

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
December 16, 2015

## Whither WOTUS on the Road to SCOTUS

The holidays are upon us, and amid the carols, wassail, and figgy pudding we hope you will make time to gather the family to talk about the Waters of the United States (WOTUS) rule that is either a massive governmental overreach, a significant under-reach, or one of the things that keeps Donald Trump from washing [his hair](#). The propriety of the WOTUS rule aside, the first thing that has to be settled is “which court should handle the case(s), the federal district courts or the federal appellate courts?” Most of those challenging the rule want to work through the lower district courts. The federal government and some others argue that this is one of those circumstances in which a federal agency action should be tested directly by the appeals courts. Right now, all eyes are on the Sixth Circuit Court of Appeals as it [considers exactly that point](#). What is really at stake is how fast this question should get back to the U.S. Supreme Court (SCOTUS) and how many judicial decisions should be behind it at that point. For those keeping score here is a [table](#) showing who is suing whom in what court.

Efforts to defund the implementation of the rule via an omnibus spending bill petered out in Congress. What did not peter out was a review of whether EPA’s outreach efforts to inform the public about the WOTUS rule crossed the line between education and lobbying. A Government Accountability Office [legal opinion](#) concludes it did, by virtue of using a social networking platform that linked to outside websites that urge viewers to support the rule. Whether that view sticks remains to be seen but at the very least this a cautionary note about how agencies might conduct public outreach in the evolving world of social media.

Oh, and about Mr. Trump’s hair. Whatever trouble he is having getting enough water to get a terrific shampoo has nothing to do with the WOTUS rule and most likely has everything to do with water conservation measures that common sense and state/local codes are driving.

## Flood Insurance Update: Searching for Mr. GoodData

Flood insurance is something of a successful failure. It has succeeded in taking some of the sting out of living with floods and developing floodplains. On the other hand, it has cost the nation bundles of money and induced development in floodplains which actually increases the chances of homes and businesses flooding—exactly the opposite of what was intended. Efforts to rein in the program have been

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:

[Tulane Environmental Law Summit](#)  
New Orleans, LA  
February 19-20, 2016

[Center for Natural Resource Economics & Policy](#)  
New Orleans, LA  
March 20-22, 2016

[State of the Coast 2016](#)  
New Orleans, LA  
June 1-3, 2016

## Water jobs:

[Clean Water Advocate](#)  
Environment America

[Professor of the Practice/Managing Attorney](#)  
Virginia Coastal Policy Center,  
William & Mary Law School  
Williamsburg, VA

[Water Resources Campaign Coordinator](#)  
National Wildlife Federation  
Washington, DC

[Tennessee Clean Water Network Staff Attorney](#)  
Knoxville, TN

## Tulane Institute on Water Resources Law & Policy

6325 Freret Street, 1<sup>st</sup> Floor  
New Orleans, LA 70118  
504-865-5982

[tulanewater.org](http://tulanewater.org)

TWITTER: [@TulaneWaterLaw](https://twitter.com/TulaneWaterLaw)

complicated by the fact that [lots of people](#) actually now live in flood-prone areas and there will be big societal and economic shocks if the cost of flood insurance goes too high, thus stranding people and investments. All of this is coming back to Congress's to-do list in 2017 when the National Flood Insurance Program is up for reauthorization. Is there some way to raise premiums to cover the actual cost of the program (as if it were really insurance) while still remaining affordable? Should some folks pay more than others or be subsidized less? These are really great questions, and according to a [new report](#) from the National Academy of Science Committee on Affordability of National Flood Insurance Program Premiums, there are no really good answers because we lack good data on the value of what is being insured and the wealth of people buying insurance. So don't be surprised if 2017 comes and goes without the kind of informed changes to the NFIP program that are probably needed. Maybe this is one of those cases where you can't do more with less.

### **Say It Ain't So!**

We have all seen them, the cycle of news stories that report that something we love will kill us only to be followed by reports that tell us that those same things will save us and make us healthy. Think [coffee](#), [cereal](#), [coffee](#), [cereal](#), fat, [red meat](#), [coffee](#), [alcohol](#), etc.... But when you call out table salt and tap water used in cooking you are cutting mighty close to home. To be specific it is iodized salt and chlorinated water that got called on the carpet for their ability to produce decontamination byproducts (DCBs) according to a [report](#) in a recent issue of Water Research. Apparently the iodine can interact to with the chlorine to produce DCBs that are themselves toxic. There are still many unknowns here and no one is suggesting that the DCBs outweigh cholera and brain eating amoebas as public health risks, but the news is the news—until the next report tells us that table salt and tap water grow strong babies and energize old brains. At this rate, it is only a matter of time until Dr. Joe Jackson, MD gets a Nobel Prize in Medicine for his [ground breaking findings](#).

### **You Probably Already Know This, but, Hey! They Reached an Agreement in Paris**

Like a bunch of undergrads at finals, negotiators from 196 nations blew through a deadline and pulled an all-nighter, but, by God, they got the thing [done](#); even after illustrating that old chestnut "[words matter](#)."

Fact Checker has [checked](#) the facts, and now it's time to figure out what the agreement is going to mean. With an unclear path towards reaching the goals, and [vulnerable countries](#) still vulnerable, perhaps [geoengineering](#) is in our future. Whether we should [forget Paris](#) or not, it's going to be an interesting century. (Do feel free to forget "Forget Paris." It's mediocre at best. If you need to see Sir Charles and Mugsy in a movie, there's always [Space Jam](#). If it's Kareem you're looking for, [Airplane](#). Of course.)