



TUWaterWays

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

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August 23, 2024

One Agency's Watered-Down Approach to Safe Drinking Water

There are times we fill out paperwork and overstate things to make reality look a little better. But your doctor knows you're definitely not drinking enough glasses of water every day. It's a mostly harmless game we play. But it's extremely harmful when the few people filling out those forms are speaking for an entire city. Unfortunately, that seemed to be custom in the Mississippi State Department of Health (MSDH). [MDSH is the agency charged with administering drinking water regulations](#) which are set by the EPA under the Safe Drinking Water Act. Or at least that's supposed to be its job. It's now been [two years since the catastrophic failure of Jackson, Mississippi's water system](#), and we're still learning just how bad things had gotten with the regulatory oversight of the city's water infrastructure. In the month leading up to the massive failure, [EPA had flagged numerous issues with the water system](#) from lack of staff, financial problems, lack of routine monitoring and maintenance, and frequent line breaks, just to name a few.

Last week, [EPA's Office of Inspector General released a report](#) that sheds light [on just how bad things were on part of regulators in years preceding crisis](#). To start, the EPA report found that Jackson's water plants were producing 45 million gallons a day of water for a city that likely only needed 18-20 million gallons a day, meaning that well over half of the water is lost in distribution. MSDH pointed out that there is no "established and enforceable consequence of providing inaccurate water loss information" under Mississippi law and the legislature was unlikely to support such a regulatory change. That's just the [tip of the iceberg](#). Jackson's water pressure lingered at around 22 psi (pounds per square inch). [Federal guidance](#) recommends water systems operate closer to 60 psi, with the normal working pressure at around 35 psi. But, once again, those guidelines are just that – guidelines, not regulations. Between 2006 and 2020, inspectors only indicated a pressure concern once—but that was due to a fire at a water plant. Apparently, pressure was not a concern to MSDH until it hit 20 psi or lower, which triggers a boil warning under federal law. So, while MSDH technically followed the law, the law itself can hardly be considered protective and sufficient.

This all comes on top of decades of neglect, underfunding, and repeated [failures to act](#). So far, changes to oversight and administration have failed to restore trust in the water utility and [furthered tensions between the city and state government](#). In the aftermath of the crisis, private entity, JXN Water, took over management of Jackson's water system. A third-party water manager appointed on an interim basis oversees JXN Water, and he has wide-ranging authority, which now [includes oversight of Jackson's sewer system](#). Yet under the new management, billing and funding issues very much persist.

So again, when the folks trying to tear down federal administrative law argue these environmental and public health matters are best left to the states, just remember that argument only works if you live in a state with agencies that are properly staffed, well-funded, and willing to go beyond the bare minimum. Does that sound like where you live?

Neptune Pass Gets an "Encorps"

This month, the [Army Corps of Engineers released a draft environmental assessment](#) for the closure of the [Neptune Pass](#). It's the Mississippi River's reminder to us that she can't be tamed. This gap was formed by a natural break in the bank and has been widening since 2019, now capturing almost a fifth of the water flowing down the main channel. This

diverted flow has slowed the current in the main channel which has caused sediment to build up in the channel downstream. It's required a lot of dredging in new areas to keep the main channel open for ships, which comes with its own negative impacts.

You might be wondering, "[Oh God!](#) Is my memory failing me? Haven't I heard this before?" and the answer is yes. [Two years ago, the Corps formulated a plan](#) to close Neptune Pass and put out a [draft environmental assessment and FONSI](#). There was a lot of pushback to the original plan to fully close the pass, in part because of how much land the Pass's diversion was building. Sediment that's being diverted through Neptune Pass is helping build one of the largest new deltas on the continent.

In the spirit of compromise, [the Corps seems to be taking a slightly different approach this time around](#). The previous plan was to place rock structure to fully close the Pass and block future flow. The new proposal includes a unique terrace/layering structure that will allow for the passage of recreational boats, water, and sediment into the channel. It will still greatly restrict the flow into Neptune Pass to accommodate for shipping. However, this draft EA/FONSI does not provide modeling and data that would give everyone a better idea of just how effective this approach is expected to be. If you want to weigh in on the matter, public comments are due August 31.

If environmental assessments aren't your preferred read for the upcoming Labor Day vacation, you might consider a new book about the waterbody we all love: "[The Great River: The Making and Unmaking of the Mississippi](#)." The Coalition to Restore Coastal Louisiana will be hosting a lecture with the book's author, Boyce Upholt, on September 5th in Baton Rouge!

[Mom, can you come pick me up? They're talking about diverting water across the continent again.](#)

Yes, it's true. This time, [folks are looking at the Great Lakes](#). Like other proposals that have come before it, there isn't a concrete plan. Moreover, there is the [U.S.-Canadian Great Lakes Compact](#) which prohibits diversions from the Great Lakes except under limited circumstances (those don't include construction of a pipeline to divert water across the country). Regardless of your opinions on such bold plans, it's another reminder that the [United States is facing an urgent groundwater crisis](#). These bold proposals wouldn't be so frequent if states and the feds had taken a proactive approach to water planning to begin with. When all those similar [ideas kept popping with Mississippi River](#) water, it was a wakeup call that other entities far from the watershed were making their own plans for the river. Unlike the Great Lakes, there is no such compact or other law that protects the main stem from out of basin diversions.

In the absence of such a measure, we must look to utilize [other avenues](#) to ensure a sufficient water supply planning for the Mississippi River. There's a possibility the Army Corps could get a bigger role in these matters. Both the House and Senate committees passed the Water Resources Development Act of 2024. The draft legislation contains many of the typical things you expect in WRDA. But there is something new: [Section 121 would make water supply planning a primary mission of the Corps](#), along with its traditional navigation and flood control authorities. It's anyone's guess whether this will get traction and go to a vote before the election (or in a lame duck session, assuming a functional government come December), so it might not matter. But it also might matter a lot.

Coming Up:

[Army Corps Neptune Pass Draft Environmental Assessment Public Comments; Deadline August 31, 2024](#)

[CRCLecture – Boyce Upholt; Baton Rouge, LA; September 5, 2024](#)

[State of the Coast 2025 Proposals Deadline September 23, 2024](#)

Water jobs:

[Community Science and Environmental Education Manager; Pontchartrain Conservancy; New Orleans, LA](#)

[Policy Fellow; Louisiana Public Service Commission; Southeast LA](#)

[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.

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