



TUWaterWays

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

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Coming Your Way: More Flooding, More Utility Fees, or Higher Insurance?

Probably all three, if we're being honest. The seemingly unavoidable fact of climate change is simply that it costs more to, well, live.

Another storm system swept across the United States last week, bringing flooding to a wide array of cities. That prompted [this article](#) from New Jersey pondering why no local government in the Garden State had created a stormwater utility to better prepare for and respond to the arrival of excess waters from sky or stream. This latest storm came five years after their state government [passed a law](#) allowing the creation of such utilities. So, what's the holdup? Well, opponents have successfully framed a stormwater fee as a "rain tax" and held up any local progress on instituting such a utility supported by stormwater fees. Of course, floods keep coming, and local governments have to figure out how to keep their communities whole in the face of ever-increasing [risk](#).

Of course, this isn't just a New Jersey problem. Flooding is increasing everywhere; between climate change increasing the frequency of extreme weather events and development decreasing land's ability to absorb water, it's going to take extremely dedicated efforts to reduce a community's risk. Supporters of stormwater utilities, [like the EPA](#), point out that stormwater management is getting paid for one way or another (adequacy not guaranteed). Without a dedicated utility, that management cost is getting rolled into property taxes, taking away the ability to fund other things that matter (like schools) and keeping the burden squarely on the shoulders of homeowners. With a dedicated utility, stormwater management can be paid through fees assessed to all property owners including businesses and non-profits that often have the majority of [impervious](#) property and thus contribute disproportionately to acute flooding events.

This dawning realization—that without all property owners paying their fair share, decent stormwater management is fairly impossible (after all, those same homeowners are also paying ever-increasing insurance costs, including flood insurance)—has led to spreading adoption of stormwater utilities, or at least more states allowing local governments to create them. Other states besides New Jersey have passed similar laws, [like Louisiana in 2022](#). But [one survey](#) notes several states have no such utilities, while others only have a handful. Just within the last several months, there have been [contentious](#) (and [failed](#)) [attempts](#) at [creating](#) stormwater utilities across the country. Here in Louisiana, the Institute's colleagues in [Baton Rouge](#) and [New Orleans](#) are working to get local governments to adopt stormwater utilities. There's no question about whether or not the next flood is coming. It's about how effectively we can organize ourselves to deal with (and pay for) it – both before and after the waters come rushing in, or down, or off.

This Leap Year, Will the Rights of Nature Movement Take a Leap Forward?

It feels like it's been a long time since environmentalism, especially environmental law, has had a real movement. The response to unchecked pollution dominated the 1960s and '70s. The environmental justice movement took form in the 1980s and has had renewed traction in the last few years with an increased focus on "justice" being actually just. Sure, there's a climate change and sustainability movement going on right now, but it

feels like a mad, desperate scramble to respond to an ongoing global catastrophe, rather than an organized, philosophical movement (feel free to disagree there, and [let us know if you do!](#)). But the rights of nature movement have slowly been gaining steam over the last decade or two as laws from earlier movements have been shown to fall short of so many needs. Maybe the most effective way to restrict the impact of environmental laws, like the Clean Water Act, has been to [restrict standing](#) and thus restrict who can use those laws to reduce pollution or protect ecosystems. The [rights of nature](#) movement essentially says, “well, what if the ecosystem or waterbody itself had standing?” And it’s a movement that has [caught on at various levels around the world](#).

This includes high-profile events in the U.S., like [Orange County, FL](#) giving rights to a handful of streams and Toledo, OH, giving rights to [Lake Erie](#). However, in both those cases, [state legislatures crafted laws to preempt the local governments](#) from ever doing anything so silly ever again. The reasoning being that such laws might stop development (heretical thought: perhaps some development should be stopped). Nonetheless, some other locales have marched on, continuing to test popular sentiment against political interests. In Milwaukee, [the county government passed](#) a not-necessarily legally binding [resolution](#) last fall. And just this month [a Colorado town appointed two legal guardians of a creek and its watershed](#). The thinking there being, if a waterbody can’t be a legal person like a ship can be a legal person, then maybe it can be legally protected like a minor or someone who lacks decisionmaking capacity. That one pointedly avoided creating legal rights for the water with the hopes of not triggering the crackdowns seen in Florida and Ohio.

But the movement moves on elsewhere. For instance, Ireland is [considering giving rights of nature constitutional standing](#). It’s enough to cause The Guardian to ask if [2024 is going to be the year](#) for rights of nature to bloom. Given that the answer to everyone’s question right now is “artificial intelligence!” it might be worth remembering that nature itself is the result of millions of years of genetic algorithms running and running until the most effective solutions are found.

Coming Up:

Tulane Environmental Law Summit; New Orleans, LA; February 23 & 24, 2024

Water jobs:

[Policy Manager, Mississippi River Water Initiative](#); National Audubon Society; Holly Springs, MS

[National Environmental Leadership Fellow](#); Rachel Carlson Council; Washington, DC

[Law Associate Post-Graduate Fellow](#); Center for Water Law & Policy, Texas Tech University; Lubbock, TX

[Policy & Intergovernmental Affairs Watershed Manager I](#); City of Atlanta; Atlanta, GA



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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