

**GWMA CONFERENCE
2012 MS4 LITIGATION
JUNE 21, 2019**

Petitioners' Claims

- Both: Want clean water, but numeric WQBELs (“NELs”) illegal for not complying with California’s Water Code
- Duarte: Seeks surgical striking of offending Permit provisions
 - NELs, monitoring, NSW NELs and Burden of Proof
- Gardena: Seeks judgment setting entire Permit aside
 - Entire permit adopted in violation of Water Code and due process so revert to 2001 Permit

Historic Storm Runoff Control

- 1920's: Creation of LACFCD due to huge Southern California floods
- 1930's: Constructed spreading grounds and began flood channel system
- 1950's – 1990's: Continued to have disastrous floods
- Storm drains remain necessary despite admirable goal of limiting run-off through retention basins and other projects

WMP/EWMPs

- WMP/EWMPs “paradigm shift” by Boards
 - Shift from run-off to retention – *ecological issues*
- WMP/EWMPs designed to capture the 85th percentile storm
- Stormwater retention needed to meet NEL provisions of the Permit
- However, 2012 Permit’s terms more stringent than 2001 Permit and not required by CWA

Cal. Water Code

- Both: Argued must comply with Water Code if issue Permit that exceeds CWA requirements
- Water Code section 13241(c) and (d): Must determine terms are feasible and “economic considerations” (cost of compliance)
- Boards calculated cost of compliance based on 2004-05 statewide studies of cost of other/different permits
- Did not accept evidence of compliance costs offered by Permittees

Primary Argument

- The “voluntary” WMP and EWMP programs were required by the Permit to meet the NELs – no real “choice”
- Boards did not comply with Water Code §13241 as did not consider cost of compliance
- Boards used cost figures that did not relate to the terms of the proposed Permit
- Boards ignored data of huge compliance costs, including LA County estimate of \$17 billion for EWMPs and cost data of other Permittees

Court's Decision

- The Permit is more stringent than the 2001 Permit, requiring compliance with §13241
- Considering cost of compliance requires analysis of actual numbers necessary to meet the Permit's terms
- The Boards failed to meet the requirement of §13241 to consider cost of compliance with the 2012 MS4 Permit for Permittees
- Final judgment under consideration: surgery or setting the Permit aside??

Take Away

- Regardless of Final Judgment, Boards likely to issue very similar Permit and include Ventura County and Long Beach
- Lip service to costs of compliance at workshop
- Reliance on Measure W is only partial remedy
- Permittees need to attend Board workshops and hearings to voice concerns, compliance costs and budgetary limitations
- Unfunded state mandate – beware of requesting to participate in the program