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SUPREME COURT OF THE UNITED STATES

No. 92-1911

PUD NO. 1 OF JEFFERSON COUNTY AND CITY OF
TACOMA, PETITIONERS *v.* WASHINGTON
DEPARTMENT OF ECOLOGY ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASH-
INGTON

[May 31, 1994]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioners, a city and a local utility district, want to build a hydroelectric project on the Dosewallips River in Washington State. We must decide whether respondent, the state environmental agency, properly conditioned a permit for the project on the maintenance of specific minimum stream flows to protect salmon and steelhead runs.

I

This case involves the complex statutory and regulatory scheme that governs our Nation's waters, a scheme which implicates both federal and state administrative responsibilities. The Federal Water Pollution Control Act, commonly known as the Clean Water Act, 86 Stat. 816, as amended, 33 U. S. C. §1251 *et seq.*, is a comprehensive water quality statute designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." §1251(a). The Act also seeks to attain "water quality which provides for the protection and propagation of fish, shellfish, and wildlife." §1251(a)(2).

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To achieve these ambitious goals, the Clean Water Act establishes distinct roles for the Federal and State Governments. Under the Act, the Administrator of the Environmental Protection Agency is required, among other things, to establish and enforce technology-based limitations on individual discharges into the country's navigable waters from point sources. See §§1311, 1314. Section 303 of the Act also requires each State, subject to federal approval, to institute comprehensive water quality standards establishing water quality goals for all intrastate waters. §§1311(b)(1)(C), 1313. These state water quality standards provide “a supplementary basis . . . so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.” *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205, n. 12 (1976).

A state water quality standard “shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.” 33 U. S. C. §1313(c)(2)(A). In setting standards, the State must comply with the following broad requirements:

“Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational [and other purposes.]” *Ibid.*

See also §1251(a)(2).

A 1987 amendment to the Clean Water Act makes clear that §303 also contains an “antidegradation policy”—that is, a policy requiring that state standards be sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation. Specifically, the Act permits the revision

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of certain effluent limitations or water quality standards “only if such revision is subject to and consistent with the antidegradation policy established under this section.” §1313(d)(4)(B). Accordingly, EPA's regulations implementing the Act require that state water quality standards include “a statewide antidegradation policy” to ensure that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 CFR §131.12 (1992). At a minimum, state water quality standards must satisfy these conditions. The Act also allows States to impose more stringent water quality controls. See 33 U. S. C. §§1311(b)(1)(C), 1370. See also 40 CFR 131.4(a) (“As recognized by section 510 of the Clean Water Act [33 U. S. C. §1370], States may develop water quality standards more stringent than required by this regulation”).

The State of Washington has adopted comprehensive water quality standards intended to regulate all of the State's navigable waters. See Washington Administrative Code (WAC) 173-201-010 to 173-201-120 (1990). The State created an inventory of all the State's waters, and divided the waters into five classes. 173-201-045. Each individual fresh surface water of the State is placed into one of these classes. 173-201-080. The Dosewallips River is classified AA, extraordinary. 173-201-080(32). The water quality standard for Class AA waters is set forth at 173-201-045(1). The standard identifies the designated uses of Class AA waters as well as the criteria applicable to such waters.¹

¹WAC 173-201-045(1) provides in pertinent part:

(1) **Class AA (extraordinary).**

(a) General characteristic. Water quality of this class shall markedly and uniformly exceed the requirements for all or substantially all uses.

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In addition to these specific standards applicable to Class AA waters, the State has adopted a statewide antidegradation policy. That policy provides:

“(a) Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses will be allowed.

“(b) No degradation will be allowed of waters

(b) Characteristic uses. Characteristic uses shall include, but not be limited to, the following:

(i) Water supply (domestic, industrial, agricultural).

(ii) Stock watering.

(iii) Fish and shellfish:

Salmonid migration, rearing, spawning, and harvesting.

Other fish migration, rearing, spawning, and harvesting. . . .

(iv) Wildlife habitat.

(v) Recreation (primary contact recreation, sport fishing, boating, and aesthetic enjoyment).

(vi) Commerce and navigation.

(c) Water quality criteria

(i) Fecal coliform organisms.

(A) Freshwater - fecal coliform organisms shall not exceed a geometric mean value of 50 organisms/100 mL, with not more than 10 percent of samples exceeding 100 organisms/100mL.

(B) Marine water - fecal coliform organisms shall not exceed a geometric mean value of 14 organisms/100 mL, with not more than 10 percent of samples exceeding 43 organisms/100 mL.

(ii) Dissolved oxygen [shall exceed specific amounts].

(iii) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(vi) Temperature shall not exceed [certain levels].

(v) pH shall be within [a specified range].

(vi) Turbidity shall not exceed [specific levels].

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lying in national parks, national recreation areas, national wildlife refuges, national scenic rivers, and other areas of national ecological importance.

“(f) In no case, will any degradation of water quality be allowed if this degradation interferes with or becomes injurious to existing water uses and causes long-term and irreparable harm to the environment. 173-201-035(8).

As required by the Act, EPA reviewed and approved the State's water quality standards. See 33 U. S. C. §1313(c)(3); 42 Fed. Reg. 56792 (1977). Upon approval by EPA, the state standard became “the water quality standard for the applicable waters of that State.” 33 U. S. C. §1313(c)(3).

States are responsible for enforcing water quality standards on intrastate waters. 33 U. S. C. §1319(a). In addition to these primary enforcement responsibilities, §401 of the Act requires States to provide a water quality certification before a federal license or permit can be issued for activities that may result in any discharge into intrastate navigable waters. 33 U. S. C. §1341. Specifically, §401 requires an applicant for a federal license or permit to conduct any activity “which may result in any discharge into the navigable waters” to obtain from the state a certification “that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.” 33 U. S. C.

(vii) Toxic, radioactive, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(viii) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

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§1341(a). Section 401(d) further provides that “[a]ny certification . . . shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant . . . will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title . . . and with any other appropriate requirement of State law set forth in such certification.” 33 U. S. C. §1341(d). The limitations included in the certification become a condition on any Federal license. *Ibid.*²

²Section 401 provides in relevant part:

“(a) Compliance with applicable requirements; application; procedures; license suspension

“(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State . . . that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.

“(d) Limitations and monitoring requirements of certification

“Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a

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II

Petitioners propose to build the Elkhorn Hydroelectric Project on the Dosewallips River. If constructed as presently planned, the facility would be located just outside the Olympic National Park on federally owned land within the Olympic National Forest. The project would divert water from a 1.2-mile reach of the River (the bypass reach), run the water through turbines to generate electricity and then return the water to the River below the bypass reach. Under the Federal Power Act (FPA), 41 Stat. 1063, as amended, 16 U. S. C. §791 *et seq.*, the Federal Energy Regulatory Commission has authority to license new hydroelectric facilities. As a result, the petitioners must get a FERC license to build or operate the Elkhorn Project. Because a federal license is required, and because the project may result in discharges into the Dosewallips River, petitioners are also required to obtain State certification of the project pursuant to §401 of the Clean Water Act, 33 U. S. C. §1341.

The water flow in the bypass reach, which is currently undiminished by appropriation, ranges seasonally between 149 and 738 cubic feet per second (cfs). The Dosewallips supports two species of salmon, Coho and Chinook, as well as Steelhead trout. As originally proposed, the project was to include a diversion dam which would completely block the river and channel approximately 75% of the River's water into a tunnel alongside the streambed. About 25% of the water would remain in the bypass reach, but would be returned to the original riverbed through sluice gates or a fish ladder. Depending on the season, this would leave a residual minimum flow of between 65 and 155 cfs in the River. Respondent

condition on any Federal license or permit subject to the provisions of this section." 33 U. S. C. §1341.

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undertook a study to determine the minimum stream flows necessary to protect the salmon and steelhead fisheries in the bypass reach. On June 11, 1986, respondent issued a §401 water quality certification imposing a variety of conditions on the project, including a minimum stream-flow requirement of between 100 and 200 cfs depending on the season.

A state administrative appeals board determined that the minimum flow requirement was intended to enhance, not merely maintain, the fishery, and that the certification condition therefore exceeded respondent's authority under state law. App. to Pet. for Cert. 55a—57a. On appeal, the state Superior Court concluded that respondent could require compliance with the minimum flow conditions. *Id.*, at 29a-45a. The Superior Court also found that respondent had imposed the minimum flow requirement to protect and preserve the fishery, not to improve it, and that this requirement was authorized by state law. *Id.*, at 34a.

The Washington Supreme Court held that the antidegradation provisions of the State's water quality standards require the imposition of minimum stream flows. 121 Wash. 2d 179, 186-187, 849 P.2d 646, 650 (1993). The court also found that § 401(d), which allows States to impose conditions based upon several enumerated sections of the Clean Water Act and "any other appropriate requirement of State law," 33 U. S. C. §1341(d), authorized the stream flow condition. Relying on this language and the broad purposes of the Clean Water Act, the court concluded that §401(d) confers on States power to "consider all state action related to water quality in imposing conditions on section 401 certificates." 121 Wash. 2d, at 192, 849 P.2d, at 652. We granted certiorari, 510 U. S. — (1993), to resolve a conflict among the state courts of last resort. See 121 Wash. 2d 179, 849 P. 2d 646 (1993); *Georgia Pacific Corp. v. Dept. of Environmental Conservation*, 628 A. 2d 944 (1992)

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(table); *Power Authority of New York v. Williams*, 60
N.Y. 2d 315, 457 N. E. 2d 726 (1983). We now affirm.

III

The principal dispute in this case concerns whether the minimum stream flow requirement that the State imposed on the Elkhorn project is a permissible condition of a §401 certification under the Clean Water Act. To resolve this dispute we must first determine the scope of the State's authority under §401. We must then determine whether the limitation at issue here, the requirement that petitioners maintain minimum stream flows, falls within the scope of that authority.

A

There is no dispute that petitioners were required to obtain a certification from the State pursuant to §401. Petitioners concede that, at a minimum, the project will result in two possible discharges—the release of dredged and fill material during the construction of the project, and the discharge of water at the end of the tailrace after the water has been used to generate electricity. Brief for Petitioners 27-28. Petitioners contend, however, that the minimum stream flow requirement imposed by the State was unrelated to these specific discharges, and that as a consequence, the State lacked the authority under §401 to condition its certification on maintenance of stream flows sufficient to protect the Dosewallips fishery.

If §401 consisted solely of subsection (a), which refers to a state certification that a “discharge” will comply with certain provisions of the Act, petitioners' assessment of the scope of the State's certification authority would have considerable force. Section 401, however, also contains subsection (d), which expands the State's authority to impose conditions on the certification of a project. Section 401(d) provides that any certification shall set forth “any effluent

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limitations and other limitations . . . necessary to assure that *any applicant* will comply with various provisions of the Act and appropriate state law requirements. 33 U.S.C. §1341(d) (emphasis added). The language of this subsection contradicts petitioners' claim that the State may only impose water quality limitations specifically tied to a "discharge." The text refers to the compliance of the applicant, not the discharge. Section 401(d) thus allows the State to impose "other limitations" on the project in general to assure compliance with various provisions of the Clean Water Act and with "any other appropriate requirement of State law." Although the dissent asserts that this interpretation of §401(d) renders §401(a)(1) superfluous, *infra*, at 4, we see no such anomaly. Section 401(a)(1) identifies the category of activities subject to certification - namely those with discharges. And §401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.

Our view of the statute is consistent with EPA's regulations implementing §401. The regulations expressly interpret §401 as requiring the State to find that "there is a reasonable assurance that the *activity* will be conducted in a manner which will not violate applicable water quality standards." 40 CFR §121.2(a)(3) (1992) (emphasis added). See also EPA, Wetlands and 401 Certification 23 (Apr. 1989) ("In 401(d), the Congress has given the States the authority to place any conditions on a water quality certification that are necessary to assure that the applicant will comply with effluent limitations, water quality standards, . . . and with any other appropriate requirement of State law."). EPA's conclusion that *activities*-not merely discharges-must comply with state water quality standards is a reasonable interpretation of §401, and is entitled to

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deference. See, e.g., *Arkansas v. Oklahoma*, 503 U. S. —, — (1992) (slip op., at 18-19); *Chevron U. S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984).

Although §401(d) authorizes the State to place restrictions on the activity as a whole, that authority is not unbounded. The State can only ensure that the project complies with “any applicable effluent limitations and other limitations, under [33 U. S. C. §§1311, 1312]” or certain other provisions of the Act, “and with any other appropriate requirement of State law.” 33 U. S. C. §1341(d). The State asserts that the minimum stream flow requirement was imposed to ensure compliance with the state water quality standards adopted pursuant to §303 of the Clean Water Act, 33 U. S. C. §1313.

We agree with the State that ensuring compliance with §303 is a proper function of the §401 certification. Although §303 is not one of the statutory provisions listed in §401(d), the statute allows states to impose limitations to ensure compliance with §301 of the Act, 33 U. S. C. §1311. Section 301 in turn incorporates §303 by reference. See 33 U. S. C. §1311(b)(1)(C); see also H. R. Conf. Rep. No. 95-830, p. 96 (1977) (“Section 303 is always included by reference where section 301 is listed”). As a consequence, state water quality standards adopted pursuant to §303 are among the “other limitations” with which a State may ensure compliance through the §401 certification process. This interpretation is consistent with EPA's view of the statute. See 40 CFR §121.2(a)(3) (1992); EPA, *Wetlands and 401 Certification*, *supra*. Moreover, limitations to assure compliance with state water quality standards are also permitted by §401(d)'s reference to “any other appropriate requirement of State law.” We do not speculate on what additional state laws, if any, might be incorporated by this

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language.³ But at a minimum, limitations imposed pursuant to state water quality standards adopted pursuant to §303 are “appropriate” requirements of state law. Indeed, petitioners appear to agree that the State’s authority under §401 includes limitations designed to ensure compliance with state water quality standards. Brief for Petitioners 9, 21.

B

Having concluded that, pursuant to §401, States may condition certification upon any limitations necessary to ensure compliance with state water quality standards or any other “appropriate requirement of State law,” we consider whether the minimum flow condition is such a limitation. Under §303, state water quality standards must “consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.” 33 U. S. C. §1313(c)(2)(A). In imposing the minimum stream flow requirement, the State determined that construction and operation of the project as planned would be inconsistent with one of the designated uses of Class AA water, namely

³The dissent asserts that §301 is concerned solely with discharges, not broader water quality standards. *Infra*, 8 n. 2. Although §301 does make certain discharges unlawful, see 33 U. S. C. §1311(a), it also contains a broad enabling provision which requires states to take certain actions, to wit: “In order to carry out the objective of this chapter [*viz.* the chemical, physical, and biological integrity of the Nation’s water] there shall be achieved . . . not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards . . . established pursuant to any State law or regulations.” 33 U. S. C. §1311(b)(1)(C). This provision of §301 expressly refers to state water quality standards, and is not limited to discharges.

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“[s]almonid [and other fish] migration, rearing, spawning, and harvesting.” App. to Pet. for Cert. 83a--84a. The designated use of the River as a fish habitat directly reflects the Clean Water Act's goal of maintaining the “chemical, physical, and biological integrity of the Nation's waters.” 33 U. S. C. §1251(a). Indeed, the Act defines pollution as “the man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.” §1362(19). Moreover, the Act expressly requires that, in adopting water quality standards, the State must take into consideration the use of waters for “propagation of fish and wildlife.” 33 U. S. C. §1313(c)(2)(A).

Petitioners assert, however, that §303 requires the State to protect designated uses solely through implementation of specific “criteria.” According to petitioners, the State may not require them to operate their dam in a manner consistent with a designated “use”; instead, say petitioners, under §303 the State may only require that the project comply with specific numerical “criteria.”

We disagree with petitioners' interpretation of the language of §303(c)(2)(A). Under the statute, a water quality standard must “consist of the designated uses of the navigable waters involved *and* the water quality criteria for such waters based upon such uses.” 33 U. S. C. §1313(c)(2)(A) (emphasis added). The text makes it plain that water quality standards contain two components. We think the language of §303 is most naturally read to require that a project be consistent with *both* components, namely the designated use *and* the water quality criteria. Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.

Consequently, pursuant to §401(d) the State may require that a permit applicant comply with both the

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designated uses and the water quality criteria of the state standards. In granting certification pursuant to §401(d), the State “shall set forth any . . . limitations . . . necessary to assure that [the applicant] will comply with any . . . limitations under [§303] . . . and with any other appropriate requirement of State law.” A certification requirement that an applicant operate the project consistently with state water quality standards—*i.e.*, consistently with the designated uses of the water body and the water quality criteria—is both a “limitation” to assure “compliance with . . . limitations” imposed under §303, and an “appropriate” requirement of State law.

EPA has not interpreted §303 to require the States to protect designated uses exclusively through enforcement of numerical criteria. In its regulations governing state water quality standards, EPA defines criteria as “*elements* of State water quality standards expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.” §40 CFR 131.3(b) (1992)(emphasis added). The regulations further provide that “[w]hen criteria are met, water quality will *generally* protect the designated use.” *Ibid.* (emphasis added). Thus, the EPA regulations implicitly recognize that in some circumstances, criteria alone are insufficient to protect a designated use.

Petitioners also appear to argue that use requirements are too open-ended, and that the Act only contemplates enforcement of the more specific and objective “criteria.” But this argument is belied by the open-ended nature of the criteria themselves. As the Solicitor General points out, even “criteria” are often expressed in broad, narrative terms, such as “there shall be no discharge of toxic pollutants in toxic amounts.” Brief for United States 18. See *American Paper Institute, Inc. v. EPA*, 996 F. 2d 346, 349 (CADC 1993). In fact, under the Clean Water Act,

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only one class of criteria, those governing “toxic pollutants listed pursuant to section 1317(a)(1)” need be rendered in numerical form. See 33 U. S. C. §1313(c)(2)(B); 40 CFR §131.11(b)(2) (1992).

Washington's Class AA water quality standards are typical in that they contain several open-ended criteria which, like the use designation of the River as a fishery, must be translated into specific limitations for individual projects. For example, the standards state that “[t]oxic, radioactive, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.” WAC 173-201-045(c)(vii). Similarly, the state standards specify that “[a]esthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.” 173-201-045(c)(viii). We think petitioners' attempt to distinguish between uses and criteria loses much of its force in light of the fact that the Act permits enforcement of broad, narrative criteria based on, for example, “aesthetics.”

Petitioners further argue that enforcement of water quality standards through use designations renders the water quality criteria component of the standards irrelevant. We see no anomaly, however, in the State's reliance on both use designations and criteria to protect water quality. The specific numerical limitations embodied in the criteria are a convenient enforcement mechanism for identifying minimum water conditions which will generally achieve the requisite water quality. And, in most circumstances, satisfying the criteria will, as EPA recognizes, be sufficient to maintain the designated use. See 40 CFR §131.3(b) (1992). Water quality standards, however, apply to an entire class of water, a class which contains numerous individual water bodies. For example, in the State of Washington, the Class AA

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water quality standard applies to 81 specified fresh surface waters, as well as to all “surface waters lying within the mountainous regions of the state assigned to national parks, national forests, and/or wilderness areas,” all “lakes and their feeder streams within the state,” and all “unclassified surface waters that are tributaries to Class AA waters.” WAC 173-201-070. While enforcement of criteria will in general protect the uses of these diverse waters, a complementary requirement that activities also comport with designated uses enables the States to ensure that each activity—even if not foreseen by the criteria—will be consistent with the specific uses and attributes of a particular body of water.

Under petitioners' interpretation of the statute, however, if a particular criterion, such as turbidity, were missing from the list contained in an individual state water quality standard, or even if an existing turbidity criterion were insufficient to protect a particular species of fish in a particular river, the State would nonetheless be forced to allow activities inconsistent with the existing or designated uses. We think petitioners' reading leads to an unreasonable interpretation of the Act. The criteria components of state water quality standards attempt to identify, for all the water bodies in a given class, water quality requirements generally sufficient to protect designated uses. These criteria, however, cannot reasonably be expected to anticipate all the water quality issues arising from every activity which can affect the State's hundreds of individual water bodies. Requiring the States to enforce only the criteria component of their water quality standards would in essence require the States to study to a level of great specificity each individual surface water to ensure that the criteria applicable to that water are sufficiently detailed and individualized to fully protect the water's designated uses. Given that there is no textual support for imposing this requirement, we are

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loath to attribute to Congress an intent to impose this heavy regulatory burden on the States.

The State also justified its minimum stream flow as necessary to implement the “antidegradation policy” of §303, 33 U. S. C. §1313(d)(4)(B). When the Clean Water Act was enacted in 1972, the water quality standards of all 50 States had antidegradation provisions. These provisions were required by federal law. See U. S. Dept. of Interior, Federal Water Pollution Control Administration, Compendium of Department of Interior Statements on Non-degradation of Interstate Waters 1-2 (Aug. 1968); see also Hines, A Decade of Nondegradation Policy in Congress and the Courts: The Erratic Pursuit of Clean Air and Clean Water, 62 Iowa L. Rev. 643, 658-660 (1977). By providing in 1972 that existing state water quality standards would remain in force until revised, the Clean Water Act ensured that the States would continue their antidegradation programs. See 33 U. S. C. §1313(a). EPA has consistently required that revised state standards incorporate an antidegradation policy. And, in 1987, Congress explicitly recognized the existence of an “antidegradation policy established under [§303].” §1313(d)(4)(B).

EPA has promulgated regulations implementing §303's antidegradation policy, a phrase that is not defined elsewhere in the Act. These regulations require States to “develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy.” 40 CFR §131.12 (1992). These “implementation methods shall, at a minimum, be consistent with the . . . [e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” *Ibid.* EPA has explained that under its anti-degradation regulation, “no activity is allowable . . . which could partially or completely eliminate any existing use.” EPA, *Questions and*

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Answers re: Antidegradation 3 (1985). Thus, States must implement their antidegradation policy in a manner “consistent” with existing uses of the stream. The State of Washington's antidegradation policy in turn provides that “[e]xisting beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses will be allowed.” WAC 173-201-035(8)(a). The State concluded that the reduced streamflows would have just the effect prohibited by this policy. The Solicitor General, representing EPA, asserts, Brief for United States 18-21, and we agree, that the State's minimum stream flow condition is a proper application of the state and federal antidegradation regulations, as it ensures that an “existing instream water us[e]” will be “maintained and protected.” 40 CFR §131.12(a)(1) (1992).

Petitioners also assert more generally that the Clean Water Act is only concerned with water “quality,” and does not allow the regulation of water “quantity.” This is an artificial distinction. In many cases, water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation or, as here, as a fishery. In any event, there is recognition in the Clean Water Act itself that reduced stream flow, *i.e.*, diminishment of water quantity, can constitute water pollution. First, the Act's definition of pollution as “the man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water” encompasses the effects of reduced water quantity. 33 U.S.C. §1362(19). This broad conception of pollution—one which expressly evinces Congress' concern with the physical and biological integrity of water—refutes petitioners' assertion that the Act draws a sharp distinction between the regulation of water “quantity” and water “quality.” Moreover, §304 of the Act

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expressly recognizes that water “pollution” may result from “changes in the movement, flow, or circulation of any navigable waters . . . including changes caused by the construction of dams.” 33 U.S.C. §1314(f). This concern with the flowage effects of dams and other diversions is also embodied in the EPA regulations, which expressly require existing dams to be operated to attain designated uses. 40 CFR §131.10(g)(4).

Petitioners assert that two other provisions of the Clean Water Act, §§101(g) and 510(2), 33 U.S.C. §§1251(g) and 1370(2), exclude the regulation of water quantity from the coverage of the Act. Section 101(g) provides “that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter.” 33 U.S.C. §1251(g). Similarly, §510(2) provides that nothing in the Act shall “be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters . . . of such States.” 33 U.S.C. §1370. In petitioners' view, these provisions exclude “water quantity issues from direct regulation under the federally controlled water quality standards authorized in §303.” Brief for Petitioners 39 (emphasis omitted).

This language gives the States authority to allocate water rights; we therefore find it peculiar that petitioners argue that it prevents the State from regulating stream flow. In any event, we read these provisions more narrowly than petitioners. Sections 101(g) and 510(2) preserve the authority of each State to allocate water quantity as between users; they do not limit the scope of water pollution controls that may be imposed on users who have obtained, pursuant to state law, a water allocation. In *California v. FERC*, 495 U.S. 490, 498 (1990), construing an analogous provision of the Federal

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Power Act,⁴ we explained that “minimum stream flow requirements neither reflect nor establish ‘proprietary rights’” to water. Cf. *First Iowa Hydro-Electric Cooperative v. FPC*, 328 U. S. 152, 176, and n. 20 (1946). Moreover, the certification itself does not purport to determine petitioners’ proprietary right to the water of the Dosewallips. In fact, the certification expressly states that a “State Water Right Permit (Chapters 90.03.250 RCW and 508-12 WAC) must be obtained prior to commencing construction of the project.” App. to Pet. for Cert. 83a. The certification merely determines the nature of the use to which that proprietary right may be put under the Clean Water Act, if and when it is obtained from the State. Our view is reinforced by the legislative history of the 1977 amendment to the Clean Water Act adding §101(g). See 3 Legislative History of the Clean Water Act of 1977 (Committee Print compiled for the Committee on Environment and Public Works by the Library of Congress), Ser. No. 95-14, p. 532 (1978) (“The requirements [of the Act] may incidentally affect individual water rights. . . . It is not the purpose of this amendment to prohibit those incidental effects. It is the purpose of this amendment to insure that State allocation systems are not subverted, and that effects on individual rights, if any, are prompted by legitimate and necessary water quality considerations”).

IV

⁴The relevant text of the Federal Power Act provides: “That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.” 41 Stat. 1077, 16 U. S. C. §821.

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Petitioners contend that we should limit the State's authority to impose minimum flow requirements because FERC has comprehensive authority to license hydroelectric projects pursuant to the FPA, 16 U. S. C. §791a *et seq.* In petitioners' view, the minimum flow requirement imposed here interferes with FERC's authority under the FPA.

The FPA empowers FERC to issue licenses for projects "necessary or convenient . . . for the development, transmission, and utilization of power across, along, from, or in any of the streams . . . over which Congress has jurisdiction." §797(e). The FPA also requires FERC to consider a project's effect on fish and wildlife. §§797(e), 803(a)(1). In *California v. FERC, supra*, we held that the California Water Resources Control Board, acting pursuant to state law, could not impose a minimum stream flow which conflicted with minimum stream flows contained in a FERC license. We concluded that the FPA did not "save" to the States this authority. *Id.*, at 498.

No such conflict with any FERC licensing activity is presented here. FERC has not yet acted on petitioners' license application, and it is possible that FERC will eventually deny petitioners' application altogether. Alternatively, it is quite possible, given that FERC is required to give equal consideration to the protection of fish habitat when deciding whether to issue a license, that any FERC license would contain the same conditions as the State §401 certification. Indeed, at oral argument the Solicitor General stated that both EPA and FERC were represented in this proceeding, and that the Government has no objection to the stream flow condition contained in the §401 certification. Tr. of Oral Arg. 43-44.

Finally, the requirement for a state certification applies not only to applications for licenses from FERC, but to all federal licenses and permits for activities which may result in a discharge into the

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Nation's navigable waters. For example, a permit from the Army Corps of Engineers is required for the installation of any structure in the navigable waters which may interfere with navigation, including piers, docks, and ramps. Rivers and Harbors Appropriation Act of 1899, 30 Stat. 1151, §10, 33 U. S. C. §403. Similarly, a permit must be obtained from the Army Corps of Engineers for the discharge of dredged or fill material, and from the Secretary of the Interior or Agriculture for the construction of reservoirs, canals and other water storage systems on federal land. See 33 U. S. C. §§1344(a), (e); 43 U. S. C. §1761 (1988 ed. and Supp. IV). We assume that a §401 certification would also be required for some licenses obtained pursuant to these statutes. Because §401's certification requirement applies to other statutes and regulatory schemes, and because any conflict with FERC's authority under the FPA is hypothetical, we are unwilling to read implied limitations into §401. If FERC issues a license containing a stream flow condition with which petitioners disagree, they may pursue judicial remedies at that time. Cf. *Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U. S. 765, 778, n. 20 (1984).

In summary, we hold that the State may include minimum stream flow requirements in a certification issued pursuant to §401 of the Clean Water Act insofar as necessary to enforce a designated use contained in a state water quality standard. The judgment of the Supreme Court of Washington, accordingly, is affirmed.

So ordered.