

The United States Supreme Court has found that the United States Environmental Protection Agency Clean Water Act requirements cannot be bypassed merely by passing pollutants through groundwater, as was recently argued by the County of Maui and the Trump administration. The language from the opinion is explicit and terse: *The Clean Water Act forbids “any addition” of any pollutant from “any point source” to “navigable waters” without an appropriate permit from the Environmental Protection Agency (EPA).* §§ 301(a), 502(12), 86 Stat. 844, 886. The Act defines “pollutant” broadly, §502(6); defines a “point source” as “ ‘any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged,’ ” including, e.g., any “ ‘container,’ ” “ ‘pipe, ditch, channel, tunnel, conduit,’ ” or “ ‘well,’ ” §502(14); and defines the term “discharge of a pollutant” as “ ‘any addition of any pollutant to navigable waters [including navigable streams, rivers, the ocean, or coastal waters] from any point source,’ ” §502(12). It then uses those terms in making “unlawful” “ ‘the discharge of any pollutant by any person’ ” without an appropriate permit. §301.

This decision bears directly on the mis-management of stormwater in Encinitas generally and Leucadia specifically. For example, from the City of Encinitas’s *Jurisdictional Runoff Management Program* (January 2017) we already know that ... Cottonwood Creek is 303(d) listed for DDT, selenium, and sediment toxicity stressors. Further, the Pacific Ocean at Moonlight Beach, where Cottonwood Creek meets the ocean, is listed as a 303(d) impaired water body for total coliform bacteria. Encinitas Creek drains the north-central portion of the city and drains into Batiqitos Lagoon, which is designated a Critical Coastal Area in the State of California 2002 Critical Coastal Areas Strategic Plan. Encinitas Creek is 303(d) listed for selenium and toxicity. Escondido Creek, 303(d) listed for DDT, enterococcus, fecal coliform, manganese, selenium, sulfates, total dissolved solids, total nitrogen, phosphate, and toxicity, drains the southern and northwest (Olivenhain) portion of the city and drains into the San Elijo Lagoon. San Elijo Lagoon is a 303(d) impaired water body listed for sediment/siltation, indicator bacteria, and eutrophic condition.

One can only wonder how or why the discharging of similarly polluted, possibly more concentrated, stormwater into Batiqitos Lagoon via a soon-to-be-constructed, 60 inch stormwater sewer, at the cost of at least a contractor-estimated \$5M, can be viewed as rational? Any polluted water that is not collected by this storm sewer will percolate into groundwater and traceably flow to the open coast through the bluffs. How can this be allowed by federal and state regulators and how can any local politician, supposed environmental steward and representative of the people who live, work, and play at the coast, advocate such a plan? The County of Maui has been doing it for a long time in Lahaina: but not anymore.