

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
[January 30, 2020](#)

We're Hiring!

The Tulane Institute on Water Resources Law & Policy is in the market for our next postgraduate research fellow to start in August 2020! That's right- if you're a recent (2019) or upcoming law school graduate this spring 2020 (JD or LLM), you could be a part of the team who writes this remarkable newsletter (among other things). If you're interested in the position, check out [this job posting](#) and send your resume on in! (Ability to quickly and confidently speak aloud the name of our institute not required.)

When All Else Fails

On January 15, four coastal Louisiana tribes filed [a formal complaint](#) with the United Nations, in which they assert that the U.S. government has violated their human rights by failing to take action on climate change. [In particular](#), they allege that sea-level rise and coastal erosion are drowning tribal burial sites in South Louisiana, threatening the tribes' sources of food, and potentially resulting in the total loss of their homeland and communities within the next couple decades. Located in Terrebonne, Lafourche, and Plaquemines Parishes, the Louisiana tribes that filed the complaint are the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana; the Pointe-au-Chien Indian Tribe; the Grand Caillou and Dulac Band of the Biloxi-Chitimacha Choctaw Tribe; and the Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village. (The Native Village of Kivalina, an Alaskan tribe, joined in the complaint.) They lack a key legal instrument to fight for their futures: federal recognition confers upon a tribe the status of "domestic dependent nations" with inherent powers of self-government. According to Patty Ferguson-Bohnee, member of the Pointe-au-Chien tribe and director of the Indian Legal Clinic at Arizona State University, without federal recognition, tribes have more difficulty protecting their ancestral land, pursuing financial assistance, and having a say in decision-making about coastal restoration projects. She further explained that the tribes do not feel that their input has been valued in their attempts to participate in creating [Louisiana's Coastal Master Plan](#). It sounds like the opposite of a [typical group project](#): someone actually wants to help out but isn't allowed.

In other news related to citizens suing their government for climate inaction, a three judge panel of the United States Ninth Circuit Court of Appeals ruled 2-1 to dismiss the landmark kids' climate case. You may recall, [Juliana vs. United States](#) involved 21 young plaintiffs, who asserted that the federal government violated their fundamental rights by allowing greenhouse gas emissions to continue despite scientific evidence that doing so would damage the environment. [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 stewardship of water.

Coming up:

[Artist Salon with Nick Slie: "Invisible Rivers"](#); January 30; New Orleans, LA

[Southern Exposure Film Series Screenings:](#)

January 30; Florence, AL

February 4 & 5, 2020: Spanish Fort, AL

February 6, 2020: Talladega, AL

[World Wetlands Day Celebration](#); Jan 31; Houma, LA

[Smart Water Innovations Webinar](#); January 31

Registration/ Application Deadlines: January 31

[-State of the Coast early registration](#)

[-ASFP Foundation Future Leaders Scholarship](#)

[-Louisiana SciComm Summit](#)

[-S&WB Customer Advisory Committee Application](#)

[Gulf of Mexico Oil Spill & Ecosystem Science](#)

[Conference](#); February 3-6; Tampa, FL

[Living Shoreline Workshop](#); Feb 4; New Orleans, LA

[Hypoxia Task Force Public Meeting and Webcast](#);

February 4; Washington, DC or via webcast

Water jobs:

[Senior Research Fellow](#); Tulane Institute on Water Resources Law & Policy; New Orleans, LA

[Stormwater Specialist](#); Ada County HWY District; Boise, ID

[Environmental and Energy Law Program Legal Fellow](#); Harvard Law School; Cambridge, MA

[Exec. Director; Alabama Water Institute](#); Tuscaloosa

[Senior Staff Attorney](#); Western Resource Advocates; Healthy Rivers team; Boulder or Denver, CO

[Water Resources Specialist II](#); Mojave Water Agency; Apple Valley, CA

[Manager of Water Resources](#); Calaveras County Water District; San Andreas, CA

[Legal Fellow](#); Yale & NRDC; various locations

[President](#); Restore America's Estuaries; Arlington, VA

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[majority opinion](#) explains that even though the plaintiffs “made a compelling case that action is needed,” the power to grant relief lies with the political branches of government rather than the judicial branch. At this point, it is uncertain what, if anything, will happen to the case, though Philip Gregory, who served as co-counsel for the plaintiffs, [said](#) that they would seek an [en banc petition](#), which would put the issue before the full 9th Circuit for review. The dissenting judge, Josephine L. Staton, wrote a blistering dissent: “In these proceedings, the government accepts as fact that the United States has reached a tipping point crying out for a concerted response — yet presses ahead toward calamity . . . It is as if an asteroid were barreling toward Earth and the government decided to shut down our only defenses.” [Mic drop](#).

What Time is it?

Regardless of what time you actually end up reading this remarkable newsletter, the answer is that it is closer to midnight. That is, on January 23, the [Bulletin of the Atomic Scientists](#) announced that it moved the hands of its symbolic, [TV famous](#) Doomsday Clock closer to midnight. [The Doomsday Clock](#) indicates the likeliness of a human-caused apocalypse: moving the hands closer to midnight indicates that this likeliness has increased since last year. The clock has been moved forward 20 seconds and is now set at [100 seconds to midnight](#), which represents the closest it has ever been to symbolic doom and the first time the hands have been within the two-minute mark. [The Bulletin explained](#) that it adjusted the clock to reflect looming threats from nuclear weapons and—you guessed it!—accelerated global warming. On the latter point, the announcement stated that even though “[p]ublic awareness of the climate crisis grew over the course of 2019,” the problem is that “governmental action on climate change still falls far short of meeting the challenge at hand.” Governmental inaction—where have we heard that before? Perhaps some [Coldplay](#) will distract us from all of this [doom and gloom](#).

Got Water?

The U.S. Geological Survey has released [a new mapping tool](#) that displays a nearly complete picture of water storage in the Lower 48 states. Specifically, the map shows water currently held in snowpack, soils, shallow groundwater, the tree canopy, and wetlands, and it compares the current amount to the historical average. However, the map does not include rivers, reservoirs, and deep groundwater. Analysts believe that the map will aid in everything from forecasting droughts and floods to notifying farmers when to fertilize crops so that nutrients do not pollute rivers. While this tool deals solely with water quantity, Mindi Dalton, the coordinator for the USGS Water Availability and Use Science Program, also seeks to integrate water assessments for quality and use because she recognizes that quantity, quality, and use can influence each other. For example, heavily polluted water has more limited value. [“There are any number of uses for water,”](#) Dalton explained. “Water used in mining is of a different quality than water used for public supply. If you’re just running a model for quantity and not taking into consideration the quality and use, then you can’t really say how much water is available.” If only all situations were approached in such a comprehensive, scientific manner.

Guess Who’s Back, Back Again, WOTUS is Back, Tell a Friend

Ok don’t be upset—it has been ages since we’ve sent a WOTUS (Waters of the United States) story your way. In fact, we’re pretty sure you’ve missed WOTUS, so really we are doing a public service. Plus, we can’t avoid it this week because on January 23, the EPA administrator, Andrew Wheeler, unveiled the Trump administration’s long anticipated [WOTUS final rule](#). Though WOTUS is still in the title (and we will insist on addressing it as such, thank you very much), the final rule has a new name too—the Navigable Waters Protection Rule. Recall that the WOTUS rule defines what is or is not a federally protected waterbody under the Clean Water Act. As a refresher, the Trump administration published a [proposed rule](#) in December 2018, which was followed by a public comment period and time for edits and incorporation of aforementioned public comments. Overall, the final rule is similar to the proposed rule but does have some tweaks. Democrats and environmental groups have already [expressed their dislike](#) of the final rule. And, an earlier, [scathing commentary](#) issued by the EPA’s own advisers argues that elements of the proposed rule were “in conflict with established science.” We are still wading through the final rule but can tell you that the definition is narrower than the Obama administration’s version because it excludes isolated wetlands and ephemeral streams, which only flow after a heavy rainfall. The definition does, however, include intermittent streams that flow only during certain times of year. In the meantime while we finish our

review, feel free to take a look back at this [history of recent WOTUS woes](#) and [our prior musings](#) on the proposed rule.