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## Los Angeles Cnty. Flood Control Dist. v. Natural Res. Def. Council, Inc., 133 S. Ct. 710 (2013)

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Los Angeles Cnty. Flood Control Dist. v. Natural Res. Def. Council, Inc., 133 S. Ct. 710 (2013)

The Commission appealed and the United States Supreme Court granted certiorari on the issue of whether government-induced temporary flooding could ever give rise to a compensable takings claim.

Arguing that temporary flooding was an exception to the general rule, the United States' position was that, in order to create liability under the takings clause, government-induced flooding needed to be permanent. The Court disagreed. It rejected the United States' interpretation of earlier precedent, explaining the temporary flooding exception was erroneously parsed out from stand-alone sentences in prior precedent. Furthermore, the Court added that subsequent developments in jurisprudence superseded the cases the United States used to support its position.

The United States also argued that reversing the appeals court would disrupt public works in flood-control areas by making even the smallest flood qualify as a compensable taking. The Court rejected this position as a slippery slope argument, noting that this case was no different from other takings clause cases that unsuccessfully urged blanket exceptions from the Fifth Amendment without proper justification.

Finally, the United States asked the Court to address two additional issues: (i) the collateral nature of the flood damage; and (ii) the bearing of Arkansas water-right law on this case. The Court refused to express any opinion with regard to these issues because the parties did not brief the issues or argue them in the lower courts.

Accordingly, the Court reversed the appeals court's decision and held that government-induced temporary flooding can give rise to a compensable taking claim under the Fifth Amendment. The Court noted the majority of such claims depend on situation-specific, factual inquiries. Consequently, the Court remanded the case, directing the claims court to consider the duration of compensable taking, owner's reasonable investment-backed expectations regarding the land's use, and the degree of foreseeability related to the invasion.

*Natasha Schissler*

**Los Angeles Cnty. Flood Control Dist. v. Natural Res. Def. Council, Inc.**, 133 S. Ct. 710 (2013) (holding the flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway is not considered a discharge of a pollutant under the Clean Water Act).

The Los Angeles County Flood Control District ("District") operates a drainage system that collects, transports, and discharges storm water. Federal regulations define "storm water" as storm water runoff, snowmelt runoff, and surface runoff and drainage. Due to the highly polluted nature of the storm water at issue in this case, the Clean Water Act ("CWA") required the drainage systems' operators to obtain a National Pollutant Discharge Elimination System ("NPDES") permit before discharging the storm water into navigable waters. The District obtained a NPDES permit in 1990 and subsequently renewed its permit several times.

The Natural Resources Defense Council and Santa Monica Baykeeper ("Respondents"), both of which are environmental organizations, filed a citizen suit in United States District Court for the Central District of California ("district court"), alleging the District violated water quality measurement require-

ments under its NPDES permit. Acknowledging water in the storm sewer system showed levels of pollutant discharges exceeding statutory limits, the district court nevertheless granted summary judgment in favor of the District. Specifically, because the district court found many other entities had also discharged into the water system, jointly contributing to the levels of pollution, the district court ruled the record was insufficient to hold the District solely liable for the pollution.

Respondents appealed to the United States Court of Appeals for the Ninth Circuit (“Court of Appeals”), which reversed the district court in part, holding a “discharge of pollutants” within the meaning of the CWA occurred when polluted water left the District’s concrete channel system and entered downstream waterways without concrete linings. Because the District controlled the concrete portions of the system, the Court of Appeals held it was responsible for discharges leaving its system into those watercourses unprotected by concrete lining.

The United States Supreme Court granted certiorari to consider just one issue: whether, under the CWA, does the flow of storm water out of a concrete channel within a river qualify as the “discharge of a pollutant?” Answering that question the negative, the Court reversed the Court of Appeals. The Court relied on legal precedent that held pumping polluted water from one part of a water body into another part of the same body is not considered a discharge of pollutants under the CWA.

The language of CWA defines “discharge of a pollutant” as the addition of any pollutant to navigable waters from any point source. The Court pointed to the generally accepted meaning of the word “add” and explained that pollutants are not “added” when water is merely transferred between different portions of that water body. If such an addition were to be considered a discharge, the Court explained, the water would have to be transferred between two meaningfully distinct water bodies.

Ultimately, the Court held 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 pollutants under the CWA. Therefore, the Court reversed the Court of Appeals and remanded the case for further proceedings.

*Tyler Geisert*

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**San Luis Unit Food Producers v. United States**, 709 F.3d 798 (9th Cir. 2013) (holding the Reclamation Act, Central Valley Project Act, and San Luis Act, did not impose a duty on the Bureau of Reclamation to provide farmers with their preferred amount of water from the Central Valley Project).

In 1902, Congress passed the Reclamation Act (“Act”), which provided for the construction and operation of water collection, storage, and distribution projects in several of the Western States, in an effort to reclaim arid lands and support agriculture. The nation’s largest reclamation project, the Central Valley Project (“CVP”), managed by the United States Bureau of Reclamation (“Bureau”), provides water to California’s Central Valley.