

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
[March 4, 2021](#)

Water Troubles

Everybody's heard about Texas's water and energy crises that were exhibited during last month's winter storms, but if one were to go on down to [Jackson](#), Mississippi, you'd see that those storms gave other places a load of [hurt](#) as well. Some residents in the city have been [without water](#) for three weeks, highlighting problems with Jackson's crumbling water infrastructure. Those of us from the [north country](#) may not understand this sort of pandemonium caused by cold weather, but areas that aren't accustomed to freezing temperatures do not have the proper infrastructure or preventative measures in place to ensure continued smooth operation. And that's exactly what happened in Jackson. The cold gave water treatment plants [the working man blues](#) - they froze and then were unable to operate, which caused water pressure to plummet. Although the plants are operating again now, without consistent water pressure they cannot optimally serve the community, especially those farthest from them.

Last month's winter weather not only highlighted water infrastructure problems, but also serious inequity - communities of color were the [hardest hit](#) and have been the longest abandoned. (Side note, the Biden Administration is working on enhancing the EPA's environmental justice mapping system, [EJSCREEN](#), in a broader climate-related [executive order](#); this should also help demonstrate how communities of color are disproportionately harmed by environmental factors and more comprehensively address those problems). These disproportionate impacts were seen in areas throughout Texas, as well as Jackson, which is a majority-black city. The city simply does not have the funding or the resources to weatherize for freezing temperatures. Mayor Lumumba stated that while they are restoring service to the area, more work needs to be done and that state and federal funding to improve the city's old pipes will be crucial going forward. Hopefully the city and entire southern United States will get the funding they need to be more prepared for the next [cold dark night](#).

The Case of the Disappearing Water?

Last week, the Supreme Court heard [oral arguments](#) in the nearly decade-old historic riparianism case, Florida v. Georgia. After Florida's oyster fishery in the Apalachicola-Chattahoochee-Flint (ACF) River Basin was decimated in 2012, Florida sued Georgia over its increased use of water from the basin. After years of discovery, trials, and the appointment of two Special Masters, the case is back in front of the Supreme Court. Throughout the arguments, Florida alleged that the most recent [Special Master's report](#), which found no harm to Florida due to Georgia's water consumption, is incorrect; Georgia is in fact the

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:

[LaSPACE Council Meeting; LaSPACE and Louisiana Sea Grant](#); March 12

[Ecological Drought: Impacts on Coastal Ecosystems](#), March 17

[SLU Summit for Water: Navigating the Currents of Water Research](#); March 22

[ASBPA Coastal Summit](#); March 23-25

[EPA Small Drinking Water Systems Webinar: Disinfection Byproducts Control](#); March 30

Water jobs:

[Assistant Director For Policy and Assistant Professor in Environmental Policy and Ecology](#); University of Georgia; Athens, GA

[Executive Director](#); Bayou City Waterkeeper; Houston, TX

[Manager of Equity and Resilience Programs](#); Groundwork USA; New York City, NY and Boston, MA

[Director, Sustainable Land Science](#); Conservation International; Arlington, VA

[Associate Research Scientist, Marine Protected Areas and Climate Change](#); Conservation International; Santa Barbara, CA

Multiple Intern Positions with Conservation International:
[Geospatial Trainer](#); [Conservation and Sustainable Development](#); [Climate Change Adaptation](#); [Climate Change and Biodiversity](#);

[New Orleans Policy Manager](#) and [Climate Coordinator](#); Alliance for Affordable Energy; New Orleans, LA

[Manager, Conserving Marine Life in the U.S.](#); Pew Charitable Trusts; Washington, D.C.

[Associate Attorney](#); Earthjustice; Seattle, WA

[Senior Staff Attorney](#); San Francisco Baykeeper; San Francisco, CA

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primary cause of the ACF River Basin's water troubles, and simple low-cost measures like more efficient irrigation practices would remedy the situation. On the other side, Georgia relied on that Special Master's report, stating that Florida could not prove its injury was the fault of Georgia, that there are numerous other factors at play (such as overharvesting, drought, and the Army Corps), and that the requested remedy would come at a massive cost to Georgia with little benefit to Florida.

All nine justices asked questions of both sides, varying from asking if this is the case of the disappearing water, to what the Army Corps' role in water allocation in the ACF Basin is, to whether this is a "[Murder on the Orient Express](#)" situation. Sounds like the justices have been catching up on their [mystery novels](#). Throughout the questioning, the Court seemed to be more skeptical of Florida's position, likely due to that pesky Special Master's report. A ruling isn't expected until the summer, but the arguments presented a lot of points that could be important to states like Louisiana and Mississippi, whose rights to and use of the Mississippi River depend greatly on the actions of upriver states. We wait in anticipation; however, based on the report and how the questioning went, if downriver states are hoping for a positive verdict, we may be [waiting in vain](#).

WOTUS, It's Been Such a Long Time

... At least it *feels* like a long time since we've written about WOTUS. And although you readers may have [enjoyed the silence](#) from us on all things WOTUS after such a WOTUS-filled 2020 (and 2019, and 2018, and ...), we regret to inform you that a Tenth Circuit Court of Appeals ruling this week has potentially thrown another wrench in our long-running WOTUS woes. As you probably remember, the Trump Administration redefined the term in its "Navigable Waters Protection Rule," narrowing what waterways could be protected by the Clean Water Act. Through a plethora of legal battles, the new Trump-era rule replaced the Obama-era rule in every state except Colorado, where the U.S. District Court for the District of Colorado blocked it. The Trump Administration naturally was unhappy with that decision and brought suit last year in the Tenth Circuit to unblock its rule in Colorado. Upon the change of leadership this year, the Biden administration filed a motion requesting the Tenth Circuit to halt that lawsuit for 60 days in order to evaluate the rule. This week the court responded, publishing an [order](#) denying the Biden Administration's request. According to a Clean Water Act expert, courts often grant such motions during a change in Administration, which is why many were surprised by this denial. So, the denial brings up some questions – does the court plan to make a final ruling on the Trump Administration's lawsuit within the next 60 days? And does this denial indicate that the ruling may be more favorable to the Trump Administration than the district court's ruling was? [Only time will tell](#). Or rather, 60 days will tell.