

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
June 24, 2022

We're Not Escaping WOTUS Woes Any Time Soon

Forgive us while we stare out the window and contemplate our life choices for a moment.

Okay, we can do this. Look, it's not as if writing TUWaterWays every week is a hardship. It's usually even enjoyable. But sometimes things just draaaag, you know? These days (months, years), nothing's dragging like sorting out the definition of the Waters of the United States, which determines the extent of the application of the Clean Water Act. It's been up in the air at least since the 2006 SCOTUS decision [Rapanos](#), but from the end of the Obama administration through to today, it's been defined, undefined, redefined, and back again. Hence, it's regularly commented on here in TUWaterWays.

We knew we had two big WOTUS signposts coming up. One, the next SCOTUS WOTUS case, [Sackett](#), is set for oral arguments on October 3rd. [On the off chance](#) that The Nine make a hash of it and do nothing to calm these Clean Water Act seas, we have the other looming signpost – the EPA's WOTUS rulemaking. This is to be the Biden administration's second phase of their WOTUS work, after they proposed and finalized the first phase this past fall, winter, and spring. So, the proposed rule for the second phase should come along soon, right? Nope! The White House released its [Unified Agenda](#) this week to give an overview of all the regulatory work the Executive Branch has in the pipeline, and [tucked away in there](#) is the note that the phase two Notice of Proposed Rulemaking won't come along until November 2023. So the EPA is going to wait for several months after the [Sackett](#) decision come out to propose their rule. Honestly, that's not a terrible idea, but projecting out that the phase two might not be finalized until the fall of 2024 (when, oh, nothing at all of political importance will be taking place) means your dutiful scribes at TUWaterWays have at least a couple more years of reporting to you about WOTUS.

The Sky Sucks Harder Than Ever

Evaporation of water out of plants, soil, snow, and water bodies increases when the air is hotter and drier. We've always kind of known that. But [a new study](#) shows just how much evaporation is increasing globally, and especially in places like the Western US. It means that even when there is precipitation giving relief from droughty conditions, [more of that precipitation is getting sucked right back into the atmosphere](#) than before, and it's doing less good on or in the ground. It's yet another thing water managers have to take into account. Surely they're [thrilled](#).

However, improved technology is allowing some communities to suck right back. Building on the traditional use of fog nets in the

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:

[Restoration on the Half Shell](#); June 25

[Louisiana Climate Initiatives Task Force Public Meeting](#); July 12

[Louisiana Climate Initiatives Task Force Fall Meeting and Workshop](#); October 22

Water jobs:

[Litigation Attorney](#); Florida Department of Environmental Protection; Tallahassee, FL

[Water Quality Technician](#); Pontchartrain Conservancy; Metairie, LA

[Fellowship for Climate Change and Environmental Professionals](#); Atlas Corps; USA

[Legislative Analyst, Coastal and Flood Resilience](#); Environmental Defense Fund; Washington, DC

[Associate Attorney](#); Sher Edling LLP; San Francisco, CA

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Atacama, [hi-tech fog nets](#) are at work in the Atlas Mountains of Morocco increasing water access for rural villages otherwise losing water resources to climate change. The companies behind it are already pondering how they can be put to work in places like the California coast.

In light of another new study, it's worth wondering how wise that would really be. This [study shows](#) how human responses to climate change can compound the direct effects of climate change – the indirect piling on top of the direct. Specifically, it shows that [these indirect effects can be profound alpine freshwater systems](#). Every reaction or adaptation has knock-on consequences, and it's unclear if any atmospheric water harvesting scheme has taken that into account. Any water that's in the air in the form of fog or just good ol' humidity is headed somewhere. Depending on where that is, these bigger, indirect impacts on climate could really matter. If you're talking atmospheric water that was just going to make a summer day on the Gulf Coast a bit more unbearable, harvest away, or if you're caching it coming off of the Mediterranean as it hits the mountains before it dissipates into something undetectable over the Sahara, that might work. But if you're catching coastal fog in California that would otherwise add to the already dwindling snowpack on the Sierra Nevada? Maybe you're just spending a whole lot of effort robbing Peter to pay Paul. This isn't coming from a belief that communities shouldn't do what they can to remain viable but a worry these magical solutions to problems rarely seem to take [the next problem down the line](#) into account.

Closing Time for Climate Change Songs!

This is the last call for songs for our next [themed playlist](#). We've gotten a few suggestions for climate change songs, but we need more! If you think of any songs you think fit the bill and send 'em over to cdalbom@tulane.edu. Maybe they're your favorites, maybe they're your least favorites—either way, he'll listen to them all and unveil the list next week.