



TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
April 14, 2023

Unsafe Standards, Rising Seas, Sinking Shores—[We've Got 'Em All!](#)

[Several environmental groups sued the EPA](#) this week over its failure to update wastewater discharge standards for refineries and manufacturing facilities. Section 301 of the Clean Water Act requires federal regulators to review effluent limitations at least every five years and revise them if there have been [improvements in the best available technology](#) for treating the class of pollutant. This January, EPA published its Effluent Guidelines Program Plan 15 which didn't include revisions to the standards for several harmful chemicals which are ending up in the nation's waterways. The lawsuit alleges that the decision to not revise the standards—some of which haven't been updated for 40 years—was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Perhaps EPA decided not to update the standards based on the old saying, [dilution is the solution to pollution](#). Because if that's true, at least along [the Gulf Coast, which boasts a heavy density of the implicated polluters](#), there's plenty of water en route to dilute all those polluted waterways—an entire ocean in fact! A new study published on Monday reports that [sea levels are rising in the southeastern U.S.](#) at some of the highest rates in at least 120 years. The study noted that the surge is unprecedented, even discounting the impacts of [sinking land levels](#). But of course, between resource extraction, urban construction, and disruption of natural land-building processes, [subsidence is also a major problem for many southeastern states, including Louisiana](#).

The new study mirrors a report released by China's Ministry of Natural Resources this week stating that [its coastal sea levels are the highest ever recorded](#). China has attributed the surge to warmer water temperatures and melting ice sheets, but the country [isn't immune to the risks of sinking land either](#). For example, in Tianjin, a major port city near the mouth of the Yellow River, subsidence rates are almost 20 times greater than mean sea level rise. It's almost like building major metropolises on the deltas of massive continental basins and then pumping all the oil, gas, and groundwater from below the surface is a flawed idea anywhere on the globe.

Bureau of Reclamation Proposes [Splitting the Check Evenly](#)

After months of the Federal government threatening to intervene in management of the Colorado River, the Bureau of Reclamation has finally [released a draft Supplemental Environmental Impact Statement \(SEIS\)](#) proposing a change in guidelines for operations of Glen Canyon and Hoover Dams beginning in 2024. The SEIS explores two alternatives in addition to a [no action](#) path which the Bureau notes could lead to dead pool levels in Lake Powell, Lake Mead, or both. The first alternative would make reductions to the Lower Basin states based on seniority of water rights. Under this scenario, [California would fare the best while Nevada and especially Arizona would face catastrophic cuts](#). While it's included as a feasible alternative, this path would practically eliminate the drinking water delivered from the river to major cities like Phoenix and Tucson, which DOI representatives have said they wouldn't allow to happen. The second alternative would spread the reductions evenly across the states regardless of seniority. This path would lessen the impacts to Nevada and Arizona, as well as the Native American tribes located within the Lower Basin whose rights to the Colorado River are guaranteed by treaties.

The SEIS will be published in the Federal Register today marking the start of a 45-day comment period which is sure to attract numerous responses on the details of the alternatives as well as the unprecedented federal intervention in general. Bear in mind, the DOI gave the states several opportunities to come to agreement amongst themselves, but while [six states agreed on a plan, California never got on board](#). So although it might be easy for everyone upset by the Bureau's plan to say this is all [California's fault](#), there may be another even more fun group to blame—the rich.

According to a new study, [water users' behavior following droughts varies along socio-economic lines](#), with the elite and upper-middle classes increasing use by up to 7.5% and 1.3% respectively, while lower-income groups maintain drought levels. The authors used Cape Town, South Africa as a case study, but economic disparities in water use can be seen elsewhere. For example, [California's farmers have borne a lot of criticism](#) for expanding production of nuts like almonds, pistachios, and walnuts which require substantial, year-round irrigation in the state's arid Central Valley. But as it turns out, much of the [capital for those orchards comes from institutional investors](#) in New York, Toronto, Zurich, and other faraway places that can reap the financial rewards without feeling the costs of groundwater depletion. In other words, [leave California alone](#). After all, [nobody likes splitting the bill evenly \(or so the vegans tell us\)](#).

Don't Go Taking My Heart

Could the U.S. government do it if they tried? An upcoming panel will discuss just that, addressing the background, practicalities, and challenges of takings claims and flooding litigation. [The free event, which offers CLE credit to in-person attendees, will be held at Tulane Law School on April 21st from 2:00-4:10](#). See you there!

Coming Up:

[CRCL Lecture Series – Mike Tidwell](#); April 18;
Houma, LA

[Fifth Amendment Takings Cases in the Court of Federal Claims](#); April 21; New Orleans, LA

[Lower Mississippi River Science Symposium](#); April
27-28; New Orleans, LA

[2023 State of the Coast Conference](#); May 31-June
2; New Orleans, LA

Water jobs:

[Policy Coordinator](#); The Water Collaborative; New Orleans, LA

[Assistant General Counsel – Water](#); Sandia Resort & Casino;
Albuquerque, NM

[Legal Director](#); Orange Country Coastkeeper; Costa Mesa, CA

[Legislative Director, Healthy Communities](#); Earthjustice; Washington DC



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.

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