

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
June 17, 2014

## Water-Energy Nexus Creeps Closer to Home

We have reported on this nexus in the past, though mainly in terms of [upper-level](#), [over-arching](#) studies. Now as oil and gas production in the Tuscaloosa Marine Shale formation starts to ramp up, state regulators are [starting to ask](#) these companies to come up with a long-term plan for sourcing the water necessary to frack wells and for storing the contaminated water. The thinking is that there won't be enough unused water in the small rivers of Louisiana and Mississippi, so regulators are expecting energy companies to get water from deep aquifers not suitable for drinking water, recycling frack or municipal wastewater, or even drawing from the Mississippi River. While the tension between current users and fracking is sure to build along the Louisiana-Mississippi formation, litigation over one hotly contested fracking-related permit has been [deferred](#).

## Staying True to its Nick-Name, Oklahoma Adopts Water Reuse Sooner Rather Than Later

Oklahoma recently enacted [a bill](#) directing its Department of Environmental Quality to start accepting, reviewing, and evaluating permit applications for water reuse projects. These projects will take wastewater, clean it, then discharge it into "sensitive public and private water supplies." The city of Norman is expected to be one of the first implementers, as it faces [dwindling water supplies](#) and looks to secure sufficient supply for the present and future.

## Supreme Court to Interpret the Rules on Agency Interpretive Rules

Sometimes, Congress writes laws that have ambiguous or even confusing language. Hey, it happens. Luckily, the agencies that carry out these laws are nice enough to issue interpretive rules that clarify what they understand these ambiguities to mean. They are viewed as guidelines that don't quite reach the level of new regulations, which require public notice and comment before they can be finalized. The U.S. Supreme Court [will now hear a case](#) with the main issue of whether interpretive rules must go through the same public notice and comment requirements. While the facts of the case involve the Department of Labor, the impending decision is expected to have [far-ranging implications](#) for all federal agencies. For example, the EPA and Department of the Army recently gave [public notice](#) of public availability and comment for this [interpretive rule](#) clarifying the exemption of certain agricultural

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:

[Restore America's Estuaries and Coastal Society Summit on Coastal and Estuarine Restoration](#)

November 1-6, 2014  
Washington, DC

[Chicago Water Summit](#)

July 21, 2014  
Chicago, IL

## Water jobs:

[Water Resources Manager](#)  
Mississippi River Network &  
National Wildlife Federation  
Washington, DC

[Executive Director](#)

Center for Climate Change Law,  
Columbia Law School  
New York, NY

[Program Director](#)

Barataria-Terrebonne National Estuary  
Program  
Chauvin, LA

**Tulane Institute**  
on Water Resources Law & Policy

6329 Freret Street, Suite 155G  
New Orleans, LA 70118  
504-865-5982

[http://www.law.tulane.edu/tlscenters/  
waterlaw/](http://www.law.tulane.edu/tlscenters/waterlaw/)

TWITTER: [@TulaneWaterLaw](#)

conservation practices from section 404(f) of the Clean Water Act.

### **For Those Looking to the Heavens for the Origin of Water on Earth, the Answer Might be Beneath Our Feet**

Where did Earth's water come from? A comet? An asteroid? Until recently, these alien intruders have been fingered as the [primary suspects](#). However, in a [recent study published in Science](#), new evidence suggests that Earth's water actually comes from within. To be exact, bonded with the mineral ringwoodite in the transition zone of the Earth's mantle. Ringwoodite has a crystalline structure that attracts hydrogen, allowing it to bond with water. The [study suggests](#) that as rocks containing ringwoodite move and melt toward the lower mantle, the water within escapes and moves upward where it can find minerals able to hold water. While the extent of ringwoodite and other minerals capable of holding water in the mantle is unknown, the implications could be huge. If just 1% of the Earth's mantle is comprised of water, that would be [nearly three times](#) as much as the water in all of the oceans. While our scientific knowledge is limited to the recognition of its limitation, we find it interesting that the study comes out at roughly the same time as [evidence surfaces](#) of an ancient subterranean ocean in Pluto's moon Charon.

### **On the Heels of WRRDA's Authorizations, Congress Moves Attention to Appropriations**

Undoubtedly, some of us out there are still digesting [WRRDA 2014](#) and about to sink into our second full read (or maybe third for those of us who can't get enough). Not Congress, though. It's is back to work, moving to turn some of those recently authorized dreams into reality. The Senate Appropriations Subcommittee on Energy and Water Development [approved](#) funding legislation for FY 2015, which will then go before the full committee on [Thursday. Tomorrow](#), the House Appropriations Committee will markup its own [FY 2015 Energy and Water Appropriations Bill](#). We will certainly be following these versions as they develop. You can go back to reading WRRDA now.

### **President Obama Eyes Creation of World's Largest Ocean Preserve**

To be fair, Obama's [plan](#) is to expand the Pacific Remote Islands Marine National Monument, which was created by George W. Bush. Under the [American Antiquities Act of 1906](#), the president can, for the most part, unilaterally designate federally-owned "areas of historic or scientific interest" as National Monuments. The protected waters will be off limits from drilling, fishing, and other activities. Obama will seek input from fishermen, scientists, politicians, and conservation experts before finalizing the boundaries.

### **California Drought: Epic Problem, Minor Impacts?**

In a recent [poll of California voters](#), 89% of respondents said that the drought was a crisis or major problem, but 82% of respondents said that the drought had a minor or no impact on their daily lives. While all polls should be taken with a grain of salt, this one demonstrates that government [efforts to find more and stretch current](#) water reserves has left many residents shielded from the brunt of the effects. It could also mean that the big impact of the drought isn't on the people of California, but rather the [fish and wildlife and the ecosystems they rely on](#).