

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
January 25, 2018

## SCOTUS on WOTUS

This week, our friends over at the Supreme Court of the United States released its opinion on a contentious, highly important, and very sexy subject – water. Specifically, the ruling regards the Waters of the United States (WOTUS) rule that has been challenged by a number of states and industry groups for being overly broad in its definition of what constitutes a water of the United States. We know what you're thinking – "Thank goodness, the Supremes cleared that right up! I can finally get the sleep I've been losing." Us too. Unfortunately, you'll have to hold on to your Zzzquil, because this is only the beginning of what could be a long battle over what in the world is a "water of the US". The unanimous [opinion](#) is only procedural. It discusses who can hear arguments over whether the WOTUS rule is legit, district courts or appellate courts. The Court held that district courts are the proper forums to file in, because the contention is over a definition, and not a "limitation" or an issuance or denial of a permit, as was argued by those who were pro team appellate courts. Yes, this is the kind of blood pumping awesomeness all of you who didn't go to law school missed out on!

So... what does all this actually mean for WOTUS? Well, it means we're in for a whole lot of confusing and diffused litigation in the upcoming years. First, it means the Sixth Circuit stay on the rule that applies to the whole country goes away, reinstating the WOTUS rule for everybody. And, all the lawsuits that we're filed in federal appellate courts are [bouncing back](#) to district courts. But then, because the cases will be heard in district courts around the country, there may be differing rulings on the substance of WOTUS, leading to different rules on water in different parts of the country. And, it means that those different rules will stay like that until the EPA repeals the WOTUS rule (which they are in the process of doing, but [definitely won't be done with soon](#)), or the district court cases make it up the litigation ladder to the Supreme Court for a final, substantive decision on the rule's merits that would apply to the whole country. In the meantime, the EPA and the Army Corps have to start answering to [a lot more folks](#) – they'll need to figure out where and how much to enforce the standing rule, defend themselves against legal challenges to any rule changes they make under el [Executive Order](#), and still do the rest of their job. Cue [us](#) reminding literally everyone to get a water lawyer – stat!

## Dry to the Bone

Growing populations and climate change are even closer to causing one city in South Africa to entirely run out of water. South African officials are warning Cape Town residents that they have less than 100 days to get their acts together before they hit "Day Zero" (when 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 stewardship of water.

## Coming up:

Deadline: January 25, 2018

[Propeller's Growth Accelerator Program](#)

New Orleans, LA

Deadline: February 2, 2018

[Water Challenge Pitch Competition](#)

New Orleans, LA

March 1-2, 2018

[Coastal Law in Louisiana](#)

New Orleans, LA

March 9-10, 2018

[23<sup>rd</sup> Annual Environmental Law and Policy Summit](#)

Tulane Law School

New Orleans

## Water jobs:

[Staff Attorney or Policy Analyst - Water](#)

National Resource Defense Council

Chicago IL

[Environmental Policy Fellow](#)

Duke University

Durham, NC

[Water Rights Specialist](#)

State of Washington

Ellensburg, WA

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city will run out of water), moving the date up 24 hours from the last time we talked about this. And, some are saying the wells could run dry as early as March. Officials are advising Cape Town residents to [save water like their lives depend on it](#), vowing to shut off water to anywhere but essential services when reservoir levels reach 13.5%. If Cape Town does run out of H<sub>2</sub>O, it will be the first major city globally to have this problem. People are blaming the [city planners](#) for not properly creating a dam structure to store water for a growing population, and a [slow national response](#) to the crisis for exacerbating the situation.

So, what's the plan if the wells do run dry? The government will pass out 6.5 gallons of water per person to the city's residents at 200 distribution points across the metro area. While this number complies with the recommended ration under the World Health Organization's emergency water rationing [standards](#), will Cape Town residents be able to live within those confines? Currently, residents are expected to only use 23 gallons a day, but over 60% use more than the allotted amount. And, come February, residents are expected to use only 13 gallons a day, while public utilities are still providing to the citizens. Cape Town government is keeping its [fingers crossed](#). One tool the city is using to help residents cut back is a [water usage map](#), hoping neighbors will shame neighbors into compliance to avoid the rationed water supply. Hopefully our friends will make it through this, but either way, it's a good idea for us to start considering how we would handle running out of the good stuff, and maybe even trying to implement some mitigating measures a little earlier than a few months out.

### **Master Plan in Action**

In early January, the Army Corps of Engineers released its [Final Scoping Report](#) on the [Mid-Barataria Sediment Diversion](#). The Diversion is one of a select few priority projects in the Master Plan and one of the first to be approved for a streamlined federal permitting process, making the time until implementation a little faster. Many are [excited](#) about the project, saying it can build roughly 28 square miles of wetlands and land over the next 50 years. If you haven't had the chance already, give it a gander.