

Federal and State Jurisdiction over California Waters

*Workshop on Global Warming, Clean Air, Clean Water
Law*

Tracy J. Egoscue
Executive Officer

California Regional Water Quality Control Board, Los Angeles
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Clean Water Act Authority - §401

Basic Mandate (§401 (a)(1))

“Any applicant for a Federal license or permit to conduct any activity... which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State...”

Main Federal Agencies

- U.S. Army Corps of Engineers: Clean Water Act §404 permits for dredge and fills
- Federal Regulatory Energy Commission (FERC): Licenses for hydroelectric works

§401 Program at Regional Board

- Regulate federally-permitted discharges to waters of the United States
- Provides protection of Beneficial Uses
- Provides protection of Wetlands and Riparian areas

§404(b)(1) Guidelines

- Sequential Approach:
 - Avoidance,
 - Minimization,
 - Compensation

Compensatory Mitigation

- Provided to offset permanent and temporal loss of aquatic resources
- Examples include: creation, restoration, enhancement, mitigation bank credits, in-lieu fee contributions, and preservation

Contents of a Complete Application (23 CCR §3856)

Including:

- Description of activity
Proposed impacts to US waters
- Proposed mitigation to offset impacts
- 5-year pre/post impact information

Executive Order W-59-93

August 23, 1993

Comprehensive Wetlands Policy

- Signed by Governor Wilson
- Three primary Objectives
 - No Net Loss
 - Simplify process
 - Encourage partnerships

Executive Order W-59-93

August 23, 1993

- No Net Loss

- 1) To ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property..."

Executive Order W-59-93

August 23, 1993

- Simplify process
 - 2) To Reduce Procedural complexity in the administration of State and Federal wetlands conservation programs.
- Encourage partnerships
 - 3) To encourage partnerships to make restoration, landowner incentive programs, and cooperative planning efforts the primary focus of wetlands conservation.

CEQA Document

(23 CCR §3856(f))

“Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action.”

Cumulative Impacts

(23 CCR §3856(h)(8))

Application must include a description of any projects implemented by the Applicant within the last 5 years or planned within the next 5 years that:

- Are in any way related to the proposed activity
- May impact the same receiving water body(ies) as the proposed activity

Solid Waste Association of Northern Cook Counties v. United States Corps of Engineers (SWANCC)

The January 9, 2001, Supreme Court decision limits the scope of the Clean Water Act as it applies to "isolated" waters.

However, the decision does not affect the State and Regional Board's authorities under state law to regulate discharges to any waters of the state, including isolated wetlands and vernal pools.

Porter-Cologne Authority (California Water Code)

Waste Discharge Requirements §13260

Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state shall file with the appropriate regional board a report of the discharge

"Waters of the State"

(California Water Code §13050(e))

Waters of the state is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state."

Rapanos v. United States

- *Rapanos v. United States*, 547 U.S. 715 (2006), was a United States Supreme Court case challenging the Clean Water Act. It was the first major environmental case heard by the newly-appointed Chief Justice, John Roberts and Associate Justice, Samuel Alito. The Supreme Court heard the case on February 21, 2006 and issued a decision on June 19, 2006. While five justices agreed to void rulings against the plaintiffs, who wanted to fill their wetlands to build a shopping mall and condos, the court was split over further details, with the four more conservative justices arguing in favor of a more restrictive reading of the term "navigable waters" than the four more liberal justices. Justice Kennedy did not fully join either position.^[1]

Mr. Van Trees and the River

Is the L.A. River up a creek?

If the waterway is not officially deemed to be 'navigable,' many of its tributaries could lose important protections.

By Deborah Schoch

June 01, 2008 *in print edition B-1*

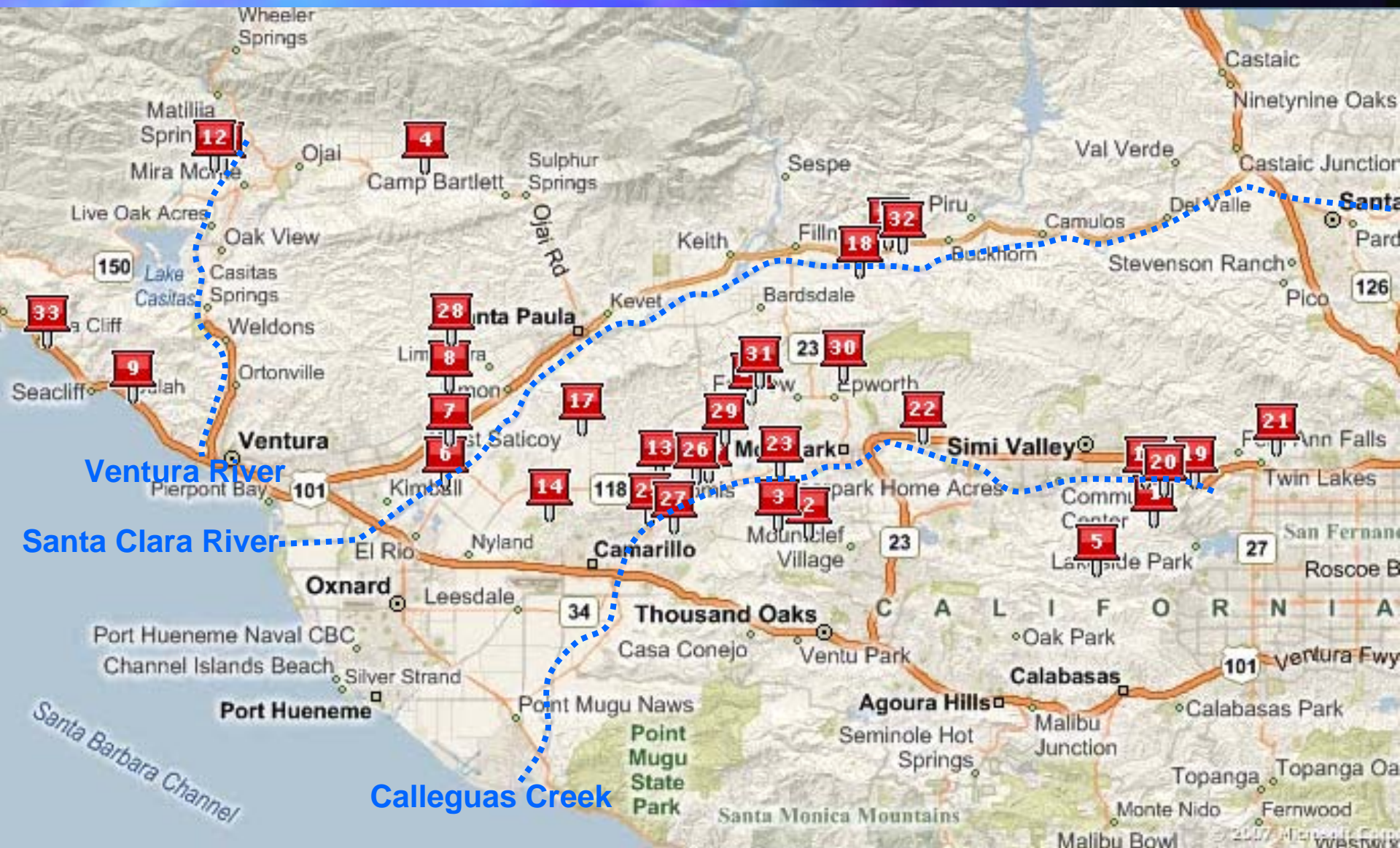
Over the years, the Los Angeles River has been redrawn, clad in concrete, tainted with chemicals, invaded by countless Hollywood car chases, dismissed as a glorified storm drain.

Now comes the latest slap. The city's river can't even float enough boats to qualify as a full-fledged navigable waterway, according to the Army Corps of Engineers.

River advocates are outraged.

CWA vs. Porter Cologne

- Untested Citizen Suit
- Federal vs. State Court
- Understaffed Regional Boards



Ventura River

Santa Clara River

Calleguas Creek

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Mission

...to preserve and enhance water quality in the Los Angeles Region for the benefit of present and future generations...

Contact Information

Tracy Egoscue, Executive Officer

Phone: 213.576.6605

Fax: 213.576.6625

Email: Tegoscue@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board

320 West Fourth Street, #200

Los Angeles, CA 90013

www.waterboards.ca.gov/losangeles/

To report a spill or immediate threat to water quality
Call 911 or 1.800.852.7550