

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
January 28, 2022

## MO SCOTUS WOTUS

New Year's resolutions are notoriously hard to keep, but if you resolved to figure out whether the Federal Appeals Court for the 9<sup>th</sup> Circuit really knows whether wetlands are protected as "waters of the United States" under the Clean Water Act, then you might be in luck. The [Supreme Court of the United States has announced that it will be hearing a case this term on exactly that issue](#). To be clear, the real issue in *Sackett v. US* is not whether the 9<sup>th</sup> Circuit got it wrong but what standard SCOTUS actually set in its controversial ruling(s) in the [2006 \*Rapanos v. US\* case](#). In that case, SCOTUS could not come to any consensus, issuing 3 opinions with none of them commanding a majority. The 9<sup>th</sup> Circuit has followed the "swing" opinion of then Justice Kennedy, which does not require wetlands have a continuous connection to some relatively permanent surface waterbody as long as there is a "substantial nexus" between them. The plaintiffs in *Sackett* argue that former Justice Scalia's more restrictive plurality should be the law of the land. Given SCOTUS's history of settling hash with more hash on this topic, maybe you and your resolution are not in luck after all.

## Hmm, Does This Taste Funny to You?

Back in the day, if you wanted to protect a community's water supply from mischief, you focused on [skulking saboteurs](#) and [industrial mishaps](#). You still do, but increasingly bad actors can mess with water systems from distant places without so much as having to leave their couch. We are talking, of course, about cyber risks. Water management has gotten more high-tech, which, for the most part, is a very good thing. But keeping modern systems secure requires more than a padlock and a security guard, it calls for cybersecurity—something we are not quite as good at, apparently. Facing [growing hacks](#) and [looming threats](#), the [White House has launched a new cybersecurity initiative](#) aimed at protecting the nation's more than 50,000 water supply and treatment systems. The new initiative will focus on better data collection, reporting of cyber vulnerabilities and breaches, and encouraging the deployment technologies and practices that can lead to better information sharing and coordinated risk management. Best seen as a welcome but overdue move, it will take more before our water (and other vital systems) are protected to the point that we can tell ne'er-do-wells, "[you can't touch this](#)" and mean it.

## 5-4-3-2-1 Blast Off... No Wait!

With all the bad, sad, and horrible news filling the airwaves and inboxes, who could blame you for thinking that maybe Elon Musk is on

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:

[WOTUS Rule Comments Due](#): Feb. 7

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

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

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

### Water jobs:

[Ocean and Coastal Law Fellow](#), National Sea Grant Law Center, Oxford MS.

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

[Staff Attorney](#); Save Our Springs Alliance; Austin, TX

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

[Request of Interest](#); Restore Mississippi River Delta; deadline: Feb. 14

6325 Freret Street, 1<sup>st</sup> Floor  
New Orleans, LA 70118  
504-865-5982

[tulanewater.org](http://tulanewater.org)

TWITTER: [@TulaneWaterLaw](https://twitter.com/TulaneWaterLaw)

to something with his plan to move to Mars? After all, all it needs is warmth, protection from ultraviolet radiation, and water, right? And the [science is pretty clear that water used to be there and probably still is in some form or fashion](#). Since [Mars is really cold \(in fact it's cold as hell\)](#), the thinking has long been that whatever water is there is frozen or bound up with other minerals. But back in 2018, news broke that [there might be liquid water under the polar caps](#). Huzzah! That means with just some SPF 1000 sunblock and a little buddy heater, we can show up at the Space X launch pad and be off, right? Well maybe not-but maybe. This week saw papers published going both ways. The first, a [paper published in Geophysical Research Letters](#) and summarized in a [release from the University of Texas](#), said (we now paraphrase), “Hold on pardner, that weren’t water you saw but some tricky lava bed mirage.” Bummer, but all may not be lost. In the same week, news broke of [another study—this one in Earth and Planetary Science Letters](#)—that said there may well be odds-defying liquid water under the poles. So which scientists should a future Martian believe and what should he/she/they do? [Try crediting them all for doing cool challenging work and accept the fact that science is not about deciding who is right but rather about learning](#), a fact that tends to generate more questions than answers. And also, why not spend some more time, attention, and resources on making our current planet more livable. After all, no matter how many rockets Space X builds, for most of the 8 billion people and all other living things, Earth is the only spaceship they will ever have to ride.

### **Summit Blurp?**

The highlight of the New Orleans social calendar is upon us once again. That’s right, it’s time for the 27<sup>th</sup> Annual Tulane Environmental Law & Policy Summit! Final details are still being finalized, but we can tell you that it will be held March 11 and 12, attendance will be virtual, CLEs will be available, and Governor John Bel Edwards will be giving the keynote address. That address and a will be the in-person cherry on the sessions’ virtual sundae! Get your best summiting gear ready now!