

TUWaterWays

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

[January 8, 2021](#)

[Goin' Out West](#)

Welcome back and happy New Year, readers. In this edition we'll be recapping all the water-related stories we missed over the holidays. To kick things off, we'll be discussing one of our favorite controversial river basins – the Colorado River! This river provides drinking water for seven western states and parts of Mexico and has faced drought conditions in recent years. The river has a brief but powerful [compact](#) that determines river allocation among Colorado, Arizona, Utah, New Mexico, California, Wyoming, and Nevada. More recently, in response to severe drought, in 2007 a cooperative set of interim guidelines and drought contingency plan helping to mitigate damage to water resources in future drought events was put in place. In December, the Federal Bureau of Reclamation released a [report](#) on the effectiveness of those guidelines since 2007. The report basically says that these guidelines and other voluntary measures, like the drought contingency plan, have been successful for the most part, but with drought continuing to be an increasing problem, more extreme measures will need to be taken in the near future. Additionally, the guidelines expire in 2026, so states in the basin have already begun talks on what comes next, especially in light of the extreme diminishment of the Colorado River since 1998.

Some are pushing for another potential solution via the private sector. [Wall Street water speculators](#) are moving into the Colorado River water market. This will almost certainly result in moving water from agricultural areas to cities. While that is not a new practice, the role of private investment firms is. Because of this new investor interest in the Colorado River, southwestern states will be convening this month to discuss options and determine the future of the Colorado River. And, Colorado has been toying with another idea of interest to private investors, called “demand management,” which consists of paying farmers not to use the Colorado River’s water at all. Some believe that allowing private investors a seat at the table when determining water allocation and distribution is the best chance the west has against drought and climate change. However, while this may somehow be beneficial to the environment, it will make water more expensive and therefore less attainable. The hardest hit communities will likely be rural, as water will be more “valuable” in city areas. Some opponents of this practice have warned against a [Mad Max-esque](#) dystopian future ([Gordon Gekko meets Immortan Joe?](#)). The compact states’ negotiations this month are much needed and will be critical for the future of water and society in the west.

[Congrats Florida, You've Got 404 Authority. Now Prove You're Not the Mule with a Spinning Wheel](#)

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:

[ELI: Diversifying the Outdoors and National Lands](#); January 12

[Gulf TREE Train the Trainer Workshop](#); January 13

[CPRA Board Meeting](#); January 20; Chalmette, LA

[Webinar: Disinfection Byproducts Formation Tools for Drinking Water Utilities](#); January 27

[CRCL and Louisiana Sea Grant: Shell-A-Bration](#); February 5

Water jobs:

[Manager, Conserving Marine Life in the U.S.](#); Pew Charitable Trusts; Washington, D.C.

[Associate Attorney](#); Earthjustice; Seattle, WA

[Water Conservation Administrator](#); City & County of San Francisco; Bodie, CA (no, not really)

[Assistant Director](#); Virginia Coastal Policy Center, William & Mary Law School; Williamsburg, VA

[Director of Conservation, Texas](#); The Nature Conservancy; *Insert-City-Here*, TX

[Watershed Specialist](#); Bayou City Waterkeeper; Houston, TX

[Environmental Specialist](#); Metropolitan Water District of Southern California; Parker Dam, CA

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Back in the [old days](#), states primarily managed their own water resources without much federal intervention. The federal government's role in water resource management and regulation grew over time and came to full fruition with the Clean Water Act's (CWA) enactment in 1972. The CWA still allows for states to manage their own water resources, most often utilized for water quality certification, Section 401, and pollutant discharge regulation, Section 402. A far less-utilized provision for states is Section 404, which outlines dredge and fill regulations. States typically do not go for that one because it just gets [so complicated](#) with all of its many intricacies. In fact, just two states, Michigan and New Jersey, had opted to take over control of Section 404 responsibilities. But in December, the EPA granted [Florida's](#) request to join in on the fun. And other states, including Louisiana, are considering doing the same. Many are unhappy with the transfer and have threatened legal action, calling this, "[the final nail in the coffin for \[Florida's\] waterways.](#)" They claim that the EPA has more stringent permitting requirements and that the state lacks the funding and resources to properly lead the permitting program, and thus the EPA is a better administrator for it. Many believe that the move was fast-tracked before President-Elect Biden takes office, so it may be too late for any other states to jump in but we'll just have to [see how this pays off](#) for Florida's waterways.

[Yeah, Science!](#)

Water filtration could be getting cheaper in the near future, thanks to a newly discovered [desalination process](#) by scientists at the University of Texas and Penn State. The researchers published their findings in a paper which says they found a new way to use desalination that is 30-40% more efficient. This means that clean water production could be done using less energy and thus would be cheaper using this technology. Due to a number of factors, including drought, finding new innovative and efficient ways to manage fresh water is vital, especially in low-resource areas. Historically, a major [problem](#) with desalination as a filtration process has been the immense amount of energy, and thus fossil fuels, and water it uses. So, this new process, while not completely solving that problem, would at least cut that energy use down a bit. As with most new technologies, there are a number of factors that go into its energy use and clean water production that must be taken into consideration.

[Or Maybe Bye Science?](#)

Apparently, the EPA does not share Jesse Pinkman's above exclamations. The agency has [finalized](#) its controversial [science transparency rule](#), which would limit data used to create public and environmental health laws, some of which is the backbone for laws such as the Clean Air Act and Clean Water Act. The EPA alleges that this new rule will ensure that lawmakers are using only the best data to craft these laws, while opponents say it will only be used to exclude important data and thus weaken the agency's regulatory ability in the future. The rule will require researchers to disclose all raw data used to formulate studies for public and environmental health laws. EPA Administrator Wheeler claims that this new rule is to allow the public to know what science goes into formulation of laws, but the major problem with that is that many of these studies rely on confidential data, such as medical records, which will now make those studies unusable. EPA did revise a part of the rule that would have retroactively affected studies, after public outcry, but moving forward studies used not only for regulations, but also just for general "influential scientific information" shared by the EPA will be affected. Many are worried that because of the scope, this rule will have a major lasting impact on the future of public and environmental health. To paraphrase [Cher](#), you probably haven't seen the last of this.