



# TUWaterWays

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

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## Annual Tulane Environmental Law and Policy Summit – It's Here!

Plopped right in the middle of the Valentine's fortnight is the professional and oddly romantic highlight of the season, the [29<sup>th</sup> Annual Tulane Environmental Law & Policy Summit](#), hosted by our very own Environmental and Energy Law Society at Tulane Law School. Featuring an array of topics and speakers, including keynote speaker Professor Richard Lazarus of Harvard Law School, where else would you rather be? Come join in for a weekend of thought-provoking panels, lots of networking with distinguished professionals, and fierce note taking. The Summit will be held today and tomorrow, February 23<sup>rd</sup> and 24<sup>th</sup>, so what are you waiting for? [Register here!](#) It's FREE, unless you want (need) continuing legal education credit.

## Overdrawn at the Water Bank?

Once upon a time, an industrious person could buy some land, subdivide it, and sell lots to folks who wanted to build homes in which to raise up families true and strong. No public water system? No problem, just drop some wells and tap into the groundwater that always seemed to be there. Sure, there might be some kind of permit or permission you would need to get but when did those ever stop anything? The answer to that question is "now". At least in Broadwater County, Montana where a local Court has [ruled that a planned subdivision was improperly approved—illegally, even—due to the failure of the Broadwater County Commission and the Montana Department of Natural Resources to consider the aquatic implications of the development](#). More specifically, the judge ruled that those agencies had not adequately considered how the development would impact the water resources of the state and the rights of existing water users. Or even come close. For fans of administrative law and environmental law, the 85-page ruling is a revealing lens into how administrative law is supposed to work and how laws like the National Environmental Policy Act (or their state law equivalents as was the case here) should function. If the ruling is actually correct, then the defendant agencies actually did not know what their duties are, did not understand what sorts of information they are supposed to muster and consider, and did not understand the roles of the public and other water rights holders, not to mention their obligations to implement prior court rulings. If all this sounds like a court showing no deference to state agency expertise, that is exactly the case. But unlike the [deference as judicial doctrine debates that are getting so much attention, including at the Supreme Court of the United States](#), the lack of deference shown by the Montana court was because the agencies had not earned it. [Does this spell the beginning of the end of development in water stressed places?](#) Probably not. Does it mean that development will need to be done with due regard for impacts on water resources and other water users? One hopes. One truly hopes.

## You've Got to [Fight for Your Right to Partake \(Clean Water\)](#)

That cool refreshing elixir you get from your tap is so easy to take for granted, just like it's seen by most Americans as a birthright that it be cheap. But it isn't cheap, and it is no sure bet that it will always be there. Those are luxuries and attitudes purchased for us by prior generations with public investments. Extending those benefits to future generations will require that we do the same. To remind us of that, and to take credit for doing something about it, the Biden Administration is out on [the hustings touting the \\$5.8 billion water infrastructure funding provided by the](#)

[bi-partisan \\$1 trillion infrastructure law enacted in 2021](#). Enacting that law was no small feat, and whether you a fan of it, it is a reminder of just how much effort—and political capital—goes into whetting your whistle. So, for supporters of the law, enjoy your [victory lap](#). For opponents, [drink up](#) and plan for the next go round, because there will be one and, please, don't just be against public investment that helps figure how to do it better.

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### Coming Up:

[Tulane Environmental Law Summit](#); New Orleans, LA; February 23 & 24, 2024

[US Army Corps of Engineers Mississippi River Study](#); New Orleans, LA; February 28, 2024

### Water jobs:

[Gulf of Mexico Campaign Manager, Offshore Wind Energy](#); National Wildlife Federation; Gulf Region

[Policy Manager, Mississippi River Water Initiative](#); National Audubon Society; Holly Springs, MS

[National Environmental Leadership Fellow](#); Rachel Carlson Council; Washington, DC

[Law Associate Post-Graduate Fellow](#); Center for Water Law & Policy, Texas Tech University; Lubbock, TX

[Advocacy Director](#); The Coalition to Restore Coastal Louisiana; New Orleans, Louisiana

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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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