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## Supreme Court Overrules Ninth Circuit in Storm Water Case

January 9, 2013

The U.S. Supreme Court on January 8, 2013, held that the discharge of impacted water from an improved portion of a navigable waterway into an unimproved portion of the same navigable waterway does not constitute a “discharge of a pollutant” as defined in the Clean Water Act. [Los Angeles Flood Control District v. Natural Resources Defense Council, Inc., U.S., No. 11-460 \(“LA Flood Control”\)](#).

The Los Angeles County Flood Control District operates a drainage system known as a “municipal separate storm sewer system” or “MS4,” which collects, transports, and discharges storm water. Under the Clean Water Act and its related regulations, certain MS4 operators are required to obtain a permit before discharging a pollutant into a navigable water. At issue in [LA Flood Control](#) was whether a discharge of a pollutant within the meaning of the Clean Water Act occurred when polluted water flowed from the concrete-lined portions of the Los Angeles and San Gabriel rivers into unlined portions of the same rivers. Interpreting the text of the Clean Water Act and, in particular, the definition of “discharge of a pollutant,” the Supreme Court held that such discharges do not require a permit. More specifically, the Clean Water Act defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” The Supreme Court reasoned that “no pollutants are ‘added’ to a water body when water is merely transferred between different portions of that water body.”

The decision, which overturns the Ninth Circuit’s ruling in the case ([Natural](#)

Resources Defense Council, Inc. v. County of Los Angeles, 673 F.3d 880, 886 (CA9 2011) was generally anticipated, and affirmed the Supreme Court's prior holding in South Florida Water Management District v. Miccosukee Tribe of Indians, 541 U.S. 95, 109-112 (2004).

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