



TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

Authors: Christopher Dalbom, Mark Davis, Haley Gentry, and Ximena De Obaldia

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Air Force Gives “Fly-Fight-Win” Motto A New Meaning

Except this time the fight’s right here at home, and perhaps the mission to protect the safety and security of the United States only goes so far. [The Air Force is refusing to comply with a Safe Drinking Water Act emergency order](#) to address PFAS contamination in Tucson, claiming the EPA no longer has the authority to enforce, citing [the recent Supreme Court decision](#) overruling the *Chevron* doctrine. Yes, remember that decision that limited federal agency authority to implement their charging statutes and gives federal judges the final word on ambiguous areas of the law that often require technical expertise? Well, many thought the ruling would only impact an agency’s rulemaking authorities, not their enforcement authorities. But, apparently, that may not be the case. So, there’s another open-ended question about the future of federal administrative law for us to ponder. Because the EPA and the Air Force are both arms of an administration, they can’t sue each other, so this whole mess will be resolved internally, but it could open the door to private companies avoiding regulation or cleaning up via this new post-*Chevron* route.

The death of *Chevron* isn’t the only argument in the Air Force’s arsenal. As part of the emergency enforcement action, [EPA ordered the Air Force to come up with a plan within sixty days](#) to address the contamination and develop a filtration system specifically designed for PFAS. The Air Force disputes whether there is “imminent and substantial danger” to the nearby Tucson residents, saying that, at present, Tucson’s drinking water is under the current federal limit for PFAS. Yet the current system in place is not designed to deal with PFAS, and there are limited alternate drinking water sources, since it’s, ya know, in a desert. An EPA spokesperson pointed out that the “law does not require or expect EPA to wait until people are actively being harmed.” It’s a good reminder that all these environmental regulatory schemes that industries fight so hard to undo were enacted to protect people in the first place, not just [the trees some of them may hug from time to time](#). Of course, [it would be nice](#) if the [Air Force would be a good neighbor](#) and address the contamination rather than forward novel legal theories as to why it shouldn’t. C’mon, USAF, “Aim High” isn’t supposed to refer to pollutant levels!

What is a State Attorney General’s Favorite Song?

In its latest legal challenge, Louisiana joined a [lawsuit against the Environmental Protection Agency’s new rule regarding Native American water rights](#) under the federal Clean Water Act. [Section 303 of the CWA](#) directs states to establish water quality standards and designates uses and criteria for waterbodies in their jurisdiction, which are updated every three years. In May, [EPA announced a final rule](#) that would require states to consider and protect tribal treaty and reserved water rights when setting water quality standards under their respective state programs. It’s part of a larger effort by the Biden Administration to improve tribal relations and respect tribal autonomy over natural resources.

The [complaint alleges](#) that the “[Protect Tribal Reserve Rights Rule](#)” exceeds EPA’s statutory authority and its implementation will erode states’ authorities over their own waters. Interestingly, it describes tribal reserved rights as “a novel concept the EPA cut out of whole cloth.” That’s a catchy argument, except for the fact that [tribal reserve water rights have been an established doctrine of law for more than a century](#). Just because EPA hasn’t used the phrase in its

own rules doesn't mean it's totally made up. If you're an avid reader of TUWW, this whole reserved water rights thing might ring a bell—[we published a paper on the topic last week!](#) For the Eastern states taking part in the lawsuit that have not yet grappled with the question of federal reserved rights on Native American reservations, we'd like to remind them that these rights will likely play a bigger role in future water decisions as climate change impacts strain water resources in once water-abundant places. And for those Western states in the suit that are home to federal tribes with established water rights . . . we'd like to point out that water quality is a component of reserved rights. Of course, there are technical arguments to be made about EPA's new rule, but they distract from the fact that states do have a role to play in respecting reserved water rights. Whether it's the EPA or the Bureau of Indian Affairs or a lawsuit to establish water rights, states cannot avoid tribal water needs. So, dear Attorneys General, [let the eagle soar!](#) Don't give the tribes the [run-around](#).

[Ships Don't Lie](#)

It's been a tough year for the shipping industry, which was especially pronounced in the Panama Canal. Low water levels in the Gatún Lake have forced the Canal to significantly reduce traffic, causing major shipping delays while driving up prices. For context, it takes 50 million gallons of water for one ship to pass through the Canal's complex lock system. To address water shortages, [Panama Canal authorities want to create a second water source by damming the Río Indio](#) and creating a reservoir that can be tapped into during droughts. This idea has been around for a while but not without some major issues. The dam would force the relocation of roughly 2,000 low-income families that have called the region home. Right now, Canal officials are operating on the assumption that the proposed dam will move forward and are focusing on planning for relocation of villages and communities. As for the residents in the surrounding area, many are opposed to the project and reject the idea that they will be "better off than they are now" as the Canal's chief financial officer has claimed. That's a dramatic assumption, and many residents certainly don't feel that way, but we can't know that until a space for [public opinion is held](#).

Global shipping and the maritime industry operate mostly in international waters and port areas and have largely assumed there would always be enough freshwater to ensure all those goods could get to their final destination. Whether it's the water shortages in the Panama Canal, or extreme low levels on the Mississippi River halting barge traffic, the systems that have been in place were clearly not designed or equipped to accommodate changing weather patterns and environmental conditions. Just a reminder that climate change impacts in one part of the world can upend longstanding global systems. [High School Musical had it right](#).

Coming Up:

[Mississippi River Commission Inspection Meetings](#)
Cape Girardeau MO, Aug. 19, 2024
Memphis TN, Aug. 20, 2024
Lake Village AR, Aug. 21, 2024
Morgan City LA, Aug. 23, 2024

[Application Deadline for Coastal Leadership Institute](#)
August 23, 2024

[Army Corps Neptune Pass Draft Environmental Assessment Public Comments; Deadline August 31, 2025](#)

[State of the Coast 2025](#)
Proposals Deadline September 23, 2025

Water jobs:

[Water Quality Fellow; The Water Collaborative; New Orleans, LA](#)

[Visiting Professor \(Clinical Assistant Professor\); Tulane Environmental Law Clinic; New Orleans, LA](#)

[Principal Counsel, Environmental Law; Berkeley Lab, San Francisco Bay Area, CA](#)

[Wildlife Biologist/Ecologist; The Water Institute, 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.

6325 Freret Street, 1st Floor
New Orleans, LA 70118
504-865-5915
tulane-water.org