

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
March 1, 2016

## SCOTUS Backs Bay Clean Up Plan

The Chesapeake Bay is a mighty fine bay but not one without trouble. With so many people living, farming and doing business around it the waters of the bay have long suffered from things that wash and blow off of the lands in the 7 state (including the District of Columbia) watershed. Five years ago those states, the District of Columbia and the U.S. EPA announced a plan to reduce nutrient loads in the Bay. Hands were shaken, backs were slapped, and glasses were raised as hopes for the Bay improved. Then, of course, law suits were filed to stop the Chesapeake Clean Water Blueprint from taking effect. Specifically the American Farm Bureau Federation, 22 states and others challenged the legality of the plan and EPA's process for setting Total Maximum Daily Loads for nitrogen and phosphorus. In 2015 a Federal Appeals Court [upheld](#) the plan which led to an appeal to the Supreme Court of the United States. On February 29, [SCOTUS declined](#) hear that appeal, bringing the saga to a close, at least in the courts. At least for now.

## Louisiana Gets a New Coastal Czar Who Calls for Sense of Urgency

Johnny Bradbury was recently appointed the new chairman of Louisiana's Coastal Protection and Restoration Authority. At his introductory meeting last week, Bradbury [called](#) for an agency that operates with a sense of urgency and for moving forward on river reintroductions as a way to nourish a collapsing coast. It turns out that this is an issue across much of the globe. Scientists using radar mapping have [found](#) that two thirds of the world's largest [deltas are sinking](#)-some very quickly. The study is another reminder that river deltas rely on tricky balances of freshwater, sediment, and sea levels, and people are severely messing with all three, so that even a sinking delta can have too much [sediment in inconvenient places](#).

## Texas: Where "First In Time, First In Right" Means Something, Darn it!

The Texas Supreme [denied petition](#) on [a case](#) that denied the Texas Commission on Environmental Quality the ability to manage surface water by prioritizing public water supplies in times of drought over more senior water rights holders. The case, decided in an appeals court last April, pitted ranchers and long-time industrial users like Dow Chemical against TCEQ

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:

[Center for Natural Resource Economics & Policy](#)

New Orleans, LA

March 20-22, 2016

[River Rally](#)

Mobile, AL

May 20-23, 2016

[State of the Coast 2016](#)

New Orleans, LA

June 1-3, 2016

[Summit on Coastal and Estuarine Restoration](#)

New Orleans, LA

December 10-15, 2016

## Water jobs:

[Mississippi River Program Officer](#)

McKnight Foundation

Minneapolis-St. Paul, MN

[Clean Water Advocate](#)

Environment America

[Staff Attorney](#)

Tennessee Clean Water Network

Knoxville, TN

[Assistant Water Program Leader](#)

Forest Service

Washington, D.C.

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and municipalities. Dow has an older plant on the Brazos River near the coast in Freeport. They weren't getting enough water, so they issued priority calls to assert their senior water rights. According to Dow (and the court), [TCEQ didn't cut the rights to enough junior users](#) – including municipalities and power plants. TCEQ was trying to prioritize public health, but this ruling makes that illegal and beyond the TCEQ's authority.

Management of Texas' groundwater took a hit recently, too. Last year, in another case that the Texas Supreme Court [declined](#) to hear, [Edwards Aquifer Authority v. Glenn and JoLynn Bragg](#), the court decided that when an agency attempted to regulate groundwater use it meant a violation of property rights and that the agency owed damages. What those damages turned out to be would indicate the [cost of water regulation and management](#) in Texas. Well, a jury last week decided that the Braggs were due [\\$2.5 million](#) in compensation for the taking of their groundwater rights. Where it all leads for Texas water management is unclear, but it sure looks like if the state wants to manage or regulate its water – on the surface or in the ground, it's going to be costly.

### **Huzzah! The Corps of Engineers Drops Plans to Transport Fracking Waste by Barge**

The Coast Guard had been [kicking around the idea](#) of moving fracking waste from fracking sites such as Pennsylvania by barge to injection well disposal sites like Louisiana. Well, a number of people thought that might not be the best idea if for no other reason that that no one really quite knows what's in fracking waste (some combination of "proprietary blends" and "who knows what's down there?") so it might not be a good idea to put it on barges (that have been known to crash and spill on occasion) on waterways that also serve as public drinking water supplies. The Coast Guard got over 70,000 comments and 98% of them were against the idea. On the other hand, support for the idea has likely waned since 2013 due to the crash in oil prices pulling the wind out of the sales of the S.S. Shale Drilling and the increased evidence of a link between disposal wells and earthquakes (especially in [Oklahoma](#)). Add it all up, and the Coast Guard is [dropping the proposed rule](#). Now we can all go back to only worrying about petrol and oil [spilling in the Mississippi](#) River.

### **The Moment You've All Been Waiting for – The Wetlands Songs Playlist**

Many thanks to those who wrote in with wetlands songs. Part of the challenge this time was deciding [what is a wetland](#) and what is not. Trust us, the Federal wetland delineation manual was of zero help. That will not surprise all our readers. So everyone who brought us ideas for streams, creeks, and bayous can look for those whenever we get to a waterway list.

This list has a strong showing from Celtic music (what with their bogs and fens), lots of Louisiana (we have a whole genre of music named for wetlands – [swamp pop](#)), a frightening amount of death metal (you'll either love it or hate it), and even an appearance from Middle Earth. Our Wetlands Songs playlist is [now up on our website](#), but there are several songs [that we found that](#) aren't on Spotify, so you'll just have to enjoy them on YouTube – including what might be [the unofficial theme song of the WOTUS controversy](#). Our director, Mark Davis, is especially skilled at trolling the depths of YouTube, so, pretty please, make his day and check out [the Intertidal Wetlands song](#). Finally, please remember that these playlists aren't set in stone. If you've got an idea for a song for any of our published playlists, send it our way!