



# TUWaterWays

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

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September 1, 2023

## Nobody Can Accuse the Corps of Engineers and the EPA of Overstepping Their Bounds Now! Oh, Wait...

As you likely already know, in May, the Supreme Court, in a [Justice Alito-penned majority opinion](#), limited the application of the Clean Water Act to the bare minimum of what they felt the Federal government absolutely had to do. That means regulating only navigable bodies of water and those wetlands with a continuous surface connection to those bodies of water so that they are so bound up with those waterbodies as to be nearly indistinguishable. The *Sackett* opinion interpreted the meaning of “adjacent wetlands” in a way that is far more restrictive than has ever been applied in the history of the Clean Water Act, including Justice Scalia’s opinion from [Rapanos](#) and [the Trump Administration’s rule](#) (that was never fully applied).

Well, [this week the newest definition of the Waters of the United States was released by the Corps of Engineers and the EPA](#), who are tasked with the regulatory duty of making clear what “Waters of the United States” actually means. They have spent nearly two decades trying to do so, only to have a new administration or Supreme Court move the target, to the point that they must feel like a cat exhausted from [chasing a laser pointer](#). What’s it say? Well, everyone’s still digesting it, but it seems to have followed Justice Alito’s opinion with great fealty. There will be more analysis coming from many sources (likely including our shop here), but at the moment we know [most wetlands will lose federal protection](#) (after all, [half were going to lose it under the less-restrictive Trump rule](#)) and it feels like the agencies are in [full Dumbledore shrug mode](#). This is a final rule version of the draft rule that was released in January, but it feels much more a response to the *Sackett* opinion than to the thousands of comments they received on the draft. And yet, and yet! The Farm Bureau, whose brief was cited by Justice Alito in his *Sackett* opinion, is [still not happy](#) with this new definition. This is the part where we remind you that normal agricultural activities are exempt from the Clean Water Act. Their buddies at the National Association of Home Builders [felt similarly](#), but they should be totally [geeked](#) about all the wetlands they’ll get to fill in and build flood-prone subdivisions on without having to bother with a Section 404 permit anymore.

What does all this mean going forward? Well, everything’s still shaking it out, but there are a few things we can read in the tea leaves: the fight isn’t over, the winners of this latest battle are [still unsatisfied](#), and if there’s one thing the last 50 years of the environmental movement has shown, it’s that they won’t just roll over and give up; that fight, though, might have to take place outside of the federal agencies, as they seem to [want to be left alone](#) at this point ([although...](#)); if you want your wetlands protected because, ya know, [they’re good for some stuff](#), then you better [make sure that your state or tribe has adequate rules on their books](#), and there’s a good chance they don’t; and if you really want a Sisyphian challenge, you can work on getting Congress to add lots of new detailed language into a Clean Water Act amendment putting into (more specific and detailed) words what sure seemed like [the intent of it in the first place](#).

## The New York Times Has Learned About Groundwater!

A [big, well-researched, and lovingly infographic-ed article](#) came out in the (digital) [Old Gray Lady](#), but to those of us who pay attention to water issues (meaning you, dear TUWaterWays readers), it sure felt a bit like [a famous cover from another of the Big Apple's flagship publications](#). "Did you know aquifers in places like 'Kansas' are drying up?" "What on Earth is that?" If the article does lead to change in the math of the business decision to overdraw aquifers, consider us shocked, grateful, and sufficiently chastised.

Snark aside, we should all welcome any and all attention to water issues that outlets with a reach like the *NY Times* bring. You now have a great gateway item to hook any of your friends and family into a better understanding of the water issues we all spend our days and nights pondering. The next step is getting them [subscribed to TUWaterWays](#) so they can be up on issues like [Arizona's big desalinization play](#), [wastewater and drought in France](#), [housebuilder water pollution in the UK](#), and [Indonesian glaciers](#).

## Can Cameron Parish Have Its Carbon and Eat Its Ducks, Too?

Cameron Parish, over in Louisiana's southwest corner, has a [dwindling population](#) and dwindling wetlands, but it's a hotbed of activity in a variety of big time industrial developments. Liquified Natural Gas is either [taking over](#) or [slowing down](#), depending on who you ask. Carbon is also going to be [taken directly from the atmosphere and injected into the ground](#) there, too, apparently. But at the same time, the state Coastal Protection and Restoration authority and groups like [Ducks Unlimited are working to preserve habitat](#) in the parish. Given the precarious nature of life for migratory birds in this day and age, it seems like extremely important work to do. Can both goals be met at once? Could be tough. Maybe [something's gotta give](#).

### Coming Up:

Tulane Environmental Law Summit, New Orleans,  
February 23 & 24, 2024 (save the date!)

### Water jobs:

[Advocacy and Policy Coordinator](#); Riverkeeper; New York, NY

[Senior Policy Analyst, Water Infrastructure](#); Environmental Policy  
Innovation Center; US-Remote

[Fisheries Legal Fellow](#); Conservation International; Various Global  
Offices



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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