

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
May 17, 2016

## [Here We Go Again...Again](#)

[Another spill](#) hit the Gulf of Mexico last week, releasing nearly 2,100 barrels of Texas tea ([oil, that is](#)) into the water. The spill originated from a flow line connected to Shell's Brutus platform, about [100 miles south of Port Fourchon](#). Shell officials were alerted to the spill after a helicopter flying over the area noticed an oily sheen 13 miles by two miles. According to the company, the leak has been isolated and contained. Shell has already [deployed skimming vessels](#) to remove oil from the water's surface.

The spill has naturally evoked comparisons to the *Deepwater Horizon* catastrophe of 2010, the largest oil spill in history. *Deepwater Horizon* released 3 to 4 million barrels from an uncontained well-head, exponentially more than the current Shell spill. Environmentalists however, point to the incident as one more on a troublingly [long list](#). So long as the Gulf is home to so much of the nation's extraction infrastructure, they maintain it will continue to suffer the ecological consequences. Spills like this and the [decade-spanning Taylor Energy spill](#), among others, are fanning the flames of the "[keep it in the ground](#)" movement and move past fossil fuel extraction. Local opposition helped [halt the plans to drill in the Atlantic](#), but left the Arctic and Gulf on the table. Activists hope that the apparent intractability and inevitability of spills will convince the Obama administration to reconsider its five-year leasing plan.

## **One Case to Rule Them All**

The Obama administration's waters of the United States rule, or WOTUS, continues its tortured path through the country's legal system. The WOTUS rule seeks to clarify [convoluted jurisprudence](#) on the murky line between federally-regulated waters and water bodies under state jurisdiction. This attempt at clarification of what the law already seems to be has been decried by [states](#) and [industry](#) as overreach, another example of federal intrusion into state sovereignty. At the 6<sup>th</sup> Circuit, 22 cases were brought by over 150 parties in a flood of legal challenges that threatened to swamp the court's docket for years. In response, the court on Monday channeled the diffuse litigation into a single consolidated case: *Murray Energy Corp. v. U.S. EPA*. The court [hopes to expedite the challenge](#) to the rule, which is likely headed to the Supreme Court. Hopefully, SCOTUS's final word will settle decades of disparate holdings over the limits of

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:

### [River Rally](#)

Mobile, AL

May 20-23, 2016

### [State of the Coast 2016](#)

New Orleans, LA

June 1-3, 2016

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

New Orleans, LA

December 10-15, 2016

## Water jobs:

### [Staff Attorney](#)

Chesapeake Legal Alliance

### [Clean Water Advocate](#)

Environment America

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federal authority over water. To [paraphrase Norman Maclean](#): Eventually, all challenges to Federal water regulation merge into one, and the WOTUS runs through it.

### **Idiots: Still Not an Endangered Species**

[Devil's Hole](#) in western Nevada is a window into the ancient past. The small surface pool, entrance to a deep network of underground caves, is the remnant of a vast lake that once covered most of Death Valley. It is home to the [Devil's Hole pupfish](#), whose ancestors used to inhabit that lake. The pupfish numbers vacillate between 100 and 500 and it cannot be found anywhere else on the planet. Half a century of conservation efforts have kept the population relatively stable, though there has been a notable decline in recent years. It is one of the most endangered species on the planet.

Last week, these living links to the past came into contact with one of the world's most wantonly destructive forces: a group of drunk dudes. Three men [went on a rampage](#) in the Ash Meadows section of Death Valley National Park. After [drinking, vomiting, and firing rifles](#) at various signs and security cameras, the men scaled a fence to skinny dip in the pool. After the incident, park officials found, in addition to a discarded pair of boxers, one dead pupfish. One dead is too many, but the bigger concern is for the pupfish spawn. Pupfish lay their eggs on a shallow shelf in the pool, where it appears the men tromped about and disturbed sediment. For a species "[teetering on the brink of extinction](#)," this random act of nincompoopery could tilt them over the edge.

Freudian psychoanalyst Edoardo Weiss posited that all humans have an intrinsic destructive urge (*destrudo*), the counter-balance to our urge to create (*libido*). Alfred J. Pennyworth notes that [some men just want to watch the world burn](#). Some might recall the "Goblin Topplers" of Utah, who provoked a firestorm after filming themselves [knocking over ancient rock formations](#). Those men received fines and probation. The Devil's Hole despoilers could be looking at jail time. But penalties will not undo the harm. Without an appreciation of [deep ecology](#), a cultural respect for our place in the natural world strong enough to overcome our ruinous impulses, this needless destruction will persist.

### **Just a Box of Rain**

Well, a barrel of rain actually. Across the country, people use rain barrels to collect rainwater from their roofs and store it for irrigation. It's a [simple, DIY bit of water conservation](#) that can reduce the amount of treated tap water used on lawns and gardens. And in Colorado they were, until very recently, illegal.

Water law in Colorado is serious business, and is based on the prior appropriation system common to the western United States. [Under prior appropriation](#), water rights are perfected by putting surface water to use. From the date the right is perfected, the right-holder has priority over later users, whether upstream or downstream. Under a very broad interpretation of the doctrine, collecting drops from the roof before they even reach a stream would interfere with senior right-holders.

Rural senators and agricultural industry lobbyists [defeated a similar bill](#) last year by raising concerns that the widespread use of rain collection would impact existing water rights. Colorado State University, however, released a [study that showed no measurable change](#) in the water cycle from the temporary retention. Armed with this information, the pro-conservation crowd had the naysayers [over a barrel](#). The Colorado Farm Bureau, among others, dropped their opposition, and Gov. Hickenlooper [signed the bill into law](#) last week.