

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
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## [Well it's floodin' down in Texas, and now renters get a heads up](#)

Happy 2022 and welcome back to TUWaterWays! Although we (and hopefully all of you) took a quick breather last week, the world of water news did not. In the [spirit of the season](#), the state of Texas has resolved to provide property [renters more transparency about flood risks](#). The new law, which went into effect on Jan. 4, requires landlords to notify tenants if the property is located inside a 100-year floodplain or was damaged by flooding within the last five years. This rule applies to both prospective tenants and current tenants who are renewing their leases. It will bring renters onto equal footing with home buyers, as [sellers have been required to disclose flood risk information to potential buyers since 2019](#). Although Texas is not the first state to extend these protections to renters, the new law is the strongest and most comprehensive in the country.

While the law has generally been positively received, critics worry about the exception for renters with long-term leases that won't be renewed anytime soon, and there is a possibility that disclosure will inadvertently force the lowest-income renters into properties with the highest flood risk, as those will have the lowest up-front costs.

## [Do you think J. Lo has a brown lawn?](#)

Texas isn't the only state that rang in the New Year with water policy changes. This Tuesday, [California adopted mandatory water restrictions](#) for residents' outdoor water use. In July, Governor Newsom urged Californians to [voluntarily reduce their water consumption by 15%](#). However, by November, the state's water usage had only decreased by 6% (despite [impressive efforts by some cities](#)). Consequently, residents statewide will soon be prohibited from letting sprinklers run onto the sidewalk or watering lawns for 48 hours after a rainstorm.

You might be thinking, "What rainstorms?" Or perhaps, "Surely this regulation won't help when these newsletter people absolutely will not shut up about drought." We hear you, but bear with us. Between rain and snowfall, California actually had an [unusually soggy end](#) to 2021. But we weren't lying about the drought! Despite California's [snowpack being at 150%](#) of average for this time of year, the state's water reserves in December were only at 78% of average, down from 82% last year.

The new regulations are [reminiscent of mandatory restrictions imposed almost 6 years ago](#). Those restrictions were dropped a couple years later as drought conditions diminished. However, the overwhelming mentality has shifted since then—the current consensus is that [the dangerously arid conditions are the new normal](#), as opposed to anomalies that must be temporarily adapted to.

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.

### Coming up:

[UF Water Institute Symposium](#), February 22-23

[Tulane Environmental Law Summit](#), March 11-12

[Coastal Law in Louisiana \(CLE\)](#), April 21-22

### Water jobs:

[Assistant General Counsel & Policy Researcher](#); The Water Institute of the Gulf; Baton Rouge, LA

Louisiana Bucket Brigade; [Campaign Director](#), New Orleans, LA; [Economic Development Manager](#), River Parishes, LA;

[Sustainability/ESG Director](#); PwC; multiple locations

[Research Associate](#); University of New Orleans; New Orleans, LA

[Communications Specialist](#); Environmental Defense Fund; Multiple

[Research Associate 1](#); University of Louisiana Lafayette; Lafayette, LA

[Organizing Representative](#); Sierra Club; New Orleans, LA

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Although the entire [American West](#) is drying out, California remains the only state to impose water use restrictions. Elsewhere, cities are taking the lead. For example, in Denver there are rules for [watering lawns and washing cars](#) in the summer. Las Vegas also enforces lawn watering limits and even assigns specific [water budgets to customers](#). On the other hand, here in New Orleans, this time of year we actually encourage you to increase your water usage—with Mardi Gras only 53 days away, you'd better start hydrating now.

### **[We're gonna go out on a limb and say, "No oil spills in '22!"](#)**

The Mississippi River almost left 2021 with a couple hundred thousand extra gallons of oil between its banks. On Dec. 27, PBF Energy shutdown the Meraux pipeline that runs between Chalmette, LA and Collins, MS after a leak was detected, but not before [300,000 gallons of oil spilled](#) into ponds outside New Orleans located just a few hundred [feet from the River](#). The rupture was caused by unrepaired corrosion that was first discovered in Oct. 2020. Regulations require the repair of such damage within 6 months, though this [never took place](#) because PBF was [waiting](#) on permits and approval from the Army Corps and other regulators. An order issued by the PHMSA on Dec. 30 requires the pipeline to remain out of operation until the damage is fixed. This incident marked the second disruption to PBF's operations in 2021, as the Chalmette refinery was one of several that [shut down after Hurricane Ida](#) swept through the region and knocked out power.

### **A win for oyster growers courtesy of the court and [John Locke](#)**

A [federal claims court has ruled](#) that Louisiana oyster growers may claim property rights in oysters. The decision comes in response to a suit by oyster growers in the Gulf of Mexico against the government. The growers claimed that an influx of freshwater from the [Bonnet Carré Spillway](#) in 2019 reduced salinity levels in coastal waters thereby significantly increasing mortality rates in oyster reefs. Almost exactly a year ago, the oyster growers brought a 5<sup>th</sup> Amendment takings claim for this loss of oysters. The Army Corps of Engineers moved to dismiss the case, arguing that there was no cause for a takings claim because the State, not the growers, [owns the waters, water beds, and the oysters](#).

Earlier cases have established that fisherman don't have any property interests in fish in the waters, but during oral argument the government went a step further stating that a provision of Louisiana law prevents oysters from becoming property, even after they've been harvested and sold. However, the court disagreed and likened oysters to crops instead of fish because they "lack legs, feet, fins, and flippers." ([Hard to argue with that](#)). Further, the government conceded that the oyster growers have the right to destroy, use, possess, and sell the oysters (among other rights)—all typical indicators of ownership under Louisiana law. Interestingly, the judge's decision also heavily rested on notions of property and ownership championed by 17<sup>th</sup> century English political philosopher John Locke. Locke believed in the [labor theory of property](#) which awards people ownership over the fruits of their efforts because they worked for them. In this case, laying cultch, seeding, and harvesting oysters in the Gulf required a lot of work and therefore created property rights for the oyster growers over an otherwise public resource. So, in case your parents and childhood coaches failed to mention it, hard work doesn't just [build character](#), it creates property rights (at least in some courtrooms).