



# 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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## After Shaking Decisions, Prepare for a Tsunami of Lawsuits

As we come to an end of another Supreme Court term, we are all [anxiously reloading](#) every news outlet, in anticipation of several blockbuster decisions, from [disinformation on social media](#) (6-3 ruling) all the way to [racial gerrymandering](#) (6-3 ruling). The Supreme Court also decided to muddy the waters between Texas and New Mexico. In a 5-4 decision, the [Court struck down a deal](#) between the two states over the management of water in the Rio Grande. Since 1938, the states of Colorado, New Mexico, and Texas manage the river according to an interstate agreement, Rio Grande Compact, which requires a certain quantity of water to be delivered each year to each party. This agreement eventually brought [troubled waters](#) in the form of a [lawsuit between neighbors](#) in 2013, with Texas alleging New Mexico's "overuse" of water and the United States intervening. But, like a good neighbor, this resulted in TX and NM asking the Supreme Court to approve a consent decree to resolve the dispute and explicitly define their shares of the water of the Rio Grande with specific methods. To which the Supreme Court said "nope." Why? Well, even though this is an *interstate* agreement, the United States government has a claim to defend its own interest, i.e., the [Treaty on the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande](#). That international instrument specifies the cooperation with yet another neighbor, Mexico. Both countries are obligated to provide a specific amount of water for the other under the agreement. According to [Justice Jackson's opinion](#), the US' ability to send water over to Mexico would be undermined by New Mexico's compact obligations as determined by the consent decree. For the Compact states, this means going back to square one, adding to the [growing frustration](#) with the lack of actual water in the river. In a dissenting opinion, Justice Gorsuch, joined by Justices Thomas, Alito, and Barrett, criticized the decision for the overreaching power it could give to the federal government over future interstate decisions and agreements, or as they call it a "veto power", will only bring a deeper, troubled waters between the governments. Given that not all interstate compacts are so bound up in a federal project (Reclamation's [Elephant Butte](#) in this case), it's hard to imagine this concern having that many chances to come up. But maybe some nice trips could change our minds.

Talking about a (not so) [good neighbor, State Farm is there](#), unlike EPA, who aren't allowed to [come out and play](#). With yet another 5-4 ruling, the [Supreme Court has slammed the breaks](#) on enforcement of a Clean Air Act regulation until legal challenges are resolved. Yes, [another one](#). The regulation, commonly known as EPA's "good neighbor" rule, is intended to limit pollution from power plants and other industrial companies that would affect their downwind neighbors. "But why? it would be costly and ineffective anyway" say Ohio, Indiana, and West Virginia, the parties who brought the lawsuit in the first place. And while this is not a decision to strike down or uphold the rule, [suspending enforcement of the "good neighbor" rule](#) does deprive the EPA of a tool for work that, makes a significant impact on children, the elderly, and people who suffer from respiratory-compromised diseases. But those are not the only States making the application of the rule a challenge, another 12 states also have the rule on hold while waiting to resolve their own legal issues with it, [including Louisiana](#).

But, amongst all the precepts that have been created, or [taken apart](#), one in particular captured everyone's attention: [Chevron Deference has been overturned](#). The Court couldn't give deference to the TUWaterWays publishing

schedule and put it out into the world this morning. Though the [decision was expected](#), it is still disappointing, if for no other reason than it yields yet more confusion around the ability of the federal government to do its jobs and when time is of the essence for dealing with what feel like existential threats. *Chevron* deference comes from a landmark decision in 1984 which instructed federal courts to defer federal agencies' reasonable interpretation of federal laws within the field where Congress gave such authority to the agency. It was a conservative victory at the time, affecting the scope of federal regulations and related agency policy decisions. This most recent decision, "*Loper Bright*," will impact all aspects of administrative law, from how agencies enact regulation, to how lower district courts interpret them. It will change the landscape in areas like environmental, food and drugs, aviation, and many others. For now, as we all watch another precedent [bite the dust](#), it's time to help shape the [new path to administrative law](#).

## It's About Dam Time We Learn

This week, powerful [storms struck Northeastern states](#) bringing non-stop rain and wind for days without end. But all of that water is not just stuck in the Northeast—the Midwest is experiencing historic flood events like never-seen before in most of these states. This area of the country, which has been subject to years of drought, has been completely inundated with water that's caused [bridges to collapse](#). Minnesota is among the states affected, where the [Rapidan Dam](#) partially failed after the waters gave it a [violent shiver](#). The Rapidan Dam, built over 110 years ago, will hopefully hold out, as the two cities nearby have not been told to evacuate.

Even though river levels seem to be dropping, this has opened a conversation about the state of the dams in the US, many of which were built a century ago and cannot seem to keep up to today's inconsistent and strong weather. The average age of the nation's dams is 63 years old. They earned a [D in a security report card](#) (a [grade that they have received before](#)), and their unsafe numbers are growing faster than those repaired, creating an [imminent risk to those who live](#) around these structures. Out of the almost 92,000 dams in the US, around [65% of them are privately owned](#) – by everyone from energy utilities to farmers – and most of them are state regulated. Depending on the state, high-hazard dams require inspections every 2 to 3 years, but [some may not require any inspection](#) if the dams are categorized as "low-hazard." Part of the reason why these immense structures have not been maintained as often as they should is the high cost that comes with repairing them, which is still significantly lower than removing them, but some owners can't afford to do either. Early this year, the [Bipartisan Infrastructure Act awarded \\$26M](#) for the State Assistance Dam Safety Grant Program, but the approximated cost to rehabilitate the [nation's dams is estimated to be billions](#) of dollars. As climate change brings heavier and lengthier rains, these century-old dams [will continue to be tested](#), and we could see more catastrophic events if states don't address the necessary updates. And that's [the dam truth](#).

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### Coming Up:

Got an event? Let us know!

### Water jobs:

[Hazard Mitigation Specialist, Senior](#); City of New Orleans; New Orleans, LA

[Staff Scientist](#); Healthy Gulf; Houston, Southeast Texas, or Southwest Louisiana (Remote)

[Chief Development Officer](#); Healthy Gulf; Gulf South (Remote)

[Coastal Organizer](#); Healthy Gulf; Southeast Louisiana (Hybrid)

[Director of Clean Water Protection](#); Harpeth Conservancy; Brentwood, TN

[Operations Manager](#); Harpeth Conservancy; Brentwood, TN



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, 1<sup>st</sup> Floor  
New Orleans, LA 70118  
504-865-5915  
[tulanewater.org](http://tulanewater.org)