

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
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The Feds are Reminded Who's the Boss

Ah, Federalism. The bedrock of our country. States granting power to the Federal Government. The Federal Government cooperating with the desires of We the People who gave them that power. Maybe. Sort of? Well, perhaps not so much in Colorado. This past April, the Colorado Water Rights Protection Act was passed *unanimously* by the Colorado Legislature. The Act tells the Federal Government that Colorado water is [none of its business](#), thank you very much...even the stuff on federal lands. More specifically, the law states Colorado's sovereignty over all issues concerning water appropriations. Such appropriations are generally governed by the U.S. Forest Service in order to maintain flows in streams for bugs, fish, other flora and fauna, and most importantly, ski areas. When the Forest Service attempted to force ski areas to turn over their water rights, the winter playgrounds put up quite a stink. And the poor Forest Service is so put out that they have thrown in the towel. But after a recent Supreme Court ruling, Colorado may be the least of the Federal Government's water worries.

In [a May 31 opinion](#), a unanimous Supreme Court held that a jurisdictional determination made by the Army Corps of Engineers is final agency action reviewable under the Administrative Procedure Act (APA). Until now, the Corps could determine that your backyard was a wetland, requiring you to get permits under the Clean Water Act in order to build, farm, discharge, etc. there, and there was nothing that you could do about that decision. However, in *United States Army Corps of Engineers v. Hawkes, Co., Inc.*, [farmers have won](#) the right to challenge those determinations as arbitrary and capricious under the APA. So perhaps final agency action isn't so final anymore. We shall see what this means for the contentious WOTUS rule. But one thing is certain, states are a bit tired of the Federal Government telling them what they can and cannot do with their water.

Electric Wind, Coming to a Venus Near You

Well actually, you probably shouldn't go there as its atmosphere is hot enough to melt lead and frequently rains sulphuric acid. But maybe this is because that electric wind stripped Venus of its water. For many years, scientists have believed that Venus was once home to oceans like its sister planet, Earth, but they were boiled away given its proximity to the Sun. However, new research suggests that the electric

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:

[RAE/The Coastal Society Summit on Coastal and Estuarine Restoration](#)

New Orleans, LA

December 10-15, 2016

Water jobs:

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wind in its atmosphere is actually a water-sucking monster. NASA believes that the wind blasts apart the water molecules leaving them to drift off into space and be blown away by the [also not nice solar winds](#). The phrase was [actually](#) “You and all of your ion friends will be dragged off kicking and screaming into space by an invisible hand, and nothing can save you.” Well that’s a cheery picture. Thanks, NASA. You’re really doing well with happy things lately. So, moral of the story is that we should probably add killer electric winds to the list of things to avoid when shopping for a new planet to inhabit when we melt this one.

Brexit: The Dawn of Flotilla Battles

As many of you may (probably) know, Britain is voting this week to determine whether or not it will remain a member of the European Union. This decision will have significant economic and cultural impacts (open markets, open borders, the euro is confusing, [Harry Potter explains it well](#)). And of course lots of [people](#) have lots of [feelings](#) about it. And sadly, [Jo Cox](#), a British lawmaker lost her life over it. Those on the exit side blame many of the country’s problems on its membership in the European Union. Last winter, Britain experienced extreme flooding all over the country. Exit leaders [blamed the EU’s Water Framework Directive](#), which sets guidelines for all EU countries for water management, pollution levels, and drinking water, among other things. Those in favor of exiting believe that the Framework’s ban on dredging (something rather necessary in a country dominated by bogs, fens, and wetlands) was the catalyst for the damaging floods. Naturally, the British people have a lot of strong feelings about this referendum, and it has manifested itself in the most epic way possible: a [Flotilla Battle](#). Yes. A bunch of pro-exit fishermen drove their boats up the Thames where they were met by a large tour boat filled with anti-exit supporters blaring pop music to drown out the pro-exit chants. Bumper boats, water hoses, [zooming jet skis](#) ensued. Basically, British politics just trumped the United States. And we have an [actual Trump](#).

Breaking News: Waukesha Water Request Approved

Yesterday, Waukesha, WI, faced [an uncertain future](#). Like so many parts of the world, the long term viability of Waukesha’s water supply was in doubt. The deep aquifers the Milwaukee suburb had used to supply its 70,000 people were tainted by high radium levels. A mere 17 miles away, the vast waters of Lake Michigan beckoned, tantalizingly close, but legally unreachable thanks to the Great Lakes Compact...[until today](#). The Great Lakes Council just approved the city’s request to draw water from Lake Michigan (subject to a few conditions), making it the first city entirely outside the basin to receive Great Lake water since the Compact was enacted.

The Great Lakes Compact is an agreement between the eight US states and two Canadian provinces that [border the Great Lakes](#). In 2008, after years of negotiations, the compact was signed and promptly enacted as federal law. Among other restrictions, the compact prohibits municipalities outside the Great Lakes basin from using Great Lakes water. Despite this prohibition, communities that straddle watershed boundaries are allowed to apply for an exception, and that’s precisely what Waukesha has done. Though Waukesha’s surface runoff drains into the Mississippi via the Fox River, it is hydrologically linked to the Great Lakes. 30% of the recharge for the aquifer Waukesha currently uses comes from Lake Michigan, and since that water is discharged into the Mississippi Basin, it represents a net loss in volume for Great Lakes basin. Under the approved exception, all water taken from the lake must be treated and returned via the Root River.

The concern over Waukesha’s exception application was not for the withdrawal itself (8-10 million gallons/day is miniscule in comparison to the volume of the lakes). Environmentalists and others interested in watershed management were more concerned about the potential precedent. If it becomes commonplace for cities outside the basin to withdraw lake water, a key provision of the compact is lost. Waukesha supporters, however, are quick to point out that the exception only applies to communities that straddle the basin, and approval requires a unanimous vote of 8 governors.