

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
Nov 18, 2022

It's History Man, Can You Dig It?

A canal that is. Not your average everyday canal but a 1400-year-old canal. That is what a nearly mile long ditch in coastal Alabama turns out to be. Long before there was a U.S. Army Corps of Engineers or any college trained civil engineers [Native Americans were building canoe canals linking inland waters to the Gulf of Mexico in Alabama and Florida](#). As cool as these canals are, even cooler is what they suggest about the hydrologic knowledge and amount of labor it took to construct them and the extent to which travel and commerce was part of life before the arrival of Europeans. If you have questions or concerns about the canal in Alabama, you may be [too late](#). We understand the public comment period closed 500 BCE.

But Mom, All the Other Kids are Getting \$40 Million

TUWW readers have lives of their own and probably assume that this newsletter and all our other acclaimed work just happens. If only. Like most folks, we have to scrape and scratch to make it all happen. Not that we're complaining, but we were [gobsmacked](#) and sat bolt upright when we saw this headline: [Arizona Plans to Give Millions to ASU for Water Innovation, Research](#). WHAT???. Actually, it's \$40 million from the American Rescue Plan Act of 2021. These funds will help Arizona develop plans for its future water supply and create a Global Center for Water Technology. Well done ASU and Arizona, but Louisiana are you looking at this? Are you going to let Arizona steal the spotlight? If this was about something important like football would the Pelican State stand for seeing its universities relegated to Division II? [That would be crazy talk](#). To be fair, [Louisiana did get \\$300 million in ARP funds that are dedicated to water infrastructure improvement](#), but we can't help but think that you can do that and invest in the future at the same time. [Sigh](#).

Okefenokee Artichokey

The Okefenokee Swamp is one heck of a swamp. Storied in [song](#), [film](#), and [comic strips](#), the 430,000 acre swamp straddles the Florida-Georgia line and is protected by its inclusion in the 400,000 acre (roughly) [Okefenokee National Wildlife Refuge](#). But just how protected is it? For years, folks have been trying to mine for titanium near the Refuge, and for years a combination of public opposition, political protection, and the Clean Water Act have kept those efforts at bay. The proposed mining sites, though outside the Refuge, were in wetlands covered by the Clean Water Act so permission was required from the U.S. Army Corps of Engineers and the Army Corps needed to consider the views of the U.S. Fish and Wildlife Service, which were very concerned about potential harm to the Refuge.

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.

Coming Up:

Water Resources Commission Meeting, November 30;
Baton Rouge, LA

[Center for Planning Excellence, 2022 Louisiana Smart Growth Summit](#); December 7-8; Baton Rouge, LA

[Restore America's Estuaries, 2022 Coastal and Estuarine Summit](#); December 4-8; New Orleans, LA

[Hypoxia Task Force Public Meeting](#); December 14;
Washington, D.C. and Virtual

Tulane Environmental and Energy Law Summit; March 17-18; New Orleans, LA

Water jobs:

[Project Manager, Louisiana Political Affairs](#); Environmental Defense Fund; Remote

[Assistant Professor of Marine Affairs: Fisheries Management and Policy](#); University of Rhode Island; Kingston, RI

[Restoration Programs Director](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

[Regional Watershed Coordinator](#); Capitol Region Planning Commission; Baton Rouge, LA

[Water Quality Technician](#); Pontchartrain Conservancy; Metairie, LA

[Clinical Instructor](#); Tulane Environmental Law Clinic; New Orleans, LA

[Associate Attorney, Senior Attorney, and Paralegal](#); Earthjustice; Multiple Locations

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Well, maybe not anymore. With demand for titanium on the rise, interest in mining near the swamp has risen too. Thanks to shifting interpretations of the Clean Water Act by the U.S. Supreme Court ([Rapanos v US](#)), abortive attempts to issue rules applying the *Rapanos* decision, and conflicting court rulings, nobody can be sure right now just what the Act applies to and doesn't. [As a result, the Act's application to the proposed mine waxed and waned, leading the mine developer to sue the Corps to settle the matter. Under an ensuing settlement agreement, the Army agreed to not consider the mine site as "water of the United States" protected by the Clean Water Act.](#) As night follows day, [the Corps got sued again but this time by folks opposed to the mine.](#) Where this all ends and how it might be impacted by the outcome of the pending [Sackett v EPA](#) case is anybody's guess but this much is clear: The current penchant of the Supreme Court and some lower courts to trim the reach of the Clean Water Act will not likely lead to clarity about what it protects and will absolutely result in important water resources with fewer or no legal protections against degradation. At the end of the day, the [words of the great sage of the Okefenokee sound as true as when he first spoke them.](#)

[Hey! We're Looking For...](#)

The top water songs of 2022 and we need your help because, despite our best efforts to do nothing but sit around listening to music and watching TikTok videos, work keeps getting in the way. That's where you come in. What do you think were the best water songs of the year? And by "best" we don't necessarily mean good--you get the picture. Our [panel of experts](#) will review all submissions and compile the definitive playlist, a top 14 list and maybe even bestow a [meaningless award](#) to the top tune. Besides, what else do you have to do? Vote early, vote often! [We even made this Google form for your submissions!](#)