

Los Angeles County Nuisance Claim Survives on Grounds that Defendant Cities “Generated” Stormwater Runoff

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In a decision that may facilitate certain nuisance suits against municipalities, a California appellate court held that the County of Los Angeles may pursue its nuisance claim against two municipalities for discharging a “toxic soup” of urban and stormwater runoff into County waters. See *County of Los Angeles v. City of Downey*, No. B238386 (Cal. Ct. App. Apr. 30, 2013), available at www.bdlaw.com/assets/attachments/Downey.PDF. The court reversed a trial court’s dismissal of the County’s claims, holding that the County stated a cause of action “at least to the extent” that it alleged that municipalities “generated the toxic pollution they discharged” and that the discharges interfered with the use of the County’s flood control facilities. *County of Los Angeles*, slip op. at 5-6 (emphasis added).

On appeal, the defendant cities argued that nuisance requires more direct and active causation than their drainage systems’ mere conveyance of polluted water. The appellate court rejected that argument on the grounds that “at least to the extent the County alleges that Cities’ facilities generated the toxic pollution they discharged, and didn’t simply pass through the pollution created by others, the County states a cause of action ... for nuisance.” *Id.* at 6.

The appellate court also held that the County had pled sufficient facts for injunctive relief, and rejected the Cities’ contention that the County has an adequate remedy at law. *Id.* 6-7. Although the Cities may reimburse the County for its pollution control expenses, the court held that the “continuing and recurrent” nature of the alleged nuisance and the possibility of a “multiplicity of suits” adequately support a claim for injunctive relief. *Id.* at 7-8.

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