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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
SIERRA CLUB, IDAHO CONSERVATION
LEAGUE, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, ANDREW
WHEELER, in his official capacity as
Administrator of the United States
Environmental Protection Agency, UNITED
STATES ARMY CORPS OF ENGINEERS,
and R.D. JAMES, in his official capacity as
Assistant Secretary of the Army for Civil
Works,

Defendants.

Case No. 2:20-cv-950

COMPLAINT

INTRODUCTION

1. Congress declared a single objective for the Clean Water Act: “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve that objective, the Act prohibits and regulates the discharge of pollutants into “navigable waters,” which the Act defines broadly as “the waters of the United States.” *Id.* § 1362(7).

1 2. Congress adopted the Clean Water Act as a uniform and comprehensive national
2 approach to water protection to replace decades of fragmented approaches that had relied on the
3 states and had failed to protect the nation’s waters. It is one of the nation’s most important and
4 successful environmental laws.

5 3. Plaintiffs challenge two final rules promulgated by the United States Environmental
6 Protection Agency (“EPA”); Andrew Wheeler, Administrator of the EPA; the United States
7 Army Corps of Engineers (“Corps”); and R.D. James, Assistant Secretary of the Army for Civil
8 Works (collectively, “the Agencies”). The first, entitled “Definition of Waters of the U.S.:
9 Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (the “Repeal
10 Rule”), repealed the 2015 “Clean Water Rule” which defined the term “waters of the United
11 States” in the Clean Water Act. The second, entitled “The Navigable Waters Protection Rule:
12 Definition of Waters of the United States,” 85 Fed. Reg. 22,250 (April 21, 2020) (the “Navigable
13 Waters Rule”), replaced the Clean Water Rule and its predecessor rules with a definition of
14 “waters of the United States” that substantially narrows the waters protected by the Act.

15 4. The Navigable Waters Rule exceeds the Agencies’ statutory authority and is contrary
16 to the Clean Water Act’s text, structure, objectives, and legislative history requiring broad
17 protection of all the Nation’s waters, because its provisions exclude waters from the protections
18 required and afforded by the Act.

19 5. Plaintiffs also challenge the Repeal Rule and the Navigable Waters Rule as arbitrary
20 and capricious because both rules are contrary to the evidence before the Agencies, including
21 vast volumes of science and technical evidence in the administrative record and the
22 uncontroverted findings made by the EPA and its own Science Advisory Board. The Agencies
23 also failed to explain their decision to reverse prior regulations and failed to consider important
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1 aspects of the problem, including the effects on water quality and aquatic ecosystems of stripping
2 protections for large numbers of waters, the ecological importance of protecting the excluded
3 waters, and the effects of the reversal on the objectives of the Clean Water Act. These decisions
4 are arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act
5 (“APA”), 5 U.S.C. § 706(2).

6 6. Plaintiffs ask the Court to vacate and set aside the Repeal Rule and the Navigable
7 Waters Rule, and to reinstate the Clean Water Rule.

8 **PARTIES**

9 7. Plaintiff Puget Soundkeeper Alliance is a nonprofit corporation organized and
10 existing under the laws of Washington, with its headquarters in Seattle. Its mission is to protect
11 and preserve the waters of Puget Sound by detecting and reporting pollution, engaging
12 government agencies and businesses to regulate pollution discharges, and enforcing requirements
13 under the CWA to control or halt pollution and other adverse impacts to waters from sewage-
14 treatment plants, industrial facilities, construction sites, municipal storm sewers, and other
15 sources. Puget Soundkeeper Alliance has nearly 1,500 members who reside throughout the
16 Puget Sound watershed. Some of its members participate in volunteer boat or kayak patrols to
17 observe water-quality conditions, check for abnormal discharges and pollution, and remove
18 floating trash and debris. Puget Soundkeeper Alliance also accomplishes its work, in part, by
19 working to enforce the permitting requirements of the Act throughout the Puget Sound
20 watershed. Puget Soundkeeper’s members use and recreate on the Sound and the waters
21 throughout the Puget Sound watershed. Puget Soundkeeper and its members have significant
22 interest in preserving the full reach of the Clean Water Act’s protections.

23 8. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the laws
24 of California, with its headquarters in San Francisco. It is a national organization dedicated to

1 protecting public health and the environment. The Sierra Club has long worked to protect clean
2 water. In particular, local chapters of the Sierra Club have defended treasured waterbodies
3 throughout the U.S. from pollution, development, and destruction. The Sierra Club has more
4 than 630,000 members who reside in all fifty states and the District of Columbia. Some Sierra
5 Club chapters and groups run local Water Sentinels programs that train member volunteers to
6 test their local waterbodies for contamination and present the results to local regulatory officials,
7 to organize cleanups, and to advocate before government agencies to help improve water quality.
8 Sierra Club members use and recreate on waters and own property that contains waters that will
9 be affected by the rules challenged here. Sierra Club and its members have an interest in
10 preserving the full protections of the Clean Water Act.

11 9. Plaintiff Idaho Conservation League is an Idaho non-profit membership conservation
12 organization. The Idaho Conservation League and its approximately 10,000 members are
13 dedicated to protecting and conserving Idaho's natural resources, including its water quality and
14 native fish. The Idaho Conservation League's mission is to protect Idaho's clean water, clean
15 air, healthy families, and unique way of life. The Idaho Conservation League, its staff, and its
16 members are active in public education, administration, and legislative advocacy on conservation
17 issues in Idaho, including advocacy aimed at addressing the impacts of pollution on water quality
18 and native fish. The Idaho Conservation League's members use and enjoy waters in Idaho for
19 recreational, scientific, aesthetic, cultural, and commercial purposes.

20 10. Mi Familia Vota is a nonprofit public-interest advocacy organization working to
21 advance and protect the interests of Latino communities in areas of immigration, voting,
22 environment, workers' rights, education, and healthcare. Mi Familia Vota works for the
23 community through offices located in Arizona, California, Colorado, Texas, Nevada, and
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1 Florida, with members throughout those states. Mi Familia Vota's members and their
2 communities are adversely affected by the Repeal Rule and the Navigable Waters Rule, as they
3 rely on waters throughout the West for drinking water and their livelihoods. Mi Familia Vota
4 also works on issues for and with its members involving housing and development policies in
5 places like Houston, Texas, that have been made more vulnerable to storms like Hurricane
6 Harvey as a result of the destruction of wetlands.

7 11. Defendant U.S. Environmental Protection Agency is a federal agency charged with
8 administering the Clean Water Act through its Administrator, Andrew Wheeler. 33 U.S.C. §
9 1251(d). It co-promulgated the Navigable Waters Rule and the Repeal Rule, the rules challenged
10 here.

11 12. Defendant U.S. Army Corps of Engineers is a federal agency within the Department
12 of the Army. It is authorized to issue permits for the discharge of dredged or fill material into the
13 waters of the United States, through the Assistant Secretary of the Army for Civil Works, R.D.
14 James. *Id.* §§ 1344, 1362(7). It co-promulgated the Navigable Waters Rule and the Repeal
15 Rule, the rules challenged here.

16 13. If the Repeal Rule and the Navigable Waters Rule are allowed to stand, the Plaintiff
17 organizations and their members will suffer significant harm. The challenged rules strip Clean
18 Water Act protections from wetlands and streams across the country, leaving many previously
19 protected wetlands vulnerable to degradation and destruction and entirely eliminating protections
20 for ephemeral streams. Because members of the Plaintiff organizations rely on waters that have
21 lost Clean Water Act protections as a result of the Agencies' rules, and also rely on downstream
22 waters that will be harmed by the pollution of unprotected waters upstream, Plaintiffs and their
23 members will be injured by the regulations.

1 14. Members of the Plaintiff organizations, for example, routinely enjoy bird watching,
2 taking photographs, and searching for other wildlife and wildflowers both in and along wetlands,
3 ephemeral streams, and other upstream waters that have lost Clean Water Act protections under
4 the Repeal Rule and the Navigable Waters Rule. Many of these waters are now imminently
5 threatened by agricultural, mining, and development activities that could destroy or pollute the
6 waters in the absence of the limits or mitigation required by Clean Water Act permits. Members
7 of the Plaintiff organizations also fish, kayak, canoe, and swim in downstream rivers, streams,
8 and lakes that face a threat of being polluted as a result of the loss of Clean Waters Act
9 protections for upstream waters under the challenged regulations.

10 15. Plaintiff Idaho Conservation League has been actively engaged in a variety of
11 educational and advocacy efforts to protect what had previously been recognized as “waters of
12 the United States” for going on 20 years. Defendants’ adoption of the Repeal Rule and
13 Navigable Waters Rule has made it more difficult to achieve Idaho Conservation League’s
14 institutional objectives in protecting its members, the public, and aquatic environments from the
15 harms associated with unpermitted activities that harm or destroy waters. Idaho Conservation
16 League has had to dedicate additional research and mapping capabilities in order to research
17 whether threatened Idaho waters remain protected as “waters of the United States,” and it is now
18 dedicating additional staff time to compile evidence and draft documents needed to prove a water
19 is protected under the Clean Water Act, whereas previously it could rely on application of the
20 2015 Clean Water Rule to determine jurisdiction and then move to the next steps of advocacy of
21 enforcing the law and advocating for permits.

22 16. Each of these injuries are fairly traceable to the challenged regulations and are
23 capable of redress by an order of this Court vacating the rules.
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1 **JURISDICTION AND VENUE**

2 17. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question),
3 and the Clean Water Act, 33 U.S.C. § 1369(b); *Nat’l Assoc. of Manufacturers v. Dep’t of*
4 *Defense*, 138 S.Ct. 617 (2018). The Court is authorized to grant relief under 5 U.S.C. § 706
5 (Administrative Procedure Act), and 28 U.S.C. § 2202 (further necessary or proper relief).

6 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because one of the
7 Plaintiffs, Puget Soundkeeper Alliance, resides in this district.

8 **LEGAL FRAMEWORK**

9 I. THE CLEAN WATER ACT

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

12 20. The Act protects waters from pollution, and from damage or destruction from
13 dredging or filling, by prohibiting “the discharge of any pollutant by any person” except in
14 compliance with the Act’s permitting requirements and other pollution-prevention programs. *Id.*
15 § 1311(a) (incorporating *id.* §§ 1312, 1316, 1317, 1328, 1342, and 1344). These programs
16 include the National Pollutant Discharge Elimination System (“NPDES”), *id.* § 1342; the section
17 404 permitting program for discharges of dredged or fill material, *id.* § 1344; and the section 311
18 oil-spill prevention and response programs, *id.* § 1321.

19 21. The protections of the Clean Water Act extend to “navigable waters,” which the Act
20 broadly defines as including all of the “waters of the United States, including the territorial seas.”
21 *See id.* §§ 1251, 1321, 1342, 1344; 1362(7).

22 22. The Act followed and sought to reverse years of failed efforts to protect and clean up
23 the Nation’s waters through the implementation of state-based water-quality standards. S. Rep.
24 No. 92-414 at 7 (1971), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3672.

1 23. The Act’s legislative history confirms that Congress adopted the “broadest possible”
2 definition of “navigable waters” of the United States, unencumbered by earlier and narrower
3 administrative interpretations. H.R. Rep. No. 92-911 at 76-77 (1972). As the conference report
4 emphasized, “the conferees fully intend that the term ‘navigable waters’ be given the broadest
5 possible constitutional interpretation unencumbered by agency determinations which have been
6 made or may be made for administrative purposes.” Clean Water Act Legislative History,
7 Senate Consideration of the Rpt. of the Conference Committee, Oct. 4, 1972, at 178. The Senate
8 Committee on Public Works “was reluctant to define” the term “navigable waters” based “on the
9 fear that any interpretation would be read narrowly[,]” and it reiterated that it “fully intend[ed]
10 that the term ‘navigable waters’ be given the broadest possible constitutional interpretation.”
11 Clean Water Act Legislative History at 818.

12 24. In directing the broadest possible protection, Congress relied on science
13 demonstrating the interconnectedness of waters and the need to ensure that aquatic ecosystems as
14 a whole are protected in order to fulfill the Act’s purpose, especially waters upstream of
15 “traditionally navigable waters.” Congress recognized that “[w]ater moves in hydrological
16 cycles and it is essential that discharge of pollutants be *controlled at the source*.” S. Rep. No.
17 92-414 at 77 (1971) (emphasis added).

18 25. The core provisions of the regulatory definition of “waters of the United States”
19 remained largely unchanged for a long period of time, from 1979 until fairly recently. *See* 44
20 Fed. Reg. 32,854, 32,901 (June 7, 1979) (defining “waters of the United States” to include,
21 among other things, “(1) All waters which are currently used, were used in the past, or may be
22 susceptible to use in interstate or foreign commerce, including all waters which are subject to the
23 ebb and flow of the tide; (2) Interstate waters, including interstate wetlands; (3) All other waters
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1 such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and
2 wetlands the use, degradation or destruction of which would affect or could affect interstate or
3 foreign commerce ...; (4) All impoundments of waters otherwise defined as navigable waters...;
4 (5) Tributaries of waters identified in paragraphs (1)-(4) ..., including adjacent wetlands; and (6)
5 Wetlands adjacent to waters identified in paragraphs (1)-(5)”).

6 26. In general, federal courts, including the Supreme Court, have affirmed that the Act’s
7 protective reach must be interpreted and applied to waters broadly in order to ensure that the
8 purpose of restoring and maintaining the biological, physical, and chemical integrity of our
9 Nation’s waters is fulfilled. *See Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 486 n.8 (1987)
10 (noting that “navigable waters” “has been construed expansively to cover waters that are not
11 navigable in the traditional sense”); *United States v. Riverside Bayview Homes, Inc.*, 474 U.S.
12 121, 136-39 (1985) (affirming the Corps’ application of jurisdiction to wetlands adjacent to
13 navigable waters).

14 27. While the Supreme Court has established that the Act’s protections do not extend to
15 each and every wet area, such as the water-filled abandoned gravel mining pits at issue in *Solid*
16 *Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 164-65
17 (2001), the Court has consistently affirmed that the EPA and the Corps have broad authority
18 under the Clean Water Act to protect both navigable and non-navigable waters that are adjacent,
19 connected, or have a significant nexus to navigable waters. *See id.* at 167-68; *Rapanos v. United*
20 *States*, 547 U.S. 715, 740-42 (2006); *id.* at 759 (Kennedy, J., concurring in judgment).

21 28. The Supreme Court’s 2006 decision in *Rapanos v. United States*, 547 U.S. at 715,
22 involved disputes over whether certain wetlands fall within the protections of the Clean Water
23 Act. While a plurality of the justices agreed to the result—a remand to address whether the
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1 Corps' assertion of jurisdiction was supported by facts in the record—all three of the opinions
2 directly disagreed with some aspects of one another, resulting in no controlling decision or
3 precedent. Further, the points agreed upon by a majority of the justices were few. A majority of
4 five justices interpreted the Act as protecting all waters, including wetlands, that “possess a
5 ‘significant nexus’—a science-based inquiry designed to meet and fulfill the objections of the
6 Act—to waters that are or were navigable in fact or that could reasonably be so made,” including
7 Justice Kennedy and the four dissenting justices. *Id.* at 759 (Kennedy, J., concurring in
8 judgment); *id.* at 810 (Stevens, J., dissenting). The four dissenting justices, led by Justice
9 Stevens, would have upheld the Corps' authority to regulate the wetlands at issue outright, based
10 on the Clean Water Act and the Corps' existing regulations. *Id.* at 787-99 (Stevens, J.,
11 dissenting). Overall, a majority of the Court decided that the Corps may have jurisdiction to
12 protect and regulate the waters in question in the case, but must further examine and justify
13 jurisdiction in light of the Court's discussion in the case.

14 29. Following *Rapanos*, most Circuit Courts have interpreted and applied the decision,
15 and all of the Circuit Courts that have applied *Rapanos* have either adopted Justice Kennedy's
16 “significant nexus” test or found that a waterbody that meets either the “significant nexus” test or
17 the plurality's test is protected under the Act. No Circuit Court has ruled that only the Justice
18 Scalia plurality opinion provides the proper test for application of the Clean Water Act.

19 II. THE ADMINISTRATIVE PROCEDURE ACT

20 30. Final agency actions are subject to judicial review under the Administrative
21 Procedure Act. 5 U.S.C. § 704.

22 31. In reviewing a final agency action, the court shall hold unlawful and set aside agency
23 action, findings, and conclusions that are found to be arbitrary, capricious, an abuse of agency
24 discretion or otherwise not in accordance with the law, *id.* § 706(2)(A), or agency actions that are

1 in excess of statutory jurisdiction, authority or limitations, or short of statutory right, *id.* §
2 706(2)(C), or agency actions that are not in observance of procedure required by law. *Id.* §
3 706(2)(D).

4 **STATEMENT OF FACTS**

5 I. THE CLEAN WATER RULE

6 32. On April 21, 2014, EPA and the Corps published a proposed rule to define “waters of
7 the United States” under the Clean Water Act. 79 Fed. Reg. 22,188 (Apr. 21, 2014) (“Proposed
8 Rule”).

9 33. The Agencies stated their intention in the Proposed Rule to “retain[] much of the
10 structure of the [A]gencies’ longstanding definition of ‘waters of the United States,’ and many of
11 the existing provisions of that definition where revisions were not required in light of Supreme
12 Court decisions or other bases for revision.” *Id.* at 22,192.

13 34. As the scientific foundation for the Clean Water Rule, the Agencies relied on a
14 published “synthesis of published peer-reviewed scientific literature discussing the nature of
15 connectivity and effects of streams and wetlands on downstream waters,” prepared by EPA’s
16 Office of Research and Development, entitled “Connectivity of Streams and Wetlands to
17 Downstream Waters: A Review and Synthesis of the Scientific Evidence” (2015) (“Science
18 Report”). *Id.* at 22,189.

19 35. In preparing the Science Report and the Proposed Rule, EPA reviewed more than
20 1,200 peer-reviewed scientific papers as well as other data and information including
21 jurisdictional determinations, relevant agency guidance and implementation manuals, and federal
22 and state reports that address connectivity of aquatic resources and effects on downstream
23 waters.

1 36. The Science Report documented the extensive evidence demonstrating that tributaries
2 and wetlands play critical roles in maintaining the physical, chemical, and biological integrity of
3 downstream waters.

4 37. EPA's Science Advisory Board conducted a peer review of the Science Report,
5 largely endorsing its analysis and conclusions. EPA, "Technical Support Document for the Clean
6 Water Rule: Definition of Waters of the U.S." (May 27, 2015), at 93-94. The only critique came
7 from members of the Board who believed the rule may not provide protections for enough
8 waters.

9 38. In their Proposed Rule, the Agencies stated their intent to "interpret[] the scope of
10 'waters of the United States' in the Clean Water Act based on the information and conclusions in
11 the [Science] Report, other relevant scientific literature, the [A]gencies' technical expertise, and
12 the objectives and requirements of the Clean Water Act." *Id.* at 22,196. The final Clean Water
13 Rule's findings cite to and rely upon the Science Report.

14 39. The Agencies finalized and published the Clean Water Rule on June 29, 2015, with
15 three basic categories of waters identified: (1) waters categorically protected under the Clean
16 Water Act in all instances; (2) waters protected under the Clean Water Act on a case-by-case
17 showing of significant nexus; and (3) waters categorically excluded from protection. 80 Fed.
18 Reg. 37,054 (June 29, 2015).

19 A. Categorically Protected Waters

20 40. Under the Clean Water Rule, the following waters would be categorically protected
21 under the Clean Water Act in all instances: "(i) All waters which are currently used, were used
22 in the past, or may be susceptible to use in interstate or foreign commerce, including all waters
23 which are subject to the ebb and flow of the tide; (ii) All interstate waters, including interstate
24 wetlands; (iii) The territorial seas; (iv) All impoundments of waters otherwise identified as

1 waters of the United States under ... [the rule]; (v) All tributaries ... of waters identified in ...
2 [the preceding sections of the rule]; [and] (vi) All waters adjacent to a water identified in ... [the
3 preceding sections of the rule], including wetlands, ponds, lakes, oxbows, impoundments, and
4 similar waters.” *See, e.g.*, 80 Fed. Reg. at 37,114.

5 41. The Science Report found unequivocal consensus evidence that all tributaries,
6 including perennial, intermittent, and ephemeral streams, “exert a strong influence on the
7 integrity of downstream waters,” and that all tributaries have a significant nexus to navigable-in-
8 fact waters, interstate waters, and the territorial sea (navigable-in-fact waters, interstate waters,
9 and the territorial sea collectively referred to as, “traditional navigable waters”). Science Report
10 at ES-2. The Science Report documented the many ways that streams affect the physical,
11 chemical and biological integrity of downstream waters and served as the foundation for the
12 Clean Water Rule’s Technical Support Document to specify markers to be used to identify
13 tributaries on the landscape, including indicators of bed, banks, high water marks and flow.
14 EPA, “Technical Support Document for the Clean Water Rule: Definition of Waters of the
15 United States” (May 27, 2015), at 234-35. Based on the Science Report, the Agencies found that
16 all tributaries should be protected by the Clean Water Act.

17 42. Based on the findings of the Science Report and the Agencies, the Clean Water Rule
18 categorically protected tributaries and defined the term “tributary” as “a water that contributes
19 flow, either directly or through another water[,]” to traditional navigable waters, interstate
20 waters, or the territorial seas, and that “is characterized by the presence of the physical indicators
21 of a bed and banks and an ordinary high water mark.” 79 Fed. Reg. at 22,189, 22,199; 80 Fed.
22 Reg. at 37,058-59, 37,065, and 37,115.

1 43. The Science Report also found clear evidence that wetlands and open waters in
2 floodplains are “highly connected” to tributaries and rivers “through surface water, shallow
3 groundwater, and biological connectivity.” Science Report at ES-2 and 4-1 et seq., especially
4 4-39. The Science Report found, too, that wetlands and open waters located outside of
5 floodplains serve numerous functions that can benefit downstream water integrity, such as
6 floodwater storage. Based on the Science Report, the Agencies found wetlands and waters in
7 floodplains should be categorically protected, and broadly defined adjacent wetlands to include
8 “bordering, contiguous, or neighboring a water [otherwise protected under the regulation],
9 including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and
10 the like.” 80 Fed. Reg. at 37,058 and 37,105.

11 44. Finally, the Science Report also found that non-adjacent wetlands and waters located
12 outside of floodplains may also provide valuable physical, chemical, or biological functions such
13 as storage of flood waters, replenishing or cleansing of water supplies, or biological functions for
14 species dependent upon certain hydrologic ecosystems, all benefitting downstream water
15 integrity. Science Report at ES-3, 4-20, and 4-38.

16 B. Case-By-Case Protections

17 45. Based upon the findings in the Science Report, the Agencies found that certain
18 categories of waters should be protected on a case-by-case basis when necessary to protect the
19 physical, chemical or biological integrity of downstream waters and to serve the objectives of the
20 Act. The first category of waters eligible for case-specific determinations were enumerated,
21 ecologically specific types of wetlands—namely, prairie potholes, Carolina bays and Delmarva
22 bays, pocosins, Western vernal pools, and Texas coastal prairie wetlands that were to be
23 considered ecologically similarly situated and combined within a watershed for the purposes of
24 determining significant nexus. *See, e.g.*, 80 Fed. Reg. at 37,114. Such waters would meet the

1 definition of “waters of the United States” under the rule if they were “determined, on a case-
2 specific basis, to have a significant nexus to a water” otherwise protected under the rule. *Id.*

3 46. The second category of waters eligible for a case-specific determination included
4 “waters located within the 100-year floodplain of a water identified ... [in a preceding section of
5 the rule] and all waters located within 4,000 feet of the high tide line or ordinary high water mark
6 of a water identified ... [in a preceding section of the rule] where they are determined on a case-
7 specific basis to have a significant nexus to [such] a water[.]” *See, e.g., id.* at 37,114.

8 C. Excluded Waters—Waste Treatment Exclusion

9 47. The Clean Water Rule identified waters that the Agencies would categorically deem
10 “not jurisdictional.” One such exclusion is for “waste treatment systems,” *id.* at 22,189, 22,192,
11 essentially waste dumps created in waters, including sometimes in protected waters.

12 48. In May 1980, through notice-and-comment rulemaking, EPA had removed a
13 provision that excluded “waste treatment systems” from where it was within the more limited
14 definition of “wetlands,” and instead excluded waste treatment systems from the larger
15 overarching definition of “waters of the United States,” potentially improperly expanding the
16 exclusion for waste treatment and allowing any waters traditionally protected under the Clean
17 Water Act to be used as waste dumps. In the same rulemaking, however, EPA ensured that
18 expansion would not occur by adding limiting language stating that “[t]his exclusion applies only
19 to manmade bodies of water which neither were originally created in waters of the United States
20 (such as a disposal area in wetlands) nor resulted from the impoundment of waters of the United
21 States.” 45 Fed. Reg. 33,290, 33,424 (May 19, 1980). In so doing, EPA ensured that polluters
22 would not be able to use the waste treatment exclusion to “convert” a water of the United States
23 into a waste dump. *Id.*

1 49. In July 1980, after “[c]ertain industry petitioners wrote to EPA expressing objections
2 to the language,” EPA announced its decision to “suspend” the limiting language it had lawfully
3 promulgated two months earlier. 45 Fed. Reg. 48,620, 48,620 (July 21, 1980). EPA indicated
4 that it planned “promptly to develop a revised definition and to publish it as a proposed rule for
5 public comment.” *Id.* at 48,620.

6 50. In the 2015 Clean Water Rulemaking, the Agencies included the waste treatment
7 exclusion without the limiting language. 80 Fed. Reg. at 37,097.

8 II. THE REPEAL RULE

9 51. On February 28, 2017, President Trump issued Executive Order 13,778, which
10 directed the Agencies to repeal the Clean Water Rule and consider replacing it with a regulation
11 employing the approach and reasoning of Justice Scalia’s plurality opinion in *Rapanos*.

12 52. In 2017, the Agencies proposed to repeal the Clean Water Rule and revert to and
13 recodify the previous regulation and guidance. 82 Fed. Reg. 34,903 (July 27, 2017).

14 53. On October 22, 2019, the Agencies published a final regulation repealing the Clean
15 Water Rule and readopting the Agencies’ 1986 regulation and related guidance. 84 Fed. Reg.
16 56,626 (Oct. 22, 2019) (“The Repeal Rule”). As it relates to the waste treatment system
17 exclusion, the Repeal Rule purports to “continue[]” the modification expanding the waste
18 treatment system exclusion to waste systems created in jurisdictional waters of the United States.
19 83 Fed. Reg. at 34,907.

20 54. The Repeal Rule became effective on December 23, 2019. 84 Fed. Reg. at 56,626.

21 55. In adopting the Repeal Rule, the Agencies provided no explanation, analysis,
22 discussion, or refutation of the Science Report or any of the research and studies in the
23 administrative record for the Clean Water Rule. The Agencies identified no different or new
24 scientific evidence, and provided no discussion of or explanation for how or why the Science

1 Report and the technical information in the administrative record support the Repeal Rule. The
2 Agencies also failed to explain why they disregarded the Science Report and their earlier
3 findings and conclusions based upon it.

4 56. Prior to the adoption of the Repeal Rule with its reversion back to the 1986
5 regulations, the Agencies had already published the proposed Navigable Waters Rule meant to
6 replace the Clean Water Rule. The Agencies did not explain how reinstating the pre-2015
7 regulation and guidance was consistent with their stated intention to replace it with a far
8 narrower definition of “waters of the United States.”

9 III. THE NAVIGABLE WATERS RULE

10 57. On February 14, 2019, the Agencies published the proposed Navigable Waters Rule
11 for public comment. 84 Fed. Reg. 4154 (Feb. 14, 2019).

12 58. The defects in the proposed Navigable Waters Rule were presented to the Agencies in
13 extensive comments submitted by Plaintiffs and others.

14 59. On April 21, 2020, the Agencies published the final Navigable Waters Rule and made
15 it effective on June 22, 2020. 85 Fed. Reg. 22,250 (Apr. 21, 2020).

16 60. The Navigable Waters Rule redefines the waters that are jurisdictional waters of the
17 United States protected by the Clean Water Act, limiting them to: (i) the territorial seas, and
18 waters which are currently used, or were used in the past, or may be susceptible to use, in
19 interstate or foreign commerce, including waters which are subject to the ebb and flow of the
20 tide; (ii) tributaries; (iii) lakes and ponds, and impoundments of jurisdictional waters; and
21 (iv) adjacent wetlands. *Id.* at 22, 338. The definition categorically excludes interstate waters
22 from protection for the first time in the Act’s history and removes protections for many
23 tributaries and adjacent wetlands through its narrow definitions of those terms.

1 61. The Navigable Waters Rule has no provision for case-by-case jurisdictional
2 determinations, meaning that waters not expressly identified as protected will be excluded from
3 protection, even if they have a significant nexus to and impact on the water quality and aquatic
4 ecosystems in other waters protected under the Act.

5 62. The Navigable Waters Rule also no longer provides for the case-by-case protection
6 for waters the Science Report and the Agencies previously found may have a significant nexus to
7 the physical, chemical, or biological functions of specific downstream waters, including prairie
8 potholes, pocosins, Carolina Bay, or Texas coastal wetlands or Western vernal pools.

9 63. The Navigable Waters Rule defines waters that are categorically not protected by the
10 Clean Water Act as (i) waters or water features that are not specifically identified in the rule as
11 categorically jurisdictional; (ii) groundwater, including groundwater drained through subsurface
12 drainage systems; (iii) “ephemeral” features, including ephemeral streams, swales, gullies, rills,
13 and pools; (iv) diffuse stormwater run-off and directional sheet flow over uplands; (v) ditches
14 that are not waters identified elsewhere in the definition; and (vi) waste treatment systems,
15 among other waters. *Id.*

16 64. The Navigable Waters Rule additionally limits jurisdiction, and thereby protections
17 under the Clean Water Act, by substantially narrowing the definition of tributaries and providing
18 new definitions of “ephemeral” and “intermittent” tributaries. The Navigable Waters Rule,
19 citing Justice Scalia’s plurality opinion in *Rapanos* for support, narrows the definition of
20 “tributaries” to exclude all waters that are considered “ephemeral,” meaning waters that flow
21 “only in direct response to precipitation in a typical year[.]” and includes only waters that are
22 “relatively permanent” in a “typical” year. *Id.* at 22,338-39.

1 65. The Navigable Waters Rule also narrows the definition of wetlands that are waters of
2 the United States, limiting protected wetlands to those that are directly connected on the surface
3 on at least one side to another protected water under the rule. A wetland that is separated from a
4 protected water only by an artificial dike, barrier, or similar artificial structure, may be protected
5 but only if the barrier allows for a direct surface water connection to the protected water in a
6 typical year through a culvert, flood or tide gate, or pump. The Navigable Waters Rule excludes
7 wetlands from protection under the Act if the wetland is inundated by flooding from a protected
8 water but that flooding does not occur in a “typical year.” *Id.* at 22,338.

9 66. The Navigable Waters Rule also provides that a waterbody may be severed and lose
10 its status as a protected “water of the United States” by man-made alterations such as roads,
11 dams, berms, or levees if those alterations result in loss of surface water connection between the
12 upstream and downstream waters, or result in the loss of a surface water connection between a
13 wetland and a waterbody, in a “typical” year. *See, e.g., id.* at 22,338-39.

14 67. The term “typical year” is defined to mean “when precipitation and other climatic
15 variables are within the normal periodic range (e.g., seasonally, annually) for the geographic area
16 of the applicable aquatic resource based on a rolling thirty-year period.” *Id.* at 22, 339. The
17 Navigable Waters Rule does not define “normal periodic range,” and does not define or provide
18 guidance on the relevant size or type of geographic area for jurisdictional determinations.

19 68. The Navigable Waters Rule retained the waste treatment exclusion allowing historic
20 waste treatment impoundments originally created in waters of the U.S. to be excluded from
21 jurisdiction, but defined “waste treatment systems” for the first time. The definition includes all
22 components of the waste treatment system, including lagoons and treatment ponds (such as
23 settling or cooling ponds) designed to either convey or retain, concentrate, settle, reduce, or
24

1 remove pollutants, either actively or passively, from wastewater prior to discharge (or
2 eliminating any such discharge). *Id.* at 22,328-39. The Agencies stated that they were
3 continuing longstanding practice without acknowledging or addressing the limiting language in
4 the promulgated 1980 rule.

5 69. The Navigable Waters Rule bases much of its more limited definition of protected
6 waters on Justice Scalia's plurality opinion in *Rapanos*.

7 70. As with the Repeal Rule, the Agencies provided no explanation, analysis, or
8 discussion of the Science Report, any of the research and studies in the administrative record for
9 the Clean Water Rule, or any of the Agency findings and conclusions based upon the Science
10 Report and other scientific evidence when they proposed or finalized the Navigable Waters Rule.
11 The Agencies prepared no comparable analysis of the scientific evidence on how various waters
12 that will now be excluded from protection affect physical, chemical or biological functions and
13 integrity of downstream water quality or aquatic ecosystems.

14 71. The Agencies failed to address or consider their past findings regarding the effect of
15 tributaries on downstream waters, the identifying features of tributaries, and the need to protect
16 all tributaries under the Act.

17 72. The Agencies failed to address or consider the earlier findings in the Science Report
18 and made by the Agencies, as well as Justice Kennedy's science-driven determination that
19 ephemeral waters and certain types of wetland ecosystems, such as prairie potholes, can and do
20 have a significant nexus to downstream waters and can and do affect the chemical, physical, and
21 biological integrity of those waters.

22 73. The Agencies failed to address or consider the earlier findings in the Science Report
23 and by the Agencies that isolated wetlands and unconnected waters within a floodplain can and
24

1 do have a significant nexus to downstream waters, and can and do affect the chemical, physical,
2 and biological integrity of those waters.

3 74. The Agencies provided no explanation for their exclusion of interstate waters, and
4 failed to consider the effects that isolated or ephemeral interstate waters have on the physical,
5 chemical or biological integrity of downstream waters.

6 75. The Agencies released the final Navigable Waters Rule for publication on January 23,
7 2020.

8 76. The Agencies' release of the final rule for publication occurred before the Agencies
9 had received final feedback and comment from the Science Advisory Board, but after the
10 Agencies had received preliminary feedback and comments from the Science Advisory Board on
11 October 16, 2019, where the Science Advisory Board reiterated that the Science Report was
12 sound, was still the best science, and that the Science Advisory Board was critical of the
13 Navigable Waters Rule as "in conflict with established science, the existing WOTUS rule
14 developed based on established science, and the objectives of the Clean Water Act."

15 77. The Science Advisory Board provided final comment on the Navigable Waters Rule
16 on February 27, 2020. In comments "[t]he Board concluded that the ... [Navigable Waters Rule]
17 does not incorporate best available science and ... that a scientific basis for the ... Rule, and its
18 consistency with the objectives of the Clean Water Act, is lacking." Science Advisory Board,
19 Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the
20 Clean Water Act, Feb. 27, 2020 at 1. The Science Advisory Board further found that the
21 Navigable Waters Rule "decreases protection for our Nation's waters and does not provide a
22 scientific basis in support of its consistency with the objective of restoring and maintaining 'the
23 chemical, physical and biological integrity' of these waters." *Id.* at 2.

1 78. The Science Advisory Board further criticized the Agencies' rejection of a sound
2 scientific approach in designing the Navigable Waters Rule, and their disregard in particular of
3 the Science Report, noting that

4 "[t]he proposed Rule does not fully incorporate the body of science on
5 connectivity of waters reviewed previously by the SAB and found to represent a
6 scientific justification for including functional connectivity in rule making[,] ...
7 [including the] EPA's 2015 Connectivity Report[,] ... The EPA's 2015
8 Connectivity Report emphasizes that functional connectivity is more than a matter
9 of surface geography. The report illustrates that a systems approach is imperative
10 when defining the connectivity of waters, and that functional relationships must
11 be the basis of determining adjacency. The proposed Rule offers no comparable
12 body of peer reviewed evidence, and no scientific justification for disregarding
13 the connectivity of waters accepted by current hydrological science."

14 *Id.* at 2 (footnote omitted).

15 79. The Science Advisory Board also specifically criticized particular parts of the
16 Navigable Waters Rule and definitions therein as contrary to the best science and contrary to the
17 purpose and intent of the Clean Water Act. *Id.* at 2-3.

18 80. Because the Agencies finalized the Navigable Waters Rule before the Science
19 Advisory Board could finish its comments, the Agencies failed to consider the final critique and
20 comments of the Agencies' own expert advisory committee.

21 CAUSES OF ACTION

22 81. The Repeal Rule and the Navigable Waters Rule are final agency actions reviewable
23 under the APA. 5 U.S.C. § 704.

24 82. Under the APA, a court shall hold unlawful, set aside, and vacate final agency actions
25 that are arbitrary and capricious, contrary to law, an abuse of discretion or not otherwise in
26 accordance with the law; that exceed the agency's authority; and that do not follow applicable
procedures. 5 U.S.C. § 706(2)(A).

**COUNT I—THE NAVIGABLE WATERS RULE IS CONTRARY
TO THE CLEAN WATER ACT**

83. Restates and realleges all preceding paragraphs.

84. The Clean Water Act’s single objective is to restore and protect the physical, chemical, and biological integrity of the Nation’s waters and to do so as broadly as possible. 33 U.S.C. § 1251.

85. A majority of the Supreme Court and all Circuit Courts that have addressed the issue have recognized that the protections of the Clean Water Act extend to all traditional navigable waters, as well as to all waters that affect or are in connection with the physical, chemical, or biological integrity of traditional navigable waters.

86. The Navigable Waters Rule is contrary to law in that it fails to afford Clean Water Act protections to waters having an effect on or connection to the physical, chemical, and biological integrity of downstream traditional navigable waters as required by the statute, the Supreme Court’s interpretation of the statute, and all circuit courts of appeal that have addressed the issue.

87. The Agencies exceeded their authority and acted contrary to the Clean Water Act, 33 U.S.C. §§ 1251-388, by adopting provisions in the Navigable Waters Rule that define waters of the U.S. to exclude waters having an effect on or connection to the physical, chemical, and biological integrity of downstream traditional navigable waters, including but not limited to:

- a. Exclusion of all interstate waters;
- b. Definition of tributaries that excludes ephemeral waters;
- c. Definition of adjacent wetlands that excludes “isolated” wetlands, wetland ecosystems such as prairie potholes, and wetlands connected by non-surface or ephemeral connections between wetlands and protected traditional navigable waters;

- 1 d. Definition of “typical year” that is vague, unclear, and contrary to
2 science and the record which will result in waters in significant
3 nexus to traditional navigable waters being excluded; and
4 e. Exclusion of waters separated from traditional navigable waters
5 that lack a surface connection in a “typical year,” but have an
6 effect on or connection to downstream traditional navigable
7 waters.

8 5 U.S.C. § 706(2)(A).

9 **COUNT II—THE NAVIGABLE WATER RULE IS ARBITRARY**
10 **AND CAPRICIOUS AND AN ABUSE OF DISCRETION**

11 88. Restates and realleges all preceding paragraphs.

12 89. The Navigable Waters Rule is arbitrary and capricious because it is contrary to the
13 entirety of the record. 5 U.S.C. § 706(2)(A).

14 90. The Navigable Waters Rule is arbitrary and capricious because it failed to consider
15 the Science Report and the comments of the Science Advisory Board supporting the broader
16 Clean Water Rule and criticizing the Navigable Waters Rule as affording inadequate protections.
17 *Id.*

18 91. The Navigable Waters Rule is further arbitrary and capricious in that the Agencies
19 failed to explain their change in position and their actions conflicting with the Science Report
20 and record evidence. *Id.* The Navigable Waters Rule reverses findings the Agencies made in the
21 Clean Water Rule, based on an extensive factual record of scientific support in the Science
22 Report and related technical documents in support of the Clean Water Rule.

23 92. The Navigable Waters Rule is contrary to the Agencies’ own scientific analysis, and
24 the Agencies did not offer a rational explanation for this contradiction.

25 93. In the Navigable Waters Rule, the Agencies severely restricted the scope of the Clean
26 Water Act, repeatedly admitting that “fewer waters would be subject to the CWA regulation”
and that they are “narrowing the scope of CWA regulatory jurisdiction,” but the Agencies failed

1 to assess, consider and explain the effects on the physical, chemical, or biological integrity of the
2 Nation’s waters or the extent to which waters will lose Clean Water Act protections. Without
3 support or further explanation, they claim that they are “unable to quantify” the changes. 85 Fed.
4 Reg. 22, 335; Economic Analysis for the Navigable Waters Protection Rule: Definition of
5 “Waters of the United States,” Jan. 22, 2020. The Agencies’ decision to significantly limit the
6 scope of waters protected under the Clean Water Act without any analysis or quantification of
7 the extent of waters losing protections and the impacts on both the newly excluded waters and
8 traditional downstream waters, is arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with the law.

10 94. The Agencies’ decision to remove the Clean Water Act’s protections for ephemeral
11 streams and many other streams, as well as many wetlands and other waters, without analyzing
12 the extensive scientific evidence of the ecological importance of protecting these waters and their
13 connectivity to and effects on downstream waters, is arbitrary, capricious, an abuse of discretion,
14 or otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A).

15 95. The Agencies’ decision to narrow the scope of waters protected under the Clean
16 Water Act and to base the final rule on the permanence of surface flow in a typical year without
17 considering the effects of climate change is arbitrary, capricious, an abuse of discretion, or
18 otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A).

19 96. The Agencies’ decision to narrowly restrict the scope of waters protected by the
20 Clean Water Act is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
21 with law, in violation of the APA. 5 U.S.C. § 706(2)(A).

22 **COUNT III—THE NAVIGABLE WATER RULE’S WASTE TREATMENT**
23 **EXCLUSION IS ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW**

24 97. Restates and realleges all preceding paragraphs.

1 98. The waste treatment exclusion will exclude waters of the United States from the
2 protections of the Clean Water Act if they are newly impounded and used as waste dumps. The
3 Navigable Waters Rule conversely defines “impoundments” of waters of the United States to
4 categorically also be waters of the United States. 85 Fed. Reg. at 22,338.

5 99. In allowing waste impoundments in “waters of the United States” to be redefined as
6 not jurisdictional and not protected under the Clean Water Act while also defining
7 impoundments of waters of the United States to categorically be jurisdictional and protected, the
8 waste treatment exclusion is arbitrary and capricious and an abuse of discretion. 5 U.S.C.
9 § 706(2)(A).

10 100. The waste treatment exclusion exceeds the Agencies’ authority because it
11 unlawfully excludes traditional navigable waters from protection under the Clean Water Act and
12 violates the objective of the Act to protect and restore the physical, chemical and biological
13 integrity of all waters of the United States. 33 U.S.C. § 1251; 5 U.S.C. § 706(2)(A).

14 **COUNT IV—THE AGENCIES ADOPTED THE NAVIGABLE WATER RULE’S**
15 **WASTE TREATMENT EXCLUSION WITHOUT COMPLYING WITH**
16 **NOTICE AND COMMENT REQUIREMENTS.**

17 101. Restates and realleges all preceding paragraphs.

18 102. In 1980, without notice and comment rulemaking, the Agencies suspended the
19 regulatory limitation of the waste treatment exclusion to manmade impoundments and
20 impoundments created prior to 1972, which had ensured that waters of the United States would
21 not be converted into waste dumps.

22 103. The 2015 Clean Water Rule continued the waste treatment system exclusion with
23 the suspension of the limiting language and expressly did not seek comment on the exclusion.

24 104. In the Navigable Waters Rule, the Agencies adopted the first definition “waste
25 treatment systems” subject to the exclusion as including all components of the waste treatment

1 impoundments in waters of the United States. The Agencies expressly stated that they were not
2 seeking comment on the definition, including its explicit acknowledgement that such systems
3 could be in waters of the United States. The Agencies also did not seek comment on these
4 regulatory changes, which conflict with the limiting language in 1980 waste treatment exclusion.

5 105. By taking action without comment on the legality or desirability of expressly
6 defining waste treatment systems to include impoundments and systems in waters of the United
7 States in the Navigable Waters Rule, the Agencies adopted the waste treatment exclusion
8 provisions in the Navigable Water Rule “without observance of procedure required by law,” in
9 violation of the APA. 5 U.S.C. § 706(2)(D).

10 **COUNT V—THE REPEAL RULE IS ARBITRARY AND CAPRICIOUS, AN**
11 **ABUSE OF DISCRETION AND CONTRARY TO THE CLEAN WATER ACT**

12 106. Restates and realleges all preceding paragraphs.

13 107. The Clean Water Act’s objective is to restore and protect the physical, chemical
14 and biological integrity of the Nation’s waters and to do so as broadly as possible. 33 U.S.C.
15 § 1251.

16 108. The Repeal Rule’s reversion to the 1986 regulations and guidance is arbitrary and
17 capricious because it is contrary to the record for the Clean Water Rule and the Navigable
18 Waters Rule, which was being developed as a package with the Repeal Rule. 5 U.S.C.
19 § 706(2)(A).

20 109. In particular, the Repeal Rule is arbitrary and capricious because it failed to
21 consider and is contrary to the Science Report and Agency findings based upon the Science
22 Report. *Id.*

1 110. The Repeal Rule is further arbitrary and capricious because the Agencies failed to
2 explain their change in position from the Clean Water Rule, and failed to address the fact that the
3 Repeal Rule is contrary to the Science Report and related record evidence. *Id.*

4 111. The Repeal Rule is further arbitrary and capricious because the Agencies failed to
5 consider the effects of reverting to an earlier system of regulation on the physical, chemical, or
6 biological integrity of the Nation’s waters. *Id.*

7 **REQUEST FOR RELIEF**

8 Based upon the foregoing, Plaintiffs request relief from the court as follows:

9 A. Adjudge and declare that the Navigable Waters Rule is arbitrary, capricious, an
10 abuse of discretion, or otherwise not in accordance with law, in violation of the APA, 5 U.S.C. §
11 706(2)(A), 33 U.S.C. §§ 1251-388;

12 B. Vacate and set aside the Navigable Waters Rule;

13 C. Adjudge and declare that the waste treatment system exclusion provisions of the
14 Navigable Waters Rule were adopted “without observance of procedure required by law,”
15 contrary to law and are arbitrary, capricious, and an abuse of discretion in violation of the APA,
16 5 U.S.C. § 706(2);

17 D. Adjudge and declare that the waste treatment system exclusion improperly
18 excludes waters of the United States from the protections of the Clean Water Act contrary to law;

19 E. Vacate and set aside the waste treatment system exclusion;

20 F. Adjudge and declare that the Repeal Rule is arbitrary, capricious, an abuse of
21 discretion, or otherwise not in accordance with law, in violation of the APA, 5 U.S.C. §
22 706(2)(A);

23 G. Vacate and set aside the Repeal Rule;

1 H. Reinstatement the Clean Water Rule without the vacated waste treatment exclusion;

2 I. Award Plaintiffs their reasonable fees, costs, expenses, and disbursements,
3 including attorney's fees, associated with this litigation; and

4 J. Grant such additional and further relief as the Court may deem just, proper, and
5 necessary.

6 Dated this 22nd day of June, 2020.

7 *s/ Janette K. Brimmer*

Janette K. Brimmer, WSBA # 41271

8 *s/ Patti Goldman*

Patti Goldman, WSBA # 24426

EARTHJUSTICE

810 Third Avenue, Suite 610

Seattle, WA 98104

(206) 343-7340

jbrimmer@earthjustice.org

pgoldman@earthjustice.org

9 *s/ Anna Sewell*

Anna Sewell, WSB # 48736

EARTHJUSTICE

1001 G St. NW, Suite 1000

Washington, D.C. 20001

(202)667-5233

asewell@earthjustice.org

17 *Counsel for Puget Soundkeeper Alliance,
18 Sierra Club, Idaho Conservation League,
and Mi Familia Vota*

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
PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,
(b) County of Residence of First Listed Plaintiff King County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Janette K. Brimmer, Patti A. Goldman, Earthjustice, 810 Third Ave., Ste. 610, Seattle, WA 98275; Anna Sewell, Earthjustice, 1625 Massachusetts Avenue, NW, Suite 702, Washington, D.C. 20036

DEFENDANTS
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Assistant Secretary of the Army for Civil Works,
County of Residence of First Listed Defendant
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)
PTF DEF
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)
CONTRACT
REAL PROPERTY
PERSONAL INJURY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
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):
5 U.S.C. § 706
Brief description of cause:
Challenge to federal agencies' rules to 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 John C. Coughenour DOCKET NUMBER 2:15-cv-01342-JCC 2:19-cv-00569-JCC

DATE 06/22/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Janette K. Brimmer

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Secretary of the Army for Civil Works,

Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ENVIRONMENTAL PROTECTION AGENCY 1200 Pennsylvania Avenue, NW Washington, D.C. 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: Janette K. Brimmer Patti A. Goldman Earthjustice 810 Third Avenue, Suite 610 Seattle, WA 98104

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. 2:20-cv-950

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

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Plaintiff(s)

v.

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Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANDREW WHEELER Acting Administrator of the United States Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 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: Janette K. Brimmer Patti A. Goldman Earthjustice 810 Third Avenue, Suite 610 Seattle, WA 98104

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. 2:20-cv-950

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

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Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Secretary of the Army for Civil Works,

Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Army Corps of Engineers 441 G Street NW Washington, DC 20314-1000

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:

Janette K. Brimmer
Patti A. Goldman
Earthjustice
810 Third Avenue, Suite 610
Seattle, WA 98104

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. 2:20-cv-950

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

Western District of Washington

PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Assistant Secretary of the Army for Civil Works,

Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rickey "R.D." James, Assistant Secretary of the Army for Civil Works 108 Army Pentagon Washington, DC 20310-0108

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: Janette K. Brimmer Patti A. Goldman Earthjustice 810 Third Avenue, Suite 610 Seattle, WA 98104

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. 2:20-cv-950

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_____ on *(date)* _____ ; or

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

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I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

UNITED STATES DISTRICT COURT

for the

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PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Secretary of the Army for Civil Works,

Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) William Barr Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

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:

Janette K. Brimmer Patti A. Goldman Earthjustice 810 Third Avenue, Suite 610 Seattle, WA 98104

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. 2:20-cv-950

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

UNITED STATES DISTRICT COURT

for the

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PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the U.S. EPA, UNITED STATES ARMY CORPS OF ENGINEERS and R.D. JAMES, in his official capacity as Secretary of the Army for Civil Works,

Defendant(s)

Civil Action No. 2:20-cv-950

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Brian T. Moran U.S. Attorney United States Attorney's Office 700 Stewart Street, Suite 5220 Seattle, WA 98101-1271

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:

Janette K. Brimmer Patti A. Goldman Earthjustice 810 Third Avenue, Suite 610 Seattle, WA 98104

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 2:20-cv-950

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Server's address

Additional information regarding attempted service, etc: