

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
October 29, 2021

## It's All A Bunch of [WOTUS Pocus](#)

Feel like WOTUS is [haunting](#) you and your inbox? Don't blame us—blame the [industry groups challenging the August decision](#) out of the District of Arizona that [vacated the Trump-era Navigable Waters Protection Rule](#). Following the summer ruling, EPA and the Army Corps of Engineers halted implementation of the Navigable Waters Protection Rule (re-branded WOTUS) across the country (despite some ambiguity as to the scope of the Arizona decision) and are interpreting WOTUS consistent with the pre-2015 [Rapanos](#) "significant nexus" standard. This week's appeal alleges that the ruling is "unduly disruptive to the regulated community." Ultimately, long-term restoration of the Trump rule is likely a pipedream since EPA stated as part of the initial case that it planned to rework the rule independent of the court's ruling. However, the appeal could impact which standard is applied in the interim as it requests that the Trump regulation be [revived](#) until the 9<sup>th</sup> Circuit makes a decision on the case.

And the appellants aren't alone in their dissatisfaction with the current implementation regime. A [coalition of 21 red states submitted a brief](#) this week requesting the Supreme Court revisit its 2006 ruling by taking up a case filed by an Idaho couple disputing an EPA determination that their property contains wetlands. On the one hand, the Supreme Court may be interested in revisiting the [messy](#) 4-1-4 [Rapanos](#) decision. On the other hand, such a ruling may be futile as EPA and the Army Corps are currently working to develop new standards. In fact, the agencies announced this week that they will host [regional roundtables](#) for interested parties to discuss key topics related to implementation of WOTUS. So, consider this a warning that this will not be the last you hear from on WOTUS.

## Microsoft Pledges to [Slash](#) Data Center Water Use

In the ramp-up to the UN's COP26 climate change conference, which starts on [Sunday](#), Microsoft has [announced plans](#) to reduce water use at its data centers by 95% by 2024. This comes on the heels of previous sustainability commitments from the company, including a pledge to be ["water positive" by 2030](#). In other words, by the end of the decade, the company will replenish more water than it consumes. This is a pretty ambitious goal as data centers are notoriously [thirsty](#) operations. The [latest plan](#) relies on non-water liquid cooling and technology that allows data centers to run at higher set points (operate at warmer temperatures).

Data centers are an undeniable necessity in a world increasingly dependent on cloud computing, but the [rate at which they guzzle electricity and water](#) is unsustainable, especially as more and more

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:

[Save Ourselves, Then & Now: Revisiting LA's Public Trust Doctrine](#); Nov. 12

### Water jobs:

[Associate Attorney](#); Sher Edling LLP; San Francisco, CA

[TMDL and Water Quality Improvement Lead](#); State of Washington Water Quality Program; Lacey, WA

[Program Operations Associate](#); The Ocean Foundation; Washington, DC

[Senior Manager, Environmental Policy \(EMEA\)](#); Amazon; Brussels, Belgium

Louisiana Bucket Brigade; [Campaign Director](#), New Orleans, LA; [Economic Development Manager](#), River Parishes, LA; [Liquefied Natural Gas Campaign Coordinator](#), Lake Charles, LA

[Staff Attorney](#); Great Rivers Environmental Law Center; St. Louis, MO

Sierra Club; [Gas Exports Campaign Representative](#), New Orleans/Gulf Coast, LA; [National Distributed Organizing Representative](#), LA/TX/DC

[Adaptation Program Director](#); Georgetown Climate Center; Washington, D.C

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

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

[Outreach Coordinator](#); Coalition to Restore Coastal Louisiana; New Orleans, LA

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of the [communities they share resources with battle drought](#). Some companies have opted to [site their data centers in countries such as Iceland](#) which has cooler air and cheap renewable energy, although simple relocation is apparently an [infeasible option for Microsoft](#). Instead, Microsoft has experimented with more creative solutions, such as [submerging entire data centers underwater](#). Although using already-warming seawater as a coolant initially sparked some concerns, Microsoft claims the impact would be [“a few thousandths of a degree warmer at most.”](#) A data center may not be the [scariest thing underwater](#), but we’re not sure who’d want to swim in those waters.

### **[Be Careful What You Wish For](#)**

For months the American West has been wishing for rain, and this week their [prayers](#) were finally answered when an “atmospheric river” drenched the West Coast with record-breaking rainfall. [Atmospheric rivers](#) are pretty much exactly what they sound like—[rivers in the sky](#). In this case, the moist tropical air was transported along a narrow flow corridor between Hawaii and the West Coast known as the [Pineapple Express](#). The deluge [doused wildfires and restored water levels](#) in lakes and rivers that were dangerously dry only days earlier, but ultimately [did little to quell long-term drought concerns](#). This is because storms of such high intensity are relatively ineffective at recharging groundwater as the dry, crusted soils struggle to absorb the water fast enough.

The heavy rainfall was also not without downsides as it [sparked urban flooding and triggered mudslides](#) up and down the coast. Not to mention, the Pacific Northwest also faced a “bomb cyclone” along with the torrential downpour. Contrary to what the name might suggest, [a bomb cyclone is not a hurricane](#). Although a bomb cyclone can also bring life-threatening winds, it develops very differently than a hurricane; hurricanes are derived from heat energy over very warm ocean water (at least 80 degrees) while bomb cyclones get their energy from the jet stream when air pressure drops [in a flash](#) (at least 24 mb in 24 hours). Shockingly, the West was not the only coast to endure a bomb cyclone this week—[another storm smashed into New England](#) overnight Tuesday, knocking out power for more than half a million. With [climate change intensifying weather events](#), it looks like we should all be bracing for more frequent, powerful, and [crazier storms](#) to come. [Any questions?](#)

[That’s all](#) for this week! Happy Halloween to all, and to all a Happy COP26!