



# A SOLUTION TO CALIFORNIA WATER POLLUTION

The benefits of citizen lawsuits and their value for clean water enforcement in California

## WHAT YOU NEED TO KNOW

- 💧 **California voters overwhelmingly support** the state preserving the citizen suit provision of the Clean Water Act should the federal government act to remove environmental protections. More than three-quarters (76%) of voters support the proposal – nearly three in five (59%) “strongly.”<sup>1</sup>
- 💧 In recent years, more citizen lawsuit complaints were filed in California for Clean Water Act enforcement than the U.S. EPA filed **in the entire country**.<sup>2</sup>
- 💧 Over the last 5 years, citizen lawsuits defending clean water in California produced more than **\$8.8 million in funding** for environmental projects that benefit local communities harmed by the pollution underlying the case.<sup>3</sup>
- 💧 Over the last 5 years, **83%** of stormwater penalty enforcement cases in California were brought by citizen enforcement.
- 💧 In recent years, the Department of Justice has **accepted over 97%** of all clean water citizen lawsuit consent decrees in California.<sup>4</sup>

## BACKGROUND

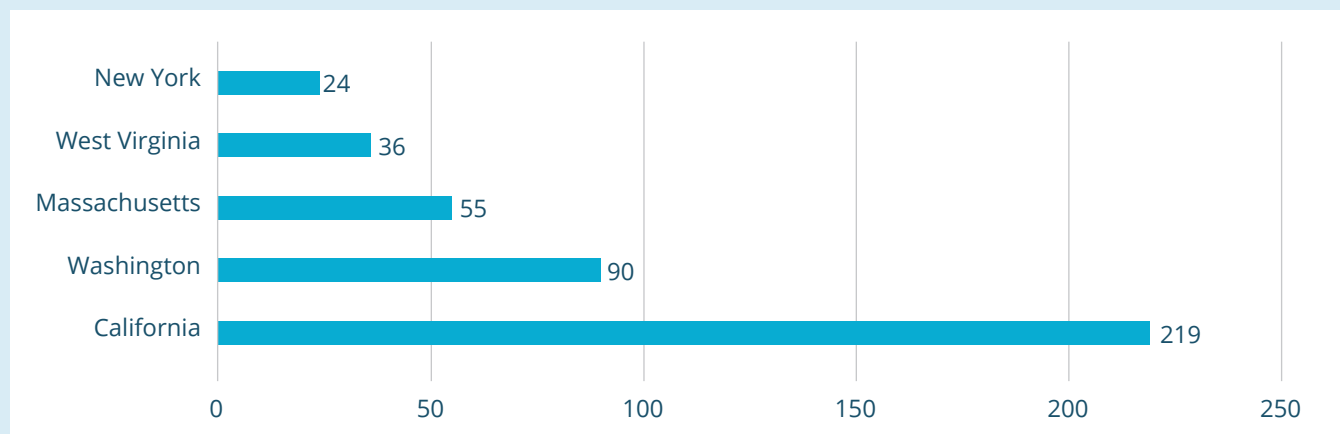
### Over half of California's lakes, bays, wetlands and estuaries are too polluted to swim, drink or fish.<sup>5</sup>

Low income communities and communities of color suffer disproportionately from pollution from toxic operations, such as scrap metal yards, landfills and cement processors. People who live in “environmental justice neighborhoods” – combining economic disadvantage and dangerous pollution – are at a greater risk for cancer and other health consequences than residents of affluent areas. But too often, the government proves unwilling or unable to compel compliance with pollution controls and permits, particularly in California's less affluent inland areas.

Despite this fact, the oil industry, agricultural industry and other heavy industrial facilities continue to pollute our waters in clear violation of environmental laws with relative impunity from agency enforcement. Fortunately, private citizens are empowered to enforce clean water mandates through the private right of action in the Clean Water Act. California leads the nation in the number of citizen lawsuits filed to defend clean water, with more than double the number of cases compared to any other state.<sup>6</sup> This work has long proved necessary to supplement minimal State and Regional Water Board enforcement actions, particularly to address polluted flows associated with industrial, municipal and construction activities. According to the State Water Board's own Performance Report in 2016, California brought penalty actions against industrial and construction stormwater violators only 0.79% of the time.<sup>7</sup> The Regional Water Boards only brought penalty actions against stormwater violators 0.47% of the time.<sup>8</sup> Six of the nine Regional Boards did not bring one penalty action. 66% of the time the Water Boards enforcement action was only a Notice of Non-Compliance sent to the violator.<sup>9</sup>

Citizen lawsuits to enforce clean water rules are even more critical in light of sharply declining federal enforcement of clean water and other environmental laws. This memorandum describes the benefits and value of clean water citizen lawsuits.

#### Citizen Suits Alleging Clean Water Act Violations by State (2010 – 2016)



## CITIZEN LAWSUITS REDUCE POLLUTION AND PROMPT SECTOR AND INDUSTRY-WIDE IMPROVEMENTS.

Clean water citizen lawsuits have stopped the flow of pollution to California waters in a number of different places and contexts. While it is not possible to calculate the total volume of pollution that has stopped flowing to California's drinking water, beaches, bays and rivers as a result of all cases undertaken, the benefits associated with these cases are striking. For example, in 1998, Communities for a Better Environment (CBE), a California non-profit environmental health and justice organization, reached a historic agreement with Exxon Mobil wherein they agreed to upgrade gas stations, clean up groundwater contamination and enact other changes to its gasoline distribution system in order to protect California drinking water. A single case aimed at reducing sewage pollution, brought by Los Angeles Waterkeeper in 1999, resulted in a 90% reduction of sewage spills into Santa Monica Bay (see graph on page 2). A 2001 case brought by the Environmental Defense Center and Santa Barbara Channelkeeper helped to protect Oxnard from radioactive waste and carcinogens. A settlement reached with Halaco Engineering Company resulted in their agreement to stop discharging wastewater contaminated with copper, lead and other heavy metals, as well as radioactive materials to local wetlands and beaches, and triggered an in-depth, longer-term cleanup process through U.S. EPA's Superfund process.

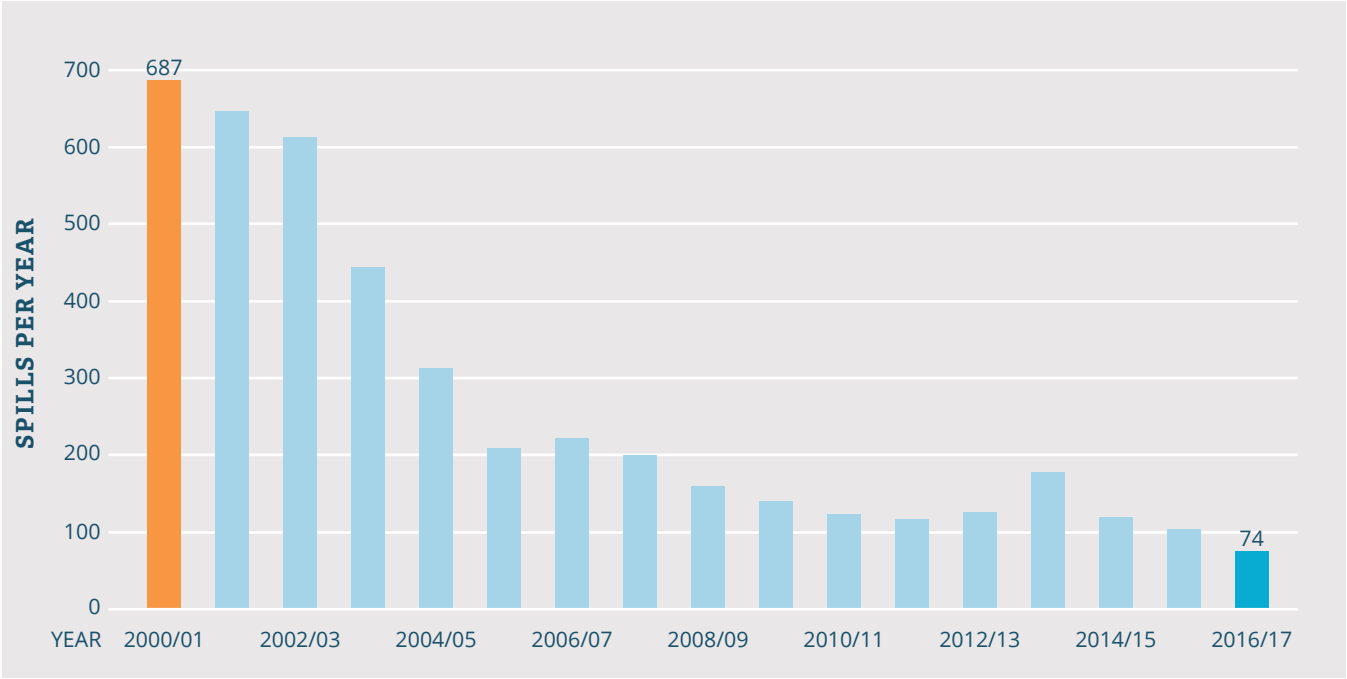
“too often, the government proves unwilling or unable to compel compliance with pollution controls and permits, particularly in California's less affluent inland areas.”

Often citizen lawsuits can help transform a polluter to an industry-leading water steward, accelerating the use of more modern, efficient and sustainable practices by years or decades. Citizen suits have spurred innovations and changes to industry best practices and have resulted in improvements that make our environment and communities safer.

In Southern California, many communities have to bear the brunt of pollution associated with heavy industrial activities in “sacrifice zones” in Los Angeles and the Inland Empire. Industrial facilities, such as scrap metal yards, waste transfer stations and auto-dismantlers, regularly discharge bacteria, copper, lead, zinc, arsenic and trash to local waters, making them unsafe to use and enjoy. This is despite the fact that many of these facilities regularly violate applicable industrial stormwater permit rules. Citizen lawsuits have succeeded in not only stopping the flow of pollution to local waters, but in improving the way some of these heavy industries operate and trigger improvements beyond a single facility.

For example, in 2013, Los Angeles Waterkeeper brought a citizen lawsuit against industrial scrap metal recycling and auto dismantling yards in south Los Angeles forcing industrial facilities to implement measures to control and treat toxic stormwater discharges. This case resulted in SA Recycling becoming a leader in the metals recycling industry, converting its Terminal Island site to a zero-discharge facility and helping set the standard for the thousands of industrial facilities that collectively have a tremendous impact on the health of the region's waters.

City of Los Angeles – Sanitary Sewer Overflows (SSO) Reduction



A single case aimed at reducing sewage pollution resulted in a 90% reduction of sewage spills into Santa Monica Bay.

Scrap yards similarly discharge high concentrations of metals that cause Orange County beaches, bays and rivers to become toxic. Prior to Orange County Coastkeeper’s citizen enforcement, scrap yards would allow toxic stormwater to run off their facilities unabated. It was a problem that communities observed for decades without any signs of improvement or accountability for the polluting facility. After a targeted series of Clean Water Act enforcement cases aimed at the scrap metal industry, the entities agreed to negotiate a new permit that could apply to scrap metal facilities throughout the region. This permit, specific to scrap metal facilities, allowed the Water Board to better focus on industry-specific water quality data to determine industry-specific practices. The new practices, developed in cooperation with the scrap metal industry, sends stormwater from scrap yards to nearby facilities, which use the water to cool down machines. This solution puts stormwater to use, reduces pollution, saves scrap yards money by eliminating water treatment costs and offsets the need to buy water to cool the machines.

## CITIZEN LAWSUITS HAVE GENERATED SUBSTANTIAL FUNDS FOR LOCAL RESTORATION AND REMEDIATION PROJECTS.

Citizen lawsuits not only stop the flow of pollution to California's coast, bays and rivers, but can also generate funding to clean up pollution and contamination that has occurred. The "Supplemental Environmental Project" or "SEP" funds are part of settlements often reached in citizen lawsuits that go directly to community partner organizations and tribes who live and work in the places where pollution and other harm have occurred. These organizations use SEP funding to develop locally-tailored projects to attempt to make the community whole again from harm suffered by pollution. Projects can range from habitat restoration to green streets to native fish restoration. For example, in 2008, Simpson Timber Company agreed to allocate \$500,000 for restoration projects to offset the environmental damage caused by their decades of contaminating the waters near the only public fishing pier in Humboldt Bay with dioxin, a highly-toxic and cancer-causing chemical. In 2015, Six Flags Magic Mountain agreed to contribute \$300,000 to an environmental project designed to protect the Santa Clara River following years of frequent and high-volume pollution putting wildlife and swimmers in Los Angeles and Ventura counties at risk. These funds can make a tremendous difference for impacted communities and trigger investments in the local environment that pay dividends.

Over the last five years, citizen lawsuit enforcement brought in over \$8.8 million in SEP funding that was then redistributed into the communities originally harmed. The Los Angeles, Orange County, and Inland Empire regions receive over half of all SEP funding with over \$6.9 million.

### SEPs Awarded By Region (2013 – 2017)<sup>10</sup>

REGION	TOTAL CITIZEN LAWSUITS	SEPs AWARDED BY REGION
North Coast	12	\$248,000.00
Bay Area	64	\$1,002,000.00
Central Coast	4	\$43,000.00
Los Angeles	68	\$5,559,065.00
Central Valley	23	\$435,000.00
Eastern Sierra	1	\$0.00
Colorado Basin	1	\$0.00
Orange County and Inland Empire	45	\$1,409,000.00
San Diego	16	\$169,500.00
<b>TOTAL</b>	<b>235</b>	<b>\$8,865,565.00</b>



# COMMUNITY-DRIVEN CLEAN WATER DEFENSE

## Citizen Lawsuit Funding Victories Map

### SAN JOSE

In 2016, San Francisco Baykeeper settled a case with the City of San Jose resulting in \$1 million in funding to the San Jose Parks Foundation for projects to reduce trash and human waste pollution, restore habitat and improve the water quality of Coyote Creek and the Guadalupe River, where high bacteria levels had previously made the creek and rivers unsafe to use and enjoy.



© San Jose Parks Foundation

### VALENCIA

In 2015, the Wishtoyo Foundation, Santa Monica Baykeeper and Friends of the Santa Clara River won a \$300,000 settlement from Six Flags Magic Mountain for an environmental project to protect the Santa Clara River following years of frequent and high-volume pollution that harmed wildlife and swimmers in Los Angeles and Ventura counties.



© Friends of Santa Clara River

### LOS ANGELES

In 2016, Los Angeles County agreed to spend \$4 million on environmental improvements to settle a lawsuit from Los Angeles Waterkeeper and the Natural Resources Defense Council for nearly five hundred violations of the federal Clean Water Act. The settlement funds have supported the Green Streets project in the historic community of Watts and stormwater capture efforts across the county.



© Watts Re:Imagined project

### ORANGE COUNTY

From 1999 to early 2018, Orange County Coastkeeper won close to \$1.9 million in local environmental projects focused on improving water quality and environmental education. The settlements from these cases go into the Orange County and Inland Empire Public Interest Green Fund, where funds are made available to nonprofits and federally recognized tribes for environmental projects.



© Inland Empire Waterkeeper



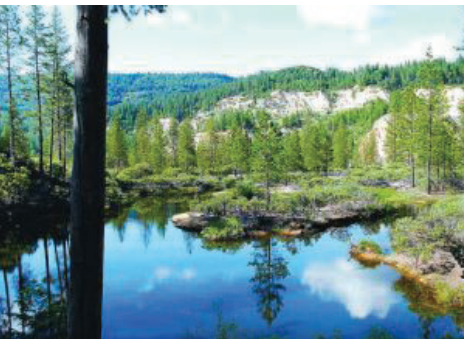
© Humboldt Baykeeper

### HUMBOLDT

In 2008, Humboldt Baykeeper and Californians for Alternatives to Toxics settled a lawsuit against Simpson Timber Company for contaminating the waters near the only public fishing pier in Humboldt Bay with dioxin, a highly-toxic and cancer-causing chemical. Simpson Timber agreed to clean up the contamination and allocate \$500,000 for restoration projects to offset the environmental damage caused by the toxic pollution.

### CENTRAL VALLEY

In 2012, the California Sportfishing Protection Alliance settled a lawsuit against Sacramento County and the Sacramento Area Sewer District, resulting in a \$350,000 award to the Rose Foundation to fund environmental projects benefiting the Sacramento-San Joaquin River Delta, including restoration of Sierra Nevada tributaries.



© John Hart, The Union



© Santa Ana Watershed Project Authority

### INLAND EMPIRE

From 2005 to 2018, Inland Empire Waterkeeper generated \$290,000 in funds from local pollution lawsuits for environmental projects, including restoring native fish in Temescal Creek and developing a recreation map for visitors to the Santa Ana River.



© San Diego Coastkeeper

### SAN DIEGO

In 2014, successive Clean Water Act settlement agreements led to a multi-benefit Cooperative Agreement between the City of San Diego and four environmental groups requiring the City of San Diego to implement a large-scale water recycling project to produce at least 83 million gallons per day of clean, pure drinking water for San Diego residents by 2035.





## Turning Industrial Polluters into Environmental Stewards

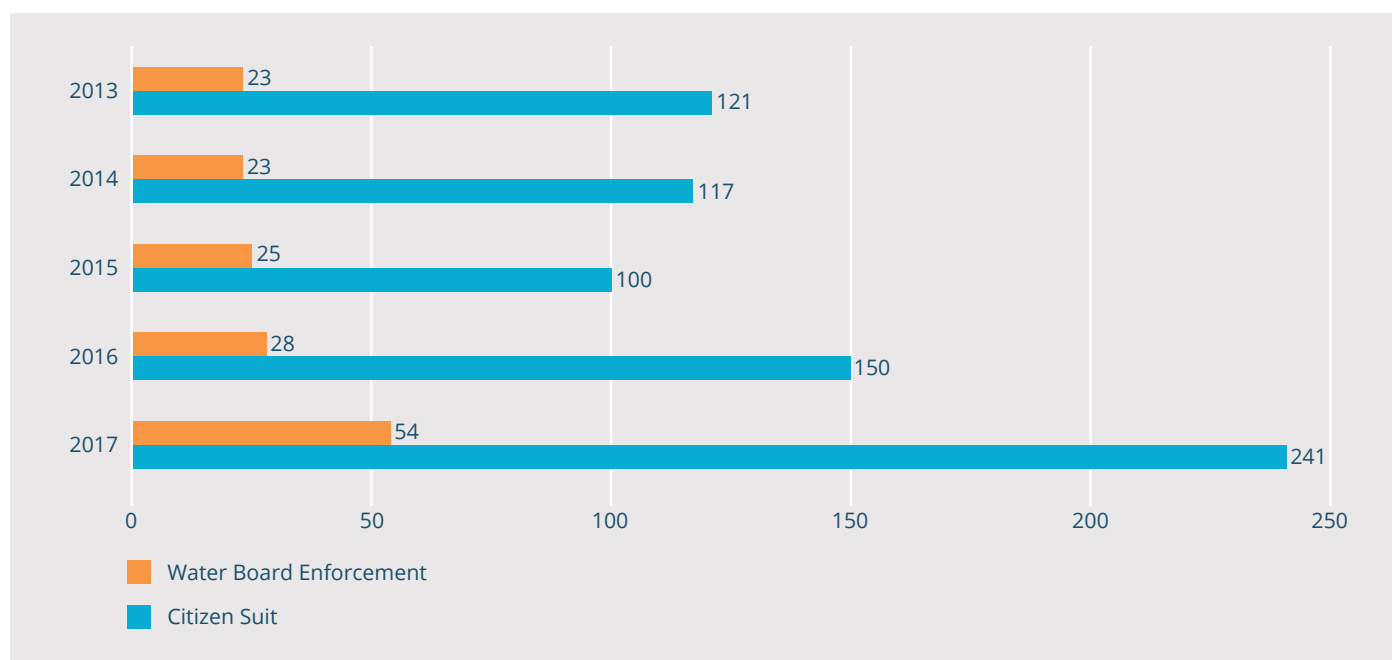
Thanks to a citizen lawsuit, SA Recycling became a leader in the metals recycling industry, converting its Terminal Island site to a zero-discharge facility.

## THE U.S. EPA AND CALIFORNIA RELY ON CITIZEN LAWSUITS TO ENFORCE CLEAN WATER LAWS AND DETER POLLUTERS.

Citizen lawsuits supplement enforcement efforts by federal and state agencies, which do not have the resources to enforce all violations of the Clean Water Act. A recent study of national citizen lawsuits concluded that the “large number of citizen suits filed—and the relatively high success rate of those suits—indicates that the suits are serving their intended purpose of enforcing the law where the government has either failed or opted not to enforce.”<sup>11</sup> Citizen lawsuits continue to be an important part of Clean Water Act enforcement. In 2016, for example, most of the reported Clean Water Act cases were citizen lawsuits. Of the 79 Clean Water Act reported decisions issued by the federal courts in 2016, 50 were brought by environmental citizen groups, while only 10 were brought by the United States.

Citizen groups are averaging more enforcement cases in just California than the U.S. EPA is averaging for the entire nation.<sup>12</sup> The California statistics are similar to the national statistics and indicate that, without citizen lawsuits, the vast majority of Clean Water Act violations would go unaddressed. In California, citizen lawsuits comprise approximately 83% of stormwater penalty enforcement cases. Thus, State and Regional Boards rely heavily on citizen lawsuits to bring the majority of enforcement actions to achieve the goals of the Clean Water Act in California.<sup>13</sup> Between 2013 and 2017, the Regional Water Boards brought 153 penalty actions for stormwater violations compared to the 729 citizen stormwater lawsuits during this same five-year period.

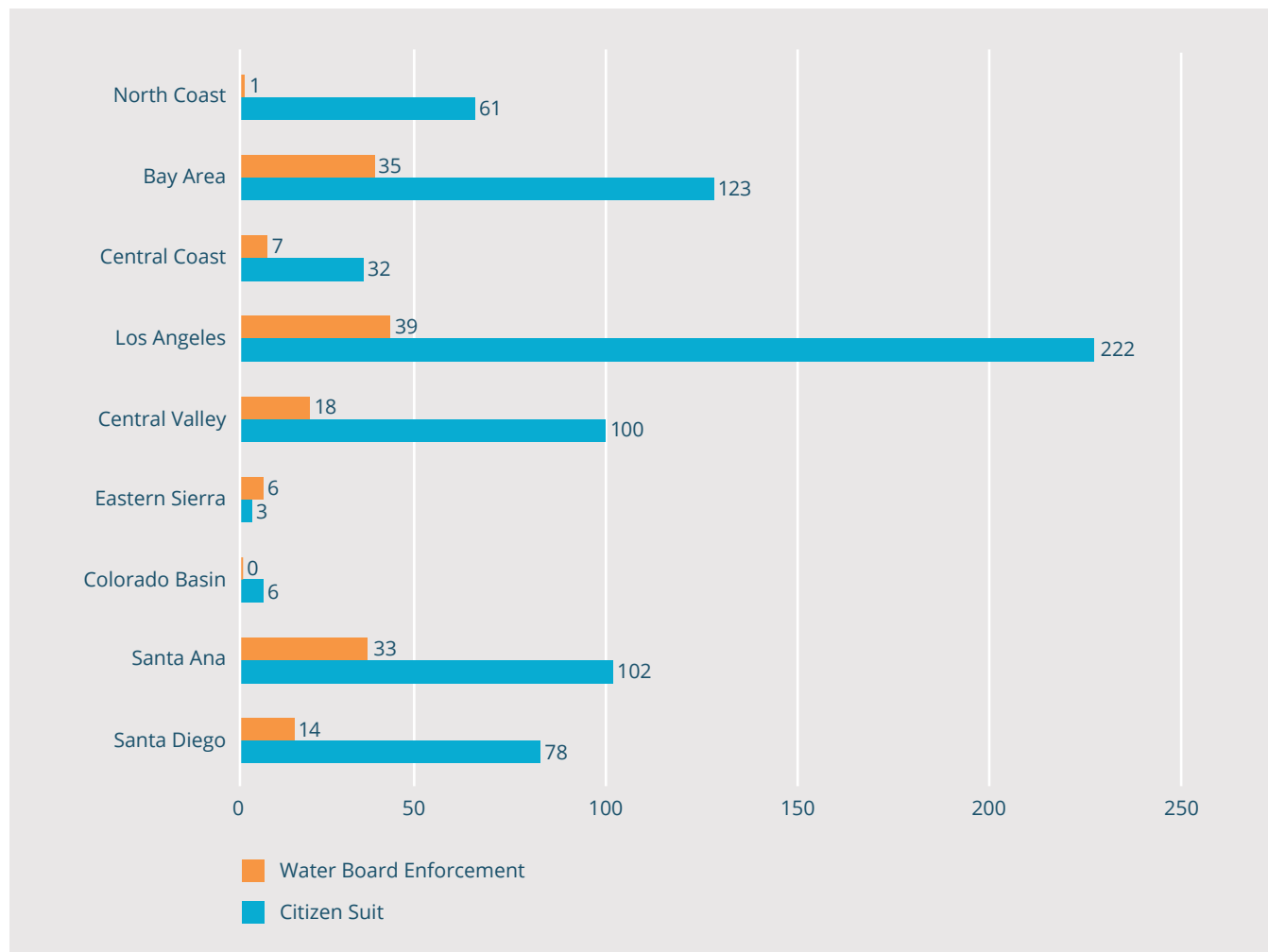
### California Stormwater Penalty Actions (2013 – 2017)





Citizen lawsuits to enforce the Clean Water Act are prevalent in most areas of the state. The notable exceptions to this are in the Eastern Sierra and the Colorado Basin regions, where less than ten citizen clean water enforcement cases have been filed in recent years. However, in urban areas of the state, such as Los Angeles, the Bay Area, Santa Ana and San Diego, there have been more than one hundred clean water enforcement cases annually on average, demonstrating the great need for citizen lawsuits and the prevalence of non-compliance.

### California Stormwater Penalty Actions by Region (2013 – 2017)



**Citizen groups are averaging more enforcement cases in California than the U.S. EPA is averaging for the entire nation.**

“[the] large number of citizen suits filed—and the relatively high success rate of those suits—indicates that the suits are serving their intended purpose of enforcing the law where the government has either failed or opted not to enforce.”

## FOOTNOTES

- 1 In June 2017, Fairbank, Maslin, Maullin, Metz & Associates completed a survey of registered voters to assess opinions of a proposal to preserve the citizen suit provision in the Clean Water Act in California state law should it be repealed by Congress.
- 2 This statement was derived from a Freedom of Information Act request submitted to the Department of Justice in January 2017, requesting CWA section 505 cases from 2007 to 2016. Using data from 2010 to 2016, an average of 36 citizen lawsuits were filed in California annually compared to the U.S. EPA's 32 Clean Water Act lawsuits filed on average per year.
- 3 These figures were derived from citizen suit data populated into the State Water Resource Control Board's Office of Enforcement list of all citizen suits filed in California under the Clean Water Act since 2013.
- 4 This number was derived from a Freedom of Information Act request submitted to the Department of Justice in January 2017, requesting CWA section 505 cases from 2007 to 2016. The number assumes that complaints with a consent decree but not closed by the DOJ were not accepted.
- 5 See State Water Resources Control Board, Staff Report: 2014 and 2016 California Integrated Report Clean Water Act Sections 303(d) and 305(b), (October 3, 2017); available at [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/docs/final\\_staff\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/final_staff_report.pdf).
- 6 Mark Ryan, Clean Water Act Citizen Suits: What the Numbers Tell Us, Natural Resources & Environment Volume 32, Number 2, pg. 2 (Fall 2017).
- 7 20 actions out of 2,524; available at [https://www.waterboards.ca.gov/about\\_us/performance\\_report\\_1617/enforce/31240\\_enf\\_response.shtml](https://www.waterboards.ca.gov/about_us/performance_report_1617/enforce/31240_enf_response.shtml).
- 8 12 actions out of 2,524. [https://www.waterboards.ca.gov/about\\_us/performance\\_report\\_1617/enforce/31240\\_enf\\_response.shtml](https://www.waterboards.ca.gov/about_us/performance_report_1617/enforce/31240_enf_response.shtml).
- 9 1,668 actions out of 2,524. [https://www.waterboards.ca.gov/about\\_us/performance\\_report\\_1617/enforce/31240\\_enf\\_response.shtml](https://www.waterboards.ca.gov/about_us/performance_report_1617/enforce/31240_enf_response.shtml).
- 10 These figures were derived from citizen suit data populated into the State Water Resource Control Board's Office of Enforcement list of all citizen suits filed in California under the Clean Water Act since 2013.
- 11 Supra note 6, at 3.
- 12 From 2010 – 2016, on average, 36 California citizen lawsuits complaints were filed compared to the U.S. EPA's 32 per year average for the entire country. The data in this next section were derived from a Freedom of Information Act request submitted to the Department of Justice in January 2017, requesting CWA section 505 cases from 2007 to 2016.
- 13 The data analyzed was derived from the State Water Resource Control Board's annual Performance Report, fiscal years 2013-2017.

# CITIZEN LAWSUITS PROTECT CLEAN WATER FOR ALL CALIFORNIANS



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