRCL Lecture Series – Mike Tidwell](#); April 18;
Houma, LA

[Fifth Amendment Takings Cases in the Court of Federal Claims](#); April 21; New Orleans, LA

[Lower Mississippi River Science Symposium](#); April
27-28; New Orleans, LA

[2023 State of the Coast Conference](#); May 31-June
2; New Orleans, LA

Water jobs:

[Policy Coordinator](#); The Water Collaborative, New Orleans, LA

[Assistant General Counsel – Water](#); Sandia Resort & Casino;
Albuquerque, NM

[Legal Director](#); Orange Country Coastkeeper; Costa Mesa, CA



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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