

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

STATE OF WEST VIRGINIA, *et al.*,)
)
 Plaintiffs,)
)
 CASS COUNTY FARM BUREAU, *et al.*,)
)
 Plaintiff-Intervenors)
)
 v.)
)
 UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY, *et al.*,)
)
 Defendants,)
)
 CHICKALOON VILLAGE)
 TRADITIONAL COUNCIL, *et al.*,)
)
 Defendant-Intervenors.)

No. 3:23-cv-32-DLH-ARS
Hon. Daniel L. Hovland

FEDERAL DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and the Court’s Order Adopting Stipulation, ECF No. 197, and for the reasons stated in Federal Defendants’ combined memorandum in support of this motion and opposition to Plaintiffs’ and Business Intervenors’ motions, Federal Defendants move for entry of final judgment in their favor. Federal Defendants request that the Court dismiss Plaintiffs’ and Business Intervenors’ complaints for lack of subject matter jurisdiction. If the Court proceeds to the merits, Federal Defendants request that the Court uphold the Amended Regulations, 33 C.F.R. § 328.3 and 40 C.F.R. § 120.2, put in place by the “2023 Rule,” 88 Fed. Reg. 3004, 3006-07 (Jan. 18, 2023), as amended by the “Conforming Rule,” 88 Fed. Reg. 61964 (Sept. 8, 2023).

Respectfully submitted,

TODD KIM
Assistant Attorney General
ENVIRONMENT AND NATURAL
RESOURCES DIVISION

Of Counsel:

Karyn I. Wendelowski
Elise O’Dea
Environmental Protection Agency

Daniel Inkelas
Erica Zilioli
U.S. Army Corps of Engineers

/s/ Sonya J. Shea

ANDREW J. DOYLE, FL Bar No. 84948
SONYA J. SHEA, CA Bar No. 305917
SARAH IZFAR, DC Bar No. 1017796
HUBERT T. LEE, NY Bar No. 4992145
ELLIOT HIGGINS, NY Bar No. 5737903
JIN HYUNG LEE, DC Bar No. 198095
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
Tel: (415) 744-6469 (Doyle)
Tel: (303) 844-7231 (Shea)
Tel: (202) 305-0490 (Izfar)
Tel: (202) 514-1806 (H. Lee)
Tel: (202) 514-3144 (Higgins)
Tel: (202) 514-2640 (J. Lee)
Fax: (202) 514-8865
andrew.doyle@usdoj.gov
sonya.shea@usdoj.gov
sarah.izfar@usdoj.gov
hubert.lee@usdoj.gov
elliott.higgins@usdoj.gov
jin.hyung.lee@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Sonya J. Shea