

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
June 18, 2015

## As California Drought Stretches On, “Sacred” Water Rights on the Chopping Block; Blame Game Heats Up

California officials are going deep in their playbook in order to manage the drought, now in its fourth year. The State Water Resources Control Board recently ordered one hundred “senior” rights holders, whose priority dates range from 1903 to 1913, to [cut back](#) on their surface water withdrawals – something not done since 1976-77. As the State Water Board [clarified](#), this curtailment does not apply to any riparian rights they may have (yes, California’s love for [hybrids](#) extends beyond cars).

These seemingly drastic measures are intensifying the blame game. Over the last few years, [almonds](#), [alfalfa](#), and [bottled water](#) have been fingered as the obvious scapegoats. However, as time passes in the parched state, additional players are getting pulled in. U.S. Rep. Devin Nunes from the Central Valley is trying to [revive blame](#) for the “man-made drought” on the federal government and selfish endangered species that need fresh water to survive. Some are wondering why a [man-made solution](#) has yet to come out of Silicon Valley, while other types of [water storage projects](#) are slow moving in their implementation (something Texas might be kicking itself for as it has watched [trillions of gallons](#) of rain flow into the Gulf over the past six weeks, but reservoirs are [on the way!](#)). For the millennials out there, there are [hashtags](#) and [apps](#) to “drought shame” those wasting the precious resource. Even the sacred cow – [population growth](#) – is getting some scrutiny as local water agencies continue to permit new water hookups despite a state mandate requiring a 25 percent reduction (on average) for all municipal water suppliers. For those looking for a time out from all this, make your way over to the “[unregulated East Coast water-topia](#)” or down to New Orleans, where there’s so much water we don’t quite know [what to do with it](#).

## Hostile Takeovers Not Just For the Private Sector

Faced with massively expensive system overhauls and the lure of private sector capital and purported efficiency, there’s a growing trend in the U.S. to [privatize water utilities](#). Missoula, MT is looking to buck that trend, as it attempts to wrestle ownership of the water system from its private owner. After offers to buy the water system were rejected, the city opted to go hostile, and in the public sector that means exercising eminent domain. This week, a Missoula district

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:

[Horizon Initiative Water Committee & Louisiana Water Network Meeting](#)  
June 24, 2015

Garden Study Center, City Park  
New Orleans, LA

[18<sup>th</sup> Annual Conference on Litigating Takings Challenges to Land Use & Environmental Regs.](#)  
September 25, 2015

University of Maryland School of Law  
Baltimore, MD

## Water jobs:

### [President and CEO](#)

Bureau of Governmental Research  
New Orleans, LA

### [Communications Director](#)

Gulf Restoration Network  
New Orleans, LA

### [Policy Director, MD and DC](#)

Potomac Conservancy  
Silver Spring, MD

### [Manager, Coastal Habitat Restoration](#)

National Fish and Wildlife Foundation  
Baton Rouge, LA

### [Attorney](#)

Community Water Center  
Sacramento, CA

### [Visiting Scholar](#)

Sabin Center for Climate Change Law  
Columbia Law School  
New York, NY

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court judge [sided with the city](#), finding that “public necessity and the public interest requires [sic] the City take ownership of the Water System.” The judge considered many factors in drawing this conclusion. Of note were the facts that the private owner was fixing to sell the water system anyway, a history of inadequate capital improvements under private ownership, increased coordination with other public works under public ownership (since the city already owns the sewerage system), and the elimination of a 9 percent profit margin. If upheld on appeal, “just compensation” will need to be worked out. The City has offered \$65 million, while the private owner thinks the system is worth closer to \$126 million. While the fight will now turn to dollars and cents, it is important to recognize the primacy of the public’s best interest when determining who will provide reliable, clean water.

While it cannot be considered if there is an appeal, Pope Francis’ latest [encyclical](#) aligns closely with the district court’s sentiment on that point and may help usher an era of improved water (and other natural resource) stewardship.

### **Knowledge is Power – New Water Studies and Tools**

In law and policy, we rely heavily on scientists, experts, and innovators as guides toward good law and policy. Case in point: groundwater. Until relatively recently, groundwater was thought to be “so secret, occult and concealed, that an attempt to administer any set of legal rules to [it] would be involved in hopeless uncertainty.” (For a primer on groundwater law, we recommend water law expert Joe Dellapenna’s 2013 [working paper](#) on the subject.) Thanks to advancements in technology, groundwater’s secrets are being revealed. The [latest studies](#) come out of NASA’s Jet Propulsion Lab and contain some unsettling news. First, thirteen of the world’s thirty-seven largest aquifers are being [depleted with little or no recharge](#). The most overstressed among those thirteen are the Arabian Aquifer System, on which 60 million people depend; the [Indus Basin aquifer](#), which straddles Pakistan and India; and the Murzuk-Djado Basin in northern Africa. The authors’ of the studies also found that the “[a]vailable physical and chemical measurements [of groundwater] are simply insufficient,” and that a coordinated effort is needed to better understand the extent of our groundwater resources. Moving to other government research, USGS scientists released a [fact sheet](#) and [report](#) on human-caused earthquakes. While scientists have known that injecting fluid underground can induce earthquakes, USGS scientists are pointing the finger at wastewater disposal as the primary cause of the recent increase in quakes in the central US., noting however that most wastewater injection wells do not induce earthquakes.

Finally, for those looking to figure out how such water stresses might impact your investments, Ceres, a non-profit that advocates for sustainable business practices and leadership, recently launched an [online tool](#) that allows you to search 10-Ks ranging from 2009 to present and determine how companies are measuring, managing, and disclosing their water risk. Now with our newfound knowledge, let us not forget that [with great power there must also come – great responsibility!](#)

### **Miracle May Staves Off Shortage on the Colorado, For Now at Least**

Do you believe in miracles?! If you’re [Al Michaels](#) or live in the Colorado River Basin, yes, yes you do. Things were looking grim for Basin States. Earlier this month, projections for Lake Mead’s water level in 2016 were 1,077 feet. If Lake Mead’s water level falls below 1,075 feet at the beginning of the year, shortage is officially declared. If shortage ever happens, automatic cuts in distribution kick in and [things get messy](#) for Arizona, California, and Nevada. To [prevent shortage](#), the seven Basin States are finalizing [two novel conservation agreements](#) that aim to keep more water in the reservoir. In essence, the cost of conservation will be less costly than the cuts dictated by the shortage schedule. The details are taking longer to hammer out than hoped, but it is reportedly progressing.

The Basin States received a shot in the arm from an unusually wet “[Miracle May](#)” (although still [below average for the year](#)). The Bureau of Reclamation is now [projecting](#) that the reservoir elevation will be above 1,081 feet at the end of this year and above 1,079 feet at the end of 2016. While the reprieve is certainly appreciated, forecasters expect Lake Mead to remain below 40 percent full over the next two years, meaning the real miracle would be a string of wet winters needed to refill the reservoirs on the Colorado River.