Lead, Follow or Get Washed Away: Why Municipalities Should Take a Greater Leadership Role on Water Quality Issues

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Introduction

- Core Municipal Functions
- Modern Water Quality Problems
- Solutions To Those Problems
- Choice
  - Lead
  - Be Lead

Key Background Issues

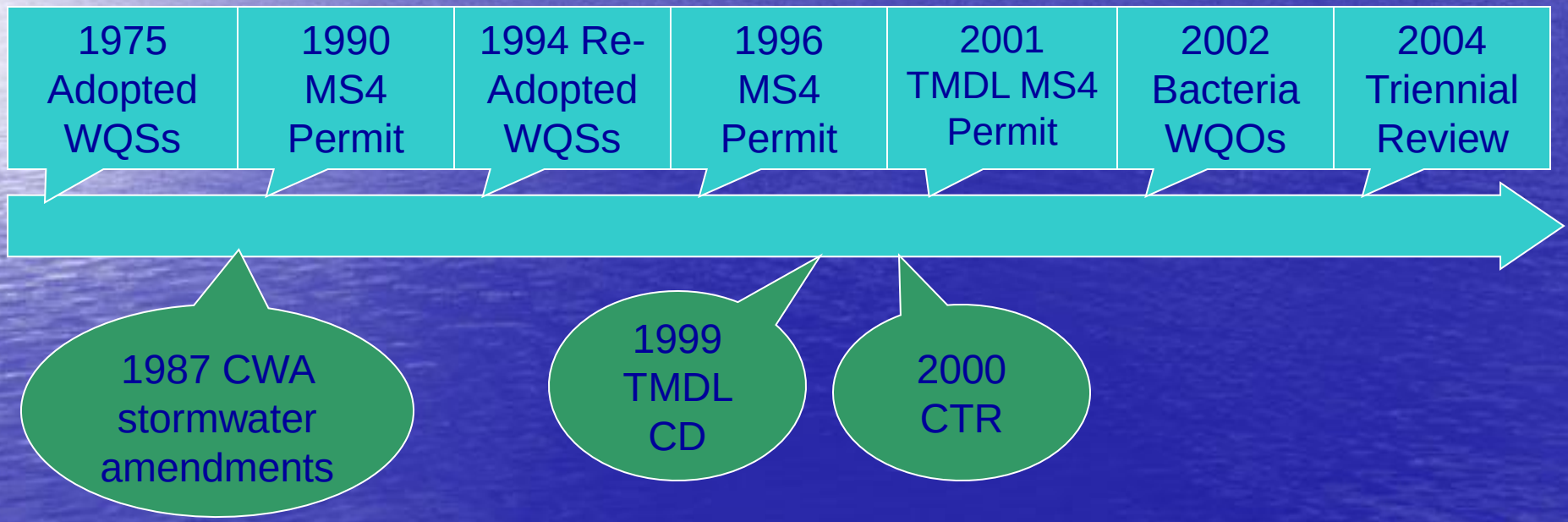
- 1972 Amendments
  - Ambitious Goals
  - Focus On Industry/POTWs
  - Stormwater Exempted By

Key Background Issues

- Development of Water Quality Standards
  - Nature Of Standards
  - Importance Of Water Quality Standards
  - Stormwater Not Considered

City of Arcadia et al v. State Board

Los Angeles Regional Board Actions



Federal Legislature and EPA Actions

Key Background Issues

- 1987 Amendments
  - Costle; EPA's Attempt To Regulate Stormwater
  - Industrial Stormwater
  - Municipal Stormwater/MEP

Key Background Issues

- TMDL Program
  - WLA/LA
  - Implementation Plans
  - November 2010 EPA Memorandum

Key Background Issues

- Enforcement
  - Consent Decrees
  - Stormwater Enforcement

Key Background Issues

- Modern Stormwater Permits
  - San Diego County, California
  - Washington, D.C.

Current Developments

- EPA's Rulemaking
- EPA's Framework Plan
- Other EPA Efforts
- NRDC/County Of LA Case
- CERCLA And Stormwater

Current Developments

- EPA's Rulemaking
  - NRC Report
  - Elements of Rule
  - Performance Standards
  - Retrofits
  - Program Expansion

Current Developments

- Performance Standards
  - New And Redevelopment
  - Onside Retention Of Defined Storm Event

Current Developments

- Retrofit
  - Development Of Plans
  - Retrofits As Part Of Public Works Projects

Current Developments

- Extension of Program
  - Unregulated But High Growth Areas
  - Principal Arterial Roads
  - Maintenance Yards

Current Developments

- Framework For Integrated Municipal Planning
  - Background
  - Status

Current Developments

- Overarching Principles
  - Flexibility
  - Within Current System

Current Developments

- Elements Of Plan
  - 5 Elements
  - Developed By Dischargers

Current Developments

- Element 1
  - Water Quality
  - Human Health
  - Regulatory Issues

Current Developments

- Element 2
  - Description Of System
  - Deficiencies And Needs

Current Developments

- Element 3
  - Public Involvement
  - Development Of Plan And Throughout Selection Process

Current Developments

- Element 4
  - Process Of Evaluating And Selecting Alternatives
  - Implementation Schedule
  - Financial Plan

Current Developments

- Element 5
  - Performance Criteria
  - Monitoring Program

Current Developments

- Implementation
  - Permits
  - Enforcement

Current Developments

- Other EPA Efforts
  - Clean Water Act Jurisdiction Guidance
  - TMDL Memorandum
  - Nutrient Criteria

NRDC v. County of Los Angeles 636 F.3d 1235 (9th Cir. 2011)

- County of Los Angeles and the Los Angeles Flood Control District alleged to have violated their MS4 permit by discharging stormwater into the Los Angeles, San Gabriel and Santa Clara Rivers, as well as Malibu Creek, that caused or contributed to exceedances of water quality standards.
- The exceedances were measured at mass emission monitoring stations located in the 4 "rivers."

Los Angeles River Basin Rivers





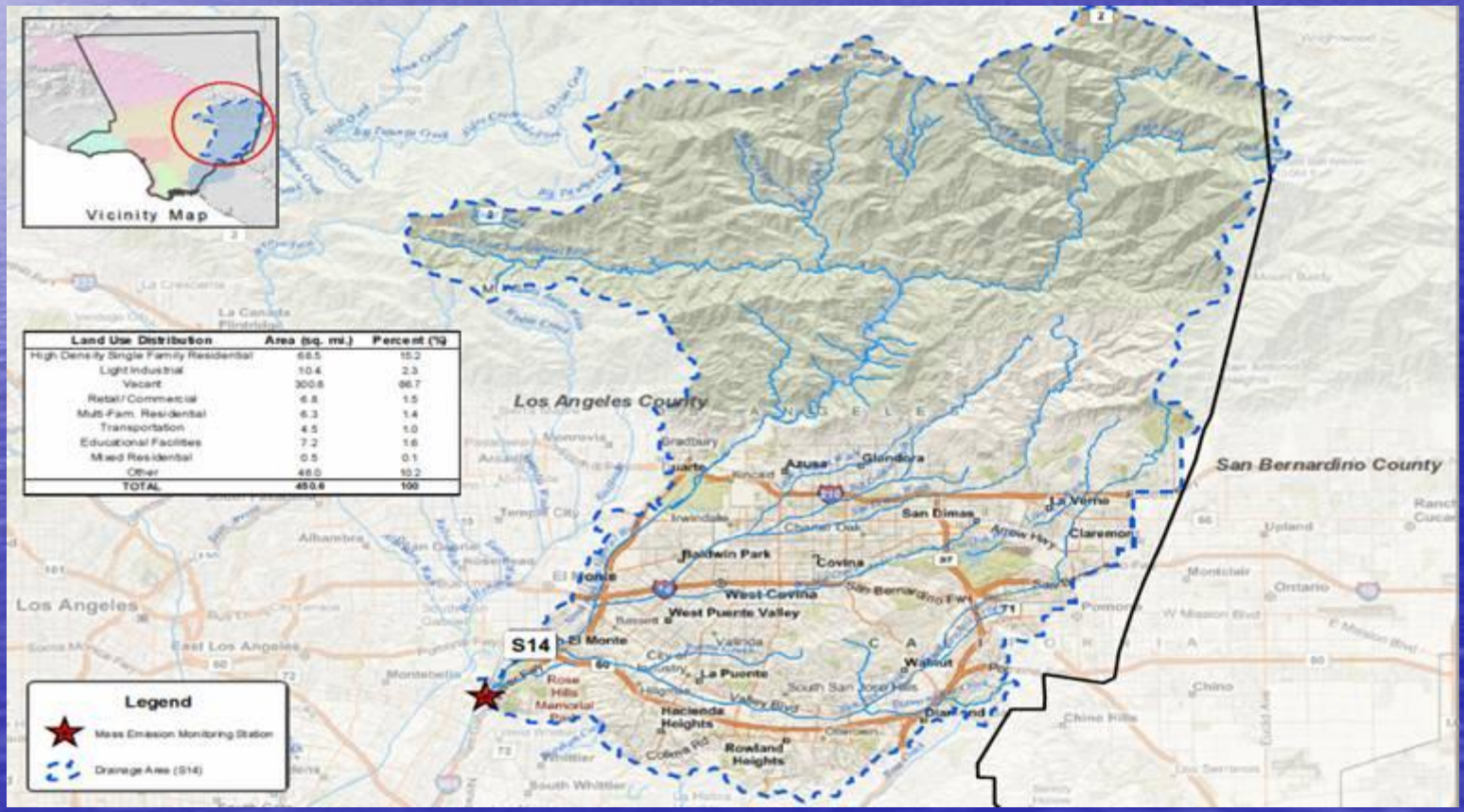
NRDC v. County of Los Angeles



NRDC v. County of Los Angeles



NRDC v. County of Los Angeles



NRDC v. County of Los Angeles 636 F.3d 1235 (9th Cir. 2011)

- 9th Circuit holds Flood Control District responsible for "discharges" to the Los Angeles and San Gabriel Rivers from the MS4 at or after the mass emission monitoring stations.
- 9th Circuit does not find the County liable for any discharge and finds that there is no evidence that the District discharged pollutants to the Santa Clara River or Malibu Creek.
- Court rejects the "iterative" process generally understood to apply to water quality standards exceedances.

United States v. Washington State DOT 716 F. Supp. 2d 1009 (W.D. Wa 2010)

- U.S. sued WSDOT under CERCLA for contaminated runoff from its highway construction site and highway drainage structures.
- WSDOT argued it did not control and therefore, did dispose of the hazardous substances. Denied.
- WSDOT argued its NPDES permits exempted it from liability. Denied.
- WSDOT asserted the contamination came from upstream third-parties. Denied.

What Can Be Done?

- Planning
- Regulatory Process
- Legislative Relief
- Funding

Conclusion and Questions

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