

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy  
July 2, 2015

## BP Reaches Universal Settlement with Federal Government and Gulf Coast States

Four Gulf States made simultaneous announcements this morning to report an agreement in principle to an [\\$18.7 billion universal settlement](#). Many exact details are unknown, as the deal still needs to be finalized over the coming months. Since those details are where the devil lives, hard analysis of the agreement will have to wait. [So far all that is known](#) is that the agreement includes \$5.5 billion in Clean Water Act civil penalties (far below the \$13.7 billion maximum penalty Judge Barbier could have imposed), \$7.1 billion in Oil Pollution Act fines (for natural resource damages and referred to as “NRDA” – and the great unknown in terms of costs and timeline), and \$5.9 billion in the economic damage claims made by states and local entities. All is to be paid over a period of 16 years. Louisiana expects to receive \$6.8 billion, [Mississippi](#) \$2.2 billion, [Alabama](#) \$2.3 billion, Florida \$3.25 billion, and Texas \$1 billion. Those numbers presumably include what each state expects to get from the Clean Water Act penalties through the RESTORE Act – perhaps including funds from [Pots 1, 3, and 5](#) – but that is still unclear for now. Expect to see a full analysis here when the actual settlement is finalized and made available to the public.

## Waters of the United States Definition Finalized and Published – States Race to See Who Can Sue the Fastest

After who knows how long and who knows how many public comments ([20,588](#)), legislative [committee hearings](#), [teeth gnashed](#), and [laments wailed](#), the EPA finally [published its updated definition](#) of “waters of the United States” (“WOTUS”) for the Clean Water Act. To many the rule [does not expand the boundaries](#) of the Clean Water Act, and the rule is just that – a rule and not a law, and it seems written to be directly in line with Justice Kennedy’s opinion in the [Rapanos](#) Clean Water Act case. So one imagines the states challenging the rule will have an uphill climb, but at [least 18 state attorneys general](#) will give it a shot.

## Supreme Court Continues Role as Nation’s Water Court

Now that the Supreme Court is done with boring old health care and marriage rights cases, it can get back to its customary function of nine people [“who couldn’t know less”](#) about water management deciding arguments over interstate waters. Florida suit Georgia over use of the Apalachicola-

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:

[18<sup>th</sup> Annual Conference on Litigating Takings Challenges to Land Use & Environmental Regs.](#)

September 25, 2015

University of Maryland School of Law  
Baltimore, MD

## Water jobs:

[President and CEO](#)

Bureau of Governmental Research  
New Orleans, LA

[Policy Director, MD and DC](#)

Potomac Conservancy  
Silver Spring, MD

[Manager, Coastal Habitat Restoration](#)

National Fish and Wildlife Foundation  
Baton Rouge, LA

[Attorney](#)

Community Water Center  
Sacramento, CA

[Water Collaborative Coordinator](#)

New Orleans, LA

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Chattahoochee-Flint river system continues. [Public hearings](#) in front of the special master have begun, and Georgia [moved for dismissal](#) – a motion that was [denied](#), but Florida has given up a chance at a mandatory minimum flow in the river and is now only seeking a cap on Georgia’s water consumption. Georgia and Florida Governors Deal and Scott have had [secret-ish](#) meetings, but no details have emerged on any progress made in those talks.

Meanwhile, the Supreme Court has [agreed](#) to hear Mississippi’s suit against Tennessee that alleges Memphis’ water utility is stealing Mississippi groundwater – this after the Solicitor General said “[pass](#)”. The next move will likely be for the Supreme Court to appoint a special master to conduct a fact-finding investigation (essentially a trial). [Texas’s lawsuit against New Mexico](#) over use of the Rio Grande is at that stage right now – and the proceedings are being overseen by New Orleans’ own Gregory Grimsal (Tulane Law Class of 1979!). However these water disputes are decided, as long as the Supreme Court is involved, all sides will certainly try to keep the jiggery-pokery [and](#) pure applesauce to a minimum.

### **Waukesha, Wisconsin One Step Closer to That Sweet, Sweet Great Lakes Water**

The [Great Lakes Compact](#) is designed to protect the Lakes as a resource for the region and keep the water within the basin. One plucky city, located less than five miles from the basin and 17 miles from Lake Michigan, has spent around [\\$4 million](#) and is in its seventh year of the application process to divert water out of the basin. Now, Waukesha is [one step closer](#) to get that water (that they will have to return to the basin after they use it) because the Wisconsin Department of Natural Resources has released a [draft report](#) that says the city lacks any reasonable alternative. [Public hearings](#) and notice and comment will follow. Environmental opposition to the diversion remains high for fear of setting a bad precedent that would weaken the Compact, so expect there to be comments a plenty.

### **Forget What You Think You Know – Water Is WEIRD!**

Water is common - the third most common molecule in the universe behind hydrogen gas and whatever Taylor Swift uses to impose her benevolent rule over the rest of us (or carbon monoxide) – but there are a lot of [things science still hasn’t figured out](#) about water. They’re all weird and fascinating aspects to water that most of us rarely consider. For instance, there are at least 17 kinds of ice. Just be glad that, as of yet, [ice-nine](#) is not one of them.

### **Songwriters Do Love a Weather Metaphor – a Roundup of Rain Songs**

TUWaterWays readers are the best. We asked for “flood songs” and you [responded](#) (still reeling from “Highway Patrolman”). Then we [asked](#) for “rain songs” and you’ve responded.

Since rain is a much more universal experience than is a flood, it shouldn’t come as much of a surprise, but there are many, many more songs about rain than about floods. We made a [playlist on Spotify](#) that has 55 songs, and that’s certainly not even scratching the surface. Artists ranging from The Beatles to Creed, from Madonna to SWV all have songs simply titled “Rain.” Of course, having the word “rain” in the title is no guarantee of a song about rain – looking in your direction, “Rainy Day Women #12 & 35.” “Purple Rain” by Prince & the New Power Generation proved the song most frequently brought up (and it didn’t even make the playlist (licensing), but Etta James’ cover is a fine stand-in). We hope you enjoy the playlist, but certainly don’t expect everyone to enjoy every song on there. If your favorite song about rain didn’t make the playlist (perhaps it’s Ginger Spice’s cover of “It’s Raining Men”), we can still add it to the list if you like. Just let us know. Thanks again to all who wrote in suggesting songs.