

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GULF RESTORATION NETWORK,)
LITTLE TCHEFUNCTE RIVER)
ASSOCIATION, LOUISIANA)
ENVIRONMENTAL ACTION)
NETWORK, LOUISIANA AUDUBON)
COUNCIL, and SIERRA CLUB)

Plaintiffs,)

v.)

U.S. ENVIRONMENTAL PROTECTION)
AGENCY, SCOTT PRUITT (in his)
official capacity as Administrator of the)
United States Environmental Protection)
Agency), and ANNE IDSAL (in her official)
capacity as Regional Administrator of)
Region 6 of the U.S. Environmental)
Protection Agency),)

Defendants.)

COMPLAINT

Plaintiffs Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Louisiana Audubon Council, and Sierra Club make the following allegations against Defendants U.S. Environmental Protection Agency, Scott Pruitt (in his official capacity as Administrator of the United States Environmental Protection Agency), and Anne Idsal (in her official capacity as Regional Administrator of Region 6 of the United States Environmental Protection Agency) (collectively, “EPA”).

INTRODUCTION

1. This case is about the EPA’s approval of drastically lowered levels of dissolved oxygen in thirty-one rivers, streams, creeks, bays, and bayous north and west of Lakes Pontchartrain and Maurepas and extending south and west to the Mississippi River (“affected waterbodies” or “affected waters”). To approve these nearly hypoxic standards, EPA disregarded Clean Water Act requirements that water quality criteria must protect the fish and wildlife which live in these waterbodies, relied on unsound science, and lacked a rational basis for the approval.

2. Among the affected waterbodies are portions of popular recreational waters like the Tchefuncte River, the Tickfaw River, the Amite River, the Tangipahoa River, Bayou Lacombe, Bayou Trepagnier, Cane Bayou, Bayou Labranche, Bayou Castine, Pontchatoula Creek, and Bayou Liberty.

3. The drastically lower dissolved oxygen criteria approved by EPA allows significant amounts of additional pollution – including treated sewage – to be discharged into these rivers, streams, creeks, bays, and bayous.

JURISDICTION

4. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331 (federal question jurisdiction). The case presents a federal question under the Clean Water Act § 303(c)(3), 33 U.S.C. § 1313(c)(3).

5. This Court may additionally grant relief under 28 U.S.C. § 2201 (Declaratory Judgment Act).

VENUE

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because Plaintiffs Gulf Restoration Network and the Little Tchefuncte River Association reside in the Eastern District and the action involves no real property.

7. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because “a substantial part of property that is the subject of the action is situated” in the Eastern District.

PARTIES

Plaintiffs

8. Plaintiff Gulf Restoration Network is a network of environmental, social justice, and citizens’ groups and individuals whose purpose is to restore the Gulf of Mexico to an ecologically and biologically sustainable condition and to protect and restore the resources of the Gulf Region for future generations. Gulf Restoration Network’s members live in the five Gulf states of Louisiana, Texas, Mississippi, Alabama, and Florida, and nationwide. The lower dissolved oxygen criteria injures members by permitting deterioration of the water quality, ecosystem health, aesthetic value, and fish population of the thirty-one rivers and streams that they fish, hike, and recreate in. This lawsuit is germane to the Gulf Restoration Network’s purpose.

9. Gulf Restoration Network is a “person” as defined by the Administrative Procedure Act (APA), 5 U.S.C. § 551(2).

10. Plaintiff Little Tchefuncte River Association is a not-for-profit association dedicated to the protection of the Tchefuncte River and its tributaries. The lower dissolved oxygen criteria injures members by permitting deterioration of the water quality, ecosystem health, aesthetic value, and fish population of the thirty-one waterbodies that they fish, hike, and recreate in. This lawsuit is germane to the Little Tchefuncte River Association’s purpose.

11. Little Tchefuncte River Association is a “person” as defined by the APA.

12. Plaintiff Louisiana Environmental Action Network is a non-profit corporation which serves as an umbrella organization for environmental and citizen groups. LEAN’s purpose includes preserving and protecting the state’s land, air, water, and other natural resources, and protecting its members and other residents of the state from threats caused by pollution. The lower dissolved oxygen criteria injures members by permitting deterioration of the water quality, ecosystem health, aesthetic value, and fish population of the thirty-one rivers and streams that they fish, hike, and recreate in. This lawsuit is germane to LEAN’s purpose.

13. Louisiana Environmental Action Network is a “person” as defined by the APA.

14. Louisiana Audubon Council is a non-profit corporation comprised of Audubon Chapters and National Audubon Society members. Louisiana Audubon Council is recognized as one of the leading environmental organizations in Louisiana and its purpose includes protecting and restoring habitats for birds and wildlife and furthering the conservation of land and water. The lower dissolved oxygen criteria injures members by permitting deterioration of the water quality, ecosystem health, aesthetic value, and fish population of the thirty-one rivers and streams that they fish, hike, and recreate in. This lawsuit is germane to the Louisiana Audubon Council’s purpose.

15. The Louisiana Audubon Council is a “person” as defined by the APA.

16. The Sierra Club is a national nonprofit organization with 67 chapters and more than 828,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s

concerns encompass maintaining and enhancing water quality in the nation's rivers and streams and in protecting endangered and threatened species. The Club's particular interest in this case and the issues which the case concerns stem from the water quality degradation which the revised DO criteria will allow and the risk that the revised criteria pose to endangered and threatened species in the affected waterbodies. The Delta Chapter of the Sierra Club has approximately 3,300 members in the state of Louisiana. Delta Chapter members use the waters affected by the revised criteria and are injured by the effects of the revised criteria.

17. Sierra Club is a "person" as defined by the APA.

Defendants

18. Defendant Environmental Protection Agency is an agency as defined by the Administrative Procedure Act. 5 U.S.C. § 701(b)(1).

19. EPA is responsible for review and approval of state water quality standards, pursuant to 33 U.S.C. § 1313(c)(2)(a). EPA approved the water quality standards challenged in this case ("revised dissolved oxygen criteria," "revised criteria" or "revised DO criteria").

20. Defendant Scott Pruitt is EPA's Administrator and an officer as defined by 5 U.S.C. § 2104. He is sued in his official capacity.

21. Defendant Anne Idsal is EPA's Region 6 Regional Administrator and an officer as defined by 5 U.S.C. § 2104. She is responsible for review and approval of Louisiana water quality standards pursuant to 40 C.F.R. § 131.21, including the water quality standards at issue in this case. She is sued in her official capacity.

LEGAL BACKGROUND

Administrative Procedure Act

22. The Administrative Procedure Act (APA) provides that “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in court are subject to judicial review.” 5 U.S.C. § 704.

23. The APA authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law.” 5 U.S.C. §§ 706(2)(A), and (C-D).

The Clean Water Act and Water Quality Standards

24. The goal of the Clean Water Act (CWA or “the Act”) is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

25. The Clean Water Act also creates a national goal of attaining “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water,” often referred to as a goal of fishable and swimmable waters. Clean Water Act § 101(a)(2), 33 U.S.C. § 1251(a)(2).

26. To achieve this goal, the Clean Water Act directs states to set water quality standards that establish, and then protect, the quality of water necessary to achieve the goals of the Act. 33 U.S.C. § 1313(a).

27. The Clean Water Act directs EPA to review states’ water quality standards to determine whether they comply with the requirements of the Clean Water Act. Clean Water Act § 303(c)(2)(A) and (c)(3), 33 U.S.C. § 1313(c)(2)(A) and (c)(3).

28. The purposes of water quality standards include “defin[ing] the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.” 40 C.F.R. § 130.2.

29. Whenever states adopt new water quality standards or revise existing water quality standards, the standards “shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of [the Clean Water Act]. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and [other purposes].” Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A). This language includes an antidegradation policy, requiring that state standards be sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation.

30. In addition to defining the water quality goals of a water body, water quality standards provide the regulatory basis for establishing water quality-based effluent limits for permits allowing pollutant discharges and also serve as a target for restoration procedures such as listings of impaired waters and setting of total maximum daily loads.

31. Water quality standards consist of 1) designated uses, 2) water quality criteria necessary to protect the designated use, and 3) antidegradation requirements.

32. Fish and Wildlife Propagation is one category of designated use. This category is defined in Louisiana as “the use of water for aquatic habitat, food, resting, reproduction, cover, and/or travel corridors for any indigenous wildlife and aquatic life species associated with the aquatic environment. This use also includes the maintenance of water quality at a level that prevents damage to indigenous wildlife and aquatic life species associated with the aquatic

environment and contamination of aquatic biota consumed by humans.” La. Admin. Code tit. 33, pt IX, § 1111.

33. Outstanding Natural Resource Waters is another category of designated use adopted by Louisiana. This category is defined as including “waterbodies designated for preservation, protection, reclamation, or enhancement of wilderness, aesthetic qualities, and ecological regimes, such as those designated under the Louisiana Natural and Scenic Rivers System or those designated by the department as waters of ecological significance.” La. Admin. Code tit. 33, pt IX, § 1111.

34. Water quality criteria are 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 C.F.R. § 131.3(b).

35. “States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.” 40 C.F.R. § 131.11(a)(1).

36. The Clean Water Act allows states to revise water quality standards. 33 U.S.C. § 1313(c)(2)(a).

37. Where the water quality equals or exceeds the levels necessary to protect the designated use or otherwise required by applicable water quality standards, the water quality standard “may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.” 33 U.S.C. § 1313(d)(4)(B).

38. States may establish water quality criteria based on site-specific conditions. 40 C.F.R. § 131.12(a)(2).

39. Both new and revised water quality standards must be established taking into consideration the use of the water for, among other things, propagation of fish and wildlife and recreational purposes.

40. Such new or revised water quality standards “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).

41. The antidegradation component of the Clean Water Act requires that state standards be sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation.

42. EPA’s antidegradation rules establish three levels of antidegradation protection: Tier 1, Tier 2, and Tier 3.

43. Tier 1 protection establishes the minimum water quality standard for all of a state’s waters and requires that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1).

44. Tier 2 protection applies when “the quality of the waters exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.” 40 C.F.R. § 131.12(a)(2). For such waters, EPA requires that their “quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.” *Id.* However, “[i]n allowing such

degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully.” *Id.*

45. Tier 3 protection provides that “[w]here high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.” 40 C.F.R. § 131.12(a)(3). Outstanding National resource waters are also known in Louisiana as Outstanding Natural Resource Waters (ONRWs).

46. EPA must review any revised water quality standard to determine that it meets the requirements of the Clean Water Act. 33 U.S.C. § 1313(c)(3); 40 C.F.R. §§ 131.5, 131.21(b).

47. If the standard is not consistent with the requirements of the Clean Water Act, EPA must disapprove the new or revised water quality standard. Clean Water Act § 303(c)(3), 33 U.S.C. § 1313(c)(3).

FACTS

48. Before EPA’s approval, the applicable dissolved oxygen water quality criteria for the affected waters was 5.0 mg/L of dissolved oxygen for freshwater rivers and streams and 4.0 mg/L of dissolved oxygen for estuarine rivers and streams.

49. Sufficient levels of dissolved oxygen in waterbodies like rivers, streams, creeks, bays, and bayous are essential for the survival and propagation of fish and other aquatic life like zooplankton and for the wildlife which rely on them.

50. On June 20, 2015, the Louisiana Department of Environmental Quality (LDEQ) published a proposed rule (“proposal”) – designated WQ091 – to lower the dissolved oxygen criteria from 5.0 mg/L (or 4.0 mg/L for estuarine waters) to 2.3 mg/L for the months of March through November for thirty-one inland streams north and west of Lakes Pontchartrain and

Maurepas extending south and west to the Mississippi River (“revised dissolved oxygen criteria,” “revised DO criteria,” or “revised criteria”).

51. LDEQ’s proposal applied the revised criteria to the following waterbody subsegments: 040201, 040303, 040305, 040306, 040401, 040402, 040403, 040404, 040503, 040506, 040508, 040601, 040604, 040605, 040606, 040702, 040705, 040809, 040907, 040915, 040916, 040917, 041101, 041201, 041202, 040807, 040808, 040903, 040912, 040913, and 040914.

52. In WQ091, LDEQ also proposed to revise the boundaries for 42 waterbody subsegments, resulting in the delineation of 21 new subsegments (“boundary revisions”).

53. The rivers, streams, creeks, bays, and bayous affected by the revised dissolved oxygen criteria are navigable waters.

54. The rivers, streams, creeks, bays and bayous to which LDEQ proposed to apply the revised water quality criteria include Outstanding Natural Resource Waters like portions of the Tchefuncte River, the Blind River, and Bayou LaCombe.

55. The revised dissolved oxygen criteria apply to at least thirty-one rivers, streams, creeks, bays and bayous across a 9-parish area: St. Tammany Parish, Tangipahoa Parish, St. John the Baptist Parish, St. Charles Parish, St. James Parish, Ascension Parish, Livingston Parish, Iberville Parish, and East Baton Rouge Parish.

56. The thirty-one affected streams all belong to an area designated by LDEQ as the eastern Lower Mississippi River Alluvial Plains Ecoregion (“the Ecoregion”).

57. On July 21, 2015, LDEQ extended the comment period on its proposed rule from August 5, 2015, to September 4, 2015.

58. On September 4, 2015, Plaintiffs timely submitted comments to LDEQ opposing the revised dissolved oxygen criteria and boundary revisions. The comments included a 12-page affidavit from water quality expert, Dr. JoAnn Burkholder, detailing the many ways in which LDEQ's proposal was not supported by sound scientific rationale.

59. On September 11, 2015, Plaintiffs sent these comments to EPA via email, including Dr. Burkholder's affidavit.

60. On November 3, 2015, LDEQ issued a Comment Summary Response. LDEQ responded to some of Plaintiffs' comments, but LDEQ did not respond to anything in Dr. Burkholder's affidavit. Indeed, LDEQ did not even acknowledge the affidavit.

61. LDEQ made no changes to its proposed rule in response to public comment.

62. On January 6, 2016, LDEQ submitted the revised dissolved oxygen criteria and boundary revisions to EPA for approval.

63. On March 8, 2016, Plaintiffs sent comments to EPA requesting disapproval of the revised dissolved oxygen criteria and the redrawn subsegments. The letter included a supplemental expert affidavit from Dr. JoAnn Burkholder.

64. On June 3, 2016, EPA approved Louisiana's revised dissolved oxygen criteria for all proposed subsegments and approved the boundary revisions. This approval is final agency action.

65. EPA also approved revised boundaries for 42 subsegments within the Ecoregion, the Southern Plains Terrace and Flatwoods Ecoregion, the Terrace Uplands Ecoregion, and the Coastal Deltaic Marshes Ecoregion.

66. These boundary revisions resulted in the delineation of 21 new subsegments and in revisions to descriptions of additional subsegments.

67. Some of the 21 new subsegments created in the boundary revisions are subject to the revised criteria.

68. Neither EPA nor LDEQ determined whether any of the streams to which the revised dissolved oxygen criteria apply have dissolved oxygen water quality equaling or exceeding the level necessary to protect the designated use or otherwise required by applicable water quality standards.

69. Many of the streams to which the revised criteria apply have dissolved oxygen levels which equal or exceed the level necessary to protect the designated use.

70. EPA was aware that many of the streams to which the revised criteria apply have dissolved oxygen levels which equal or exceed the level necessary to protect the designated use.

71. EPA performed no antidegradation analysis before approving the revised criteria.

72. Neither EPA nor LDEQ determined whether the revised criteria complied with antidegradation policy.

73. The revised criteria applicable to many of the affected rivers and streams – including the Tchefuncte River – do not comply with antidegradation policy.

74. Ambient monitoring data collected by LDEQ (station 116) over the past several decades indicate that the portion of the Tchefuncte River represented by subsegment 040506 met the 5.0 mg/l dissolved oxygen criterion in 238 of 242 measurements, that is, 98.4% of the time. Plaintiffs sent this water quality data to EPA during its review of the revised dissolved oxygen criteria.

75. Ambient monitoring data collected by LDEQ over the past several decades indicate that the water quality of the Amite River, Tchefuncte River, Tickfaw River, Bayou Trepagnier, Colyell Bay, Gray's Creek, Natalbany River, Bayou Lacombe, Bayou Bonfouca,

Cane Bayou, Bayou Chinchubas, Bayou La Branche, Bayou Castine, Bayou Liberty, Tangipahoa River, Ponchatoula Creek all regularly exceed 5.0 mg/L dissolved oxygen.

76. EPA and LDEQ regularly rely on ambient water quality monitoring data when performing their Clean Water Act duties.

77. EPA has access to Louisiana's ambient water quality monitoring data on the affected waterbodies.

78. In its approval, EPA discounted the ambient water quality monitoring data from the Tchefuncte River and instead relied on continuous monitoring data from different waterbodies.

79. EPA relied on what it refers to as an "ecoregion" or "reference water body" approach in approving the sweeping application of site-specific criteria to thirty-one rivers, streams, creeks, bays and bayous in an entire region of the state (the Ecoregion).

80. EPA never engaged in rulemaking procedures to promulgate its ecoregion approach.

81. The premise of the EPA's ecoregion approach and methodology for approving the revised dissolved oxygen site-specific criteria, as it relates to water quality and aquatic life, is that in the absence of human influences the water quality and aquatic life are more likely to be similar within an ecoregion than without, and that conditions in "reference water bodies" in the Ecoregion represent the best attainable or least impacted conditions of most water bodies within the Ecoregion. Therefore, the fish and wildlife propagation use and corresponding ecological conditions in "least impacted reference waters" in the Ecoregion are the basis for defining the DO criteria in the Ecoregion.

82. In its approval, EPA relied on monitoring data from 13 reference sites, seven of which were outside of the Ecoregion and six of which were within the Ecoregion, to determine the appropriate dissolved oxygen criteria for all rivers, streams, creeks, bays and bayous within the Ecoregion.

83. Several of the reference sites upon which EPA relied were subjected to man-made influences and had significant point and nonpoint source discharges impacting them.

84. Information regarding the point and nonpoint source discharges affecting the reference sites was presented to EPA.

85. EPA did not respond to the information regarding the flaws in the reference site selection.

86. EPA's methodology to determine the appropriate revised dissolved oxygen criteria for all inland streams in the Ecoregion was based on water quality monitoring data from these reference waterbodies.

87. EPA considered the water quality conditions in the inland rivers, streams, creeks, bays and bayous of the Ecoregion to be irrelevant, aside from the condition of the six reference waterbodies in the Ecoregion. Therefore, EPA ignored the water quality conditions in the inland rivers, streams, and bayous of the Ecoregion, other than the six reference waterbodies in the Ecoregion.

88. EPA approved the revised criteria without any study of the impact the revised criteria would have on the fish and other aquatic life in the inland rivers, streams, creeks, bays and bayous of the Ecoregion.

89. Based on its methodology, EPA disregarded ambient monitoring data from the affected waterbodies and relied instead on monitoring data from the 13 reference waterbodies.

90. In approving the DO criteria, EPA disregarded 90% of the monitoring data collected from the reference streams. Instead, it relied exclusively on the worst 10% (lowest DO readings) of the monitoring data.

91. Estuarine waters are waters where freshwater systems and saltwater systems interact.

92. None of the reference waterbodies which formed the basis of the revised criteria are classified as estuarine.

93. At least six of the thirty-one waterbodies included in EPA's approval are classified as estuarine: 1) portions of Bayou Lacombe, 2) portions of Bayou Cane, 3) Bayou Paquet, 4) portions of Bayou Bonfouca, 5) Bayou Labranche, and 6) Bayou Trepagnier.

94. During a 2013 review of LDEQ's proposal, EPA commented to LDEQ that application of its proposed revised dissolved oxygen criteria to estuarine subsegments would be inappropriate, as no estuarine waters served as reference waterbodies.

95. On November 7, 2013, LDEQ responded to EPA's concern by clarifying that its proposed revision would only apply to freshwater inland streams and would not apply to estuarine or tidally influenced waters.

96. The revised dissolved oxygen criteria which LDEQ promulgated and EPA approved apply to estuarine and tidally influenced waters within the Ecoregion.

97. The revised dissolved oxygen criteria applies to at least ten waterbody subsegments which are designated Outstanding Natural Resource Waters ("outstanding National resource waters" or "Scenic Streams."). These include the Blind River (subsegments 040401 and 040403), portions of the Tchefuncte River (subsegments 040807 and 040808), portions of Bayou

Cane (subsegments 040903 and 040914), portions of Bayou Lacombe (subsegments 040912 and 040913), Bayou Labranche (subsegment 040201) and Bayou Trepagnier (subsegment 040202).

98. Neither EPA nor LDEQ performed any study or analysis of whether the revised dissolved oxygen criteria would be protective of the Outstanding Natural Resource Waters use.

99. All of the affected waterbody subsegments covered by the revised dissolved oxygen criteria are designated Fish and Wildlife Propagation.

100. Neither EPA nor LDEQ performed any study or analysis of the impact of the revised dissolved oxygen criteria on fish and other aquatic life in the affected rivers and streams.

101. Neither EPA nor LDEQ examined the effect of the revised dissolved oxygen criterion on fish that live or reproduce in the waters of the Ecoregion, including sensitive stages like larval and juvenile.

102. EPA's basis for approving the sweeping application of site-specific criteria to thirty-one streams in an entire region of the state (the Ecoregion) is that the waterbodies in the Ecoregion are alike in significant ways.

103. EPA's methodology for revising the dissolved oxygen criteria for the Ecoregion relied on a determination that the waterbodies in the Ecoregion were like the waterbodies in the adjoining western Lower Mississippi River Alluvial Plains Ecoregion (western LMRAP).

104. Once EPA concluded that the waterbodies in the Ecoregion were like the waterbodies in the western LMRAP Ecoregion, it automatically applied the criteria it had approved for the western Ecoregion to the Ecoregion.

105. EPA did not use the ecological conditions in the least impacted reference waters in the Ecoregion as the basis for approving the DO criteria in the Ecoregion. Instead, EPA used

the ecological conditions in the least impacted reference waters in the adjoining Ecoregion – the western LMRAP – as the basis for defining the DO criteria in the Ecoregion.

106. In approving the revised criteria, EPA did not consider whether the revised criteria would provide for the attainment and maintenance of the water quality standards of waters downstreams from the affected waterbodies.

107. Evidence before EPA demonstrated that portions of the Tchefuncte River included in the criteria change are not like other waterbodies in the Ecoregion in significant ways.

108. EPA disregarded the evidence that portions of the Tchefuncte River are unlike the described characteristics of waterbodies in the Ecoregion.

109. None of the thirteen reference streams are located on the northshore of Lake Pontchartrain from the Tangipahoa River east to the Pearl River.

110. EPA approved application of the revised dissolved oxygen criteria to stream segments outside of the Ecoregion.

FIRST CAUSE OF ACTION

111. EPA's approval of the revised dissolved oxygen criteria was arbitrary, capricious, an abuse of discretion, in excess of statutory authority, without observance of procedure required by law, and not in accordance with the law.

SECOND CAUSE OF ACTION

112. EPA's approval of the Ecoregion boundary revisions was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. An order declaring that EPA's approval of the revised dissolved oxygen criteria violates the Clean Water Act and is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, and not in accordance with the law;
- B. An order declaring that EPA's approval of the revised boundaries of the Ecoregion and subcoregions violates the Clean Water Act and was arbitrary, capricious, an abuse of discretion, and not in accordance with the law;
- C. An order vacating EPA's approval of the revised dissolved oxygen criteria;
- D. An order vacating EPA's approval of the revised boundaries of the Ecoregion and subcoregions;
- E. An order that EPA rescind its approval of the revised dissolved oxygen criteria and promulgate revised criteria which comply with the requirements of the Clean Water Act;
- F. An order that EPA rescind its approval of the revised boundaries of the ecoregion and subregions and remanding for further consideration consistent with the Clean Water Act and its implementing regulations;
- G. An award of reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.
- H. Such other relief as this Court may deem appropriate.

Respectfully submitted this 16th day of February, 2018

TULANE ENVIRONMENTAL LAW CLINIC

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Association, Louisiana
Environmental Action Network,
Louisiana Audubon Council, and
Sierra Club*

SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT PRACTITIONER

Undersigned counsel respectfully introduces law student practitioner Kavan Vartak to this Court pursuant to Local Rule 83.2.13. This student practitioner is duly enrolled in Tulane Law School and the Tulane Environmental Law Clinic. He meets all of the prerequisites for a Law Student Appearance under Local Rule 83.2.13(A). His clients' written consents to student appearances are attached as Exhibit A in globo to this Complaint pursuant to Local Rule 83.2.13. The Tulane Law School Dean's certification that the student practitioner is of good moral character, competent legal ability, and adequately trained to perform as a legal intern is attached as Exhibit B to this Complaint pursuant to Local Rule 83.2.13(B).

Respectfully submitted,

/s/ Lisa W. Jordan

Lisa W. Jordan, Bar No. 20451
Supervising Attorney
Tulane Environmental Law Clinic
6329 Freret Street, Suite 130
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Gulf Restoration Network's Consent to Student Attorney Representation

The Gulf Restoration Network (GRN) hereby grants its consent for Tulane Environmental Law Clinic student practitioners to appear on behalf of GRN in any matter in which the Tulane Environmental Law Clinic represents GRN and in accordance with all appropriate court rules or orders.

Date: 11/8/16



Cynthia Sarthou, Executive Director
Gulf Restoration Network
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New Orleans, LA 70176
Phone: (504) 525-1528
Fax: (504) 525-0833

CLIENT'S WRITTEN CONSENT FOR APPEARANCES BY LAW STUDENTS

The Little Tchefuncte River Association ("Little Tchefuncte") hereby grants its consent for Tulane Environmental Law Clinic student practitioners to appear on its behalf in any matter in which the Tulane Environmental Law Clinic represents Little Tchefuncte. Little Tchefuncte gives its consent in accordance with the Court's local rules governing law student appearances.

Dated : 2/14/2018



Printed Name: *Matthew Allen*
Little Tchefuncte River Association

Address:

13058 Major Ln.

Folsom, LA 70437

CLIENT'S WRITTEN CONSENT FOR APPEARANCES BY LAW STUDENTS

Louisiana Environmental Action Network (LEAN) hereby grants its consent for Tulane Environmental Law Clinic student practitioners to appear on LEAN's behalf in any matter in which the Tulane Environmental Law Clinic represents LEAN. LEAN gives its consent in accordance with the Court's local rule governing law student appearances.

Dated: 12/28/2015



Marylee Orr, Executive Director
Louisiana Environmental Action Network
162 Croydon Ave
Baton Rouge, LA 70806

CLIENT'S WRITTEN CONSENT FOR APPEARANCES BY LAW STUDENTS

The Louisiana Audubon Council hereby grants its consent for Tulane Environmental Law Clinic student practitioners to appear on its behalf in any matter in which the Tulane Environmental Law Clinic represents the Louisiana Audubon Council. The Louisiana Audubon Council gives its consent in accordance with the Court's local rules governing law student appearances.

Dated : Feb. 14, 2018

BARRY KOHL

Printed Name:

Louisiana Audubon Council

Address:

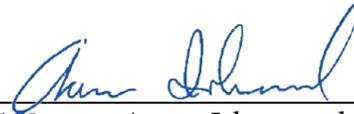
1522 Lowerline St.

New Orleans, LA 70118

CLIENT'S WRITTEN CONSENT FOR APPEARANCES BY LAW STUDENTS

The Sierra Club hereby grants its consent for Tulane Environmental Law Clinic student practitioners to appear on its behalf in any matter in which the Tulane Environmental Law Clinic represents the Sierra Club. The Sierra Club gives its consent in accordance with the Court's local rules governing law student appearances.

Dated : 2/8/2018



Printed Name: Aaron Isherwood
Sierra Club
Address:
2101 Webster Street, Suite 1300
Oakland, CA 94612

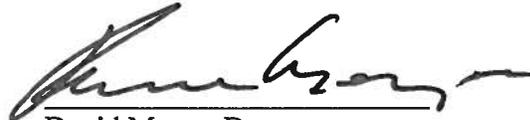
EXHIBIT B

DEAN'S CERTIFICATION PURSUANT TO LOCAL RULE 83.2.13

I, David Meyer, am Dean of the Tulane Law School. To the best of my knowledge and belief following reasonable inquiry, Tulane Law Students Colin Casciato, Alexander DeGiulio, Thomas Gosselin, Christopher Halbohn, Talia Nimmer, Allison Skopec, Ashlyn Smith-Sawka, Thomas Steinfeldt, Ryan Sundstrom, Kavan Vartak, Patrick Weis, Morgan Wilson are of good moral character, competent legal ability, and adequately trained to perform as a legal interns.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/15/17



David Meyer, Dean
Tulane Law School
6329 Freret St.
New Orleans, LA 70118

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Louisiana Audubon Council, Sierra Club

(b) County of Residence of First Listed Plaintiff Orleans Parish (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Lisa Jordan and Kavan Vartak Tulane Environmental Law Clinic - 6329 Freret St., Suite 130, New Orleans, LA 70118 - (504) 314-2481

DEFENDANTS

U.S. EPA, Scott Pruitt (in his official capacity as Administrator of the United States Environmental Protection Agency), Anne L. Idsal (in her official capacity as Regional Administrator of Region 6)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C § 1313(c)

Brief description of cause:

The EPA's approval of Louisiana's revised water quality standards violated the Clean Water Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

02/16/2018 Lisa W. Jordan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Louisiana Audubon Council and Sierra Club

Plaintiff(s)

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, SCOTT PRUITT and ANNE IDSAL (in their official capacities)

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Environmental Protection Agency 1200 Pennsylvania Avenue N.W., Washington DC, 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lisa Jordan, Bar #: 20451 Kavan Vartak, Student Practitioner 6329 Freret St, Suite 130 New Orleans, LA, 70118

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (I))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Louisiana Audubon Council and Sierra Club

Plaintiff(s)

v.

Civil Action No.

U.S. ENVIRONMENTAL PROTECTION AGENCY, SCOTT PRUITT and ANNE IDSAL (in their official capacities)

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Scott Pruitt USEPA Headquarters William Jefferson Clinton Building 1200 Pennsylvania Avenue, N. W. Mail Code: 1101A Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lisa Jordan, Bar #: 20451 Kavan Vartak, Student Practitioner 6329 Freret St, Suite 130 New Orleans, LA, 70118

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Louisiana Audubon Council and Sierra Club

Plaintiff(s)

v.

Civil Action No.

U.S. ENVIRONMENTAL PROTECTION AGENCY, SCOTT PRUITT and ANNE IDSAL (in their official capacities)

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Anne Idsal, Regional Administrator U.S. EPA Region 6 1445 Ross Avenue Suite 1200 Mail Code: 6RA Dallas, TX 75202-2733

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lisa Jordan, Bar #: 20451 Kavan Vartak, Student Practitioner 6329 Freret St, Suite 130 New Orleans, LA, 70118

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: