

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
[April 2, 2020](#)

To Demo, or Not to Demo, That is the Question

Hey all you cool cats and kittens! Welcome to this week's edition of TUWaterWays: Whales, WOTUS, and Washing. To begin, there is no shortage of debate about water management in the west. One of the current debates regards removal of dams on rivers. For example, there are [plans to demolish the four southernmost hydroelectric dams on the Klamath River](#), which is California's second-largest river. At an estimated cost of nearly \$450 million, the project would reshape the Klamath River and empty giant reservoirs. It would be the largest such demolition project in U.S. history, fitting into a trend in the U.S. toward dam demolition as these infrastructure projects age and become less economically viable. Since 2012, more than 1,700 U.S. dams have demolished.

Tribes, farmers, homeowners, and conservationists all have a stake in the Klamath dams' fate. Tribal members and conservationists appreciate that the removal of the dams could revive plummeting salmon populations by reopening habitat that has been blocked for more than a century and allowing clear passage for the fish. Coho salmon from the Klamath River are listed as threatened under federal and California law, and their population in the river has fallen anywhere from 52% to 95%. The situation is so bad that members of the Yurok tribe canceled fishing for the first time in the tribe's memory in recent years and had to buy fish at a grocery store for their annual salmon festival in 2017. How festive.

But, opponents of removal, including a group of residents who live around a reservoir, argue that their waterfront properties will become mudflats and their homes will lose value without the dams. They also argue that they too feel a strong sense of attachment to the land and have been there for years. Other residents worry that removing the dams will result in the loss of an easily accessible water source to fight wildfires. Two dams further upriver, which are not slated for demolition, are part of a massive irrigation system that provides water to more than 300 square miles of crops. Though those farmers won't be directly affected by the project, they worry that it will set a precedent. The groups are currently waiting to see if federal officials approve the plan. In the meantime, this showdown of tribal/conservation rights versus farm/property interests feels like a tale as old as time. Plus, based on the competing interests, it's a damned if you do, damned if you don't situation for the feds (pun intended).

A similar plan to save salmon, and killer whales by extension, by removing dams has been long debated regarding the Snake River within the Columbia River system. Those four dams are part of a vast and complex hydroelectric power system operated by the federal

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:

[National Wildlife Federation EcoCareers virtual conference](#); April 2, 2020

[Webinar: Responding to COVID-19: Insights & Resources for Clean Water Utilities](#); April 2

[Webinar: Environmental Law and Policy Annual Review](#); April 3

[Solve Climate, "Climate Solutions for Louisiana" Webinar](#); April 7

[PFAS Webinar: Advanced Discussion of Site Investigation Challenges and Best Practices](#); April 7

[A Studio in the Woods Scholarly Retreat Application Deadline](#); April 13

[Public Comment Deadline for Certain CA Groundwater Sustainability Plans](#); April 15

[Public Comment Deadline for "Strengthening Transparency in Regulatory Science" Proposed Rule](#); April 17

[Coastal Resilience in Alaska Webinar](#); April 21

[Summer Sea Turtle Sustainability Grant Application Deadline](#); April 25

[Drinking Water Webinar: Harmful Algal Blooms \(HABs\) and Algal Toxins](#); April 28

Water jobs:

[Attorney Advisor](#); U.S. Department of the Interior, Office of the Solicitor General; Atlanta, GA

[Climate Engineering Fellow](#); UCLA School of Law; Los Angeles, CA

[Idaho Director](#); Western Watersheds Project

[Rachel Carson Environmental Organizing Fellowship for Students](#)

[Various Positions & Locations](#); Earthjustice

[Executive Director](#); Washington Water Trust; Seattle, WA

[Clean Rivers Program Supervisor](#); Guadalupe-Blanco River Authority; Seguin, TX

[Assistant Professor](#); Texas Tech University; Lubbock, TX

Tulane Institute
on Water Resources Law & Policy

6325 Freret Street, 1st Floor
New Orleans, LA 70118
504-865-5982

tulanewater.org

TWITTER: [@TulaneWaterLaw](#)

government in Washington, Oregon, Idaho, and Montana. Recently a draft federal report [rejected the idea of removing the Snake River dams](#) to save the endangered or threatened salmon and the whales. That report is now in the public comment period. After the public comment period ends, NOAA will analyze the proposal to determine if it does enough to protect salmon and whales, and a final federal report is expected in September. Due to the pandemic, however, the public comment meetings are now being held as teleconferences, and [environmentalists contend](#) that the teleconferences are cumbersome and allow for far fewer comments than the traditional public hearings. They have asked the federal government to double the public comment period to 90 days and to hold more hearings. Such questions regarding the fairness, adequacy, and legality of teleconferences and webcast meetings as replacements for in-person public meetings are beginning to emerge more and more in this new dystopian world.

A Time to Reconnect with Old Friends

The Waters of the United States (WOTUS) saga might not be at the forefront of your thoughts with everything else going on, but this might be a good time to check in again because the conflict is heating up. Recall that the Trump administration's WOTUS rule, which is also called the [Navigable Waters Protection Rule](#), narrows the types of wetlands and waterways subject to federal jurisdiction under the Clean Water Act. The administration still has not published the new rule in the federal register. On Monday, March 30, the Natural Resources Defense Council, Conservation Law Foundation, and other groups notified the EPA and Army Corps of Engineers that they're preparing a citizen suit under the Endangered Species Act to challenge the new rule. In a [letter](#), the groups assert that the agencies failed "to consult with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service (together, the Services) before promulgating the Navigable Waters Protection Rule (the Rule)." The letter further asserts: "The Rule is a 'discretionary' action, 50 C.F.R. § 402.03, that 'may affect' endangered and threatened species, *id.* § 402.14(a). The Agencies therefore had a legal duty to complete consultation with the Services before promulgating the rule. *See id.*; 16 U.S.C. § 1536(a)(2). The Agencies did not fulfill that legal duty. As a result, they have failed to ensure that the Rule is not likely to jeopardize ESA-listed species or result in the adverse modification of critical habitat, in violation of section 7 of the ESA. *See* 16 U.S.C. § 1536(a)(2)." The letter goes on to list species that could be affected by the rule because they rely on wetlands, such as the crested caracara, Everglade snail kite, piping plover, Poweshiek skipperling, vernal pool fairy shrimp, bog turtle, meadow jumping mouse, Cooley's meadowrue, and pondberry. Sure, some of these may sound like the names of creatures from *Harry Potter*, but they, in fact, are real species that are endangered or threatened. We promise to keep a watchful eye as the challenge progresses and keep you in the loop.

Waste Not, Want Not

With everyone washing their hands a lot these days, we wanted to remind people that handwashing does not have to mean water-wasting. That is, according to [official CDC guidance](#) on the proper way to wash hands, the steps are: 1. wet your hands with clean, running water (warm or cold); **2. turn off the tap**; 3. apply soap; 4. lather your hands by rubbing them together with the soap; 5. scrub your hands for at least 20 seconds; 6. rinse your hands well under clean, running water; and 7. dry your hands using a clean towel or air dry them.

Unfortunately, most commercials demonstrating proper handwashing techniques show the water continuing to run during the process. However, the CDC guidance states that this is not necessary, specifying that "[t]urning off the faucet after wetting hands saves water, and there are few data to prove whether significant numbers of germs are transferred between hands and the faucet." Additionally, the guidance further explains: "While some recommendations include using a paper towel to turn off the faucet after hands have been rinsed, this practice leads to increased use of water and paper towels, and there are no studies to show that it improves health." If you get bored counting and want a timer to reach 20 seconds, try singing the "Happy Birthday" song from beginning to end twice (side bar: happy birthday to our senior research fellow, Portia!). If you get tired of that, here are some [other songs](#) with roughly 20 second choruses to sing. There is even a [twitter thread](#) of people chiming in with their suggestions. If you don't want to fall down that particular rabbit hole, use the ["Wash Your Lyrics" site](#) to generate a hand washing infographic based on your favorite song. Thank you for coming to my Ted Talk.

Have some extra time on your hands?

The folks at Ripple Effect are creating a series of short video tutorials, called “Water Literacy 101,” which will be posted to their [Instagram](#), [Facebook](#), and [YouTube channel](#). Each video shows how to build a simple scientific model that demonstrates a basic concept of land and water, such as erosion, deposition, surface tension, or buoyancy. All activities can be done using materials you can find at home or in your own backyard and are aligned to Next Generation Science Standards.

Scaled up, the ideas explored in these models help explain some of the largest, most consequential scientific phenomena shaping coastal communities today. For example, the first video, Sediment Jar, shows how different types of sediment settle in water. Now think about the Mississippi River, which carries an immense sediment load toward the Gulf of Mexico each year. Where that sediment is deposited determines where new land is created. Students of any age--even adults--will be better equipped to understand coastal land loss and restoration, namely diversions, if they can make a model and observe sediment action with their own eyes. It’s like a real-life version of The Magic School Bus! Check out the videos; and, if you are an educator, a student, a parent, a scientist, water expert, artist, or anyone who would like to make a Water Literacy 101 video, email the team at hello@rippleeffectnola.com.

Wondering what’s up at the Louisiana Legislature?

If you’re the kind of cool cat or kitten who’s still reading all the way down here, you’re probably the kind of cool cat or kitten who’s interested in what’s going on at the Louisiana Legislature this session. Well, we can help a bit. Some of our lovely interns this semester have put together spreadsheets of bills related to our watery world in the [House](#) and the [Senate](#). Hope you find them useful but be ready to have to enlarge!