



# TUWaterWays

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

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## Maybe Don't Follow Every Tradition

Now that May's wrapping up, it's time to slowly melt into that swampy New Orleans summer and [prepare for hurricane season](#). At least it is around here. But the month couldn't pass without a high-profile Clean Water Act lawsuit against EPA. It's basically tradition now for [these things](#) to happen in May. The U.S. Supreme Court [agreed to hear](#) an appeal from the [City and County of San Francisco against the Environmental Protection Agency](#) over its discharge regulations. The regs bar any discharges that "cause or contribute to a violation of any applicable water quality standard" which San Francisco argues is too ambiguous. Last summer, the 9<sup>th</sup> U.S. Circuit Court of Appeals sided with EPA and upheld the standards in the discharge permits issued to the city. In response, the Golden Gate City appealed to the Supreme Court and alleged that the provisions don't impose quantifiable limits for water quality, and, as a consequence, there are no directives to assess for controlling its discharges. In other words, San Francisco is saying that a narrative standard under the Clean Water Act is too ambiguous to comply with. EPA contends that such standards are specified in the adopted regional or state water resource control boards of the EPA and should be incorporated into said permit provisions. While all of this kerfuffle was happening, residents had been noticing that after rainstorms in the city, the beach and the ocean would get covered in trash and plastics, which has driven the city into yet [another displacement crisis](#), although not the one everyone was expecting. To add salt to the wound, before the Supremes decided to take on the case, earlier this month the [EPA, the state Attorney General, and the SF Bay Regional Water Quality Control Board](#) jointly sued San Fran for allegedly allowing billions of gallons of sewage to flow into the Bay and the Pacific ocean. Now it is time to [wait and see](#) what the Court has to say, unless you're one of "friends of the court" submitting on behalf of one side or another, like San Francisco's traditional allies [the American Farm Bureau Federation and the American Fuel and Petrochemical Manufacturers](#). If San Francisco DOES win, does it essentially make combined sewer overflow systems illegal, as it is nearly impossible for a city department to accurately predict the pollutants in those waters? Once again, the Clean Water Act could be in for a major rewrite—without word one of the actual law changing. If history does repeat itself, it will be decided in May 2025.

So, sitting on the edge of our seats until the next SCOTUS term, we can entertain ourselves with yet another case here in Louisiana. The decade-old Louisiana parishes' Coastal Use Permit suits, led by Plaquemines Parish v. BP America Production Co., are still moving along. Despite what many believed to have already been a resolved issue, the [fight over jurisdiction](#) has finally been answered this week (or maybe not – writ application?). But first, a quick recap of the situation: these suits involves many oil and gas companies that have been sued by several Louisiana parishes, the state Attorney General, and the Secretary of Natural Resources for violating the Louisiana's State and Local Coastal Resources Management Act of 1978 by either violating the terms of their Coastal Use Permits or neglecting to get them at al. But up to this point, they have been playing the long, long game of jurisdiction (and, in the meantime, out of sight negotiations). First, the companies removed the cases to the federal court. The district court then granted Louisiana's motion to remand the case to state court for lack of federal jurisdiction. The companies appealed that decision (who knew you could appeal from remand?). The United States Court of Appeals for the 5<sup>th</sup> Circuit now decided to uphold the district

court's remand decision, and the cases are back in the state courts. With this decision, the cases may now finally move on to the actual matter of the suits.

## There's a First Time for Everything

Some things are loooong overdue. When are we ever going to see high-speed rail across the US? When is One Direction getting back together, as promised? When is the [Texas State Flood Plan](#) going to be finalized? Well, the answer to that last one is maybe in a couple of months, but you can read the draft now. Hey, [a win is a win](#). That's right, the Texas Water Development Board, which was formed in 2019 in response to [Hurricane Harvey](#), has finally published its [first flood plan draft](#). And not just the first plan for the TWDB. This is the state of Texas's first ever statewide flood risk analysis and comprehensive flood plan.

The plan has revealed that around 1.3 million houses in Texas are located in flood-prone areas. More than [5 million residents of the state live or work in places susceptible to flooding](#). That's more than the entire population of Louisiana with everyone in Coastal Mississippi thrown in as lagniappe. Additionally, according to the TWDB, each one of the states' counties has experienced at least one federally declared flood disaster since 1953. Part of why this flood plan took so long to develop is because many of the regions in the state had never had flood plans, or if they did, they were completely outdated. That means that the new plan will be used as a baseline for future studies and analysis. The plan includes recommendations like allocating additional funding to flood mitigation projects and creating technical assistance programs. So, if you live in [Texas](#), the deadline for public comments is July 17, 2024, which can be submitted [here](#).

## Danny Ocean, is that you?

Heist movies are a Hollywood staple, and the elements of yet another are coming together right now; one that involves a man and a body of water. It involves neither [Danny Ocean](#) nor [Spectre](#). It's the current case in Fresno, California where the former head of the [Panoche Water District](#) (PWD), has pleaded guilty to [conspiring to steal water from the government](#). Perhaps to understand the heist, you at least need [a lot of scrolling text](#). The PWD obtains water in many ways – it both purchases water from the federal government and reclaims runoff drainage from farms. The water that PWD buys from the federal government is provided by the [Central Valley Project](#), one of the largest water storage and transport systems in the world. It takes water from other sources and pumps it south for delivery through the Delta-Mendota Canal (DMC), also federally owned. That water is then delivered to PWD, and other water districts, and they pay the government a set price. As a final step, PWD then usually mixes the water from all its sources and moves it through canals, pipelines, and pump stations.

Now about the heist. According to the indictment, the water grabbing allegedly went like this: an old pipeline that stretched from the DMC to the PWD had a leak, and instead of notifying federal authorities, the alleged conspirators modified the pipe to open and close on demand; The result was supposedly a two-decade conspiracy where \$25 million worth of water was [smoothly siphoned and sold](#) to farmers and other water districts. Now, not to state the obvious, but [stealing water from the federal government is illegal](#). This subject becomes even more pressing as California continues to push for water conservation and water pumping limitations on [agricultural communities](#) which has worried farmers in California over their produce and just how much they'll be able to grow. So, who do you like for the role? We Clooney might just be able to pull it off.

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### Coming Up:

[LDENR Natural Resources Steering Committee Public Hearing; Baton Rouge, LA; June 18, 2024](#)

[CRCLecture - Analysis of Drought Events in the Lower Mississippi River; New Orleans, LA; June 26, 2024](#)

[Public Comments on Texas State Flood Plan; Online; until June 17, 2024](#)

### Water jobs:

[Hazard Mitigation Specialist, Senior; City of New Orleans; New Orleans, LA](#)

[Staff Attorney; Atchafalaya Basinkeeper; Remote w/in LA](#)

[Staff Scientist; Healthy Gulf; Houston, Southeast Texas, or Southwest Louisiana \(Remote\)](#)

[Chief Development Officer; Healthy Gulf; Gulf South \(Remote\)](#)

[Coastal Organizer; Healthy Gulf; Southeast Louisiana \(Hybrid\)](#)



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.

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