

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

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AMERICAN RIVERS  
1101 14th St. NW, Suite 1400  
Washington, DC 20005

NATIONAL AUDUBON SOCIETY  
225 Varick St.  
New York, NY 10014

SIERRA CLUB  
National Headquarters  
2101 Webster St., Suite 1300  
Oakland, CA 94612

HEALTHY GULF  
935 Gravier St., Suite 700  
New Orleans, LA 70112

*Plaintiffs,*

v.

U.S. ARMY CORPS OF ENGINEERS  
441 G Street NW  
Washington, DC 20314-1000

U.S. FISH and WILDLIFE SERVICE  
1849 C Street, NW  
Washington, DC 20240

*Defendants.*

Case No.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs American Rivers, National Audubon Society, Sierra Club, and Healthy Gulf (collectively the “Conservation Organizations”) file this Complaint for Declaratory and Injunctive Relief against the U.S. Army Corps of Engineers (“Corps”) and U.S. Fish and Wildlife Service (“Service”), and allege as follows:

## INTRODUCTION

1. This case challenges the Corps’ illegal decision to approve a massive pumping plant that would drain some of the Nation’s richest wetland and aquatic resources in a sparsely populated area of Mississippi. The late Senator John McCain described this agricultural drainage project as “one of the worst projects ever conceived by Congress,” while the Environmental Protection Agency (“EPA”) decisively vetoed the pumps during the George W. Bush Administration due to the unacceptable adverse impacts on wildlife and fisheries.

2. Yet, the Corps hastily approved the construction and operation of the same vetoed pumping plant during the last days of the Trump Administration, relying on the same flawed analysis rejected by EPA in 2008 as contrary to the facts and law. By repeating those same errors, the Corps severely underestimated the pumps’ devastating impacts and failed to inform the public about the true costs of the project. The Corps also refused to consider viable alternatives to the pumps that would provide prompt, effective, and environmentally sound flood relief to communities. The Corps’ uninformed decision contravenes core requirements of the Clean Water Act, Water Resources Development Act (“WRDA”), National Environmental Policy Act (“NEPA”) and Endangered Species Act.

3. The Yazoo Backwater Area contains one of the few remaining intact bottomland hardwood forested wetlands in the Lower Mississippi River Alluvial Valley. Periodic flooding sustains vital wetland habitat for a highly productive floodplain fishery and globally significant

migratory bird foraging grounds. In fact, 60 percent of all North American bird species depend upon the Mississippi River basin's habitats, including 40 percent of all waterfowl and shorebirds that migrate along the Mississippi River Flyway. The Yazoo Backwater Area provides hemispherically significant habitat to more than 28 million migrating birds annually.

4. EPA safeguarded this ecosystem in 2008 by exercising its authority under Section 404(c) of the Clean Water Act to veto the construction and operation of a 14,000 cubic feet per second (cfs) pumping plant (hereinafter the "Yazoo Pumps Project") proposed by the Corps, and each alternative plan considered by the Corps that included a pumping plant. The Veto ensures against the "unacceptable adverse effects" of any variation of the pumps that impacts more than 28,400 acres of wetlands in an area that provides vital habitat to more than 450 species of birds, fish, and wildlife.

5. EPA has issued only 13 Section 404(c) vetoes since the Clean Water Act was enacted in 1972, out of approximately 2 million activities approved by the Corps during that timeframe. EPA has never revoked a veto.

6. EPA and the public repeatedly urged the Corps to consider alternatives to the prohibited pumping plant, including modern approaches to floodplain management and flood risk reduction.

7. The Corps nevertheless insisted on approving the long-vetoed and outdated Yazoo pumps, notwithstanding the Veto and without consideration of any alternatives. The Corps based its decision on a Final Supplemental Environmental Impact Statement prepared in 2020 (hereinafter the "2020 FSEIS") that categorically refused to consider "any new alternatives" and instead insisted on the same pumping plant at a nearby location with the exact same key features as the vetoed Yazoo Pumps Project (hereinafter the "Yazoo Pumps Redo").

8. The Yazoo Pumps Redo plainly violates the Veto. It includes the same 14,000 cfs pumping plant whose construction would require the discharge of fill material into the same wetlands prohibited by the Veto, and whose operation would cause unacceptable adverse effects far in excess of the amount prohibited by the Veto. The Corps cannot unilaterally override the Veto, which EPA has not lawfully revoked.

9. The Corps refused to consider any alternatives to the pumps, despite being presented with a proposed alternative at the outset of the public process that could be implemented quickly through existing federal programs to provide prompt, effective, sustainable, and environmentally sound relief to communities in the Yazoo Backwater Area. The 2020 FSEIS did not even mention this alternative, known as the Resilience Alternative, and instead focused solely on approving the pumps, even though new data shows that the pumps would not prevent flooding in the vast majority of the Yazoo Backwater Area, would increase flood risks for communities, and would likely cost taxpayers far in excess of \$450 million. As a result, the Corps overlooked reasonable alternatives in violation of NEPA and failed to demonstrate that the Yazoo Pumps Redo is the least environmentally damaging practicable alternative—a threshold requirement of the Clean Water Act.

10. The Corps also blinded itself and the public to the significant and unacceptable adverse impacts of the Yazoo Pumps Redo by relying on the same unduly constrained analysis rejected by EPA in the Veto. By repeating this error, the 2020 FSEIS excludes consideration of the pumps' impacts on at least 96,139 acres of wetlands—an area over twice the size of Washington D.C.—and thereby severely underestimates the pumps' significant adverse impacts on vital wetland functions. Even the severe underestimate of wetland impacts in the 2020 FSEIS shows

that the Yazoo Pumps Redo would cause significant and unacceptable degradation to wetlands and their associated functions, in violation of the Clean Water Act.

11. The Corps also failed to consider the significant risk to downstream and Yazoo Backwater Area communities created by the pumps, which would discharge up to 9 billion gallons of water per day into the Yazoo River when the River is at flood stage. The Corps instead rejected the notion of any such risk by referencing a summary report based on a model that an expert review deemed too flawed to provide any type of reliable analysis. Compounding this error, the Corps misrepresented the results of that model and failed to inform the public about the significant risks to downstream communities, as well as the risk of overtopping the Yazoo Backwater levee, which would flood the Yazoo Backwater Area.

12. The Corps' incomplete analysis, in turn, infected its conceptual proposal to mitigate the pumps' impacts. The Corps did not provide any mitigation to offset the pumps' significant adverse impacts on thousands of acres of wetlands excluded from the 2020 FSEIS. The Corps also failed to provide a specific and detailed mitigation plan, despite its obligation to do so. Instead, the Corps relied on a hypothetical, wait-and-see approach that plainly violates the Clean Water Act and WRDA and is destined to fail. In fact, the Corps' own data show that its conceptual mitigation proposal will not offset even the severe underestimate of wetland impacts identified in the 2020 FSEIS. EPA concluded that the Corps' mitigation was so inadequate that it would "preclude a private party from receiving a Section 404 permit" under the Clean Water Act.

13. The Corps' haste to approve the pumps was so great that it did not respond to more than 50,500 public comment letters opposing the project, including technical comments submitted by citizens and scientists detailing the flaws in the 2020 Draft SEIS. The Corps also failed to carry

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