

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
November 5, 2021

What's Going on at COP26

The first week of COP26 in Glasgow is coming to a close, and boy, is there a lot to talk about.

CEO/entrepreneur, born in 1964, [Jeffrey Bezos](#) attended COP26 and [pledged \\$2 billion](#) to fund projects dedicated to restoring natural habitats and combatting the effects of climate change. This is in addition to his already-established Bezos Earth Fund. Surely, that'll make up for the environmental impact of the rocket he sent into space last month. Actually, Bezos claims that the experience with Blue Origin gave him a revelation as to fragility of our planet. Imagine needing to leave Earth to finally understand why it's important.

Meanwhile, countries are making promises of their own. There is a pledge to [phase out coal power](#) and cease funding for the coal industry. Coal still produces around 37% of the world's electricity, and many countries view it as having no place in the future of clean energy. Notably missing from the pledge are China, India, and the U.S.—the three largest coal-burning countries in the world. Instead, the U.S. joined a pledge to prioritize clean energy over fossil fuel projects. Lack of cooperation from major players makes one wonder how close they'll come to meeting their goal—especially considering there were no uniform deadlines established, nor any hard requirements or responsibilities placed on the participating nations. But hey, [A for effort](#). There seems to be more agreeance when it comes to trees, however. Eighty-five percent of world leaders have sworn to halt deforestation by 2030 (though, [Indonesia](#) might be getting cold feet). There's also the [Global Methane Pledge](#), which aims to slash GHG emissions by 2030 and limit global warming to 1.5 degrees Celsius. There were some familiar local faces at the conference. [John Bel Edwards](#) and Latoya Cantrell attended, seeking to place Louisiana and New Orleans on the front lines of the battle against climate change.

All of this is promising, and it's clear that climate change is getting the attention it deserves. Still, the conference is drawing a lot of ire from [activists who are unimpressed](#) by the “all talk and no action” approach delegates have taken so far. We're at the halfway mark now, and there's still a lot that can happen after halftime. Of course, it's hard to have trees or power plants without water, so expect TUWaterWays to keep an eye on all the news coming from the banks of the [River Clyde](#).

What's a Water Court?

The complexity of water law often leads to conflicting decisions among courts and a variety of challenges to their rulings. As a result,

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:

[Save Ourselves, Then & Now: Revisiting LA's Public Trust Doctrine](#); Nov. 12

Water jobs:

Louisiana Bucket Brigade; [Campaign Director](#), New Orleans, LA; [Economic Development Manager](#), River Parishes, LA; [Liquefied Natural Gas Campaign Coordinator](#), Lake Charles, LA

[Staff Attorney](#); Great Rivers Environmental Law Center; St. Louis, MO

Sierra Club; [Gas Exports Campaign Representative](#), New Orleans/Gulf Coast, LA; [National Distributed Organizing Representative](#), LA/TX/DC

[Adaptation Program Director](#); Georgetown Climate Center; Washington, D.C

[Sustainability/ESG Director](#); PwC; multiple locations

[Research Associate](#); University of New Orleans; New Orleans, LA

[Outreach Coordinator](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

[Line 3 Defense Legal Fellow](#); Civil Liberties Defense Center & Water Protector Legal Collective; Minnesota

[Climate Resilient Coasts & Watersheds Coordinator](#); and [Communications Specialist](#); Environmental Defense Fund; Multiple

[Attorney](#); State Water Resources Control Board

[Director of Finance](#); Pontchartrain Conservancy; New Orleans, LA

[Co-Director](#); Common Ground Relief; New Orleans, LA

6325 Freret Street, 1st Floor
New Orleans, LA 70118
504-865-5982

tulanewater.org

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some states have opted to create courts that specialize in water issues. [Colorado](#) has had its own water courts for the better half of a century now; [Montana](#) has had one since the late 1900s. Nevada may be following suit soon. The Nevada Commission to Study the Adjudication of Water Law Cases, who was tasked by the state's supreme court to study and improve the efficiency of the Nevada district courts in water cases, proposed [the creation of a new water court](#)—essentially a body specifically dedicated to overseeing all of the state's water law cases. But the response from lawmakers and judges was not, “Make it so.” The idea was met with hesitancy; however, the commission will continue its work and present official recommendations in April 2022. As water scarcity increases and water appropriation issues arise, Western states may find themselves in a similar position as Nevada and hard-pressed to find a way to reconcile different rulings on water rights. Sounds like job security to us.

...And the Votes Are In!

Remember when environmental issues struggled to make it onto ballots? Well, well, [how the turn tables](#). Virginia Beach is throwing a bunch of money to fend off flooding. Voters voted to [approve a \\$568 million bond](#) intended to fund a multitude of infrastructure projects that will address flooding issues. At an average elevation of 10 feet above sea level, it's one of the coastal communities that feel the impact of climate change more intensely than the rest of the country. For reference, Grand Isle and Baton Rouge are 7 feet and 56 feet about sea level, respectively. Homes are flooded more frequently, and property costs are increasing as a result. While the bond is only a third of what the city needs to protect itself, it's still a significant step.

Up north, New Yorkers voted [to approve a constitutional amendment](#) that would give them the right to clean air and water, and healthy environment. The proposal passed with 68.9% support from the general public, but its language has drawn some critics. Opponents of the amendment claim that its ambiguity will breed unnecessary lawsuits and increase costs. But hey, Pennsylvania, Illinois, Montana, Massachusetts, and Hawaii have gotten along fine with similar provisions in their constitution without being inundated with world-changing litigation. And that's mostly because, even with those “green amendments,” lawsuits tend to run into procedural obstacles before the court even gets a chance to address the merits of the claim. These amendments are a great way for states to strengthen their public trust doctrines and expand environmental rights, but they are not always self-executing and some depend on the state legislature to enact laws that reflect the policies expressed by the constitutional provisions. What these provisions *will* do is give [the Julianas of the world](#) better footing to hold governments accountable for environmental degradation. Courts have long been hesitant to insert themselves into political matters—or maybe they've just been quick to deem matters political when they're afraid to insert themselves. But by establishing a right to a healthy environment and putting it on the books, these states have altered the public trust doctrine from a nebulous cloud of principles and policies into something clear enough to be adjudicated. Louisiana's own public trust provision is very much like this—it's vague, but it places a responsibility on the legislature to pass laws to protect and preserve the environment. But then why haven't we had more cases about this? Glad you asked! It just so happens that we will be hosting an event about this very topic on November 12 at 6pm. [Register here](#), if you're interested. For those of you who won't be able to make it in person, you can attend [virtually via Zoom](#)!