

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
March 4, 2022

Let's Talk About [Plastic](#)

Maybe it's all the Mardi Gras beads we've had [pelted at us with immunity](#) over the last week, but right now we really have [plastic](#) on our minds. It could also be the fact that on Wednesday, 175 countries endorsed a UN resolution to develop a legally binding treaty to [address the plastic pollution crisis](#).

To catch you up: plastic is [everywhere](#). The UN resolution specifically acknowledges the damage plastics (and specifically microplastics) can have on marine environments, but that's really just the tip of the iceberg—it's seriously everywhere: the highest mountains, the deepest oceans, and even in [newborn babies](#). And that's [just some of the places on Earth!](#) And one of the reasons plastic is everywhere is because it's in [everything](#). There are [the usual suspects](#) (bags, straws, cigarette filters) and some [sneakier](#) culprits (chewing gum, clothing, [paint](#)). And even when you [try to recycle](#), the [reality isn't as green](#) as you might think. Despite all this, plastic production could triple by 2050, providing a [lifeline for fossil fuel companies](#).

Something obviously needs to change and, as much as we love to see it, [Coors Light making the swap from plastic rings](#) to cardboard carriers on its six-packs won't quite cover it. With that in mind, this week's UN resolution is promising—the UN Environmental Assembly actually called it "[the most significant environmental deal since the Paris accord](#)."

But previous attempts to manage plastic pollution have taught us that a plan is a far cry from a solution. For example, the [EPA is currently considering regulating](#) one [controversial "solution"](#) to plastic waste: chemical recycling. Even if chemical recycling is a safe and clean disposal option, it would still only address one problematic aspect of plastics' lifecycle. Not to mention, converting used plastic into fuel doesn't support a transition to clean and renewable energy sources. In another approach, this week, California became the first state to adopt a [comprehensive plan for addressing microplastics](#). The plan focuses on preventing further microplastics from entering the environment by regulating materials, prioritizing reusability, and limiting single-use plastic. It is yet to be seen how effective this plan will be, but regardless, it fails to account for the massive amounts of [plastics](#) that are already in the environment. On that front, a new study has shown promising results for deploying [nanobots to remove microplastics](#) from

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.

Coming Up:

[Flood Resilience and Adaptation Planning in the U.S.: Challenges and Opportunities Webinar](#), March 8

[Lower Mississippi River Science Symposium](#), March 10-11

[Tulane Environmental Law Summit](#), March 11-12

[SLU Summit for Water](#), March 22 – 23

[ABA SEER 51st Spring Conference](#), April 6 - 8

[Coastal Law in Louisiana \(CLE\)](#), April 21- 22

Water jobs:

[Senior Research Fellow](#), Tulane Institute on Water Resources Law & Policy; New Orleans, LA

[Ocean and Coastal Law Fellow](#), National Sea Grant Law Center; Oxford MS

[Western Water Policy Specialist](#), The Nature Conservancy; flexible within the Western US

[Water Justice Specialist](#), Bayou City Waterkeeper, Houston, TX

[Sustainability/ESG Director](#), PwC; multiple locations

[Research Associate](#), University of New Orleans; New Orleans, LA

[Research Associate 1](#), University of Louisiana Lafayette; Lafayette, LA

[Organizing Representative](#), Sierra Club; New Orleans, LA

[Advocacy Director](#), Coalition to Restore Coastal Louisiana; New Orleans, LA

[Policy Advisor, Mississippi River Basin Floodplain](#), The Nature Conservancy; LA, MS, AR, TN, or KY

[Georgetown Justice Fellowship](#), Georgetown Climate Center; Washington D.C.

[Attorney](#), California State Water Resources Control Board; Sacramento, CA

[Associate Attorney, Oceans Program](#), Earthjustice; Seattle, WA

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water. Maybe the UN's plan will result in similar tactics, but [are robots really the answer for our ocean-based problems?](#)

[Resources to Privatize](#)

On Tuesday, the New Mexico Supreme Court struck down an agency rule that allowed private landowners to [limit public access to streams and rivers](#) as unconstitutional and contrary to state statute. The 2015 law provided landowners the option to certify segments of rivers and streams running through their property as off limits to fishers, boaters, and other members of the public. Curiously, an appellate court in [Illinois recently upheld the seemingly opposite position](#). In that case, the facts involved excluding other riparians (not the general public) from a non-navigable river that the court determined did not really support recreational uses. Determining who has access to do what on surface water may just seem like an [argument](#) to be had between landowners and canoers, but these decisions actually speak to much broader aspects of water use, such as what qualifies as “navigable” ([it always comes back to WOTUS, doesn't it?](#)), and can and should access to water—or water itself—be “privatized”? As we've discussed *ad nauseum*, EPA and the U.S. Supreme Court are currently in a [furious race](#) to define navigability first. As for privatization, the courts aren't the only ones split on the issue. On the one hand, private property rights enthusiasts argue that opening up waterways access to the public could reduce property values. However, the opposite side caution against privatization, particularly in states with limited water like New Mexico.

Furthermore, water related-aspects of privatization go beyond just surface water access and, as the Illinois case demonstrates, also affect [“water-rich” states, such as Michigan](#). For instance, this week, [Michigan filed suit against the owner and operator of a private dam](#) over sediment deposits on the Kalamazoo River. The state alleges that the sediment created public safety hazards and impacted recreation and natural habitats. Since 2019, the dam owners have been repeatedly ordered to repair the damage but so far have only cleaned up [less than 1% of the sediment deposits](#).

“Privatization” is a loaded term that can refer to countless systems and mechanisms and extends to resources beyond just water, but it's becoming an increasingly popular idea in the United States. For example, in 2017, President Trump proposed [privatizing the vast network of dams on the Columbia River](#) that produce nearly half the nation's hydropower electricity (this and the Michigan case could be best categorized as privatization of electricity, despite being intimately connected with water access and riparian rights). This week, a bill before the West Virginia State Senate proposed [privatizing state parks](#). And, really, a carbon tax is just a form of [privatizing the atmosphere](#).

[Hot Fun in the Summittime](#)

The highlight of the New Orleans social calendar is upon us once again. That's right, it's time [for the 27th Annual Tulane Environmental Law & Policy Summit!](#) Final details are still being finalized, but we can tell you that it will be held March 11 and 12, attendance will be virtual, CLEs will be available, and Governor John Bel Edwards is slated to give a keynote address. That address will be the in-person cherry on the sessions' virtual sundae! Get your best summiting gear ready now!

[We're Hiring!](#)

It's time for the Tulane Institute on Water Resources Law & Policy to find our next postgraduate fellow! [We are now accepting applications through the Tulane Jobs portal, where all the relevant information can be found](#). Okay, most relevant information. The position is for a 1- or (hopefully) 2-year stint doing public service policy work here with us at Chateau d'Eau. It's open to students graduating from a JD or LLM program this spring as well as those who graduated in 2021. The posting says it will stay up until the position is filled, but we anticipate starting to review resumes at the end of the month. Tell everybody! But mostly, you know, tell new law grads who'd actually be eligible.