

# China-US Judicial Interpretation on “Water Pollution” in Dam- induced Water Quality Cases

Associate Professor

Southwest University of Political Science and Law

张 辉



**USAID**  
FROM THE AMERICAN PEOPLE

# ***Yu Yizhi et al. v. CNDC***

- ❖ Plaintiffs: 12 fish breeders (Yu Yizhi et al.)
- ❖ Defendant: Chongqing Navigation Development Company (CNDC)
- ❖ Facts: CNDC was the developer of Chongqing Caojie Hydropower Station located in the middle section of Jiangling River in which plaintiffs feed fish with net cage. The dam built by CNDC is at the up stream, and plaintiff's net cages were right at the down stream next to the dam about 100 miles. The dam project was about to be completed during the summer time of 2010. A heavy rainstorm suddenly invaded Jiangling River, causing catastrophic result to the plaintiffs' net cages. Bid flood submerged the whole dam, plunging down to the down stream, and killed the fish in the net cage.



# ***Plaintiffs' Complaints***

- ❖ Talked with CNDC and ask for compensation
- ❖ Sent complaints to government
- ❖ Consulted legal practitioners about  
compensation
- ❖ looked for judicial examination on fish death

# ***Defendant's Response***

- ❖ No legal basis for compensation
- ❖ Agree to give moral assistance
- ❖ Prepare an experts report on fish death

# ***Suit Commencement***

❖ Claim: Seeking for 10m RMB damages relief

❖ Jurisdiction

(1) Beibei District Court in 2010

(2) Chongqing Environmental Tribunal at Yubei

District Court in 2011

# ***Issues under dispute***

- ❖ Was it an environmental pollution case?
- ❖ Was it a Force Majeure or CNDC's wrong doing?
- ❖ If it was an environmental pollution case, would defendant be definitely liable for the damages?
- ❖ How to resolve this dispute?

# ***N.W.F. v. Gorsuch***

- ❖ Wildlife Federation and State of Missouri sought declaration that administrator of EPA violated her nondiscretionary duty by failing to regulate discharge of pollutants from dams under NPDES mandated by Clean Water Act and mandamus or injunction compelling promulgation of regulations. The United States District Court for the District of Columbia, Joyce Hens Green, issued requested declaration and order, and EPA and others appealed.
- ❖ The Court of Appeals, Wald, Circuit Judge, held that since EPA's interpretation of NPDES permit program as excluding damcaused pollution was reasonable, not inconsistent with congressional intent and entitled to great deference, it was required to be upheld.



# ***Definitions of Water Pollution***

- ❖ WPCA § 91(1): “**water pollution**” means the alteration of the chemical, physical, biological, and radiological integrities of water, which affects the effective utilization of water, and endangers human health or destroys the environment, and further deteriorates the water quality, by means of adding certain substance into the water.
- ❖ CWA § 502(19): The term “**pollution**” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- ❖ CWA § 502(12): The term “**discharge of a pollutant**” and the term “discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

# ***Comparison of Key Points***

## ❖ Primary Constituents of Water Pollution in WPCA

(1) Alteration

(2) Addition

(3) Endangerment and Deterioration

## ❖ Primary Constituents of Water Pollution in CWA

(1) Point source

(2) Pollutant

(3) Addition

(4) Alteration

# *Issues in Controversy*

- ❖ Could air dissolved in water be recognized as “pollutant”?
- ❖ Could dam-induced supersaturation constitute “discharge of a pollutant”?
- ❖ Does “discharge of a pollutant” definitely constitute “pollution”?
- ❖ Could merely rely upon “pollution” to justify the nature of the case?

# ***Disputes Resolution***

- ❖ Could the direct casual link be testified in CNDC case? Could the Force Majeure be used as the defendant's defense? Act of God.
- ❖ What's your judgments on this two cases?

# Thank you!

Hui Zhang制作并保留  
知识产权

[dominic6938@126.com](mailto:dominic6938@126.com)

