

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

THE DOE RUN RESOURCES CORPORATION)
D/B/A THE DOE RUN COMPANY)
)
Plaintiff,)
)
vs.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, and)
)
MARK J. HAGUE, in his capacity as Regional)
Administrator of Region VII of the)
Environmental Protection Agency,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff The Doe Run Resources Corporation d/b/a The Doe Run Company (“Doe Run”), and for its cause of action against Defendants, states:

NATURE OF ACTION

1. This action is brought pursuant to the federal Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551, et seq. This action seeks an order of preliminary injunctive relief to permit the Court’s review of final action taken by Defendants, the United States Environmental Protection Agency and its Region 7 Administrator (“EPA”) to establish a Total Maximum Daily Load (“TMDL”) to regulate and reduce alleged pollutants affecting West Fork Black River near the City of Centerville in Reynolds County, Missouri, pursuant to section 303 of the Clean Water Act (“CWA”). 33 U.S.C. § 1313.

2. Pursuant to section 303(d) of the CWA, the states are responsible for listing creeks and other surface waters that are found not to meet applicable water quality standards

and thereby not to support designated instream uses of those waters (“section 303(d) list”). The water quality standards and designated instream uses are specified by the states. For each impaired water, the listing state, or EPA, is responsible for developing a TMDL which must focus on the pollutant(s) causing the impairment and which must devise a plan to allocate acceptable levels of that pollutant to correct the impairment.

3. Among the waterbodies listed on Missouri’s 2008 section 303(d) list is a 31.7-mile portion of West Fork Black River in Reynolds County, Missouri, with a corresponding watershed area of approximately 163 square miles. The West Fork Black River flows east through the town of Centerville into the Black River in Reynolds County, Missouri, and then flows south through Wayne and Butler Counties into Arkansas.

4. The 31.7-mile portion of the West Fork Black River generally has shallow banks common to recreational streams in the Ozarks region. Sand beaches and smaller depositional areas are common along the river, although rock outcroppings form the banks of some sections.

5. In 1998, the West Fork Black River was put on Missouri’s section 303(d) list of impaired waters for nutrients.

6. The 2008 section 303(d) list was the most recent 303(d) list that identified the West Fork Black River as impaired by nutrients. The 2008 section 303(d) list did not identify the source of the nutrients that purportedly caused an impairment of the recreational use.

7. In Missouri, the West Fork Black River is protected by the general narrative criteria contained in Missouri’s Water Quality Standards at 10 C.S.R. § 20-7.031(3).

8. The EPA prepared and on December 23, 2010 approved a TMDL for the West Fork Black River (“West Fork Black River TMDL” or “TMDL”).

9. The West Fork Black River TMDL establishes wasteload allocations (“WLA”)

for Total Nitrogen (“TN”) and Total Phosphorus (“TP”). The WLA will impact Plaintiff Doe Run by imposing significant reductions in allowable discharges of TN and TP from mines owned and operated by Plaintiff Doe Run which maintains outfalls that discharge into the West Fork Black River.

10. Plaintiff brings this action to protect itself from the arbitrary, capricious, and illegal West Fork Black River TMDL. As a remedy for EPA’s violations, Plaintiff seeks an Order of this Court (a) staying the effectiveness of the TMDL, (b) declaring that the EPA’s issuance of the West Fork Black River TMDL was inconsistent with CWA mandates and violated provisions of the APA; (c) vacating the West Fork Black River TMDL and remanding it to EPA; and (d) enjoining EPA or Missouri Department of Natural Resources (“MDNR”) from applying or enforcing the West Fork Black River TMDL.

PARTIES

11. Plaintiff owns and operates three mines in the West Fork Black River watershed (collectively, the “Doe Run Mines”):

A. The Doe Run Company, West Fork Mine is located six miles east of Bunker, Missouri, on Highway KK. This facility maintains four outfalls that discharge directly and indirectly into the West Fork Black River. It is required to meet effluent limits for nitrate + nitrite, and TP under Permit No. MO-0100218. The Permit was issued on March 12, 2010 and expired on March 11, 2015.

B. The Doe Run Company, Brushy Creek Mine is located on Highway KK in Bunker, Missouri. This facility maintains three outfalls that discharge indirectly into the West Fork Black River. Permit No. MO-0001848 covering this facility was issued on February 26, 2010 and expired on February 25, 2015.

C. The Doe Run Company, Fletcher Mine and Mill is located on Highway TT in Bunker, Missouri. The facility maintains three outfalls that discharge indirectly into the West Fork Black River. Permit No. MO-0001856 covering this facility was issued on November 13, 2009 and expired on November 12, 2014.

12. Plaintiff brings this action because it suffers direct and immediate injury from the West Fork Black River TMDL. Its injuries include, without limitation: (a) immediate and substantial costs to, engineer, design, fund, and comply with the TMDL, which could run in the tens of millions of dollars, and (b) potential denial of applications for future permits required for discharges from Doe Runs Mines' wastewater treatment facilities.

13. Defendant EPA is an administrative agency of the federal government. EPA has statutory responsibilities for implementation and administration of the CWA, including review, approval and, if necessary, adoption of water quality standards, impaired water lists and TMDLs by the states. 33 U.S.C. §§ 1313 (a) to (d).

14. EPA Region 7 is one of ten regional offices of Defendant EPA and is the regional office with jurisdiction over West Fork Black River. EPA Region 7 established the West Fork Black River TMDL.

15. Defendant Mark J. Hague is sued in his official capacity as Regional Administrator of EPA Region 7.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. 57. Injunctive relief is authorized by 28 U.S.C. § 2202. Judicial review of this final agency action is authorized by the APA, 5 U.S.C. §§ 702, 704, and 706.

17. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 703 because Defendants are agencies and officers or employees of the United States, acting in their official capacities, and a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in this District; the water bodies affected by the Defendants' failure to follow federal law are located in this District; and the individual Plaintiff is located in this District. Venue is proper in this Division pursuant to Rule 3-2.07(A)(3) of the Local Rules of this Court.

FACTUAL ALLEGATIONS

18. Congress enacted the CWA in 1972 with a goal of "restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

19. The CWA requires that each state adopt, periodically review and revise water quality standards that consider "the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." 33 U.S.C. § 1313(a), (c)(1), and (c)(2)(A); 40 C.F.R. §§ 130.3, 131.2 and 131.3(i).

20. The State of Missouri through MDNR has promulgated water quality standards for many pollutants. 10 C.S.R. § 20-7.031. It is through a comparison between these numeric and other water quality standards with instream concentrations that MDNR and EPA determine whether water quality is acceptable and whether existing water quality supports the designated beneficial uses of surface waters.

21. The designated beneficial uses assigned to West Fork Black River are: Livestock and Wildlife Watering; Protection of Warm-Water Aquatic Life; Human Health Protection (Fish Consumption); Protection of Cool-Water Fishery; and Whole Body Contact Recreation – Category A.

22. West Fork Black River is protected by the general (narrative) criteria contained in Missouri's Water Quality Standards at 10 C.S.R. § 20-7.031(4). The general criteria applicable to the West Fork Black River impairment are:

(A) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly, or harmful bottom deposits or prevent full maintenance of beneficial uses;

(C) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor, or prevent full maintenance of beneficial uses;

(G) Waters shall be free from physical, chemical, or hydrologic changes that would impair the natural biological community;

23. The CWA provides for a permitting program, the National Pollutant Discharge Elimination System ("NPDES") permit program, as the primary means for achieving and enforcing state water quality standards. 33 U.S.C. § 1342.

24. Through the CWA, Congress prohibits the discharge of any pollutant into the nation's waters except when authorized by an applicable NPDES permit. 33 U.S.C. § 1311(a).

25. State water quality standards are applied to an individual discharger and enforced through an NPDES permit. 40 C.F.R. § 122.44(d)(1).

26. In Missouri, NPDES permits are issued by MDNR pursuant to a specific state regulatory program, largely analogous to the federal NPDES program, and subject to EPA's oversight. In Missouri, NPDES permits are referred to as "Missouri State Operating Permits."

27. In addition to setting water quality standards, states must assess the quality of their waters and identify those waters for which standard technology-based effluent limitations required by the CWA "are not stringent enough to implement any water quality standard applicable to such waters." 33 U.S.C. § 1313(d)(1)(A). Waters identified as not meeting or attaining water quality standards are referred to as "impaired." The list of "impaired waters" is

commonly referred to as the “303(d) list.”

28. The 303(d) list “shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards.”

29. States must submit their lists of these “impaired waters” to EPA for review and approval every two years. 40 C.F.R. § 130.7(d).

30. For each water listed as impaired, that is not otherwise addressed, a TMDL is established for pollutants causing the impairment and for such pollutants, the TMDL establishes a pollutant loading “at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C).

31. A TMDL is “[t]he sum of the individual [wasteload allocations] for point sources and [load allocations] for nonpoint sources and natural background.” 40 C.F.R. § 130.2(i). A WLA is “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution.” 40 C.F.R. § 130.2(h). A load allocation is “[t]he portion of a receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.” 40 C.F.R. § 130.2(g). “Loading capacity” is “[t]he greatest amount of loading [of a pollutant] that a water can receive without violating water quality standards [for that pollutant].” 40 C.F.R. § 130.2(f).

32. TMDLs must account for all sources and causes of pollution, which EPA defines as “[t]he man-made or man-induced alteration of the chemical, physical, biological, and

radiological integrity of water.” 40 C.F.R. § 130.2(c). States must periodically submit their TMDLs to EPA for review and approval. If a state fails to do so, or if EPA disapproves a submittal, then EPA must establish the required TMDL(s). 33 U.S.C. § 1313(d)(2).

33. Once TMDLs have been developed, they are implemented for both point sources and nonpoint sources. TMDLs are incorporated into the applicable NPDES permits, as these permits are required to include any limitation necessary to achieve water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)(1).

34. In 1998, EPA’s failure to establish and implement TMDLs in Missouri resulted in litigation against EPA in this District. Ultimately, a consent decree was entered on February 27, 2001 under which EPA was required to approve and/or establish all necessary TMDLs, including the TMDL for the West Fork Black River, by December 31, 2010. This gave EPA more than nine years to accomplish this task. *See American Canoe Ass’n, et al. v. Browner, et al.*, Case No. 98-1195-CV-W and Consolidated Case No. 98-482-CV-W.

35. During or before the year 1998, MDNR purportedly received a complaint regarding algal growth in the swimming hole downstream of West Fork Mine in the West Fork Black River.

36. MDNR and EPA initially believed that one source of nitrogen and phosphorus that may be contributing to excessive algae on the stream bottom could be underground water pumped from the West Fork Mine, however MDNR studies did not support the premise that the West Fork Mine was the source of the alleged impairment.

37. In 1998, the West Fork Black River was placed on Missouri’s section 303(d) list for nutrients identifying Doe Run’s West Fork Mine as the source of the nutrients causing the perceived impairment.

38. The MDNR removed the West Fork Black River from its proposed 2004-2006 section 303(d) list because the MDNR did not believe the river's recreational use was impaired by nutrients. However, the EPA rejected the MDNR's proposed de-listing and restored the West Fork Black River to the 303(d) list.

39. On December 23, 2010, EPA approved the West Fork Black River TMDL.

40. The West Fork Black River TMDL states that the outfalls from the Doe Run Mines are considered "significant sources" of nutrients in the West Fork Black River.

41. The TMDL establishes a WLA for nutrients for the Doe Run Mines that discharge directly or indirectly into the West Fork Black River.

42. The TMDL describes how nutrients can result in proliferation of nuisance algae that can affect the recreational beneficial use. The TMDL reports algal measurements collected by the EPA, but there is no indication that these algal values represent nuisance levels of algae.

43. The algal density data collected by the EPA and reported in the TMDL are below nuisance algal densities that could impair the recreational beneficial use.

44. Missouri does not have a numeric criterion for TN and TP in freshwater streams like the West Fork Black River.

45. Because Missouri does not have numeric criterion for TN and TP in freshwater streams, EPA's West Fork Black River TMDL used the reference condition approach ("reference approach") to set TN and TP loading allocations. The reference approach sets target loading concentrations for TN and TP based on the 25th percentile of all stream data for TN and TP from the Ozarks Highlands. The West Fork Black River is located in the Ozarks Highlands Ecoregion.

46. The EPA's calculation of the 25th percentile of TN and TP data for streams in the Ozarks Highlands Ecoregion is 0.289 mg/L for TN and 0.007 mg/L for TP.

47. The West Fork Black River TMDL sets the following WLA for the Doe Run Mines: 18.5 lbs./day for TN and 0.45 lbs./day for TP at all stream flow levels.

48. The allowable TN and TP WLAs were determined by multiplying the total design flow of the Doe Run Mines by the water quality targets and a unit conversion factor. The entire West Fork Black River has a total of four permitted point source outfalls with established design flows. These outfalls currently have a combined permitted flow of 7.669 MGD or 11.89 cfs.

49. The TMDL defines maximum allowable loads for both TN and TP. However, the data of the TN to TP ratio indicates the river is very strongly phosphorus-limited, and nitrogen controls will not be effective in controlling algal growth. Therefore, even if the West Fork Black River's recreational use is impaired for nutrients, the TMDL's TN load allocation is unnecessary.

50. Doe Run cannot replicate all of the allowable loads presented in TMDL Tables 9 and 10 using the flows provided and the specified TMDL targets. Therefore, the loads appear to be mathematically incorrect.

51. WLAs were developed by applying the TMDL target concentration to the point source flows with no allowance for mixing and dilution. This approach is arbitrary given that the data suggest existing instream concentrations of phosphorus are already below the TMDL target.

52. Point source flows used in the calculations were the average flows, rather than the maximum permitted flows. This approach is illogical and results in overly stringent WLAs.

EPA's approach of applying the TMDL target concentration to the average point source flows requires point sources to meet concentrations more stringent than the TMDL target at all flows higher than the average flow. This is overly stringent and an unnecessary burden on the identified point sources.

53. The draft TMDL allocates 75% of the allowable loads at low flow to nonpoint sources. This is unfounded because the majority of nonpoint sources are from runoff, which is expected to be associated with wet weather, elevated-flow conditions. The TMDL failed to quantify contributions from nonpoint sources and provide an equitable allocation for all flow conditions, including higher WLAs for the point sources. Because stormwater from Doe Run Mines is included as a point source, the WLAs for point sources should increase at higher flows, rather than being held constant at the low-flow allocation.

54. The West Fork Black River TMDL recognized that potential nonpoint sources that may contribute to the alleged nutrient impairment in West Fork Black River include runoff from agricultural and urban areas, onsite wastewater treatment systems like septic systems and various sources associated with stream riparian areas.

55. Perhaps because there was no impairment, EPA failed to determine the sources that were contributing to the impairment, by how much and by what pollutants, as well as an appropriate response to address those concerns in the West Fork Black River TMDL. To the extent that nonpoint sources or other point sources are contributing to the alleged impairment and are unaffected by the West Fork Black River TMDL, Plaintiff will not be able to meet the TMDL because it cannot alone reduce the pollutants as mandated by the TMDL. EPA should have determined the pollutants of concern as well as their source(s) to ensure the TMDL controls hit the right mark.

56. The WLA for TN and TP also are technologically unachievable. The imposition of these limits would require point sources to implement technology that is beyond industry practice without reaching the TN and TP reduction level mandated by the West Fork Black River TMDL. The TMDL is arbitrary and capricious because it failed to consider affordability when setting the WLA and LA.

57. The nutrient targets used in this TMDL are based on the reference approach which attempts to infer nutrient criteria values that may be protective of designated uses. The approach considers the observed nutrient data from all sites in a given ecoregion, and pre-supposes that the concentration value that is exceeded at 25% of these sites is the value that represents a “protective” level.

58. The TMDL’s nutrient targets do not explicitly consider the nutrient concentrations required to support the recreational designated use. The targets do not consider the relationship between nutrient concentrations and environmental response (e.g. algal growth), nor do they consider the relationship between environmental response and designated use support.

59. The reference approach used to set nutrient targets for this TMDL is overly simplistic and results in arbitrary nutrient criteria which will result in the implementation of inefficient and ineffective pollution control efforts.

60. The EPA calculations of the TMDL targets using the reference approach are arbitrary and/or erroneous in that the calculations are substantially and inappropriately influenced by incorrectly applying data from multiple sampling locations on one stream, the Jack’s Fork River.

61. Using Ecoregion 39 conditions as a reference for West Fork Black River fails to account for the special characteristics of West Fork Black River and for the fact that West Fork Black River may achieve water quality standards under less stringent concentration and load limits than those imposed under Ecoregion 39 criteria.

62. EPA has issued and approved a number of Missouri stream TMDLs that utilize the arbitrary TN and TP reference approach. In doing so, EPA established a binding norm, a standard, generally-applicable regulatory approach and solution to an issue, which, pursuant to APA requirements, must be promulgated as a regulation. The public has been deprived of the essential public safeguard of notice and comment rulemaking regarding the reference stream approach and the selection criteria for reference streams.

63. The West Fork Black River TMDL will have significant adverse impacts on Doe Run. As a result of its arbitrary, inaccurate and incomplete TMDL analysis, EPA assumes that specific changes in the operations of Plaintiff Doe Run are necessary to achieve the arbitrary TMDL standard in West Fork Black River that is already achieving general water quality standards which the TMDL is supposed to address. Ultimately, Plaintiff Doe Run will be forced to implement and pay for changes to Plaintiff's facilities in order to comply with the West Fork Black River TMDL.

CLAIMS FOR RELIEF

COUNT I

EPA'S ACTION WAS IN EXCESS OF STATUTORY AUTHORITY

64. Plaintiff incorporates by reference, as if fully set forth here, each allegation set forth in paragraphs 1 through 63 above.

65. Agency action must be set aside if it is in excess of statutory jurisdiction, authority or short of statutory right. 5 U.S.C. § 706(2)(C).

66. TMDLs must be established for a pollutant at a level necessary to implement (i.e., attain and maintain) the applicable water quality standards. 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1).

67. EPA violated the APA and CWA in establishing the West Fork Black River TMDL because the EPA has purported to establish the TMDLs to address sources of pollutants that have not been identified on the section 303(d) list.

COUNT II

EPA'S ACTION WAS ARBITRARY AND CAPRICIOUS

68. Plaintiff incorporates by reference, as if fully set forth here, each allegation set forth in paragraphs 1 through 67 above.

69. EPA's action in issuing the West Fork Black River TMDL was arbitrary and capricious as a result of, not by way of limitation, the following:

A. Even though the West Fork Black River did not have nuisance levels of benthic algae when the TMDL was approved, EPA set a nutrient load allocation that was lower than the current nutrient loading in the West Fork Black River at which level the river was meeting the recreational use; and

B. EPA's failure to identify and evaluate all causes or contributors to the purported recreational impairment to West Fork Black River; and

C. EPA's use of the reference approach to establish nutrient concentrations and loads in West Fork Black River 1) does not explicitly consider the nutrient concentrations required to support the recreational designated use and 2) results in

inappropriate results due to the erroneous and arbitrary inclusion of multiple sampling locations on one stream; and

D. EPA's imposition of a TN and TP WLA on Plaintiff Doe Run is not correlated with an objective measurement of benthic algae that reportedly would cause a recreational impairment; and

E. The TMDL's nutrient load calculations were calculated incorrectly; and

F. EPA's erroneous assignment of WLA and load allocation to TN and TP without discerning the cause of the alleged impairment between different pollutants; and

G. EPA calculated and imposed a TN load even though the West Fork Black River is very strongly phosphorus-limited, and, to the extent reductions in pollutants are required, nitrogen controls will not be effective in controlling algal growth; and

H. The TMDL allocates 75% of the allowable loads at low flow to nonpoint sources even though the majority of nonpoint sources are from runoff which occurs during wet weather and elevated-flow conditions; and

I. The TMDL failed to quantify contributions from nonpoint sources and provide an equitable allocation for all flow conditions, including higher WLAs for the point sources especially during high flow; and

J. EPA issued the West Fork Black River TMDL in the absence of an impairment of the recreational use.

70. EPA's arbitrary and capricious actions were inconsistent with the mandates of the CWA and violated universally accepted requirements to base administrative decisions and to take final agency action on the basis of meaningful, substantial evidence.

71. Agency action must be set aside if it is arbitrary and capricious.
5 U.S.C. § 706(2)(A).

COUNT III

EPA'S ACTION VIOLATED THE REQUIREMENT FOR NOTICE AND COMMENT RULEMAKING

72. Plaintiff incorporates by reference, as if fully set forth here, each allegation set forth in paragraphs 1 through 71 above.

73. Under the APA, an agency that intends to promulgate a rule or regulation must first provide the public with notice of, and an opportunity to comment on, a proposed version of the rule. *See* 5 U.S.C. § 553.

74. Such notice and opportunity to comment must include the data upon which the agency relies.

75. Agency requirements of general applicability, those that establish a binding norm, must be promulgated as a regulation following the essential public safeguard of notice and comment rulemaking process. 5 U.S.C. § 553.

76. EPA's action in adopting a reference stream approach to determine TN and TP set a binding norm for West Fork Black River and, on information and belief, other watersheds for the selection and use of such "reference" streams in EPA TMDLs. EPA was thereby legally obligated to adopt its approach and procedures for identifying such "reference" watersheds as a regulation. 33 U.S.C. § 1313(C)(4); 5 U.S.C. § 553(b).

77. Because EPA failed to follow the required rulemaking procedures, its action violated section 553 of the APA. 5 U.S.C. § 553.

78. Agency action must be set aside if it fails to follow required procedures.
5 U.S.C. § 706(2)(D).

COUNT IV

RELIEF PENDING REVIEW

79. Plaintiff incorporates by reference, as if fully set forth here, each allegation set forth in paragraphs 1 through ___ above.

80. In order to prevent irreparable injury the Court may stay the effectiveness and take other appropriate and necessary action to preserve status and rights pending review of government agency action. 5 U.S.C. § 705.

81. The CWA requires that NPDES permits must impose requirements consistent with effective “Water Quality Management Plans,” which include TMDLs. 40 C.F.R. § 130.12(a).

82. Plaintiff Doe Run’s NPDES permits for the Doe Run Mines have expired. Plaintiff continues to lawfully operate the facilities because the permits are administratively continued. The permits may be renewed at any time to incorporate the TMDL’s WLA for TP and TN. If and when Doe Run’s NPDES permits are renewed incorporating the WLA it will impose an economic hardship on Doe Run by having to undertake the substantial and unaffordable steps called for in the TMDL with no scientific evidence that any benefit to the stream or water quality standards will be met.

83. Accordingly, the Court should stay the effectiveness of the West Fork Black River TMDL in its entirety pending review. In the alternative, the Court should stay the effectiveness of the West Fork Black River TMDL specifically as it applies to the Doe Run’s NPDES permits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Doe Run prays that the Court

- A. Declare that the West Fork Black River TMDL violates the Administrative Procedure Act and the Clean Water Act;
- B. Vacate the West Fork Black River TMDL and remand it to EPA;
- C. Immediately enjoin EPA from enforcing or otherwise acting pursuant to the West Fork Black River TMDL, including but not limited to withdrawing its approval of the West Fork Black River TMDL; and
- D. Such other and further relief as the Court deems just and proper, including all attorney's fees, costs and expenses herein incurred.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

/s/ Robert J. Brundage

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