



# TUWaterWays

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

Authors: Christopher Dalbom, Mark Davis, Haley Gentry, and Ximena De Obaldia

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## Lo, per Bright Enterprises and Relentless Commerce, The Functioning of the Federal Government May Be About to Drastically Change

If you took an administrative law class (or maybe ended up in [a very niche corner of TikTok](#)?) in the past forty years, you may soon be able to just forget most of what you still have rattling around in your dome. The sea change has already started with Supreme Court cases like [West Virginia v. EPA](#) that created the [major questions doctrine](#). Now, next week, the Supreme Court will hear two consolidated cases, [Loper Bright Enterprises v. Raimondo](#) (sorry couldn't work your name into the title, Raimondo) and [Relentless v. Department of Commerce](#), that are directly challenging the court to overrule a forty-year-old case, *Chevron v. NRDC*, that created the "Chevron Doctrine" that allows courts to cede reasonable interpretation to the subject expertise of an executive agency when it is carrying out an ambiguous aspect of a federal law. If the [current members of the Supreme Court bench](#) decide the case the way everyone expects them to and do, indeed, overrule *Chevron* (and why would they take the cases if they weren't interested in doing just that?), then following on from those cases like *West Virginia* and *Sackett*, the ability of agencies to apply the laws they're charged with will continue to narrow. If you ask [George Will](#) or a [lawyer named Scalia](#), this is a great idea: taking away the partisan, right-left lurching that happens as administrations change and [putting highly technical decisionmaking \(and added power\) in the steadfast hands of trustworthy federal judges](#), far removed from the [hoi polloi](#) voting electorate and coincidentally a body shaped by the decades-long conservative effort to shape the judiciary.

It's all worth thinking about now, because oral arguments take place on Wednesday, January 27<sup>th</sup>. There will be [winners and losers](#), but at least the futures market for administrative law textbooks should be a hot one, even better than [frozen concentrated orange juice](#).

## Do Ya Ever Feel The Urge to Connect with the Gods of Water Infrastructure?

[Juturna](#)? [Hapi](#)? [Mighty Agrippa](#)? Well, whatever pantheon your water deity of choice occupies, the San Francisco Bay area may be the place for you. [Two water temples](#), one in Redwood City and one in Sunol, commemorate the region's efforts to bring water to [The City](#). One, where three water sources converge in Alameda County and the other at the end of the Hetch Hetchy aqueduct. They bring classical architecture and flair to the celebration of man's ability to harness water for municipal development (irrespective of ecological destruction and ethnic cleansing). While this might not be the exact way those of us at Chateau d'Eau would celebrate our spiritual connection with water (perhaps [purifying ourselves in the waters of Lake Minnetonka](#) instead), it could be time for a pilgrimage.

## [These Pretzels Cheeses and Chickens Are Making Me Thirsty!](#)

We humans are a thirsty lot. As land-based, air-breathing, questionably charismatic megafauna, it makes sense. And as heterotrophic, endothermic critters, we also are a hungry lot. [What we choose to eat ends up making an even bigger difference on the waters around us than our own thirst](#). The American West is currently seeing the culmination of the century-old effort of the Department of Interior's Bureau of Reclamation. The agency was founded to "reclaim" desert lands for agriculture. When, exactly, did industrial, Western-style agriculture have a

previous claim to desert lands? [Mustn't ask us. Not it's business.](#) Anyways, the Arid West has more "reclaimed" desert in major agricultural production than ever. Thanks, in large part, to the American diet and our love of pizza. It turns out that Americans' cheese consumption has greatly increased in recent decades, in large part through mozzarella on top of a [Ray's Famous Original](#) and the like. The need for all that mozz has been met by places like Idaho, where dairy cattle operations have exploded (not literally) along with expanding water-intensive crops to feed those lady ungulates. And where do they get that water for those crops? Underground! It's just one of a countless number of ways we're depleting groundwater resources in the US through our lifestyles and the policies that subsidize them. Will [the cultural ramifications of the Teenage Mutant Ninja Turtles](#) ever stop echoing?

Lest you think it's a problem just for the West and the lactose-indulgent, a similar groundwater depletion is occurring in Arkansas through the intensive chicken growing operations that are, for liability purposes, very much independent operators and not just part of Tyson's multi-billion-dollar operation and row crops of soy and corn to feed them (and to make "clean" ethanol). Apparently, we Americans are a bunch of bodybuilders eating four times the amount of chicken recommended by global health and climate experts. Of course, all those chickens make plenty of waste. That waste, in Arkansas, all makes its way into the Mississippi River watershed, and [it has plenty of other pollution issues to worry about](#) right now.

Water law wonks out there reading this might ask how the Western states' water resources board would have approved all these changes to so many appropriation permits, but they would probably also know the answer about how such systems look on paper or in statute versus how they play out in reality and would only be asking to be a bit of a [smart aleck](#).

Not to say that no one isn't trying to do anything about any of this. In Utah, the state is [paying farmers to leave fields fallow](#). There it's about preserving water for Salt Lake City and preventing the ultimate collapse of both the Great Salt Lake and the Colorado River system, but there's the added benefit of potentially increasing the lifespan of groundwater resources. In Texas' panhandle groundwater districts are trying regionalization as a response to aquifer depletion, but whether the Texas Supreme Court will let them do their jobs is always a question [there](#).

In Central California's berry growing region of Pajaro Valley, farmers now have to [pay for irrigation water](#). Something anathema to American farmers who traditionally [don't want to even talk](#) to the government about their water, let alone pay for it. And, yet, the chief executive of berry giant (not [Giant Barry](#)) Driscoll's told the NY Times that "water can't be free anywhere" and supports this change in Pajaro Valley. Wonder if he paid for the water for [these berries we just picked up](#)? Probably not, but it also makes sense that if any "farmer" is going to advocate for paying for water it would be a huge outfit that sells an expensive product and can absorb the cost for the ground to absorb the water.

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### Coming Up:

Tulane Offshore Wind Conference; New Orleans, LA; January 19, 2024

Tulane Environmental Law Summit; New Orleans, LA; February 23 & 24, 2024

### Water jobs:

Staff Attorney, Atchafalaya Basinkeeper; South Louisiana (flexible location)

[Water Policy and Science Communications Graduate Student Research Fellowship](#); University of Wisconsin-Milwaukee; Milwaukee, WI



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.

6325 Freret Street, 1<sup>st</sup> Floor  
New Orleans, LA 70118  
504-865-5982  
[tulanewater.org](http://tulanewater.org)

