



JANUARY 2013

## Supreme Court Holds Transfer of Polluted Water Within Same Water Body is Not a Discharge Under the Clean Water Act

On January 8, 2013, the United States Supreme Court reversed a Ninth Circuit decision and confirmed that the transfer of polluted water from an improved portion of a water body to an unimproved portion of a water body does not qualify as a discharge of a pollutant under the Clean Water Act (CWA).

In *Natural Resources Defense Council, Inc. v. County of Los Angeles*, 673 F.3d 880 (9th Cir. 2011), the Ninth Circuit held that the Los Angeles County Flood Control District (the District) was liable for stormwater discharges to two rivers from concrete channels owned and operated by the District. *Id.* at 900-01. Monitoring stations located in the channels detected pollutants in excess of limitations established in the District's permit under the CWA. *Id.* at 889-90. The Ninth Circuit found that these channelized portions of the rivers were part of the District's storm sewer system; therefore, according to the Ninth Circuit, a discharge occurred when polluted water exited the concrete channels. *Id.* at 900.

The Supreme Court granted certiorari to answer a narrow question: "Under the CWA, does a 'discharge of pollutants' occur when polluted water 'flows from one portion of a river that is navigable water of the United States, through a concrete channel or other engineered improvement in the river,' and then 'into a lower portion of the same river'?" *Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc.*, 568 U.S. \_\_\_ (2013) (quoting Pet. for Cert. i., 567 U.S. \_\_\_ (2012)). The Court answered that question in the negative, stating that no pollutants are added to a water body when water is merely transferred between two different portions of the water body. *Id.* The Supreme Court's holding is consistent with its 2004 decision in *South Florida Water Management District v. Miccosukee Tribe*, 541 U.S. 95 (2004), which held that pumping polluted water from one part of a water body to another part of the same water body is not a discharge of pollutants under the CWA.

The Court declined to address any further issues raised by the case, including who ultimately bears responsibility for stormwater pollutants that are discharged to waters of the United States.

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## FOR MORE INFORMATION

If you would like more information regarding the *Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc.* decision or other CWA issues, please contact one of the following attorneys:

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