

## Flow of Polluted Water from Lined to Unlined Section of River Doesn't Constitute "Discharge of a Pollutant"

The U.S. Supreme Court has reversed a Ninth Circuit Court of Appeals opinion that the flow of polluted water from a concrete channel to an unlined section of the same river constituted a "discharge of pollutants." [\*Los Angeles County Flood Control Dist. v. Natural Resources Defense Council, Inc.\*](#)

Environmental organizations sued the Los Angeles County Flood Control District, alleging the district was violating the terms of its Clean Water Act permit to discharge stormwater to local rivers. Legal limits for a variety of pollutants were clearly exceeded in the rivers, but the flood control district was not the only party discharging pollutants upstream. Therefore, the trial court declined to hold the district liable.

The Ninth Circuit panel took a different approach. The district was responsible for certain concrete-lined channels in the rivers, which had been constructed for flood control purposes. Therefore, the appellate court reasoned, the district was responsible for the pollutants that flowed from the concrete channels into unlined portions of the rivers—regardless of who originally discharged pollutants to those waters.

Citing an earlier case holding that the transfer of polluted water between two parts of the same water body does not constitute a discharge of pollutants under the Clean Water Act, the Supreme Court unanimously reversed.

The environmental organizations agreed that the Ninth Circuit's analysis was wrong, but argued that that court had reached the right result. The plaintiffs asserted that data from the rivers' water quality monitoring stations sufficed to show that the district's own upstream discharges violated the Clean Water Act. The Supreme Court declined to reach this issue because the court had taken the case only to address the Ninth Circuit reasoning.

The *Los Angeles County Flood Control District* case reflects environmental organizations' commitment to aggressively pursue what they view as persistent violations of Clean Water Act discharge limits and insufficient enforcement of the Act's requirements by regional water boards.

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