

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
August 26, 2022

## Flood Control or Reproductive Rights: [Make Your Choice](#)

[Once every hour, a city in the US experiences street flooding...](#) that city is New Orleans. Anyone who's been to New Orleans during even a minor rain event knows that this is barely an exaggeration. And if by chance any of the [drainage pumps aren't working at full capacity](#), even longtime residents can be [blown away](#) by how just 30 minutes of rain can completely cover a road. So, while the [once-revolutionary pump system admittedly played a big role in increasing flood vulnerability by sinking New Orleans below sea level](#), we are nonetheless reliant on that those pumps to function as a city. Which is why New Orleans officials want to build a new electrical substation to power the city's drinking water, drainage, and sewage systems. Seems reasonable enough, right? According to Attorney General Jeff Landry and a half dozen anti-abortionists, the answer is, "[Nope.](#)"

Last Thursday, [Louisiana's State Bond Commission voted for the second time to delay the approval](#) of a \$39 million line of credit for the new project due to New Orleans' handling of Louisiana's laws on abortion. New Orleans city officials have said they won't enforce the statewide trigger-ban on abortions that took effect in July after the Supreme Court overturned *Roe v. Wade*. In AG Landry's words, "This is [New Orleans] coming right out to the rest of the citizens of the state saying, 'We don't care what your law is.'" To be fair, [what exactly that law is has been difficult to keep track of](#) lately. The delay was approved despite opposition from New Orleans members of the commission who suggested finding less essential projects to [hold hostage](#), with state Sen. Harris referring to the power plant as a pro-life project—flood control has been known to save lives, after all. [Governor Edwards has also spoken out against the use of the Bond Commission's power](#) as a weapon in a political disagreement.

On the bright side, even though New Orleans residents may soon need to swap their cars for boats (or a [combination of the two](#)), at least [some Louisiana communities will be receiving funding for flood mitigation](#). Oh, in case you track these things, we don't believe the Bond Commission benched any local governments whose [sheriffs refused to enforce Governor Edwards' Covid mask mandate](#).

## The Great Lakes and the Public Trust: [Stop Me If You Think You've Heard This One Before](#)

An Indiana lawsuit challenging public access to the Lake Michigan shoreline [might be headed to the Supreme Court](#). Justice Amy Coney Barrett has granted lake-adjacent landowners extended time to challenge a 2018 Indiana Supreme Court ruling that under the public trust doctrine the state holds the shoreline for the enjoyment of all Hoosiers.

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:

[ABA SEER 30<sup>th</sup> Fall Conference](#); September 21- 24

[Louisiana Climate Initiatives Task Force Fall Meeting and Workshop](#); October 22

[Restore America's Estuaries, 2022 Coastal and Estuarine Summit](#); December 4-8; New Orleans

### Water jobs:

[Water Quality Technician](#); Pontchartrain Conservancy; Metairie, LA

[Clinical Instructor Tulane Environmental Law Clinic](#); New Orleans, LA

[Associate Attorney, Senior Attorney, and Paralegal](#); Earthjustice; Multiple Locations

[Climate Risk Legal Fellow](#); Environmental Defense Fund; Boulder, CO

[Summer Associate 2023](#), Sher Edling LLP, San Francisco

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

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That each state has duties under the public trust doctrine is thanks to the succession of sovereignty from the King of England, to the federal US government, and finally to the states. Because the English common law required the king to hold certain resources in trust for the public, so too must state governments today. And while this means Indiana landowners may not be entitled to an entirely private beach, it could be much worse. For example, in [Brazil](#), the consequence of former sovereign control over all land is that for almost half of all properties in the country, a [2.5% tax is owed to descendants of former Portuguese royals and nobles](#) each time a sale takes place.

The Indiana lawsuit is eerily similar to the 2005 Michigan Supreme Court case, [Glass v. Goeckel](#), which affirmed the public's right under the public trust doctrine to walk along Great Lakes shores. Furthermore, it isn't even the only public trust doctrine case in the Great Lakes region at the moment—in 2019, Michigan Attorney General Dana Nessel [sought to shut down the Enbridge Line 5 oil pipeline](#) that runs in the Straits of Mackinac based on alleged public trust doctrine violations. Of course, given that Lake Michigan is in fact the [jurisprudential birthplace of the public trust doctrine](#) in the US, we'll [give 'em a break](#) on the lack of originality.

### **Desalination and Cloud Seeding: Water Planning Enters the [Age of Machine](#)**

Although the public trust battles around the Great Lakes might feel repetitive, we shouldn't take for granted that Indiana still has a shoreline to fight over—other places around the world aren't so [lucky](#). For example, as water levels in the Sea of Galilee fluctuate to dangerous levels, Israel is making plans to [desalinate and pump in water from the Mediterranean Sea](#). Turning salt water into freshwater may not rise to the level of biblical miracle, but it is popping up in more and [more plans to address water scarcity](#).

Another deific innovation that's [coming up more often is cloud seeding](#). The most recent plan to [make it rain](#) has come out of [China as a last ditch effort to protect its grain harvest](#). Low rainfall and a heat wave is causing lakes and rivers around the country to dry up—including major water bodies like the Poyang Lake and Yangtze River. Beyond impacts on the agricultural industry, [low output from hydroelectric plants](#) has prompted rolling blackouts and low water levels have forced [halts to cargo shipments](#). However, just as we're [seeing in the US](#), drought unfortunately does not mean less floods. The good news is, despite more intense rain events in China, [deaths from flooding are way down](#). Experts attribute this decline to more accurate forecasts with better communication and evacuation procedures, infrastructure improvements, and increased funding for disaster response. Meanwhile, [back in Brazil, heavy rains caused 130 deaths](#) just in the latter half of May. A major driver of these deaths is badly sited or poorly built housing. Many densely populated cities in Brazil see poorer residents living on riverbanks, alongside canals, and on steep hills because they can't afford expensive housing—or that pesky little 2.5% land tax we were just talking about... Don't you just [love it when it all comes together](#)?