

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC.; SIERRA CLUB;
WEST VIRGINIA HIGHLANDS
CONSERVANCY, INC.; & WEST
VIRGINIA RIVERS COALITION;**

Plaintiffs,

v.

CIVIL ACTION NO. 3:15-cv- 00271

**GINA MCCARTHY, Administrator,
United States Environmental
Protection Agency, & SHAWN M.
GARVIN, Regional Administrator,
United States Environmental
Protection Agency, Region III,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges six (6) final actions by the United States Environmental Protection Agency, its Administrator, and Regional Administrator for Region III (collectively, “EPA”), and seeks to compel Defendants to perform certain nondiscretionary duties under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act” or “CWA”).

2. The challenged final actions include:

- a. EPA’s September 24, 2009 approval of the Total Maximum Daily Loads (“TMDLs”) for selected streams in the Upper Ohio River South Watershed (hereinafter, the “Upper Ohio South TMDLs”), submitted by the West Virginia Department of Environmental Protection (“WVDEP”);

- b. EPA's September 30, 2009 approval of the TMDLs for selected streams in the Dunkard Creek Watershed (hereinafter, the "Dunkard Creek TMDLs"), submitted by the WVDEP;
- c. EPA's April 23, 2012 approval of the TMDLs for selected streams in the Lower Kanawha River Watershed (hereinafter, the "Lower Kanawha River TMDLs"), submitted by WVDEP;
- d. EPA's May 17, 2012 approval of the TMDLs for selected streams in the Elk River Watershed (hereinafter, the "Elk River TMDLs"), submitted by WVDEP;
- e. EPA's April 2, 2014 approval of the TMDLs for selected streams in the Monongahela River Watershed (hereinafter, the "Monongahela River TMDLs"), submitted by WVDEP; and
- f. EPA's July 29, 2014 approval of the TMDLs for selected streams in the West Fork River Watershed (hereinafter, the "West Fork River TMDLs"), submitted by WVDEP.

3. The nondiscretionary duties of which Plaintiffs seek to compel performance are Defendants' duties pursuant to 33 U.S.C. § 1313(d)(2) to disapprove of WVDEP's actual and/or constructive submission of no TMDLs for waters in West Virginia biologically impaired by ionic stress and to develop such TMDLs for those waters.

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 5 U.S.C. §§ 702–703 (Administrative Procedures Act), & 33 U.S.C. § 1365(a)(2) (Clean Water Act citizen suit provision).

5. On November 7, 2014, Plaintiffs gave notice to Defendants of their intent to bring this action to compel the performance of Defendants' nondiscretionary duties under 33 U.S.C. § 1313(d)(2), as required by Section 505(b)(2) of the CWA, 33 U.S.C. § 1365(b)(2).

6. Venue in this District is proper because "a substantial part of the events or omissions giving rise to the claim occurred" in this District and because plaintiffs Ohio Valley Environmental Coalition and West Virginia Highlands Conservancy reside in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

7. Plaintiff Sierra Club is a nonprofit corporation incorporated in California with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; 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 those objectives. The Sierra Club's concerns encompass the exploration, enjoyment, and protection of surface waters in West Virginia.

8. Plaintiff Ohio Valley Environmental Coalition, Inc., (hereinafter, "OVEC") is a nonprofit organization incorporated in Ohio. Its principle place of business is in Huntington, West Virginia. It has approximately 1,500 members. Its mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, and media outreach. OVEC has focused on water quality issues and is a leading source of information about water pollution in West Virginia.

9. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter, "WVHC") is a nonprofit organization incorporated in West Virginia. It has approximately 1,700 members. It works for the conservation and wise management of West Virginia's natural resources.

10. Plaintiff West Virginia Rivers Coalition makes its mission the conservation and restoration of West Virginia's exceptional rivers and streams. It not only seeks preservation of high quality waters but also the improvement of waters that should be of higher quality. It has approximately 2,500 members.

11. Plaintiffs' members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendants' unlawful approval of the TMDLs at issue and Defendants' failure to perform its nondiscretionary duties under 33 U.S.C. § 1313(d)(2). Plaintiffs' members fish in, swim in, hike near, observe wildlife in, photograph, and/or otherwise use the waters for which the TMDLs at issue were developed and/or should have been developed by Defendants. Plaintiffs' members refrain from those activities and/or enjoy them less because of the continued polluted conditions of the affected waters that results from Defendants' unlawful approval of and failure to develop TMDLs. If Defendants' unlawful approvals are set aside, and if Defendants are compelled to develop appropriate TMDLs, then the harm to the interests of Plaintiffs' members could be redressed. Plaintiffs' members with fairly traceable, redressible injuries as a result of Defendants' unlawful approval of the TMDLs at issue and Defendants' failure to perform their nondiscretionary duties include:

- a. Vivian Stockman, who has a legally cognizable interest in one or more biologically impaired streams in the Upper Kanawha, Lower Kanawha, Upper Guyandotte, Little Kanawha, and Middle Ohio North Watersheds;
- b. Dustin White, who has a legally cognizable interest in one or more

biologically impaired streams in the Coal River Watershed;

- c. Cindy Rank, who has a legally cognizable interest in one or more biologically impaired streams in the Gauley River, Elk River, West Fork River, Tygart Valley, Upper Guyandotte, and Lower Guyandotte Watersheds;
- d. Robin Mahonen, who has a legally cognizable interest in one or more biologically impaired streams in the Upper Ohio South Watershed;
- e. Betty Wiley, who has a legally cognizable interest in one or more biologically impaired streams in the Dunkard Creek Watershed;
- f. Dave Saville, who has a legally cognizable interest in one or more biologically impaired streams in the Monongahela River, Cheat River, and Middle Ohio River South Watersheds;
- g. Cindy Ellis, who has a legally cognizable interest in one or more biologically impaired streams in the Tug Fork Watershed;
- h. Tonya Adkins, who has a legally cognizable interest in one or more biologically impaired streams in the Tug Fork and Big Sandy River Watersheds;
- i. Eric Autenreith, who has a legally cognizable interest in one or more biologically impaired streams in the Lower New River Watershed;
- j. Ed Gertler, who has a legally cognizable interest in one or more biologically impaired streams in the South Branch Potomac and Potomac Direct Drains Watersheds;
- k. Eddie Fletcher, who has a legally cognizable interest in one or more biologically impaired streams in the Greenbrier River Watershed;

- l. Robin Blakeman, who has a legally cognizable interest in one or more biologically impaired streams in the Lower Ohio River Watershed; and
- m. Dianne Bady, who has a legally cognizable interest in one or more biologically impaired streams in the Lower Ohio and Twelvepole Watersheds.

12. At all relevant times, Plaintiffs were and are “persons” as that term is defined by the CWA, 33 U.S.C. § 1362(5).

13. Defendant Gina McCarthy is the Administrator of the United States Environmental Protection Agency. She is charged with the supervision and management of all decisions and actions of that agency, including those taken pursuant to the Clean Water Act with respect to the approval and development of TMDLs under 33 U.S.C. § 1313(d)(2). Ms. McCarthy is being sued in his official capacity only.

14. Defendant Shawn M. Garvin is the Regional Administrator of Region III of the United States Environmental Protection Agency. Region III’s responsibilities include oversight of the Clean Water Act activities of the State of West Virginia. Pursuant to 40 C.F.R. § 130.7(d)(2), the Administrator of the United States Environmental Protection Agency has delegated her authorities and nondiscretionary duties under 33 U.S.C. § 1313(d)(2) to the Regional Administrators, including Mr. Garvin. Mr. Garvin is being sued in his official capacity only.

STATUTORY AND REGULATORY FRAMEWORK

15. Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The goal of the Clean Water Act is to eliminate “the discharge of pollutants into the navigable waters,” and in the interim, to attain “water quality which provides for the protection and

propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(1) and (2).

16. The achieve those ends, Section 303 of the Clean Water Act requires each State to establish and implement water quality standards, subject to review and approval by EPA. 33 U.S.C. §§ 1313(a)–(c), 1362(3).

17. Water quality standards consist of the “designated uses” of a state’s waters and “the water quality criteria for such waters based upon such uses,” and “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. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 130.2(d).

18. The CWA requires each State to “identify those waters within its boundaries for which the [technology-based] effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of [the CWA] are not stringent enough to implement any water quality standard applicable to such waters.” 33 U.S.C. § 1313(d)(1)(A).

19. For the waters thus identified, “[e]ach State shall establish . . . the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation.” 33 U.S.C. § 1313(d)(1)(C). Pursuant to Section 1314(a)(2), EPA has identified “[a]ll pollutants” as being suitable for TMDL calculation. 43 Fed. Reg. 60,665 (Dec. 28, 1978). The CWA requires that “TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards. . . .” 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1)(ii).

20. Section 303(d) further provides that TMDLs “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship

between effluent limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C). EPA regulations likewise provide that “TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.” 40 C.F.R. § 130.7(c)(1).

21. Under EPA regulations, a TMDL is “[t]he sum of the individual [waste load allocations or “WLAs”] for point sources and [load allocations or “LAs”] for nonpoint sources and natural background.” 40 C.F.R. § 130.2(i). A WLA is “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.” 40 C.F.R. § 130.2(h) (emphasis added). An LA is “[t]he portion of a receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.” 40 C.F.R. § 130.2(g).

22. Submission of lists of impaired waters and related TMDLs by states trigger a duty of EPA to “either approve or disapprove such identification and load not later than thirty days after the date of submission.” 33 U.S.C. § 1313(d)(2). “If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.” Id.

23. TMDLs are implemented, among other ways, through incorporation into water

quality management plans under § 303(e)(3)(C) of the CWA, and through point source discharge permits issued under § 402. Such permits must include not only technology-based effluent limitations, but also “any more stringent limitation . . . required to implement any applicable water quality standard established pursuant to this chapter.” 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Such limitations are known as “water quality-based effluent limitations.” Thus, water quality-based effluent limitations in point source discharge permits must be consistent with the assumptions and requirements of any available wasteload allocations in applicable TMDLs. *See, e.g.*, 40 C.F.R. § 122.44(d)(1)(vii)(B).

UPPER OHIO SOUTH TMDLS

24. On or about September 24, 2009, Defendants approved West Virginia’s submitted Total Maximum Daily Loads for Selected Streams in the Upper Ohio South River Watershed, West Virginia—the Upper Ohio South TMDLs.

25. Prior to submitting the Upper Ohio South TMDLs to EPA for approval, WVDEP sought and obtained public comments on the proposed TMDLs.

26. Plaintiffs Sierra Club and WVRC submitted comments to WVDEP on the proposed Upper Ohio South TMDLs on or about April 3, 2009.

27. Sierra Club and WVRC objected to the proposed Upper Ohio South TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP determined were biologically impaired because of ionic stress.

28. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that “[t]here is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL

development for ionic toxicity at this time.”

29. In their comments, Sierra Club and WVRC established that WVDEP’s rationale had no basis in law or fact.

30. In the Upper Ohio South TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Boggs Run, UNT/Boggs Run RM 2.69, Browns Run, Graeb Hollow, Short Creek, Girty Run, North Fork/Short Creek, Huff Run, and UNT/Ohio River MP 79.4), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. . . . A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. There is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time. Therefore, WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list.

31. EPA approved West Virginia’s Upper Ohio South TMDLs, notwithstanding the failure of those TMDLs to address ionic stress, accepting without analysis West Virginia’s bare-bones “explanation as to why it chose not to develop a TMDL for ionic stress at this time.” EPA made no statement as to whether it agreed with WVDEP’s claims regarding “insufficient information available regarding the causative pollutants and their associated impairment thresholds.” Rather, EPA “recommend[ed] that stressors identified through the stressor identification process conducted as part of these TMDLs be identified on the Section 303(d) list” and pledged to “continue to work with WVDEP as they develop TMDLs that fully address the biological impairments identified in Boggs Run, UNT/Boggs Run RM 2.69, Brown Run, Graeb Hollow, Short Creek, Girty Run, North Fork/Short Creek, Huff Run, and UNT/Ohio River MP 79.4.”

DUNKARD CREEK TMDLs

32. On or about September 30, 2009, Defendants approved West Virginia’s submitted

Total Maximum Daily Loads for Selected Streams in the Dunkard Creek Watershed, West Virginia—the Dunkard Creek TMDLs.

33. Prior to submitting the Dunkard Creek TMDLs to EPA for approval, WVDEP sought and obtained public comments on the proposed TMDLs.

34. Plaintiffs Sierra Club and WVRC submitted comments to WVDEP on the proposed Dunkard Creek TMDLs on or about April 3, 2009.

35. Sierra Club and WVRC objected to the proposed Dunkard Creek TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP determined were biologically impaired because of ionic stress.

36. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that “[t]here is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time.”

37. In their comments, Sierra Club and WVRC established that WVDEP’s rationale had no basis in law or fact.

38. In the Dunkard Creek TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Miracle Run, Building Run, West Virginia Fork/Dunkard Creek, South Fork/West Virginia Fork/Dunkard Creek), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. . . . A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. There is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time. Therefore, WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list.

39. EPA approved West Virginia’s Dunkard Creek TMDLs, notwithstanding the

failure of those TMDLs to address ionic stress, accepting without analysis West Virginia's barebones "explanation as to why it chose not to develop a TMDL for ionic stress at this time." EPA made no statement as to whether it agreed with WVDEP's claims regarding "insufficient information available regarding the causative pollutants and their associated impairment thresholds." Rather, EPA "recommend[ed] that stressors identified through the stressor identification (SI) process conducted as part of these TMDLs be identified on the Section 303(d) list" and pledged to "continue to work with WVDEP as they develop TMDLs that fully address the biological impairments identified in Miracle Run, Building Run, West Virginia Fork/Dunkard Creek, and South Fork/West Virginia Fork/Dunkard Creek."

LOWER KANAWHA RIVER TMDLs

40. On or about April 23, 2012, Defendants approved West Virginia's submitted Total Maximum Daily Loads for Selected Streams in the Lower Kanawha River Watershed, West Virginia—the Lower Kanawha River TMDLs.

41. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that "[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity."

42. In the Lower Kanawha River TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Joplin Branch WV-KL-77), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. A strong presence of sulfates and other dissolved solids exists in that stream where ionic toxicity has been determined to be a significant biological stressor. During the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity. WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the

Section 303(d) list. WVDEP and USEPA Region III have agreed upon a plan to develop these biological impairment TMDLs by 2014.

43. EPA approved West Virginia's Lower Kanawha River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress. EPA made no statement as to whether it agreed with WVDEP's claims regarding "insufficient information available regarding the causative pollutants and their associated impairment thresholds." Rather, EPA simply stated that "WVDEP and EPA are working to develop an impairment threshold for toxicity."

ELK RIVER TMDLs

44. On or about September May 17, 2012, Defendants approved West Virginia's submitted Total Maximum Daily Loads for Selected Streams in the Elk River Watershed, West Virginia—the Elk River TMDLs.

45. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that "[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity."

46. In the Elk River TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Leatherwood Creek WV-KE-83, Right Fork/Leatherwood Creek WV-KE-83-H, Road Fork/Leatherwood Creek WV-KE-83-N, Big Branch WV-KE-89-C-8, Birch River WV-KE-131, and Jacks Run WV-KE-131-BH), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. During the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity. WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list. WVDEP and USEPA Region III have agreed upon a plan to develop these biological impairment TMDLs by 2014.

47. EPA approved West Virginia's Elk River TMDLs, notwithstanding the failure of

those TMDLs to address ionic stress, accepting and repeating without analysis or support in the record West Virginia's bare-bones claim that "[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for TMDL development for this pollutant."

MONANGAHELA RIVER TMDLs

48. On or about April 2, 2014, Defendants approved West Virginia's submitted Total Maximum Daily Loads for Selected Streams in the Monongahela River Watershed, West Virginia—the Monongahela River TMDLs.

49. In the Monongahela River River TMDLs, WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

50. Notwithstanding its refusal to develop TMDLs for biologically impaired streams in the Monongahela River watershed, WVDEP nonetheless retained a consultant to identify the stressors causing the impairment of biologically impaired streams on the State's Section 303(d) list, and determined that ionic toxicity was the cause of the biological impairment in the following 32 streams:

- a. Camp Run, WV-M-1;
- b. Scotts Run, WV-M-10;
- c. Wades Run, WV-M-10-C;
- d. Guston Run, WV-M-10-D;
- e. Dents Run, WV-M-12;
- f. Flaggy Meadow Run, WV-M-12-A;
- g. UNT/Dents Run RM 5.82, WV-M-12-H;

- h. Hartman Run, WV-M-14-A;
- i. Owl Creek, WV-M-17-G;
- j. UNT/Camp Run RM 0.79, WV-M-1-A;
- k. Crooked Run, WV-M-2;
- l. Flaggy Meadow Run, WV-M-30;
- m. UNT/Flaggy Meadow Run RM 2.15, WV-M-30-D;
- n. Indian Creek, WV-M-33-E;
- o. Little Indian Creek, WV-M-33-E;
- p. Snider Run, WV-M-33-E-2;
- q. UNT/Little Indian Creek RM 3.19, WV-M-33-E-6;
- r. UNT/Indian Creek RM 7.23, WV-M-33-P;
- s. Paw Paw Creek, WV-M-49;
- t. Sugar Run, WV-M-49-W;
- u. Harvey Run, WV-M-49-X;
- v. Buffalo Creek, WV-M-54;
- w. Whetstone Run, WV-M-54-AA;
- x. Pyles Fork, WV-M-54-X;
- y. Flat Run, WV-M-54-X-3;
- z. Llewellyn Run, WV-M-54-X-3-A;
- aa. UNT/Mongahela River RM 128.55, WV-M-57;
- bb. West Run, WV-M-7;
- cc. Robinson Run, WV-M-8;
- dd. Crafts Run, WV-M-8-A;

ee. UNT/Robinson Run RM 1.09, WV-M-8-B; and

ff. UNT/Robinson Run RM 4.09, WV-M-8-F.

51. EPA approved West Virginia's Monongahela River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress or biological impairment. Indeed, EPA was silent as to those failures.

WEST FORK RIVER TMDLs

52. On or about July 29, 2014, Defendants approved West Virginia's submitted Total Maximum Daily Loads for the West Fork Watershed, West Virginia—the West Fork River TMDLs.

53. In the West Fork River TMDLs, WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

54. WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

55. Notwithstanding its refusal to develop TMDLs for biologically impaired streams in the West Fork River watershed, WVDEP nonetheless retained a consultant to identify the stressors causing the impairment of biologically impaired streams on the State's Section 303(d) list, and determined that ionic toxicity was the cause of the biological impairment in the following 110 streams:

- a. UNT/Booths Creek RM 1.39, WV-MW-5-A;
- b. UNT/Booths Creek RM 4.11, WV-MW-5-D;
- c. UNT/Booths Creek RM 4.81, WV-MW-5-E;
- d. Horners Run, WV-MW-5-J;

- e. Purdys Run, WV-MW-5-J-1;
- f. Coons Run, WV-MW-8;
- g. Camp Run, WV-MW-12;
- h. Bingamon Creek, WV-MW-14;
- i. Elklick Run, WV-MW-14-C;
- j. Cunningham Run, WV-MW-14-F;
- k. Glade Fork, WV-MW-14-P;
- l. Harris Fork, WV-MW-14-V;
- m. UNT/Harris Fork RM 0.65, WV-MW-14-V-2;
- n. UNT/West Fork River RM 11.44, WV-MW-15;
- o. Laurel Run, WV-MW-18;
- p. UNT/West Fork River RM 13.10, WV-MW-19;
- q. Mudlick Run, WV-MW-20;
- r. UNT/West Fork River RM 13.91, WV-MW-21;
- s. Browns Run, WV-MW-22;
- t. Shinns Run, WV-MW-23;
- u. UNT/Shinns Run RM 3.69, WV-MW-23-E;
- v. UNT/Shinns Run RM 4.15, WV-MW-23-F;
- w. UNT/Shinns Run RM 5.61, WV-MW-23-G;
- x. UNT/Shinns Run RM 5.97, WV-MW-23-H;
- y. Robinson Run, WV-MW-26;
- z. Tenmile Creek, WV-MW-27;
- aa. Jack Run, WV-MW-27-A;

- bb. Jones Creek, WV-MW-27-B;
- cc. Little Tenmile Creek, WV-MW-27-E;
- dd. Peters Run, WV-MW-27-E-2;
- ee. UNT/Little Tenmile Creek RM 1.91, WV-MW-27-E-3;
- ff. Bennett Run, WV-MW-27-E-4;
- gg. Isaac Creek, WV-MW-27-H;
- hh. Gregory Run, WV-MW-27-I;
- ii. Katy Lick Run, WV-MW-27-K;
- jj. Flag Run, WV-MW-27-L;
- kk. UNT/Tenmile Creek RM 10.82, WV-MW-27-M;
- ll. Rockcamp Run, WV-MW-27-N;
- mm. UNT/Tenmile Creek RM 22.53, WV-MW-27-AK;
- nn. UNT/West Fork River RM 20.42, WV-MW-30;
- oo. Simpson Creek, WV-MW-31;
- pp. UNT/Simpson Creek RM 1.23, WV-MW-31-A;
- qq. Jack Run, WV-MW-31-B;
- rr. Smith Run, WV-MW-31-C;
- ss. Barnett Run, WV-MW-31-F;
- tt. Beards Run, WV-MW-31-O;
- uu. Berry Run, WV-MW-31-T;
- vv. Right Fork/Simpson Creek, WV-MW-31-U;
- ww. UNT/Simpson Creek RM 21.92, WV-MW-31-X;
- xx. UNT/Right Fork RM 0.33/Simpson Creek, WV-MW-31-U-2;

- yy. Buck Run, WV-MW-31-U-3;
- zz. Sand Lick Run, WV-MW-31-U-4;
- aaa. Gabe Fork, WV-MW-31-U-5;
- bbb. Bartlett Run, WV-MW-31-Y;
- ccc. UNT/Simpson Creek RM 22.72, WV-MW-31-Z;
- ddd. West Branch/Simpson Creek, WV-MW-31-AA;
- eee. UNT/West Branch RM 0.63/Simpson Creek, WV-MW-31-AA-1;
- fff. Stillhouse Run, WV-MW-31-AA-2;
- ggg. UNT/West Branch RM 1.57/Simpson Creek, WV-MW-31-AA-4;
- hhh. Camp Run, WV-MW-31-AB;
- iii. UNT/Simpson Creek RM 26.94, WV-MW-31-AC;
- jjj. Lambert Run, WV-MW-32;
- kkk. UNT/Lambert Run RM 2.77, WV-MW-32-C;
- lll. Jack Run, WV-MW-33;
- mmm. Fall Run, WV-MW-34;
- nnn. Crooked Run, WV-MW-35;
- ooo. Limestone Run, WV-MW-36;
- ppp. Stone Coal Run, WV-MW-36-A;
- qqq. Simpson Fork, WV-MW-36-C;
- rrr. Johnson Fork, WV-MW-36-D;
- sss. Elk Creek, WV-MW-37;
- ttt. Murphy Run, WV-MW-37-C;
- uuu. Ann Moore Run, WV-MW-37-D;

vvv. Nutter Run, WV-MW-37-F;
www. Turkey Run, WV-MW-37-G;
xxx. Hooppole Run, WV-MW-37-H;
yyy. Brushy Fork, WV-MW-37-J;
zzz. Coplin Run, WV-MW-37-J-8;
aaaa. Glade Run, WV-MW-37-J-11;
bbbb. Stonecoal Run, WV-MW-37-J-15;
cccc. Gnatty Creek, WV-MW-37-V;
dddd. Rooting Creek, WV-MW-37-V-3;
eeee. Right Branch/Gnatty Creek, WV-MW-37-V-15;
ffff. Charity Fork, WV-MW-37-V-15-A;
gggg. Left Branch/Gnatty Creek, WV-MW-37-V-16;
hhhh. Stouts Run, WV-MW-37-W;
iiii. Birds Run, WV-MW-37-AA;
jjjj. Arnold Run, WV-MW-37-AC;
kkkk. Isaacs Run, WV-MW-37-AK;
llll. Stewart Run, WV-MW-37-AM;
mmmm. UNT/Elk Creek RM 27.87, W-MW-37-AS;
nnnn. Davisson Run, WV-MW-40;
oooo. Washburncamp Run, WV-MW-40-A;
pppp. Browns Creek, WV-MW-45;
qqqq. Coburns Creek, WV-MW-46;
rrrr. Sycamore Creek, WV-MW-47;

ssss. Lost Creek, WV-M-55;
tttt. UNT/Lost Creek, WV 3.32, WV-MW-55-C;
uuuu. Bonds Run, WV-MW-55-J;
vvvv. Buffalo Creek, WV-MW-59;
wwww. Duck Creek, WV-MW-62;
xxxx. Two Lick Creek, WV-MW-69;
yyyy. Hackers Creek, WV-MW-72;
zzzz. McKinney Run, WV-MW-72-F;
aaaa. Stony Run, WV-MW-72-R;
bbbb. Browns Run, WV-MW-75-C;
cccc. Grass Run, WV-MW-90-I;
dddd. Right Fork/Stonecoal Creek, WV-MW-90-L;
eeee. UNT/Sycamore Creek RM 3.04, WV-MW-47-F; and
ffff. Washburn Run, WV-MW-97.

56. On or about May 9, 2014, Plaintiffs commented to WVDEP on the proposed West Fork River TMDLs.

57. Plaintiffs objected to the proposed West Fork River TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP were biologically impaired because of ionic stress.

58. EPA approved West Virginia's Monongahela River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress or biological impairment. Indeed, EPA was silent as to those failures. With regard to Plaintiffs comments, EPA cursorily stated that it "believes

that WVDEP appropriately addressed all comments.”

WVDEP’S ACTUAL AND/OR CONSTRUCTIVE SUBMISSION OF NO TMDLs FOR IONICALLY STRESSED STREAMS AND CERTAIN BIOLOGICALLY IMPAIRED STREAMS

59. On or about February 14, 2014, West Virginia submitted the Monongahela River TMDLs to EPA.

60. Included within the Monongahela River TMDLs was West Virginia’s confirmation to EPA that it was not going to develop TMDLs for any biologically impaired streams.

61. On June 26, 2014, West Virginia submitted the West Fork River TMDLs to EPA.

62. Included within the West Fork River TMDLs was West Virginia’s reiteration that it was not going to develop TMDLs for any biologically impaired streams.

63. WVDEP’s statements that it would not develop TMDLs for biologically impaired streams informed EPA that West Virginia would not be meeting agreed upon deadlines for the completion of biological impairment TMDLs.

64. WVDEP’s statement regarding the suspension of TMDL development amounted to the actual submission of no TMDL for the 179 streams for which ionic stress had been identified as the cause of biological impairment (identified in Appendix A to the Complaint), and the 387 other streams listed on West Virginia’s 2012 Section 303(d) list as biologically impaired but for which TMDLs had not yet been developed (identified in Appendix B to the Complaint).

65. Alternatively, WVDEP’s failure to develop TMDLs for the 179 streams for which ionic stress had been identified as the cause of biological impairment (identified in Appendix A to the Complaint), and the 387 other streams listed on West Virginia’s 2012 Section 303(d) list as biologically impaired but for which TMDLs had not yet been developed (identified in

Appendix B to the Complaint) constitutes the constructive submission of no TMDL for the narrative water quality standards for those streams.

66. Defendants neither approved nor disapproved West Virginia's actual submission of no TMDLs for the streams in Appendices A and B by March 17, 2014 or July 28, 2014.

67. Defendants did not develop their own TMDLs for the streams in Appendices A and B by April 16, 2014.

68. Defendants have never approved nor disapproved West Virginia's constructive submission of no TMDLs for the streams in Appendices A and B.

69. Defendants have never developed their own TMDLs for the streams in Appendices A and B.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure to Perform Nondiscretionary Duties Triggered by West Virginia's Actual Submission of No TMDLs for Biologically Impaired Streams)

70. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

71. Defendants are required by 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2) to approve or disapprove TMDLs submitted by States "not later than 30 days after the date of submission." If Defendants disapprove of a State's submission, then they must establish TMDLs "for such waters as [they] determine[] necessary to implement the water quality standards applicable to such waters." 33 U.S.C. § 1313(d)(2). Those duties are non-discretionary.

72. West Virginia's actual submission of no TMDLs for the 179 ionically stressed streams in Appendix A and the 387 biologically impaired streams in Appendix B on or about February 14, 2014, and again on June 26, 2014, through its statements in the Monongahela River

TMDLs and the West Fork River TMDLs that it would not develop such TMDLs triggered Defendants' non-discretionary duties (a) to disapprove West Virginia's submission and (b) to develop TMDLs for those streams to implement the applicable narrative water quality standards.

73. Defendants failed to perform those duties.

74. To date, Defendants have neither (a) disapproved of West Virginia's actual submission of no TMDLs for the waters identified in Appendices A and B nor (b) developed their own TMDLs for those streams.

75. In failing to perform the acts specified above, Defendants have failed to perform nondiscretionary acts and duties under the CWA.

SECOND CLAIM FOR RELIEF

(Failure to Perform Nondiscretionary Duties Triggered by West Virginia's Constructive Submission of No TMDLs for Biologically Impaired Streams)

76. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

77. Defendants are required by 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2) to approve or disapprove TMDLs submitted by States "not later than 30 days after the date of submission." If Defendants disapprove of a State's submission, then they must establish TMDLs "for such waters as [they] determine[] necessary to implement the water quality standards applicable to such waters." 33 U.S.C. § 1313(d)(2). Those duties are non-discretionary.

78. West Virginia's constructive submission of no TMDLs for the 179 ionically stressed streams in Appendix A and the 387 biologically impaired streams in Appendix B triggered Defendants' non-discretionary duties (a) to disapprove West Virginia's submission and (b) to develop TMDLs for those streams to implement the applicable narrative water quality standards.

79. Defendants failed to perform those duties.

80. To date, Defendants have neither (a) disapproved of West Virginia's actual submission of no TMDLs for the waters identified in Appendices A and B nor (b) developed their own TMDLs for those streams.

81. In failing to perform the acts specified above, Defendants have failed to perform nondiscretionary acts and duties under the CWA.

THIRD CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Upper Ohio South TMDLs)

82. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

83. EPA's approval of the Upper Ohio South TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems," 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with

those uses, in violation of the CWA and implementing regulations;

c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and

d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

84. EPA's approval of the Upper Ohio South TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

85. EPA's approval of the Upper Ohio South TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

FOURTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Dunkard Creek TMDLs)

86. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

87. EPA's approval of the Dunkard Creek TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems," 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

88. EPA's approval of the Dunkard Creek TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that

responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

89. EPA's approval of the Dunkard Creek TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

FIFTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Lower Kanawha River TMDLs)

90. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

91. EPA's approval of the Lower Kanawha River TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts

to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;

- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

92. EPA’s approval of the Lower Kanawha River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP’s assertions that there is “insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time.”

93. EPA’s approval of the Lower Kanawha River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic

toxicity, the Clean Water Act requires the development of TMDLs even in the face of a “lack of knowledge.” 33 U.S.C. § 1313(d)(2).

SIXTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants’ Approval of Elk River TMDLs)

94. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

95. EPA’s approval of the Elk River TMDLs constitutes agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and

applicable regulations; and

- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

96. EPA's approval of the Elk River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

97. EPA's approval of the Elk River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

**SEVENTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Monongahela River TMDLs)**

98. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

99. EPA's approval of the Monongahela River TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems," 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

100. EPA's approval of the Monongahela River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record.

101. EPA's approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited

information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a “lack of knowledge.” 33 U.S.C. § 1313(d)(2).

102. EPA’s approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because West Virginia’s suspension of its TMDL program for biologically impaired streams is neither lawful nor scientifically justified.

EIGHTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants’ Approval of West Fork River TMDLs)

103. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

104. EPA’s approval of the West Fork River TMDLs constitutes agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- e. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- f. The TMDLs fail to provide for attainment of water quality supporting all

designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;

- g. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- h. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

105. EPA's approval of the West Fork River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record.

106. EPA's approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

107. EPA's approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because West Virginia's suspension of its TMDL program for biologically impaired streams is neither lawful nor scientifically justified.

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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

1. Declaring that Defendants have failed to perform nondiscretionary duties required by the Clean Water Act, including their failure to disapprove West Virginia's actual and/or constructive submission of no TMDLs for the streams listed in Appendices A and B and to develop TMDLs for those streams;
2. Ordering Defendants to disapprove West Virginia's actual and/or constructive submission of no TMDLs for the streams listed in Appendices A and B;
3. Ordering Defendants to develop, as soon as possible, TMDLs for the streams listed in Appendices A and B;
4. Declaring that Defendants' approval of the Upper Ohio South TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;
5. Remanding that portion of the Upper Ohio South TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Upper Ohio South TMDLs as soon as possible;
6. Declaring that Defendants' approval of the Dunkard Creek TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;
7. Remanding that portion of the Dunkard Creek TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Dunkard Creek TMDLs as soon as possible;
8. Declaring that Defendants' approval of the Lower Kanawha River TMDLs was

arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

9. Remanding that portion of the Lower Kanawha River TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Lower Kanawha River TMDLs as soon as possible;

10. Declaring that Defendants' approval of the Elk River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

11. Remanding that portion of the Elk River TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Elk River TMDLs as soon as possible;

12. Declaring that Defendants' approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

13. Remanding that portion of the Monongahela River TMDLs that omitted TMDLs for biologically impaired streams to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Monongahela River TMDLs as soon as possible;

14. Declaring that Defendants' approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

15. Remanding that portion of the West Fork River TMDLs that omitted TMDLs for biologically impaired streams to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the West Fork River TMDLs as soon as possible;

16. Retaining jurisdiction over this action to ensure compliance with the Court's decree;
17. Awarding Plaintiffs their costs of litigation (including attorneys fees and expert witness costs); and
18. Granting such other relief as the Court deems just and proper.

DATED: JANUARY 7, 2015

Respectfully submitted,

/s/ Derek O. Teaney

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APPENDIX A

Stream	Watershed	Year of Stressor Identification
Pointlick Fork of Campbells Creek	Upper Kanawha	2005
Rattlesnake Hollow of Campbells Creek	Upper Kanawha	2005
Wet Branch of Cabin Creek	Upper Kanawha	2005
Coal Fork of Cabin Creek	Upper Kanawha	2005
James Branch	Coal River	2005
Ellis Creek	Coal River	2005
Rockhouse Creek	Coal River	2005
Toney Fork	Coal River	2005
Buffalo Fork	Coal River	2005
Left Fork/Beech Creek	Coal River	2005
Seng Creek	Coal River	2005
Scrabble Creek	Gauley River	2008
Left Fork of Scrabble Creek	Gauley River	2008
Boardtree Branch	Gauley River	2008
Sugarcamp Branch	Gauley River	2008
Stillhouse Branch	Gauley River	2008
Robinson Fork	Gauley River	2008
Boggs Run	Upper Ohio River South	2009
UNT/Boggs Run RM 2.69	Upper Ohio River South	2009
Browns Run	Upper Ohio River South	2009
Graeb Hollow	Upper Ohio River South	2009
Short Creek	Upper Ohio River South	2009
Girty Run	Upper Ohio River South	2009
North Fork/Short Creek	Upper Ohio River South	2009
Huff Run	Upper Ohio River South	2009
UNT/Ohio River MP 79.4	Upper Ohio River South	2009
Miracle Run	Dunkard Creek	2009
Building Run	Dunkard Creek	2009

West Virginia Fork/Dunkard Creek	Dunkard Creek	2009
South Fork/West Virginia Fork/Dunkard Creek	Dunkard Creek	2009
Joplin Creek	Lower Kanawha	2012
Leatherwood Creek	Elk River	2012
Right Fork/Leatherwood Creek	Elk River	2012
Road Fork	Elk River	2012
Big Branch	Elk River	2012
Birch River	Elk River	2012
Jacks Run	Elk River	2012
Camp Run	Monongahela River	2014
Scotts Run	Monongahela River	2014
Wades Run	Monongahela River	2014
Guston Run	Monongahela River	2014
Dents Run	Monongahela River	2014
Flaggy Meadow Run	Monongahela River	2014
UNT/Dents Run RM 5.82	Monongahela River	2014
Hartman Run	Monongahela River	2014
Owl Creek	Monongahela River	2014
UNT/Camp Run RM 0.79	Monongahela River	2014
Crooked Run	Monongahela River	2014
Flaggy Meadow Run	Monongahela River	2014
UNT/Flaggy Meadow Run RM 2.15	Monongahela River	2014
Indian Creek	Monongahela River	2014
Little Indian Creek	Monongahela River	2014
Snider Run	Monongahela River	2014
UNT/Little Indian Creek	Monongahela River	2014
UNT/Indian Creek RM 3.19	Monongahela River	2014
UNT/Indian Creek RM 7.23	Monongahela River	2014
Paw Paw Creek	Monongahela River	2014
Sugar Run	Monongahela River	2014
Harvey Run	Monongahela River	2014
Buffalo Creek	Monongahela River	2014
Whetstone Run	Monongahela River	2014
Pyles Fork	Monongahela River	2014
Flat Run	Monongahela River	2014
Llewellyn Run	Monongahela River	2014
UNT/Monongahela River RM 128.55	Monongahela River	2014
West Run	Monongahela River	2014
Robinson Run	Monongahela River	2014
Crafts Run	Monongahela River	2014

UNT/Robinson Run RM 1.09	Monongahela River	2014
UNT/Robinson Run RM 4.09	Monongahela River	2014
UNT/Booths Creek RM 1.39	West Fork	2014
UNT Booths Creek RM 4.11	West Fork	2014
UNT/Booths Creek RM 4.81	West Fork	2014
Horners Run	West Fork	2014
Purdys Run	West Fork	2014
Coons Run	West Fork	2014
Camp Run	West Fork	2014
Bingamon Creek	West Fork	2014
Elklick Run	West Fork	2014
Cunningham Run	West Fork	2014
Glade Fork	West Fork	2014
Harris Fork	West Fork	2014
UNT/Harris Fork RM 0.65	West Fork	2014
UNT/West Fork River RM 11.44	West Fork	2014
Laurel Run	West Fork	2014
UNT/West Fork River RM 13.10	West Fork	2014
Mudlick Run	West Fork	2014
UNT/West Fork River RM 13.91	West Fork	2014
Browns Run	West Fork	2014
Shinns Run	West Fork	2014
UNT/Shinns Run RM 3.69	West Fork	2014
UNT/Shinns Run RM 4.15	West Fork	2014
UNT/Shinns Run RM 5.61	West Fork	2014
UNT/Shinns Run RM 5.97	West Fork	2014
Robinson Run	West Fork	2014
Tenmile Creek	West Fork	2014
Jack Run	West Fork	2014
Jones Creek	West Fork	2014
Little Tenmile Creek	West Fork	2014
Peters Run	West Fork	2014
UNT/Little Tenmile Creek RM 1.91	West Fork	2014
Bennett Run	West Fork	2014
Isaac Creek	West Fork	2014
Gregory Run	West Fork	2014
Katy Lick Run	West Fork	2014
Flag Run	West Fork	2014
UNT/Tenmile Creek RM 10.82	West Fork	2014
Rockcamp Run	West Fork	2014
UNT/Tenmile Creek RM 22.53	West Fork	2014

UNT/West Fork River RM 20.42	West Fork	2014
Simpson Creek	West Fork	2014
UNT/Simpson Creek RM 1.23	West Fork	2014
Jack Run	West Fork	2014
Smith Run	West Fork	2014
Barnett Run	West Fork	2014
Beards Run	West Fork	2014
Berry Run	West Fork	2014
Right Fork/Simpson Creek	West Fork	2014
UNT/Simpson Creek RM 21.92	West Fork	2014
Buck Run	West Fork	2014
Sand Lick Run	West Fork	2014
Gabe Fork	West Fork	2014
Bartlett Run	West Fork	2014
UNT/Simpson Creek RM 22.72	West Fork	2014
West Branch/Simpson Creek	West Fork	2014
UNT/West Branch RM 0.63/Simpson Creek	West Fork	2014
Stillhouse Run	West Fork	2014
UNT/West Branch RM 1.57/Simpson Creek	West Fork	2014
Camp Run	West Fork	2014
UNT/Simpson Creek RM 26.94	West Fork	2014
Lambert Run	West Fork	2014
UNT/Lambert Run RM 2.77	West Fork	2014
Jack Run	West Fork	2014
Fall Run	West Fork	2014
Crooked Run	West Fork	2014
Limestone Run	West Fork	2014
Stone Coal Run	West Fork	2014
Simpson Fork	West Fork	2014
Johnson Fork	West Fork	2014
Elk Creek	West Fork	2014
Murphy Run	West Fork	2014
Ann Moore Run	West Fork	2014
Nutter Run	West Fork	2014
Turkey Run	West Fork	2014
Hooppole Run	West Fork	2014
Brushy Fork	West Fork	2014
Coplin Run	West Fork	2014
Glade Run	West Fork	2014
Stonecoal Run	West Fork	2014
Gnatty Creek	West Fork	2014

Rooting Creek	West Fork	2014
Right Branch/Gnatty Creek	West Fork	2014
Charity Fork	West Fork	2014
Left Branch/Gnatty Creek	West Fork	2014
Stouts Run	West Fork	2014
Birds Run	West Fork	2014
Arnold Run	West Fork	2014
Isaacs Run	West Fork	2014
Stewart Run	West Fork	2014
UNT/Elk Creek RM 27.87	West Fork	2014
Davisson Run	West Fork	2014
Washburncamp Run	West Fork	2014
Browns Creek	West Fork	2014
Coburns Creek	West Fork	2014
Sycamore Creek	West Fork	2014
Lost Creek	West Fork	2014
UNT/Lost Creek RM 3.32	West Fork	2014
Bonds Run	West Fork	2014
Buffalo Creek	West Fork	2014
Duck Creek	West Fork	2014
Two Lick Creek	West Fork	2014
Hackers Creek	West Fork	2014
McKinney Run	West Fork	2014
Stony Run	West Fork	2014
Browns Run	West Fork	2014
Grass Run	West Fork	2014
Right Fork/Stonecoal Creek	West Fork	2014
UNT/Sycamore Creek RM 3.04	West Fork	2014
Washburn Run	West Fork	2014

APPENDIX B

Stream	Watershed
Jennie Creek	Tug Fork
Marrowbone Creek	Tug Fork
Pigeon Creek (Mouth to RM 21.5)	Tug Fork
Pigeon Creek (RM 21.5 to 25)	Tug Fork
Pigeon Creek (RM 25 to 30.8)	Tug Fork
Pigeon Creek (RM 30.8 to HW)	Tug Fork
Ben Creek	Tug Fork
White Oak Hollow	Tug Fork
Elkhorn Creek	Tug Fork
Longbottom Creek (Mouth to RM 0.8)	Upper Kanawha
Longbottom Creek (RM 0.8 to RM 1.8)	Upper Kanawha
Tenmile Fork	Upper Kanawha
Coal River	Coal River
Little Marsh Fork (Mouth to RM 3.8)	Coal River
Little Marsh Fork (RM 3.8 to HW)	Coal River
Ewing Fork	Coal River
Wilson Branch	Lower New River
Three Fork Creek	Tygart Valley
Raccoon Creek	Tygart Valley
Gooney Otter Creek	Upper Guyandotte
Littles Creek	Upper Guyandotte
Guyandotte River (Lower)	Lower Guyandotte
Parsner Creek	Lower Guyandotte
South Fork/South Branch Potomac River	South Branch Potomac
Gravel Lick Run	South Branch Potomac
UNT/Warm Spring Run RM 7.96	Potomac Direct Drains
Brains Creek	Tygart Valley
UNT/UNT RM 0.56/Sandy Creek RM 10.47	Tygart Valley
Webster Run	Lower New River
Scheidler Run	Middle Ohio North
Left Fork/Slab Creek	Little Kanawha
Tanner Fork	Little Kanawha
Squealing Fork	Lower New
UNT/Sal Willis Branch RM 0.73	Lower New
Buckles Branch	Gauley River
UNT/Williams River RM 15.86	Gauley River
Pigeonroost Fork	Elk River

Laurel Creek	Elk River
Fork Creek	Coal River
UNT/Greens Run RM 6.88	Cheat
Smoky Hollow	Cheat
UNT/Beaver Creek RM 11.91	Cheat
Yellow Creek	Cheat
Freeland Run	Cheat
Tory Camp Run	Cheat
Anderson Run	South Branch Potomac
UNT/South Branch Potomac River RM 40.44	South Branch Potomac
Miller Run	South Branch Potomac
UNT/South Branch Potomac River RM 59.19	South Branch Potomac
Robinson Run	South Branch Potomac
South Fork/Lunice Creek	South Branch Potomac
Powers Hollow	South Branch Potomac
Jordan Run	South Branch Potomac
Mill Creek	South Branch Potomac
Mission Hollow (Venable Branch)	Upper Kanawha
Lower Donnally Branch	Upper Kanawha
Big Ninemile Fork	Upper Kanawha
Georges Creek	Upper Kanawha
New West Hollow	Upper Kanawha
Toms Fork	Upper Kanawha
UNT/Tenmile Fork RM 1.22	Upper Kanawha
Kellys Creek	Upper Kanawha
Horsemill Branch	Upper Kanawha
Sugarcamp Branch	Upper Kanawha
Bufflick Branch	Upper Kanawha
Hurricane Fork	Upper Kanawha
Banner Hollow	Upper Kanawha
Sycamore Branch	Upper Kanawha
Cedar Creek	Upper Kanawha
Bishop Fork	Upper Kanawha
Mossy Creek	Upper Kanawha
North Sand Branch	Upper Kanawha
Maple Fork	Upper Kanawha
Hughes Creek	Upper Kanawha
Martin Hollow	Upper Kanawha
Barn Hollow	Upper Kanawha

Smithers Creek	Upper Kanawha
Bullpush Fork	Upper Kanawha
Dempsey Branch	Upper Kanawha
Fuquay Creek	Coal River
Ely Fork	Coal River
Slippery Gut Branch	Coal River
Spruce Fork	Coal River
Trace Fork	Coal River
Hopkins Fork	Coal River
Rock Creek	Coal River
Spanker Branch	Coal River
Wickwire Run	Tygart Valley
Squires Creek	Tygart Valley
UNT/Birds Creek RM 2.57	Tygart Valley
Little Sandy Creek	Tygart Valley
Sugar Creek	Tygart Valley
Long Run	Tygart Valley
Hackers Creek	Tygart Valley
Foxgrape Run	Tygart Valley
Big Run	Tygart Valley
Childers Run	Tygart Valley
Wash Run	Tygart Valley
Sawmill Run	Tygart Valley
Laurel Run/Buckhannon River	Tygart Valley
Hooppole Run	Tygart Valley
Three Forks Run	Tygart Valley
Pleasant Run	Tygart Valley
Rocky Run	Tygart Valley
Craven Run	Tygart Valley
Davis Lick	Tygart Valley
Laurel Run	Tygart Valley
Riffle Creek	Tygart Valley
Right Fork/Robinson Fork	Gauley
Big Ditch Run	Gauley
Tanyard Branch	Lower Guyandotte
Little Cabell Creek	Lower Guyandotte
Big Cabell Creek	Lower Guyandotte
Fudges Creek	Lower Guyandotte
Wire Branch	Lower Guyandotte
Mill Creek	Lower Guyandotte
Right Fork/Mill Creek	Lower Guyandotte

Johns Branch	Lower Guyandotte
Indian Fork	Lower Guyandotte
Charley Creek	Lower Guyandotte
Trace Creek	Lower Guyandotte
Trace Fork	Lower Guyandotte
Coon Creek	Lower Guyandotte
Straight Fork	Lower Guyandotte
Meadow Branch	Lower Guyandotte
Straight Fork	Lower Guyandotte
Valley Fork	Lower Guyandotte
Sugartree Fork	Lower Guyandotte
Big Creek	Lower Guyandotte
Left Fork/Mud River	Lower Guyandotte
Stinson Branch	Lower Guyandotte
Upton Branch	Lower Guyandotte
Ballard Fork	Lower Guyandotte
Davis Creek	Lower Guyandotte
Edens Branch	Lower Guyandotte
Smith Creek	Lower Guyandotte
Cavill Creek	Lower Guyandotte
Madison Creek	Lower Guyandotte
Twomile Creek	Lower Guyandotte
Fourmile Creek	Lower Guyandotte
Ninemile Creek	Lower Guyandotte
Tenmile Creek	Lower Guyandotte
Lick Branch	Lower Guyandotte
Aarons Creek	Lower Guyandotte
Laurel Creek	Lower Guyandotte
Dry Run	Lower Guyandotte
Short Bend Fork	Lower Guyandotte
Laurel Fork	Lower Guyandotte
West Fork/Big Harts Creek	Lower Guyandotte
Smokehouse Fork	Lower Guyandotte
Buck Fork	Lower Guyandotte
Bulwark Branch	Lower Guyandotte
Vickers Branch	Lower Guyandotte
UNT/Big Creek RM 3.28	Lower Guyandotte
Trace Fork	Lower Guyandotte
Hurricane Branch	Lower Guyandotte
Garrett Fork	Lower Guyandotte
Perrys Branch	Lower Guyandotte

South Fork/Crawley Creek	Lower Guyandotte
Fowler Branch	Lower Guyandotte
Mill Creek	Lower Guyandotte
Middle Island Creek	Middle Ohio North Watershed
McKim Creek	Middle Ohio North Watershed
Sugar Creek	Middle Ohio North Watershed
Sancho Creek	Middle Ohio North Watershed
Point Pleasant Creek	Middle Ohio North Watershed
Pursley Creek	Middle Ohio North Watershed
Peach Fork	Middle Ohio North Watershed
Gorrell Run	Middle Ohio North Watershed
Indian Creek	Middle Ohio North Watershed
Big Battle Run	Middle Ohio North Watershed
Wilhelm Run	Middle Ohio North Watershed
Right Fork/Arnold Creek	Middle Ohio North Watershed
Meathouse Fork	Middle Ohio North Watershed
Buckeye Run	Middle Ohio North Watershed
Cow Hollow Run	Middle Ohio North Watershed
Doolin Run	Middle Ohio North Watershed
Little Fishing Creek	Middle Ohio North Watershed
South Fork/Fishing Creek	Middle Ohio North Watershed
Buffalo Run	Middle Ohio North Watershed
Arches Fork	Middle Ohio North Watershed
Fallen Timber Run	Middle Ohio North Watershed
Price Run	Middle Ohio North Watershed
Proctor Creek	Middle Ohio North Watershed
Oldtown Creek	Middle Ohio South Watershed
Turkey Run	Middle Ohio South Watershed
Potter Creek	Middle Ohio South Watershed
UNT/Robinson Run RM 2.42	Middle Ohio South Watershed
Mill Run	Middle Ohio South Watershed
Tenmile Creek	Middle Ohio South Watershed
UNT/Tenmile Creek RM 5.33	Middle Ohio South Watershed
Sliding Hill Creek	Middle Ohio South Watershed
UNT/Sliding Hill Creek RM 1.25	Middle Ohio South Watershed
Little Broad Run	Middle Ohio South Watershed
Little Mill Creek	Middle Ohio South Watershed
Mill Creek	Middle Ohio South Watershed
Bar Run	Middle Ohio South Watershed
Cow Run	Middle Ohio South Watershed
Left Fork/Cow Run	Middle Ohio South Watershed

Parchment Creek	Middle Ohio South Watershed
Cox Fork	Middle Ohio South Watershed
Wolfe Creek	Middle Ohio South Watershed
Sycamore Creek	Middle Ohio South Watershed
Left Fork/Sycamore Creek	Middle Ohio South Watershed
Grasslick Creek	Middle Ohio South Watershed
Bear Fork	Middle Ohio South Watershed
Elk Fork	Middle Ohio South Watershed
Little Mill Creek	Middle Ohio South Watershed
Frozenscamp Creek	Middle Ohio South Watershed
Little Creek	Middle Ohio South Watershed
Buffalo Creek	Middle Ohio South Watershed
Spring Creek	Middle Ohio South Watershed
Cedar Run	Middle Ohio South Watershed
Sandy Creek	Middle Ohio South Watershed
Crooked Fork	Middle Ohio South Watershed
Trace Fork	Middle Ohio South Watershed
Beatty Run	Middle Ohio South Watershed
Right Fork/Sandy Creek	Middle Ohio South Watershed
Left Fork/Sandy Creek	Middle Ohio South Watershed
Copper Fork	Middle Ohio South Watershed
Turkey Fork	Middle Ohio South Watershed
Nessleroad Run	Middle Ohio South Watershed
Washington Run	Middle Ohio South Watershed
Pond Creek	Middle Ohio South Watershed
Jesse Run	Middle Ohio South Watershed
South Fork/Lee Creek	Middle Ohio South Watershed
North Fork/Lee Creek	Middle Ohio South Watershed
Gunners Run	Middle Ohio South Watershed
Sandy Creek	Middle Ohio South Watershed
Vaughts Run	Middle Ohio South Watershed
UNT/Sandy Creek RM 4.97	Middle Ohio South Watershed
Pond Run	Middle Ohio South Watershed
Little Pond Run	Middle Ohio South Watershed
Briscoe Run	Middle Ohio South Watershed
Big Run	Middle Ohio South Watershed
Plum Run	Middle Ohio South Watershed
Hogland Run	Middle Ohio South Watershed
Rattlesnake Run	Potomac Direct Drains
Rockymarsh Run	Potomac Direct Drains
UNT/Opequon Creek RM 10.21	Potomac Direct Drains

Roaring Run	Potomac Direct Drains
Middle Fork/Sleepy Creek	Potomac Direct Drains
Warm Spring Run	Potomac Direct Drains
Tug Fork	Tug Fork
Mill Creek	Tug Fork
Lost Creek	Tug Fork
Silver Creek	Tug Fork
Parsley Big Branch	Tug Fork
Sulphur Creek	Tug Fork
Greenbrier Fork	Tug Fork
Wolfpen Branch	Tug Fork
Mountain Fork	Tug Fork
Middle Fork/Big Creek	Tug Fork
Beech Fork	Tug Fork
Spice Creek	Tug Fork
Badway Branch	Tug Fork
Davy Branch	Tug Fork
Upper Shannon Branch	Tug Fork
Browns Creek	Tug Fork
Puncheoncamp Branch	Tug Fork
Rock Narrows Branch	Tug Fork
UNT/Stony Run RM 1.12	Greenbrier
Walker Creek	Little Kanawha
Goose Creek	Little Kanawha
South Fork/Hughes River	Little Kanawha
Indian Creek	Little Kanawha
Bone Creek	Little Kanawha
Middle Fork/South Fork/Hughes River	Little Kanawha
Beech Run	Little Kanawha
Laurel Run	Little Kanawha
Sang Run	Little Kanawha
Leading Creek	Little Kanawha
Rush Run	Little Kanawha
Right Fork/Steer Creek	Little Kanawha
Left Fork/Steer Creek	Little Kanawha
White Oak Run	Little Kanawha
Steer Run	Little Kanawha
Bender Run	Little Kanawha
Tanner Creek	Little Kanawha
Butchers Run	Little Kanawha
Sand Fork	Little Kanawha

Copen Run	Little Kanawha
Hamilton Branch	Lower New
Bowyer Creek	Lower New
Miller Creek	Big Sandy
Cedar Run	Big Sandy
Whites Creek	Big Sandy
Gragston Creek	Big Sandy
Elijah Creek	Big Sandy
Gilkerson Branch	Big Sandy
Hurricane Creek	Big Sandy
Sugar Branch	Big Sandy
Tabor Creek	Big Sandy
Redhead Branch	Big Sandy
Fourpole Creek	Lower Ohio
Sevenmile Creek	Lower Ohio
Ninemile Creek	Lower Ohio
Guyan Creek	Lower Ohio
Spurlock Creek	Lower Ohio
McCowan Branch	Lower Ohio
Rocky Fork	Lower Ohio
Mud Run	Lower Ohio
Sixteenmile Creek	Lower Ohio
Stonecoal Run	Lower Ohio
Crab Creek	Lower Ohio
Mud Run	Lower Ohio
Middle Fork/Crab Creek	Lower Ohio
Twelvepole Creek	Twelvepole Watershed
Krout Creek	Twelvepole Watershed
UNT/Twelvepole Creek RM 5.72	Twelvepole Watershed
Buffalo Creek	Twelvepole Watershed
Camp Creek	Twelvepole Watershed
Right Fork/Camp Creek	Twelvepole Watershed
Beech Fork	Twelvepole Watershed
Rubens Branch	Twelvepole Watershed
Long Branch	Twelvepole Watershed
Butler Branch	Twelvepole Watershed
Lynn Creek	Twelvepole Watershed
Left Fork/Wilson Creek	Twelvepole Watershed
Toms Creek	Twelvepole Watershed
West Fork/Twelvepole Creek	Twelvepole Watershed
Big Branch	Twelvepole Watershed

Trace Fork	Twelvepole Watershed
Billy Branch	Twelvepole Watershed
Wells Branch	Twelvepole Watershed
Moses Fork	Twelvepole Watershed
Right Fork/Moses Fork	Twelvepole Watershed
Breeden Creek	Twelvepole Watershed
Moses Fork	Twelvepole Watershed
East Fork/Twelvepole Creek	Twelvepole Watershed
Lynn Creek	Twelvepole Watershed
Cove Creek	Twelvepole Watershed
Kiah Creek	Twelvepole Watershed
Parker Branch	Twelvepole Watershed
Copley Trace Branch	Twelvepole Watershed
Jims Branch	Twelvepole Watershed
Maynard Branch	Twelvepole Watershed
Honey Branch	Twelvepole Watershed
Island Creek	Upper Guyandotte
Rockhouse Branch	Upper Guyandotte
Whitman Creek	Upper Guyandotte
Curry Branch	Upper Guyandotte
Mill Creek	Upper Guyandotte
Pine Creek	Upper Guyandotte
Right Fork/Pine Creek	Upper Guyandotte
Cow Creek	Upper Guyandotte
Lower Dempsey Branch	Upper Guyandotte
Dingess Run	Upper Guyandotte
Rum Creek	Upper Guyandotte
Right Hand Fork/Rum Creek	Upper Guyandotte
Burgess Branch	Upper Guyandotte
Camp Branch	Upper Guyandotte
Right Fork/Buffalo Creek	Upper Guyandotte
Perry Branch	Upper Guyandotte
Robinette Branch	Upper Guyandotte
Middle Fork/Buffalo Creek	Upper Guyandotte
Paynter Branch	Upper Guyandotte
Lefthand Fork/Rockhouse Creek	Upper Guyandotte
Right Fork/Sandlick Creek	Upper Guyandotte
Spice Creek	Upper Guyandotte
Stafford Branch	Upper Guyandotte
Browning Fork	Upper Guyandotte
Little Huff Creek	Upper Guyandotte

Little Cub Creek	Upper Guyandotte
Suke Creek	Upper Guyandotte
Long Branch	Upper Guyandotte
Chestnut Flats Branch	Upper Guyandotte
Cabin Branch	Upper Guyandotte
Tom Bailey Branch	Upper Guyandotte
Franks Fork	Upper Guyandotte
Indian Creek	Upper Guyandotte
Rockcastle Creek	Upper Guyandotte
Little Pinnacle Creek	Upper Guyandotte
Sugar Run	Upper Guyandotte
Marsh Fork	Upper Guyandotte
Mill Branch	Upper Guyandotte
Marsh Fork	Upper Guyandotte
Big Branch	Upper Guyandotte
Wiley Spring Branch	Upper Guyandotte
Mullens Branch	Upper Guyandotte
Tommy Creek	Upper Guyandotte
Fish Creek	Upper Ohio River South
Conner Run	Upper Ohio River South
Bark Camp Run	Upper Ohio River South
West Virginia Fork/Fish Creek	Upper Ohio River South
Church Fork	Upper Ohio River South
UNT/Wheeling Creek RM 25.77	Upper Ohio River South

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
 OHIO VALLEY ENVIRONMENTAL COALITION, INC.; SIERRA CLUB;
 WEST VIRGINIA HIGHLANDS CONSERVANCY, INC.; & WEST
 VIRGINIA RIVERS COALITION;
 (b) County of Residence of First Listed Plaintiff Cabell
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 Appalachian Mountain Advocates; PO Box 507, Lewisburg, WV 24901;
 304-793-9007.

DEFENDANTS
 GINA MCCARTHY, Administrator, United States Environmental
 Protection Agency, & SHAWN M. GARVIN, Regional Administrator,
 United States Environmental Protection Agency, Region III,
 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)
 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 USC s. 706(2) & 33 USC s 1365(a)
 Brief description of cause:
Action to compel EPA to perform duties under the Clean Water Act and to set aside certain agency actions

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: 01/07/2015 SIGNATURE OF ATTORNEY OF RECORD: /s/ Derek O. Teaney

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

