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Pronsolino v. Nastri, 291 F. 3d 1123 (9th Cir. 2002)

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Pronsolino v. Nastri, 291 F.3d 1123 (9th Cir. 2002) (upholding the Environmental Protection Agency's statutory interpretation of its authority to impose total maximum daily loads on waters containing only nonpoint source pollution).

Betty and Guido Pronsolino ("Pronsolinos") filed suit pursuant to sections 702 and 704 of the Administrative Procedure Act in the United States District Court for the Northern District of California. They challenged the Environmental Protection Agency's ("EPA") authority to impose total maximum daily loads ("TMDLs") on rivers only polluted by non-point sources and sought a determination of whether the Clean Water Act ("CWA") authorized the Garcia River TMDLs. The district court granted summary judgment to the EPA. The Pronsolinos appealed to the Court of Appeals for the Ninth Circuit, which affirmed the district court's grant of summary judgment.

Congress enacted the CWA in 1972. Section 303 of the CWA required each state to identify the waters within its boundaries for which the required effluent limitations are not stringent enough to establish applicable water quality standards. Section 303(d)(1)(C) required states to establish TMDLs on the waters it identified within its boundaries. In 1992, the EPA set TMDLs on the Garcia River in California pursuant to this provision of the CWA.

In 1998, the Pronsolinos and other landowner along the Garcia River applied for harvesting permits. The EPA granted the permits, but required the landowners to comply with certain restrictions, including the TMDLs previously set by the EPA. The Pronsolinos subsequently filed suit.

The EPA argued the court should defer to their interpretation of the CWA regulations based on *Chevron*, which held that an agency's statutory interpretation is entitled to such deference if "Congress delegated authority to the agency generally to make rules carrying the force of law, and. . .the agency interpretation claiming deference was promulgated in the exercise of law." The Pronsolinos did not contest the EPA's rulemaking authority, but instead argued that the EPA failed to exercise it here. The Pronsolinos argued the EPA should receive no deference because it inconsistently interpreted section 303(d). The court interjected a middle standard of deference set out in *Skidmore*, where deference was determined according to the agency's persuasiveness.

With regard to the EPA's rulemaking and interpretation of the laws, the court determined that the *Chevron* standard applied because of the delegated authority of the EPA to interpret the CWA. Even still, the court decided it should apply, at a minimum, deference under *Skidmore*. However, the court found both standards resulted in the same decision. It held the EPA's regulations of TMDLs applied regardless of how the water body received its pollution. Disagreeing

that the EPA had inconsistently interpreted the statute at issue, the court found that the EPA interpreted the statute today exactly as it did initially.

The Pronsolinos contended the EPA upset the balance of the federal and state control created by the CWA by establishing TMDLs for waters impaired only by nonpoint source pollution. The court disagreed and determined the Garcia River TMDLs served as an informational tool for the creation of the state's implementation plan, which Congress independently and explicitly requires. Thus, the court found no merit in the federalism argument.

Ultimately, the court upheld EPA's reasonable interpretation of the CWA, finding that the EPA did not exceed its statutory authority in identifying the Garcia River pursuant to section 303(d)(1)(A) and establishing the Garcia River TMDLs, even though the river was polluted only by non-point sources of pollution.

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Ka Makani 'O Kohala Ohana Inc. v. Dep't of Water Supply, 295 F.3d 955 (9th Cir. 2002) (holding the minimal economic involvement of a federal agency does not satisfy the National Environmental Policy Act's "major Federal action" requirement mandating an environmental impact statement).

Ka Makani 'O Kohala Ohana ("Ka Makani"), a citizen's coalition, filed suit in the United States District Court for the District of Hawaii requesting injunctive relief against the Hawaii Department of Water Supply ("DWS") and other federal and county agencies and officials pending the completion of a federal environmental impact statement ("EIS"). The district court granted summary judgment to the defendants, DWS. Ka Makani appealed to the Court of Appeals for the Ninth Circuit. The appellate court affirmed the district court's decision granting summary judgment to DWS.

DWS began planning the Kohala water project in 1987. The water project would transfer as much as 20 million gallons of groundwater per day from the northern part of Kohala to the southern part of Kohala. The project involved two governmental agencies, the United States Geological Survey ("USGS") and the United States Department of Housing and Urban Development ("HUD"). The USGS provided partial funding for the project and participated in a series of preliminary studies, which assessed the groundwater availability. In 1988, the DWS and the USGS entered into four Joint Funding Agreements, which divided the costs of the studies. HUD involved itself after Congress passed an appropriations bill allotting \$500,000 to the County of Hawaii for an EIS. HUD provided application materials and advice, including a recommendation restricting the scope of the activities. Narrowing the scope of the project exempted it from the