There's been a lot of discussion here about the failings of the latest Supreme Court environmental decision in *Los Angeles County Flood Control District v. NRDC*. I don't really want to pile on with those criticisms – though it is baffling to me that the Court wasted its very limited judicial resources correcting the Ninth Circuit's interpretation of the Clean Water Act in a case where the stakes of that interpretation were so low, and where the real problems in the Ninth Circuit decision might well have been factual, not legal.

But I think there's a much broader lesson from the case: The importance of monitoring for environmental law. I've talked about this in other posts and in my scholarship, but this case really demonstrates how important good quality monitoring of environmental conditions is for the effective implementation of environmental law.

First, start with the Clean Water Act permit that the District needed so that it could discharge stormwater into the Pacific Ocean and Southern Californian rivers. The permit only required the District to conduct monitoring in very limited locations, including one monitoring station for the entire mainstem of the Los Angeles River. (The monitoring program can be found here; it looks like there is a supplemental program to monitoring water quality in certain tributaries to the Los Angeles River, but that is also very limited in scope both in time and space.) That limited monitoring meant that when violations of water quality standards were found at that station, the District could plausibly argue that those violations might not, in fact, be the result of the District's own discharges but instead the result of other discharges elsewhere on the River. That points to two more weaknesses of the monitoring program. First, the monitoring stations were not placed in locations that might provide better evidence of whether water quality violations were the result of District discharges or other discharges (e.g., placing monitoring stations near to major outfalls from the District's stormwater system). Second, the permit was extremely vague about the consequences of finding violations; it only stated that violations at the monitoring stations would help "determine if the [District's stormwater system] is contributing to exceedances of Water Quality Standards."

The result of all of these problems was the complete mess that this case eventually became. The District Court refused to find that the District had violated the Clean Water Act because there was no evidence that it was the District's discharges that had caused the water quality standards; more, and better located, monitoring stations would have prevented that problem. (It's also unclear whether the District Court's legal conclusion on this point is, in fact, correct.) The Court of Appeals tried

to finesse this problem by concluding that the monitoring stations were, in fact, located near the outfall of the District's system so that there wasn't a problem of showing a causal linkage between District discharges and water quality violations. The District then turned around argued that in reaching this (probably erroneous) factual conclusion, the Ninth Circuit had also made an improper legal conclusion that water flowing from a channelized portion of a river into an unchannelized portion of a river was a "discharge" under the Clean Water Act – contradicting dicta in a prior Supreme Court decision. That led the Court to grant cert on a case that probably didn't deserve it.

But the legal consequences are probably less severe here than the environmental consequences. The LA River continues to be polluted after major storm events, even after many years of regulation of the District's discharges under the Clean Water Act. That pollution can have major impacts on human health and on ecosystems – for instance, pollution from the LA River might have impacts on people using LA area beaches for recreation.

Monitoring matters because it is essential for us to know whether there is a problem in our water, air, or other environmental resources – here, that there were significant pollution problems after major storm events in the Los Angeles River watershed. But it is also essential if we are to attempt to identify, and address, the causes of those problems. And it is often equally essential for adequate enforcement of environmental laws. The monitoring program set up by the Regional Water Quality Control Board in this case for the District's permit was woefully inadequate, and this case makes clear why that inadequacy matters, both for the legal system and for environmental quality.