

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
November 12, 2021

## **On the Road to . . . Better Roads!**

Well, folks. We made it. It was a rocky road, but we're here. After weeks of negotiations, beyond our [wildest dreams](#), Congress was able to bridge their differences and pass the [Infrastructure Investment and Jobs Act](#) last Friday. Finally. The \$1.2 trillion bill is expected to land on President Biden's desk next Monday for his signature. (He's probably going to be tied up with the [new T-Swizzle album](#) this weekend, but who isn't?) It received bipartisan support from the Senate and House, which is a rare sight indeed. In it is \$15 billion allocated for lead drinking water pipe replacement, a whopping \$30 billion less than President Biden's original proposal. This is well below the amount needed to replace all the 6 to 10 million lead service lines in the country, but it's certainly going to be helpful in bringing clean drinking water to more people. Some cities, like [Benton Harbor](#), are already in the works to change out their pipes. Replacing lead pipes will have impacts well beyond the immediate ones we always think of (i.e., better infrastructure, safer drinking water, better community health). There's about [9.7 to 12.8 million lead pipes](#) in the country—and that the low estimate. Their usage in our current water infrastructure poses health risks, especially to children; even low levels of exposure can impair childhood development and adult reproductive systems. So, logically, the fewer lead pipes we have, the healthier people become. And that means lower health care costs and more people who can focus on building wealth rather than paying off medical debt or simply trying not to die. It also means less money the government needs to spend [settling lawsuits](#).

Speaking of health hazards, \$10 billion of the bill is allocated for addressing PFAS, which is music to the ears of communities who have been dealing with this problem since DuPont invented Teflon. Clean water is finally getting its time in the spotlight, and we're here for that.

[For Louisiana](#), some of that money will be going to road and bridge repair, as well as increasing broadband access to people living in rural areas, which will allow them better access to information and resources—resources like, say, a certain water-centric newsletter. Jokes aside, the UN declared [internet access a human right](#) back in 2016, and this part of the bill will hopefully increase the quality of life for thousands of Louisianans. A chunk will also be dedicated to strengthening electrical grids, improving flood resiliency, and coastal restoration. This will be especially important, as the state has sustained a tremendous amount of damage from hurricanes and storms over the last two years. For the affected communities, [recovery and relief have been slow](#). Hurricane Laura

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

[The Water Runoff: A City Council Debate](#); Nov. 30

## **Water jobs:**

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

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

[Line 3 Defense Legal Fellow](#); Civil Liberties Defense Center & Water Protector Legal Collective; Minnesota

[Climate Resilient Coasts & Watersheds Coordinator](#); and [Communications Specialist](#); Environmental Defense Fund; Multiple

[Attorney](#); State Water Resources Control Board

[Director of Finance](#); Pontchartrain Conservancy; New Orleans, LA

[Co-Director](#); Common Ground Relief; New Orleans, LA

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made landfall in August 2020; a year later, Governor John Bel Edwards is [still seeking some much-needed recovery funds](#). As a coastal state, we experience the effects of climate change first-hand; the same goes for cities like Miami and [Coney Island](#). The money is earmarked for Louisiana, but the actual distribution of it and the determination of which projects will receive that funding will fall to state authorities. Word on the street is that Lake Pontchartrain is one of the waterbodies set to benefit directly from this bill. Fifty-three million dollars are intended to be used to [restore the Lake Pontchartrain basin](#), which has been harmed by the increases storms and nutrient pollution. Why, this calls for some [biodegradable glitter](#)!

### **WOTUS, Meet Section 404**

Ah, WOTUS. A topic we know [all too well](#). Florida is once again at the center of a water case. Honestly, who is surprised here? What a reputation to have. In January 2021, after the Trump Administration's rollback of the Clean Water Act, EPA approved [Florida's assumption](#) of the Section 404 permitting program. Unsurprisingly, several environmental organizations, including the Center for Biological Diversity, sued, claiming that the decision violated the Administrative Procedures Act. Now, they're using the Biden Administration's rollback of the Trump-era WOTUS rule to [show that Florida is unlawfully applying the Trump-era rule](#) to their 404 permitting process, claiming that this further bolsters their argument that EPA's permit to Florida was inappropriate. However, Florida considers the two issues—the 404 permitting process and the WOTUS rule changes—[separate and unrelated](#), and claims that the definition of “waters of the United States” isn't relevant to their dispute about their permitting authority. Though, generally, to properly conduct a permitting program, one would need to know which waters the program applies to, right? Florida hasn't definitively answered whether it's still using the Trump-era rule, but did file a [response](#) to [Center for Biological Diversity's Notice of Supplemental Authority](#). They're far from being [out of the woods](#).

### **The Gold Rush**

[Native American tribes and environmental groups](#) in Montana have teamed up to block the operation of two copper and gold mines in the state. Hecla Mining Company has two mines rumored to hold huge copper and gold deposits. Mining operations cause extensive damage on the land and water that often takes years or decades to clean up.

Okay, background: The [Metal Mine Reclamation Act](#) has “bad actor” provisions that prevent mining professionals and companies from acquiring new Montana mining permits if they fail to complete reclamation for past mining operations. [Boy, we can sure use some of that here in Louisiana](#). The state's Department of Environmental Quality can sue for reimbursement for cleanup costs associated with the operation. In the late 1990s, Pegasus Gold Corp was operating the Zortman-Landusky mines. The mines caused so much pollution that it permanently contaminated the Fort Belknap Reservation, among other environmental damages. Pegasus went bankrupt and left Montana authorities with \$32 million in cleanup costs. One Philip Baker, Jr. held various executive positions in Pegasus before it went belly up. He has since become the CEO of...you guessed it! Hecla Mining Company. So, in 2018, the Montana DEQ sought to block Hecla from obtaining permits for new mines until it reimbursed the state for the cleanup costs associated with Zortman-Landusky. The idea was that Baker is a “[bad actor](#)” because of his connections to Pegasus and his current position in Hecla. Similar positions, different companies. Kind of like Voldemort. And the MDEQ was trying to make a point and say that just because Baker now has a different horcrux...(ahem) we mean company.... doesn't mean he's not a “bad actor.” Or at least, that was the stance under the former governor.

Flash forward to the present: MDEQ [dropped the lawsuit](#) after a change in governors, citing complexity and procedural hurdles. The [lawsuit](#) filed by the tribes and environmental groups seeks to compel the Montana DEQ to enforce the “bad actor” law against Hecla and Philip Baker, Jr. The lawsuit is against the Montana DEQ and its Director, leaving out Hecla and Baker. But that doesn't mean Baker's in [exile](#). While this case proceeds through the courts, for Hecla, it's business as usual.