

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

WASHINGTON CATTLEMEN’S )  
ASSOCIATION; CALIFORNIA )  
CATTLEMEN’S ASSOCIATION; NEW )  
MEXICO CATTLE GROWERS )  
ASSOCIATION; NEW MEXICO WOOL )  
GROWERS, INC.; NEW MEXICO )  
FEDERAL LANDS COUNCIL; DUARTE )  
NURSERY, INC.; PIERCE INVESTMENT )  
COMPANY; LPF PROPERTIES, LLC.; )  
and HAWKES COMPANY, INC., )  
Plaintiffs, )  
v. )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY; GINA )  
McCARTHY, in her official capacity as )  
Administrator of the ENVIRONMENTAL )  
PROTECTION AGENCY; UNITED )  
STATES ARMY CORPS OF ENGINEERS; )  
and JO ELLEN DARCY, in her official )  
Capacity as Assistant Secretary of the Army, )  
Civil Works, )  
Defendants. )  
\_\_\_\_\_ )

No. \_\_\_\_\_

COMPLAINT

## INTRODUCTION

1. Plaintiffs, Washington Cattlemen's Association, California Cattlemen's Association, New Mexico Cattle Growers Association, New Mexico Wool Growers, Inc., New Mexico Federal Lands Council, Duarte Nursery, Inc., Pierce Investment Company, LPF Properties, LLC, and Hawkes Company, Inc., bring this action for declaratory judgment and injunctive relief against Federal Defendants, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and their officers, for violating statutory and constitutional law. By final rule dated June 29, 2015, 80 Fed. Reg. 37054, *et seq.*, Federal Defendants broadened the jurisdictional term "waters of the United States" under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, contrary to the plain language of the Act, notice and comment procedures, Supreme Court decisions interpreting the Act, and in excess of federal authority under the U.S. Constitution.

## JURISDICTION AND VENUE

2. Jurisdiction is founded upon 28 U.S.C. § 1331 (federal question); § 1346(a)(2) (civil action against the United States); § 2201 (authorizing declaratory relief); § 2202 (authorizing injunctive relief and any other "necessary and proper" relief); 5 U.S.C. § 702 (judicial review of agency action under the Administrative Procedure Act).

3. Plaintiffs have exhausted all administrative remedies.

4. This action is timely. 28 U.S.C. § 2401(a).

5. The challenged rule is final agency action, ripe for judicial review. 5 U.S.C. § 704.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(2), because Plaintiff Pierce Investment Company resides in this District. *See also* 5 U.S.C. § 703 (venue for

actions under the Administrative Procedure Act generally proper in “a court of competent jurisdiction”).

## **PARTIES**

### **Plaintiffs**

7. The Washington Cattlemen’s Association (WCA) is a non-profit trade organization dedicated to promoting and preserving the beef industry through producer and consumer education, legislative participation, regulatory scrutiny, and legal intervention related to environmental regulation, including the Clean Water Act. WCA represents over 1,300 cattlemen and landowners throughout the State of Washington, many of whom are subject to the Clean Water Act under the broader jurisdictional standards established in the Final Rule. On behalf of these members, WCA submitted comments and congressional testimony opposing the Final Rule.

8. The California Cattlemen’s Association (CCA) is a non-profit trade organization representing California’s ranchers and beef producers in legislative and regulatory affairs. Among other activities, CCA maintains a political action committee and funds litigation and research to support and protect ranching throughout the state from overreaching federal regulation, including the Clean Water Act. CCA has 38 county affiliates and many of its members are subject to the Clean Water Act under the broader jurisdictional standards established in the Final Rule. On behalf of these members, CCA submitted comments opposing the Final Rule.

9. New Mexico Cattle Grower’s Association (NMCGA) is an association, headquartered in Albuquerque, New Mexico, that is organized for the purpose of advancing and protecting the cattle industry in New Mexico. NMCGA advocates on behalf of its members on

numerous issues relating to regulation under the Clean Water Act. Cattle Growers also lobbies on Clean Water Act issues, publishes information on Clean Water Act-related issues for its members, and submits comments to government agencies addressing concerns about Clean Water Act regulation and its effect on its members. NMCGA devotes substantial resources to those activities, which seek to ensure that Clean Water Act-related regulation does not unreasonably impair the cattle industry in New Mexico. NMCGA members are subject to the Clean Water Act under the broader jurisdictional standards established in the Final Rule. On behalf of these members, NMCGA submitted comments opposing the Final Rule.

10. New Mexico Wool Growers, Inc. (NMWG) is the oldest livestock trade association in New Mexico. NMWG has provided a voice for the food and fiber industry, sheep and livestock producers, and agriculture in New Mexico for over a century. NMWG works to make its members' concerns about federal regulation known to federal agencies, including regulations under the Clean Water Act that impede the livelihood of stock producers. NMWG members are subject to the Clean Water Act under the broader jurisdictional standards established in the Final Rule. On behalf of these members, NMWG submitted comments opposing the Final Rule.

11. New Mexico Federal Lands Council (NMFLC) is a non-governmental, nonprofit organization that represents the views of allotment owners and multiple-use proponents of New Mexico's public lands. Federal Lands Council believes that any action that affects land management, including regulations under the Clean Water Act, should be based on sound science and public input. NMFLC members are subject to the Clean Water Act under the broader jurisdictional standards established in the Final Rule. On behalf of these members, NMFLC submitted comments opposing the Final Rule.

12. Duarte Nursery, Inc. is a California corporation involved in research and development of commercial agricultural products including fruit trees, nut trees, and other plant types. Duarte owns land in California that is slated for development into orchards. Under the Final Rule, large portions of this land would be subject to federal regulation that would not have been subject to federal regulation under the preexisting rules.

13. Pierce Investment Company is a Minnesota corporation with its principal place of business in Minnesota. Pierce Investment Company owns property in Marshall County, Minnesota, that the Corps of Engineers claims, via an Approved Jurisdictional Determination, is subject to federal jurisdiction under the Clean Water Act.

14. LPF Properties, LLC, is a North Dakota limited liability company with its principal place of business in North Dakota. LPF Properties is co-owner with Pierce Investment Company in the property in Marshall County over which the Corps claims jurisdiction.

15. Hawkes Company, Inc. is a North Dakota company with its principal place of business in North Dakota. Hawkes Company will pay Pierce Investment Company and LPF Properties royalties for its use of the property in Marshall County to expand Hawkes' nearby peat mining operations.

16. Pierce Investment Company, LPF Properties, LLC, and Hawkes Company, Inc., jointly challenged the Corps' Jurisdictional Determination in this Court in *Hawkes Co., Inc. v. U.S. Army Corps of Engineers*, 963 F. Supp. 2d 868 (D. Minn. 2013). That case was dismissed by this Court for lack of subject matter jurisdiction and was subsequently appealed to the Eighth Circuit (13-3067). The Eighth Court overturned the district court decision and held the Jurisdictional Determination is subject to immediate judicial review under the Administrative Procedure Act. *See Hawkes Co., Inc. v. U.S. Army Corps of Engineers*, 782 F.3d 994 (8th Cir.

2015). On remand, the property in Marshall County may be subject to the broader jurisdictional standards established in the Final Rule.

### **Defendants**

17. The Environmental Protection Agency (EPA) is a branch of the Department of Interior and has enforcement responsibility for portions of the Clean Water Act affected by the Final Rule. The EPA jointly issued the Final Rule challenged in this action.

18. Gina McCarthy is the Administrator of the EPA. Administrator McCarthy signed the Final Rule on behalf of EPA on May 27, 2015.

19. The Corps of Engineers is a branch of the Department of the Army and has enforcement responsibility for portions of the Clean Water Act affected by the Final Rule. The Corps jointly issued the Final Rule challenged in this action.

20. Jo Ellen Darcy is the Assistant Secretary of the Army for Civil Works. Assistant Secretary Darcy signed the Final Rule on behalf of the Corps on May 27, 2015.

### **LEGAL BACKGROUND**

21. Under the Clean Water Act, the Corps and EPA regulate “navigable waters” statutorily defined as “waters of the United States.” 33 U.S.C. § 1362(7). These are known as jurisdictional waters.

22. Until the Final Rule challenged here, the Corps and EPA defined jurisdictional waters or “waters of the United States” to include the territorial seas, traditional or navigable-in-fact waters, interstate waters, tributaries, impoundments, “other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of

which could affect interstate or foreign commerce,” and wetlands adjacent to other waters (other than waters that are themselves wetlands). 33 C.F.R. §§ 328.3, 328.3(a)(7).

23. In 1985, the Supreme Court held these agencies could regulate certain wetlands adjacent to (*i.e.*, abutting) navigable-in-fact waters. *See United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985).

24. In 2001, the Supreme Court held these agencies could not regulate “isolated” water bodies with no hydrological connection to navigable-in-fact waters because that would read the term “navigable” out of the Act and that the regulation of ponds and mudflats would impinge on the States’ traditional power to regulate local land and water use and raise serious constitutional questions. *See Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001).

25. In 2006, a majority on the Supreme Court held these agencies could not categorically regulate all tributaries with an ordinary high water mark (OHM) because it would exceed the scope of the Clean Water Act. However, Justice Kennedy, in a lone concurring opinion, stated that although not all tributaries could be categorically regulated, certain wetlands could be regulated if they have an established “significant nexus” with a navigable-in-fact waterway. *See Rapanos v. United States*, 547 U.S. 715 (2006).

#### **FACTUAL ALLEGATIONS**

26. On April 21, 2014, the Corps and EPA published a Proposed Rule entitled “Definition of ‘Waters of the United States’ Under the Clean Water Act.” 79 Fed. Reg. 22188 (Apr. 21, 2014).

27. On June 29, 2015, the Corps and EPA issued a Final Rule entitled “Clean Water Rule: Definition of ‘Waters of the United States.’” 80 Fed. Reg. 37054 (June 29, 2015).

28. The Final Rule (*id.* at 37104-37106) defines “waters of the United States” subject to federal regulation under the Clean Water Act to include eight categories:

1. All waters which are or were or may be used in interstate or foreign commerce;

2. All interstate waters;

3. The territorial seas;

4. All impoundments of any “waters of the United States;”

5. All tributaries to waters 1-3. A “tributary” means a water that contributes flow directly or through another water (including any impoundment), to waters 1-3, that has physical indicators of a bed and bank and an ordinary high water mark. A tributary may be natural or man-made.

6. All waters adjacent to waters 1-5. “Adjacent” means bordering, contiguous, or neighboring. “Neighboring” means within 100 feet of the ordinary high water mark of waters 1-

5. And, all waters within the 100-year floodplain of waters 1-5 and not more than 1,500 feet from the ordinary high water mark. Also, all waters within 1,500 feet of the high tide line of waters 1-3.

7. All of the following waters that have been determined on a case-by-case basis to have a significant nexus to waters 1-3: prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools, and Texas coastal prairie wetlands. “Significant nexus” means that a water, alone or in combination with similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of waters 1-3. “Significant” means more than speculative or insubstantial and includes effects on any of nine factors.



8. All waters located within the 100-year floodplain of waters 1-3 and all waters within 4,000 feet of the high tide line or ordinary high water mark of waters 1-5 when they have a significant nexus to waters 1-3.

29. Some waters are excluded from federal regulation under the Final Rule

### **DECLARATORY RELIEF ALLEGATIONS**

30. The preceding paragraphs are incorporated herein.

31. The validity of the Torps and EPA's Final Rule redefining "waters of the United States," is the subject of a live controversy. Plaintiffs contend the Final Rule changes and broadens the substantive standards for determining jurisdictional waters under the Clean Water Act in violation of statutory and constitutional authority. The Corps and EPA claim the Final Rule merely "clarifies" existing standards and is consistent with these authorities.

32. No factual development is necessary to resolve this case as Plaintiffs raise a pure legal challenge to the Final Rule on its face.

33. Plaintiffs (or their members) are injured by the Final Rule because they hold a beneficial interest in property that is or will be subject to increased federal regulatory jurisdiction under the Final Rule's changed and illegal standards for determining jurisdiction. This will require such landowners to seek federal permit approval (at significant cost) to use their property for its intended purpose. Or, it will require Plaintiffs (or their members) to seek a determination from the Corps or a private party expert whether the final rule applies to them. *See Hawkes Co., Inc. v. U.S. Army Corps of Engineers*, 782 F.3d 944, 1003 (8th Cir. 2015) (Kelly, J., concurring) ("This is a unique aspect of the CWA; most laws do not require the hiring of expert consultants to determine if they even apply to you or your property.").

34. Accordingly, an actual and substantial controversy exists between Plaintiffs and Federal Defendants as to the parties' respective legal rights and responsibilities. A judicial determination of the parties' rights and responsibilities arising from this actual controversy is necessary and appropriate at this time.

### **INJUNCTIVE RELIEF ALLEGATIONS**

35. The preceding paragraphs are incorporated herein.

36. Because of the Final Rule's broadened, but illegal, jurisdictional interpretation of waters subject to federal regulation under the Clean Water Act, Plaintiffs will now be required to obtain federal approval of new and ongoing land-use projects at a cost of tens of thousands of dollars and months, if not years, of delay.

37. Plaintiffs (or their members) will continue to be injured by the Corps and EPA's expanded interpretation of federal jurisdiction under the Clean Water Act.

38. Enjoining the enforcement of the final rule will redress these harms.

39. Plaintiffs have no plain, speedy, and adequate remedy at law and, absent judicial intervention, Plaintiffs will suffer irreparable injury.

40. If not enjoined, the Corps and EPA will enforce the Final Rule based on its erroneous interpretation of federal jurisdiction under the Act.

### **FIRST CLAIM FOR RELIEF**

#### ***(Ultra Vires Regulation of All "Tributaries" with an Ordinary High Water Mark)***

41. The preceding paragraphs are incorporated herein.

42. Under the Clean Water Act, the Corps and EPA may regulate "navigable waters" defined in the statute as "waters of the United States." *See* 33 U.S.C. §§ 1344(a), 1362(7).

43. The Final Rule defines “waters of the United States” to include all tributaries with an ordinary high water mark. 80 Fed. Reg. 37104-37106.

44. In *Rapanos*, however, a majority of the Supreme Court held that the term “waters of the United States” does not include all tributaries with an ordinary high water mark. *See* plurality opinion, Scalia, J. (Rejecting the regulation of tributaries based on an ordinary high water mark because “[t]his interpretation extended ‘the waters of the United States’ to virtually any land feature over which rainwater or drainage passes and leaves a visible mark—even if only ‘the presence of litter and debris.’” *Rapanos*, 547 U.S. at 725. *See also* Justice Kennedy’s concurrence (Rejecting categorical regulation of tributaries with an ordinary high water mark because “the breadth of this standard . . . [would] leave wide room for regulation of drains, ditches and streams remote from any navigable-in-fact water and carrying only minor water volumes toward it . . .”). *Id.* at 781.

45. Categorical regulation of all tributaries with an ordinary high water mark exceeds the scope of the Clean Water Act as interpreted by the Supreme Court. Therefore, the final rule is arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

## **SECOND CLAIM FOR RELIEF**

### **(*Ultra Vires* Regulation of All Waters “Adjacent” To All “Tributaries” with an Ordinary High Water)**

46. The preceding paragraphs are incorporated herein.

47. It is axiomatic that if the regulation of all tributaries with an ordinary high water mark is invalid then the categorical regulation of all waters adjacent to such tributaries is also invalid. *See* Kennedy concurrence (Holding that the overly broad regulation of all tributaries

with an ordinary high water mark “precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood. Indeed, in many cases wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act’s scope in *SWANCC*.”). *Rapanos*, 547 U.S. at 781-82.

48. Categorical regulation of all waters adjacent to all tributaries with an ordinary high water mark exceeds the scope of the Clean Water Act as interpreted by the Supreme Court. Therefore, the final rule is arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

### **THIRD CLAIM FOR RELIEF**

#### ***(Ultra Vires Regulation of All Interstate Waters)***

49. The preceding paragraphs are incorporated herein.

50. The final rule purports to regulate all interstate waters regardless of navigability or connection to navigable-in-fact waters. 80 Fed. Reg. 37104.

51. Such waters would include isolated waters or waters that the Supreme Court determined would have no connection or effect on navigable-in fact waters and could not be regulated under the Clean Water Act. *See Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159, 171-72 (2001) (*SWANCC*) (“We cannot agree that Congress’ separate definitional use of the phrase ‘waters of the United States’ constitutes a basis for reading the term “navigable waters” out of the statute. We said in *Riverside Bayview Homes* that the word “navigable” in the statute was of ‘limited import’ 474 U.S., at 133, 106 S. Ct. 455, and went on to hold that § 404(a) extended to nonnavigable wetlands adjacent to open waters. But it

is one thing to give a word limited effect and quite another to give it no effect whatever. The term ‘navigable’ has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.”).

52. Categorical regulation of all interstate waters would exceed the scope of the Clean Water Act as interpreted by the Supreme Court. Therefore, the final rule is arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

#### **FOURTH CLAIM FOR RELIEF**

##### **(*Ultra Vires* Regulation of Isolated Waters)**

53. The preceding paragraphs are incorporated herein.

54. The final rule purports to regulate all waters within 4,000 feet of another jurisdictional water if it has a “significant nexus” to an interstate water or navigable-in-fact water. This necessarily includes “isolated waters” which the Supreme Court has held as a matter of law cannot be regulated under the Clean Water Act. *See SWANCC*, 531 U.S. at 172. In *Rapanos* all nine justices acknowledged that *SWANCC* precluded the regulation of isolated water bodies. *See, e.g.*, Scalia, J., for the plurality (In *SWANCC* “we held that ‘nonnavigable, isolated, intrastate waters,’ *id.*, at 171, 121 S. Ct. 675—which, unlike the wetlands at issue in *Riverside Bayview*, did not ‘actually abut on a navigable waterway,’ 531 U.S. at 167, 121 S. Ct. 675—were not included as ‘waters of the United States.’”), *Rapanos*, 547 U.S. at 726; (Kennedy, J.: “Congress’ choice of words creates difficulties, for the Act contemplates regulation of certain ‘navigable waters’ that are not in fact navigable. *Supra*, at 2241. Nevertheless, the word ‘navigable’ in the Act must be given some effect. *See SWANCC, supra*, at 172, 121 S. Ct. 675.

Thus, in *SWANCC* the Court rejected the Corps' assertion of jurisdiction over isolated ponds and mudflats bearing no evident connection to navigable-in-fact waters.”), *id.* at 779; and, *see* Stevens, J. (dissent, recognizing isolated water bodies are not jurisdictional under *SWANCC*), *Rapanos*, 547 U.S. at 795.

55. The regulation of isolated water bodies would exceed the scope of the Clean Water Act as interpreted by the Supreme Court in *SWANCC* and affirmed in *Rapanos*. Therefore, the final rule is arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

#### **FIFTH CLAIM FOR RELIEF**

##### **(Plaintiffs Were Denied Their Right to Notice and Comment on the Final Rule)**

56. The preceding paragraphs are incorporated herein.

57. Federal agencies must conduct rule making in accord with the Administrative Procedure Act which requires public notice of substantive rule changes and an opportunity for public comment on those changes. 5 U.S.C. § 553(b), (c).

58. Among other things, the Final Rule substantially changed the category of “adjacent waters” from the Proposed Rule by including a definition of “neighboring” that includes: (1) all waters located within 100 feet of the ordinary high water mark of certain waters; (2) all waters within the 100-year floodplain and 1,500 feet of the ordinary high water mark of certain waters; and, (3) all waters located within 1,500 feet of the high tide line of certain waters. This change was not subject to public review and comment.

59. The Final Rule substantially changed the category of “other waters” from the Proposed Rule by aggregating normally isolated waters to determine if they will have a “significant nexus” with downstream navigable-in-fact-waters including: Prairie potholes;

Carolina and Delmarva bays; pocosins; western vernal pools in California; and, Texas coastal prairie wetlands. This change was not subject to public review and comment.

60. The Final Rule also substantially changed the category of “other waters” from the Proposed Rule by allowing case-by-case analysis of all waters within 4,000 feet of any other covered water. This change was not subject to public review and comment.

61. And, the Final Rule substantially changed the case-by-case analysis for determining a “significant nexus” from the Proposed Rule by defining such a nexus based on the effect of any one of nine factors including: (i) sediment trapping; (ii) nutrient recycling; (iii) pollutant trapping, transformation, filtering, and transport; (iv) retention and attenuation of flood waters; (v) runoff storage; (vi) contribution of flow; (vii) export of organic matter; (viii) export of food resources; and, (ix) provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in certain waters. This change was not subject to public notice or comment.

62. Plaintiffs were deprived of notice and an opportunity to comment on substantive changes to the Proposed Rule. Therefore, the Final Rule is invalid and should be set aside for procedural inadequacy under the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

### **SIXTH CLAIM FOR RELIEF**

#### **(Constitutional Violation: Impingement on Traditional State Authority)**

63. The preceding paragraphs are incorporated herein.

64. In *SWANCC*, the Supreme Court held that federal regulation of small ponds and mudflats “would result in a significant impingement of the States’ traditional and primary power over land and water use.” 531 U.S. at 174.

65. The Final Rule extends federal jurisdiction so far into local land and water resources that it necessarily undermines State power, in violation of the Tenth Amendment. The Tenth Amendment Provides that “[t]he powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people.” U.S. Const. amend. X. Congress expressly acknowledged the prerogative of the States to regulate local land and water use in the Clean Water Act itself: “It is the policy of the Congress to recognize, preserve and protect the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .” 33 U.S.C. § 1215(b). Rather than preserve and protect these rights and responsibilities, the Final Rule eviscerates them.

66. Therefore, the final rule is contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

### **SEVENTH CLAIM FOR RELIEF**

#### **(Constitutional Violation: Exceeding the Commerce Power)**

67. The preceding paragraphs are incorporated herein.

68. In *SWANCC*, the Supreme Court not only recognized that federal regulation of small water bodies would impinge on the power of the States to regulate local land and water use, the court also recognized that such regulation may exceed the scope of the commerce power as limited by that court’s decisions in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). *SWANCC*, 531 U.S. at 173. The Supreme Court raised similar concerns in *Rapanos* over the Corps’ broad interpretation of tributaries and adjacent wetlands. “Likewise, just as we noted in *SWANCC*, the Corps’ interpretation stretches the outer limits of Congress’s commerce power.” *Rapanos*, 547 U.S. at 738 (Scalia, J., for the plurality).



But here, the Final Rule goes even further than the interpretation of “waters of the United States” advanced in those cases.

69. Therefore, the final rule is contrary to law, in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

### **PRAYER FOR RELIEF**

Plaintiffs pray for judgment from this Court as follows:

1. A declaratory judgment stating that the categorical regulation of all tributaries as defined by the Final Rule is contrary to law and invalid;
2. A declaratory judgment stating that the categorical regulation of adjacent waters as defined by the Final Rule is contrary to law and invalid;
3. A declaratory judgment stating that the categorical regulation of all interstate waters as defined by the Final Rule is contrary to law and invalid;
4. A declaratory judgment stating that the regulation of hydrologically isolated waters as defined by the Final Rule is contrary to law and invalid;
5. A declaratory judgment stating that the Final Rule is invalid because it lacked the notice and comments procedures required by the APA;
6. A declaratory judgment stating that the Final Rule unduly impinges on the States’ traditional power over land and water use and therefore is invalid under the Constitution of the United States;
7. A declaratory judgment stating that the Final Rule exceeds the commerce power and is invalid under the Constitution of the United States;
8. An injunction barring Federal Defendants from asserting federal jurisdiction based on the Final Rule or otherwise enforcing the Final Rule;

9. An award to Plaintiffs of reasonable attorneys' fees and costs, pursuant to 28 U.S.C. § 2412, or any other authority, including the Court's inherent authority, as appropriate; and,

10. An award of any other relief as the Court may deem proper.

DATED: July 15, 2015

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Respectfully submitted,  
  
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