

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OHIO VALLEY ENVIRONMENTAL COALITION, INC.; SIERRA CLUB;
WEST VIRGINIA HIGHLANDS CONSERVANCY, INC.; & WEST
VIRGINIA RIVERS COALITION;

(b) County of Residence of First Listed Plaintiff Cabell
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Appalachian Mountain Advocates; PO Box 507, Lewisburg, WV 24901;
304-793-9007.

DEFENDANTS

GINA MCCARTHY, Administrator, United States Environmental
Protection Agency, & SHAWN M. GARVIN, Regional Administrator,
United States Environmental Protection Agency, Region III,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration |
| | | | PROPERTY RIGHTS | | |
| | | | <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | | |
| | | LABOR | SOCIAL SECURITY | | |
| | | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | | |
| | | IMMIGRATION | FEDERAL TAX SUITS | | |
| | | <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes | |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty | | | |
| | | <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (Specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 USC s. 706(2) & 33 USC s 1365(a)

Brief description of cause:
Action to compel EPA to perform duties under the Clean Water Act and to set aside certain agency actions

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 01/07/2015 SIGNATURE OF ATTORNEY OF RECORD: /s/ Derek O. Teaney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC.; SIERRA CLUB;
WEST VIRGINIA HIGHLANDS
CONSERVANCY, INC.; & WEST
VIRGINIA RIVERS COALITION;**

Plaintiffs,

v.

CIVIL ACTION NO. _____

**GINA MCCARTHY, Administrator,
United States Environmental
Protection Agency, & SHAWN M.
GARVIN, Regional Administrator,
United States Environmental
Protection Agency, Region III,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges six (6) final actions by the United States Environmental Protection Agency, its Administrator, and Regional Administrator for Region III (collectively, “EPA”), and seeks to compel Defendants to perform certain nondiscretionary duties under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act” or “CWA”).

2. The challenged final actions include:

- a. EPA’s September 24, 2009 approval of the Total Maximum Daily Loads (“TMDLs”) for selected streams in the Upper Ohio River South Watershed (hereinafter, the “Upper Ohio South TMDLs”), submitted by the West Virginia Department of Environmental Protection (“WVDEP”);

- b. EPA’s September 30, 2009 approval of the TMDLs for selected streams in the Dunkard Creek Watershed (hereinafter, the “Dunkard Creek TMDLs”), submitted by the WVDEP;
- c. EPA’s April 23, 2012 approval of the TMDLs for selected streams in the Lower Kanawha River Watershed (hereinafter, the “Lower Kanawha River TMDLs”), submitted by WVDEP;
- d. EPA’s May 17, 2012 approval of the TMDLs for selected streams in the Elk River Watershed (hereinafter, the “Elk River TMDLs”), submitted by WVDEP;
- e. EPA’s April 2, 2014 approval of the TMDLs for selected streams in the Monongahela River Watershed (hereinafter, the “Monongahela River TMDLs”), submitted by WVDEP; and
- f. EPA’s July 29, 2014 approval of the TMDLs for selected streams in the West Fork River Watershed (hereinafter, the “West Fork River TMDLs”), submitted by WVDEP.

3. The nondiscretionary duties of which Plaintiffs seek to compel performance are Defendants’ duties pursuant to 33 U.S.C. § 1313(d)(2) to disapprove of WVDEP’s actual and/or constructive submission of no TMDLs for waters in West Virginia biologically impaired by ionic stress and to develop such TMDLs for those waters.

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 5 U.S.C. §§ 702–703 (Administrative Procedures Act), & 33 U.S.C. § 1365(a)(2) (Clean Water Act citizen suit provision).

5. On November 7, 2014, Plaintiffs gave notice to Defendants of their intent to bring this action to compel the performance of Defendants' nondiscretionary duties under 33 U.S.C. § 1313(d)(2), as required by Section 505(b)(2) of the CWA, 33 U.S.C. § 1365(b)(2).

6. Venue in this District is proper because "a substantial part of the events or omissions giving rise to the claim occurred" in this District and because plaintiffs Ohio Valley Environmental Coalition and West Virginia Highlands Conservancy reside in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

7. Plaintiff Sierra Club is a nonprofit corporation incorporated in California with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out those objectives. The Sierra Club's concerns encompass the exploration, enjoyment, and protection of surface waters in West Virginia.

8. Plaintiff Ohio Valley Environmental Coalition, Inc., (hereinafter, "OVEC") is a nonprofit organization incorporated in Ohio. Its principle place of business is in Huntington, West Virginia. It has approximately 1,500 members. Its mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, and media outreach. OVEC has focused on water quality issues and is a leading source of information about water pollution in West Virginia.

9. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter, “WVHC”) is a nonprofit organization incorporated in West Virginia. It has approximately 1,700 members. It works for the conservation and wise management of West Virginia’s natural resources.

10. Plaintiff West Virginia Rivers Coalition makes its mission the conservation and restoration of West Virginia’s exceptional rivers and streams. It not only seeks preservation of high quality waters but also the improvement of waters that should be of higher quality. It has approximately 2,500 members.

11. Plaintiffs’ members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendants’ unlawful approval of the TMDLs at issue and Defendants’ failure to perform its nondiscretionary duties under 33 U.S.C. § 1313(d)(2). Plaintiffs’ members fish in, swim in, hike near, observe wildlife in, photograph, and/or otherwise use the waters for which the TMDLs at issue were developed and/or should have been developed by Defendants. Plaintiffs’ members refrain from those activities and/or enjoy them less because of the continued polluted conditions of the affected waters that results from Defendants’ unlawful approval of and failure to develop TMDLs. If Defendants’ unlawful approvals are set aside, and if Defendants are compelled to develop appropriate TMDLs, then the harm to the interests of Plaintiffs’ members could be redressed. Plaintiffs’ members with fairly traceable, redressible injuries as a result of Defendants’ unlawful approval of the TMDLs at issue and Defendants’ failure to perform their nondiscretionary duties include:

- a. Vivian Stockman, who has a legally cognizable interest in one or more biologically impaired streams in the Upper Kanawha, Lower Kanawha, Upper Guyandotte, Little Kanawha, and Middle Ohio North Watersheds;
- b. Dustin White, who has a legally cognizable interest in one or more

- biologically impaired streams in the Coal River Watershed;
- c. Cindy Rank, who has a legally cognizable interest in one or more biologically impaired streams in the Gauley River, Elk River, West Fork River, Tygart Valley, Upper Guyandotte, and Lower Guyandotte Watersheds;
 - d. Robin Mahonen, who has a legally cognizable interest in one or more biologically impaired streams in the Upper Ohio South Watershed;
 - e. Betty Wiley, who has a legally cognizable interest in one or more biologically impaired streams in the Dunkard Creek Watershed;
 - f. Dave Saville, who has a legally cognizable interest in one or more biologically impaired streams in the Monongahela River, Cheat River, and Middle Ohio River South Watersheds;
 - g. Cindy Ellis, who has a legally cognizable interest in one or more biologically impaired streams in the Tug Fork Watershed;
 - h. Tonya Adkins, who has a legally cognizable interest in one or more biologically impaired streams in the Tug Fork and Big Sandy River Watersheds;
 - i. Eric Autenreith, who has a legally cognizable interest in one or more biologically impaired streams in the Lower New River Watershed;
 - j. Ed Gertler, who has a legally cognizable interest in one or more biologically impaired streams in the South Branch Potomac and Potomac Direct Drains Watersheds;
 - k. Eddie Fletcher, who has a legally cognizable interest in one or more biologically impaired streams in the Greenbrier River Watershed;

- l. Robin Blakeman, who has a legally cognizable interest in one or more biologically impaired streams in the Lower Ohio River Watershed; and
- m. Dianne Bady, who has a legally cognizable interest in one or more biologically impaired streams in the Lower Ohio and Twelvepole Watersheds.

12. At all relevant times, Plaintiffs were and are “persons” as that term is defined by the CWA, 33 U.S.C. § 1362(5).

13. Defendant Gina McCarthy is the Administrator of the United States Environmental Protection Agency. She is charged with the supervision and management of all decisions and actions of that agency, including those taken pursuant to the Clean Water Act with respect to the approval and development of TMDLs under 33 U.S.C. § 1313(d)(2). Ms. McCarthy is being sued in his official capacity only.

14. Defendant Shawn M. Garvin is the Regional Administrator of Region III of the United States Environmental Protection Agency. Region III’s responsibilities include oversight of the Clean Water Act activities of the State of West Virginia. Pursuant to 40 C.F.R. § 130.7(d)(2), the Administrator of the United States Environmental Protection Agency has delegated her authorities and nondiscretionary duties under 33 U.S.C. § 1313(d)(2) to the Regional Administrators, including Mr. Garvin. Mr. Garvin is being sued in his official capacity only.

STATUTORY AND REGULATORY FRAMEWORK

15. Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The goal of the Clean Water Act is to eliminate “the discharge of pollutants into the navigable waters,” and in the interim, to attain “water quality which provides for the protection and

propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(1) and (2).

16. To achieve those ends, Section 303 of the Clean Water Act requires each State to establish and implement water quality standards, subject to review and approval by EPA. 33 U.S.C. §§ 1313(a)–(c), 1362(3).

17. Water quality standards consist of the “designated uses” of a state’s waters and “the water quality criteria for such waters based upon such uses,” and “shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of” the Clean Water Act. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 130.2(d).

18. The CWA requires each State to “identify those waters within its boundaries for which the [technology-based] effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of [the CWA] are not stringent enough to implement any water quality standard applicable to such waters.” 33 U.S.C. § 1313(d)(1)(A).

19. For the waters thus identified, “[e]ach State shall establish . . . the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation.” 33 U.S.C. § 1313(d)(1)(C). Pursuant to Section 1314(a)(2), EPA has identified “[a]ll pollutants” as being suitable for TMDL calculation. 43 Fed. Reg. 60,665 (Dec. 28, 1978). The CWA requires that “TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards. . . .” 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1)(ii).

20. Section 303(d) further provides that TMDLs “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship

between effluent limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C). EPA regulations likewise provide that “TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.” 40 C.F.R. § 130.7(c)(1).

21. Under EPA regulations, a TMDL is “[t]he sum of the individual [waste load allocations or “WLAs”] for point sources and [load allocations or “LAs”] for nonpoint sources and natural background.” 40 C.F.R. § 130.2(i). A WLA is “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.” 40 C.F.R. § 130.2(h) (emphasis added). An LA is “[t]he portion of a receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.” 40 C.F.R. § 130.2(g).

22. Submission of lists of impaired waters and related TMDLs by states trigger a duty of EPA to “either approve or disapprove such identification and load not later than thirty days after the date of submission.” 33 U.S.C. § 1313(d)(2). “If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.” Id.

23. TMDLs are implemented, among other ways, through incorporation into water

quality management plans under § 303(e)(3)(C) of the CWA, and through point source discharge permits issued under § 402. Such permits must include not only technology-based effluent limitations, but also “any more stringent limitation . . . required to implement any applicable water quality standard established pursuant to this chapter.” 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Such limitations are known as “water quality-based effluent limitations.” Thus, water quality-based effluent limitations in point source discharge permits must be consistent with the assumptions and requirements of any available wasteload allocations in applicable TMDLs. *See, e.g.*, 40 C.F.R. § 122.44(d)(1)(vii)(B).

UPPER OHIO SOUTH TMDLs

24. On or about September 24, 2009, Defendants approved West Virginia’s submitted Total Maximum Daily Loads for Selected Streams in the Upper Ohio South River Watershed, West Virginia—the Upper Ohio South TMDLs.

25. Prior to submitting the Upper Ohio South TMDLs to EPA for approval, WVDEP sought and obtained public comments on the proposed TMDLs.

26. Plaintiffs Sierra Club and WVRC submitted comments to WVDEP on the proposed Upper Ohio South TMDLs on or about April 3, 2009.

27. Sierra Club and WVRC objected to the proposed Upper Ohio South TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP determined were biologically impaired because of ionic stress.

28. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that “[t]here is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL

development for ionic toxicity at this time.”

29. In their comments, Sierra Club and WVRC established that WVDEP’s rationale had no basis in law or fact.

30. In the Upper Ohio South TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Boggs Run, UNT/Boggs Run RM 2.69, Browns Run, Graeb Hollow, Short Creek, Girty Run, North Fork/Short Creek, Huff Run, and UNT/Ohio River MP 79.4), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. . . . A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. There is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time. Therefore, WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list.

31. EPA approved West Virginia’s Upper Ohio South TMDLs, notwithstanding the failure of those TMDLs to address ionic stress, accepting without analysis West Virginia’s bare-bones “explanation as to why it chose not to develop a TMDL for ionic stress at this time.” EPA made no statement as to whether it agreed with WVDEP’s claims regarding “insufficient information available regarding the causative pollutants and their associated impairment thresholds.” Rather, EPA “recommend[ed] that stressors identified through the stressor identification process conducted as part of these TMDLs be identified on the Section 303(d) list” and pledged to “continue to work with WVDEP as they develop TMDLs that fully address the biological impairments identified in Boggs Run, UNT/Boggs Run RM 2.69, Brown Run, Graeb Hollow, Short Creek, Girty Run, North Fork/Short Creek, Huff Run, and UNT/Ohio River MP 79.4.”

DUNKARD CREEK TMDLs

32. On or about September 30, 2009, Defendants approved West Virginia’s submitted

Total Maximum Daily Loads for Selected Streams in the Dunkard Creek Watershed, West Virginia—the Dunkard Creek TMDLs.

33. Prior to submitting the Dunkard Creek TMDLs to EPA for approval, WVDEP sought and obtained public comments on the proposed TMDLs.

34. Plaintiffs Sierra Club and WVRC submitted comments to WVDEP on the proposed Dunkard Creek TMDLs on or about April 3, 2009.

35. Sierra Club and WVRC objected to the proposed Dunkard Creek TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP determined were biologically impaired because of ionic stress.

36. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that “[t]here is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time.”

37. In their comments, Sierra Club and WVRC established that WVDEP’s rationale had no basis in law or fact.

38. In the Dunkard Creek TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Miracle Run, Building Run, West Virginia Fork/Dunkard Creek, South Fork/West Virginia Fork/Dunkard Creek), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. . . . A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. There is insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time. Therefore, WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list.

39. EPA approved West Virginia’s Dunkard Creek TMDLs, notwithstanding the

failure of those TMDLs to address ionic stress, accepting without analysis West Virginia’s bare-bones “explanation as to why it chose not to develop a TMDL for ionic stress at this time.” EPA made no statement as to whether it agreed with WVDEP’s claims regarding “insufficient information available regarding the causative pollutants and their associated impairment thresholds.” Rather, EPA “recommend[ed] that stressors identified through the stressor identification (SI) process conducted as part of these TMDLs be identified on the Section 303(d) list” and pledged to “continue to work with WVDEP as they develop TMDLs that fully address the biological impairments identified in Miracle Run, Building Run, West Virginia Fork/Dunkard Creek, and South Fork/West Virginia Fork/Dunkard Creek.”

LOWER KANAWHA RIVER TMDLs

40. On or about April 23, 2012, Defendants approved West Virginia’s submitted Total Maximum Daily Loads for Selected Streams in the Lower Kanawha River Watershed, West Virginia—the Lower Kanawha River TMDLs.

41. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that “[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity.”

42. In the Lower Kanawha River TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Joplin Branch WV-KL-77), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. A strong presence of sulfates and other dissolved solids exists in that stream where ionic toxicity has been determined to be a significant biological stressor. During the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity. WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the

Section 303(d) list. WVDEP and USEPA Region III have agreed upon a plan to develop these biological impairment TMDLs by 2014.

43. EPA approved West Virginia's Lower Kanawha River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress. EPA made no statement as to whether it agreed with WVDEP's claims regarding "insufficient information available regarding the causative pollutants and their associated impairment thresholds." Rather, EPA simply stated that "WVDEP and EPA are working to develop an impairment threshold for toxicity."

ELK RIVER TMDLs

44. On or about September May 17, 2012, Defendants approved West Virginia's submitted Total Maximum Daily Loads for Selected Streams in the Elk River Watershed, West Virginia—the Elk River TMDLs.

45. WVDEP refused to develop TMDLs for streams that were biologically impaired because of ionic stress on the ground that "[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity."

46. In the Elk River TMDLs that WVDEP submitted to EPA, WVDEP stated:

In certain waters (Leatherwood Creek WV-KE-83, Right Fork/Leatherwood Creek WV-KE-83-H, Road Fork/Leatherwood Creek WV-KE-83-N, Big Branch WV-KE-89-C-8, Birch River WV-KE-131, and Jacks Run WV-KE-131-BH), the [Stressor Identification] process determined ionic toxicity to be a significant stressor. A strong presence of sulfates and other dissolved solids exists in those waters and in all other streams where ionic toxicity has been determined to be a significant biological stressor. During the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity. WVDEP is deferring biological TMDL development for ionic toxicity stressed streams and retaining those waters on the Section 303(d) list. WVDEP and USEPA Region III have agreed upon a plan to develop these biological impairment TMDLs by 2014.

47. EPA approved West Virginia's Elk River TMDLs, notwithstanding the failure of

those TMDLs to address ionic stress, accepting and repeating without analysis or support in the record West Virginia's bare-bones claim that "[d]uring the TMDL development period, there was insufficient information available regarding the causative pollutants and their associated impairment thresholds for TMDL development for this pollutant."

MONANGAHELA RIVER TMDLs

48. On or about April 2, 2014, Defendants approved West Virginia's submitted Total Maximum Daily Loads for Selected Streams in the Monongahela River Watershed, West Virginia—the Monongahela River TMDLs.

49. In the Monongahela River River TMDLs, WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

50. Notwithstanding its refusal to develop TMDLs for biologically impaired streams in the Monongahela River watershed, WVDEP nonetheless retained a consultant to identify the stressors causing the impairment of biologically impaired streams on the State's Section 303(d) list, and determined that ionic toxicity was the cause of the biological impairment in the following 32 streams:

- a. Camp Run, WV-M-1;
- b. Scotts Run, WV-M-10;
- c. Wades Run, WV-M-10-C;
- d. Guston Run, WV-M-10-D;
- e. Dents Run, WV-M-12;
- f. Flaggy Meadow Run, WV-M-12-A;
- g. UNT/Dents Run RM 5.82, WV-M-12-H;

- h. Hartman Run, WV-M-14-A;
- i. Owl Creek, WV-M-17-G;
- j. UNT/Camp Run RM 0.79, WV-M-1-A;
- k. Crooked Run, WV-M-2;
- l. Flaggy Meadow Run, WV-M-30;
- m. UNT/Flaggy Meadow Run RM 2.15, WV-M-30-D;
- n. Indian Creek, WV-M-33-E;
- o. Little Indian Creek, WV-M-33-E;
- p. Snider Run, WV-M-33-E-2;
- q. UNT/Little Indian Creek RM 3.19, WV-M-33-E-6;
- r. UNT/Indian Creek RM 7.23, WV-M-33-P;
- s. Paw Paw Creek, WV-M-49;
- t. Sugar Run, WV-M-49-W;
- u. Harvey Run, WV-M-49-X;
- v. Buffalo Creek, WV-M-54;
- w. Whetstone Run, WV-M-54-AA;
- x. Pyles Fork, WV-M-54-X;
- y. Flat Run, WV-M-54-X-3;
- z. Llewellyn Run, WV-M-54-X-3-A;
- aa. UNT/Mongahela River RM 128.55, WV-M-57;
- bb. West Run, WV-M-7;
- cc. Robinson Run, WV-M-8;
- dd. Crafts Run, WV-M-8-A;

- ee. UNT/Robinson Run RM 1.09, WV-M-8-B; and
- ff. UNT/Robinson Run RM 4.09, WV-M-8-F.

51. EPA approved West Virginia's Monongahela River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress or biological impairment. Indeed, EPA was silent as to those failures.

WEST FORK RIVER TMDLs

52. On or about July 29, 2014, Defendants approved West Virginia's submitted Total Maximum Daily Loads for the West Fork Watershed, West Virginia—the West Fork River TMDLs.

53. In the West Fork River TMDLs, WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

54. WVDEP refused to develop TMDLs for streams that were biologically impaired, and announced that it had suspended the development of such TMDLs.

55. Notwithstanding its refusal to develop TMDLs for biologically impaired streams in the West Fork River watershed, WVDEP nonetheless retained a consultant to identify the stressors causing the impairment of biologically impaired streams on the State's Section 303(d) list, and determined that ionic toxicity was the cause of the biological impairment in the following 110 streams:

- a. UNT/Booths Creek RM 1.39, WV-MW-5-A;
- b. UNT/Booths Creek RM 4.11, WV-MW-5-D;
- c. UNT/Booths Creek RM 4.81, WV-MW-5-E;
- d. Horners Run, WV-MW-5-J;

- e. Purdys Run, WV-MW-5-J-1;
- f. Coons Run, WV-MW-8;
- g. Camp Run, WV-MW-12;
- h. Bingamon Creek, WV-MW-14;
- i. Elklick Run, WV-MW-14-C;
- j. Cunningham Run, WV-MW-14-F;
- k. Glade Fork, WV-MW-14-P;
- l. Harris Fork, WV-MW-14-V;
- m. UNT/Harris Fork RM 0.65, WV-MW-14-V-2;
- n. UNT/West Fork River RM 11.44, WV-MW-15;
- o. Laurel Run, WV-MW-18;
- p. UNT/West Fork River RM 13.10, WV-MW-19;
- q. Mudlick Run, WV-MW-20;
- r. UNT/West Fork River RM 13.91, WV-MW-21;
- s. Browns Run, WV-MW-22;
- t. Shinns Run, WV-MW-23;
- u. UNT/Shinns Run RM 3.69, WV-MW-23-E;
- v. UNT/Shinns Run RM 4.15, WV-MW-23-F;
- w. UNT/Shinns Run RM 5.61, WV-MW-23-G;
- x. UNT/Shinns Run RM 5.97, WV-MW-23-H;
- y. Robinson Run, WV-MW-26;
- z. Tenmile Creek, WV-MW-27;
- aa. Jack Run, WV-MW-27-A;

- bb. Jones Creek, WV-MW-27-B;
- cc. Little Tenmile Creek, WV-MW-27-E;
- dd. Peters Run, WV-MW-27-E-2;
- ee. UNT/Little Tenmile Creek RM 1.91, WV-MW-27-E-3;
- ff. Bennett Run, WV-MW-27-E-4;
- gg. Isaac Creek, WV-MW-27-H;
- hh. Gregory Run, WV-MW-27-I;
- ii. Katy Lick Run, WV-MW-27-K;
- jj. Flag Run, WV-MW-27-L;
- kk. UNT/Tenmile Creek RM 10.82, WV-MW-27-M;
- ll. Rockcamp Run, WV-MW-27-N;
- mm. UNT/Tenmile Creek RM 22.53, WV-MW-27-AK;
- nn. UNT/West Fork River RM 20.42, WV-MW-30;
- oo. Simpson Creek, WV-MW-31;
- pp. UNT/Simpson Creek RM 1.23, WV-MW-31-A;
- qq. Jack Run, WV-MW-31-B;
- rr. Smith Run, WV-MW-31-C;
- ss. Barnett Run, WV-MW-31-F;
- tt. Beards Run, WV-MW-31-O;
- uu. Berry Run, WV-MW-31-T;
- vv. Right Fork/Simpson Creek, WV-MW-31-U;
- ww. UNT/Simpson Creek RM 21.92, WV-MW-31-X;
- xx. UNT/Right Fork RM 0.33/Simpson Creek, WV-MW-31-U-2;

yy. Buck Run, WV-MW-31-U-3;

zz. Sand Lick Run, WV-MW-31-U-4;

aaa. Gabe Fork, WV-MW-31-U-5;

bbb. Bartlett Run, WV-MW-31-Y;

ccc. UNT/Simpson Creek RM 22.72, WV-MW-31-Z;

ddd. West Branch/Simpson Creek, WV-MW-31-AA;

eee. UNT/West Branch RM 0.63/Simpson Creek, WV-MW-31-AA-1;

fff. Stillhouse Run, WV-MW-31-AA-2;

ggg. UNT/West Branch RM 1.57/Simpson Creek, WV-MW-31-AA-4;

hhh. Camp Run, WV-MW-31-AB;

iii. UNT/Simpson Creek RM 26.94, WV-MW-31-AC;

jjj. Lambert Run, WV-MW-32;

kkk. UNT/Lambert Run RM 2.77, WV-MW-32-C;

lll. Jack Run, WV-MW-33;

mmm. Fall Run, WV-MW-34;

nnn. Crooked Run, WV-MW-35;

ooo. Limestone Run, WV-MW-36;

ppp. Stone Coal Run, WV-MW-36-A;

qqq. Simpson Fork, WV-MW-36-C;

rrr. Johnson Fork, WV-MW-36-D;

sss. Elk Creek, WV-MW-37;

ttt. Murphy Run, WV-MW-37-C;

uuu. Ann Moore Run, WV-MW-37-D;

vvv. Nutter Run, WV-MW-37-F;
www. Turkey Run, WV-MW-37-G;
xxx. Hooppole Run, WV-MW-37-H;
yyy. Brushy Fork, WV-MW-37-J;
zzz. Coplin Run, WV-MW-37-J-8;
aaaa. Glade Run, WV-MW-37-J-11;
bbbb. Stonecoal Run, WV-MW-37-J-15;
cccc. Gnatty Creek, WV-MW-37-V;
dddd. Rooting Creek, WV-MW-37-V-3;
eeee. Right Branch/Gnatty Creek, WV-MW-37-V-15;
ffff. Charity Fork, WV-MW-37-V-15-A;
gggg. Left Branch/Gnatty Creek, WV-MW-37-V-16;
hhhh. Stouts Run, WV-MW-37-W;
iiii. Birds Run, WV-MW-37-AA;
jjjj. Arnold Run, WV-MW-37-AC;
kkkk. Isaacs Run, WV-MW-37-AK;
llll. Stewart Run, WV-MW-37-AM;
mmmm. UNT/Elk Creek RM 27.87, W-MW-37-AS;
nnnn. Davisson Run, WV-MW-40;
oooo. Washburncamp Run, WV-MW-40-A;
pppp. Browns Creek, WV-MW-45;
qqqq. Coburns Creek, WV-MW-46;
rrrr. Sycamore Creek, WV-MW-47;

ssss. Lost Creek, WV-M-55;
tttt. UNT/Lost Creek, WV 3.32, WV-MW-55-C;
uuuu. Bonds Run, WV-MW-55-J;
vvvv. Buffalo Creek, WV-MW-59;
wwww. Duck Creek, WV-MW-62;
xxxx. Two Lick Creek, WV-MW-69;
yyyy. Hackers Creek, WV-MW-72;
zzzz. McKinney Run, WV-MW-72-F;
aaaaa. Stony Run, WV-MW-72-R;
bbbbb. Browns Run, WV-MW-75-C;
ccccc. Grass Run, WV-MW-90-I;
dddd. Right Fork/Stonecoal Creek, WV-MW-90-L;
eeee. UNT/Sycamore Creek RM 3.04, WV-MW-47-F; and
ffff. Washburn Run, WV-MW-97.

56. On or about May 9, 2014, Plaintiffs commented to WVDEP on the proposed West Fork River TMDLs.

57. Plaintiffs objected to the proposed West Fork River TMDLs on the grounds that they did not include a TMDL for each impaired stream in the watershed and indefinitely delayed establishing TMDLs for streams that WVDEP were biologically impaired because of ionic stress.

58. EPA approved West Virginia's Monongahela River TMDLs, notwithstanding the failure of those TMDLs to address ionic stress or biological impairment. Indeed, EPA was silent as to those failures. With regard to Plaintiffs comments, EPA cursorily stated that it "believes

that WVDEP appropriately addressed all comments.”

WVDEP’S ACTUAL AND/OR CONSTRUCTIVE SUBMISSION OF NO TMDLs FOR IONICALLY STRESSED STREAMS AND CERTAIN BIOLOGICALLY IMPAIRED STREAMS

59. On or about February 14, 2014, West Virginia submitted the Monongahela River TMDLs to EPA.

60. Included within the Monongahela River TMDLs was West Virginia’s confirmation to EPA that it was not going to develop TMDLs for any biologically impaired streams.

61. On June 26, 2014, West Virginia submitted the West Fork River TMDLs to EPA.

62. Included within the West Fork River TMDLs was West Virginia’s reiteration that it was not going to develop TMDLs for any biologically impaired streams.

63. WVDEP’s statements that it would not develop TMDLs for biologically impaired streams informed EPA that West Virginia would not be meeting agreed upon deadlines for the completion of biological impairment TMDLs.

64. WVDEP’s statement regarding the suspension of TMDL development amounted to the actual submission of no TMDL for the 179 streams for which ionic stress had been identified as the cause of biological impairment (identified in Appendix A to the Complaint), and the 387 other streams listed on West Virginia’s 2012 Section 303(d) list as biologically impaired but for which TMDLs had not yet been developed (identified in Appendix B to the Complaint).

65. Alternatively, WVDEP’s failure to develop TMDLs for the 179 streams for which ionic stress had been identified as the cause of biological impairment (identified in Appendix A to the Complaint), and the 387 other streams listed on West Virginia’s 2012 Section 303(d) list as biologically impaired but for which TMDLs had not yet been developed (identified in

Appendix B to the Complaint) constitutes the constructive submission of no TMDL for the narrative water quality standards for those streams.

66. Defendants neither approved nor disapproved West Virginia's actual submission of no TMDLs for the streams in Appendices A and B by March 17, 2014 or July 28, 2014.

67. Defendants did not develop their own TMDLs for the streams in Appendices A and B by April 16, 2014.

68. Defendants have never approved nor disapproved West Virginia's constructive submission of no TMDLs for the streams in Appendices A and B.

69. Defendants have never developed their own TMDLs for the streams in Appendices A and B.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure to Perform Nondiscretionary Duties Triggered by West Virginia's Actual Submission of No TMDLs for Biologically Impaired Streams)

70. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

71. Defendants are required by 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2) to approve or disapprove TMDLs submitted by States "not later than 30 days after the date of submission." If Defendants disapprove of a State's submission, then they must establish TMDLs "for such waters as [they] determine[] necessary to implement the water quality standards applicable to such waters." 33 U.S.C. § 1313(d)(2). Those duties are non-discretionary.

72. West Virginia's actual submission of no TMDLs for the 179 ionically stressed streams in Appendix A and the 387 biologically impaired streams in Appendix B on or about February 14, 2014, and again on June 26, 2014, through its statements in the Monongahela River

TMDLs and the West Fork River TMDLs that it would not develop such TMDLs triggered Defendants' non-discretionary duties (a) to disapprove West Virginia's submission and (b) to develop TMDLs for those streams to implement the applicable narrative water quality standards.

73. Defendants failed to perform those duties.

74. To date, Defendants have neither (a) disapproved of West Virginia's actual submission of no TMDLs for the waters identified in Appendices A and B nor (b) developed their own TMDLs for those streams.

75. In failing to perform the acts specified above, Defendants have failed to perform nondiscretionary acts and duties under the CWA.

SECOND CLAIM FOR RELIEF
(Failure to Perform Nondiscretionary Duties Triggered by West Virginia's Constructive Submission of No TMDLs for Biologically Impaired Streams)

76. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

77. Defendants are required by 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2) to approve or disapprove TMDLs submitted by States "not later than 30 days after the date of submission." If Defendants disapprove of a State's submission, then they must establish TMDLs "for such waters as [they] determine[] necessary to implement the water quality standards applicable to such waters." 33 U.S.C. § 1313(d)(2). Those duties are non-discretionary.

78. West Virginia's constructive submission of no TMDLs for the 179 ionically stressed streams in Appendix A and the 387 biologically impaired streams in Appendix B triggered Defendants' non-discretionary duties (a) to disapprove West Virginia's submission and (b) to develop TMDLs for those streams to implement the applicable narrative water quality standards.

79. Defendants failed to perform those duties.

80. To date, Defendants have neither (a) disapproved of West Virginia's actual submission of no TMDLs for the waters identified in Appendices A and B nor (b) developed their own TMDLs for those streams.

81. In failing to perform the acts specified above, Defendants have failed to perform nondiscretionary acts and duties under the CWA.

THIRD CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Upper Ohio South TMDLs)

82. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

83. EPA's approval of the Upper Ohio South TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems," 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with

those uses, in violation of the CWA and implementing regulations;

c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and

d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

84. EPA's approval of the Upper Ohio South TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

85. EPA's approval of the Upper Ohio South TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

FOURTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Dunkard Creek TMDLs)

86. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

87. EPA’s approval of the Dunkard Creek TMDLs constitutes agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

88. EPA’s approval of the Dunkard Creek TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that

responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

89. EPA's approval of the Dunkard Creek TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

FIFTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Lower Kanawha River TMDLs)

90. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

91. EPA's approval of the Lower Kanawha River TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia's applicable water quality standards, including the narrative water quality standards that prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts

to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;

- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

92. EPA’s approval of the Lower Kanawha River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP’s assertions that there is “insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time.”

93. EPA’s approval of the Lower Kanawha River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic

toxicity, the Clean Water Act requires the development of TMDLs even in the face of a “lack of knowledge.” 33 U.S.C. § 1313(d)(2).

**SIXTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants’ Approval of Elk River
TMDLs)**

94. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

95. EPA’s approval of the Elk River TMDLs constitutes agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and

applicable regulations; and

- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

96. EPA's approval of the Elk River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record. For example, EPA provided no explanation for its acceptance of WVDEP's assertions that there is "insufficient information available regarding the causative pollutants and their associated impairment thresholds for biological TMDL development for ionic toxicity at this time."

97. EPA's approval of the Elk River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

**SEVENTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants' Approval of Monongahela River TMDLs)**

98. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

99. EPA's approval of the Monongahela River TMDLs constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- a. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- b. The TMDLs fail to provide for attainment of water quality supporting all designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;
- c. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- d. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

100. EPA’s approval of the Monongahela River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record.

101. EPA’s approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited

information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a “lack of knowledge.” 33 U.S.C. § 1313(d)(2).

102. EPA’s approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because West Virginia’s suspension of its TMDL program for biologically impaired streams is neither lawful nor scientifically justified.

EIGHTH CLAIM FOR RELIEF
(Administrative Procedures Act Claim Regarding Defendants’ Approval of West Fork River TMDLs)

103. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 69 supra.

104. EPA’s approval of the West Fork River TMDLs constitutes agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C). That is so because:

- e. The TMDLs fail to implement West Virginia’s applicable water quality standards, including the narrative water quality standards that prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems,” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i, in violation of the CWA and implementing regulations;
- f. The TMDLs fail to provide for attainment of water quality supporting all

designated and existing uses in the biologically impaired streams, including the aquatic life use, and to meet narrative water quality standards associated with those uses, in violation of the CWA and implementing regulations;

- g. The TMDLs fail to allocate loads of the causative pollutants associated with ionic stress to individual point sources, in violation of the CWA and applicable regulations; and
- h. The TMDLs lack an adequate margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, in violation of the CWA, 33 U.S.C. § 1313(d)(1)(C);

105. EPA's approval of the West Fork River TMDLs contravenes requirements of reasoned agency decision making because EPA failed to offer a reasoned explanation that responds to comments, considers relevant factors, and is supported by substantial evidence in the record.

106. EPA's approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, even if there were limited information on the causative pollutants and appropriate thresholds related to ionic toxicity, the Clean Water Act requires the development of TMDLs even in the face of a "lack of knowledge." 33 U.S.C. § 1313(d)(2).

107. EPA's approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because West Virginia's suspension of its TMDL program for biologically impaired streams is neither lawful nor scientifically justified.

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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

1. Declaring that Defendants have failed to perform nondiscretionary duties required by the Clean Water Act, including their failure to disapprove West Virginia's actual and/or constructive submission of no TMDLs for the streams listed in Appendices A and B and to develop TMDLs for those streams;
2. Ordering Defendants to disapprove West Virginia's actual and/or constructive submission of no TMDLs for the streams listed in Appendices A and B;
3. Ordering Defendants to develop, as soon as possible, TMDLs for the streams listed in Appendices A and B;
4. Declaring that Defendants' approval of the Upper Ohio South TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;
5. Remanding that portion of the Upper Ohio South TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Upper Ohio South TMDLs as soon as possible;
6. Declaring that Defendants' approval of the Dunkard Creek TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;
7. Remanding that portion of the Dunkard Creek TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Dunkard Creek TMDLs as soon as possible;
8. Declaring that Defendants' approval of the Lower Kanawha River TMDLs was

arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

9. Remanding that portion of the Lower Kanawha River TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Lower Kanawha River TMDLs as soon as possible;

10. Declaring that Defendants' approval of the Elk River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

11. Remanding that portion of the Elk River TMDLs that omitted TMDLs for ionic toxicity to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Elk River TMDLs as soon as possible;

12. Declaring that Defendants' approval of the Monongahela River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

13. Remanding that portion of the Monongahela River TMDLs that omitted TMDLs for biologically impaired streams to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the Monongahela River TMDLs as soon as possible;

14. Declaring that Defendants' approval of the West Fork River TMDLs was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

15. Remanding that portion of the West Fork River TMDLs that omitted TMDLs for biologically impaired streams to EPA for reconsideration in light of the Court's decision, and directing that EPA conclude the remand and issue a new decision on that portion of the West Fork River TMDLs as soon as possible;

16. Retaining jurisdiction over this action to ensure compliance with the Court's decree;
17. Awarding Plaintiffs their costs of litigation (including attorneys fees and expert witness costs); and
18. Granting such other relief as the Court deems just and proper.

DATED: JANUARY 7, 2015

Respectfully submitted,

/s/ Derek O. Teaney

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APPENDIX A

| Stream | Watershed | Year of Stressor Identification |
|---------------------------------------|------------------------|--|
| Pointlick Fork of Campbells Creek | Upper Kanawha | 2005 |
| Rattlesnake Hollow of Campbells Creek | Upper Kanawha | 2005 |
| Wet Branch of Cabin Creek | Upper Kanawha | 2005 |
| Coal Fork of Cabin Creek | Upper Kanawha | 2005 |
| James Branch | Coal River | 2005 |
| Ellis Creek | Coal River | 2005 |
| Rockhouse Creek | Coal River | 2005 |
| Toney Fork | Coal River | 2005 |
| Buffalo Fork | Coal River | 2005 |
| Left Fork/Beech Creek | Coal River | 2005 |
| Seng Creek | Coal River | 2005 |
| Scrabble Creek | Gauley River | 2008 |
| Left Fork of Scrabble Creek | Gauley River | 2008 |
| Boardtree Branch | Gauley River | 2008 |
| Sugarcamp Branch | Gauley River | 2008 |
| Stillhouse Branch | Gauley River | 2008 |
| Robinson Fork | Gauley River | 2008 |
| Boggs Run | Upper Ohio River South | 2009 |
| UNT/Boggs Run RM 2.69 | Upper Ohio River South | 2009 |
| Browns Run | Upper Ohio River South | 2009 |
| Graeb Hollow | Upper Ohio River South | 2009 |
| Short Creek | Upper Ohio River South | 2009 |
| Girty Run | Upper Ohio River South | 2009 |
| North Fork/Short Creek | Upper Ohio River South | 2009 |
| Huff Run | Upper Ohio River South | 2009 |
| UNT/Ohio River MP 79.4 | Upper Ohio River South | 2009 |
| Miracle Run | Dunkard Creek | 2009 |
| Building Run | Dunkard Creek | 2009 |

| | | |
|---|-------------------|------|
| West Virginia Fork/Dunkard Creek | Dunkard Creek | 2009 |
| South Fork/West Virginia Fork/Dunkard Creek | Dunkard Creek | 2009 |
| Joplin Creek | Lower Kanawha | 2012 |
| Leatherwood Creek | Elk River | 2012 |
| Right Fork/Leatherwood Creek | Elk River | 2012 |
| Road Fork | Elk River | 2012 |
| Big Branch | Elk River | 2012 |
| Birch River | Elk River | 2012 |
| Jacks Run | Elk River | 2012 |
| Camp Run | Monongahela River | 2014 |
| Scotts Run | Monongahela River | 2014 |
| Wades Run | Monongahela River | 2014 |
| Guston Run | Monongahela River | 2014 |
| Dents Run | Monongahela River | 2014 |
| Flaggy Meadow Run | Monongahela River | 2014 |
| UNT/Dents Run RM 5.82 | Monongahela River | 2014 |
| Hartman Run | Monongahela River | 2014 |
| Owl Creek | Monongahela River | 2014 |
| UNT/Camp Run RM 0.79 | Monongahela River | 2014 |
| Crooked Run | Monongahela River | 2014 |
| Flaggy Meadow Run | Monongahela River | 2014 |
| UNT/Flaggy Meadow Run RM 2.15 | Monongahela River | 2014 |
| Indian Creek | Monongahela River | 2014 |
| Little Indian Creek | Monongahela River | 2014 |
| Snider Run | Monongahela River | 2014 |
| UNT/Little Indian Creek | Monongahela River | 2014 |
| UNT/Indian Creek RM 3.19 | Monongahela River | 2014 |
| UNT/Indian Creek RM 7.23 | Monongahela River | 2014 |
| Paw Paw Creek | Monongahela River | 2014 |
| Sugar Run | Monongahela River | 2014 |
| Harvey Run | Monongahela River | 2014 |
| Buffalo Creek | Monongahela River | 2014 |
| Whetstone Run | Monongahela River | 2014 |
| Pyles Fork | Monongahela River | 2014 |
| Flat Run | Monongahela River | 2014 |
| Llewellyn Run | Monongahela River | 2014 |
| UNT/Monongahela River RM 128.55 | Monongahela River | 2014 |
| West Run | Monongahela River | 2014 |
| Robinson Run | Monongahela River | 2014 |
| Crafts Run | Monongahela River | 2014 |

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|----------------------------------|-------------------|------|
| UNT/Robinson Run RM 1.09 | Monongahela River | 2014 |
| UNT/Robinson Run RM 4.09 | Monongahela River | 2014 |
| UNT/Booths Creek RM 1.39 | West Fork | 2014 |
| UNT Booths Creek RM 4.11 | West Fork | 2014 |
| UNT/Booths Creek RM 4.81 | West Fork | 2014 |
| Horners Run | West Fork | 2014 |
| Purdys Run | West Fork | 2014 |
| Coons Run | West Fork | 2014 |
| Camp Run | West Fork | 2014 |
| Bingamon Creek | West Fork | 2014 |
| Elklick Run | West Fork | 2014 |
| Cunningham Run | West Fork | 2014 |
| Glade Fork | West Fork | 2014 |
| Harris Fork | West Fork | 2014 |
| UNT/Harris Fork RM 0.65 | West Fork | 2014 |
| UNT/West Fork River RM 11.44 | West Fork | 2014 |
| Laurel Run | West Fork | 2014 |
| UNT/West Fork River RM 13.10 | West Fork | 2014 |
| Mudlick Run | West Fork | 2014 |
| UNT/West Fork River RM 13.91 | West Fork | 2014 |
| Browns Run | West Fork | 2014 |
| Shinns Run | West Fork | 2014 |
| UNT/Shinns Run RM 3.69 | West Fork | 2014 |
| UNT/Shinns Run RM 4.15 | West Fork | 2014 |
| UNT/Shinns Run RM 5.61 | West Fork | 2014 |
| UNT/Shinns Run RM 5.97 | West Fork | 2014 |
| Robinson Run | West Fork | 2014 |
| Tenmile Creek | West Fork | 2014 |
| Jack Run | West Fork | 2014 |
| Jones Creek | West Fork | 2014 |
| Little Tenmile Creek | West Fork | 2014 |
| Peters Run | West Fork | 2014 |
| UNT/Little Tenmile Creek RM 1.91 | West Fork | 2014 |
| Bennett Run | West Fork | 2014 |
| Isaac Creek | West Fork | 2014 |
| Gregory Run | West Fork | 2014 |
| Katy Lick Run | West Fork | 2014 |
| Flag Run | West Fork | 2014 |
| UNT/Tenmile Creek RM 10.82 | West Fork | 2014 |
| Rockcamp Run | West Fork | 2014 |
| UNT/Tenmile Creek RM 22.53 | West Fork | 2014 |

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|---------------------------------------|-----------|------|
| UNT/West Fork River RM 20.42 | West Fork | 2014 |
| Simpson Creek | West Fork | 2014 |
| UNT/Simpson Creek RM 1.23 | West Fork | 2014 |
| Jack Run | West Fork | 2014 |
| Smith Run | West Fork | 2014 |
| Barnett Run | West Fork | 2014 |
| Beards Run | West Fork | 2014 |
| Berry Run | West Fork | 2014 |
| Right Fork/Simpson Creek | West Fork | 2014 |
| UNT/Simpson Creek RM 21.92 | West Fork | 2014 |
| Buck Run | West Fork | 2014 |
| Sand Lick Run | West Fork | 2014 |
| Gabe Fork | West Fork | 2014 |
| Bartlett Run | West Fork | 2014 |
| UNT/Simpson Creek RM 22.72 | West Fork | 2014 |
| West Branch/Simpson Creek | West Fork | 2014 |
| UNT/West Branch RM 0.63/Simpson Creek | West Fork | 2014 |
| Stillhouse Run | West Fork | 2014 |
| UNT/West Branch RM 1.57/Simpson Creek | West Fork | 2014 |
| Camp Run | West Fork | 2014 |
| UNT/Simpson Creek RM 26.94 | West Fork | 2014 |
| Lambert Run | West Fork | 2014 |
| UNT/Lambert Run RM 2.77 | West Fork | 2014 |
| Jack Run | West Fork | 2014 |
| Fall Run | West Fork | 2014 |
| Crooked Run | West Fork | 2014 |
| Limestone Run | West Fork | 2014 |
| Stone Coal Run | West Fork | 2014 |
| Simpson Fork | West Fork | 2014 |
| Johnson Fork | West Fork | 2014 |
| Elk Creek | West Fork | 2014 |
| Murphy Run | West Fork | 2014 |
| Ann Moore Run | West Fork | 2014 |
| Nutter Run | West Fork | 2014 |
| Turkey Run | West Fork | 2014 |
| Hooppole Run | West Fork | 2014 |
| Brushy Fork | West Fork | 2014 |
| Coplin Run | West Fork | 2014 |
| Glade Run | West Fork | 2014 |
| Stonecoal Run | West Fork | 2014 |
| Gnatty Creek | West Fork | 2014 |

| | | |
|----------------------------|-----------|------|
| Rooting Creek | West Fork | 2014 |
| Right Branch/Gnatty Creek | West Fork | 2014 |
| Charity Fork | West Fork | 2014 |
| Left Branch/Gnatty Creek | West Fork | 2014 |
| Stouts Run | West Fork | 2014 |
| Birds Run | West Fork | 2014 |
| Arnold Run | West Fork | 2014 |
| Isaacs Run | West Fork | 2014 |
| Stewart Run | West Fork | 2014 |
| UNT/Elk Creek RM 27.87 | West Fork | 2014 |
| Davisson Run | West Fork | 2014 |
| Washburncamp Run | West Fork | 2014 |
| Browns Creek | West Fork | 2014 |
| Coburns Creek | West Fork | 2014 |
| Sycamore Creek | West Fork | 2014 |
| Lost Creek | West Fork | 2014 |
| UNT/Lost Creek RM 3.32 | West Fork | 2014 |
| Bonds Run | West Fork | 2014 |
| Buffalo Creek | West Fork | 2014 |
| Duck Creek | West Fork | 2014 |
| Two Lick Creek | West Fork | 2014 |
| Hackers Creek | West Fork | 2014 |
| McKinney Run | West Fork | 2014 |
| Stony Run | West Fork | 2014 |
| Browns Run | West Fork | 2014 |
| Grass Run | West Fork | 2014 |
| Right Fork/Stonecoal Creek | West Fork | 2014 |
| UNT/Sycamore Creek RM 3.04 | West Fork | 2014 |
| Washburn Run | West Fork | 2014 |

APPENDIX B

| Stream | Watershed |
|---------------------------------------|-----------------------|
| Jennie Creek | Tug Fork |
| Marrowbone Creek | Tug Fork |
| Pigeon Creek (Mouth to RM 21.5) | Tug Fork |
| Pigeon Creek (RM 21.5 to 25) | Tug Fork |
| Pigeon Creek (RM 25 to 30.8) | Tug Fork |
| Pigeon Creek (RM 30.8 to HW) | Tug Fork |
| Ben Creek | Tug Fork |
| White Oak Hollow | Tug Fork |
| Elkhorn Creek | Tug Fork |
| Longbottom Creek (Mouth to RM 0.8) | Upper Kanawha |
| Longbottom Creek (RM 0.8 to RM 1.8) | Upper Kanawha |
| Tenmile Fork | Upper Kanawha |
| Coal River | Coal River |
| Little Marsh Fork (Mouth to RM 3.8) | Coal River |
| Little Marsh Fork (RM 3.8 to HW) | Coal River |
| Ewing Fork | Coal River |
| Wilson Branch | Lower New River |
| Three Fork Creek | Tygart Valley |
| Raccoon Creek | Tygart Valley |
| Gooney Otter Creek | Upper Guyandotte |
| Littles Creek | Upper Guyandotte |
| Guyandotte River (Lower) | Lower Guyandotte |
| Parsner Creek | Lower Guyandotte |
| South Fork/South Branch Potomac River | South Branch Potomac |
| Gravel Lick Run | South Branch Potomac |
| UNT/Warm Spring Run RM 7.96 | Potomac Direct Drains |
| Brains Creek | Tygart Valley |
| UNT/UNT RM 0.56/Sandy Creek RM 10.47 | Tygart Valley |
| Webster Run | Lower New River |
| Scheidler Run | Middle Ohio North |
| Left Fork/Slab Creek | Little Kanawha |
| Tanner Fork | Little Kanawha |
| Squealing Fork | Lower New |
| UNT/Sal Willis Branch RM 0.73 | Lower New |
| Buckles Branch | Gauley River |
| UNT/Williams River RM 15.86 | Gauley River |
| Pigeonroost Fork | Elk River |

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|---|----------------------|
| Laurel Creek | Elk River |
| Fork Creek | Coal River |
| UNT/Greens Run RM 6.88 | Cheat |
| Smoky Hollow | Cheat |
| UNT/Beaver Creek RM 11.91 | Cheat |
| Yellow Creek | Cheat |
| Freeland Run | Cheat |
| Tory Camp Run | Cheat |
| Anderson Run | South Branch Potomac |
| UNT/South Branch Potomac River RM 40.44 | South Branch Potomac |
| Miller Run | South Branch Potomac |
| UNT/South Branch Potomac River RM 59.19 | South Branch Potomac |
| Robinson Run | South Branch Potomac |
| South Fork/Lunice Creek | South Branch Potomac |
| Powers Hollow | South Branch Potomac |
| Jordan Run | South Branch Potomac |
| Mill Creek | South Branch Potomac |
| Mission Hollow (Venable Branch) | Upper Kanawha |
| Lower Donnally Branch | Upper Kanawha |
| Big Ninemile Fork | Upper Kanawha |
| Georges Creek | Upper Kanawha |
| New West Hollow | Upper Kanawha |
| Toms Fork | Upper Kanawha |
| UNT/Tenmile Fork RM 1.22 | Upper Kanawha |
| Kellys Creek | Upper Kanawha |
| Horsemill Branch | Upper Kanawha |
| Sugarcamp Branch | Upper Kanawha |
| Bufflick Branch | Upper Kanawha |
| Hurricane Fork | Upper Kanawha |
| Banner Hollow | Upper Kanawha |
| Sycamore Branch | Upper Kanawha |
| Cedar Creek | Upper Kanawha |
| Bishop Fork | Upper Kanawha |
| Mossy Creek | Upper Kanawha |
| North Sand Branch | Upper Kanawha |
| Maple Fork | Upper Kanawha |
| Hughes Creek | Upper Kanawha |
| Martin Hollow | Upper Kanawha |
| Barn Hollow | Upper Kanawha |

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|-----------------------------|------------------|
| Smithers Creek | Upper Kanawha |
| Bullpush Fork | Upper Kanawha |
| Dempsey Branch | Upper Kanawha |
| Fuquay Creek | Coal River |
| Ely Fork | Coal River |
| Slippery Gut Branch | Coal River |
| Spruce Fork | Coal River |
| Trace Fork | Coal River |
| Hopkins Fork | Coal River |
| Rock Creek | Coal River |
| Spanker Branch | Coal River |
| Wickwire Run | Tygart Valley |
| Squires Creek | Tygart Valley |
| UNT/Birds Creek RM 2.57 | Tygart Valley |
| Little Sandy Creek | Tygart Valley |
| Sugar Creek | Tygart Valley |
| Long Run | Tygart Valley |
| Hackers Creek | Tygart Valley |
| Foxgrape Run | Tygart Valley |
| Big Run | Tygart Valley |
| Childers Run | Tygart Valley |
| Wash Run | Tygart Valley |
| Sawmill Run | Tygart Valley |
| Laurel Run/Buckhannon River | Tygart Valley |
| Hooppole Run | Tygart Valley |
| Three Forks Run | Tygart Valley |
| Pleasant Run | Tygart Valley |
| Rocky Run | Tygart Valley |
| Craven Run | Tygart Valley |
| Davis Lick | Tygart Valley |
| Laurel Run | Tygart Valley |
| Riffle Creek | Tygart Valley |
| Right Fork/Robinson Fork | Gauley |
| Big Ditch Run | Gauley |
| Tanyard Branch | Lower Guyandotte |
| Little Cabell Creek | Lower Guyandotte |
| Big Cabell Creek | Lower Guyandotte |
| Fudges Creek | Lower Guyandotte |
| Wire Branch | Lower Guyandotte |
| Mill Creek | Lower Guyandotte |
| Right Fork/Mill Creek | Lower Guyandotte |

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|---------------------------|------------------|
| Johns Branch | Lower Guyandotte |
| Indian Fork | Lower Guyandotte |
| Charley Creek | Lower Guyandotte |
| Trace Creek | Lower Guyandotte |
| Trace Fork | Lower Guyandotte |
| Coon Creek | Lower Guyandotte |
| Straight Fork | Lower Guyandotte |
| Meadow Branch | Lower Guyandotte |
| Straight Fork | Lower Guyandotte |
| Valley Fork | Lower Guyandotte |
| Sugartree Fork | Lower Guyandotte |
| Big Creek | Lower Guyandotte |
| Left Fork/Mud River | Lower Guyandotte |
| Stinson Branch | Lower Guyandotte |
| Upton Branch | Lower Guyandotte |
| Ballard Fork | Lower Guyandotte |
| Davis Creek | Lower Guyandotte |
| Edens Branch | Lower Guyandotte |
| Smith Creek | Lower Guyandotte |
| Cavill Creek | Lower Guyandotte |
| Madison Creek | Lower Guyandotte |
| Twomile Creek | Lower Guyandotte |
| Fourmile Creek | Lower Guyandotte |
| Ninemile Creek | Lower Guyandotte |
| Tenmile Creek | Lower Guyandotte |
| Lick Branch | Lower Guyandotte |
| Aarons Creek | Lower Guyandotte |
| Laurel Creek | Lower Guyandotte |
| Dry Run | Lower Guyandotte |
| Short Bend Fork | Lower Guyandotte |
| Laurel Fork | Lower Guyandotte |
| West Fork/Big Harts Creek | Lower Guyandotte |
| Smokehouse Fork | Lower Guyandotte |
| Buck Fork | Lower Guyandotte |
| Bulwark Branch | Lower Guyandotte |
| Vickers Branch | Lower Guyandotte |
| UNT/Big Creek RM 3.28 | Lower Guyandotte |
| Trace Fork | Lower Guyandotte |
| Hurricane Branch | Lower Guyandotte |
| Garrett Fork | Lower Guyandotte |
| Perrys Branch | Lower Guyandotte |

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|--------------------------------|-----------------------------|
| South Fork/Crawley Creek | Lower Guyandotte |
| Fowler Branch | Lower Guyandotte |
| Mill Creek | Lower Guyandotte |
| Middle Island Creek | Middle Ohio North Watershed |
| McKim Creek | Middle Ohio North Watershed |
| Sugar Creek | Middle Ohio North Watershed |
| Sancho Creek | Middle Ohio North Watershed |
| Point Pleasant Creek | Middle Ohio North Watershed |
| Pursley Creek | Middle Ohio North Watershed |
| Peach Fork | Middle Ohio North Watershed |
| Gorrell Run | Middle Ohio North Watershed |
| Indian Creek | Middle Ohio North Watershed |
| Big Battle Run | Middle Ohio North Watershed |
| Wilhelm Run | Middle Ohio North Watershed |
| Right Fork/Arnold Creek | Middle Ohio North Watershed |
| Meathouse Fork | Middle Ohio North Watershed |
| Buckeye Run | Middle Ohio North Watershed |
| Cow Hollow Run | Middle Ohio North Watershed |
| Doolin Run | Middle Ohio North Watershed |
| Little Fishing Creek | Middle Ohio North Watershed |
| South Fork/Fishing Creek | Middle Ohio North Watershed |
| Buffalo Run | Middle Ohio North Watershed |
| Arches Fork | Middle Ohio North Watershed |
| Fallen Timber Run | Middle Ohio North Watershed |
| Price Run | Middle Ohio North Watershed |
| Proctor Creek | Middle Ohio North Watershed |
| Oldtown Creek | Middle Ohio South Watershed |
| Turkey Run | Middle Ohio South Watershed |
| Potter Creek | Middle Ohio South Watershed |
| UNT/Robinson Run RM 2.42 | Middle Ohio South Watershed |
| Mill Run | Middle Ohio South Watershed |
| Tenmile Creek | Middle Ohio South Watershed |
| UNT/Tenmile Creek RM 5.33 | Middle Ohio South Watershed |
| Sliding Hill Creek | Middle Ohio South Watershed |
| UNT/Sliding Hill Creek RM 1.25 | Middle Ohio South Watershed |
| Little Broad Run | Middle Ohio South Watershed |
| Little Mill Creek | Middle Ohio South Watershed |
| Mill Creek | Middle Ohio South Watershed |
| Bar Run | Middle Ohio South Watershed |
| Cow Run | Middle Ohio South Watershed |
| Left Fork/Cow Run | Middle Ohio South Watershed |

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|----------------------------|-----------------------------|
| Parchment Creek | Middle Ohio South Watershed |
| Cox Fork | Middle Ohio South Watershed |
| Wolfe Creek | Middle Ohio South Watershed |
| Sycamore Creek | Middle Ohio South Watershed |
| Left Fork/Sycamore Creek | Middle Ohio South Watershed |
| Grasslick Creek | Middle Ohio South Watershed |
| Bear Fork | Middle Ohio South Watershed |
| Elk Fork | Middle Ohio South Watershed |
| Little Mill Creek | Middle Ohio South Watershed |
| Frozenscamp Creek | Middle Ohio South Watershed |
| Little Creek | Middle Ohio South Watershed |
| Buffalo Creek | Middle Ohio South Watershed |
| Spring Creek | Middle Ohio South Watershed |
| Cedar Run | Middle Ohio South Watershed |
| Sandy Creek | Middle Ohio South Watershed |
| Crooked Fork | Middle Ohio South Watershed |
| Trace Fork | Middle Ohio South Watershed |
| Beatty Run | Middle Ohio South Watershed |
| Right Fork/Sandy Creek | Middle Ohio South Watershed |
| Left Fork/Sandy Creek | Middle Ohio South Watershed |
| Copper Fork | Middle Ohio South Watershed |
| Turkey Fork | Middle Ohio South Watershed |
| Nessleroad Run | Middle Ohio South Watershed |
| Washington Run | Middle Ohio South Watershed |
| Pond Creek | Middle Ohio South Watershed |
| Jesse Run | Middle Ohio South Watershed |
| South Fork/Lee Creek | Middle Ohio South Watershed |
| North Fork/Lee Creek | Middle Ohio South Watershed |
| Gunners Run | Middle Ohio South Watershed |
| Sandy Creek | Middle Ohio South Watershed |
| Vaughts Run | Middle Ohio South Watershed |
| UNT/Sandy Creek RM 4.97 | Middle Ohio South Watershed |
| Pond Run | Middle Ohio South Watershed |
| Little Pond Run | Middle Ohio South Watershed |
| Briscoe Run | Middle Ohio South Watershed |
| Big Run | Middle Ohio South Watershed |
| Plum Run | Middle Ohio South Watershed |
| Hogland Run | Middle Ohio South Watershed |
| Rattlesnake Run | Potomac Direct Drains |
| Rockymarsh Run | Potomac Direct Drains |
| UNT/Opequon Creek RM 10.21 | Potomac Direct Drains |

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|-------------------------------------|-----------------------|
| Roaring Run | Potomac Direct Drains |
| Middle Fork/Sleepy Creek | Potomac Direct Drains |
| Warm Spring Run | Potomac Direct Drains |
| Tug Fork | Tug Fork |
| Mill Creek | Tug Fork |
| Lost Creek | Tug Fork |
| Silver Creek | Tug Fork |
| Parsley Big Branch | Tug Fork |
| Sulphur Creek | Tug Fork |
| Greenbrier Fork | Tug Fork |
| Wolfpen Branch | Tug Fork |
| Mountain Fork | Tug Fork |
| Middle Fork/Big Creek | Tug Fork |
| Beech Fork | Tug Fork |
| Spice Creek | Tug Fork |
| Badway Branch | Tug Fork |
| Davy Branch | Tug Fork |
| Upper Shannon Branch | Tug Fork |
| Browns Creek | Tug Fork |
| Puncheoncamp Branch | Tug Fork |
| Rock Narrows Branch | Tug Fork |
| UNT/Stony Run RM 1.12 | Greenbrier |
| Walker Creek | Little Kanawha |
| Goose Creek | Little Kanawha |
| South Fork/Hughes River | Little Kanawha |
| Indian Creek | Little Kanawha |
| Bone Creek | Little Kanawha |
| Middle Fork/South Fork/Hughes River | Little Kanawha |
| Beech Run | Little Kanawha |
| Laurel Run | Little Kanawha |
| Sang Run | Little Kanawha |
| Leading Creek | Little Kanawha |
| Rush Run | Little Kanawha |
| Right Fork/Steer Creek | Little Kanawha |
| Left Fork/Steer Creek | Little Kanawha |
| White Oak Run | Little Kanawha |
| Steer Run | Little Kanawha |
| Bender Run | Little Kanawha |
| Tanner Creek | Little Kanawha |
| Butchers Run | Little Kanawha |
| Sand Fork | Little Kanawha |

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|------------------------------|----------------------|
| Copen Run | Little Kanawha |
| Hamilton Branch | Lower New |
| Bowyer Creek | Lower New |
| Miller Creek | Big Sandy |
| Cedar Run | Big Sandy |
| Whites Creek | Big Sandy |
| Gragston Creek | Big Sandy |
| Elijah Creek | Big Sandy |
| Gilkerson Branch | Big Sandy |
| Hurricane Creek | Big Sandy |
| Sugar Branch | Big Sandy |
| Tabor Creek | Big Sandy |
| Redhead Branch | Big Sandy |
| Fourpole Creek | Lower Ohio |
| Sevenmile Creek | Lower Ohio |
| Ninemile Creek | Lower Ohio |
| Guyan Creek | Lower Ohio |
| Spurlock Creek | Lower Ohio |
| McCowan Branch | Lower Ohio |
| Rocky Fork | Lower Ohio |
| Mud Run | Lower Ohio |
| Sixteenmile Creek | Lower Ohio |
| Stonecoal Run | Lower Ohio |
| Crab Creek | Lower Ohio |
| Mud Run | Lower Ohio |
| Middle Fork/Crab Creek | Lower Ohio |
| Twelvepole Creek | Twelvepole Watershed |
| Krout Creek | Twelvepole Watershed |
| UNT/Twelvepole Creek RM 5.72 | Twelvepole Watershed |
| Buffalo Creek | Twelvepole Watershed |
| Camp Creek | Twelvepole Watershed |
| Right Fork/Camp Creek | Twelvepole Watershed |
| Beech Fork | Twelvepole Watershed |
| Rubens Branch | Twelvepole Watershed |
| Long Branch | Twelvepole Watershed |
| Butler Branch | Twelvepole Watershed |
| Lynn Creek | Twelvepole Watershed |
| Left Fork/Wilson Creek | Twelvepole Watershed |
| Toms Creek | Twelvepole Watershed |
| West Fork/Twelvepole Creek | Twelvepole Watershed |
| Big Branch | Twelvepole Watershed |

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|-------------------------------|----------------------|
| Trace Fork | Twelvepole Watershed |
| Billy Branch | Twelvepole Watershed |
| Wells Branch | Twelvepole Watershed |
| Moses Fork | Twelvepole Watershed |
| Right Fork/Moses Fork | Twelvepole Watershed |
| Breeden Creek | Twelvepole Watershed |
| Moses Fork | Twelvepole Watershed |
| East Fork/Twelvepole Creek | Twelvepole Watershed |
| Lynn Creek | Twelvepole Watershed |
| Cove Creek | Twelvepole Watershed |
| Kiah Creek | Twelvepole Watershed |
| Parker Branch | Twelvepole Watershed |
| Copley Trace Branch | Twelvepole Watershed |
| Jims Branch | Twelvepole Watershed |
| Maynard Branch | Twelvepole Watershed |
| Honey Branch | Twelvepole Watershed |
| Island Creek | Upper Guyandotte |
| Rockhouse Branch | Upper Guyandotte |
| Whitman Creek | Upper Guyandotte |
| Curry Branch | Upper Guyandotte |
| Mill Creek | Upper Guyandotte |
| Pine Creek | Upper Guyandotte |
| Right Fork/Pine Creek | Upper Guyandotte |
| Cow Creek | Upper Guyandotte |
| Lower Dempsey Branch | Upper Guyandotte |
| Dingess Run | Upper Guyandotte |
| Rum Creek | Upper Guyandotte |
| Right Hand Fork/Rum Creek | Upper Guyandotte |
| Burgess Branch | Upper Guyandotte |
| Camp Branch | Upper Guyandotte |
| Right Fork/Buffalo Creek | Upper Guyandotte |
| Perry Branch | Upper Guyandotte |
| Robinette Branch | Upper Guyandotte |
| Middle Fork/Buffalo Creek | Upper Guyandotte |
| Paynter Branch | Upper Guyandotte |
| Lefthand Fork/Rockhouse Creek | Upper Guyandotte |
| Right Fork/Sandlick Creek | Upper Guyandotte |
| Spice Creek | Upper Guyandotte |
| Stafford Branch | Upper Guyandotte |
| Browning Fork | Upper Guyandotte |
| Little Huff Creek | Upper Guyandotte |

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| Little Cub Creek | Upper Guyandotte |
| Suke Creek | Upper Guyandotte |
| Long Branch | Upper Guyandotte |
| Chestnut Flats Branch | Upper Guyandotte |
| Cabin Branch | Upper Guyandotte |
| Tom Bailey Branch | Upper Guyandotte |
| Franks Fork | Upper Guyandotte |
| Indian Creek | Upper Guyandotte |
| Rockcastle Creek | Upper Guyandotte |
| Little Pinnacle Creek | Upper Guyandotte |
| Sugar Run | Upper Guyandotte |
| Marsh Fork | Upper Guyandotte |
| Mill Branch | Upper Guyandotte |
| Marsh Fork | Upper Guyandotte |
| Big Branch | Upper Guyandotte |
| Wiley Spring Branch | Upper Guyandotte |
| Mullens Branch | Upper Guyandotte |
| Tommy Creek | Upper Guyandotte |
| Fish Creek | Upper Ohio River South |
| Conner Run | Upper Ohio River South |
| Bark Camp Run | Upper Ohio River South |
| West Virginia Fork/Fish Creek | Upper Ohio River South |
| Church Fork | Upper Ohio River South |
| UNT/Wheeling Creek RM 25.77 | Upper Ohio River South |