

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
No. 2:24-cv-00013-BO-RJ**

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

**MOTION OF NATIONAL  
WILDLIFE FEDERATION AND  
NORTH CAROLINA WILDLIFE  
FEDERATION TO INTERVENE  
AS DEFENDANTS**

Fed. R. Civ. P. 24(b)  
Local Rule 7.1(b)

Pursuant to Federal Rule of Civil Procedure 24(b), the National Wildlife Federation and North Carolina Wildlife Federation (collectively, “Wildlife Federations”) hereby move to intervene as defendants in this case. The Wildlife Federations meet the standard for permissive intervention under Rule 24(b): their proposed intervention is timely, involves common questions of law and fact, and would not cause undue prejudice or delay.

The reasons and authority supporting this motion are included in the accompanying memorandum in support. Declarations showing the Wildlife Federations’ interests in this action

are attached as Exhibits A through F to this motion. A proposed Answer is also provided in accordance with Federal Rule of Civil Procedure 24(c).

Counsel for the Wildlife Federations have consulted with counsel for the existing parties to obtain their positions on this motion. Defendants have represented that they do not oppose the Wildlife Federations' motion for permissive intervention; Plaintiff Robert White has represented that he opposes the motion.

Accordingly, the Wildlife Federations respectfully request that they be granted intervention as defendants in this action.

This the 7th day of May, 2024.

Respectfully submitted,

/s/ Julia Furr Youngman  
Julia Furr Youngman [NC Bar No. 21320]  
Derb S. Carter, Jr. [NC Bar No. 10644]  
Dakota Foard Loveland [NC Bar No. 57893]\*  
Southern Environmental Law Center  
601 West Rosemary Street, Suite 220  
Chapel Hill, NC 27516  
(919) 967-1450  
Fax (919) 929-9421  
jyoungman@selcnc.org  
dcarter@selcnc.org  
dloveland@selcnc.org

Mark Sabath [VA Bar No. 94275]\*  
Southern Environmental Law Center  
122 C Street NW, Suite 325  
Washington, DC 20001  
(434) 977-4090  
Fax (202) 347-6041  
msabath@selcva.org

*Attorneys for the Wildlife Federations*

*\* Notice of Special Appearance filed concurrently*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2024, I electronically filed the foregoing Motion of National Wildlife Federation and North Carolina Wildlife Federation to Intervene as Defendants with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/ Julia Furr Youngman  
Julia Furr Youngman  
Southern Environmental Law Center  
601 West Rosemary Street, Suite 220  
Chapel Hill, NC 27516  
(919) 967-1450  
Fax (919) 929-9421  
jyoungman@selcnc.org  
NC State Bar No. 21320

*Attorney for the Wildlife Federations*

## **Exhibit Index**

Exhibit A	Declaration of James Murphy
Exhibit B	Declaration of Tim Gestwicki
Exhibit C	Declaration of Tim Aydlett
Exhibit D	Declaration of Jane Plough
Exhibit E	Declaration of Anne Radke
Exhibit F	Declaration of John Stanton
Exhibit G	[Proposed] Answer of National Wildlife Federation and North Carolina Wildlife Federation

## **Exhibit A**

### **Declaration of James Murphy**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF JAMES MURPHY**

I, James Murphy, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I joined the National Wildlife Federation (“NWF”) in 2003, first serving as Wetlands and Water Resources Counsel, then Senior Counsel. I currently serve as NWF’s Senior Director of Legal Advocacy in NWF’s National Advocacy Center. In this capacity, I coordinate litigation and legal advocacy for NWF’s national policy programs, with a major focus on clean

water and on encouraging congressional, administrative, and legal actions to protect wetlands and water resources for the benefit of both human and wildlife populations.

3. I have been deeply engaged in advocating for a broad interpretation of the Clean Water Act consistent with congressional intent for approximately twenty years. In this capacity, I have led NWF's advocacy efforts in support of the "Revised Definition of 'Waters of the United States'" ("January 2023 Rule") to restore the longstanding federal clean water protections as updated to reflect Supreme Court precedent, agency experience and expertise, and the best available science.

4. Founded in 1936, NWF is the nation's largest member-supported nonprofit conservation advocacy and education organization. NWF has more than six million members and supporters nationwide and affiliate organizations in 52 states and territories, including (since 1945) the North Carolina Wildlife Federation. Approximately 15,700 of those members reside in North Carolina. NWF's membership is made up of conservation-minded hunters, anglers, and other outdoor enthusiasts. NWF members enjoy the outdoors and the nation's wetlands and other waters across the country. For example, they hunt ducks that depend on wetlands adjacent to open waters like the bottomland hardwoods and estuarine fringe marshes of coastal North Carolina, fish in waters from the headwater trout streams of the Appalachian Mountains to the Intracoastal Waterway, and canoe on waters that are fed by the small streams of New England.

5. NWF is headquartered in Reston, Virginia, with regional offices throughout the United States. Staff in each of NWF's regional offices work on regional issues. For example, the staff in NWF's Mid-Atlantic Regional Center in Annapolis, Maryland, work across North Carolina, Virginia, West Virginia, Kentucky, Maryland, Delaware, and Pennsylvania.

6. The mission of NWF is to unite all Americans to ensure wildlife thrive in a

rapidly changing world. NWF achieves this mission by educating, mobilizing, and advocating to preserve and strengthen protections for wildlife and wild places. A major concern of NWF is the protection of water resources such as wetlands and streams. NWF has been advocating for the protection of these vital resources, upon which wildlife depends, since its founding in 1936.

7. For decades, NWF has actively worked on behalf of its members to ensure protection of wetlands, streams, and other water resources, including the fish and wildlife that rely on them. Among its activities relating to wetlands, NWF has defended the applicability of the Clean Water Act to activities involving the dredging of wetlands; submitted comments and other documents to improve and enforce mitigation requirements where impacts to wetlands cannot be avoided; advised citizens, including NWF's members, on procedures for becoming involved in wetlands permit challenges; and prepared citizens' guides to the Section 404 permitting process.

8. Because protecting water resources is fundamental to NWF's mission, NWF worked on behalf of its members and affiliates to secure the issuance of the January 2023 Rule and to advocate for strong federal protections for vital waters, including headwater streams, tributaries and adjacent wetlands, and other wetlands like prairie potholes and Carolina bays.

9. NWF's intensive work on the scope of Clean Water Act protections spans the two decades since the United States Supreme Court's decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. United States*. Our work on this issue has included, but is not limited to, the following. NWF:

a. co-produced and publicly distributed three major reports focusing on the heightened risk to wetlands and water resources following the Supreme Court's decisions in *SWANCC* (in 2001) and *Rapanos v. United States* (in 2006), and the guidance documents that



EPA and the Army Corps of Engineers adopted in the wake of those decisions;

b. conducted scores of presentations and roundtables around the country to inform the public of the need to restore Clean Water Act protections to vulnerable wetlands and streams;

c. participated in, and contributed scientific input to, the EPA Office of Research and Development's science report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, and the formal EPA Science Advisory Board review of the report, which provided a portion of the scientific support for the January 2023 Rule;

d. submitted extensive written comments to EPA and the Corps supporting reforms to the 2003 and 2008 guidance documents;

e. supported a strong 2015 Clean Water Rule during the rulemaking process;

f. opposed actions to delay the effective date of the 2015 Clean Water Rule;

g. submitted organizational comments and encouraged our members, supporters, and state affiliates to submit more than 96,500 total individual and organizational comments supporting the 2015 Clean Water Rule and opposing the 2019 repeal of the Clean Water Rule and the 2020 adoption of the Navigable Waters Protection Rule;

h. advocated for the restoration of longstanding federal clean water protections during the January 2023 Rule rulemaking process, including submitting comments to EPA and the Corps on their proposed rule; and

i. regularly reported to NWF members on NWF's efforts to ensure that Clean Water Act protections are asserted and maintained for water resources to the full extent required by law.

10. NWF has also frequently participated in federal litigation concerning the scope of the Clean Water Act’s definition of “waters of the United States” and the resulting federal protections for wetlands and other waters. NWF was an intervenor-defendant helping to defend the 2015 Clean Water Rule, *Georgia v. McCarthy*, No. 2:15-cv-79-LGW-RSB (S.D. Ga.); a plaintiff challenging the 2019 rule that repealed the Clean Water Rule, *S.C. Coastal Conservation League v. Wheeler*, No. 2:19-cv-03006-BHH (D.S.C.); a plaintiff challenging the 2020 Navigable Waters Protection Rule, *S.C. Coastal Conservation League v. Regan*, No. 2:20-cv-01687-BHH (D.S.C.); an *amicus curiae* in *Sackett v. EPA*, No. 21-454 (U.S.); and an *amicus curiae* helping to defend the January 2023 Rule, *Kentucky v. EPA*, No. 3:23-cv-00007-GFVT (E.D. Ky.).

11. In addition, NWF works on projects to restore and protect rivers, bays, wetlands, and watersheds across the country. For example, in 2010, NWF helped launch the Choose Clean Water Coalition to advocate for restoring thousands of streams and rivers flowing to the Chesapeake Bay; NWF remains a member of that coalition, which continues its advocacy to this day. NWF does similar advocacy work and on-the-ground restoration nationwide, including in the upper Great Lakes, especially Michigan’s Upper Peninsula, northern Wisconsin, and the arrowhead region of northern Minnesota; the Everglades; the Mississippi River Delta; and the Gulf of Mexico. These and other waters have become degraded by pollution, flow alterations, and wetland and stream destruction. An unduly narrow interpretation of the scope of the Clean Water Act directly hinders these restoration efforts by removing federal protections from wetlands and streams. A further narrowing of the definition of “waters of the United States” and of the scope of the Clean Water Act would be devastating to these efforts.

12. The Supreme Court’s 2023 decision in *Sackett v. EPA* effected a significant

rollback of clean water protections for wetlands and streams, threatening to remove protections from up to 63% of the nation's wetlands by acreage and up to 4.9 million miles of streams, putting the drinking-water sources for over 117 million people at risk, and harming the interests of NWF and its members.

13. In challenging portions of the “Revised Definition of ‘Waters of the United States,’” 88 Fed. Reg. 3004 (Jan. 18, 2023), *as amended*, 88 Fed. Reg. 61,964 (Sept. 8, 2023) (“Amended Rule”), the plaintiff in this case is asking this court to vacate the Amended Rule and to limit the protections for wetlands even more severely than the Supreme Court did through its decision in *Sackett*. A decision in favor of the plaintiff could make it more difficult to protect wetlands and other waters that are critical to fish, waterfowl, shellfish, and other wildlife; to NWF's mission; and to NWF's members. For example, adopting the plaintiff's restrictive view of “adjacent wetlands” could allow widespread destruction and degradation of those critically important waters along with deleterious effects downstream.

14. The destruction of waters that could be permitted to occur if the plaintiff prevails on his arguments would force NWF to increase its advocacy and restoration efforts, including advocating before Congress and state legislatures; advocating before local, state, and federal agencies; building support at the local government level for new local water protections; and engaging in litigation challenging permits and potentially damaging projects. These efforts would divert resources from NWF's other important projects, such addressing the threats posed by invasive species and the warming climate, promoting wildlife conservation, and working with farmers on resilient farming practices.

15. NWF also has numerous members who have taken action to support a strong Clean Water Act and strong federal protections for our nation's wetlands and other waters. These

members use and enjoy wetlands, streams, and other water bodies that will be at risk of pollution, destruction, or degradation if this Court issues an order vacating the Amended Rule or limiting the protections it provides.

16. An order from this Court upholding the Amended Rule and the federal government's remaining authority to protect critical wetlands and other waters that sustain our nation's wildlife and its habitat would address NWF's concerns.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on:

5/2/24

James Murphy

## **Exhibit B**

### **Declaration of Tim Gestwicki**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF TIM GESTWICKI**

I, Tim Gestwicki, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I am a resident of Charlotte, North Carolina.
3. I am an avid hunter, fisherman, and outdoorsman. I spend as much of my time as I can in North Carolina's natural spaces, including those in and around the coast. I have been fishing and hunting in North Carolina for over 45 years.

4. I have worked for the North Carolina Wildlife Federation (“NCWF”) since 1991. In January of 2009, I became the Chief Executive Officer of the organization. I am responsible for all NCWF operations, including education, advocacy, publications, and litigation.

5. The North Carolina Wildlife Federation is North Carolina’s oldest and largest statewide non-profit conservation organization, with over ten thousand members and supporters, seventeen community wildlife chapters, and over sixty affiliates. NCWF will soon have two chapters based in the Elizabeth City area: Albemarle Conservation and Wildlife Chapter, an existing chapter, and Wildlife Habitat Stewards of Northeastern NC, which will be officially chartered this summer.

6. Since 1945, NCWF has worked with citizens, outdoor enthusiasts, hunters and anglers, government, and industry to safeguard North Carolina’s natural resources, including the Carolina Bays, pocosins, and other wetlands and waters that make our state unique. Our mission is to protect, conserve, and restore North Carolina’s natural areas—not only as habitat for native wildlife but also as recreational, hunting, fishing, and wildlife observation areas for people.

7. Because wildlife and its habitat need ample clean water to thrive, water conservation and restoration is a critical part of NCWF’s work. Through policy and protection work, research and education, and direct hands-on conservation projects, we work to protect water quality throughout North Carolina.

8. NCWF’s “Sound Solutions Marine Resources Reform and Management” campaign combats threats to the state’s fisheries through habitat loss and water quality degradation. Hundreds of species of fish and other marine life grow and feed within North Carolina’s estuarine waters before they are old enough to venture out toward the coast and ocean. Concerned about the health of the state’s precious coastal network of sounds, wetlands, and

waterways, NCWF initiated a campaign to protect marine fisheries and habitat for present and future generations. Through this campaign, we work to change the way that North Carolina marine fisheries and habitats are managed and regulated by educating the public and decision-makers, and by making policy and regulatory recommendations that will have positive impacts on the state's coastal wetlands and waterways. NCWF also educates recreational and commercial fishermen about, and discourages the use of, destructive fishing gear and unsustainable fishing practices.

9. Through the Little Tennessee River Native Fish Conservation Partnership, NCWF engages with agencies, organizations, and businesses to promote the health of the Little Tennessee River Basin, which stretches from north Georgia across North Carolina and into Tennessee. The river basin is home to over one hundred species of fish, as well as mussels, snails, crayfish, and aquatic plants, including state and federally threatened and endangered species. We put sustainable watershed management tools into practice, including the removal of stream obstructions such as culverts, and the restoration of riparian stream banks. NCWF also creates educational materials, such as videos and interactive online maps, to inform the public about the ecological significance of different segments of the river and all of its tributaries.

10. NCWF also works to connect the public with nature. For instance, through its Great Outdoors University, the organization takes children who have limited opportunities to explore the natural environment on exciting outdoor trips. Many of these trips involve recreational activities that rely on clean water, such as canoeing, fishing, or simply exploring creeks in the woods. These experiences teach children the importance of conserving natural habitats for wildlife, while helping them to gain new skills and build self-confidence.

11. Through our Governor's Conservation Achievement Awards, NCWF recognizes



those who have exhibited a true commitment to protecting water quality and fisheries within North Carolina, including organizations that have worked to restore wetlands, streams, and river systems—such as Winston-Salem’s Resource Institute, the Carolina Wetlands Association, and Cape Fear River Watch—and individuals who have combatted egregious water pollution—such as those recognized annually as the Division of Marine Fisheries Patrol Officer and the Water Conservationist of the Year.

12. In 2017, our Board of Directors passed two resolutions that emphasized the importance of water quality to preserving the health of the state’s fisheries and habitat, including the “Resolution on North Carolina Marine Habitat Protection,” and the “Resolution on North Carolina Marine Fisheries Reform.” In particular, the board’s “Resolution on North Carolina Marine Habitat Protection” voiced concerns about the destruction of state sounds and estuaries by excessive development and accompanying sedimentation and pollution, and it stressed the importance of improving water quality and restoring critical aquatic habitats.

13. We have nineteen community wildlife chapters that work on local projects throughout the state related to water quality and aquatic habitat protection and restoration. For instance, Wildlife Habitat Stewards of Northeastern NC maintains a network of stewards who maintain, create, and restore wildlife habitat in northeastern North Carolina and hosts outings and other programs to connect people with the abundance of wildlife found within the region.

14. NCWF has submitted organizational comments on several proposed rules by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers regarding the definition of the Clean Water Act’s term “waters of the United States,” including the 2015 Clean Water Rule, the 2019 rule repealing the Clean Water Rule, the 2020 Navigable Waters Protection Rule, and the January 2023 rule.

15. In recent years, NCWF has also been involved in several federal court cases concerning the scope of the Clean Water Act’s definition of “waters of the United States” and the resulting federal protections for wetlands and other waters. NCWF was a plaintiff challenging the 2019 rule that repealed the Clean Water Rule, *S.C. Coastal Conservation League v. Wheeler*, No. 2:19-cv-03006-BHH (D.S.C.); a plaintiff challenging the 2020 Navigable Waters Protection Rule, *S.C. Coastal Conservation League v. Regan*, No. 2:20-cv-01687-BHH (D.S.C.); and an *amicus curiae* helping to defend the January 2023 rule that the plaintiff in the present case is challenging (in part), *Kentucky v. EPA*, No. 3:23-cv-00007-GFVT (E.D. Ky.).

16. The Supreme Court’s 2023 decision in *Sackett v. EPA* had the effect of removing federal clean water protections from tens of millions of acres of wetlands nationwide, including in North Carolina.

17. After the *Sackett* decision, the North Carolina General Assembly passed legislation to prevent the state from protecting wetlands that are not protected under the federal Clean Water Act, putting North Carolina’s wetlands at even greater risk.

18. I understand that in challenging portions of the “Revised Definition of ‘Waters of the United States,’” 88 Fed. Reg. 3004 (Jan. 18, 2023), *as amended*, 88 Fed. Reg. 61,964 (Sept. 8, 2023) (“Amended Rule”), the plaintiff in this case is asking this Court to vacate the Amended Rule and to limit the protections for wetlands even more severely than the Supreme Court did through its decision in *Sackett*. A decision in favor of the plaintiff could make it more difficult to protect wetlands and other waters, including waters critical for North Carolina’s fisheries and wetlands important for wildlife habitat, flood prevention, and pollution control.

19. NCWF is deeply invested in maintaining the water quality of North Carolina both for wildlife and for our members who enjoy the state’s wetlands and other waters. We cannot

protect estuarine fisheries if the wetlands and streams flowing into the estuaries are polluted or destroyed. We cannot ensure that critical wildlife habitat is preserved if wetland protections are weakened. Additionally, the more that Clean Water Act protections are eliminated, the more NCWF will be required to invest its finite resources in advocating for state and local water quality protections, which would take away from the organization's other programs and activities.

20. An order from this Court upholding the Amended Rule and the federal government's remaining authority to protect critical wetlands and other waters that sustain our fisheries and wildlife habitat would address NCWF's concerns.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: May 2, 2024

Tim Gestwicki

Tim Gestwicki

## **Exhibit C**

### **Declaration of Tim Aydlett**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF TIM AYDLETT**

I, Tim Aydlett, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I grew up in Elizabeth City, North Carolina, and I currently live in Pasquotank County just outside the Elizabeth City limits, on property that backs up against wetlands. I am a retired high school biology teacher and principal who worked at schools in the Mattamuskeet, Williamston, and Elizabeth City areas. I did my best to teach my students to respect nature and

conserve our limited environmental resources.

3. My family has been in this part of North Carolina for generations. The Village of Aydlett was named for my family, and my ancestors are buried in Currituck County, North Carolina.

4. I am an avid hunter, fisherman, and outdoorsman and have fished and hunted in North Carolina for almost 70 years. I spend as much of my time as I can in North Carolina's natural spaces, including those in and around the coast. I love the great outdoors and have spent my life dedicated to preserving it for our children and our grandchildren.

5. I first became involved with the North Carolina Wildlife Federation ("NCWF") in the 1970s, while I was president of the Pasquotank Wildlife Club and later a director on the NCWF board. I have been a member of NCWF continuously since 2000. I strongly support NCWF's mission to protect, conserve, and restore North Carolina's natural areas—not only as habitats for native wildlife but also as recreational hunting, fishing, and wildlife observation areas. As a member, I pay dues, receive newsletters, and attend organization events.

6. I am a founder and past president and the current treasurer of the Albemarle Conservation and Wildlife Chapter of NCWF. The Chapter brings together wildlife enthusiasts living in and around Elizabeth City for wildlife and habitat conservation. Our chapter was named NCWF's Chapter of the Year in 2010 for planting 16,000 Atlantic white cedar seedlings, which are endangered species in Dismal Swamp State Park.

7. I am also a member of the National Wildlife Federation ("NWF"). I have been a member of NWF on and off since the 1970s and continuously since 2005. I support NWF's mission "to unite all Americans to ensure wildlife thrive in a rapidly changing world."

8. I am an avid duck hunter and have been duck hunting for most of my life. I

particularly enjoy duck hunting in and around wetlands in Perquimans County, Pasquotank County, Camden County, Currituck County, and Hyde County, including on Big Flatty Creek, Little Flatty Creek, the North River, the Little River, the Currituck Sound, Juniper Bay, and the Pamlico Sound and at the Pine Island Audubon Sanctuary. I hunted regularly with both of my sons while they were growing up and living at home. I still hunt nearly every year, including earlier this year, and I plan to go back out each season.

9. I have served as a Hunter Education Instructor for the North Carolina Wildlife Resources Commission, training hunters in firearm safety, first aid, wildlife and plant identification, and how to be good stewards of God's creation.

10. Northeastern North Carolina has a rich tradition of duck hunting, and duck hunting has been a major part of our local economy for many years. One of my grandfathers had a slaughter plant and meatpacking business and used to ship barrels of ducks to restaurants up north. The ducks are not sold like that anymore, but hunting and tourism are still a major part of our economy.

11. I also like to fish and have boated and fished for years in the Little River, Big Flatty Creek, Little Flatty Creek, the Pasquotank River, and the Albemarle Sound and at the Pine Island Audubon Sanctuary. I fish for white perch, largemouth bass, smallmouth bass, bream, crappie, and raccoon perch. I plan to continue fishing in these waters in the future. My enjoyment of these activities depends on these water bodies having ample water that is clean and unpolluted.

12. The health of North Carolina's wetlands—especially in the areas where I hunt and fish—is very important to me. I have worked hard to protect and restore North Carolina's wetlands and other natural resources by volunteering with various conservation groups in North

Carolina.

13. I am the current president of North Carolina Friends of State Parks, an independent nonprofit organization supporting the North Carolina State Park System at a local level and providing environmental education to the general public. I previously served as president of Friends of Dismal Swamp State Park; a member of the boards of Audubon North Carolina and Keep North Carolina Beautiful; a member of the advisory board of the Sentinel Landscapes Initiative; a sponsor with the North Carolina Beta Club State Council; and a Scoutmaster with the Boy Scouts of America. I was also appointed for six years to the board of the North Carolina Parks and Recreation Trust Fund, based on my commitment to conservation and recreation. I have strived to protect and support wildlife and wildlife habitat and to teach others to do the same through my involvement with each of these organizations.

14. In 2006, I was presented by Governor Easley with the Order of the Long Leaf Pine, one of North Carolina's highest awards, for my extensive contributions to conservation and education. The Order of the Long Leaf Pine is awarded to persons for exemplary service to the State of North Carolina and their communities that is above and beyond the call of duty and that has made a significant impact and strengthened North Carolina.

15. It is my understanding that we have already lost many acres of wetlands in my part of North Carolina. I also understand that, as a result of the Supreme Court's decision in *Sackett v. EPA* and the passage of the Farm Act in North Carolina, more wetlands can now be filled or polluted without the need to first obtain a permit. I am worried that further marsh degradation and wetland fill will leave the remaining natural resources and wildlife habitat critically vulnerable.

16. I know that pollution or destruction of these wetlands will harm not only the



wetlands but also downstream waters and the fish and wildlife they support. If we don't protect our wetlands and estuaries, I worry that we won't have clean water to fish in, or shrimp and other seafood to safely eat.

17. I am also concerned that the loss of wetlands, and their ability to filter pollution, would increase pollution in the rivers, streams, lakes, and ponds where I hunt—for instance, killing subaquatic vegetation like wild celery that is a food source for ducks and geese. Without this vegetation, the ducks and geese will not be attracted to these waters to feed, which will interfere with my ability to hunt and to observe wildlife. I am also concerned that the loss and degradation of wetlands and their filtration of pollution will harm other aquatic populations, such as shrimp and shellfish.

18. If federal protections for wetlands are narrowed even further, I am concerned that the wetlands and other waters where I hunt and fish will be polluted or destroyed, harming duck and fish populations and causing people like me who enjoy hunting and fishing to suffer. I understand that the plaintiff in this case is asking this Court to vacate the rule issued by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, “Revised Definition of ‘Waters of the United States,’” 88 Fed. Reg. 3004 (Jan. 18, 2023), *as amended*, 88 Fed. Reg. 61,964 (Sept. 8, 2023) (“Amended Rule”), and to adopt an even narrower view of the wetlands that are subject to federal protections. A decision in favor of the plaintiff threatens to critically impair the natural resources and ecological processes that I have dedicated much of my life to protecting and the recreational opportunities that I have enjoyed for decades.


19. NCWF and NWF represent my interests in defending the Amended Rule. An order from this Court upholding the Amended Rule and the federal government's remaining authority to protect wetlands would address my concerns about the degradation or destruction of

wetlands and other waters.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on:

5/6/24

  
Tim Aydlett

## **Exhibit D**

### **Declaration of Jane Plough**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF JANE PLOUGH**

I, Jane Plough, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I have lived in Elizabeth City, North Carolina, for approximately 31 years. I am a retired registered nurse and restaurateur.
3. I have been involved with the North Carolina Wildlife Federation (“NCWF”) for about eleven years. I first became active in NCWF activities about twenty years ago and have

been a dues-paying member continuously since 2013. I joined NCWF because I love wildlife and want to do what I can to protect it and preserve its habitat. I strongly support NCWF's mission to protect, conserve, and restore North Carolina's natural areas – not only as habitats for native wildlife but also as recreational hunting, fishing, and wildlife observation areas. As a member, I pay dues, receive newsletters, attend organization events, volunteer, and conduct educational programs.

4. Together with my husband Bobby, I founded a new local chapter of the NCWF called the Wildlife Habitat Stewards of Northeastern North Carolina. NCWF chapters are community-based organizations that form a cohesive, statewide network of wildlife enthusiasts working for wildlife and habitat conservation. As its name suggests, our local chapter's mission is to enhance wildlife habitat in northeastern North Carolina. I took a course with the NCWF to become a "certified wildlife steward" as part of my work to create this chapter. I now serve as president of the chapter and my husband serves as treasurer. We held our first event in June 2023, which included a ranger-guided wildlife program and a paddle through Merchants Millpond State Park in Gatesville, North Carolina.

5. I have also been a member of the National Wildlife Federation ("NWF") off and on over the years since at least as early as 2005. I support NWF's mission "to unite all Americans to ensure wildlife thrive in a rapidly changing world."

6. I am an avid boater, hiker, cyclist, runner, wildlife enthusiast, and conservationist. I spend a great deal of my time out in nature, especially the coastal natural areas near my home.

7. My husband and I frequently paddle our kayaks and canoes in the waterways near our home, including in and around the Pasquotank River, Perquimans River, Little River, Bennett's Creek, Lassiter Swamp, and the Intracoastal Waterway. We sometimes launch our

boats from waterfront property owned by friends who live along the Pasquotank River downstream of Elizabeth City, near the plaintiff's property. We also often hike in the woods and wetlands in and around these same rivers and creeks, as well as in and around the Great Dismal Swamp National Wildlife Refuge, Dismal Swamp State Park, Merchants Millpond State Park, and other parks in the area. We also bicycle and run in these same areas for exercise. In general, paddling, hiking, running, and cycling, often with my husband and friends, in and around the beautiful waters in the vicinity of Elizabeth City and the Pasquotank River is an important part of my social life and exercise routine. I plan to continue paddling and hiking just as frequently for the foreseeable future. My enjoyment of these activities depends on these water bodies having ample water that is clean and unpolluted.

8. I love wildlife and wilderness. I enjoy experiencing nature in all its forms. I enjoy viewing and photographing birds, alligators, marine animals, and all kinds of wildlife in their natural habitats, but I also value wildlife for its own sake. I have devoted much of my time and energy, especially in retirement, to preserving the wildlife and the natural environment for future. I derive a sense of peace and well-being from being out in nature and from my connection to wildlife.

9. I don't just value nature in the abstract; I take action to protect and preserve it. My husband and I own a thirteen-acre farm outside of Elizabeth City called "Moonlight Farm." About seven years ago, we planted about a thousand trees on our property in coordination with the North Carolina Forest Service. Soon afterwards, we took the steps for our farm to be recognized as North Carolina "certified wildlife habitat" under NCWF's certification program, and we have maintained that status ever since. We plan to begin hosting educational events on our farm to help other people learn how to convert their property to certified wildlife habitat. The

high-quality wildlife habitat on our farm depends on the availability of ample clean water, and I believe that the presence of wetlands in the area contributes to that.

10. In addition, I have collaborated with the staff who manage Merchants Millpond State Park to organize park clean-ups and plant pollinator gardens. I have also led paddling excursions in the streams, marshes, and wetlands within Merchants Millpond State Park, Lassiter Swamp, Bennett's Creek, and the marshes near them. I find those areas to be absolutely beautiful, and I love observing the birds, alligators, snakes, and other wildlife in their natural wetland habitat. The amazing biodiversity of these areas depends on an abundance of healthy coastal wetlands.

11. My livelihood used to depend in part on the water quality and quantity in the Pasquotank River, and the health of the local economy where I live is closely tied to the health of the river. My husband and I co-owned a restaurant called Cypress Creek Grill beginning in approximately 1997 until we sold it in 2016. It has a beautiful view of the Pasquotank River, separated from the river only by Mariners Wharf Park in downtown Elizabeth City. Its popularity depends on the water in the river and the intercoastal waterway being of high enough quality and quantity to attract boaters. Many of the businesses in my community also depend on the health of the river to attract boaters and tourists to our area.

12. I value the wetlands in my area. I believe wetlands are a valuable food source and provide habitat for myriad species. Some of the wetlands in my part of North Carolina provide valuable nurseries for fish and other aquatic life. Wetlands also protect water quality in the streams that I use by filtering the water as it flows through them and preventing pollutants from traveling further downstream. Contaminated streams are no good for humans to use for drinking water, paddling, and other recreation. Contaminated streams are no good for the fish and other

aquatic animals that live in them.

13. I also know that wetlands can act as giant sponges to absorb heavy rains and storm water. I believe that flooding would increase in my community if the wetlands in our area are filled, paved over, and otherwise degraded for development.

14. For all these reasons (wildlife habitat, water quality, and flood control), the health of North Carolina's wetlands, especially in and around Elizabeth City and Pasquotank County, are very important to me. I believe that we all have a responsibility to protect the wetlands in our communities. I personally have worked hard to protect and restore these natural areas through my management of my farm and my volunteer efforts with NCWF and other organizations.

15. I am concerned that the filling and destruction of wetlands to support development will degrade marshes and wetlands and leave the remaining natural resources and wildlife habitat critically vulnerable.

16. I understand that the United States Supreme Court's 2023 decision in a case called *Sackett v. EPA* and a related change to the federal rule describing which wetlands are protected by the Clean Water Act (the "Amended Rule") have resulted in the loss of protections for wetlands. If federal protections for wetlands are narrowed even further, I am concerned that wetlands in my area will be destroyed or degraded, and that my community will suffer through loss of wildlife habitat, degraded water quality, and possibly even increased flooding. I understand that the plaintiff in this case is asking this Court to vacate the Amended Rule issued by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers and to adopt an even narrower view of the wetlands that are subject to federal protections. A decision in favor of the plaintiff threatens to critically impair the natural resources and ecological processes that I have dedicated much of my life to protecting and the recreational opportunities that I have

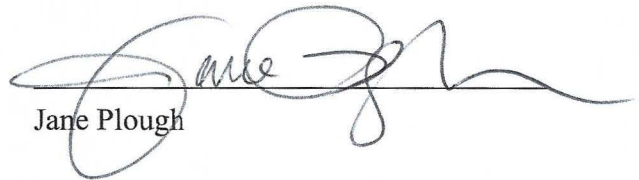


enjoyed for decades.

17. NCWF and NWF represent my interests in defending the Amended Rule. An order from this Court upholding the Amended Rule and the federal government's remaining authority to protect wetlands would address my concerns about the degradation or destruction of wetlands and other waters that are so important to supporting the wildlife habitat that I value and protecting the water quality in the streams and wetlands where I paddle and hike.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: May 2, 2024

  
Jane Plough

## **Exhibit E**

### **Declaration of Anne Radke**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF ANNE M. RADKE**

I, Anne M. Radke, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I have lived in Elizabeth City, North Carolina, for the past five years. As a child of a military family, I moved around a lot as a child, but I have lived in North Carolina for most of my adult life, first in the Charlotte area before moving to Pasquotank County in 2019. I live on the harbor waterfront in Elizabeth City, close to where Charles Creek empties into the Pasquotank River.

3. I am a retired middle school principal and literature teacher. I worked at Piedmont Middle School, East Union Middle School, and Porter Ridge High School in Union County near Charlotte and then, after moving to Elizabeth City, at Moyock Middle School. I retired on June 1, 2022. Among other degrees, I earned a Doctor of Education degree from Wingate University and two master's degrees from UNC-Charlotte.

4. Through my work as a teacher and principal, I have devoted quite a bit of my professional time and energy to teaching young people about the environment, wildlife, and wildlife habitat, which includes wetlands and streams. I earned an Environmental Educator Certificate from the North Carolina Department of Environmental Quality in 2003 and coordinated educational opportunities for the students in my schools to learn about the environment. For example, in 2021, I obtained a large grant from the North Carolina Outdoor Heritage Fund and used it to establish a trail on the Moyock Middle School grounds and engage the students in archery and air, soil, and water quality sampling; earlier, I used another grant to establish an extensive nature trail and outdoor science amphitheater at Piedmont Middle School.

5. In retirement, I have been involved in programs to teach people about wildlife and wildlife habitat, particularly through a nonprofit organization called Green Saves Green. Green Saves Green is an all-volunteer organization committed to local environmental education, outreach, advocacy, and action. I have participated in and sometimes led a variety of activities, including doing water quality testing in local streams for salinity, temperature, turbidity, and other metrics; planting trees and pollinator gardens; advocating on a variety of conservation issues; and engaging in community and stream cleanups.

6. I have been involved with the North Carolina Wildlife Federation ("NCWF") for approximately eighteen years. I first became a member in 2006 and I have remained a member

ever since, although there may have been years between 2010 and 2020 when I neglected to pay my dues, as my husband passed away in 2010 in an airplane crash and I became a working single mother. I was elected to the NCWF board of directors in 2021, and I have been paying membership dues, serving as the District One Director, and serving on the board's executive committee from 2021 through the present day. I strongly support NCWF's mission to protect, conserve, and restore North Carolina's natural areas – not only as habitats for native wildlife but also as recreational hunting, fishing, and wildlife observation areas. As a member, I pay dues, receive newsletters, attend organization events, volunteer as a master gardener and planter, and conduct educational programs.

7. I am supporting the founders of a new chapter of the NCWF called the Wildlife Habitat Stewards of Northeastern North Carolina. NCWF chapters are community-based organizations that form a cohesive, statewide network of wildlife enthusiasts working for wildlife and habitat conservation. We held our first event in June 2023, which included a ranger-guided wildlife program and a paddle through Merchants Millpond State Park in Gatesville, North Carolina.

8. I volunteer with NCWF and Green Saves Green approximately monthly or as needed, conducting programs for children, college students, and adults, as well as doing the other activities described above.

9. In 2005, the NCWF named me the "Environmental Educator of the Year" through its Governor's Conservation Achievement Awards.

10. I have also been a member of the National Wildlife Federation ("NWF") off and on over the years since at least as early as 2005. I support NWF's mission "to unite all Americans to ensure wildlife thrive in a rapidly changing world."

11. I am an avid kayaker, hiker, fisher, wildlife enthusiast, conservationist, and outdoorswoman. I spend a great deal of my time out in nature, especially the coastal natural areas near my home.

12. I frequently paddle my kayak in the waterways near my home, including in and around the Pasquotank River, Big Flatty Creek, Dance's Bay, and Sawyers Creek. I also often hike in the woods and wetlands in and around these same rivers and creeks, as well as in and around the Great Dismal Swamp. I am planning to participate in the 19th Annual Paddle for the Border from the Dismal Swamp Canal in North Carolina to Chesapeake, Virginia, in May 2024. In general, paddling and hiking with friends in and around the beautiful waters in the vicinity of Elizabeth City and the Pasquotank River is an important part of my social life and exercise routine. I plan to continue paddling and hiking just as frequently for the foreseeable future. My enjoyment of these activities depends on these water bodies having ample water that is clean and unpolluted.

13. I also like to fish and crab from the Pasquotank River from my dock. I plan to continue fishing and crabbing from my dock for the foreseeable future. My ability to safely consume the fish and crabs that I collect and serve them to my guests depends on the Pasquotank River having ample, clean, and unpolluted water.

14. I love wildlife and wilderness. I enjoy experiencing nature in all its forms, both locally and around the world. I enjoy viewing birds, the otters that live under my house, other aquatic animals, and all kinds of wildlife in their natural habitats, but I also value wildlife for its own sake. I have devoted my life to preserving the wildlife and the natural environment for future generations and teaching young people about it. I derive a sense of serenity and well-being from my ability to be out in nature, from my connection to wildlife, and from knowing that the

ecosystem in my area can support the wildlife that I love. I have even taken the steps to ensure that the land that I own both in Mint Hill, NC, and Elizabeth City, NC, are recognized as “certified wildlife habitat” under the NWF certification program.

15. We in northeastern North Carolina are blessed to have some of the most diverse wildlife populations that are still intact. I believe that those populations have been preserved because so much of their habitat in coastal, northeastern North Carolina includes wetlands-rich land that has historically been both unattractive for development because it does not percolate well, leaving development susceptible to flooding, and because state and federal laws protected the wetlands from overdevelopment. The preservation of all this wetlands-rich land has been an enormous benefit to my community and has preserved large tracts of natural areas and ecosystems that other communities no longer have to enjoy.

16. Through the water-quality testing that I have been involved in, I am aware that the salinity in the Pasquotank River and other streams in the area is rising and that the increase in salinity could be caused at least in part by pollution of the Albemarle Sound. For instance, as trawling disrupts the floor of the sound, the substrate is less able to filter and clean the water of the sound. I am also aware that the Coast Guard has stopped doing certain training in the Pasquotank River because of concerns about the effect of pollution in the river on the health of the trainees. I believe that, if wetlands in the vicinity of the Pasquotank River and Albemarle Sound are filled and destroyed to support development, we would lose the water filtering services of those wetlands, and the water quality in those water bodies would be further impaired.

17. My home is located on the bank of the Pasquotank River in Elizabeth City, and my low-lying land is susceptible to flooding. For instance, during some heavy rains, I must move

my car to higher ground to protect it from damage. I am concerned that, if wetlands in the vicinity of the Pasquotank River and Albemarle Sound are filled and destroyed to support development, we would lose their capacity to absorb large quantities of storm water and flood risks could increase, both for myself and for other people in my community.

18. For all these reasons (wildlife habitat, water quality, and flood control), the health of North Carolina's wetlands, especially in and around Elizabeth City and Pasquotank County, are very important to me. I have worked hard to protect and restore these natural areas through my work in the public schools and my volunteer efforts with NCWF, Green Saves Green, and other organizations.

19. I am concerned that the filling and destruction of wetlands to support development will degrade marshes and wetlands and leave the remaining natural resources and wildlife habitat critically vulnerable.

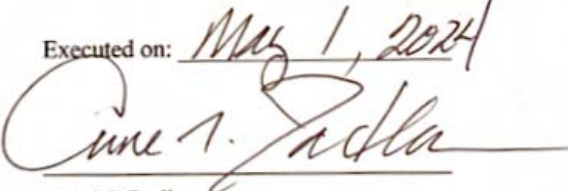
20. I understand that the United States Supreme Court's 2023 decision in a case called *Sackett v. EPA* and a related change to the federal rule describing which wetlands are protected by the Clean Water Act (the "Amended Rule") have resulted in the loss of protections for wetlands. If federal protections for wetlands are narrowed even further, I am concerned that wetlands in my area will be destroyed or degraded, and that my community will suffer in loss of wildlife habitat, degraded water quality, and possibly even increased flooding. I understand that the plaintiff in this case is asking this Court to vacate the Amended Rule issued by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers and to adopt an even narrower view of the wetlands that are subject to federal protections. A decision in favor of the plaintiff threatens to critically impair the natural resources and ecological processes that I have



long been committed to protecting and the recreational opportunities that I have enjoyed for decades.

21. NCWF and NWF represent my interests in defending the Amended Rule. An order from this Court upholding the Amended Rule and the federal government's remaining authority to protect wetlands would address my concerns about the degradation or destruction of wetlands and other waters that are so important to supporting the wildlife habitat that I value and protecting the water quality in the streams and wetlands where I kayak, hike, and fish.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: May 1, 2024  
  
Anne M. Radke

## **Exhibit F**

### **Declaration of John Stanton**

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

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00013-BO-RJ

**DECLARATION OF JOHN STANTON**

I, John Stanton, declare as follows:

1. I am over the age of eighteen and competent to make this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I am a resident of Columbia, North Carolina, in Tyrrell County, approximately seven miles from the southern shore of the Albemarle Sound. I have lived in Columbia since 1994. My home is approximately three miles from the Scuppernon River and even closer to wetlands along the river and creeks that flow into the river.

3. My adult life has been centered around conservation and the great outdoors. I spent my career as a wildlife biologist. I earned a Bachelor of Science degree in wildlife management from the University of Maine and a Master of Science degree in wildlife biology from North Carolina State University. I was hired by the U.S. Fish and Wildlife Service (“FWS”) in 1991, and, starting in 1992, I worked as a refuge biologist in the National Wildlife Refuge System administered by FWS. At the time of my retirement in 2022, I was a supervisory wildlife biologist specializing in migratory birds.

4. The National Wildlife Refuge System is a network of public lands and waters set aside to conserve, manage, and restore the United States’ fish, wildlife, and plant resources and their habitats. For the first 50 years after the designation of the first national wildlife refuge in 1903, nearly all refuges were focused on connecting lands to provide habitat for migratory birds along the path of their migration between breeding grounds in Canada and the tropics of the Caribbean and South America. Today, a substantial proportion of the refuges still protect wetlands that support migratory birds.

5. For the last 20 years of my tenure with FWS, I worked in the Division of Migratory Birds. I worked with states along the eastern seaboard from Maine to Florida, along with Puerto Rico and the U.S. Virgin Islands, to promote the protection of habitat that supports migratory birds and other wildlife.

6. I first became involved with the North Carolina Wildlife Federation (“NCWF”) in the 1990s and was a member on and off during that time. I have also been a member of NCWF since 2021. I strongly support NCWF’s mission to protect, conserve, and restore North Carolina’s natural areas—not only as habitats for native wildlife but also as recreational hunting, fishing, and wildlife observation areas. As a member, I pay dues, receive newsletters, and attend

organization events.

7. I recently helped establish Wildlife Habitat Stewards of Northeastern North Carolina, a community wildlife chapter of NCWF that will officially be chartered this summer. Wildlife Habitat Stewards of Northeastern North Carolina maintains a network of stewards who maintain, create, and restore wildlife habitat in northeastern North Carolina and host outings and other programs to connect people with the abundance of wildlife found within the region. I have been active as a volunteer with the chapter for the past year and a half.

8. I am also a member of the National Wildlife Federation (“NWF”). I was an NWF member in 2009 and have been a member from 2022 to the present. I support NWF’s mission “to unite all Americans to ensure wildlife thrive in a rapidly changing world.”

9. I have been a member of The Wildlife Society for the past 40 years. The Wildlife Society is an international professional network of over 11,000 leaders in wildlife science, management, and conservation who are dedicated to excellence in wildlife stewardship. Over the years, I have also been a member of the Audubon Society and the National Wildlife Refuge Association. I support all of these organizations as part of my lifelong interest and devotion to protecting wildlife and wildlife habitat.

10. I have fished recreationally for most of my life. My wife and I started taking our sons fishing when they were toddlers. We would frequently cast into the Scuppernong River near our house or fish from the boardwalk in Columbia. I have photos of my sons as children holding sunfish and wearing huge smiles on their faces. Those experiences fishing as a family were extremely fulfilling and the beginning of my sons’ own love of nature. It is still a tradition for our family to fish together for striped bass, gray trout, and other species on holidays when my sons, now grown, come home.

11. I also enjoy canoeing in the Pasquotank River and kayaking in creeks around Edenton. My enjoyment of these activities depends on these water bodies having ample water that is clean and unpolluted.

12. I am an avid duck and deer hunter, an interest that began on hunting trips with my father when I was growing up in Maine. As a teenager, I spent countless hours duck hunting at various lakes, ponds, creeks, and wetlands. I hunted with my father until he passed away two years ago, and I still duck hunt in northeastern North Carolina with friends—on the Scuppernong River, the Alligator River, Matamuskeet National Wildlife Refuge, the Albemarle Sound (for diving ducks), and state game lands south of Edenton.

13. Spending so much time duck hunting in wetlands is probably why I became a wildlife biologist. The ducks were fascinating to me. Even as a teenager, I recognized that waterfowl and wetlands cannot live without each other.

14. I intend to continue fishing, hunting, and paddling for the foreseeable future.

15. Between my work as a wildlife biologist and my recreational hunting and fishing, I have probably spent more time around wetlands in a single year than most people will spend in a lifetime. I care deeply about protecting wetlands from overdevelopment and destruction, both from a professional standpoint and because, without wetlands, I could not enjoy fishing and hunting and wildlife habitat would be lost.

16. It has taken decades for people to appreciate the value of wetlands. We know so much more now about the huge role they play in life's existence on this planet. Wetlands are important to water quality and integral to aquatic food webs and the diversity of fauna. They support habitat and contribute to people's livelihoods. They filter pollutants and improve water quality in downstream waters. Without clean water, we would not exist as a species. Wetlands

and the waters to which they connect represent a network that needs to be understood and protected for the well-being of everyone.

17. I am concerned that any reduction in federal wetlands protections, by eliminating existing permitting requirements, will lead to increased destruction and pollution of wetlands. I know that pollution or destruction of these wetlands will also harm downstream waters and the species they support. The resulting harm to fish, birds, and other wildlife would interfere with my ability to fish, hunt, and observe wildlife in the natural areas where I frequently spend time.

18. It is my understanding that the plaintiff in this case is asking the Court to vacate the rule issued by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, “Revised Definition of ‘Waters of the United States,’” 88 Fed. Reg. 3004 (Jan. 18, 2023), *as amended*, 88 Fed. Reg. 61,964 (Sept. 8, 2023) (“Amended Rule”), and to adopt an extremely restrictive view of the wetlands that are subject to federal protections. A decision in favor of the plaintiff threatens the survival of wetlands, waters, and the wildlife that depend on them—resources that I have dedicated my professional life to protecting and that I enjoy recreationally as well.

19. NCWF and NWF represent my interests in defending the Amended Rule. An order from this Court upholding the Amended Rule and the federal government’s remaining authority to protect wetlands would address my concerns about the degradation or destruction of wetlands and other waters.

//

//

//

//

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: May 1, 2024

John Stanton  
John Stanton



## **Exhibit G**

### **[Proposed] Answer of National Wildlife Federation and North Carolina Wildlife Federation**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
No. 2:24-cv-00013-BO-RJ**

ROBERT D. WHITE,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency; UNITED STATES ARMY CORPS OF ENGINEERS; LIEUTENANT GENERAL SCOTT A. SPELLMON, in his official capacity as Chief of Engineers and Commanding General, United States Army Corps of Engineers; MICHAEL L. CONNOR, in his official capacity as Assistant Secretary of the Army (Civil Works); and the UNITED STATES OF AMERICA,

Defendants.

**[PROPOSED] ANSWER OF  
NATIONAL WILDLIFE  
FEDERATION AND NORTH  
CAROLINA WILDLIFE  
FEDERATION**

Fed. R. Civ. P. 12

Defendants National Wildlife Federation and North Carolina Wildlife Federation (collectively, “the Wildlife Federations”), by and through their undersigned counsel, respectfully submit this proposed Answer to the Complaint for Declaratory and Injunctive Relief filed by Robert D. White (“Plaintiff”). This proposed pleading is submitted concurrently with the Wildlife Federations’ Motion to Intervene in conformance with Fed. R. Civ. P. 24(c).

**ANSWER**

The Wildlife Federations respond to the numbered paragraphs of Plaintiff’s complaint as follows.

## **Introduction**

1. The allegations of Paragraph 1 of the complaint constitute Plaintiff's characterization of his own Complaint and descriptions of federal regulations that speak for themselves, to which no response is required. To the extent a response is nevertheless required, the Wildlife Federations deny all allegations in Paragraph 1.

2. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 2, and therefore deny all allegations in Paragraph 2.

3. The allegations of Paragraph 3 constitute Plaintiff's characterization of his own case, to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 3.

4. The allegations of Paragraph 4 both state legal conclusions that do not require a response and constitute Plaintiff's characterization of his own case, which requires no response. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 4.

5. The Wildlife Federations admit the allegations in the first sentence of Paragraph 5. The second sentence of Paragraph 5 characterizes the Clean Water Act, which speaks for itself and provides the best evidence of its contents. To the extent the allegations of Paragraph 5 are inconsistent with the Clean Water Act, the Wildlife Federations deny them.

6. The allegations in Paragraph 6 state legal conclusions that require no response. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 6.

7. The first sentence of Paragraph 7 constitutes Plaintiff's characterization of his own case, to which no response is required. To the extent that the second sentence characterizes existing case law, that court opinion is a written document that speaks for itself and provides the

best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 7.

8. The allegations in Paragraph 8 state legal conclusions that require no response. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 8.

9. The allegations in Paragraph 9 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 9.

10. The allegations in Paragraph 10 characterize existing case law, which speaks for itself and provides the best evidence of its contents. The final sentence of Paragraph 10 states legal conclusions that require no response. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 10.

11. The allegations in Paragraph 11 characterize existing case law, which speaks for itself and provides the best evidence of its contents, and also state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 11.

12. The Wildlife Federations admit that the Agencies published an amended rule on September 8, 2023. Except as specifically admitted, all other allegations in Paragraph 12 are denied.

13. The allegations in Paragraph 13 state legal conclusions to which no response is required and characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 13.

14. The allegations in Paragraph 14 characterize Plaintiff's request for relief, which requires no response. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 14.

### **Jurisdiction and Venue**

15. The allegations in Paragraph 15 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 15.

16. The allegations in Paragraph 16 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 16.

17. The allegations in Paragraph 17 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 17.

18. The allegations in the first sentence of Paragraph 18 constitute Plaintiff's characterization of his own case, to which no response is required. The second sentence of Paragraph 18 states a legal conclusion to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 18.

19. The allegations in Paragraph 19 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 19.

20. The allegations in Paragraph 20 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 20.

21. The allegations in Paragraph 21 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 21, and therefore deny all allegations in Paragraph 21.

### **Description of Parties and Standing Allegations**

#### **Plaintiff**

22. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 22, and therefore deny all allegations in Paragraph 22.

23. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 23, and therefore deny all allegations in Paragraph 23.

24. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 24, and therefore deny all allegations in Paragraph 24.

25. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 25, and therefore deny all allegations in Paragraph 25.

26. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 26, and therefore deny all allegations in Paragraph 26.

27. The Wildlife Federations admit that Plaintiff was sued by the United States on January 6, 2023. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 27, and therefore deny all allegations in Paragraph 27 not specifically admitted.

28. The Wildlife Federations admit that the Agencies published the Amended Rule on September 8, 2023. Otherwise, the Wildlife Federations lack sufficient information to admit or deny the allegations in the first sentence of Paragraph 28. The second sentence of Paragraph 28

states a legal conclusion to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 28 not specifically admitted.

29. The allegations in Paragraph 29 constitute Plaintiff's characterization of his own case, which requires no response. In addition, the Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 29. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 29.

30. The allegations in Paragraph 30 characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. In addition, the Wildlife Federations lack sufficient information to admit or deny the allegations regarding Plaintiff's state of mind and beliefs. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 30.

31. The allegations in Paragraph 31 characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 31.

32. The Wildlife Federations deny the allegations in the first sentence of Paragraph 32. The second, third, and fourth sentences of Paragraph 32 characterize existing case law and provisions of the Clean Water Act and associated regulations, which speak for themselves and provide the best evidence of their contents. To the extent a response is required to any remaining allegations in Paragraph 32, the Wildlife Federations deny all allegations in Paragraph 32.

33. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 33, and therefore deny all allegations in Paragraph 33.

34. The allegations in Paragraph 34 characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. The Wildlife Federations lack sufficient

information to admit or deny the remaining allegations in Paragraph 34, and therefore deny all remaining allegations in Paragraph 34.

35. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 35, and therefore deny all allegations in Paragraph 35.

36. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 36, and therefore deny all allegations in Paragraph 36.

37. The allegations in Paragraph 37 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 37, and therefore deny all remaining allegations in Paragraph 37.

38. The allegations in the third sentence of Paragraph 38 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 38, and therefore deny all remaining allegations in Paragraph 38.

39. The allegations in the third and fourth sentences of Paragraph 39 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 39, and therefore deny all remaining allegations in Paragraph 39.

40. To the extent that the allegations in Paragraph 40 state a legal conclusion regarding the effect of the Amended Rule, no response is required. The Wildlife Federations lack



sufficient information to admit or deny the remaining allegations in Paragraph 40, and therefore deny all remaining allegations in Paragraph 40.

41. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 41, and therefore deny all allegations in Paragraph 41.

42. The allegations in Paragraph 42 characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents, and they also state a legal conclusion to which no response is required. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 42, and therefore deny all remaining allegations in Paragraph 42.

43. The Wildlife Federations lack sufficient information to admit or deny the allegations in Paragraph 43. The allegations in Paragraph 43 further characterize the Amended Rule, which speaks for itself and is the best evidence of its contents, and they also state legal conclusions to which no response is required. To the extent a response is required to any remaining allegations in Paragraph 43, the Wildlife Federations deny all allegations in Paragraph 43.

44. The Wildlife Federations deny the allegations in Paragraph 44. To the extent that the second sentence of Paragraph 44 characterizes *Sackett*, that case speaks for itself and provides the best evidence of its contents.

45. The Wildlife Federations deny the allegations in the first sentence of Paragraph 45. The Wildlife Federations lack sufficient information to admit or deny the allegations in the second and third sentences of Paragraph 45, and therefore deny those allegations. The final sentence of Paragraph 45 states a legal conclusion to which no response is required. To the extent

a response is required, the Wildlife Federations deny all allegations in the final sentence of Paragraph 45.

46. The Wildlife Federations deny the allegations in the first sentence of Paragraph 46, and, to the extent that the first sentence states a legal conclusion, no response is required. The Wildlife Federations lack sufficient information to admit or deny the allegations in the second sentence of Paragraph 46, and, to the extent that the second sentence states a legal conclusion, no response is required. The third sentence of Paragraph 46 states a legal conclusion to which no response is required and characterizes existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required to any remaining allegations in Paragraph 46, the Wildlife Federations deny all allegations in Paragraph 46.

47. The Wildlife Federations deny the allegations in the first sentence of Paragraph 47. The second sentence of Paragraph 47 constitutes Plaintiff's characterization of his own case and otherwise states legal conclusions, and therefore no response is required. To the extent a response is required to any remaining allegations in Paragraph 47, the Wildlife Federations deny all allegations in Paragraph 47.

### **Defendants**

48. The Wildlife Federations admit the allegations in Paragraph 48.

49. The Wildlife Federations admit the allegations in Paragraph 49.

50. The Wildlife Federations admit the allegations in Paragraph 50.

51. The Wildlife Federations admit the allegations in Paragraph 51.

52. The Wildlife Federations admit the allegations in Paragraph 52.

### **Legal Background and Factual Allegations**

53. The Wildlife Federations admit the allegations in Paragraph 53.

54. The Wildlife Federations admit the allegations in Paragraph 54.

55. The Wildlife Federations deny the allegations in Paragraph 55.

56. The Wildlife Federations deny the allegations in Paragraph 56.

57. The Wildlife Federations admit only that regulations provide a process for seeking an approved jurisdictional determination from the Army Corps. The allegations in Paragraph 57 otherwise characterize those regulations and the legal requirements imposed by the Clean Water Act, which speak for themselves and provide the best evidence of their contents. To the extent a response is required to any remaining allegations in Paragraph 57, the Wildlife Federations deny all allegations in Paragraph 57 not specifically admitted.

58. The allegations in Paragraph 58 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent that the allegations in Paragraph 58 characterize the Clean Water Act, the Act also speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 58.

59. The allegations in Paragraph 59 characterize the Clean Water Act, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 59.

60. The allegations in Paragraph 60 characterize the Clean Water Act, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 60.

61. The Wildlife Federations deny the allegations in Paragraph 61.

62. The Wildlife Federations admit the allegations in Paragraph 62.

63. The allegations in Paragraph 63 characterize the Clean Water Act, regulations implementing the Act, and existing case law, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 63.

64. The allegations in Paragraph 64 characterize regulations implementing the Clean Water Act, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 64.

65. The Wildlife Federations admit the allegations in Paragraph 65.

66. The allegations in Paragraph 66 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 66.

67. The allegations in Paragraph 67 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 67.

68. The Wildlife Federations admit only that Paragraph 68 accurately quotes the *Sackett* opinion; to the extent that the allegations in Paragraph 68 characterize existing case law, that case law speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 68.

69. The allegations in Paragraph 69 characterize existing case law and regulations, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 69.

70. The Wildlife Federations admit the allegations in Paragraph 70.

71. The allegations in Paragraph 71 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 71.

72. The allegations in Paragraph 72 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 72.

73. The allegations in Paragraph 73 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 73.

74. The allegations in Paragraph 74 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 74.

75. The allegations in Paragraph 75 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 75.

76. The Wildlife Federations admit the allegations in Paragraph 76.

77. The allegations in Paragraph 77 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 77.

78. The allegations in Paragraph 78 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 78.

79. The allegations in Paragraph 79 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 79.

80. The allegations in Paragraph 80 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 80.

81. The allegations in Paragraph 81 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 81.

82. The allegations in Paragraph 82 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 82.

83. The allegations in Paragraph 83 characterize existing case law and agency guidance documents, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 83.

84. The allegations in Paragraph 84 state legal conclusions to which no response is required and also characterize existing case law and regulations, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 84.

85. The allegations in Paragraph 85 characterize existing case law and agency guidance documents, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 85.

86. The allegations in Paragraph 86 characterize agency guidance documents, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 86.

87. The allegations in Paragraph 87 characterize agency guidance documents, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 87.

88. The allegations in Paragraph 88 characterize agency guidance documents and federal regulations, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 88.

89. The Wildlife Federations admit the allegations in Paragraph 89.

90. The Wildlife Federations admit the allegations in Paragraph 90.

91. The Wildlife Federations admit only that the Agencies issued the “Navigable Waters Protection Rule” in 2020. The Wildlife Federations deny all allegations in Paragraph 91 not specifically admitted.

92. The Wildlife Federations admit that the “Navigable Waters Protection Rule” was preliminarily enjoined and then vacated. The allegations in Paragraph 92 otherwise state legal conclusions to which no response is required and also characterize agency rulemaking, which speaks for itself and provides the best evidence of its contents. To the extent a response is

required to any remaining allegations in Paragraph 92, the Wildlife Federations deny all allegations in Paragraph 92 not specifically admitted.

93. The Wildlife Federations admit the allegations in Paragraph 93.

94. The allegations in Paragraph 94 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 94.

95. The Wildlife Federations admit that the Agencies published a new rule on January 18, 2023. The allegations in Paragraph 95 otherwise characterize agency rulemaking, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 95 not specifically admitted.

96. The allegations in Paragraph 96 state legal conclusions to which no response is required and also characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 96.

97. The allegations in Paragraph 97 state legal conclusions to which no response is required and also characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 97.

98. The allegations in Paragraph 98 state legal conclusions to which no response is required and also characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 98.



99. The allegations in Paragraph 99 state legal conclusions to which no response is required and also characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 99.

100. The allegations in Paragraph 100 characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 100.

101. The allegations in Paragraph 101 state legal conclusions to which no response is required and also characterize the 2023 Rule and existing case law, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 101.

102. The allegations in Paragraph 102 state legal conclusions to which no response is required and also characterize the 2023 Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 102.

103. The Wildlife Federations admit that the 2023 Rule was preliminarily enjoined. The remaining allegations in the first sentence of Paragraph 103 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. The Wildlife Federations lack sufficient information to admit or deny the allegations in the final sentence of Paragraph 103. To the extent a response is required to any remaining allegations in Paragraph 103, the Wildlife Federations deny all allegations in Paragraph 103 not specifically admitted.

104. The allegations in Paragraph 104 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 104.

105. The Wildlife Federations admit the allegations in Paragraph 105.

106. The allegations in Paragraph 106 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 106.

107. The allegations in Paragraph 107 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 107.

108. The Wildlife Federations admit the allegations in Paragraph 108.

109. The Wildlife Federations admit only that Paragraph 109 accurately quotes phrases from *Sackett*; to the extent that Paragraph 109 characterizes *Sackett*, that court opinion is a written document that speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 109.

110. The allegations in Paragraph 110 characterize the court opinion in *Sackett*, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 110.

111. The allegations in Paragraph 111 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 111.

112. The allegations in Paragraph 112 state legal conclusions to which no response is required and also characterize existing case law and agency guidance and rulemaking, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 112.

113. The allegations in Paragraph 113 characterize agency rulemaking, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 113.

114. The allegations in Paragraph 114 state legal conclusions to which no response is required and also characterize agency rulemaking, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 114.

115. The allegations in Paragraph 115 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 115.

116. The allegations in Paragraph 116 characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 116.

117. The allegations in Paragraph 117 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best

evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 117.

118. The allegations in Paragraph 118 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 118.

119. The Wildlife Federations admit that the Amended Rule asserts authority over wetlands adjacent to some relatively permanent bodies of water. To the extent a response is required to any remaining allegations in Paragraph 119, the Wildlife Federations deny all allegations not specifically admitted.

120. The allegations in Paragraph 120 state legal conclusions to which no response is required and also characterize existing case law and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 120.

121. The allegations in Paragraph 121 state legal conclusions to which no response is required and also characterize existing case law and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 121.

122. The allegations in Paragraph 122 characterize agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 122.

123. The allegations in Paragraph 123 state legal conclusions to which no response is required and also characterize the court opinion in *Sackett*, which speaks for itself and provides

the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 123.

124. The allegations in Paragraph 124 state legal conclusions to which no response is required and also characterize existing case law and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 124.

125. The allegations in Paragraph 125 state legal conclusions to which no response is required and also characterize the judicial opinion in *Sackett* and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 125.

126. The allegations in Paragraph 126 state legal conclusions to which no response is required and also characterize existing case law and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 126.

127. The allegations in Paragraph 127 state legal conclusions to which no response is required and also characterize existing case law and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 127.

128. The allegations in Paragraph 128 state legal conclusions to which no response is required and, further, characterize the Clean Water Act and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 128.

129. The allegations in Paragraph 129 state legal conclusions to which no response is required and, further, characterize the Clean Water Act and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 129.

130. The allegations in Paragraph 130 state legal conclusions to which no response is required and, further, characterize existing case law, the Clean Water Act, and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 130.

131. The allegations in Paragraph 131 state legal conclusions to which no response is required and, further, characterize existing case law, the Clean Water Act, and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 131.

132. The Wildlife Federations deny the allegations in Paragraph 132.

#### **Declaratory and Injunctive Relief Allegations**

133. The Wildlife Federations incorporate their responses to the allegations contained in Paragraphs 1 through 132 as if fully set forth herein.

134. The Wildlife Federations specifically deny that the Amended Rule is unlawfully restricting Plaintiff's productive use, enjoyment, and improvement of his land. The Wildlife Federations lack sufficient information to admit or deny the remaining allegations in Paragraph 134, and therefore deny all remaining allegations in Paragraph 134.

135. The allegations in Paragraph 135 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 135.

136. The allegations in Paragraph 136 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 136.

137. The allegations in Paragraph 137 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 137.

138. The Wildlife Federations deny the allegations in Paragraph 138.

139. The allegations in Paragraph 139 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 139.

140. The allegations in Paragraph 140 state legal conclusions to which no response is required. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 140.

141. The Wildlife Federations deny the allegations in Paragraph 141.

### **First Claim for Relief**

142. The Wildlife Federations incorporate their responses to the allegations contained in Paragraphs 1 through 141 as if fully set forth herein.

143. The allegations in Paragraph 143 characterize the Administrative Procedure Act, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 143.

144. The allegations in Paragraph 144 characterize the Clean Water Act, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 144.

145. The allegations in Paragraph 145 characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 145.

146. The allegations in Paragraph 146 characterize existing case law and the Amended Rule, both of which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 146.

147. The allegations in Paragraph 147 state legal conclusions to which no response is required and also characterize the Clean Water Act and agency rules, which speak for themselves and provide the best evidence of their contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 147.

148. The first sentence of Paragraph 148 states legal conclusions to which no response is required. The Wildlife Federations deny that Plaintiffs are entitled to the relief sought under the first claim for relief. To the extent a response is required to any remaining allegations, the Wildlife Federations deny all remaining allegations in Paragraph 148.

### **Second Claim for Relief**

149. The Wildlife Federations incorporate their responses to the allegations contained in Paragraphs 1 through 148 as if fully set forth herein.

150. The allegations in Paragraph 150 characterize the Administrative Procedure Act, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 150.

151. The allegations in Paragraph 151 characterize existing case law, the Clean Water Act, and the Amended Rule, all of which speak for themselves and provide the best evidence of their contents. Paragraph 151 further states legal conclusions to which no response is required.



To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 151.

152. The allegations in Paragraph 152 state legal conclusions to which no response is required and also characterize existing case law, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 152.

153. The allegations in Paragraph 153 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 153.

154. The allegations in Paragraph 154 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 154.

155. The allegations in Paragraph 155 state legal conclusions to which no response is required and also characterize the Amended Rule, which speaks for itself and provides the best evidence of its contents. To the extent a response is required, the Wildlife Federations deny all allegations in Paragraph 155.

156. The first sentence of Paragraph 156 states legal conclusions to which no response is required. The Wildlife Federations deny that Plaintiffs are entitled to the relief sought under the second claim for relief. To the extent a response is required to any remaining allegations, the Wildlife Federations deny all remaining allegations in Paragraph 156.

### **Prayer for Relief**

The Wildlife Federations deny that Plaintiff is entitled to any of the relief requested in Paragraphs 1–7 of the section following the heading “Prayer for Relief.”

### **GENERAL DENIAL**

The unnumbered allegations appearing in bold immediately following Paragraphs 59, 64, 69, 75, 83, 94, 104, 111, and 117 state legal conclusions to which no response is required. To the extent a response is required to any of those unnumbered allegations, the Wildlife Federations deny those allegations. To the extent that any factual allegation in the Complaint has not been admitted or specifically responded to above, the Wildlife Federations deny such allegation.

### **AFFIRMATIVE DEFENSES**

1. One or more of Plaintiff’s claims is barred, in whole or in part, by the doctrine of unclean hands, estoppel, laches, and other equitable defenses.
2. One or more of Plaintiff’s claims is not ripe for adjudication.
3. Plaintiff has failed to establish standing under the Administrative Procedure Act, 5 U.S.C. § 702, as a “person suffering legal wrong because of agency action,” and/or as a person “adversely affected or aggrieved by agency action within the meaning of a relevant statute.”
4. Plaintiff has failed to establish standing under Article III of the U.S. Constitution.
5. One or more of Plaintiff’s claims may be barred in whole or in part by the doctrine of waiver.
6. One or more of Plaintiff’s claims is barred because he failed to meet some or all of the conditions precedent to bringing his claims and/or by his failure to exhaust administrative remedies.

7. One or more of Plaintiff's claims is barred because Plaintiff has failed to state a claim for which relief can be granted.

8. The Wildlife Federations reserve the right to assert such other affirmative defenses as they become available or as they become known to the Wildlife Federations through discovery or otherwise.

### **PRAYER FOR RELIEF**

WHEREFORE, having fully Answered the Complaint in this matter, the Wildlife Federations pray this Court issue a decision denying Plaintiff's requested relief and granting such other and further relief as the Court deems appropriate.

This the 7th day of May, 2024.

Respectfully submitted,

/s/ Julia Furr Youngman  
Julia Furr Youngman [NC Bar No. 21320]  
Derb S. Carter, Jr. [NC Bar No. 10644]  
Dakota Foard Loveland [NC Bar No. 57893]  
Southern Environmental Law Center  
601 West Rosemary Street, Suite 220  
Chapel Hill, NC 27516  
(919) 967-1450  
Fax (919) 929-9421  
jyoungman@selcnc.org  
dcarter@selcnc.org  
dloveland@selcnc.org

Mark Sabath [VA Bar No. 94275]  
Southern Environmental Law Center  
122 C Street NW, Suite 325  
Washington, DC 20001  
(434) 977-4090  
Fax (202) 347-6041  
msabath@selcva.org

*Attorneys for the Wildlife Federations*