



Los Angeles River (Credit: Thomas Hawk on Flickr)

[Disclosure: The Frank G. Wells Environmental Clinic at UCLA School of Law is representing Los Angeles Waterkeeper on matters related to the subject of this post. I will shortly be joining Los Angeles Waterkeeper as a Staff Attorney. However, like all other Legal Planet posts, this post reflects only my own views and opinions.]

The Los Angeles Regional Water Quality Control Board (“Regional Board”) is in the process of issuing a new permit for water discharges through the municipal separate storm sewer systems (“MS4”) in Los Angeles County and Ventura County. The MS4 permit is an important document that regulates how municipalities can allow stormwater to flow through the MS4 system and out into natural (or modified) waterways. Stormwater typically contains high quantities of pollutants, including toxic metals, bacteria, and other materials picked up from buildings and streets during wet weather events, all of which harms both the ecosystem and human health. The MS4 permit, therefore, is a vital tool to ensure that cities are held responsible for addressing water quality issues arising from their stormwater discharges.

The Regional Board is holding [public hearings](#) on July 8, 9, 16, and 23 for a proposed new MS4 permit, creating an important opportunity for public participation and comment to advocate in favor of stronger protections against harmful stormwater discharges. Building off an informative [blog post from Heal the Bay](#), this post provides additional context for the Regional Board’s proposed MS4 permit and the importance of the upcoming public

hearings.

The 2012 MS4 Permit in a Nutshell

The [MS4 permit currently in effect](#) was issued in 2012 and re-adopted the receiving water limitations—or the maximum amount of a pollutant that may be added to a specified water body—from the earlier permit established in 2001. However, the 2012 permit included new provisions that shield cities in the County from being sued or fined for failing to comply with those receiving water limits, as long as they were implementing a [watershed management program](#) (“WMP”).

Here’s how these “safe harbor” provisions work:

- Under the permit, a city has an alternative pathway to comply with receiving water limitations by participating in a regional WMP or enhanced watershed management program (“EWMP”). These programs allow cities to work together to develop stormwater management plans and implement stormwater infrastructure improvements such as green streets and stormwater capture projects. (I wrote a [post](#) last year on some of the stormwater capture measures that are being pursued in Los Angeles County through Measure W.)
- WMPs and EWMPs focus on long-term stormwater projects and do not require immediate reductions in stormwater discharges. As long as the Regional Board approves a city’s participation in a WMP or EWMP, the city will be “deemed in compliance” with receiving water limitations during the plan’s timeline, even if its discharges continue to exceed receiving water limitations and impair water quality during wet weather conditions.

WMPs and EWMPs, however, are unenforceable. The 2012 permit was not established with clear and measurable requirements for how the plans will actually reduce the levels of stormwater pollution. As a result, the 2012 permit allows cities to let their stormwater discharges continue to pollute water bodies under an approved watershed management plan, even where slow implementation of that plan does little to reduce stormwater discharges or improve water quality.

Taking the 2012 MS4 Permit to Court

After the Regional Board issued the 2012 MS4 permit, the Natural Resources Defense Council (“NRDC”) and Los Angeles Waterkeeper (“LAW”) filed a lawsuit against the Regional Board and the State Water Resources Control Board (“State Board”), arguing in

part that the safe harbor provisions violated federal and state policies against degradation of water quality for both impaired water bodies and high-quality water bodies.

The Superior Court sided with the boards and upheld the 2012 permit, and NRDC and LAW appealed. The California Court of Appeal reversed the lower court's decision on the anti-degradation claim, finding that the lower court applied the incorrect standard of review. See [Natural Resources Defense Council v. State Water Resources Control Board](#), No. B282016, 2018 WL 6735201 (Cal. Ct. App. Dec. 24, 2018).

The second time proved to be the charm. After the case was sent back to the trial court, in March 2021, [the Superior Court found in favor of NRDC and LAW](#) on the anti-degradation claim. Here are the important details of the court's decision:

- The Regional Board must conduct a socioeconomic analysis of why continued stormwater discharges that degrade receiving waters are to the “maximum benefit” of California residents. That analysis must show that stormwater discharges will not unreasonably affect present and future uses of the water body.
- The Regional Board conducted no socioeconomic analysis at all in the 2012 permit to support degradation, so the State Board stepped in to conduct that analysis on behalf of the Regional Board during the litigation. But the court found that the State Board's socioeconomic analysis was lackluster, at best. The court criticized the State Board's efforts to “stitch together” portions of the administrative record in a “post hoc” attempt to offer justifications for the degradation.
- The court also criticized the State Board's reliance on the costs of capturing all stormwater to prevent any discharges whatsoever, because costs alone do not indicate how other important social needs outweigh the benefits of preventing the degradation.

Due to the State Board's failure to conduct a legitimate socioeconomic analysis showing the “maximum benefits” of water degradation, the court granted the petition from NRDC and LAW and issued a writ to set aside the State Board's decision approving the 2012 MS4 permit.

The Proposed 2021 MS4 Permit

Following the Superior Court's decision, the Regional Board seems motivated to move past the litigation over the 2012 MS4 permit by issuing a new one on an expedited timeline.

In early June, the Regional Board issued a [proposed new MS4 permit](#) that would cover both Los Angeles County and Ventura County. In the [revised fact sheet](#) accompanying the

proposed permit, the Regional Board includes a revised anti-degradation analysis in an attempt to justify the anticipated degradation of water bodies throughout the Counties. But despite its new anti-degradation analysis, **the Regional Board offers no legitimate socioeconomic analysis to show how degradation from stormwater discharges would be to the “maximum benefit” of LA County residents.**

Here are some of the key issues with the Regional Board’s analysis:

- The Regional Board acknowledges that there are significant environmental, economic, and public health costs associated with poor water quality, and that removing the “safe harbor” provisions would avoid some of these costs. But the Regional Board effectively argues that it is not worth the money to require cities to comply with water quality limits now, because of the “enormous opportunity cost” from spending money on stormwater infrastructure instead of other social needs or public services—without clearly explaining what those social needs or public services are.
- To elaborate, the Regional Board claims that it would cost an extra \$113 billion or so for cities to stop stormwater discharges, and that money “could be better spent addressing the homeless problem in the region.” But the Regional Board does not explain how money spent on infrastructure comes out of the budget for housing programs, instead relying primarily on self-serving letters from cities lamenting the high costs of stormwater controls. The Regional Board also claims that more stormwater diversion requirements would increase housing and development prices, but only offers generic and outdated information about housing costs and homelessness for support.
- In the Regional Board’s view, immediate compliance with water quality limits under the MS4 permit would be “unrealistic” for most cities due to technical and financial constraints, and because of the 5-7 year timeline for completing infrastructure projects. But the Regional Board also admits that cities actually could implement immediate fixes to stop water quality exceedances in the short term, while continuing efforts to develop long-term stormwater infrastructure under a WMP or EWMP. And besides, the only reason that cities might have difficulty complying now is because the Regional Board has not required cities to do enough over the past 30 years to address stormwater discharges.
- Finally, even if members of the public cannot enforce water quality limits against cities because of the “safe harbor” provisions, the Regional Board notes that it still has its own enforcement powers. But the Regional Board has not enforced water quality limits against cities under the 2012 MS4 permit and would be unlikely to do so moving forward for cities operating under the time schedule in an approved WMP or EWMP. If

the public cannot enforce these water quality limits, and the Regional Board refuses to do so either, then there is no way to hold cities accountable for the continued degradation of our waters in LA County.

The Regional Board's inability to offer a legitimate socioeconomic analysis to support the degradation under the proposed MS4 permit is not too surprising, given how poor water quality has been in LA County. Using surface water data collected in 2010, UCLA's Sustainable LA Grand Challenge gave LA County's surface water a "D" grade in its [2019 water report card](#), finding that 99% of water bodies in the county are impaired—and that conditions actually worsened from 2007. Heal the Bay's more recent [river report card from 2019](#) shows high percentages of impaired rivers throughout LA County as well.

Stormwater infrastructure is not a mere "cost" to cities, but rather is an investment in the future of clean water in LA County. Improving water quality by reducing stormwater discharges offers [significant overall economic benefits](#) and meaningful [employment opportunities](#). More importantly, all residents deserve access to clean water and healthy ecosystems. It is well worth the investment to eliminate water degradation under the MS4 permit now, rather than allowing cities to drag their feet under WMPs or EWMPs over the coming years.

Opportunity for Public Engagement

At the [public hearings](#) on July 8, 9, 16, and 23, NRDC, LAW, and Heal the Bay will present to the Regional Board as a "party" to the proceedings about the importance of removing of the safe harbor provisions in the MS4 permit.

Other members of the public interested in advocating for improved water quality in LA County have the opportunity to attend and speak at the hearings. Public engagement is crucial to show the Regional Board that residents care deeply about water quality, human health impacts, and ecosystem health concerns arising from stormwater discharges—concerns which cause disproportionate harm to residents of disadvantaged and environmental justice communities. Hearing these concerns may convince the Regional Board that the benefits of clean waterways for all communities in LA County are worth the costs of reducing stormwater pollution under the MS4 permit.

Residents also have the opportunity to seek greater transparency around the MS4 permit. Despite extensive monitoring and reporting requirements under the permit, the reports are not readily available to the public in a clear and accessible format. Without meaningful oversight from the public, cities can continue to allow harmful stormwater discharges to

pollute the LA County's waterways without most people even knowing about it. Public comments at the upcoming July hearings would help the Regional Board realize that it must do better to include community members in its stormwater permitting and enforcement processes.

The Regional Board will be holding an **evening hearing session open to the general public on July 8 from 6:00 pm to 8:30 pm**. Residents wishing to speak during this hearing, or at any other hearing days, must [register at this link by July 1 at 5:00 pm](#). More information about the upcoming July hearings will be posted on the [Regional Board's website for the MS4 permit](#).

Those wishing to learn more about stormwater issues in LA County can also check out the upcoming [stormwater advocacy training session](#) hosted by Heal the Bay, LAW, and The Nature Conservancy, which will be occurring on June 30 from 6:00 pm - 7:30 pm.