

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
June 12, 2019

We're not the only ones puzzled by WOTUS

Frequent readers of TUWW are no strangers to [our musings](#) about President Trump's WOTUS (Waters of the United States) proposal and effort to rollback President Obama's Clean Water Rule. As a quick refresher: the proposal would erase Clean Water Act (CWA) protections for wetlands without surface water connections to larger waterways and streams that only flow following rainfall. The proposal leaves much to be desired, and extreme weather caused by climate change could further complicate its application. For example, drought might drain wetlands that are normally connected to waterways, and it could lower groundwater tables that normally feed streams. Increased rains would have the opposite effect. Accordingly, the EPA told its Science Advisory Board (SAB) that streams and wetlands could "come in and out" of CWA jurisdiction because Army Corps of Engineers jurisdictional determinations last only five years.

The EPA's Science Advisory Board (SAB) last addressed questions about CWA jurisdiction in 2014 with a 300-page "connectivity report" that describes how wetlands and small waterways can affect larger resources. President Obama's administration used that report and the SAB's review of it as the basis for its Clean Water Rule. [Members of the SAB](#) (more than half of whom are Trump administration appointees) met last week and affirmed that the group still stands by its 2014 scientific review. Referring to the Trump administration's proposal and insistence that the proposal is a question of policy, not science, one member said: "[They have the right to change the policy, but the science isn't right.](#)" The chairwoman of the SAB wasn't sure whether the SAB could influence an EPA policy decision but noted that the scientific "gaps" in the WOTUS proposal are things the agencies had asked for public comment on. Ultimately, the SAB also voted to write a "commentary" to EPA explaining the science at issue in the WOTUS proposal.

At a hearing of the Environment and Public Works Committee on Wednesday, June 12, Senators will look at how CWA protections affect the agriculture sector. Agriculture groups, along with oil and gas producers and home developers, have argued that President Obama's Clean Water Rule amounted to a federal overreach and dictated how private landowners can use their property. These groups will probably promote the same theme at Wednesday's hearing, but Senate Democrats are likely to push back on that narrative and instead focus on the public health implications of erasing federal protections for wetlands and streams.

Don't Bite the Hand that Feeds You

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:

[Energy Audits Training](#)

June 13, 2019; New Orleans, LA

[Water Management Basics Workshop](#)

June 14, 2019; New Orleans, LA

[Bayou Bonfouca Marsh Planting](#)

June 14, 15, and 18, 2019; Lacombe, LA

[Evacuteer Training](#)

June 17, 2019; New Orleans, LA

[Stormwater Management Lunch & Learn](#)

June 18, 2019; New Orleans, LA

[Water Collaborative Summer Social Hour](#)

June 19, 2019; New Orleans, LA

[GPRO Green Professional Course](#)

June 19-20, 2019; New Orleans, LA

Water jobs:

[Mystic River Ambassador](#)

Groundwork USA; Somerville, MA

[Director of Water & Agricultural Programs](#)

The Nature Conservancy; Topeka, KS

[Environmental Analyst \(Drinking Water\)](#)

New England Interstate Water Pollution Control Commission (NEIWPCC)

Various locations, NY

[Drinking Water Policy & Data Analysis](#)

U.S. EPA; Washington, DC

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In 2016, Carnival Corporation paid a \$40 million fine and was put on five years' probation for discharging oily waste and covering it up. On June 3, 2019, Carnival admitted that it had violated terms of its probation. Specifically, Carnival admitted that its ships have dumped "gray water" in prohibited places such as Alaska's Glacier Bay National Park and knowingly allowed plastic to be discharged along with food waste in the Bahamas. The company also admitted that it has falsified compliance documents and other administrative violations, e.g. the company sent cleanup teams to visit its ships just before scheduled inspections. As a result of its continued bad behavior, Carnival reached a settlement with federal prosecutors and agreed to pay a \$20 million penalty. Carnival also promised there will be additional audits to check for violations, a restructuring of the company's compliance and training programs, a better system for reporting environmental violations to state and federal agencies, and improved waste management practices. The Senior U.S. District Judge Patricia Seitz, who approved the agreement, stated, "[\[t\]he concern I have is that senior management has no skin in the game.](#)" Accordingly, she cautioned that future violations might be met with prison time and criminal fines for individuals. She also pointed out: "[i]f you all did not have the environment, you would have nothing to sell."

Sick wave, brah!

Some surfers are intentionally putting themselves in "[right place wrong time](#)" situations and sending themselves to the [doctor](#). That is, while most know that it is a good idea to avoid surfing near pipes after a [storm warning](#) due to the increased bacteria that enter the surf from heavy rainfall, many do it anyway because the post-storm period often brings bigger waves. A 2010 study concluded that surfers are more likely to get sick than other beachgoers because they are in the water more frequently and for longer periods. Moreover, surfers ingest 10 times more water than swimmers. Though the relationship between storms, outfall pipes, and waterborne bacteria has already been well-established, a new [study](#) is underway at New Jersey's Monmouth University. The researchers are evaluating water quality at popular surfing beaches along the Jersey Shore with an eye toward documenting higher levels of harmful, illness-causing bacteria in the water after storms. Their goal is to give surfers and others who use the water additional information to make more informed decisions about when to surf and what might be in the water. You're probably thinking to yourself: "[Hey now! Hey now!](#) Doesn't New Jersey monitor beach water?" Correct, but state monitoring is mostly done during the summer. The aforementioned study will continue to test through fall and winter, when storms can be more numerous and surfers are still in the water.

Beachgoers and surfers alike should beware though: [bacteria aren't the only thing lurking in Jersey's waters](#). We suggest that vacationers plan on spending their time [down in New Orleans](#) instead. After all, we have [Mardi Gras Day](#); delicious [\(mama\) roux](#) and [\(gris gris\) gumbo \(ya ya\)](#); [such a night](#)-life scene; and [second lines](#).

ICYMI Snippets

- **Removing the "spill" from spillway:** [Last week's edition of TUWW](#) discussed the historic levels of river flooding and impending opening of the Morganza Spillway. Presumably to make us look silly, shortly after publication, the [Army Corps of Engineers announced](#) that it was delaying the opening of the Morganza Spillway for the third time with no opening planned for the foreseeable future. While the news that the spillway might not be opened is a positive development in the flood fight, unfortunately the high water in the Mississippi River watershed will still likely funnel excessive nutrients and fertilizer downstream this year. The prediction is that the [2019 Gulf of Mexico dead zone might be the second largest on record](#).
- **Sine die:** At the close of the Louisiana legislative session on June 6, the legislature voted to send [\\$55 million of budget surplus money to coastal restoration](#). Additionally, [HB 578](#) was sent to the governor's desk for approval. The bill [directs \\$690 million dollars to various transportation projects](#), including some long-promised projects. The funding comes from settlement dollars from the 2010 Deepwater Horizon oil spill. Fear not: the money is separate from recovery money slated for coastal restoration. Instead, the transportation funding comes from yearly payments of \$53.3 million that BP will pay through 2034 as compensation for economic damage. Since 2014, that yearly payment has been divided between the Medicaid Trust Fund (45%); Louisiana's rainy day fund (45%); and the Health Trust Fund (10%).