

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
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Comment Period for Trump Administration's Changes to NEPA Begins... NOW

The National Environmental Quality Act (NEPA) is our country's most powerful and effective law in protecting all of us from potential environmental harm, and it does so simply by requiring open and honest [accounting of the decision-making process and the impacts of environmentally harmful actions](#). NEPA implementation across all of the Federal government is coordinated by the Council on Environmental Quality (CEQ), an office within the White House. Though the CEQ has been without a chair since January 20, 2017 ([though not for long – maybe](#)), the agency is publishing a [call for comments in the Federal Register](#) this week. Public comments can be made at [regulations.gov](#) for thirty days once the comments are published. Don't know how to make a public comment? [Our neighbors across the street have got you covered](#).

This is one worth paying attention to, folks. The NEPA regs [haven't been changed](#) since the Reagan Administration, though individual agencies have tried [to find ways to streamline](#) within their shops. Because funding those shops to the level that would allow them to fulfill their NEPA obligations in a timely manner doesn't seem to be politically palatable these days, expect the administration to be pushing to limit the extent of NEPA's duties. Like [bacteria](#), [vampires](#), and [teenage bravado](#) (hopefully), harmful decisions tend to die in the [sunlight](#). Losing the [sunshine that NEPA lets in](#) is a scary prospect; [Living with the shades pulled down might sound good for Merle](#), but it's no way for a government to function.

Those Crazy Kids at the Union of Concerned Scientists Hell-bent on Making the [Non-unionized & Non-scientists](#) Concerned, Too.

A [new report from the Union of Concerned Scientists](#) puts some numbers on the impacts of projected sea level rise between now and 2045 (So, before you've payed-off that 30 year mortgage you got to take advantage of low interest rates a couple of years ago). [In Louisiana](#), it projects over 40,000 homes at risk of flooding once every other week – homes that yield \$36 million in property taxes. [In California](#), where we don't usually think of being on the frontlines of sea level rise risk, over 20,000 homes that yield \$187 million in property taxes are similarly situated. The UCS has an [online interactive tool](#) to see the effects predicted in the analysis.

Of course, none of this should be coming [out of left field](#). A [new report](#) from NOAA finds that flooding from high tides, "blue sky flooding" or "sunny day flooding" in the US has [doubled in the past 30 years](#). These findings should, hopefully, impart some urgency in those who were already vaguely concerned and increase support for those

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:

[World Water Week](#)

August 26-31, 2018

Stockholm, Sweden

Water jobs:

[Senior Program Officer, Corporate Water Stewardship](#)

WWF

Washington, DC

[Associate Staff Attorney](#)

Riverkeeper

Ossining, NY

[Director/Staff Attorney](#)

UC Irvine Center for Land, Environment, and Natural Resources

Irvine, CA

[Senior Researcher](#)

The Pacific Institute

Oakland, CA

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who are [promoting responses to climate change](#) and those who are [looking for ways to pay](#) for those responses and climate change's damages to shining sea, [purple mountains majesty](#), and [fruited plain](#). What there clearly isn't is time for is to [debate](#) the "realness" of climate change while a new [study](#) in *Nature* tells us the Antarctic Ice Sheet is going the way of the [Wicked Witch of the West](#).

[I'll See You in Court: Litigation Roundup](#)

Without lawsuits, the United States [would be without some of our greatest characters](#). So, for the sake of Western culture, sometimes you just gotta sue somebody. Here's a brief look at happenings around the country's courts. But probably not the night courts. [RIP, Judge Harry Stone](#) (yes, it's been two months, but we're just now ready to talk about it).

New York City's climate change suit against Big Oil has been in court recently, with the defendants unsurprisingly calling for [dismissal](#). New York's argument is trying to [follow in the footsteps](#) of San Francisco and Oakland's similar lawsuit that's a step or so ahead procedurally. Inland, Boulder and San Miguel Counties in Colorado have filed their own climate change lawsuits, providing property and infrastructure based [approach](#) to suits for locales far away from the sea level rise threat. Climate change adaptation: it's not just for the coasts, anymore. Depending on the outcomes, these suits could be positioned as the next steps to further climate [litigation around the world](#).

In the "well, kinda about climate change, but also about more stuff because this is the Louisiana coast and it's [complex](#)" division, Louisiana's Coastal Protection and Restoration Authority are having to [threaten to sue](#) Plaquemines Parish over the local government's unwillingness to cooperate with the Mid-Barataria Diversion project, the single largest project in the state's Coastal Master Plan. The project, in the long term, is supposed to help keep Plaquemines Parish from disappearing off of the map, but, in the short term, fisher-people are worried about the difficulties it will create for their livelihood.

Additionally, citizen groups in New Orleans have filed a [lawsuit](#) against the city because the City Council approved a new gas power plant for Entergy in New Orleans East at a meeting when opponents of the plant were not allowed entry, in part because [dozens of actors had been hired](#) to fill the room and [pretend to support Entergy and the plant](#). It's a whole thing. It's surely not the end of the matter, least of all because no one has explained sufficiently the water law aspects of it – will the plant extract groundwater? If so, how will subsidence due to groundwater extraction be avoided? Isn't it the City Council's job as regulator to ensure that that doesn't happen? If the plant uses water from the neighboring Gulf Intracoastal Water Way, what right do they have to access that canal, as it is not a stream that would give Entergy riparian rights of use? Again, [it's a whole thing](#).

In the "no really, it's not about [climate change](#)" division, the Waterkeeper Alliance is [suing](#) the EPA and Corps of Engineers for delaying implementation of the "clean water rule." That's the rule that those agencies tried to implement back in 2015, but it's since been tied up in a whole lotta courtroom battles. Additionally, the Trump administration decided they wanted that 2015 rule out, too, so they released a final rule back in February saying that the rule wouldn't be implemented until 2020. They did so without consulting the Fish and Wildlife Service and National Marine Fisheries Service, thereby violating the Endangered Species Act, among others. It's just more confusion and disarray in the Clean Water world caused by the previous administration's attempt to clarify things that were made confusing by SCOTUS decisions a decade earlier. Also on the Clean Water Act front, the Department of Justice apparently had a problem with a firm that specializes in Clean Water Act citizen suits filing so many... Clean Water Act citizen suits. That firm is [fighting back](#).

The South Carolina Supreme Court [ruled](#) to continue to allow mega-farms to withdraw river water unabated. The decision isn't about the highest court in the Palmetto State strictly adhering to traditional riparianism, though. It's more about why, when you create a law to require permits for anyone taking massive amounts of waters out of the state's streams, you don't issue agriculture a blanket exemptions, and if you do issue a blanket exemption, you don't do so without creating some robust oversight to allow the state to step in should need be.

If all this sounds like too much fun to miss out on, check out a [new public lands litigation tracker](#).