

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
November 30, 2017

## I'd Rather be a Hammer than a Nail, I'd Rather Have a Glacier than a Snail

[Peru is a land of wonders and contrasts](#), and nothing proves that better than the majestic Cordillera Blanc range in the Peruvian Andes about 400 km north of Lima. Really tall, glaciated peaks, tower over the towns and farms in Ancash province. It does rain (500-1000 mm per year), but without the water coming from those glaciers life in the region and the city of Huaraz would be hugely different. These days, there is plenty of water coming from those glaciers, water that is fueling a transformation in the regions' agriculture. So far so good, but there is fly in the ointment—the glaciers are melting too fast, or at least way faster than they historically have. That bodes ill in two ways. First, the high glacial lakes are filling fast and they have a [nasty history](#) of breaching and sending walls of water, mud, and rocks to the folks below. Second, [once the glaciers are gone the goose that laid the golden egg will be gone](#). So what's to be done? In the short term, maybe it would be a good idea to try to understand what is actually driving the glacial retreat and its impacts on the human and natural systems that are linked to the glaciers. And wouldn't you know it, a [new interdisciplinary center](#) has been created to do just that. To get a feel for the sort work to expect out of that center take look at this article in the [December 2017 issue of Global and Planetary Change](#) (which you have to admit would be a great gift idea this holiday season, maybe not [Trumpy Bear](#) but still nice). If that is not enough, you could follow the lead of one Peruvian farmer and just sue a company that contributes to climate change ([a German utility in his case](#)) to get money to shore up those glacial lakes.

## Davy Jones's Water

Tired of spending bundles on fancy bottles of water that leave you still feeling like you're missing something, that [je ne sais quoi](#) that says you are not just hydrated but "[extra hydrated](#)". Well, this is your lucky day. Gone are the days when your choices were just tap water, spring water, rainwater or dipping your Sierra Cup in a mountain stream. Or water from Fiji, did we not say water from Fiji? Now, thanks to [Kona Water](#), you can sip water from the depths of the Pacific Ocean filled with all of nature's goodness, but stripped its pesky salts and stuff contributed by hatchet fish and tube worms. A twelve-pack of one-liter bottles can be had for \$33. Leave one of those out for [Santa](#) and see if that doesn't improve your haul. (And note to self, why didn't you think of this?)

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:

March 1-2, 2018

[Coastal Law in Louisiana](#)

New Orleans, LA

March 9-10, 2018

[Tulane Environmental Law & Policy Summit](#)

New Orleans, LA

## Water jobs:

[Vice President, National Advocacy Center](#)

National Wildlife Federation

Washington DC

[Program Director for Land, Water and](#)

[Nature Program](#)

Resources for the Future

Washington, DC

[Senior Water Resources Management](#)

[Specialist](#)

World Bank

Washington, DC

[Intern for Water Policy](#)

Northeast-Midwest Institute

Washington, DC

[Senior Manager, Investor Engagement,](#)

[Water Program](#)

Ceres

Boston, MA

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## Hey! Where's My Infrastructure Package?

Remember a year ago when our bridges, pipes, dams, ecosystems, levees and roads were falling apart? Remember how we had a choice between two presidential candidates who [pledged literally hundreds of billions of dollars of infrastructure improvements](#)? Seen much of that? Neither have we. And if the folks at the American Association of State Highway and Transportation Officials (AASHTO, for short) [are right](#), unless the current tax bills careening through Congress are changed to link tax policy with infrastructure investment (something not currently in the cards), [there might not be a second chance](#). More than that, the current vehicles could [remove important incentives to the private sector](#) to help participate in public infrastructure projects. In short, if you have been waiting for an infrastructure bill to come up, you may actually be looking at it and it may not be at all what you thought it might be.

## Yes, We Have Your Reservation

Sometimes the things the US Supreme Court doesn't do speak as loud as things it does. [Case in point](#): SCOTUS's decision not to hear an appeal of a 9<sup>th</sup> Circuit Court of Appeals ruling that found that the Agua Caliente band of the Cahuilla Tribe has ["reserved" water rights in](#) the groundwater beneath the Coachella Valley in Southern California. Why is this a big deal? Two reasons. When Native American's were forced onto reservations, mostly pretty undesirable chunks of real estate, no one said anything about whether they had any rights to water or how any rights they had stacked up against Euro-American settlers' rights. That hash was settled in the landmark 1908 SCOTUS decision in [Winters v US](#). Under the [Winters Doctrine](#), as a matter of federal law, Native American land reservations implicitly carry with them rights to water and those rights trump rights created subsequently under state law. Under California law, groundwater use was not prioritized, unlike rights to surface water where the first user of water has priority against all comers. Which brings us to the second reason this decision is important. The Winters court didn't say how much water was reserved exactly or what it could be used for but the idea was that there had to be enough to get by on. Since no one was thinking much about ground water at the time nobody had to answer those daunting questions—until now. As for the question of what the water might be used for, this is not a case of an agrarian tribe against big business. The Agua Calientiens have more needs than watering stock, tending gardens and keeping house. The AC's reservation includes two resort-casinos and two golf courses. While this case only speaks to one dispute, the ramifications could echo across the West where state and tribal rights have tended to occupy parallel universes.