

## U.S. SUPREME COURT HOLDS THAT WATER FLOWING WITHIN LOS ANGELES RIVER IS NOT A POLLUTANT “DISCHARGE” UNDER THE CLEAN WATER ACT

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*Los Angeles County Flood Control Dist. v. Natural Resources Defense Council, Inc.*, No. 11-460 (U.S. Jan. 08, 2013)

In a 9-0 ruling on January 8, 2013, the United States Supreme Court reversed a Ninth Circuit Court of Appeals decision that had held the Los Angeles County Flood Control District liable for violation of Clean Water Act water quality standards for stormwater discharges. In a case in which all parties, including the United States as *amicus curiae*, agreed on the answer to the narrow question on which the Supreme Court granted certiorari, the Court held that the Flood Control District had not violated the Clean Water Act because the flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not qualify as a “discharge of a pollutant” under the Act.

The Natural Resources Defense Council and Santa Monica Baykeeper had filed a Clean Water Act citizen suit against the Flood Control District, alleging that water quality measurements from monitoring stations in the Los Angeles and San Gabriel Rivers demonstrated that the District was violating the terms of its stormwater NPDES permit. The Ninth Circuit ruled in favor of the environmental groups, holding that a “discharge of pollutants” occurred when stormwater containing pollutants flowed out of concrete-lined flood control channels and into unlined downstream portions of the rivers. Once the case reached the Supreme Court, however, all parties agreed that the Ninth Circuit’s analysis was erroneous because the Supreme Court had previously held in *South Fla. Water Management Dist. v. Miccosukee Tribe*,

541 U.S. 95, 124 S.Ct. 1537 (2004) that the transfer of polluted water between “two parts of the same water body” is not a discharge of pollutants.

The environmental groups nevertheless urged the Court to uphold the Ninth Circuit ruling, arguing that the court had reached the right result (albeit for the wrong reason) because exceedances of water quality standards detected at instream monitoring stations are by themselves sufficient to establish liability for stormwater permit violations. Refusing to go beyond the narrow question on which it had granted certiorari, the Supreme Court did not address the environmental groups’ argument, potentially leaving it to be pursued on remand or in other citizen suits.

Justice Ruth Bader Ginsburg wrote the opinion on behalf of the court, in which all justices other than Justice Samuel Alito joined. Justice Alito concurred in the judgment but did not write an opinion.

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