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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
SIERRA CLUB, IDAHO CONSERVATION
LEAGUE, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, ANDREW
WHEELER, in his official capacity as
Administrator of the United States
Environmental Protection Agency, UNITED
STATES ARMY CORPS OF ENGINEERS,
and R.D. JAMES, in his official capacity as
Assistant Secretary of the Army for Civil
Works,

Defendants.

Case No. 2:20-cv-950

COMPLAINT

INTRODUCTION

1. Congress declared a single objective for the Clean Water Act: “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve that objective, the Act prohibits and regulates the discharge of pollutants into “navigable waters,” which the Act defines broadly as “the waters of the United States.” *Id.* § 1362(7).

1 2. Congress adopted the Clean Water Act as a uniform and comprehensive national
2 approach to water protection to replace decades of fragmented approaches that had relied on the
3 states and had failed to protect the nation’s waters. It is one of the nation’s most important and
4 successful environmental laws.

5 3. Plaintiffs challenge two final rules promulgated by the United States Environmental
6 Protection Agency (“EPA”); Andrew Wheeler, Administrator of the EPA; the United States
7 Army Corps of Engineers (“Corps”); and R.D. James, Assistant Secretary of the Army for Civil
8 Works (collectively, “the Agencies”). The first, entitled “Definition of Waters of the U.S.:
9 Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (the “Repeal
10 Rule”), repealed the 2015 “Clean Water Rule” which defined the term “waters of the United
11 States” in the Clean Water Act. The second, entitled “The Navigable Waters Protection Rule:
12 Definition of Waters of the United States,” 85 Fed. Reg. 22,250 (April 21, 2020) (the “Navigable
13 Waters Rule”), replaced the Clean Water Rule and its predecessor rules with a definition of
14 “waters of the United States” that substantially narrows the waters protected by the Act.

15 4. The Navigable Waters Rule exceeds the Agencies’ statutory authority and is contrary
16 to the Clean Water Act’s text, structure, objectives, and legislative history requiring broad
17 protection of all the Nation’s waters, because its provisions exclude waters from the protections
18 required and afforded by the Act.

19 5. Plaintiffs also challenge the Repeal Rule and the Navigable Waters Rule as arbitrary
20 and capricious because both rules are contrary to the evidence before the Agencies, including
21 vast volumes of science and technical evidence in the administrative record and the
22 uncontroverted findings made by the EPA and its own Science Advisory Board. The Agencies
23 also failed to explain their decision to reverse prior regulations and failed to consider important
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1 aspects of the problem, including the effects on water quality and aquatic ecosystems of stripping
2 protections for large numbers of waters, the ecological importance of protecting the excluded
3 waters, and the effects of the reversal on the objectives of the Clean Water Act. These decisions
4 are arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act
5 (“APA”), 5 U.S.C. § 706(2).

6 6. Plaintiffs ask the Court to vacate and set aside the Repeal Rule and the Navigable
7 Waters Rule, and to reinstate the Clean Water Rule.

8 **PARTIES**

9 7. Plaintiff Puget Soundkeeper Alliance is a nonprofit corporation organized and
10 existing under the laws of Washington, with its headquarters in Seattle. Its mission is to protect
11 and preserve the waters of Puget Sound by detecting and reporting pollution, engaging
12 government agencies and businesses to regulate pollution discharges, and enforcing requirements
13 under the CWA to control or halt pollution and other adverse impacts to waters from sewage-
14 treatment plants, industrial facilities, construction sites, municipal storm sewers, and other
15 sources. Puget Soundkeeper Alliance has nearly 1,500 members who reside throughout the
16 Puget Sound watershed. Some of its members participate in volunteer boat or kayak patrols to
17 observe water-quality conditions, check for abnormal discharges and pollution, and remove
18 floating trash and debris. Puget Soundkeeper Alliance also accomplishes its work, in part, by
19 working to enforce the permitting requirements of the Act throughout the Puget Sound
20 watershed. Puget Soundkeeper’s members use and recreate on the Sound and the waters
21 throughout the Puget Sound watershed. Puget Soundkeeper and its members have significant
22 interest in preserving the full reach of the Clean Water Act’s protections.

23 8. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the laws
24 of California, with its headquarters in San Francisco. It is a national organization dedicated to

1 protecting public health and the environment. The Sierra Club has long worked to protect clean
2 water. In particular, local chapters of the Sierra Club have defended treasured waterbodies
3 throughout the U.S. from pollution, development, and destruction. The Sierra Club has more
4 than 630,000 members who reside in all fifty states and the District of Columbia. Some Sierra
5 Club chapters and groups run local Water Sentinels programs that train member volunteers to
6 test their local waterbodies for contamination and present the results to local regulatory officials,
7 to organize cleanups, and to advocate before government agencies to help improve water quality.
8 Sierra Club members use and recreate on waters and own property that contains waters that will
9 be affected by the rules challenged here. Sierra Club and its members have an interest in
10 preserving the full protections of the Clean Water Act.

11 9. Plaintiff Idaho Conservation League is an Idaho non-profit membership conservation
12 organization. The Idaho Conservation League and its approximately 10,000 members are
13 dedicated to protecting and conserving Idaho's natural resources, including its water quality and
14 native fish. The Idaho Conservation League's mission is to protect Idaho's clean water, clean
15 air, healthy families, and unique way of life. The Idaho Conservation League, its staff, and its
16 members are active in public education, administration, and legislative advocacy on conservation
17 issues in Idaho, including advocacy aimed at addressing the impacts of pollution on water quality
18 and native fish. The Idaho Conservation League's members use and enjoy waters in Idaho for
19 recreational, scientific, aesthetic, cultural, and commercial purposes.

20 10. Mi Familia Vota is a nonprofit public-interest advocacy organization working to
21 advance and protect the interests of Latino communities in areas of immigration, voting,
22 environment, workers' rights, education, and healthcare. Mi Familia Vota works for the
23 community through offices located in Arizona, California, Colorado, Texas, Nevada, and
24

1 Florida, with members throughout those states. Mi Familia Vota's members and their
2 communities are adversely affected by the Repeal Rule and the Navigable Waters Rule, as they
3 rely on waters throughout the West for drinking water and their livelihoods. Mi Familia Vota
4 also works on issues for and with its members involving housing and development policies in
5 places like Houston, Texas, that have been made more vulnerable to storms like Hurricane
6 Harvey as a result of the destruction of wetlands.

7 11. Defendant U.S. Environmental Protection Agency is a federal agency charged with
8 administering the Clean Water Act through its Administrator, Andrew Wheeler. 33 U.S.C. §
9 1251(d). It co-promulgated the Navigable Waters Rule and the Repeal Rule, the rules challenged
10 here.

11 12. Defendant U.S. Army Corps of Engineers is a federal agency within the Department
12 of the Army. It is authorized to issue permits for the discharge of dredged or fill material into the
13 waters of the United States, through the Assistant Secretary of the Army for Civil Works, R.D.
14 James. *Id.* §§ 1344, 1362(7). It co-promulgated the Navigable Waters Rule and the Repeal
15 Rule, the rules challenged here.

16 13. If the Repeal Rule and the Navigable Waters Rule are allowed to stand, the Plaintiff
17 organizations and their members will suffer significant harm. The challenged rules strip Clean
18 Water Act protections from wetlands and streams across the country, leaving many previously
19 protected wetlands vulnerable to degradation and destruction and entirely eliminating protections
20 for ephemeral streams. Because members of the Plaintiff organizations rely on waters that have
21 lost Clean Water Act protections as a result of the Agencies' rules, and also rely on downstream
22 waters that will be harmed by the pollution of unprotected waters upstream, Plaintiffs and their
23 members will be injured by the regulations.

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