

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 Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**PUD NO. 1 OF JEFFERSON COUNTY ET AL. V.
WASHINGTON DEPARTMENT OF ECOLOGY ET AL.**
CERTIORARI TO THE SUPREME COURT OF WASHINGTON
No. 92-1911. Argued February 23, 1994—Decided May 31, 1994

Section 303 of the Clean Water Act requires each State, subject to federal approval, to institute comprehensive standards establishing water quality goals for all intrastate waters, and requires that such standards "consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." Under Environmental Protection Agency (EPA) regulations, the standards must also include an antidegradation policy to ensure that "[e]xisting instream water uses and the level of water quality necessary to protect [those] uses [are] maintained and protected." States are required by §401 of the Act to provide a water quality certification before a federal license or permit can be issued for any activity that may result in a discharge into intrastate navigable waters. As relevant here, the certification must "set forth any effluent limitations and other limitations . . . necessary to assure that any applicant" will comply with various provisions of the Act and "any other appropriate" state law requirement. §401(d). Under Washington's comprehensive water quality standards, characteristic uses of waters classified as Class AA include fish migration, rearing, and spawning. Petitioners, a city and a local utility district, want to build a hydroelectric project on the Dosewallips River, a Class AA water, which would reduce the water flow in the relevant part of the River to a minimal residual flow of between 65 and 155 cubic feet per second (cfs). In order to protect the River's fishery, respondent state environmental agency issued a §401 certification imposing, among other things, a minimum stream flow requirement of between 100 and 200 cfs. A state administrative appeals board ruled that the certification condition exceeded respondent's authority under state law, but the State Superior Court reversed. The State Supreme Court

affirmed, holding that the antidegradation provisions of the State's water quality standards require the imposition of minimum stream flows, and that §401 authorized the stream flow condition and conferred on States power to consider all state action related to water quality in imposing conditions on §401 certificates.

Held: Washington's minimum stream flow requirement is a permissible condition of a §401 certification. Pp. 8-21.

(a) A State may impose conditions on certifications insofar as necessary to enforce a designated use contained in the State's water quality standard. Petitioners' claim that the State may only impose water quality limitations specifically tied to a "discharge" is contradicted by §401(d)'s reference to an applicant's compliance, which allows a State to impose "other limitations" on a project. This view is consistent with EPA regulations providing that activities—not merely discharges—must comply with state water quality standards, a reasonable interpretation of §401 which is entitled to deference. State standards adopted pursuant to §303 are among the "other limitations" with which a State may ensure compliance through the §401 certification process. Although §303 is not specifically listed in §401(d), the statute allows States to impose limitations to ensure compliance with §301 of the Act, and §301 in turn incorporates §303 by reference. EPA's view supports this interpretation. Such limitations are also permitted by §401(d)'s reference to "any other appropriate" state law requirement. Pp. 8-11.

(b) Washington's requirement is a limitation necessary to enforce the designated use of the River as a fish habitat. Petitioners err in asserting that §303 requires States to protect such uses solely through implementation of specific numerical "criteria." The section's language makes it plain that water quality standards contain two components and is most naturally read to require that a project be consistent with both: the designated use and the water quality criteria. EPA has not interpreted §303 to require the States to protect designated uses exclusively through enforcement of numerical criteria. Moreover, the Act permits enforcement of broad, narrative criteria based on, for example, "aesthetics." There is no anomaly in the State's reliance on both use designations and criteria to protect water quality. Rather, it is petitioners' reading that leads to an unreasonable interpretation of the Act, since specified criteria cannot reasonably be expected to anticipate all the water quality issues arising from every activity which can affect a State's hundreds of individual water bodies. Washington's requirement also is a proper application of the state and federal antidegradation regulations, as it ensures that an existing instream water use will be "maintained and protected." Pp. 11-16.

JEFFERSON CTY. PUD v. ECOLOGY DEPT. OF WASH.

Syllabus

(c) Petitioners' assertion that the Act is only concerned with water quality, not quantity, makes an artificial distinction, since a sufficient lowering of quantity could destroy all of a river's designated uses, and since the Act recognizes that reduced stream flow can constitute water pollution. Moreover, §§101(g) and 510(2) of the Act 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. Those provisions preserve each State's authority to allocate water quantity as between users, but the §401 certification does not purport to determine petitioners' proprietary right to the River's water. In addition, the Court is unwilling to read implied limitations into §401 based on petitioners' claim that a conflict exists between the condition's imposition and the Federal Energy Regulatory Commission's authority to license hydroelectric projects under the Federal Power Act, since FERC has not yet acted on petitioners' license application and since §401's certification requirement also applies to other statutes and regulatory schemes. Pp. 16-21.

121 Wash. 2d 179, 849 P. 2d 646, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.