

TUWaterWays

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

[September 17, 2020](#)

The Gift That Keeps on Giving

It's been 19 days since Hurricane Laura made landfall on August 27, 2020, and we keep discovering [more](#) and [more](#) about just how much [damage](#) she did. Some of the LDEQ's water quality teams checked out Lake Charles and Prien Lake last week, and let's just say it's not a [wonderland](#). The storm surge [pushed](#) dead plants and salt water into the lakes, causing oxygen depletion and killing the fish. Secretary Chuck Carr Brown assures the public that it's not dangerous—though your noses might beg to differ. The issue should resolve with time. Right now, the team is concerned with locating petroleum spills. Fun fact: plant decay releases a substance that looks like oil sheen, so it's easy to mistake one for the other. Along with the spills and decay, other issues still plague Southwest Louisiana. Many people are still waiting for their power to be restored and the water system to be repaired. Hurricane Laura was highlighted the sombering fact that our water infrastructure is in [dire need](#) of some improvement.

Earth, Wind, (Water) and Fire

On the topic of hurricanes, two charges related to Hurricane Harvey, which hit Houston in 2017, brought against a chemical manufacture were dismissed. Harvey brought historic flooding to Arkema Inc.'s chemical plant, which caused an [explosion](#) and led to force evacuations and injuries. Hmm, this is starting to sound familiar to something that happened a few weeks ago. You may remember the [chemical fire](#) near Lake Charles caused by damage to a BioLab plant during Hurricane Laura. Cue discussions about whether a company can be held criminally responsible because it failed to properly prepare for a storm. Well, Arkema claims not. [It's not like they started the fire](#). It's an act of God; no one could have foreseen it! The folks at Arkema said they didn't consider flooding of their systems to be a "credible risk." Fair—but wait, here's the kicker: the plant was in a flood zone. Flooding in a flood zone—[definitely not a credible threat](#). While the judge dismissed two charges of assault against Arkema and its former Vice President, charges of reckless emission of an air containment are still up for argument. The trial began in February but took a hiatus due to the pandemic. It's now set to resume on [September 21](#).

Not Going Down Without a Fight

In August, the Louisiana Court of Appeals for the Third Circuit passed down a [ruling](#) declaring that a swamp tour business can continue to operate, despite violating St. Martin's local zoning law. The business owner acquired all of the necessary permits, but 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:

[Rocky Mountain Mineral Law Foundation: New NEPA Regulations: Long Overdue Update or Radical Sea Change](#); September 18

[AWWA Webinar: Smart Water 2020: Building a Resilient Water Future](#); September 20

[Environmental Law Institute: Citizen Science: Concepts and Applications for Enforcement](#); September 25

[National Coastal and Estuarine Virtual Summit](#); September 29-October 1

[Wildfires and Resulting Impacts to Water Bodies Used as Drinking Water Sources](#); September 29

[CPEX Virtual Growth Summit: Past, Present, and Future: Urban Adaptations for Uncertain Times](#); September 29

[Mississippi River/Gulf of Mexico Hypoxia Task Force Virtual Public Meeting](#); October 1

[WEFTEC](#); October 3-7

[ASBPA National Coastal Conference](#); October 13-16

[Deadline to Submit Projects for the Atchafalaya Basin Program](#); October 15

Water jobs:

[Public Information Specialist](#); Mojave Water Agency; Apple Valley, CA

[Attorney \(Drinking Water Unit\)](#); California State Water Resource Control Board; Sacramento, CA (deadline 9/30/20)

[Attorney III \(Water Rights Unit\)](#); California State Water Resource Control Board; Sacramento, CA (deadline 10/5/20)

[Attorney III \(Drinking Water Unit\)](#); California State Water Resource Control Board, Drinking Water Unit; Sacramento, CA (deadline 10/6/20)

[Staff Attorney, Fossil Fuels Program](#); Earthjustice; New Orleans, LA or Texas

[Policy Specialist \(Resilient Coasts & Floodplains\)](#); NWF; D.C.

[Assistant/Associate/Full Professor – Climate Equity and Environmental Justice](#); Berkeley, CA (deadline 9/21/20)

[Senior Specialist \(Water Stewardship\)](#); Gap, Inc.; San Francisco, CA

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Parish argued that it issued the permits in error and that Lake Martin actually falls under jurisdiction of the Department of Wildlife and Fisheries, not the St. Martin Parish Government. The Parish requested an injunction to stop the business from operating, citing that it has a responsibility to protect the lake and its natural resources for the public interest—and according to the public trust doctrine and Louisiana’s constitution, they do. But the Third Circuit court didn’t agree it applied here. So, the St. Martin Parish Council is [putting up their dukes](#). They unanimously [voted to appeal](#) the ruling and take the case up to the Louisiana Supreme Court. There’s been vocal input from people on both sides of the debate; while activists say the business is polluting the lake, private landowners are concerned about their property rights. No one knows how the case will turn out, but it could have major implications for issues surrounding the public trust doctrine in Louisiana.

Just Roll(back) With It, says EPA

Twenty states and four municipalities have gotten together and [filed](#) suit against EPA over its [rollback](#) of methane emissions standards, arguing that it would accelerate climate change and harm public health. The standards were reduced based on the claim that they were redundant because other regulations overlapped with them and already somewhat regulated methane. While this is true, opponents of the rollback argue that stronger methane-dedicated regulations are necessary in the face of rapid climate change.

Clean Drinking Water Doesn’t Grow on Trees, You Know...

EPA [released](#) its [proposed changes](#) for the Financial Capability Assessment for Clean Water Act recently. And it’s about time—the last update was over 20 years ago! The changes include new metrics to more accurately inform communities and EPA when planning their water infrastructure improvements required by the CWA, which can be prohibitively more costly for low-income areas. Instead of focusing solely on median household income, it will also consider prevalence of poverty, drinking water costs, and expenses of meeting CWA obligations to determine a community’s financial capability to pay for the upgrades. The hope is that this new guidance would help make water access for affordable to a larger number of communities.

...And They Aren’t Growing in Reservoirs, Either

Models released by the U.S. Bureau of Reclamation suggests that lakes Powell and Mead, the United States’ two largest man-made reservoirs, [may suffer a shortage](#). The reservoirs store water from the Colorado River, and due to below-average run-off from the river caused by climate change and drought, scientists predict that they are 12% more likely to reach critically low levels by 2025. The Colorado Simulation System projects future water levels by simulating various weather and usages patterns to provide a variety of different scenarios (like one in which the droughts continue, for example). This prediction comes despite the water conservation efforts already in place in the region. Several states in the region agreed to a drought contingency plan last year, but deeper cuts may be needed if water level projections continue to decrease—as if negotiations over shares of the river aren’t tense enough.