

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

**STATES OF WEST VIRGINIA;
NORTH DAKOTA; GEORGIA;
and IOWA; *et al.*,**

Plaintiffs,

and

**AMERICAN FARM BUREAU
FEDERATION, *et al.*,**

Intervenor-Plaintiffs,

v.

**U.S. ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,**

Defendants,

and

**CHIKALOON VILLAGE
TRADITIONAL COUNCIL, *et al.*,**

Intervenor-Defendants.

Case No. 3:23-cv-00032-DLH-ARS

Hon. Daniel L. Hovland

PLAINTIFF STATES' MOTION FOR SUMMARY JUDGMENT

Under Federal Rule of Civil Procedure 56 and D.N.D. Civ. L. R. 7.1(A), and for the reasons stated in the accompanying memorandum, the Plaintiff States move for summary judgment in their favor and ask that the Court:

- (1) Declare the Final Rule entitled "Revised Definition of 'Waters of the United States,'" 88 Fed. Reg. 3004-3114 (January 18, 2023), as modified by the Conforming Rule entitled, "Revised Definition of "Waters of the United States"; Conforming," 88 Fed. Reg. 61,964

(Sept. 8, 2023) (together, the “Amended Final Rule”), to be in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), (C), and (D); the Clean Water Act, 33 U.S.C. § 1251-1387; and the Commerce Clause, U.S. CONST. art. I, § 8, Due Process Clause, U.S. CONST. amend. V, and the Tenth Amendment, U.S. CONST. amend. X, of the United States Constitution;

- (2) Hold, vacate, and set aside the Amended Final Rule as unlawful;
- (3) Remand the matter to the Environmental Protection Agency and the United States Army Corps of Engineers with instructions to issue a rule that complies with the Constitution, the statutory limits and cooperative-federalism mandate of the Clean Water Act, the procedural mandates of the Regulatory Flexibility Act, the Administrative Procedure Act, the United States Constitution, and the rulings of the Supreme Court of the United States; and
- (4) Grant the Plaintiff States such other relief as may be necessary and appropriate or as the Court deems just and proper.

Respectfully submitted,

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