



WATER RESOURCES TOPIC: AFFIRMATIVE

National Federation of State
High School Associations



Resolved: The United States federal government should substantially increase its protection of water resources in the United States.

A look at possible affirmative cases, provided by Rich Edwards, Baylor University



AGRICULTURAL POLLUTION

- Factory farms and confined animal feeding operations (CAFOs) have taken over agriculture in the U.S. This has resulted in the overuse of agricultural chemicals (fertilizers, pesticides, herbicides) that end up in the water. CAFOs pollute water with animal wastes.
- Existing federal farm subsidies incentivize the shift to large industrial agriculture. The Clean Water Act (CWA) manages only “point” sources of pollution.
- Federal support should shift away from industrial agriculture to small family and organic farming. The CWA should regulate non-point sources of pollution.

Laurie Beyranev & Emily Leib, (Prof., Law, Vermont Law School/Prof., Law, Harvard Law School), FOOD & DRUG LAW JOURNAL, 2017, 230.

Regarding environmental health, agriculture accounts for 80-90 percent of America's "consumptive water use" and is a leading cause of water quality impairment.





HYDRAULIC FRACTURING (FRACKING)

- Fracking is a major source of groundwater contamination.
- All existing water protection legislation specifically exempt fracking, due to the “Halliburton Loophole.”
- Fracking should either be banned entirely or at least made subject to the restrictions of the Clean Water Act.

James Salzman, (Prof., Environmental Law, UCLA), DRINKING WATER: A HISTORY, 2017, 131.

Perhaps surprisingly, the EPA plays almost no role in regulating fracking operations. This is not for lack of concern. The EPA has been prevented from doing so. In the 2005 energy bill, at the behest of Vice President Dick Cheney, text was adopted that specifically exempted fracking from coverage under the Clean Water Act and the Safe Drinking Water Act. The efforts of Cheney, a former chief executive of Halliburton, led some to dub the exemption as the "Halliburton Loophole."





CLIMATE CHANGE

- Water resources must be protected from the ravages of climate change. Climate change threatens water resources in many ways.
- While the Biden administration has given lip service to the Paris Climate Accord, meaningful change is impossible given the continued reliance on fossil fuels.
- Restrictions on fossil fuel use, such as a carbon tax, will be necessary in order to reduce the rate of climate change and protect water resources.

Erin Brockovich, (Pres., Brockovich Research & Consulting), SUPERMAN'S NOT COMING: OUR NATIONAL WATER CRISIS AND WHAT WE THE PEOPLE CAN DO ABOUT IT, 2020, 271.

The quality as well as the quantity of water is affected when the climate changes. When there are massive floods or other events that shift how water flows in our country, it means that new substances, pathogens, microbes, sediment, and saltwater, can infiltrate our drinking water supplies. Rising sea levels and deteriorating infrastructure means that "saltwater intrusion" is a serious threat to drinking water on islands from the Caribbean to the Pacific, and even in Miami.





LEAD POLLUTION

- Lead contamination of the drinking water system in Flint, Michigan was tragic, but only the tip of the iceberg. Lead contamination threatens millions of America's children.
- Existing means of regulating lead contamination – primarily the Lead and Copper Rule (LCR) – are inadequate. Existing programs to replace lead-service lines do not include residential plumbing.
- The federal government should fund the replacement of lead-service lines, including residential lines.

TaQuira Thompson, (J.D.), *LSU JOURNAL OF ENERGY LAW & RESOURCES*, Spring 2020, 720.

It is imperative that the EPA revise the current rule for lead service line replacement under the LCR to provide for full lead service line replacement at little to no cost to the homeowner. Safe drinking water should be provided to all citizens, regardless of their ability to pay. The current "ownership" rule has allowed water companies to avoid replacing the whole line and impose partial replacements of the lead service line, which has been shown to be ineffective in regards to reducing lead levels in drinking water and has disproportionate effects on the poor.





PROTECTION OF WETLANDS

- Wetlands represent the essential “kidneys” of the planet – removing toxins from water as they recharge groundwater resources. Unfortunately, wetlands are disappearing.
- The Biden administration has suspended the Trump “Dirty Water Rule” but has been unwilling to return to the protective Obama-era “Clean Water Rule.”
- A return to the Obama-era “Clean Water Rule” is essential to protect wetlands; this will require congressional action.

R. Kyle Alagood, (JD), ENVIRONMENTAL LAW REPORTER NEWS AND ANALYSIS, Mar. 2016, 10200.

Over the past 200 years, the United States has lost half its natural wetlands. Because they are home to disproportionately diverse plant and animal species compared to other landforms, wetlands are important habitats. They also serve other purposes: Wetlands feed downstream waters, trap floodwaters, recharge groundwater supplies, drive local economies, and provide recreation. The loss of wetlands is an ecological disaster that threatens already endangered species, as well as the safety and economic well-being of populations who live on or near coastal wetlands, particularly in places like Louisiana.





PFAS POLLUTION

- Per- and polyfluorinated substances (PFAS) are used in thousands of items in everyday use in the U.S., including Scotchguard, GORE-TEX, non-stick cookware, firefighting foam, textiles, carpets, fast food wrappers, microwave popcorn bags, etc.
- Numerous studies indicate adverse health effects from PFAS, often called “forever chemicals” because they bioaccumulate in human tissue: cancer, liver damage, weakened immune response, high cholesterol, thyroid disease, hypertension, among others.
- PFAS chemicals ought to be banned following the example of the treatment of PCBs in the 1970s.

Michael Heard Snow, (JD Candidate), WILLIAM & MARY ENVIRONMENTAL LAW & POLICY REVIEW, Fall 2020, 299.

Water is the primary vector for PFAS contamination--it spreads downstream from factories often located on rivers and it seeps into the groundwater after firefighting operations, causing it to end up in drinking water far from the pollution source.





E-WASTE POLLUTION

- The discarding of cell phones, computers, televisions, solar panels, and hundreds of other electronic devices is contaminating groundwater in the U.S.
- There are, at present, no federal laws governing the disposal of e-waste.
- The U.S. federal government should require and fund the recycling of e-waste.

Great Lakes Electronics Corporation, WHAT IS E-WASTE? DEFINITION AND WHY IT'S IMPORTANT, Apr. 30, 2021. Retrieved May 3, 2021 from <https://www.ewaste1.com/what-is-e-waste/>

The problem is that there is so, so much E-waste that the trace amounts have ballooned over the years. That toxic water under the landfill doesn't stop below the landfill. It continues to the groundwater and the sources to all the freshwater in the surrounding area. Not only is this bad for anyone using a natural well, but it hurts the nearby wildlife. That, in turn, causes the wildlife to get sick from lead, arsenic, cadmium, and other metal poisonings due to the high concentration of these minerals.





COAL POLLUTION

- Coal harms water resources both at the mining stage and the end-use stage.
- Coal production continues to be protected by Congress.
- Congress should restore the “Stream Protection Rule” and regulate non-point coal pollution.

Claire Jarrell, (JD Candidate), UNIVERSITY OF COLORADO LAW REVIEW, Summer 2019, 908.

Another by-product of coal mining is acid mine drainage, which pollutes water with sulfates, metals, and high acidity. Acid mine drainage affects thousands of stream miles throughout Appalachia. It can render streams unable to support aquatic life and significantly impair their biological carrying capacity.

Keaston Hall, (JD Candidate), EMORY LAW JOURNAL, 2019, 165.

Coal ash ponds pose a significant threat to the environment and human health. Coal ash is a byproduct of the electricity production process, and it contains carcinogens like boron, arsenic, lithium, and mercury. Typically, utility companies store coal ash in ponds located near rivers and lakes. If coal ash is stored in ponds that lack an adequate liner, the coal ash can seep into the groundwater and travel to nearby surface waters, which may serve as a drinking water source for neighboring communities.





NATIVE AMERICANS

- Native American culture depends upon access to water resources; though treaties with the federal government theoretically guaranteed Native American water rights, these rights are routinely ignored.
- Native American water rights are undermined in multiple ways: pipelines in Indian Country, uranium mining residue, denial of opportunity to profit from water rights.
- The federal government should protect the water rights of Native Americans.

Adam Crepelle, (Prof., Southern U. Law Center), TULANE ENVIRONMENTAL LAW JOURNAL, Summer 2019, 169.

Though tribes have the right to water and can obtain the authority to improve it, tribes struggle to access water. On the Navajo Nation, for example, the average Navajo is able to use only seven gallons of water a day while the average American uses approximately 100 gallons of water a day. Likewise, approximately half of tribal homes lack clean drinking water or even access to a reliable source of water. Houses in Indian country commonly lack kitchen sinks, showers or bath tubs, flush toilets, and even running water.





RIGHT TO WATER

- Access to water, under international law, is a basic human right.
- The United States refuses to acknowledge the right to water, making access to water a matter of financial capability.
- The United States should affirm international law guaranteeing access to water as a human right.

Rose Mooney, (JD Candidate), NOTRE DAME LAW REVIEW, Jan. 2021, 1320.

Although United Nations declarations and international law deem clean water a human right, the United States does not, and in 2019, more than thirty million Americans lived in communities with unsafe water systems. Like many environmental crises, clean water access exposes socioeconomic injustices. Water contamination disproportionately hinders poor and minority communities. "Not only are water quality violations more likely to occur with water systems that service minority or low-income populations, but oft-discussed solutions ... such as privatization and regionalization ... fail to address the unique barriers that poor communities and communities of color face." (ellipses in original)





BOTTLED WATER

- The increased use of bottled water threatens water resources in many ways: it leads to scarcity because of withdrawals from aquifers, contributes to chemical pollution of waterways, and careless disposal of plastic bottles threatens rivers and ocean environments.
- Existing regulation of the bottled water industry is inadequate.
- Non-emergency use of bottled water should either be restricted or sale of bottled water in national parks and federal facilities should be banned.

Erin Brockovich, (Pres., Brockovich Research & Consulting), SUPERMAN'S NOT COMING: OUR NATIONAL WATER CRISIS AND WHAT WE THE PEOPLE CAN DO ABOUT IT, 2020, 299.

In addition to cost, bottled water creates a ton of waste. The industry used about 4 billion pounds of plastic in 2016 alone. Many of those bottles don't get recycled and clog up landfills and public trash bins. Plus, plastic manufacturing plants that make the bottles have been known to pollute local drinking water sources.





DESALINATION

- Water scarcity is already a major problem in Western U.S. states, and this is increasingly becoming a national problem.
- Desalination of brackish or ocean waters offers a solution to water scarcity, but will not proceed without federal subsidy.
- The federal government ought to subsidize a national desalination program to be powered by renewable energy.

John Duff, (Professor, School for the Environment, University of Massachusetts Boston), OCEAN & COASTAL LAW REVIEW, May 2017, 133.

Fresh water in the United States is a limited resource and water shortages are recurring at an increasing rate. A 2013 survey conducted by the US Government Accountability Office found that 40 of 50 state water managers in the United States expected their states would face water shortages in the succeeding decade. That number is up from 36 states addressing the same question a decade earlier.





INLAND WATERWAYS

- Inland waterways are essential to move U.S. agricultural produce in environmentally-friendly ways.
- The locks and dam systems on U.S. inland waterways are currently in a dangerous state of disrepair.
- The U.S. federal government should fully-fund infrastructure maintenance and improvement projects on inland waterways.

Mary Ann Bucci, (Dir., Port of Pittsburgh Commission), **NEGLECTING INLAND WATERWAYS WOULD HURT US ECONOMY**, Sept. 10, 2019. Retrieved May 2, 2021 from <https://thehill.com/opinion/energy-environment/460776-neglecting-inland-waterways-would-hurt-us-economy>

Our inland waterways system is comprised of over 12,000 navigable miles and 240 locks that connect the heartland of America to the rest of the country and the world. However, like other modes of transportation, our river infrastructure continues to be inadequately funded. Failure or neglect in one or more modes of transportation has a ripple effect on the entire system and directly impacts our ability as a nation to remain globally competitive.





DAM REMOVAL

- Tens of thousands of dams currently obstruct river flow on U.S. waterways; the vast majority of these dams no longer serve a useful purpose and do significant harm to the ecosystem.
- At present, the federal government leaves decisions about dam removal to the states who typically lack the funding necessary for dam removal.
- The U.S. federal government should fund a comprehensive program of dam removal.

Mark Widerschein, (JD Candidate, Ohio State U. College of Law), ENVIRONMENTAL LAW REPORTER, Oct. 2019, 10926.

Both industry and environmental groups have recently begun to assess the sweeping environmental consequences of obstructing rivers. Dams alter rivers in a variety of ways: reducing water levels and flow, preventing fish from migrating, altering water temperatures, decreasing oxygen levels, and holding back silt, debris, and nutrients. These impacts are often destructive to fish populations and the communities that depend upon them, producing ecosystem collapse in river systems that have been dammed.





OFFSHORE OIL EXPLORATION AND DRILLING

- Oil spills represent a major threat to the quality of water resources in coastal regions of the United States.
- Courts have ruled that the Biden administration cannot suspend offshore oil drilling and exploration without appropriate congressional action.
- The U.S. federal government should cancel all new oil exploration and drilling in the coastal waters of the United States.

Abigail Andre, (Prof., Law, Vermont Law School), GEORGETOWN ENVIRONMENTAL LAW REVIEW, Fall 2020, 6.

Deepwater captured the world's attention, but large spills are more common than one might think. In 2018, for example, the National Oceanic and Atmospheric Administration ("NOAA") reported 137 oil spills ranging in size from only thirty gallons to as much as 2.1 million gallons. On the U.S. outer continental shelf between 1971 and 2010, there were 23 large spills of more than 1,000 barrels of oil, or an average of one every 21 months. One study suggests that another event the size of Deepwater can be expected in the next twelve to sixteen years.





MARINE PROTECTED AREAS

- Overfishing threatens the survival of species, destabilizing entire ecosystems, making them less resilient to change. Ironically, overfishing also threatens the economic viability of coastal communities and the commercial fishing industry.
- While there are numerous "marine protected areas" in U.S. coastal waters, too few of them are "no take" reserves.
- The U.S. should substantially increase the regions covered by "no take" marine protected areas.

Kevin Leske, (Prof., Law, Barry U. School of Law), WILLIAM & MARY ENVIRONMENTAL LAW AND POLICY REVIEW, Spr. 2018, 700.

Commercial overfishing has extinguished "New England cod, snapper-grouper reef fish in the South Atlantic and Gulf of Mexico, various species of rockfish . . . [the] white abalone along the Pacific Coast, and rock lobster in Hawaii." And the National Oceanic and Atmospheric Administration ("NOAA") estimates that eighty-six fish populations in the United States are overfished. Especially when recent estimates place the ocean's production of seafood each year to eighty million metric tons, the need for their protection comes sharper into focus. (ellipsis in original)





OCEANS: AQUACULTURE

- Commercial aquaculture operations based in coastal regions threaten ocean species and the ocean environment.
- Existing federal regulation is confusing and fragmented.
- The federal government should either ban or further restrict commercial aquaculture operations in coastal waters of the United States.

Friends of the Earth, THE DANGERS OF INDUSTRIAL OCEAN FISH FARMING, Feb. 14, 2018. Retrieved May 5, 2021 from https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Aquaculture-Report_Feb14_FullSpread.pdf

These facilities are essentially underwater factory farms, but with even less pollution controls. They are used to farm massive populations of finfish in net pens, pods, and cages that provide no real barrier between the farm and the ocean. This allows for free exchange between the net pens and the open water, including direct deposits of untreated fish waste, diseases and parasites, excess feed, agricultural drug residues, chemicals and anti-foulants from the farm's infrastructure, and oftentimes spills and escapes of farmed fish – all dumped right into the surrounding environment.





PLASTIC POLLUTION OF THE OCEANS

- Single-use plastic products, such as grocery bags, straws, cutlery, and packaging, are washed into lakes and streams, eventually ending up in the oceans. The ocean ecosystem is increasingly undermined by plastic pollution.
- No existing federal regulations regulate the production or recycling of plastic waste.
- The federal government should either ban certain single-use plastic products or require and/or fund the recycling of plastic wastes.

Marcela Romero Mosquera, (JD Candidate, Barry U. School of Law), ENVIRONMENTAL AND EARTH LAW JOURNAL, 2019, 10.

The EPA stated that the amount of waste from United States consumers continues to rise and when it is disposed of improperly by poor waste management or litter, the trash finds its way into rivers, streams and other waterways that end up in the ocean. Approximately eight million tons of plastic waste enter the oceans each year which equates to dumping the contents of one garbage truck into the ocean every minute. This alarming information estimates that in 2025 for every three tons of fish, there will be one ton of plastic, and by 2050 there will be more plastic in our ocean than fish.





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