

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
September 15, 2015

## To Invest, or Not to Invest? Water is the Question

Generally speaking, people are reactionary creatures, or in many cases ostriches with their heads in the sand, which of course ostriches [don't](#) really do but [maybe we do](#). Even if we can see something coming, if it hasn't really affected us yet in ways we recognize it is [human nature](#) to pay attention to other things, especially if the nature of the problem and the solutions are not easy to wrap our brains around. Case in point: Climate change and environmental risks. The climate and environmental sciences are deeply rational; our approaches to dealing with climate and environmental risk are often, very often, anything but. However, some are starting to understand that things like natural resources may in fact be something to examine more deeply. For many businesses, water is a precious commodity, vital to the production of the goods we American ostriches love so much. Those that invest a lot of money for people are [starting to wonder](#) if companies like Nike and [Coca-Cola](#) are aware of their water use, and taking steps to make sure a (inevitable) decline in water availability will not harm their investors. Asset management companies are springing up to help investors assess whether portfolios will suffer from things such as drought, environmental change, tighter regulations, and re-distribution of water needs. Those using water risk as a filter when investing are hoping that it will force the ostriches out of the sand.

## Yes, You too, Texas

On Friday, September 4, U.S. District Judge Ralph Erikson [broke Texas' heart](#) when he stated that his injunction of the new Waters of the U.S. rule did not apply outside of the 13 named states. This means that Texas will be included in the 37 states where the EPA will enforce the expanded Waters rule. Texas Attorney General Ken Paxton had, until Friday, [been under the impression](#) that the injunction applied nationwide and had praised Judge Erikson's decision. However, citing competing sovereign and judicial interests, Erikson declined to extend his ruling farther than the 13 states named in the original suit. Despite this, there is still a possibility that Texas and other states will not be subject to the rule. Texas, Louisiana, and Mississippi have filed their own suit challenging the rule as an attack on private property rights. The District judge granted a [stay](#) in that suit in mid-August pending a ruling on whether or not the EPA will be able to consolidate 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:

### [Water Protection Network Membership Meeting](#)

September 23-24  
Hyatt Regency Capital Hill  
Washington D.C.

### [Capital Region Water in 2050: Opportunities & Challenges](#)

September 17, 2015  
Pennington Conference Center  
Baton Rouge, LA

### [RAM Coal Export Terminal Public Hearing](#)

September 17, 2015  
Belle Chasse Auditorium  
Belle Chasse, LA

## Water jobs:

### [Coalition to Restore Coastal Louisiana](#)

Restoration Programs Director, Habitat Restoration Program Coordinator, Science/Technical Director  
Baton Rouge, LA

### [Virginia Energy Attorney](#)

Southern Environmental Law Center  
Charlottesville, VA

### [MRD & Natural Infrastructure Economist](#)

(Two Year Postdoc Position)  
Environmental Defense Fund  
Washington, DC, New York City, or Boston, MA

# Tulane Institute on Water Resources Law & Policy

6325 Freret Street, 1<sup>st</sup> Floor  
New Orleans, LA 70118  
504-865-5982

<http://www.law.tulane.edu/tlscenters/waterlaw/>

TWITTER: [@TulaneWaterLaw](#)

multiple lawsuits it is facing. Contrary to the EPA's claims that the rule does not increase its authority over U.S. water by a great percentage, Texas officials and private landowners believe that every stream, creek, brook, gully, and other terms for water, will be subject to the rule, thus subjecting its farmers and ranchers to permitting and government oversight of pollution from runoff despite their explicit exclusion within the rule.

### **No Slushies for Columbia**

The citizens of Columbia, South Carolina, are not happy with their city's spending habits. Specifically, they are upset that the city has been transferring revenues from water utilities to the General Fund to use for city expenditures in direct contravention of the general rule that revenues derived from a service or user fee should be put to financing said service. In other words, money from water bills should be used for water related things. Evidently, Columbia has budgeted \$29 million in water revenues for economic development projects since 1999 and annually budgets a \$4.5 million transfer of water revenues to the General Fund. The citizens sued, claiming that these transfers have [driven up fees](#). The situation is compounded by the fact that, only a few years ago, EPA cited the city for failing to maintain its sewer system, which resulted in a [hefty](#) Clean Water Act settlement burden. The city was initially granted a summary judgment, but after an April appeal, the citizens of Columbia can tentatively say that they are able to read better than the city. On September 9 the South Carolina Supreme Court [overturned](#) the summary judgment, based largely on the city's creative (read: ridiculous) interpretation of the aforementioned use-utility-bills-for-utilities rule. The Supreme Court pointed out that nowhere in these statutes does it provide for a slush fund. Sorry, Columbia.

### **Willy Wonka's Water**

OK, so it's not as sweet as something Willy Wonka would concoct, but it definitely looks like something you would find in his [candy land](#). [An edible water bottle](#), "Ooho!", just won Climate KIC's Venture Competition, a competition created by the EU's European Institute of Innovation and Technology. The little edible water glob's designer, Pierre Paslier, describes it as man-made fruit due to its skin-like casing made from calcium chloride and a seaweed derivative called sodium alginate. Though perhaps a little [messy](#), people are excited about the prospect of packaging that utilizes a simple culinary technique rather than the [millions of barrels of oil used](#) annually to make plastic bottles. With the advent of sacked liquids, maybe Canada will finally get some respect for its [bagged milk](#). Or better yet, Capri Sun will figure out a way to make their juice [drinkable](#). News of the edible bottles has been greeted with yawns by goats who already thought cans, bottles and everything else were edible. (We apologize to all other goats for perpetuating that [myth](#)).