



# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
March 22, 2023

## If You're Not at the Table...

We know, we know. Nobody likes hearing that their forebearers were not always kind, just, or well informed, but sometimes there is just no avoiding that history as we contend with our present and prepare for our future. This is especially true when it comes to figuring out how to manage the Colorado River and whose interests should be at the table. To be blunt about it, there is not enough water in the River to [satisfy everybody](#) who needs water and who thinks they have rights to it. The current, federally brokered Colorado River Compact of 1922 allocates the River among the seven states it runs through. A lot has changed since the Compact's birth. The River has changed. The climate has changed. The seven states sure have changed. Throw in the needs of nature and of "domestic dependent nations" (Native American Tribes, that is) and you have yourself a real mess. The obvious thing to do would be to reboot the "law of the river" like mature adults armed with up-to-date science, demographics, and notions of justice and stewardship. Since the [last adult to try that lost a presidential election](#) (though probably not just for that reason), don't expect that to happen.

[The Navajo Nation is trying a different route, which is to force the federal government to commit to include the Tribe in River planning as a matter of treaty right.](#) The argument is that when the Tribe agreed to confine itself to a proscribed reservation under the [Treaties of 1849 and 1868](#), it came with an implied reservation of water that the government is duty-bound to assert. Basically, the Tribe says the Treaty, earlier Supreme Court precedent, and previous federal actions make the federal government a trustee for the Tribe with respect to ensuring the Tribe's access to water. The federal government and Colorado, Arizona, Nevada and California disagree.

The Tribe sued the Department of Interior, and the [case was argued before the U.S. Supreme this week.](#) The Department of Justice does not dispute that the reservation of land came with an implied reservation of water, it just believes that it has no duty to try to make that water actually available. Considering the federal government has at various times confined tribes to reservations, tried to eliminate reservations and tribes, and restricted tribal efforts to assert their interests on their own, it is no surprise that the Navajo Nation wants to be sure it is in the mix as the future of the Colorado River is decided. If there is one lesson they have learned, it is that if you're not at the table, you're on the menu.

On a not-at-all-related note, [check out this Instagram post](#) from our friends over at the Bywater Institute for World Water Day yesterday.

## I Feel the Earth Move Under My Feet

I see reports coming on down, coming on down. [Apologies to Carole King](#), but if you are in suburban Houston (Montgomery County) and have been feeling a little closer to the center of the Earth, it is not just you. You are in fact a little closer to the center of the Earth. The reason is soil subsidence—sinking, for you non-geologists & pedologists. Subsidence is nothing new for Houston, but most of the attention has been given to Harris County (home of Houston proper) which actually has a subsidence management district. A [report issued by University of Houston in December](#)

[2022 concluded that subsidence was also happening next door](#). That conclusion is bolstered by a [second report from Oklahoma-Texas Water Science Center](#), which is part of the U.G. Geological Survey. Why are we telling you about this? First, because [we care a lot](#), and second, because groundwater pumping is the likely culprit—at least according to the reports. [However, it might not be in the eyes of the Lone Star Groundwater Conservation District that manages groundwater in Montgomery County and has questioned the connection between pumping and subsidence](#). The District can be forgiven for being shy since groundwater rights and the property rights of surface landowners are linked in Texas, so regulating groundwater means regulating property rights—and in Texas that is not a popular thing to do. Given the rates of pumping and expected population growth, we suspect this will end up being more of a question of political will than of, ya know, science. The water, of course, will be the final arbiter.

## What's Yours is Mine(d)

Every school kid learns that the magic of the [hydrologic cycle](#) is that water never disappears when you use it, it just goes somewhere else—a cloud, a river, a raindrop, or an ocean. That is absolutely true and absolutely unhelpful if you live in a place that is water-challenged. Sure, you can use water, but that does not mean the water comes back where you are. That is particularly true for groundwater—something Justices hearing the Navajo water case should remember. One of the arguments offered against the Tribe's case that it should be included in plans for the Colorado River is that it can always use groundwater, which it does. But groundwater is often finite, and as it plays out, the pressure to tap surface water only grows. [Case in point, Kansas](#). Maybe you know it and maybe you don't, but northwestern Kansas has no significant rivers yet is very productive agriculturally. How? Groundwater. To be specific, the [Ogallala Aquifer](#). This massive aquifer runs from Texas to South Dakota and there is no reason on God's green Earth that it should not be used. But, unlike a river, that aquifer is not renewable for all intents and purposes. Think of it as a mine that contains something you want. You can take what you want but one day it will run out and the mine will close. That is the Ogallala, and that one fateful day is fast approaching for Kansas if it's not already here. One way of avoiding a water death spiral is to replace or supplement groundwater with water from somewhere else. This will sound familiar to TUWW readers, but instead of the Mississippi, Red or Sabine Rivers as targets, it is the Missouri River that has caught Kansas's eye. Whether that is a realistic option or not, Kansas is at the point of having to reckon with the water limits of its future. If they can't figure it out, western Kansas may become home to new generation of [mining ghost towns](#). Or, as was prophetically predicted in the 1970s, it may all become [dust in the wind](#).

## Bayou Farewell Redux

Lots of words have been written about the collapse of coastal Louisiana, but none have done it better or with a greater sense of purpose than Mike Tidwell in his 2003 book, *Bayou Farewell*. Thanks to the Coalition to Restore Coastal Louisiana, Mike is returning to coastal Louisiana as part of the Coalition's coastal lecture series. The talk will take place on April 18 at the Bayou Terrebonne Waterlife Museum in Houma. The lecture, like all in the CRCLectures series, is free. Hors d'oeuvres and libations will be served. Capacity is limited. [Registration is online](#).

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## Coming Up:

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

[Coastal Organizer](#); Healthy Gulf; Multiple Locations

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

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

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

[Policy and Partnerships Manager](#); Bayou City Waterkeeper; Houston, TX

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

[Program Director](#); Restore America's Estuaries; Long Island Sound

[Governor's Fellows Program](#); Baton Rouge, LA



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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