Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11–460. Argued December 4, 2012—Decided January 8, 2013

Petitioner Los Angeles County Flood Control District (District) operates a "municipal separate storm sewer system" (MS4), a drainage system that collects, transports, and discharges storm water. Because storm water is often heavily polluted, the Clean Water Act (CWA) and its implementing regulations require certain MS4 operators to obtain a National Pollutant Discharge Elimination System (NPDES) permit before discharging storm water into navigable waters. The District has such a permit for its MS4. Respondents Natural Resources Defense Council, Inc. (NRDC) and Santa Monica Baykeeper (Baykeeper) filed a citizen suit against the District and others under §505 of the CWA, 33 U. S. C. §1365, alleging, among other things, that water-quality measurements from monitoring stations within the Los Angeles and San Gabriel Rivers demonstrated that the District was violating the terms of its permit. The District Court granted summary judgment to the District on these claims, concluding that the record was insufficient to warrant a finding that the MS4 had discharged storm water containing the standards-exceeding pollutants detected at the downstream monitoring stations. The Ninth Circuit reversed in relevant part. The court held that the District was liable for the discharge of pollutants that, in the court's view, occurred when the polluted water detected at the monitoring stations flowed out of the concrete-lined portions of the rivers, where the monitoring stations are located, into lower, unlined portions of the same rivers.

Held: The flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not

qualify as a "discharge of a pollutant" under the CWA. See *South Fla. Water Management Dist.* v. *Miccosukee Tribe*, 541 U. S. 95, 109–112 (holding that the transfer of polluted water between "two parts of the same water body" does not constitute a discharge of pollutants under the CWA). The Ninth Circuit's decision cannot be squared with this holding.

The NRDC and Baykeeper alternatively argue that, based on the terms of the District's NPDES permit, the exceedances detected at the monitoring stations sufficed to establish the District's liability under the CWA for its upstream discharges. This argument, which failed below, is not embraced within the narrow question on which certiorari was granted. The Court therefore does not address it. Pp. 3–5.

673 F. 3d 880, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., concurred in the judgment.