

**CAPE FEAR WATER WATCH et al. V EPA – UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA – Case No. 22-3809**

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

CAPE FEAR RIVER WATCH
617 Surry Street
Wilmington, NC 28401;

RURAL EMPOWERMENT
ASSOCIATION FOR COMMUNITY
HELP
2389 West Wards Bridge Road
Warsaw, NC 28398;

WATERKEEPERS CHESAPEAKE
P.O. Box 11075
Takoma Park, MD 20913;

WATERKEEPER ALLIANCE
180 Maiden Lane, Suite 603
New York, NY 10038;

HUMANE SOCIETY OF THE UNITED
STATES
1255 23rd Street NW, Suite 450
Washington, DC 20037;

FOOD & WATER WATCH
1616 P Street NW, Suite 300
Washington, DC 20036;

ENVIRONMENT AMERICA
1543 Wazee Street, Suite 410
Denver, CO 80202

COMITE CIVICO DEL VALLE
235 Main Street
Brawley, CA 92227;

CENTER FOR BIOLOGICAL
DIVERSITY
1411 K Street NW, Suite 1300
Washington, DC 20005

Case No. _____

ANIMAL LEGAL DEFENSE FUND
525 East Cotati Avenue
Cotati, CA 94931;

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; and MICHAEL REGAN, in his
official capacity as Administrator of the
U.S. Environmental Protection Agency,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Slaughterhouses and rendering facilities, which together comprise the Meat and Poultry Products (“MPP”) industrial point source category, generate significant quantities of water pollution. Every year, these facilities discharge millions of pounds of nitrogen and phosphorus, collectively known as nutrient pollution, along with heavy metals and dozens of other pollutants, into rivers and streams across the United States. According to the U.S. Environmental Protection Agency (“EPA” or “Agency”), MPP facilities are the largest industrial source of phosphorus pollution and the second largest industrial source of nitrogen pollution.

2. Nutrient pollution has devastating consequences for human health and the environment. According to EPA, nutrient pollution threatens iconic waterways, including the Chesapeake Bay, the Gulf of Mexico, Long Island Sound, and Puget Sound. In addition, EPA has acknowledged that nutrient pollution causes harmful algal blooms, which render water unsafe for drinking, unfit for outdoor recreation, and uninhabitable for aquatic life. For these reasons, EPA has concluded that

nutrient pollution is one of the most widespread, costly, and challenging environmental problems affecting water quality in the United States.

3. Nutrient pollution and other pollution from MPP facilities overwhelmingly harms vulnerable and under-resourced communities. Most MPP facilities are located within one mile of populations that, on average, EPA classifies as low income, linguistically isolated, or at high risk of exposure to toxic substances.

4. Despite these grave consequences, EPA's regulations governing water pollution from the MPP industry are either woefully out-of-date or altogether non-existent. EPA has failed to revise these regulations for *at least* 18 years, notwithstanding its repeated acknowledgment that the existing standards have not kept pace with widely available pollution control technology. Some MPP facilities are still subject to outdated and under-protective standards that EPA promulgated in the mid-1970s, and EPA's existing regulations altogether fail to control discharges of phosphorus, a critical component of nutrient pollution. Moreover, EPA has *never* published national standards applicable to the vast majority of MPP facilities, which discharge wastewater through publicly owned treatment works ("POTWs"), even though EPA has known for decades that—without adequate pretreatment—pollutants in MPP wastewater pass through many POTWs into our nation's rivers and streams.

5. EPA's failure to act and unreasonable delay violate the Clean Water Act ("CWA") and the Administrative Procedure Act ("APA"), respectively. With this action, Plaintiffs Cape Fear River Watch, Rural Empowerment Association for

Community Help, Waterkeepers Chesapeake, Animal Legal Defense Fund, Center for Biological Diversity, Comité Civico del Valle, Environment America, Food & Water Watch, The Humane Society of the United States, and Waterkeeper Alliance seek to compel the expeditious promulgation of long overdue regulations governing wastewater discharges from MPP facilities, as the CWA requires.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365(a), and this Court may grant declaratory relief and further relief pursuant to 28 U.S.C. §§ 2201–2202.

7. Plaintiffs have a right to bring this action pursuant to the CWA, 33 U.S.C. § 1365(a)(2), and the APA, 5 U.S.C. §§ 701–706.

8. By certified letter mailed on December 17, 2021, as well as by email, Plaintiffs provided EPA with written notice of the failure to act described in this complaint. Therefore, Plaintiffs are filing this complaint more than 60 days after providing EPA with written notice, as required under 33 U.S.C. § 1365(b).

9. Venue is proper in the United States District Court for the District of Columbia under 28 U.S.C. § 1391(e), because Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY resides in this district and a substantial part of the events and omissions giving rise to this action occurred here.

PARTIES

10. Plaintiff CAPE FEAR RIVER WATCH (“CFRW”) is a nonprofit membership organization that aims to protect and improve the water quality of the

Lower Cape Fear River Basin through education, advocacy, and action. The Cape Fear River Basin is North Carolina's largest river basin. It is home to nearly one-third of North Carolina's residents, and it supports a broad range of habitats, including salt marshes, blackwater swamps, and stands of ancient cypress trees. The Cape Fear River Basin suffers from excessive nitrate and phosphorus concentrations. In addition, it is the site of the world's largest slaughterhouse, which discharges an average of nearly 1,760 pounds of nitrogen into impaired waters each day. Together with its more than 1,000 members, many of whom live near and recreate in and around the Cape Fear River, CFRW works to ensure that slaughterhouses, rendering facilities, and other sources of industrial pollution comply with appropriate permit conditions. CFRW brings this action on behalf of its members, to ensure that the Cape Fear River exists as a clean, healthy, and beautiful resource for the next generation.

11. Plaintiff RURAL EMPOWERMENT ASSOCIATION FOR COMMUNITY HELP ("REACH") is a nonprofit organization that works to address social, economic, and environmental inequities in and around Duplin County, North Carolina. Founded in 2002, REACH aims to educate and empower community members, including by promoting research and citizen science, as well as by working to enforce and improve laws and policies that affect the lives of Duplin County's rural and low-income African-American residents. In partnership with its approximately 20 members and more than 60 supporters, REACH focuses much of its community outreach and organizing activities on combatting pollution from

industrial animal agriculture, including slaughterhouses and rendering facilities. REACH brings this action on behalf of its members, including individuals who live near waters affected by pollution from slaughterhouses and rendering facilities.

12. Plaintiff WATERKEEPERS CHESAPEAKE is a coalition of nineteen independent programs working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. Waterkeepers Chesapeake amplifies the voice of each member program and mobilizes each program to fight pollution and champion clean water. Waterkeepers Chesapeake's member programs work locally, using grassroots action and advocacy to protect their waters and communities, and regionally, sharing resources and leveraging one another's strengths to expand each program's capacity for citizen-based enforcement of strong protections against pollution. Waterkeepers Chesapeake brings this action on behalf of its members, including individuals who live near and recreate in and around waters affected by pollution from slaughterhouses and rendering facilities.

13. Plaintiff WATERKEEPER ALLIANCE ("Waterkeeper") is a nonprofit organization that fights for every community's right to drinkable, fishable, and swimmable water. Waterkeeper is the world's largest and fastest-growing nonprofit organization focused on clean water, uniting over 15,000 individual members, as well as 150 member organizations and 15 affiliate organizations, which collectively represent tens of thousands of additional members and supporters. Through its Clean Water Defense campaign, Waterkeeper fights ever-growing threats to clean water by working to defend, strengthen, and enforce clean water laws, standards,

and permits. In addition, Waterkeeper's Pure Farms, Pure Waters campaign focuses on reforming the destructive and polluting practices of industrialized meat production, ensuring compliance with environmental laws, and supporting independent, traditional family farmers. Waterkeeper brings this action on behalf of its members, including individuals who live near and recreate in and around waters affected by pollution from slaughterhouses and rendering facilities.

14. Plaintiff HUMANE SOCIETY OF THE UNITED STATES ("HSUS") is a nonprofit organization that promotes the protection of all animals. On behalf of its millions of members and constituents, HSUS responds to major instances of animal cruelty, providing hands-on care to abused animals; encourages and empowers people to create a more humane society for animals; partners with companies to reform and improve their treatment of animals; and fights to improve legal protections for animals and animal habitats through the courts and the ballot box. HSUS recognizes that wastewater from industrial facilities, including slaughterhouses and rendering facilities, degrades habitat and puts communities at risk. Accordingly, HSUS brings this action on behalf of its members and constituents, including individuals directly and indirectly affected by waste from slaughterhouses and rendering facilities.

15. Plaintiff FOOD AND WATER WATCH ("FWW") is a nonprofit organization that works to create a healthy future for all people and generations to come. Among other activities, FWW fights to create a just and equitable food system that supports family farmers and rural communities while protecting our air, water,

and climate. FWW brings this action on behalf of its more than 180,000 dues-paying members, many of whom live near and enjoy recreating in and around waters affected by pollution from slaughterhouses and rendering facilities.

16. Plaintiff ENVIRONMENT AMERICA is a nonprofit organization that works to protect America's natural wonders, from beloved national parks like Acadia and Mount Rainier to stunning waterways like the Chesapeake Bay and the Great Lakes, and to promote core environmental values, such as clean air to breathe, clean water to drink, and clean energy to power our lives. Together with its 30 state affiliates, Environment American has over 125,000 individual members in all 50 states, who support its efforts to raise awareness of environmental issues and promote sensible solutions. Environment America's Clean Water Network focuses specifically on connecting and supporting individuals and organizations working to clean up rivers, lakes, and streams across the country—in part, by advocating for meaningful limits on pollution from industrial sources. Environment America brings this action on behalf of its members, many of whom live near and enjoy recreating in and around waters affected by pollution from slaughterhouses and rendering facilities.

17. Plaintiff COMITE CIVICO DEL VALLE ("CCV") is a nonprofit organization based in California's Imperial Valley that seeks to improve the lives of people in disadvantaged communities, including by working with the members of its Board of Directors, its supporters, and the community at large on public health and environmental justice issues. CCV's constituents have long expressed concerns

about exposures and health outcomes related to pollution from nearby sources, including an MPP facility. Given these concerns, in 2021, CCV commenced a multi-year project to record oral histories of community members' exposure to pollution from the MPP facility and other sources, perform environmental monitoring, and report its findings to the community and government agencies. CCV brings this action on behalf of its members and supporters, in connection with its efforts to empower community members to protect their own health.

18. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a nonprofit organization with over 1.7 million members and online activists dedicated to the preservation, protection, and restoration of public health, biodiversity, and ecosystems. The Center works through science, law, and policy to secure a future for all species, great and small, hovering on the brink of extinction. In particular, the Center often advocates to improve habitats for water-dependent species—in part, by seeking to strengthen and enforce permits issued to industrial facilities under the CWA. The Center brings this action on behalf of its members, many of whom live near or enjoy exploring and recreating in and around waters affected by pollution from slaughterhouses and rendering facilities.

19. Plaintiff ANIMAL LEGAL DEFENSE FUND (“ALDF”) is a nonprofit organization that works to protect the lives and advance the interests of animals. Among other activities, ALDF challenges industrial agricultural practices that harm animals, the environment, and public health. ADLF also works to secure and enforce legal protections for wildlife, including animals that use land and water

near slaughterhouses and rendering facilities. ALDF brings this action on behalf of its more than 350,000 members and supporters nationwide, many of whom enjoy visiting areas and viewing or attempting to view wildlife in areas affected by water pollution from slaughterhouses and rendering facilities.

20. Defendant EPA is an agency of the federal government. Congress charged EPA with restoring and maintaining the chemical, physical, and biological integrity of our nation's waters—in part, by complying with statutory mandates concerning the publication, review, and revision of water pollution control regulations for industrial polluters, including MPP facilities.

21. Defendant MICHAEL REGAN is the Administrator of EPA and, as such, the federal official ultimately responsible for EPA's administration and implementation of its legal duties. He is sued in his official capacity only.

FACTUAL BACKGROUND

22. The MPP industry consists of approximately 7,000 facilities that fall into three general categories: (1) meat slaughtering and processing, (2) poultry slaughtering and processing, and (3) rendering.

Meat Slaughterhouses

23. According to the U.S. Department of Agriculture ("USDA"), every year, meat slaughterhouses in the United States process approximately 100 million pigs and 33 million beef cattle, along with millions of sheep, lambs, calves, horses, goats, and exotic livestock such as elk, deer, and buffalo.

24. Meat slaughterhouses process animals in multiple stages. *First*, slaughterhouse workers receive live animals; contain them in holding cells; and stun, slaughter, and bleed them. *Second*, workers strip animal carcasses of hides and hair, wash them with water, remove their internal organs, and wash them again with water and bactericides. *Third*, workers chill the carcasses, cut them into smaller segments for sale, or further process them into products such as sausages and bacon.

25. Each slaughtering shift, which usually lasts eight to 10 hours and requires near-constant water use, is generally followed by a six- to eight-hour cleanup shift, which requires significantly more water, along with disinfectants and sanitizing agents.

26. Slaughterhouses that process pigs and cattle generate between 291 and 532 gallons of wastewater per 1,000 animals killed. The largest meat slaughterhouses discharge up to 5.3 million gallons of wastewater each day.

Poultry Slaughterhouses

27. USDA estimates that a total of 9 billion chickens are killed each year at poultry slaughterhouses in the United States, along with millions of turkeys, small game animals such as quails and pheasants, and exotic birds such as ostriches.

28. Like meat slaughterhouses, poultry slaughterhouses perform multiple stages of operations, including unloading and confinement; stunning, killing, and bleeding; scalding, defeathering, washing, eviscerating, and re-washing; and

chilling, freezing, and packaging. Poultry slaughterhouses also alternate between slaughtering shifts and cleaning shifts, both of which require large volumes of water.

29. According to EPA, poultry slaughterhouses generate between 580 and 2,440 gallons of wastewater per 1,000 pounds of birds processed. In total, poultry slaughterhouses generate tens of billions of gallons of wastewater each year.

Rendering Facilities

30. Rendering facilities convert slaughterhouse byproducts—including viscera, meat scraps, fat, bone, blood, feathers, and dead animals not suitable for human consumption—into marketable products such as grease, oil, tallow, lard, and animal meal.

31. Generally, rendering facility workers cook byproducts to recover fats, oil, and grease. The residue is then dried and granulated or ground into meal.

32. Condensed cooking vapors make up the largest percentage of total rendering wastewater in terms of volume and pollutant load. Other sources of wastewater at rendering facilities include liquid drained from raw material receiving areas, water used for general cleaning and sanitizing, and water used to clean up spills.

33. EPA reports that an average rendering plant discharges 169 gallons of wastewater per minute, totaling about 243,300 gallons of wastewater per day.

MPP Facilities' Wastewater Pollution

34. Of the approximately 7,000 MPP facilities in the United States, EPA has estimated that at least 4,711 facilities discharge wastewater. (Facilities that do not “discharge” wastewater might contract with a hauling company for wastewater removal, for example, or dispose of wastewater through land application—a practice that remains largely unregulated.) About five percent of discharging MPP facilities—that is, approximately 300 facilities by EPA’s estimate—discharge wastewater directly to surface waters. The remaining 95 percent of discharging MPP facilities discharge wastewater indirectly through POTWs.

35. Wastewater from MPP facilities typically contains nitrogen compounds and phosphorus, as well as blood, fat, oil and grease, fecal bacteria, disease-causing pathogens, detergents, and heavy metals. Nitrogen compounds and phosphorus are prevalent in MPP facility wastewater because they are present in cleaning solutions, urine and feces, and animal parts including blood, fat, and viscera.

36. According to EPA, direct-discharging MPP facilities generate approximately 16.5 million pounds of nitrogen and 2.84 million pounds of phosphorus every year. As a result, EPA has acknowledged that direct-discharging MPP facilities are the largest industrial source of phosphorus pollution and the second largest industrial source of nitrogen pollution.

37. Since at least 1977, EPA has recognized that pollutants in MPP facility wastewater, including nitrogen compounds and phosphorus, are not susceptible to treatment by POTWs. Accordingly, EPA has long warned that indirect-discharging

MPP facilities should avoid discharging wastewater to POTWs without prior treatment. *See* EPA, EPA-430/9-76-017a, *Federal Guidelines: State and Local Pretreatment Programs* 8-28-1–8-28-11 (1977). Despite this warning, EPA has never promulgated pretreatment standards for indirect-discharging MPP facilities.

Harm to Human Health and the Environment

38. Nutrient pollution poses serious threats to human health. For instance, exposure to nitrogen compounds in drinking water can cause colorectal cancer, thyroid disease, birth defects, and—in infants under six months of age—methemoglobinemia, or “blue baby syndrome,” a potentially fatal condition.

39. Concerns about the health consequences of exposure to nutrient pollution and other pollution from MPP facilities has fundamentally changed the manner in which Plaintiffs’ members and supporters interact with the water.¹ For instance, a member of the Center for Biological Diversity explains that she is “no longer able to enjoy” the Raccoon River in Iowa as she once did, because the river is “visibly polluted downstream” from the point at which it receives wastewater from a

¹ For this and other reasons, Plaintiffs have standing to bring this challenge. *See* Decl. of Kemp Burdette (sworn to on August 9, 2022), attached as Ex. 1; *see also* Decl. of Devon Hall (sworn to on September 29, 2022), attached as Ex. 2; Decl. of Robin Broder (sworn to on December 22, 2022), attached as Ex. 3; Decl. of Ted Evgeniadis (sworn to on December 21, 2022), attached as Ex. 4; Decl. of Daniel E. Estrin (sworn to on August 4, 2022), attached as Ex. 5; Decl. of Nelson Brooke (sworn to on August 5, 2022), attached as Ex. 6; Decl. of Chris Holbein (sworn to on December 21, 2022), attached as Ex. 7; Decl. of Nancy Thompson (sworn to on December 21, 2022), attached as Ex. 8; Decl. of Wenonah Hauter (sworn to on July 28, 2022), attached as Ex. 9; Decl. of Jackie Eubank (sworn to on August 5, 2022), attached as Ex. 10; Decl. of John Rumpler (sworn to on August 1, 2022), attached as Ex. 11; Decl. of Robert Knight (sworn to on September 1, 2022), attached as Ex. 12; Decl. of Luis Olmedo (sworn to on December 21, 2022), attached as Ex. 13; Decl. of Lori Ann Burd (sworn to on August 1, 2022), attached as Ex. 14; Decl. of Danielle Wirth (sworn to on August 26, 2022), attached as Ex. 15; Decl. of Kendra Melrose (sworn to on July 31, 2022), attached as Ex. 16; Decl. of Sara Parker (sworn to on August 9, 2022), attached as Ex. 17.

slaughterhouse, “and it gives off a putrid odor.” Wirth Decl. ¶ 10. The member explains that she is “afraid that exposure to MPP facility pollution could threaten [her] health, [her] husband’s health, and the health of [her] pets.” *Id.*

40. According to the Black Warrior Riverkeeper, who represents an organizational member of Waterkeeper Alliance, he and many of his organization’s members avoid swimming and engaging in other activities in Graves Creek, which receives wastewater from a slaughterhouse in Blountsville, Alabama, for fear of exposure to dangerous levels of bacteria and other pollution. One member “stopped kayaking . . . because he got sick after paddling” downstream of the slaughterhouse. Brooke Decl. ¶ 12.

41. In rural North Carolina, the Co-Founder and Executive Director of REACH, along with many REACH members, “ha[s] given up drinking tap water” due to concerns that well water and municipal water both are “contaminated with pollution from MPP facilities and other industrial animal agriculture facilities.” Hall Decl. ¶ 12. In addition, he “stopped fishing after [he] began to catch fish with open sores,” which, he believes, are caused by bacteria and other pollution. *Id.* ¶ 11.

42. The Executive Director of Comité Civico del Valle “[does] not think that it is safe to swim” in the New River in Imperial County, California, which receives wastewater from a slaughterhouse. Olmedo Decl. ¶ 11. As he explains, due to water pollution in the New River, “it certainly is not very pleasant to spend time nearby.” *Id.*

43. In addition to threatening human health, nutrient pollution and other pollution from slaughterhouses can have devastating effects on the environment. For example, in the Cape River Water Basin, “visible” and “distressing” pollution consisting of “solids[] and foamy residue,” likely “a mixture of fat and chemical disinfectants,” “persists miles downstream” from a discharging slaughterhouse, “threaten[ing] people and wildlife” who live nearby. Burdette Decl. ¶ 9.

44. Fat and other solid pollutants in MPP wastewater can harm wildlife directly—for instance, by clogging fish gills, potentially resulting in asphyxiation—and indirectly, by creating anaerobic conditions during decomposition and thereby degrading habitat for fish, shellfish, and other aquatic species.

45. In addition, EPA recognizes that nutrient pollution, such as that discharged by MPP facilities, causes harmful algal blooms.

46. On the Shenandoah River, MPP facility water pollution feeds algal blooms that “give off a terrible smell” and are “so thick that it is impossible to paddle a kayak, let alone fish.” Broder Decl. ¶ 5.

Environmental Justice

47. Water pollution from MPP facilities raises significant environmental justice concerns.

48. EPA has concluded that “74 [percent] of MPP facilities that directly discharge wastewater to surface waters are within one mile of census block groups with demographic or environmental characteristics of concern.” *See* EPA, EPA-821-

R-21-003, *Preliminary Effluent Guidelines Program Plan 15*, at 6-2 (2021) [hereinafter “Preliminary Plan 15”].

49. A recent analysis of 184 direct-discharging MPP facilities confirmed that many are located near vulnerable and under-resourced communities. *See Comments of the Env’t Integrity Project and Earthjustice et al.*, at 9–14, Docket ID No. EPA-HQ-OW-2021-0547, Comment ID EPA-HQ-OW-2021-0547-0462 (Oct. 14, 2021) [hereinafter “EIP Preliminary Plan 15 Comments”]. In particular, MPP facilities are disproportionately likely to be located within one mile of communities that EPA classifies as “low-income,” meaning that the household income is less than or equal to twice the federal poverty level; “linguistically isolated,” meaning that no household member over the age of 14 speaks English “very well” or as their only language; or at heightened risk from toxic discharges in wastewater. *Id.*

LEGAL FRAMEWORK

50. Congress passed the CWA “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA protects all waters of the United States, including rivers, streams, and other surface waters that supply drinking water, support fish and wildlife, and provide aesthetic value and recreational opportunities.

51. The CWA sets a national goal of eliminating water pollution. *Id.* § 1251(a)(1). To achieve this goal, the CWA requires EPA to promulgate national, industry-specific pollution control standards at different levels of stringency for

conventional, toxic, and non-conventional pollutants and to revise these standards as appropriate to keep pace with advances in technology. *Id.* §§ 1314(b), 1317(b).

52. Conventional pollutants include biochemical oxygen demand, suspended solids, fecal coliform, and pH. *Id.* § 1314(a)(4). Toxic pollutants include a variety of heavy metals and other dangerous compounds. *See* 40 C.F.R. § 401.15. Nitrogen compounds and phosphorus are classified as non-conventional pollutants.

53. For facilities that discharge directly into surface waters, EPA must promulgate control standards in the form of effluent limitation guidelines (“ELGs”), which then form the basis of the effluent limitations included in individual wastewater discharge permits. *See* 33 U.S.C. § 1314(b). For facilities that discharge indirectly through POTWs, EPA must publish pretreatment standards. *Id.* § 1317(b).

Effluent Limitation Guidelines

54. EPA must establish effluent limitations for toxic and non-conventional pollutants such as nitrogen compounds and phosphorus based on the best available technology economically achievable (“BAT”). *Id.* §§ 1311(b)(2), 1314(b)(2)(B). The CWA requires EPA to review and, if appropriate, revise effluent limitations at least every five years. *Id.* § 1311(d).

55. To facilitate the adoption and revision of effluent limitations, the CWA mandates that EPA develop and publish ELGs that characterize the wastewater discharges from a given industry, identify the level of pollution control that is

achievable in light of available technologies, and specify the relevant factors for determining what constitutes BAT. *Id.* § 1314(b).

56. BAT represents the gold standard for controlling water pollution from existing sources. Accordingly, BAT must reflect, at a minimum, the performance of the single best-performing plant in an industrial field.

57. To ensure that ELGs keep pace with advances in control technology, the CWA directs EPA to “publish . . . regulations, providing guidelines for effluent limitations, and, *at least annually* thereafter, revise, if appropriate, such regulations.” *Id.* (emphasis added).

58. Therefore, the CWA imposes on EPA a mandatory annual duty with respect to ELGs. Every year, EPA must either (1) make a determination that revision is not appropriate, or (2) make a determination that revision is appropriate and issue revised ELGs within the statutory deadline.

59. For decades, EPA has addressed its independent obligations regarding effluent limitations and ELGs simultaneously by promulgating ELGs that include effluent limitations. *See, e.g.*, Notice of Final 2008 Effluent Guidelines Program Plan, 73 Fed. Reg. 53,218-03, 53,221 (Sept. 15, 2008) (stating that “as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously”).

60. Although EPA may elect to complete its quinquennial obligation to review and revise effluent limitations *more frequently* than the CWA requires, the

Agency has no authority to ignore or extend its annual obligation with respect to ELGs. Indeed, as EPA has recognized, compliance with this annual obligation is essential “[t]o ensure that effluent [limitation] guidelines remain current with the state of the industry and with available control technologies.” Effluent Guidelines Plan, 63 Fed. Reg. 29,203, 29,204 (May 28, 1998).

Pretreatment Standards

61. In drafting the CWA, “Congress recognized that regulating only those sources that discharge effluents directly into the Nation’s waters would not be sufficient to achieve the CWA’s goals.” Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category, 69 Fed. Reg. 54,476, 54,479 (Sept. 8, 2004). Accordingly, to control water pollution originating from indirect-discharging facilities, Congress directed EPA to establish pretreatment standards—that is, technology-based regulations that govern the introduction into POTWs of “pollutants which are determined not to be susceptible to treatment by [POTWs] or which would interfere with the operation of [POTWs].” 33 U.S.C. § 1317(b)(1).

62. Pretreatment standards may take the form of maximum one-day and monthly average concentrations for specific pollutants discharged to POTWs. *See, e.g.*, 40 C.F.R. § 418.76 (establishing pretreatment standards for ammonia and phosphorus applicable to certain industrial sources).

63. The CWA directs EPA to promulgate pretreatment standards by July 15, 1973. *See* 33 U.S.C. § 1317(b)(2). In addition, the CWA mandates that EPA

“shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise [pretreatment] standards[.]” *Id.*

64. EPA has recognized that, in developing pretreatment standards for existing sources of non-conventional pollutants, the Agency must “consider[] the same factors . . . as it does for BAT limitations.” Preliminary Plan 15 at 2-3.

65. EPA promulgates both pretreatment standards for existing sources (“PSES”), which apply to all sources that began construction *before* the publication of proposed standards, and pretreatment standards for new sources (“PSNS”), which apply to sources that began construction *after* the publication of proposed standards or on a date specifically provided for by regulation. Upon publication, pretreatment standards apply to individual facilities through operating permits issued under the National Pretreatment Program. *See* 40 C.F.R. § 403.

REGULATORY HISTORY

66. EPA has promulgated or revised ELGs for direct-discharging MPP facilities only three times: in 1974, 1975, and 2004.

67. Although EPA has repeatedly recognized that its existing regulations do not provide the statutorily mandated level of protection, it has not issued or revised any MPP industry ELGs since 2004.

68. Notwithstanding EPA’s mandatory *annual* duty to complete review and, if appropriate, revision of MPP industry ELGs, the Agency has not announced the outcome of an annual review in a final agency document since May 2, 2018.

69. Since announcing its May 2, 2018 decision *not* to revise MPP industry ELGs, EPA has repeatedly indicated that existing water pollution control standards governing the MPP industry are insufficient.

70. EPA has never promulgated pretreatment standards for indirect-discharging MPP facilities.

MPP Industry ELGs

71. EPA first promulgated ELGs for various meat slaughterhouses and rendering facilities in 1974 and 1975. *See* Meat Products Point Source Category, 39 Fed. Reg. 7,894 (Feb. 28, 1974) (codified at 40 C.F.R. pt. 432); *see also* Meat Products and Rendering Processing Point Source Category, 40 Fed. Reg. 902 (Jan. 3, 1975) (codified at 40 C.F.R. pt. 432). These regulations set ELGs for several pollutants, including 5-day biochemical oxygen demand (“BOD5”), total suspended solids (“TSS”), pH, oil and grease, fecal coliforms, and ammonia, a nitrogen compound. *See* 39 Fed. Reg. at 7,898; *see also* 40 Fed. Reg. at 905.

72. In 1975, EPA proposed, but never finalized, ELGs for poultry slaughterhouses and rendering facilities. *See* EPA, EPA-821-R-04-011, *Technical Development Document for the Final Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (40 C.F.R. 432), at 2-15 (2004) [hereinafter “2004 Technical Development Document”].

73. In 2004, EPA revised ELGs for “non-small” meat slaughterhouses and rendering facilities and promulgated new ELGs for “non-small” poultry facilities. 69

Fed. Reg. at 54,476; *see* 2004 Technical Development Document.² For some facilities, these regulations set limits for ammonia and total nitrogen discharges; for others, they limited the discharge of conventional pollutants, including BOD₅, TSS, pH, oil and grease, and fecal coliforms. *See* 69 Fed. Reg. at 54,488 (summarizing regulatory changes by subcategory and size in Table VI.H-1).

74. At the time, EPA estimated that the updated rules for “non-small” meat and poultry facilities would impact only 246 direct-discharging facilities, leaving the overwhelming “majority of facilities in the meat and poultry products industry” unaffected. Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category, 67 Fed. Reg. 8,582, 8,590, 8,612 (Feb. 25, 2002).

EPA’s Recognition that MPP Industry Standards May Be Inadequate

75. For more than a decade, EPA has recognized that revisions to the MPP industry ELGs may be appropriate.

76. In 2011, EPA identified the MPP industry for further review because of the industry’s relatively high ranking in terms of “toxic-weighted pound equivalent” (“TWPE”), a calculation that enables the Agency to rank the relative toxicities of different pollutant discharges. *See* EPA, EPA-821-R-12-001, *2011 Annual Effluent*

² EPA defines “non-small” meat slaughterhouses and rendering facilities as facilities that slaughter more than 50 million pounds of animals each year, produce more than 50 million pounds of finished product each year, or render 10 million pounds or more of raw material each year. 69 Fed. Reg. at 54,488; *see* 40 C.F.R. §§ 432.10–432.107. “Non-small” poultry facilities either slaughter more than 100 million pounds per year in live weight killed or further process more than 7 million pounds of finished product per year. 69 Fed. Reg. at 54,484–85; *see* 40 C.F.R. §§ 432.110–432.127.

Guidelines Review Report, at 11-1 (2012). The total TWPE of the MPP industry was higher than that of the coal mining, centralized waste treatment, pesticide chemicals, and aluminum forming point source categories. *Id.* at 1-2, tbl.1-1.

77. In 2015, EPA identified the MPP industry “for preliminary review because it rank[ed] high again, in terms of [TWPE].” EPA, EPA-821-R-16-002, *2015 Annual Effluent Guidelines Review Report*, at 3-5 (2016).

78. Despite identifying the MPP industry for preliminary review, in 2016, EPA declined to undertake further review of the MPP industry. Instead, EPA stated that it “may do so in the future . . . as additional data become available.” EPA, EPA-821-R-16-001, *Preliminary 2016 Effluent Guidelines Program Plan*, at 4-7 (2016); see *Preliminary 2016 Effluent Guidelines Program Plan*, 81 Fed. Reg. 41,535 (June 27, 2016).

79. On May 2, 2018, EPA finalized its conclusion not to revise MPP industry ELGs. See EPA, EPA-821-R-18-001, *Final 2016 Effluent Guidelines Program Plan* 8-1–8-2 (2018); see also *Final 2016 Effluent Guidelines Program Plan*, 83 Fed. Reg. 19,281-02 (May 2, 2018) (stating that “EPA concluded that no additional industries warrant new or revised [ELGs] at this time” in the MPP industry). EPA did not present any new analysis to support or explain this conclusion.

80. Since May 2, 2018, EPA has neither announced in a final agency document any decision with respect to revising MPP industry ELGs nor revised those ELGs. Thus, May 2, 2018 marks the last time that EPA completed its

mandatory annual duty to review, and if necessary, revise ELGs. *See* 33 U.S.C. § 1314(b) (providing that EPA “shall” review and, if appropriate, revise ELGs “at least annually”).

EPA’s Findings Since it Last Completed its Mandatory Review-and-Revise Duty

81. In 2019, EPA did not make any decision with respect to revising the ELGs for the MPP industry, nor did it revise those ELGs. Instead, EPA announced that it “intend[ed] to continue the review or study of” the MPP industry, based on its findings that MPP facilities are a leading industrial source of nitrogen water pollution. EPA, EPA-821-R-19-005, *Preliminary Effluent Guidelines Program Plan 14*, at 8-1 (2019) [hereinafter “Preliminary Plan 14”]. EPA also found that half of the MPP industry surveyed in a national sample discharged an annual average total nitrogen concentration “well below the ELG monthly average,” strongly suggesting that existing ELGs are out of date. *See id.*, at 3-14.

82. In January 2021, EPA “announc[ed] that the Agency will conduct a detailed study of the [MPP] category” in order to “continue the review or study of” MPP industry ELGs. EPA, *Effluent Guidelines Program Plan 14* 6-4, 8-1 (2021); *see* *Effluent Guidelines Program Plan 14*; Notice of Availability, 86 Fed. Reg. 1960-02 (Jan. 11, 2021).

83. In September 2021, EPA published a preliminary determination that revision of MPP industry ELGs is appropriate. *See* *Preliminary Plan 15* at 6-2; *see also* *Preliminary Effluent Guidelines Program Plan 15*, 86 Fed. Reg. 51,155-01,

51,156 (Sept. 14, 2021). However, EPA did not commit to revising MPP facility ELGs, publish proposed revisions, or specify a timeline for the revision process.

84. In November 2021, EPA announced its intention to collect additional information about the MPP industry, “to determine if the current regulations remain appropriate.” Proposed Information Collection Request; Comment Request; Meat and Poultry Products Industry Data Collection, 86 Fed. Reg. 64,931, 64,931 (Nov. 19, 2021). In connection with this announcement, EPA again acknowledged “that there are existing, affordable technologies that can reduce nutrient concentrations in MPP wastewater,” *id.*, but once again, EPA failed to commit to revising MPP facility ELGs, publish proposed revisions, or specify a timeline for the revision process.

85. Currently, “small” meat slaughterhouses and rendering facilities remain subject to ELGs promulgated over 47 years ago, in 1974 and 1975.

86. “Small” poultry slaughterhouses and rendering facilities are not subject to any ELGs at all, meaning that the discharge of pollutants from these facilities is not nationally regulated. 69 Fed. Reg. 54,476.

87. Even though EPA has acknowledged that direct-discharging MPP facilities are the largest industrial source of phosphorus pollution, EPA’s existing ELGs for the MPP industry do not impose *any* limits on phosphorus discharges.

88. EPA has *never* promulgated pretreatment standards for MPP facilities that discharge to POTWs, which comprise approximately 95 percent of the industry.

**EPA MUST REVISE ELGs AND PUBLISH PRETREATMENT STANDARDS
FOR THE MPP INDUSTRY**

89. Given EPA’s longstanding recognition that its existing regulations do not adequately control water pollution from MPP facilities, as the CWA requires, the Agency must revise ELGs and publish pretreatment standards for the MPP industrial point source category. EPA already has access to relevant data and information about modern, affordable water pollution control technologies.

Effluent Limitation Guidelines

90. EPA’s own data and conclusions leave no doubt that the existing ELGs for MPP facilities lag far behind the standard imposed by the CWA, which requires EPA to base ELGs for non-conventional pollutants on the performance of the single best-performing plant in an industrial field.

91. For years, EPA has repeatedly acknowledged that many MPP facilities discharge pollutants at levels *well below* those allowed under EPA’s existing ELGs.

92. Indeed, data included in Discharge Monitoring Reports (“DMR”) prepared by MPP facilities from 2016 through 2018 demonstrate that the best-performing *quartile* of meat slaughterhouses and rendering facilities discharges total nitrogen at levels *over 74 times lower* than the currently applicable ELG allows. *See* EIP Preliminary Plan 15 Comments at 15. Similarly, the best-performing quartile of poultry facilities discharges total nitrogen at levels over 16 times lower than the applicable ELG allows. *Id.*

93. In addition, DMR data show that many MPP facilities that discharge over 250,000 gallons of wastewater per day currently achieve levels of pollution well

below existing regulatory limitations. For example, more than half of these facilities report discharging less than *one third* of the applicable total nitrogen ELG monthly limit. See Env't Integrity Project, Water Pollution from Slaughterhouses (2018), https://environmentalintegrity.org/wp-content/uploads/2018/10/Slaughterhouse_Report_Final.pdf.

94. In 2020, according to DMR data, the monthly average total nitrogen concentration discharged by the best-performing poultry facility was as low as 0.8 mg/L and never exceeded 3.3 mg/L. See Env't Integrity Project, 2020 DMR Total Nitrogen Analysis for Large Slaughterhouses (2021). By contrast, the applicable ELG allows poultry facilities to discharge a total nitrogen monthly average of 103 mg/L, over 30 times above the best-performing facility's highest monthly average. See 40 C.F.R. § 432.113.

95. Information about the existence of modern, affordable pollution technology already in use at MPP facilities, POTWs, and other industrial sites is readily available to EPA. Indeed, EPA has been aware of one such technology, Biological Nutrient Removal, for over 20 years.

Pretreatment Standards

96. Since at least 1977, EPA has repeatedly acknowledged that pollutants in MPP facility wastewater are incompatible with many POTWs.

97. Indeed, EPA has long required other industrial sources of these pollutants to comply with pretreatment standards. See, e.g., Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines,

Pretreatment Standards, and New Source Performance Standards, 49 Fed. Reg. 8,742, 8,766 (Mar. 8, 1984) (“It is necessary to promulgate [pretreatment standards] to prevent pass-through . . . of lead, zinc, fluoride, and ammonia.”).

98. In 2021, EPA acknowledged that “[d]ata indicate that MPP facilities are causing problems for POTWs that receive MPP wastewater via indirect discharges.” *See* Preliminary Plan 15 at 6-2. Indeed, EPA’s review of 200 indirect-discharging MPP facilities “show[ed] that 73 [percent] of the POTWs receiving MPP wastewater have violation(s) of permit limits for pollutants found in MPP wastewater.” *Id.* Moreover, most POTWs included in EPA’s review were not subject to any nitrogen or phosphorus limits at all, “which indicates that many POTWs may not be removing much of the nutrient load discharged to POTWs from MPP industrial users.” *Id.*

99. EPA can readily access information about indirect-discharging MPP facilities to inform up-to-date pretreatment standards. In fact, as the Agency itself has recognized, “[i]ndirect dischargers [are required to] file compliance monitoring reports with their control authority (e.g., POTW) at least twice a year[.]” 2004 Technical Development Document at 3-16.

CLAIMS FOR RELIEF

First Claim for Relief: EPA Has Violated the CWA by Failing to Review and Revise ELGs for the MPP Industry

100. The CWA mandates that EPA “shall” revise ELGs for the MPP industry “at least annually,” if appropriate. 33 U.S.C. § 1314(b). Thus, the CWA establishes a nondiscretionary duty with respect to ELGs. Every year, EPA must

complete a review of existing ELGs and either: (1) decide that revisions are not appropriate or (2) finalize revisions, if appropriate.

101. At best, EPA last completed its mandatory review-and-revise duty with respect to the MPP industry ELGs on May 2, 2018, when the Agency published its final decision not to revise MPP industry ELGs.

102. Since 2018, EPA has repeatedly acknowledged that revisions to MPP industry ELGs are appropriate, but the Agency has not revised the MPP industry ELGs. EPA has neither published proposed revisions, specified a timeline for the revision process, nor expressly declined to undertake revisions in a final agency document. Thus, EPA has not completed the required annual reviews—including the appropriate revisions—for the MPP industry.

103. As a result, “small” meat slaughterhouses and rendering facilities remain subject to outdated ELGs promulgated in the mid-1970s and, absent more protective state standards, “non-small” meat and poultry slaughterhouses and rendering facilities must adhere only to ELGs that EPA last updated more than 15 years ago. There are no national standards curbing phosphorus water pollution from any MPP facility and no national standards regulating any water pollution from “small” poultry slaughterhouses.

104. EPA’s failure to complete its review-and-revision responsibilities with respect to the MPP industry ELGs constitutes a “failure of the Administrator to perform an[] act or duty under [the CWA] which is not discretionary with the Administrator,” within the meaning of 33 U.S.C. § 1365(a)(2).

105. EPA’s conduct makes it less likely that MPP facilities will reduce their pollutant discharges. As a result, Plaintiffs will endure greater-than-necessary levels of pollution in the waters they seek to use and enjoy.

106. An order from this Court requiring EPA to comply with its statutory obligation under the CWA will ensure that surface waters are not polluted at unnecessarily high levels, thereby redressing Plaintiffs’ injuries.

107. Plaintiffs are entitled to declaratory and injunctive relief ordering EPA to complete its review of the MPP industry ELGs in conformance with the CWA.

Second Claim for Relief: EPA Violated the APA by Unreasonably Delaying Publication of Pretreatment Standards for the MPP Industry

108. The CWA mandates that the EPA “shall” publish “regulations establishing pretreatment standards for introduction of pollutants into [POTWs] for those pollutants which are determined not to be susceptible to treatment by [POTWs] or which would interfere with the operation of [POTWs].” 33 U.S.C. § 1317(b)(1). Additionally, the CWA provides that EPA “shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise [pretreatment] standards[.]” *Id.* § 1317(b)(2).

109. Despite EPA’s repeated acknowledgment—including as early as 1977—that pollutants contained in MPP facility wastewater require pretreatment, the Agency has *never* promulgated pretreatment standards for MPP facilities.

110. EPA’s failure to publish MPP industry pretreatment standards constitutes “agency action . . . unreasonably delayed.” 5 U.S.C. § 706(1).

111. EPA's conduct makes it less likely that pollutant discharges originating from MPP facilities will be reduced. As a result, Plaintiffs will endure greater-than-necessary levels of pollution in the waters they seek to use and enjoy.

112. An order from this Court requiring EPA to comply with its statutory obligation under the CWA will ensure that surface waters are not polluted at unnecessarily high levels, thereby redressing Plaintiffs' injuries.

113. Plaintiffs are entitled to declaratory and injunctive relief ordering EPA to publish pretreatment standards for the MPP industry in conformance with the procedures set forth in 33 U.S.C. § 1317(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Declare that EPA has violated the Clean Water Act by failing to complete its revision of MPP industry ELGs;
2. Declare that EPA has violated the Administrative Procedure Act by unreasonably delaying its publication of MPP industry pretreatment standards;
3. Order Defendant Regan to issue revised regulations in accordance with sections 304(b) and 307(b) of the Clean Water Act that apply to the MPP industry;
4. Retain jurisdiction of this action to ensure compliance with its decree;
5. Award Plaintiffs the costs of this action, including attorney's fees; and
6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

s/ Alexis Andiman

ALEXIS ANDIMAN

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

(212) 854-7376

aandiman@earthjustice.org

TONTY ENMANUEL RUTINEL

[Pro Hac Vice Application Pending]

Earthjustice

633 17th Street, Suite 1600

Denver, CO 80202

(917) 410-8673

mrutinel@earthjustice.org

s/ Jennifer Duggan

JENNIFER DUGGAN (D.C. Bar No. 978352)

SARAH KULA (D.C. Bar No. 1720116)

Environmental Integrity Project

1000 Vermont Avenue NW, Suite 1100

Washington, DC 20005

(202) 263-4446

jduggan@environmentalintegrity.org

skula@environmentalintegrity.org

Counsel for Plaintiffs

Exhibit 1

DECLARATION OF KEMP BURDETTE

I, KEMP BURDETTE, declare and state as follows:

1. I am 48 years old. I currently live in Pender County, North Carolina with my partner and my two daughters, aged 13 and 15. I am the Cape Fear Riverkeeper at Cape Fear River Watch (“CFRW”), and I have held this position for almost 13 years. Before that, I served as CFRW’s Executive Director for approximately two years. I have been a member of CFRW for 18 years.

2. The Cape Fear River Basin is the largest river basin in North Carolina, encompassing about 9,164 square miles, or approximately 16.5 percent of North Carolina’s total land area. Nearly one-third of the State’s population lives in the Cape Fear River Basin, and about 20 percent of North Carolinians get their drinking water from the Cape Fear River, including people living in Greensboro, Fayetteville, and Wilmington. The Cape Fear River Basin also boasts some of North Carolina’s most impressive remaining natural biodiversity, providing habitat for a variety of native, threatened, and endangered species and supporting a thriving tourism economy for recreational boaters, birders, and other nature-lovers.

3. CFRW is a nonprofit organization with over 1,000 members, working to protect and improve the water quality of the Cape Fear River Basin for all people through education, advocacy, and action. CFRW is an official Riverkeeper organization and U.S. Waterkeeper Member Organization licensed by the Waterkeeper Alliance since 1994. Among other activities, we provide education to children and adults through monthly seminars on issues related to the river and the

environment, as well as summer camps, eco-tours, internships, and other programs. We help our members make their voices heard to local, state, and federal legislators to improve the water quality of the Cape Fear River Basin and hold heavily polluting industries accountable. For instance, in collaboration with local partners, we compelled Duke Energy to clean up coal ash from power plants. And we take action to use, enjoy, and protect the rivers, streams, and tributaries within the Cape Fear River Basin by paddling, leading monthly volunteer clean-ups, monitoring water quality, and conducting research.

4. As the Cape Fear Riverkeeper, I work to protect and improve the water quality of the Lower Cape Fear River, its estuary, tributaries, wetlands, and groundwater. I respond to citizen complaints of water pollution; carry out patrols in the air, on the ground, and on the water to identify threats to water quality; and collaborate with members, local partners, regulators, and legislators at the local, state, and federal levels to eliminate identified threats. In addition, I regularly conduct water-quality sampling in the Black, Northeast Cape Fear, and Cape Fear Rivers and associated waters, and I share this data with the public so they know if and when it is safe to recreate in the water.

5. Aside from my work as the Cape Fear Riverkeeper, I am an avid outdoorsman, fisherman, and bird enthusiast. In 2016, I paddled the entire length of the Cape Fear River from the headwaters to the Atlantic Ocean. These days, I spend as much time as possible paddling or boating on the Cape Fear River and its tributaries, either alone, with my partner and friends, or with my two daughters.

We use the Cape Fear River to fish, swim, kayak, motorboat, and view wildlife, and, sometimes, we camp on the riverbank. I grew up in Wilmington, exploring the waterways, wetlands, and swamps of the Cape Fear River Basin, and I want to make sure my daughters have the same opportunity to experience our region's incredible waterways.

6. I have long-standing interests in clean water, healthy communities, and environmental protection. Prior to becoming the Cape Fear Riverkeeper, I lived and traveled around the world as a U.S. Navy Search and Rescue Swimmer, a Fulbright Scholar, and a Peace Corps volunteer. In addition to working with CFRW, I am an active supporter of other nonprofit organizations working to protect the Cape Fear River Basin and the communities and environment of eastern and southern North Carolina. For instance, I am a member of the Advisory Board for the North Carolina Conservation Network.

7. CFRW's members include people who live near the Cape Fear River and associated waters; people who fish, swim, and boat on the river and associated waters, and who enjoy viewing or attempting to view the wildlife living in and near the river; and people who get their drinking water from the river. Our members contribute annual membership fees, and they elect CFRW's leadership. Members guide our priorities, and they have encouraged us to combat pollution from industrial animal agriculture, including slaughterhouses and rendering facilities (collectively, "MPP facilities"), as well as concentrated animal feeding operations ("CAFOs"), large facilities that raise animals for food.

8. Swine and poultry CAFOs are more densely concentrated in the Cape Fear River Basin than anywhere else on Earth. Each year, CAFOs in this region raise more than 10 million pigs and approximately 300 million birds;¹ collectively, these animals generate a staggering quantity of waste, much of which finds its way into the Cape Fear River and associated waters. For example, in June 2020, three million gallons of pig urine and feces spilled into the waters of the Cape Fear River Basin, killing at least 1,000 fish.² Pollution from CAFOs causes many of the same problems as pollution from MPP facilities, and I am very concerned about the cumulative harms that result from both sources of pollution, in combination.

9. Along with pollution from CAFOs, MPP facility pollution is a serious concern in the Cape Fear River Basin. The largest pork slaughterhouse in the world is located in Tar Heel, North Carolina, and it discharges polluted wastewater directly into the Cape Fear River.³ I regularly paddle just downstream of the slaughterhouse's discharge point, and I have observed specific and distressing evidence of pollution coming from the slaughterhouse, including an unpleasant odor, visible solids, and foamy residue. The foamy residue persists miles downstream from the slaughterhouse and, based on my training and experience, I

¹ See *CAFOs*, Cape Fear River Watch, <https://capefearriverwatch.org/cafos/> (last visited June 10, 2022).

² See Lisa Sorg, *1,000+ Dead Fish: DEQ Releases More Troubling Details on Hog Lagoon Spill*, NC Policy Watch (July 17, 2020), <http://pulse.ncpolicywatch.org/2020/07/17/1000-dead-fish-deq-releases-more-troubling-details-on-hog-lagoon-spill/>.

³ See NPDES Permit NC0078344, <https://echo.epa.gov/detailed-facility-report?fid=110007377338> (last visited June 10, 2022).

suspect that this residue consists of a mixture of fat and chemical disinfectants. I know that the slaughterhouse also discharges high levels of fecal coliform, a dangerous pollutant that threatens people and wildlife.

10. In addition to discharging fecal coliform and other types of pollution, the Tar Heel plant is the largest discharger of nutrient pollution, including various forms of nitrogen, in the Cape Fear River Basin. High levels of nitrogen pollution promote harmful algal blooms that endanger aquatic plants and wildlife. Algal blooms form in the water, depriving aquatic vegetation of the sunlight necessary to grow. And when algae decays, it pulls dissolved oxygen out of the water, which kills fish and other aquatic wildlife. Blue-green algal blooms are particularly harmful to human health because they can produce microcystins, toxins that are difficult for water treatment plants to remove from drinking water.

11. Along with over 300,000 people living in Wilmington and the surrounding areas, including CFRW members, I drink water drawn from the Cape Fear River, downstream from the Tar Heel plant. I am very concerned that my drinking water might be unsafe because of the blue-green algal blooms in the river, and I know that many CFRW members share these concerns. Recently, harmful algal blooms have become more common in the Cape Fear River. I fear that this increase results, in part, from high levels of pollution discharged from the Tar Heel plant.

12. The Tar Heel plant is not the only MPP facility in the Cape Fear River Basin. For instance, my house in Atkinson is located downstream of a large swine

slaughterhouse in Clinton, North Carolina that discharges into the Black River, a tributary of the Cape Fear River.⁴ I often spend time swimming, fishing, kayaking, motorboating, and wildlife-viewing on the Black River with my daughters, my partner, and my friends. I will continue spending time this way in the future—proximity to the Black River is one of the reasons I chose to live in Atkinson—but I am afraid that these activities might expose me and my family to slaughterhouse pollution in concentrations that could threaten our health.

13. From my conversations with CFRW members, I know that many members worry about high levels of MPP facility pollution, as well. I have spoken with many CFRW members who are afraid to swim, fish, boat, or otherwise spend time in or near the Cape Fear River, because they are concerned about the health consequences of exposure to high levels of bacteria and other pollutants from the Smithfield slaughterhouse in Tar Heel and other MPP facilities.

14. MPP facility pollution also impairs the interests of CFRW members who enjoy exploring the Cape Fear River Basin and viewing or attempting to view fish, birds, and other wildlife. For years, CFRW and its members, along with many partners, have advocated for the construction of fish passages that allow migratory fish species to travel upstream past locks and dams. These passages are essential to the reintroduction and recovery of native species, including striped bass, shad, and Atlantic and shortnose sturgeon. But passages alone are not enough to allow these

⁴ See NPDES Permit NCG060139, <https://echo.epa.gov/detailed-facility-report?fid=110000349846> (last visited June 10, 2022).

species to recover. I am concerned that fish might fail to thrive in the portions of the Cape Fear River that receive high levels of MPP facility pollution. If pollution prevents native fish from thriving in the Cape Fear River, I would consider that to be a major failure of our society, and along with other CFRW members, I would suffer an injury to my aesthetic and recreational interests.

15. I am aware that EPA's water pollution control standards for MPP facilities are either out-of-date or nonexistent. Currently, the Tar Heel plant is permitted to discharge as much nitrogen as allowed under EPA's existing standards. As a result of EPA's failure to update water pollution control standards, the Smithfield slaughterhouse in Tar Heel and other MPP facilities that discharge polluted wastewater into the Cape Fear River will not be required to adopt more stringent pollution control technology to meet national standards. Instead, the Smithfield slaughterhouse and other MPP facilities can continue to release the same amount of pollution indefinitely, putting people and the environment at risk. I find this particularly concerning because the Smithfield slaughterhouse discharges a tremendous amount of pollution, including approximately 719,966 pounds of nitrogen *every year*—making it one of the highest nitrogen-polluting slaughterhouses in the country.⁵ It is my understanding that more effective technology to control nitrogen and other pollutants is available and affordable, and I believe EPA should require the Tar Heel plant and other MPP facilities to adopt that technology.

⁵ See *supra* note 3.

16. If EPA required slaughterhouses to adopt better technology, CFRW members would feel significantly more comfortable spending time in and near the Cape Fear River and associated waters, and I would be relieved that my family and I could recreate in cleaner water. We would feel less anxious drinking tap water. And we would be more confident that CFRW's efforts to protect and restore native species might succeed.

17. The Cape Fear River Basin is my home, and I have committed my life to protecting this vital resource and the communities that depend on it. I feel privileged to serve as the voice of the river and to represent the interests of CFRW members against polluting industries. But EPA's failure to act means that the river will continue to receive high levels of MPP facility pollution, threatening the health, beauty, cleanliness, and heritage of the Cape Fear River Basin.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 9th day of August 2022, in Wilmington, North Carolina.

A handwritten signature in black ink, reading "Kemp M Burdette". The signature is written in a cursive, flowing style.

Kemp Burdette

Exhibit 2

DECLARATION OF DEVON HALL

I, DEVON HALL, declare and state as follows:

1. I am the Co-Founder and Executive Director at the Rural Empowerment Association for Community Help (“REACH”). Since 2002, REACH has worked to address social, economic, and environmental inequities in and around Duplin County, North Carolina, a rural area with a significant proportion of low-income African-American residents. REACH’s primary goal is educating and empowering our community about issues that matter. We work to help people understand that everybody is somebody, and everybody has a right to be heard.

2. I am African-American. I live in Duplin County. I was born and raised here, and I have lived in Duplin County my whole life. I am 66 years old. My three brothers and three sisters live in Duplin County too. Our roots are here. I co-founded REACH because I saw that there was a lack of resources in Duplin County to help people like me and my family, and I worried that my grandchildren’s generation might not have any future here.

3. REACH has about 20 official members, and more than 60 people in our community regularly attend our meetings. In connection with our mission, and in partnership with our members and other people in our community, we have chosen to concentrate on five areas: civil engagement, research and citizen science, public education, expanding our own capacity to assist the community, and working to enforce and improve laws and policies that affect life in and around Duplin County. For years, much of our work has focused on pollution from industrial animal

agriculture, including slaughterhouses and rendering facilities (collectively, “MPP facilities”). For example, REACH has signed on to comments urging the U.S. Environmental Protection Agency (“EPA”) to strengthen water pollution control standards for MPP facilities and to consider environmental justice when evaluating whether stronger standards are necessary to protect people living in communities like mine that are harmed by MPP facility pollution.

4. According to the North Carolina Department of Environmental Quality, there are more than 520 industrial pig-growing operations in Duplin County. Together, these facilities confine almost two-and-a-half million pigs. Over the past 15 years or so, I have witnessed the poultry industry expand dramatically in Duplin County, as well. It can be difficult to find information about the poultry industry because many poultry-growing facilities are exempt from federal and state permitting requirements. I am aware of one report estimating that, in 2019, industrial poultry-growing operations confined more than 113 million chickens and turkeys in Duplin, Sampson, and Robeson counties alone.¹ That number represents a 36 percent increase over the estimated number of birds confined in these counties in 2012, and based on my personal experience, I believe the number of poultry-growing operations has continued to increase since 2019.

5. I live at [REDACTED].

[REDACTED]

¹ See Sarah Graddy et al., *Exposing Fields of Filth: Factory Farms Disproportionately Threaten Black, Latino and Native American North Carolinians* (July 30, 2020), <https://www.ewg.org/interactive-maps/2020-fields-of-filth/>.

There are at least 30 industrial pig-growing operations and at least 11 poultry-growing operations within three miles of my home and the REACH office. And it's not just growing operations; there are at least four MPP facilities within 20 miles of my home and the REACH office, too.² The world's largest pork slaughterhouse is less than an hour-and-a-half away, in Tar Heel, North Carolina.³

6. Industrial animal agriculture generates a staggering amount of pollution. Pig-growing facilities in Duplin County produce nearly two-and-a-half billion gallons of urine and feces every year. Most facilities store that waste in giant uncovered pits, which the industry calls "lagoons," before applying it to fields without appropriate treatment or disinfection, often using mechanized sprinkler systems that spray waste high into the air. Once applied to fields, waste can seep into groundwater and run-off into nearby rivers and streams. Hurricanes, storms, and even relatively light rainfall can cause lagoons to breach or overflow, flooding surrounding areas with urine and feces. For instance, in June 2020, it was reported

² See NPDES Permit NCG060108, <https://echo.epa.gov/detailed-facility-report?fid=110000562221> (Butterball LLC of Mount Olive); *see also* NPDES Permit NCG060243, <https://echo.epa.gov/detailed-facility-report?fid=110015680967> (Pork Company); NPDES Permit NC0003344, <https://echo.epa.gov/detailed-facility-report?fid=110000350389> (House of Raeford Farms Inc. Wallace Div.), NPDES Permit NCG060139, <https://echo.epa.gov/detailed-facility-report?fid=110000350389> (Smithfield Clinton Plant).

³ See NPDES Permit NC0078344, https://echo.epa.gov/trends/loading-tool/reports/permit-limits?permit_id=NC0078344&year=2022 (Smithfield Packing Co, Inc).

that two inches of rainfall flooded a lagoon in neighboring Sampson County, killing over 1,000 fish in surrounding waterways.⁴

7. According to one report, industrial poultry-growing operations in North Carolina generate at least 5 million tons of urine and feces each year.⁵ Like hog-growing operations, poultry-growing facilities usually dispose of waste by applying it to fields without appropriate treatment. Poultry waste, too, can seep into groundwater or wash into nearby waterways.

8. Like animal-growing operations, MPP facilities near my home generate tremendous quantities of waste. For instance, I understand that a slaughterhouse in nearby Clinton can process 10,600 pigs every day, producing about 1.3 million gallons of polluted wastewater.⁶ And the Tar Heel plant can process as many as 35,000 pigs every day, producing up to 3 million gallons of polluted wastewater.

9. I understand that wastewater from MPP facilities includes many of the same pollutants as waste from pig- and poultry-growing operations. I am concerned about the negative health and environmental consequences of so many of the same

⁴ See Lisa Sorg, *1,000+ Dead Fish: DEQ Releases More Troubling Details on Hog Lagoon Spill*, N.C. Pol'y Watch (July 17, 2020), <http://pulse.ncpolicywatch.org/2020/07/17/1000-dead-fish-deq-releases-more-troubling-details-on-hog-lagoon-spill/>.

⁵ See Soren Rundquist & Don Carr, *Under the Radar: New Data Reveals N.C. Regulators Ignored Decade-Long Explosion of Poultry CAFOs*, Env't Working Grp. (Feb. 2019), <https://www.ewg.org/research/under-radar>.

⁶ *Smithfield Foods to shut world's largest hog plant before Florence hits*, CNBC (Sept. 12, 2018), <https://www.cnbc.com/2018/09/12/smithfield-foods-to-shut-worlds-largest-hog-plant-before-florence-hits.html>.

pollutants being released in one relatively small area, in and around Duplin County, and many REACH members share my concerns.

10. Based on my own published research, I know that under-regulated industrial animal agriculture poses serious risks to people living nearby. For instance, I contributed to a study showing that kids who attend school downwind of industrial pig-growing operations are exposed to relatively high levels of hydrogen sulfide, putting them at greater risk of symptoms like difficulty breathing and impaired lung function.⁷ I also worked on a study finding that the children of people who work in industrial pig-growing operations are more likely to carry dangerous antibiotic-resistant bacteria on their bodies—even though those children never set foot in industrial pig-growing operations themselves.⁸ Even though I have spent more time studying air pollution, I believe that water pollution from industrial animal agriculture is just as dangerous as air pollution from industrial animal agriculture.

11. Already, I have changed my behavior and given up activities I enjoy because of my concerns about water pollution from MPP facilities and other industrial animal agriculture facilities. For instance, I was once an avid fisherman,

⁷ See Virginia T. Guidry et al., *Hydrogen Sulfide Concentrations at Three Middle Schools Near Industrial Livestock Facilities*, 27 J. Exposure Sci. & Env't Epidemiology 167 (2017).

⁸ See Sarah M. Hatcher et al., *The Prevalence of Antibiotic-Resistant Staphylococcus aureus Nasal Carriage Among Industrial Hog Operation Workers, Community Residents, and Children Living in their Households: North Carolina, USA*, 125 Env't Health Persps. 560 (2017).

but I have not been fishing near my home in over a decade. I stopped fishing after I began to catch fish with open sores. I believe these sores are caused by bacteria and other pollution from MPP facilities and other industrial animal agriculture facilities, and I do not think that fish with open sores are safe to eat. I have spoken with multiple REACH members who have also given up fishing after catching deformed fish, seeing dead fish floating in the water, and noticing that the water had turned an unusual color or begun to give off an unpleasant odor. Duplin County is a rural community; hunting and fishing are a way of life, and most people do not have extra income to spare. By forcing people to buy fish at the store, instead of fishing in the creeks and streams near their homes, MPP facilities and other industrial animal agriculture facilities are harming our recreational interests and our economic interests, too.

12. In addition to giving up fishing, I have given up drinking tap water. The same is true for many REACH members. Most people in Duplin County used to drink well water, but many now receive county water instead. Even though my water comes from the County, I am not confident that it is safe to drink. I do not think that county water is any safer than well water; I am concerned that both water sources are contaminated with pollution from MPP facilities and other industrial animal agriculture facilities. Some REACH members have complained that county water tastes like chlorine or that it looks milky. Most people buy bottled water instead. We always buy bottled water to serve at REACH meetings, and we

distribute bottled water to community-members during and after hurricanes and other emergencies.

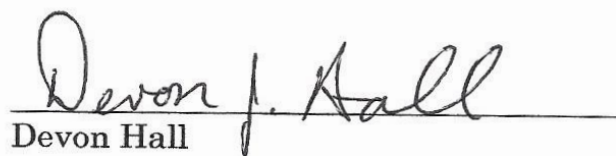
13. I am aware that EPA has not revised water pollution control standards for MPP facilities since at least 2004, and I know that some MPP facilities are not subject to any national water pollution control standards at all. I am also aware that the MPP facilities in Duplin County are still subject to some water pollution control standards that date back to the 1970s, including regulations that govern discharges of nitrogen. I am concerned that EPA's failure to publish appropriate standards—and to revise those standards promptly, when necessary—puts me, my family, and my community at risk.

14. I know many people who work at MPP facilities and industrial animal-growing operations, including REACH members and people who have attended REACH meetings. REACH has been clear from the beginning that we have no interest in putting anyone out of business. But I believe that the corporations that own and operate MPP facilities can afford to implement better technology to protect their workers, REACH members, and other people living nearby. It is very upsetting to me that some of the corporations providing jobs in our community are also polluting the environment, destroying quality of life, and making people sick. We only have one Earth, and everyone should want to help take care of it.

15. If EPA required MPP facilities to reduce the amount of water pollution they discharge, I would feel more confident that the federal government was listening and starting to take us seriously. I believe that the amount of water

pollution in and around Duplin County would start to decline, and I would be honored to tell REACH members that their hard work and engagement was paying off. Eventually, I might feel safe fishing or drinking tap water again.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 29th day of September, 2022, in Warsaw, North Carolina.



Devon Hall

Exhibit 3

DECLARATION OF ROBIN BRODER

I, ROBIN BRODER, declare and state as follows:

1. I am 60 years old, and I live in Arlington, Virginia. I am currently the Deputy Director of Waterkeepers Chesapeake (“WKC”), and I have held this position since January 2020. Prior to becoming Deputy Director, I was a member of WKC’s Board of Directors for seven years.

2. Incorporated in 2012, WKC has been a licensed Waterkeeper Regional Entity and a licensed Waterkeeper Member Organization since May 12, 2014. WKC is a non-profit coalition of seventeen independent Waterkeeper organizations, working to protect the 64,000-square mile Chesapeake Bay watershed, which includes the full length of the Potomac, Susquehanna, and James Rivers, and encompasses portions of Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and Washington, D.C. WKC’s member organizations work locally, using grassroots action and advocacy to protect their communities and their waters. WKC amplifies these organizations’ voices and leverages their strengths to expand their collective capacity to conduct on-the-water, citizen-based enforcement of environmental laws in the Chesapeake region. When necessary, WKC engages in litigation to reduce pollution, improve water quality, and restore a healthy aquatic habitat.

3. As WKC’s Deputy Director, I manage the coalition’s finances, oversee external communications, contribute to advocacy campaigns, and participate in the development of legislative and litigation strategies to advance our mission. I also work directly with WKC’s member organizations, on behalf of their tens of

thousands of members throughout the Chesapeake Bay watershed. For instance, I participate in monthly calls with member organizations to share local campaigns and set regional priorities. In addition, I help to organize training opportunities for our member organizations, covering topics such as advocacy, fundraising, and litigation.

4. Together, WKC's member organizations and Board of Directors play a crucial role in supporting our work and determining our priorities. WKC's member organizations pay small annual dues to WKC, and along with the Board of Directors, they are responsible for helping to select our leadership and approving our legislative agenda and any decision to proceed with litigation. WKC's Board of Directors consists of eleven individuals, half of whom represent member organizations.

5. Pollution from industrial animal agriculture, including slaughterhouses and rendering facilities (collectively, MPP facilities), is a significant and growing concern throughout the Chesapeake Bay watershed. MPP facilities discharge wastewater that contains substances like blood, fat, urine, and feces, which threaten public health and deplete levels of oxygen dissolved in waterways as they decompose, resulting in uninhabitable zones for fish and other aquatic organisms. In addition, these substances promote algal blooms, which can harm aquatic organisms by smothering benthic creatures, for example, or blocking the sunlight that underwater grasses need to survive. Algal blooms also can contaminate drinking water and reduce everyone's ability to enjoy on-the-water recreational opportunities. For instance, in the Shenandoah River, algal blooms can

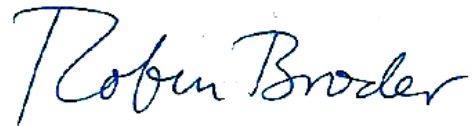
be so thick that it is impossible to paddle a kayak, let alone fish. The blooms give off a terrible smell, making it very unpleasant to spend time on or near the river. The Shenandoah Riverkeeper, a WKC member organization, and its supporters are very concerned that these algal blooms could threaten the health of people who recreate on the river or live nearby.

6. MPP facilities also discharge high levels of nutrient pollutants, including nitrogen and phosphorous, which decrease dissolved oxygen levels and imperil aquatic organisms. Another WKC member organization, the Lower Susquehanna Riverkeeper, recently sued Keystone Protein Company for discharging excessive amounts of nitrogen from its poultry rendering facility in Fredericksburg, Pennsylvania. The Keystone facility discharges into a tributary of the Susquehanna River, and the Susquehanna River, in turn, contributes nearly half of the nitrogen load flowing into the Chesapeake Bay, which long has suffered from nutrient pollution. The Keystone facility's polluted wastewater threatens drinking water supplies and prevents the Lower Susquehanna Riverkeeper and its members from enjoying recreational activities in and near the water. The Lower Susquehanna Riverkeeper's lawsuit involves permit violations, but many slaughterhouses pose a threat to waterbodies within our region and across the country even when they *comply* with wastewater discharge permits, because the existing federal pollution control standards are far too lax. In fact, according to the U.S. Environmental Protection Agency ("EPA"), MPP facilities are the leading industrial source of nitrogen pollution for which EPA has not revised pollution control standards.

7. I understand that EPA must review federal pollution control standards for various industries every year. Despite the grave consequences of MPP facility pollution, EPA has failed to revise existing standards for MPP facilities that discharge pollution directly into our nation's waterbodies or to publish standards for slaughterhouses that discharge pollution indirectly, through publicly-owned treatment works. WKC and its member organizations chose to challenge EPA's failure to act and unreasonable delay in court because we know that more stringent standards are necessary and appropriate. We see first-hand the damage that MPP facility pollution causes to people and the environment in the Chesapeake Bay watershed, and we understand that better technology to reduce pollution from MPP facilities is available now. We cannot achieve our goal of protecting local waterways—and ensuring that those waterways are fishable and swimmable—unless EPA fulfills its duty to revise and publish appropriately stringent pollution control standards.

8. A favorable resolution of this lawsuit, requiring EPA to revise and publish appropriate pollution control standards for MPP facilities, would help to protect the Chesapeake Bay watershed. Over time, appropriate standards and adequate enforcement would reduce pollution, improve water quality, and help to restore a healthy aquatic habitat. And cleaner water would allow WKC's member organizations, the tens of thousands of people our member organizations represent, and every other person living in our region to use and enjoy the watershed for fishing, boating, wildlife viewing, and other recreational purposes.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 22 day of December 2022, in Arlington, Virginia.

A handwritten signature in blue ink that reads "Robin Broder". The signature is written in a cursive style with a large initial "R".

Robin Broder

Exhibit 4

DECLARATION OF TED EVGENIADIS

I, TED EVGENIADIS, declare and state as follows:

1. I am 37 years old, and I live in Mount Wolf, Pennsylvania. I currently serve as both the Lower Susquehanna Riverkeeper and Executive Director of the Lower Susquehanna Riverkeeper Association (“LSRA”). Since LSRA’s founding in 2005, it has been a U.S. Waterkeeper Member Organization licensed by the Waterkeeper Alliance. The Lower Susquehanna River is an important tributary to Chesapeake Bay, and accordingly, LSRA also has been a member organization of Waterkeepers Chesapeake (“WKC”) since WKC’s founding in 2012.

2. I began my education in water ecosystems during my undergraduate studies. Since then, I have received additional training in water protection, water monitoring, and water sampling. I consider myself a citizen scientist, and I supplement my training and experience by keeping up to date with relevant information, including research and reports. In my work, I partner with attorneys, engineers, and other experts to generate informed conclusions about water issues.

3. I have been involved with LSRA for over a decade. I began as a volunteer in 2010, joined the Board of Directors in 2015, and became the acting Lower Susquehanna Riverkeeper and LSRA’s Executive Director in 2017. In my capacity as Lower Susquehanna Riverkeeper, I work to defend the right of the Lower Susquehanna River and its tributaries to be healthy and prosperous, including by patrolling the water for evidence of pollution, conducting biological and chemical water monitoring, and working to educate the public. As Executive

Director, I oversee LSRA's day-to-day operations. Among other tasks, I assist with fundraising, help to spread awareness of LSRA and its mission, and work to support and partner with local stakeholders, including LSRA's hundreds of dues-paying members—outdoorspeople, recreationists, and residents who care about preserving safe drinking water, protecting natural resources, and ensuring that the Lower Susquehanna River and its tributaries remain safe for fishing, swimming, and all forms of recreation.

4. LSRA monitors and works to control a wide range of threats to the Lower Susquehanna River and its tributaries, including pollution from slaughterhouses and rendering facilities (collectively, "MPP facilities"). We assist environmental protection agencies by reporting unlawful or dangerous pollution. Occasionally, when agencies are unable to do their jobs due to politics or funding issues, we follow through with litigation to protect the Lower Susquehanna River and its tributaries.

5. WKC is a coalition of seventeen independent non-profit Waterkeeper organizations working together to protect the greater Chesapeake Bay watershed, which encompasses 64,000 square miles of waterways across six states, extending from Pennsylvania to southern Virginia. WKC members believe that everyone has a right to fishable and swimmable water. By working together, we amplify our individual voices, increase our ability to fight pollution, and more effectively champion clean water. For example, we often collaborate at the state and federal levels to advocate for regulatory and policy reform.

6. As a WKC member, I play a key role in determining WKC's priorities, and I receive important benefits. WKC members elect WKC's leadership, and we are responsible for approving certain decisions, including whether to participate in litigation. About once each month, I join a call with other WKC members to discuss coalition campaigns, share news from our watershed jurisdictions, and review the report from the most recent meeting of WKC's Board of Directors, on which I serve. Members contribute small annual dues to WKC, and WKC, in turn, shares litigation and legislative expertise; offers training in advocacy, fundraising, and science; and helps members secure operational funding.

7. Through my work with LSRA and WKC, I am keenly aware of pollution in the Lower Susquehanna River and Chesapeake Bay watersheds. I know that these watersheds receive a substantial amount of pollution from MPP facilities and other industrial animal agriculture operations. My water monitoring consistently reveals high levels of fecal bacteria, nitrogen, and oxygen-depleting pollutants, all of which are associated with animal agriculture, including MPP facilities.

8. I am often on the water for work, and like many LSRA members, I love to spend my free time recreating in or near the Lower Susquehanna River and Chesapeake Bay watersheds. About one hundred times a year, I use these waters for boating, crabbing, fishing, kayaking, oyster diving, watching birds and other wildlife, or just enjoying the sights. I've loved fishing and spending time on the water for as long as I can remember, and I intend to continue engaging in these

activities in the Lower Susquehanna River and Chesapeake Bay watersheds for as long as I can.

9. Unfortunately, I no longer enjoy recreating in the Lower Susquehanna River and Chesapeake Bay watersheds as much as I once did, because I am concerned about high levels of pollution from MPP facilities. For example, MPP facilities discharge pollutants that fuel algal blooms, which are unsightly and damaging to fish populations. In my roles with LSRA, I advise people against swimming with open cuts or sores in certain parts of the Lower Susquehanna River and its tributaries, because high levels of bacteria associated with pollution from MPP facilities in those waters could cause serious infections. Some MPP facilities in this area discharge more pollution than their permits allow—but even when MPP facilities comply with federal rules limiting the discharge of water pollutants, they still put people at risk because the federal rules are out-of-date.

10. I am aware that WKC and partners have sued the U.S. Environmental Protection Agency (“EPA”) to challenge EPA’s failure to update pollution standards for MPP facilities. I support this lawsuit because I believe that up-to-date, appropriately stringent pollution standards are necessary to protect people and the environment from MPP facilities’ pollution. Until EPA publishes appropriate pollution standards for MPP facilities, I cannot be fully confident that it is safe to swim, fish, or recreate in water that receives pollution from MPP facilities, and I cannot confidently advise others that the water is safe.

11. If EPA were to fulfill its legal responsibility to publish appropriate pollution standards for MPP facilities, I would feel less worried about spending time on the water in the Lower Susquehanna River and Chesapeake Bay watersheds. It would be a true relief to know that the water was cleaner, with fewer bacteria and other pollutants. Over time, I hope that pollution levels would fall to a point at which I would feel comfortable encouraging others to enjoy the water freely. And I would feel more confident that EPA was doing its job and taking action to keep people and the environment safe and healthy.

12. I have dedicated my career to water protection because I believe that the ability to enjoy water safely is truly priceless. In addition, I believe in standing up for all living creatures, including species and ecosystems that do not have the ability to advocate for themselves. MPP facilities are threatening the waters that I love. It is incumbent upon EPA to act now to protect the waters of the Lower Susquehanna River and Chesapeake Bay watersheds.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 21st day of December 2022, in Mount Wolf, Pennsylvania.



Ted Evgeniadis

Exhibit 5

DECLARATION OF DANIEL E. ESTRIN

I, DANIEL E. ESTRIN, declare and state as follows:

1. I am the General Counsel and Advocacy Director of Waterkeeper Alliance, Inc. (“Waterkeeper”). I have worked with the Waterkeeper movement in various capacities for 30 years. As Waterkeeper’s General Counsel and Advocacy Director, I am responsible for supervising all of Waterkeeper’s legal advocacy work, including all litigation to which Waterkeeper is a party.
2. Waterkeeper is a not-for-profit corporation organized under the laws of the State of New York and a charitable corporation under section 501(c)(3) of the Internal Revenue Code. Waterkeeper maintains its headquarters at 180 Maiden Lane, Suite 603, New York, New York 10038.
3. Waterkeeper is a global movement of on-the-water advocates who patrol and protect over 2.6 million square miles of rivers, streams, and coastlines in North and South America, Europe, Australia, Asia, and Africa. Waterkeeper seeks to protect water quality in every major watershed around the world, and to restore and maintain all waterways as drinkable, fishable, and swimmable, consistent with the goals of the federal Clean Water Act (“CWA”) and other laws. Waterkeeper works toward this vision through direct advocacy and through the grassroots advocacy of its Waterkeeper member and affiliate organizations, which Waterkeeper connects and supports to provide a voice for waterways and their communities worldwide. To champion clean water and strong communities, Waterkeeper also: (1) supports and empowers Waterkeeper organizations to protect communities, ecosystems, and water quality; (2) promotes the Waterkeeper model for watershed protection worldwide; and

(3) advocates for issues common to Waterkeeper organizations.

4. Waterkeeper is a membership organization with two classes of members: licensed organizational members and individual members. Waterkeeper's Board of Directors must approve all licensed organizational members. Once approved, member organizations are entitled to vote, through a designated representative, on matters at member organization meetings. Among other requirements, member organizations must conform to Waterkeeper Quality Standards, participate in membership meetings, elect the President of Waterkeeper, and elect the Waterkeeper Council, which is composed of up to 30 member-organization representatives. Waterkeeper Council members, in turn, appoint at least 50 percent of Waterkeeper's Board of Directors.

5. Waterkeeper currently connects approximately 332 Waterkeeper member affiliate organizations in 48 countries on six continents, including 150 Basinkeepers, Baykeepers, Bayoukeepers, Canalkeepers, Channelkeepers, Coastkeepers, Creekkeepers, Inletkeepers, Lakekeepers, Riverkeepers, Shorekeepers, Soundkeepers, and Waterkeepers ("U.S. Member Organizations"), and 15 affiliate organizations licensed by Waterkeeper in the United States ("U.S. Affiliate Organizations"). Our U.S. Member Organizations and U.S. Affiliate Organizations cumulatively have tens of thousands of individual members that live, work, and recreate on waterways and in watersheds across the United States, and whose interests are injured by regulatory actions that weaken protections for waters under the CWA. These include the U.S. Environmental Protection Agency's ("EPA") failure to revise effluent limitation guidelines ("ELGs") and associated effluent limitations,

and unreasonable delay in promulgating pretreatment standards, for slaughterhouses and rendering facilities (collectively, “MPP facilities”) in the Meat and Poultry Products industrial point source category. *See* 40 C.F.R. pt. 432.

6. Waterkeeper supports its U.S. Member Organizations and U.S. Affiliate Organizations, and their individual members, through coordinated litigation and other advocacy, as well as by providing a centralized hub for sharing scientific legal, and administrative resources with these organizations across the country; by expanding local Waterkeepers’ abilities to affect environmental compliance and policy on a national level; by sponsoring educational and capacity-building programs for U.S. Member Organizations and U.S. Affiliate Organizations; by providing legal support to these organizations; and by protecting and administering the trademarks covering “Waterkeeper” and the other “-keeper” names above.

7. The second class of Waterkeeper members is composed of over 15,000 individual supporting members who assist Waterkeeper through financial contributions. Waterkeeper supports these members by advocating on behalf of their clean water interests in local and national forums, including before legislative bodies, government agencies, and courts of law, and by keeping them informed about environmental issues that impact their communities and others around the country.

8. The interests of U.S. Member Organizations in watersheds impacted by slaughterhouse discharges—as well as our respective individual members’ interests—in clean water for drinking, fishing, swimming, aesthetic enjoyment, and conservation of aquatic species and wildlife—are injured by EPA’s failure to revise ELGs and unreasonable delay in promulgating pretreatment standards for MPP

facilities. Many of Waterkeeper's and our U.S. Member Organizations' individual members live, recreate, and work in watersheds that receive direct and indirect discharges of wastewater from MPP facilities. This wastewater contains nitrogen, phosphorus, pathogens, and other contaminants that can create toxic algal blooms, aesthetic problems, and fish kills, and render receiving waters unsafe for consumption, recreation, and wildlife. EPA's failure to revise ELGs and unreasonable delay in promulgating pretreatment standards necessary to protect human health, water quality, and aquatic resources injures our members' use and enjoyment of these waters.

9. The interests we seek to advance in this action fall squarely within Waterkeeper's mission, U.S. Member Organizations' missions, and U.S. Affiliate Organizations' missions, as well as within the interests of our respective members. Waterkeeper and our U.S. Member Organizations and U.S. Affiliate Organizations are steadfast and powerful voices for drinkable, fishable, and swimmable waters in 165 watersheds across the nation. The CWA is the bedrock of Waterkeeper's work to protect rivers, streams, channels, lakes, reservoirs, wetlands, bays, estuaries, and coastal waterways for the benefit of their communities. We work with broad coalitions of government, private, nonprofit, and individual partners to restore these waters—for example, by participating in CWA permitting processes. We utilize the CWA's citizen suit provisions to enforce CWA permits and regulatory standards against dischargers that would otherwise pollute our waterways in violation of the law. In these and in many other ways, Waterkeeper depends on the CWA to protect waterways and the people, including our members, who depend on clean water for

drinking, recreation, fishing, economic growth, food production, and other water uses that sustain our way of life, health, and well-being.

10. Waterkeeper has three primary advocacy campaigns under which we enforce and protect the CWA: the “Clean and Safe Energy,” “Pure Farms, Pure Waters,” and “Clean Water Defense” campaigns. Waterkeeper is a powerful advocate for controlling pollution as required by the CWA in each of these campaigns and regularly organizes and conducts training courses, workshops, webinars, and panels at topic summits, regional meetings, and Waterkeeper conferences. Additionally, Waterkeeper maintains information on our website devoted to each of these campaigns, including information on the regulation of pollution sources under the CWA; information on the impacts of pollution sources on waterways, communities, and fish, shellfish, and wildlife populations; and proposed legislative or regulatory measures that may impact CWA protections. Waterkeeper also advocates for more stringent regulation of pollution associated with municipal and industrial discharges of pollutants, including Concentrated Animal Feeding Operations (“CAFOs”), before state and national governmental agencies.

11. Much of our work involves efforts to ensure that pollution sources operate in compliance with regulations that are consistent with CWA requirements, and that these sources obtain and comply with National Pollutant Discharge Elimination System (“NPDES”) permits. Waterkeeper also routinely provides comments to EPA and other federal and state regulatory agencies on proposed regulations and permits affecting regulated pollution sources; advocates before state and local officials; and conducts educational outreach, training, and coordinated

advocacy efforts with and for its members. It is therefore critical to Waterkeeper's mission and to its members across the country that MPP facilities not be allowed to pollute waterways as a result of outdated ELGs, absent pretreatment standards, or inappropriately lax NPDES permits that are inconsistent with the requirements of the CWA.

12. In addition to our collective on-the-ground work to monitor and protect water quality, Waterkeeper and our U.S. Member Organizations and U.S. Affiliate Organizations often utilize litigation as a tool to ensure, among other things, that: CWA and state regulations are as stringent as the statutes require; state and federal laws that protect waterways are enforced; pollution sources operate under NPDES and/or state permits; and facilities comply with the terms of their permits. The issue of whether NPDES permits are consistent with the CWA and EPA regulations often arises in the context of these cases, especially when litigation involves discharges from a specific facility.

13. Waterkeeper has engaged in key litigation under each of its three advocacy campaigns. In addition to enforcement cases against individual facilities, Waterkeeper has participated in the vast majority of the national litigation involving federal regulation of CAFOs, including litigation challenging both of EPA's most recent major revisions to its CAFO regulations. *See, e.g., Waterkeeper All. v. EPA*, 853 F.3d 527 (D.C. Cir. 2017) (Waterkeeper was a petitioner); *Nat'l Pork Producers Council v. EPA*, 635 F.3d 738 (5th Cir. 2011) (Waterkeeper was an intervenor); *Waterkeeper All., Inc. v. EPA*, 399 F.3d 486 (2d Cir. 2005) (Waterkeeper was a petitioner). Waterkeeper has also participated in numerous major cases relating to

the regulation of, or pollution from, the extraction, transport, combustion, and disposal of fossil fuels. *See, e.g., Sw. Elec. Power Co. v. EPA*, 920 F.3d 999 (5th Cir. 2019) (Waterkeeper was a petitioner); *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414 (D.C. Cir. 2018) (Waterkeeper was an intervenor); *Riverkeeper v. Taylor Energy Co., LLC*, 309 F.R.D. 381 (E.D. La. 2015) (Waterkeeper was a plaintiff); *Cape Fear River Watch, Inc. v. Duke Energy Progress, Inc.*, 25 F. Supp. 3d 798 (E.D.N.C. 2014) (Waterkeeper was a plaintiff); *Commonwealth v. Shepherd*, 366 S.W.3d 1 (Ky. 2012) (Waterkeeper was an intervenor). Through our Clean Water Defense Campaign, Waterkeeper Alliance has participated in a wide range of other cases of national importance. *See, e.g., Sackett v. EPA*, No. 21-454, (2021), <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-454.html> (Waterkeeper is an amici); *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 138 S. Ct. 617 (2018) (Waterkeeper was a respondent); *Catskill Mts. Chptr. of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492 (2d Cir. 2017) (Waterkeeper was a petitioner); *Gulf Restoration Network v. McCarthy*, 783 F.3d 227 (5th Cir. 2015) (Waterkeeper was a plaintiff); *Nat'l Cotton Council of Am. v. EPA*, 553 F.3d 927 (6th Cir. 2009) (Waterkeeper was a petitioner).

14. Given the above-described examples of the participation of Waterkeeper in litigation, rulemaking proceedings, and permit challenges under the CWA, and the fact that its attorneys and staff are intimately involved in those actions relating to the regulation of pollution under CWA, Waterkeeper has particular expertise in the legal issues at hand and is well-situated to provide a comprehensive view of the legal and factual context of the issues presented in this case.

15. I am very familiar with the CWA and associated regulatory requirements, as well as the standards and duties that apply to EPA rulemaking in implementing the CWA. I have been in frequent communication with my legal staff about EPA's regulation of MPP facility pollution, and its implications have been discussed and evaluated by Waterkeeper and many of our U.S. Member Organizations. My understanding and opinions about EPA's failure to revise slaughterhouse ELGs or promulgate pretreatment standards, as well as the impacts those decisions will have on Waterkeeper, U.S. Member Organizations, and our respective members, have been informed by these discussions and our formal comments.

16. Congress passed the CWA in 1972 to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. *See* 33 U.S.C. § 1251(a). It has been well known for decades that if we hope to control water pollution, we must do so at its source. This concept was firmly established in the law with the passage of the CWA. To achieve this goal, the Act prohibits the discharge of pollutants into navigable waters except in compliance with the statute. *See id.* § 1311.

17. Point sources that discharge directly (or in a manner that is the functional equivalent of a direct discharge) into the nation's waters must obtain and comply with NPDES permits that contain, among other things, discharge limits designed to meet water quality standards and comply with ELGs. *Id.* §§ 1311(b), 1314(a). Point sources that discharge wastewater indirectly, through publicly owned treatment works ("POTWs"), such as municipal sewage treatment plants, must comply with national pretreatment standards to "control and prevent the discharge . .

. of any pollutant which interferes with, passes through, or otherwise is incompatible with [the relevant POTW].” *Id.* § 1314(g)(1); *see* 40 C.F.R. pt. 403.

18. The CWA requires EPA to promulgate ELGs for toxic, nonconventional, and conventional pollutants, which include pollutants discharged by MPP facilities such as nitrogen, ammonia, and pathogens. *See* 33 U.S.C. §§ 1311(b), 1314(b), and 1316(a)(1). The CWA also requires EPA to identify pollutants that “pass through” POTWs or otherwise “interfere with” the operation of POTWs and to promulgate and revise pretreatment guidelines and pretreatment standards. *See* 33 U.S.C. § 1314(g), 1317(b).

19. While the CWA has been effective in controlling pollution in numerous respects, too many of our major waterways remain impaired, and by some indicators, pollution of our nation’s waters appears to be increasing. For example, although EPA has not assessed water quality in a large percentage of our nation’s waters, the most recent available data from EPA show water pollution in assessed waters has impaired 588,173 river/stream miles and 13,208,917 lake acres.¹ By comparison, EPA’s 2004 CWA Section 305b Report showed that there were 246,002 miles of impaired rivers/streams and 10,451,402 impaired lake acres as of 2004.²

20. EPA reports that “states have consistently identified agricultural sources – including CAFOs – as a leading contributor of water quality impairment in

¹ *See National Summary of State Information: Water Quality Data*, EPA, https://web.archive.org/web/20220423233434/https://ofmpub.epa.gov/waters10/attains_nation_cy.control (last visited Aug. 29, 2022).

² *See* EPA, National Water Quality Inventory: Report to Congress, 2004 Reporting Cycle (2009), <https://www.epa.gov/waterdata/2004-national-water-quality-inventory-report-congress> (last visited Aug. 29, 2022).

state assessed surface waters. Pollutants associated with animal waste primarily include nutrients – mainly nitrogen and phosphorus. However, animal waste may also include organic matter, solids, pathogens, pesticides, antibiotics, hormones, salts and various trace elements (including metals).”³ Agricultural pollution can harm ecosystems and human health and can result in fish kills, algal blooms, contamination of drinking water sources, and transmission of disease-causing pathogens. This type of pollution is impacting many of the watersheds protected by Waterkeeper’s U.S. Member Organizations, including large waters of national importance such as Chesapeake Bay, the Gulf of Mexico, the Cape Fear Estuary, and Lake Erie, as well as untold numbers of smaller but equally important waterways like the Black Warrior River in Alabama and the Grand River in Oklahoma.

21. Direct and indirect pollution discharges from MPP facilities are a major source of this pollution in many U.S. Member Organization watersheds. High levels of phosphorus, nitrogen, ammonia, pathogens, suspended solids, and other pollutants are commonly found in discharges from MPP facilities and can adversely impact waterways, aquatic life, and water quality essential for beneficial use of our nation’s waters.⁴ MPP facilities also discharge oxygen-demanding pollutants that can reduce available aquatic habitat and cause fish kills by depleting oxygen levels in

³ EPA, Compliance and Enforcement National Priority: Concentrated Animal Feeding Operations (CAFOs), at 1 (Dec. 2009), <https://downloads.regulations.gov/EPA-HQ-OW-2011-0188-1431/content.pdf>.

⁴ See EPA, Technical Development Document for the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (40 CFR 432)(2004), https://www.epa.gov/sites/default/files/2015-11/documents/meat-poultry-products_tdd_2004_0.pdf.

waterways.⁵

22. EPA's failure to revise slaughterhouse ELGs and its unreasonable delay in promulgating slaughterhouse pretreatment standards is inconsistent with the objective and requirements of the CWA. For example, MPP facilities are the second largest source of NPDES-permitted nitrogen pollution in the country, and the current ELGs allow nitrogen discharges at levels well in excess of levels achieved by MPP facilities using better and readily available technology.⁶

23. EPA's failure to revise slaughterhouse ELGs and unreasonable delay in promulgating pretreatment standards causes injury to the interests of Waterkeeper and its U.S. Member Organizations, as well as to our respective members, by allowing continued pollution of waters used for drinking water, fishing, recreation, and other important uses. Examples of the ways in which the EPA's failure to revise ELGs or promulgate pretreatment standards impacts Waterkeeper, U.S. Member Organizations, and our respective members are illustrated in detail in separately executed individual member declarations from Black Warrior Riverkeeper, Waterkeepers Chesapeake, and Cape Fear River Watch, filed in this matter.

24. Black Warrior Riverkeeper, Inc. is a nonprofit membership corporation founded in 2001 with a mission to protect and restore the Black Warrior River and its tributaries in Alabama. Black Warrior Riverkeeper has over 6,000 members. Black Warrior Riverkeeper has been a licensed member of Waterkeeper Alliance since

⁵ *Id.*

⁶ See EPA, *Preliminary Effluent Guidelines Program Plan 14* (2019), at 3-4–3-5, figs. 3- 1 & 3-2, https://www.epa.gov/sites/production/files/2019-10/documents/prelim-eg-plan-14_oct-2019.pdf.

September 25, 2001. Black Warrior Riverkeeper is dedicated to the preservation, protection, and defense of the environment. Black Warrior Riverkeeper actively supports effective implementation of environmental laws, in part, by patrolling the Black Warrior River watershed by land, water, and air; identifying pollution problems; responding to citizen complaints; researching and analyzing environmental permits; collecting pollution samples for laboratory analysis; educating the public about the beauty of the river and threats to it; working to empower stakeholders throughout the watershed; advocating compliance with environmental laws; and working on finding solutions to pollution problems.

25. Nelson Brooke has served as the Black Warrior Riverkeeper since 2004 and has been a member of Black Warrior Riverkeeper since 2003. The Tyson Blountsville poultry slaughterhouse (NPDES Permit AL0001449) in Blountsville, Alabama discharges nitrogen, phosphorus, pathogens, and other pollutants into Graves Creek, which flows into the Locust Fork of the Black Warrior River less than two miles downstream. Graves Creek and the Locust Fork are highly valued, scenic waterways that are used for recreation, fishing, and as a water supply. The pollution discharges from the Tyson Blountsville slaughterhouse to Graves Creek and the Locust Fork are causing nutrient and bacteria impairment, endangering aquatic life and public safety, and threatening endangered species reintroduction and recovery efforts. These discharges are adversely impacting Black Warrior Riverkeeper members' use and enjoyment of the Locust Fork to swim, fish, paddle, and otherwise use and enjoy these waterways, including adversely impacting the interests of Nelson Brooke, as set forth in a separate declaration filed in this matter.

26. Waterkeepers Chesapeake is a not-for-profit corporation organized under the laws of the State of Maryland. It is a coalition of 17 independent U.S. Member Organizations working for clean water in and around Chesapeake Bay. Waterkeepers Chesapeake's mission is to make the waters in the Chesapeake Bay watershed swimmable, fishable, and drinkable. Waterkeepers Chesapeake has been a licensed Waterkeeper Regional Entity and a licensed U.S. Member Organization since May 12, 2014. The U.S. Member Organizations that participate in Waterkeepers Chesapeake use grassroots action and advocacy to protect their respective communities and waters. These U.S. Member Organizations also have individual members. Waterkeepers Chesapeake's Board members and contributors, and the members of the U.S. Member Organizations that participate in Waterkeepers Chesapeake, live, work, and recreate in and around the Chesapeake Bay watershed and regularly consume drinking water from public water systems taking water from the Chesapeake Bay system. Pollution from industrial animal agriculture facilities, including MPP facilities, is a significant problem throughout the Chesapeake Bay watershed, and it harms Waterkeepers Chesapeake, the U.S. Member Organizations that participate in Waterkeepers Chesapeake, and their respective members as set forth in the separately filed declarations of Robin Broder and Ted Evgeniadis.

27. Cape Fear River Watch ("CFRW") is a § 501(c)(3) nonprofit public interest organization headquartered in Wilmington, North Carolina. CFRW is an official Riverkeeper organization and U.S. Waterkeeper Member Organization licensed by the Waterkeeper Alliance since 1994. CFRW's mission is "to protect and improve the water quality of the Cape Fear River Basin through education, advocacy

and action.” CFRW has over 1,000 current annual members, including members who live near and recreate on, as well as obtain their drinking water from, the Cape Fear River. CFRW has members throughout the Cape Fear River Basin. CFRW, Cape Fear Riverkeeper, and CFRW’s members are injured by pollution discharges from MPP facilities—including the Smithfield Tar Heel Plant, which contributes high levels of nitrogen and bacteria to the Cape Fear River—as set forth in the separately filed declaration of Kemp Burdette.

28. Some U.S. Member Organization watersheds are also impacted by discharges from MPP facilities operating under the pretreatment program. Because EPA has failed to adopt pretreatment standards for MPP facilities, pollution discharges are controlled by opaque state and local permitting, regulations, and ordinances. Information about the discharges, and any limits imposed upon them, is often not readily available and accessible to the public like it is for direct dischargers that have NPDES permits and are required to file discharge monitoring reports that are readily available to the public.

29. For example, Local Environmental Action Demanded Agency, Inc. (“L.E.A.D. Agency”), an Oklahoma non-profit corporation, has been a licensed U.S. Member Organization for over 15 years through its Grand Riverkeeper program (“Grand Riverkeeper”). The mission of Grand Riverkeeper is to protect and restore the Grand River watershed, which is located in the northeastern portion of Oklahoma and encompasses the Neosho and Spring Rivers and their tributaries. The Neosho and Spring Rivers are important water resources to the nine tribes of the Inter-Tribal Council of North Eastern Oklahoma and other subsistence and sport users, and

Grand Lake is an important resource to the Cherokee Nation, in whose jurisdiction it is located. Spring River is impacted by excessive nutrient loading,⁷ and Grand Lake, an important drinking water reservoir and recreational resource in Oklahoma, is impaired by low dissolved oxygen and periodic toxic algal blooms due to nutrient pollution.⁸ L.E.A.D. Agency has worked to address sources of nutrient pollution in the Grand River watershed for more than two decades.

30. Butterball, LLC (“Butterball”) operates a turkey slaughterhouse that discharges pollution into the Grand River watershed. The Grand River watershed is also impacted by pollution from at least two other slaughterhouses: Tyson Chicken, Inc. in Noel, Missouri (MO0002500), which discharges to the Elk River, and Simmons Foods (“Simmons”) in Southwest City, Missouri (MO0036773), which discharges to Cave Spring Branch—a tributary of Honey Creek. The Elk River and Honey Creek are both tributaries to Grand Lake.

31. Within the Grand River watershed, Butterball discharges 757,043 gallons of process wastewater per day and 15,141 gallons of non-process wastewater per day continuously into the wastewater treatment plant for the City of Carthage,

⁷ See Mo. Dep’t of Conserv., *Spring River Watershed Inventory and Assessment*, <https://mdc.mo.gov/sites/default/files/mdcd7/watersheds/SpringRiverWatershed370.pdf>.

⁸ See Kan. Watershed Restoration & Prot. Strategy, Spring River WRAPS—9 Element Watershed Plan Summary, https://kswraps.org/wp-content/uploads/2020/10/springriver_plansummary.pdf; see also Grand River Dam Auth., Water Quality Standards and Hydropower Release (2018), <https://www.owrb.ok.gov/reports/pdf/2018WaterQualityStandardsAndHydropowerRelease.pdf>; *Blue Green Algae Level High at Fly Creek Arm of Grand Lake*, Tahlequah Daily Press (June 19, 2017), https://www.tahlequahdailypress.com/news/lifestyles/blue-green-algae-level-high-%20at-fly-creek-arm-of-grand-lake/article_bb446880-5529-11e7-ae3e-537a84b6c632.html.

Missouri.⁹ According to the NPDES permit for Carthage's wastewater treatment plant (MO0039136), Butterball is subject to unspecified Local Limits on its discharge, as opposed to Categorical Pretreatment Standards (i.e., uniform pretreatment standards for slaughterhouses adopted by EPA).¹⁰ Little additional information on Butterball's discharge is available, despite the fact that the facility is by far the largest industrial pretreatment discharger to Carthage's wastewater treatment plant. The Carthage wastewater treatment plant discharges wastewater with high levels of pollution associated with MPP facilities to Spring River under an NPDES permit that places no effluent limitations on many of those pollutants. For example, Carthage's effluent testing in its NPDES permit shows that it is discharging wastewater containing high levels of total nitrogen (10.5 mg/l) and total phosphorus (1.6 mg/l), but the permit only requires monitoring and reporting.¹¹ As of 2021, Carthage reports to EPA that it discharged 107,839 pounds of nitrogen, 29,971 pounds of oil and grease, and 9,756 pounds of phosphorus to Spring River each year.¹² Spring River flows into Oklahoma, joins with the Neosho River, and then flows into the Grand River and Grand Lake.

⁹ See Mo. Dep't of Natural Res., NPDES Permit for City of Carthage Wastewater Treatment Permit, at 72 (*modified* 2021), <https://dnrservices.mo.gov/env/wpp/permits/issued/docs/0039136.pdf>.

¹⁰ *Id.*

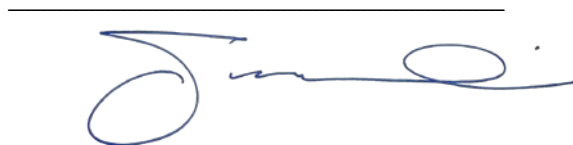
¹¹ *Id.* at 100–101.

¹² See Pollutant Loading Report (DMR) Carthage WWTP, EPA ECHO, https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?permit_id=MO0039136&year=2021 (last visited July 22, 2022).

33. Collectively, the pollution described above harms Waterkeeper, U.S. Member Organizations, and our respective members and contributors, and these examples illustrate the far-reaching adverse impacts of EPA's failure to update MPP facility ELGs or promulgate slaughterhouse pretreatment standards on Waterkeeper, U.S. Member Organizations, and our respective members.

34. If granted, the relief sought in this litigation will redress the injuries to Waterkeeper, our U.S. Member Organizations, and our individual members by ensuring that direct and indirect pollution discharges from MPP facilities are regulated consistent with the CWA. This relief will help to ensure that waters utilized by our members across the country will be protected, and our members' interests in clean water for swimming, drinking, fishing, aesthetic enjoyment, and conservation of aquatic species and wildlife will not be injured as a result of inadequately regulated MPP facility pollution discharges and the resulting contamination of these waters.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 4th day of August, in New York, New York.

A handwritten signature in blue ink, appearing to read "Daniel E. Estrin", is written over a horizontal line.

Daniel E. Estrin

Exhibit 6

DECLARATION OF NELSON BROOKE

I, NELSON BROOKE, declare and state as follows:

1. I am a resident of Jefferson County, Alabama and a native of Birmingham, Alabama. I have hunted, fished, boated, canoed, and swam in and along the Black Warrior River and its tributaries for over 36 years, since I was seven years old. I also recreate in and around other waterbodies within the Black Warrior River watershed, including the Locust Fork, a tributary of the Black Warrior River, and Graves Creek, a tributary of the Locust Fork. Graves Creek receives polluted wastewater and stormwater from a poultry slaughterhouse located in Blountsville, Alabama and operated by Tyson Farms, Inc. (“Tyson Blountsville”), and that polluted wastewater and stormwater eventually make their way into the Locust Fork and the Black Warrior River.

2. I am the Riverkeeper for Black Warrior Riverkeeper, Inc. (“Riverkeeper”), and I have held this position since 2004. Riverkeeper is a nonprofit membership corporation that works to protect and restore the Black Warrior River and its tributaries. We were founded in 2001, and today we have over 6,000 members. In addition to serving as Riverkeeper, I am also a member of Riverkeeper. I have been a Riverkeeper member since 2003.

3. Black Warrior Riverkeeper members are the bedrock of the organization. Membership is attained by volunteering and/or donating money. We hold polluters accountable by patrolling the river and documenting pollution issues, educating the public, and providing exposure through media, in state

administrative processes, and in federal court. We advocate for our members' interests in clean water, and we challenge projects and polluters who threaten to harm the river and its tributaries. We encourage members to contact us with their pollution concerns. We are a resource for information about pollution sources, and we respond to complaints submitted by the public. We periodically survey our membership to help determine organizational priorities, and members have a vote in Riverkeeper's Board of Directors elections.

4. Riverkeeper is a licensed member of Waterkeeper Alliance, Inc. ("Waterkeeper"). We joined Waterkeeper on September 25, 2001. Waterkeeper is a nonprofit organization that fights for every community's right to drinkable, fishable, swimmable water. Through Waterkeeper, Riverkeeper is linked to more than 300 Waterkeeper groups on the front lines of our global environmental crisis, patrolling and protecting more than 2.5 million square miles of rivers, lakes, and coastal waterways on six continents. Through my role as Riverkeeper, I participate in Waterkeeper membership meetings, vote in elections for the President of Waterkeeper, and vote in elections for the Waterkeeper Council, which is composed of up to 30 Waterkeeper member organization representatives. I also work with and support other Waterkeeper member organizations and join with Waterkeeper Alliance and other Waterkeeper member organizations in joint advocacy actions, webinars, trainings, and listservs.

5. As Riverkeeper, I am the spokesman for the Black Warrior River watershed. I patrol the river and its tributaries, educate the public, and hold

polluters accountable. To identify threats to water quality, I respond to citizen complaints, research and analyze polluters' permits, document pollution problems, and collect pollution samples for laboratory analysis. Through community events and outreach initiatives, I educate the public about the beauty of the river and increase public awareness about environmental threats. I also work to empower stakeholders throughout the watershed, and I work to find solutions to pollution problems.

6. Riverkeeper is dedicated to the preservation, protection, and defense of the environment, and we actively support the effective implementation and enforcement of environmental laws, including the Clean Water Act, Endangered Species Act, National Environmental Policy Act, Resource Conservation and Recovery Act, and Surface Mining Control and Reclamation Act, as well as their regulations. We are particularly interested in the implementation and enforcement of these laws and regulations as they apply to activities within the Black Warrior River watershed.

7. The Black Warrior River system is one of Alabama's greatest natural resources, flowing 300 miles from the southern Appalachian Mountains to the Tombigbee River in Demopolis. Over 1 million Alabamians live in the Black Warrior River watershed, including people in Birmingham and Tuscaloosa. The Black Warrior River watershed encompasses over 6,000 square miles, and it contains more than 16,000 miles of mapped streams. Three Black Warrior tributaries are drinking water sources for one of Alabama's largest cities,

Birmingham. The North River, a tributary to the Black Warrior, is Tuscaloosa's primary drinking water source. The Locust Fork, a major tributary of the Black Warrior River, is one of the few remaining free-flowing rivers in Alabama (except for a few old mill dams). Graves Creek flows into the Locust Fork less than two miles downstream of Tyson Blountsville.

8. The Locust Fork is my favorite river in the Black Warrior River system. It follows the path of an ancient river, which began flowing before the Appalachian Mountains formed more than 300 million years ago. Over time, the Locust Fork and its tributaries have carved a path through the surrounding ridges, resulting in scenic rock bluffs, boulders, rapids, and shoals throughout the river's upper reaches. As a result of these spectacular features, the Locust Fork is a popular and well-loved destination. I regularly explore, paddle, and patrol areas of the Locust Fork. Like many Riverkeeper members, I visit the Locust Fork to enjoy unique natural vistas and to engage in activities including canoeing, boating, fishing, photography, tubing, swimming, and wildlife watching.

9. Graves Creek, a tributary of the Locust Fork, is another beautiful stream in the Black Warrior River system. Many people use Graves Creek for recreational activities, and many visit to view the Locust Fork's historic covered bridges. In particular, Mardis Mill Falls on Graves Creek is a very popular destination. Generations of families and many Riverkeeper members use this area for swimming, fishing, picnicking, and simply relaxing by the water. It is also a popular location for whitewater kayakers who like to run the creek and drop over

Mardis Mill Falls after big rain events.

10. In addition to my work as the Black Warrior Riverkeeper, I am an active member of other nonprofit organizations working to protect the Black Warrior River and its tributaries, including the Locust Fork and Graves Creek. For instance, I have been a member of the Friends of the Locust Fork River, Inc. (“FLFR”) for many years. Like Riverkeeper, FLFR is dedicated to preserving the Locust Fork in all its natural beauty. FLFR and its members, including me, strive to limit pollution and keep the river in a natural state, so that future generations can enjoy the beauty, wildlife, and recreational opportunities provided by this wonderful Alabama treasure.

11. As Riverkeeper, I am aware that Tyson Blountsville discharges wastewater with high levels of nitrogen, phosphorus, bacteria, and other pollutants into Graves Creek, approximately one-half mile upstream of Mardis Mill Falls. I am also aware of information indicating that these discharges have negatively affected water quality in Graves Creek and the Locust Fork. For example, Riverkeeper member and Samford University biologist Dr. Betsy Dobbins has conducted research demonstrating that the wetlands between Tyson Blountsville and Graves Creek serve as a sink for phosphorus, including phosphorus discharged by Tyson Blountsville; during periods of high water flow, these wetlands discharge phosphorus into Graves Creek and, ultimately, into the Locust Fork and Black Warrior River. In addition, Riverkeeper’s Staff Scientist John Kinney has recorded nitrate levels in Graves Creek that exceed 30

milligrams per liter. And FLFR volunteers, working in association with Alabama Water Watch, have found that E. coli levels in Graves Creek near Mardis Mill Falls frequently exceed Alabama's acute water quality criteria for E. coli, meaning that Graves Creek is often unsafe for certain uses, such as swimming.

12. Pollutants from Tyson Blountsville contribute to poor water quality in the Locust Fork, which impedes Riverkeeper members' and my ability to enjoy this great river for fishing, paddling, swimming, and other activities. Bacteria is my number one concern with regard to recreation. Along with many other Riverkeeper members, I avoid swimming and engaging in other activities that could lead to contact with the water in Graves Creek, because I am afraid that I could get sick as a result of exposure to bacteria from Tyson Blountsville. One Riverkeeper member stopped kayaking over Mardis Mill Falls, because he got sick after paddling. I do not want to get sick, and I certainly do not want my family or friends to get sick either. Most other Riverkeeper members feel the same way, and we have changed the way we use the river as a result.

13. Riverkeeper members and I are also harmed by bad smells, cloudy and foamy water, algae blooms, and lyngbya algae infestations—which, individually and in combination, can make recreating in and near Graves Creek, the Locust Fork, and the Black Warrior River very unpleasant. I receive complaints from paddlers about cloudy, foamy, stinky water in the Locust Fork, and I know that coming into contact with water like that really puts a damper on fully enjoying yourself while paddling. I also receive complaints about filamentous

algae, which often grows over the rocks in Graves Creek; this algae is unsightly, and it impedes users' ability to enjoy the water.

14. Not only does poor water quality resulting, in part, from Tyson Blountsville's discharges raise concerns about human health and safety, it also threatens aquatic life. I know that slaughterhouse pollution can be devastating to aquatic life; on June 6, 2019, a rendering plant operated by Tyson Foods in Hanceville, Alabama had a wastewater spill which caused a massive fish kill in the Mulberry Fork of the Black Warrior River.

15. I am concerned that Tyson Blountsville's discharges could cause adverse impacts throughout the aquatic food chain, starting with macroinvertebrate insects; moving through darters, minnows, snails, salamanders, mussels, and crayfish; and continuing all the way up to predator fish and turtles. These adverse impacts would make it more difficult for me and other Riverkeeper members to perform scientific surveys, see rare animals, and take successful fishing trips. The upper portions of the Locust Fork are known for excellent fishing, and fishing and wildlife watching are some of the most enjoyable activities for me and other Riverkeeper members. Pollution from Tyson Blountsville already has harmed us by preventing us from enjoying the river in the way we would like, and I am worried that things will only get worse.

16. As a fisherman, conservationist, and photographer, I care deeply about the health and diversity of wildlife in Graves Creek, the Locust Fork, and the Black Warrior River. I am particularly concerned that Tyson Blountsville's

discharges could harm the rare aquatic species that live in the Locust Fork, such as threatened and endangered species like the Black Warrior waterdog, flattened musk turtle, plicate rocksnail, Cahaba shiner, numerous species of mussels, and more.

17. I am particularly concerned about the survival of the Black Warrior waterdog (*Necturus alabamensis*), an iconic aquatic salamander endemic to the Black Warrior River system. The Black Warrior waterdog has experienced significant declines throughout the upper Black Warrior River watershed. The U.S. Fish and Wildlife Service designated the Black Warrior waterdog as endangered, in part, because of excessive nutrient pollution. The Locust Fork is officially designated Critical Habitat for the Black Warrior waterdog, and I believe the Black Warrior waterdog needs good water quality and a healthy habitat to survive.

18. Riverkeeper members and I derive joy just from knowing that these rare species call the Locust Fork and Black Warrior River watershed home. We work to preserve the health and diversity of the entire Black Warrior watershed, and we want these species to recover and thrive, now and for future generations.

19. Tyson Blountsville operates under a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Alabama Department of Environmental Management (“ADEM”). Tyson Blountsville’s NPDES permit contains limits on the levels of pollutants the facility may discharge into Graves Creek. These limits are based on effluent limitation guidelines (“ELGs”) developed by the U.S. Environmental Protection Agency (“EPA”). Tyson Blountsville violated

its NPDES permit eight times between January 2016 and June 2018. But even when Tyson Blountsville is in compliance with its permit, it still discharges pollution that degrades water quality in Graves Creek and, ultimately, in the Locust Fork and the Black Warrior River. For example, in 2021 alone, Tyson Blountsville discharged 178,585 pounds of nitrogen and 164,806 pounds of total suspended solids into Graves Creek.

20. As a member of Riverkeeper, I am aware that EPA has, for many years, failed to revise ELGs for slaughterhouses. Based on my experience as Riverkeeper and as a user of the Black Warrior River system, I believe that EPA's current ELGs are insufficiently strict, because Tyson Blountsville is allowed to discharge pollution at levels that degrade water quality and injure me and other Riverkeeper members.

21. I find EPA's failure to revise ELGs for slaughterhouses particularly upsetting because I know that better, more stringent pollution control technology exists, and Tyson Blountsville can improve their wastewater treatment system to reduce discharges of nitrogen, phosphorus, and bacteria. Other slaughterhouses, including facilities operated by Tyson, have already done this. Based on my communications with Tyson, however, I do not believe that Tyson will implement improved pollution control technology at Tyson Blountsville, beyond what it agreed to with the ADEM, unless and until EPA requires it to do so.

22. If EPA required Tyson Blountsville to implement more stringent pollution control technology, Riverkeeper members and I would feel more confident

using Graves Creek, the Locust Fork, and the Black Warrior River. We would worry less about our health and the health of the environment. But if EPA does not update ELGs, Riverkeeper members and I will continue to worry about poor water quality putting us and the environment at risk. Having to think twice about whether or not I may get sick after spending time in some of my favorite places is not fair, and it puts a damper on the experience.

23. Waterkeeper's litigation challenging EPA's failure to revise pollution control standards for slaughterhouses represents my interests in the utmost protection of the Locust Fork and the Black Warrior River system. The resolution of this litigation in favor of Waterkeeper Alliance will serve to protect my interests and redress my injuries, as well as the interests of Riverkeeper and its members.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 5th day of August 2022, in Jefferson County, Alabama.

A handwritten signature in blue ink, reading "Nelson Brooke", written in a cursive style.

Nelson Brooke

Exhibit 7

DECLARATION OF CHRIS HOLBEIN

I, CHRIS HOLBEIN, declare and state as follows:

1. I am the Public Policy Director of Farm Animal Protection for the Humane Society of the United States (“HSUS”). I specialize in addressing the implications of intensive animal agriculture. I also play a role in HSUS’s efforts to analyze and shape public policy concerning agriculture, health, and nutrition. In my capacity with the organization, I am familiar with HSUS’s structure, function, purpose, and membership.

2. HSUS is a nonprofit animal protection organization headquartered in Washington, D.C. and incorporated in Delaware. HSUS is the largest animal protection organization in the United States, representing millions of members and constituents who participate in and influence organizational activities. Since its establishment in 1954, HSUS has worked to combat animal abuse, including the abuse of animals raised for food, and to promote animal welfare. In furtherance of these goals, HSUS conducts mission-specific campaigns; advocates for better laws to protect animals and the environment, and to empower its membership; and advocates against practices that injure, harass, or otherwise harm animals, including farm animals and wildlife. Specifically, in connection with its goal of creating a humane and sustainable world for all animals—including people and their communities—HSUS endeavors to ensure that its members are aware of threats to wildlife and their habitat posed by releases of dangerous water pollutants from slaughterhouses and rendering facilities (collectively, “MPP facilities”).

Likewise, HSUS works to ensure its members are aware of, and not injured by, MPP facilities' release of hazardous water pollutants.

3. HSUS's mission is to reduce animal suffering and create meaningful societal change by actively advocating against animal cruelty, working to enforce existing laws, promoting sensible public policies, and educating the public about animal issues. As part of its mission, HSUS actively advocates against inhumane practices that harm farm and wild animals and wildlife habitats. HSUS's Farm Animal Protection campaign works to inform its supporters and the public about the threats caused by such practices.

4. HSUS opposes extreme practices of industrialized "factory farms," which cause environmental and public health harms experienced by communities where these operations exist. Very often, systemic mistreatment of farm animals is closely connected to some of the gravest threats to wildlife, the environment, and human health, including water contamination. Indeed, some of the most common and dangerous environmental and human health threats are exacerbated by cruel treatment of animals, including predictable increases in the production of water pollutants from industrialized animal slaughterhouse operations, due to the systemic nature of ever more rapidly processing huge numbers of animals who often expel waste and other fluids during this process. This nexus between animal welfare, human health, and the environment is, and long has been, a major focus of HSUS's work.

5. HSUS invests substantial organizational resources in researching the

impacts described above and in educating its members and supporters about industrialized agriculture's impacts on animal welfare, human health, the environment, and aquatic animals and other wildlife. HSUS has a long, well-established record of educational, legislative, and advocacy efforts related to farm animals, water pollution from factory farms and slaughter facilities, wildlife and biodiversity, and public health. HSUS employees have published numerous whitepapers and articles on the environmental and public health implications of large-scale animal production and slaughter.¹

6. HSUS staff and its members have expended hundreds of hours working to further legal protections against inhumane practices that harm farm animals, including by mobilizing support for enhanced welfare regulations, and for improved regulation of MPP facilities' impacts on the environment and public health. This has included drafting farm animal-friendly legislation and bringing strategic litigation to advance these goals. HSUS also regularly comments on, or otherwise participates in, agency decision-making and other agency actions. Moreover, HSUS has advocated for more humane and water-efficient systems in MPP facility operations, like the controlled-atmosphere killing system used in the slaughter of broiler chickens.

7. HSUS has a farm animal welfare campaign that is strongly committed to working with and educating its members and the public about pollution from

¹ See, e.g., *The Science Behind Farm Animal Welfare*, <https://www.humanesociety.org/farm-animal-welfare> (last visited Mar. 4, 2022); *Improving the Lives of Farm Animals*, <https://www.humanesociety.org/all-our-fights/improving-lives-farm-animals> (last visited Mar. 4, 2022).

industrialized agriculture, including the consequences of that pollution on local communities.

8. HSUS's members and supporters reside and work in communities throughout the United States that are, or may be, impacted by the release of hazardous water pollution from MPP facilities. For instance, water quality problems and noxious odors caused by this pollution are bothersome to HSUS members and prevent them from engaging in various outdoor or water-based recreational activities. These members are concerned about the negative impacts of MPP facility pollution on their health and the health of their families and communities. Knowing that EPA has placed adequate limitations on the release of effluent waste from these facilities, including on the type and amount of the releases, would allow HSUS's members and supporters to make important, informed choices about their health and safety. Moreover, adequate limitations would lessen the concerns of members and mitigate their harms by improving water pollution conditions.

9. Even though current pollution control standards for MPP facilities are insufficiently protective, EPA has failed to revise existing effluent limitation guidelines for decades in some circumstances, and it has never promulgated pretreatment standards specific to MPP facilities. HSUS and its members believe that EPA's failure to act and unreasonable delay with respect to these pollution control standards is inconsistent with the Agency's mandate under the Clean Water Act. As a result of EPA's decision, HSUS's members will continue to be harmed by

high levels of pollution from MPP facilities, impairing their interests.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 21st day of December 2022, in Pittsboro, North Carolina.

A handwritten signature in black ink, appearing to read "Chris Holbein", written in a cursive style.

Chris Holbein

Exhibit 8

DECLARATION OF NANCY THOMPSON

I, NANCY THOMPSON, declare and state as follows:

1. I am a member of the Humane Society of the United States (“HSUS”) and have been a member of HSUS for at least five years. I am an HSUS member because I believe strongly in the humane treatment of animals, including animals in food production. I associate with HSUS because it represents my interests in a variety of ways, including when it submits comments to the federal government on issues relating to animal welfare, livestock production, and environmental impacts. I often participate in HSUS action items. For instance, I regularly sign my name to e-letters in support of HSUS’s efforts to protect animals and the environment.

2. I live in Ottumwa, Iowa. Apart from about one year, I have lived in Ottumwa my whole life, and I have no intention of leaving. I was raised on a farm that my family rented just outside of town. Throughout my years growing up, I would often turn to nature as a place that I knew I could go for comfort, contemplation, and beauty. During those times, I would explore the areas in and around where I lived in Ottumwa, and elsewhere. And today, over 50 years later, I still do.

3. Ottumwa, Iowa is located on the Des Moines River and has many ideal locations for outdoor recreation, nature walking, and bird watching. I am an avid bird watcher, and I look forward to seeing a wide array of birds in the area. I believe that biodiversity and healthy ecosystems have an inherent value that must be

protected. Being able to enjoy nature and see the bountiful animals and natural features that we share this earth with brings me peace and joy.

4. It pains me to think of the people and corporations that take biodiversity and a healthy environment—for people and wildlife—for granted. I often see changes that result from human activities in the natural environment that surrounds me, and I am concerned about how these changes will affect my ability to view and enjoy nature, native wildlife, and healthy, functioning ecosystems. I am extremely concerned, for instance, about the growing loss of natural wetlands around where I live, much of which happens when wetlands are filled to make way for additional farm fields.

5. A JBS/Swift Pork slaughter operation (“Ottumwa Plant” or “Plant”) is located on the edge of downtown Ottumwa and is situated on the Des Moines River.¹ It is also directly across the highway from the Gray Eagle Wildlife Reserve. As described in more detail below, I enjoy bird watching at this Reserve, especially during migration times.

6. I currently live about 10 miles south of the Ottumwa Plant. When I drive around Ottumwa, I try to go out of my way to avoid having to drive past the Ottumwa Plant. I do this for many reasons, including because the plant emits an extremely strong odor that, at times, I would describe as horrendous. By avoiding

¹ See NPDES Permit IA0060569, <https://echo.epa.gov/detailed-facility-report?fid=110000415220> (last visited June 10, 2022).

driving past the plant, I am able to avoid acutely experiencing that odor, but in truth the odor often permeates the whole town.

7. I know that the U.S. Environmental Protection Agency (“EPA”) has failed for years to update national water pollution control standards for Meat and Poultry Products facilities (“MPP facilities”) such as the Ottumwa Plant,² and it has delayed establishing standards for MPP facilities that send their wastewater to sewage plants before it is discharged into rivers or streams.

8. I am aware that the Ottumwa Plant produces a great deal of wastewater and has a history of spills into neighboring waterways.³ I am also aware that in November of 2021 the U.S. Department of Agriculture, Food Safety and Inspection Service invited the Ottumwa Plant to apply for permission to operate at much higher speeds than is generally allowed by federal regulations, which would allow the plant to slaughter far more pigs per hour than the plant has been allowed to before.

9. I am concerned about aesthetic harm to me from the current level of wastewater and water pollution from the Ottumwa Plant, and I am concerned about the increased water pollution that would accompany an increased number of pigs slaughtered at the Ottumwa Plant—things that will harm my personal health and

² See *id.* (noting that the Ottumwa Plant discharges directly into the Des Moines River below Whitebreast Creek).

³ See, e.g., *Cargill Ottumwa Plant Had Long History of Clean Water Act Violations Prior to March 3 Spill*, Iowa Citizens for Cmty. Improvement, <http://iowacci.org/in-the-news/cargill-ottumwa-plant-had-long-history-of-clean-water-act-violations-prior-to-march-3-spill/> (last visited July 23, 2020).

recreation interests. I am further concerned about the current level of, and potential increase in, odor and other air and water quality issues that I believe accompany slaughter activities at the Ottumwa Plant—things that do and will continue to, again, harm my personal health and recreational interests.

10. I am also concerned that EPA's failure to update and publish appropriate standards for MPP facilities, including the Ottumwa Plant, will negatively affect my recreational and aesthetic interests. When I am driving on the highway, I can see a portion of the Ottumwa Plant where it appears that wastewater, or some other type of waste, is stored in a large concrete pool. Sometimes this container is covered, but when it isn't, I can see it is full of an awful smelling sludgy liquid. I do not like seeing this storage structure, and I do not want to see any expansion in its footprint or use.

11. I am an avid equestrian and have been for most of my life. I believe that riding teaches a person compassion for other animals, and it provides a good opportunity to get out in nature, for example by riding on trails. Riding is extremely important to me, but my enjoyment is reduced knowing that the surrounding environment in which I ride is being polluted by the Ottumwa Plant. If the pollution increased or even just continued at the current levels, it would be further injurious to my enjoyment of riding and riding activities.

12. Currently, I do some of my horseback riding in Farmington, a town south of Ottumwa. The riding and camping facility that I go to in Farmington is located on the Des Moines River, downstream of the Ottumwa Plant. Because EPA

has not published pretreatment standards or revised water pollution control standards for MPP facilities, I am concerned about the current levels of waste and wastewater produced by the Ottumwa Plant, and how the Plant disposes of that waste and wastewater. I am especially concerned about whether the effluent that the Plant discharges into the Des Moines River harms water quality and aquatic species' health both locally in Ottumwa and downstream in Farmington. Additional impairment to the river would harm my aesthetic and recreational enjoyment of this resource.

13. Visiting the Des Moines River and surrounding natural areas also provides me the perfect opportunity to watch wildlife and birds. I deeply enjoy bird watching. I regularly carry binoculars in my car, and I am always excited when I spot and have the opportunity to identify bird species. While bird watching, both in Ottumwa and along the Des Moines River slightly downstream, I have seen bald eagles, Canada geese, herons, trumpeter swans, gulls, bufflehead ducks (which are my current favorites), and many others. Once at my house I saw so many snow geese flying overhead on their migration path that it took at least 20 minutes for them to all pass overhead. I relish these experiences, and I am concerned that EPA's failure to revise standards for wastewater pollution and pretreatment from the Ottumwa Plant will negatively affect bird populations and, therefore, decrease my ability to see and enjoy these bird species.

14. Several times a year, I go walking on the trails in the Gray Eagle Wildlife Reserve, which is across the highway from the plant and on the Des Moines

River, just so that I can spot birds and other wildlife and get a chance to get outside and enjoy nature. In my experience, Gray Eagle is especially good for bird watching because it consists of a series of seasonally flooded wetlands, which attract and provide a good opportunity to observe a variety of species. In particular, the area attracts a high concentration of diverse waterfowl, shorebirds, and migratory songbirds during the spring and fall migrations, which I enjoy observing. While I plan to continue these walks and my bird and wildlife watching activities, thinking about how continued pollution from the Ottumwa Plant could negatively impact this special area makes my heart sink. I am very concerned, for example, about the continued harm to the water quality of the Des Moines River that results from EPA's failure to update pollution control standards. Because of this failure to act, I am concerned that my use and enjoyment of the river, nearby walking paths, and the area's wildlife will be diminished and that my health will be endangered as well.

15. I find EPA's failure to revise water pollution standards or promulgate pretreatment standards for MPP facilities like the Ottumwa Plant to be disturbing and dangerous. I am concerned about how the failure to update standards will affect the natural environment and wildlife around the Plant. I am especially concerned that pollution will continue to affect my ability to use and enjoy the natural environment and wildlife, because of EPA's regulatory decisions. I am concerned that EPA's failure to comply with the Clean Water Act's requirements means the agency does not understand the consequences of water pollution from facilities like

the Ottumwa Plant, and it has not taken necessary measures to better protect the environment.

16. I am harmed by the release of pollution from the Ottumwa Plant, and I am concerned about the negative impacts of that pollution on my health and the health of my community. If EPA were to revise existing pollution control standards and set pretreatment standards for MPP facilities, I would be better able to make important, informed choices about my health and safety, such as whether it is safe for me to continue to recreate in areas within my community and near the Ottumwa Plant.

17. If EPA had fully complied with the requirements of the Clean Water Act, my interests may have been protected. Because it did not, a court order compelling EPA to fully comply with its obligations under this federal law would remedy my injuries described above.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 21st day of December 2022, in Ottumwa, Iowa.

/s/ Nancy Thompson

Nancy Thompson

Exhibit 9

DECLARATION OF WENONAH HAUTER

I, WENONAH HAUTER, declare and state as follows:

1. I am the Executive Director of Food & Water Watch (“FWW”). I have held this position since FWW’s founding in 2005.

2. FWW is a nonprofit organization headquartered in Washington, D.C., with offices located across the country, including California, New York, and Iowa. FWW recognizes that our food, water, and climate are under constant assault by corporations that put profit over the survival of humanity. Accordingly, FWW works to create a healthy future for all people and generations to come—a world where everyone has food they can trust, clean drinking water, and a livable climate. In particular, FWW mobilizes people to reclaim their political power, hold elected officials accountable, and advance bold solutions to the most pressing food, water, and climate problems of our time. To achieve this goal, FWW uses grassroots organizing, policy advocacy, research, communications, and litigation to protect people’s health, communities, and democracy from the growing destructive power of the most powerful economic interests. In my capacity as Executive Director, I am intimately familiar with FWW’s campaigns and strategic direction, I interact with members, and I oversee the activities and operations that advance our mission.

3. FWW has over 180,000 dues-paying members and over 2.8 million supporters nationwide, with whom we regularly communicate through emails, action alerts, texts, newsletters, social media, webinars, and direct engagement in campaigns. Members and supporters regularly participate in panel discussions,

rallies, and other events. FWW also has volunteer teams around the country, with volunteer leaders helping to develop and implement FWW's grassroots campaigns.

4. FWW advocates extensively on issues related to industrial animal agriculture, including slaughterhouses and rendering facilities (collectively, "MPP facilities"). FWW has significant expertise on the structure of the animal agriculture industry, the corporations that dictate this industry's practices, and the environmental and public health harms that these practices create. FWW frequently engages in litigation and policy advocacy aimed at reducing water pollution and other harms from industrial animal agriculture and holding corporations within this industry accountable under the Clean Water Act and other environmental, transparency, and food safety laws.

5. FWW regularly educates our members, our supporters, and the public about the many harmful consequences of industrial animal agriculture, including food safety risks, contributions to climate change, air and water pollution, public health harms, decreased quality of life in rural communities, and poor animal welfare. FWW's work to inform and empower the public around these issues includes, among other things: maintaining informational websites; producing news articles, press releases, fact sheets, issue briefs, and reports; and sending out action alerts telling our members and supporters how they can engage with government decision-makers to advocate for their interests in safe, accessible, and sustainably produced food, clean water and air, and a livable climate.

6. FWW also works to influence public policy related to industrial animal

agriculture and engages our members, our supporters, and the public in our efforts to pressure agencies and other decision-makers to strengthen slaughterhouse regulations, increase transparency, and shift public funding away from industrial animal agriculture and toward responsible and sustainable agriculture. This advocacy work includes, among other things: submitting comments in opposition to proposed mergers between industrial animal agriculture corporations and in support of stronger competition in agriculture, advocating against the allocation of public funding to industrial animal agriculture corporations, and lobbying to reform Farm Bill provisions that promote industrial animal agriculture. In addition, FWW regularly submits petitions for rulemaking and comments on proposed rules and permits, publicizes public records that shed light on government action and illegal pollution related to industrial animal agriculture, and pushes for transparent and fair agency decision-making.

7. Litigation is also a key strategy that FWW employs in furtherance of its mission. FWW engages in a wide range of litigation, including citizen suits against MPP facility polluters, intended to hold the animal agriculture industry accountable for its water and air pollution. FWW's litigation and case development include suits specifically intended to ensure that MPP facility processes (including indirect discharge through wastewater treatment plants) comply with the appropriate permits.

8. The effectiveness of these lawsuits is limited by the extent to which an MPP facility's Clean Water Act permit requires it to treat its waste. If the permit includes only weak waste-treatment requirements, obtaining permit compliance

through litigation may not adequately reduce water pollution, leaving downstream communities and ecosystems at risk. Obtaining the best relief possible in these lawsuits thus depends, in part, on the existence of strong permits—which, in turn, depend on the existence strong federal effluent limitation guidelines and pretreatment standards.

9. FWW also uses litigation to hold the government accountable for its inappropriately and unlawfully lax regulation of industrial animal agriculture, including MPP facilities. FWW is engaged in multiple legal actions against the U.S. Environmental Protection Agency (“EPA”) and other federal agencies, involving issues such as the elimination of MPP facility line speeds, which is necessary to protect food safety, worker safety, and animal welfare; EPA’s arbitrary decision not to revise and strengthen effluent limitation guidelines for the concentrated animal feeding operations supplying animals to MPPs, which are also responsible for significant water pollution nationally; the failure to require factory farms to report air emissions of hazardous substances; and the allocation of federal financing to factory farms without adequately considering these facilities’ harmful environmental and community impacts.

10. FWW has members and supporters who live and recreate near MPP facilities, and who are concerned about the negative health and environmental consequences of exposure to water pollution from MPP facilities. For instance, FWW members are concerned about the Lone Tree wastewater treatment plant’s MPP facility pollution, which is discharged into Lone Tree Creek and the South Platte

River in Colorado.¹ Evidence suggests that this pollution may have a negative effect on the receiving waterbodies' ability to sustain healthy aquatic life populations, which are the foundation of a healthy river ecosystem and necessary to maintain an environment that our members and supporters can feel comfortable recreating in and around. Even in the absence of permit violations, MPP facility pollution can threaten health and the environment, because existing permit requirements—and the federal requirements on which those requirements depend—are far too lax.

11. MPP facility pollution and EPA's lax, outdated regulations for this industry's discharges have harmed FWW and our members, and these harms are likely to continue absent a court order requiring EPA to revise the effluent limitation guidelines, revise the associated effluent limitations, and promulgate pretreatment standards for the Meat and Poultry Products industrial point source category. If EPA were to fulfill its legal obligation to publish, review, and revise pollution standards for MPP facilities, FWW's members and supporters—and the aquatic ecosystems they enjoy—would be better protected.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 28 day of July 2022, in Washington, DC.



Wenonah Hauter

¹ See EPA, Detailed Facility Report, Lone Tree Industrial Wastewater Treatment Plant, <https://echo.epa.gov/detailed-facility-report?fid=110042263109> (last visited June 10, 2022).

Exhibit 10

DECLARATION OF JACKIE EUBANK

I, JACKIE EUBANK, declare and state as follows:

1. I reside in Johnstown, Colorado, which is located less than 20 miles outside Greeley, Colorado. I have lived in Johnstown for the past nine years, and I have lived in Northern Colorado near Greeley for the past 19 years.

2. I have been a dues-paying member of Food & Water Watch (“FWW”) since 2019. I joined FWW because I support its goals and mission, including its goal of protecting our waterways and other natural resources from pollution. I believe that FWW is effective at using organizing, litigation, communications, and other strategies to protect the environment, and I appreciate FWW’s work to hold polluters and the government accountable in Colorado and across the country.

3. I am a former JBS USA employee. JBS USA owns JBS-Swift Beef Company, which in turn, owns a slaughterhouse in Greeley, Colorado,¹ as well as the associated Lone Tree wastewater treatment plant. I worked in international logistics for JBS USA for about eight years until May 2018, when I left to pursue another opportunity. I left, and I remain, on good terms with the company. My employment history had no impact on my decision to participate in this case as a declarant for FWW.

4. I am aware that the Lone Tree wastewater treatment plant discharges treated wastewater from the Greeley slaughterhouse into Lone Tree Creek, which

¹ See NPDES Permit CO4900484, <https://echo.epa.gov/detailed-facility-report?fid=110037942616> (last visited June 10, 2022) (noting that the facility has been in significant noncompliance since at least 2018).

flows into the South Platte River just a couple of miles downstream of the discharge site.

5. One of my primary recreational activities is hunting, including turkey hunting. My husband and I began turkey hunting along the South Platte River about nine years ago. We access the river from the Centennial Valley State Wildlife Area, which is on the river's southwest bank. The Wildlife Area is just a few miles downstream from where Lone Tree Creek flows into the South Platte River. I enjoy hunting along the South Platte River not just because it gives me an opportunity to bag a bird, but also because I appreciate the overall aesthetic experience of being in nature, sitting under the trees, and watching the pelicans and other wildlife nearby.

6. The banks of the South Platte River are prime turkey habitat because turkeys like to roost in trees near the water. My husband and I are in very close proximity to the river when we hunt, sometimes wearing waders to walk directly across it. We typically hunt turkeys in this area around two or three times each spring season.

7. I have very young children, and I have not hunted turkeys during the past five years due to my childcare obligations. I had hoped to hunt the last couple seasons, but—due to the COVID-19 pandemic—I did not feel safe leaving my children with another caregiver, and as a result, I was not able to hunt. I would like to resume hunting along the South Platte River next spring, when my children are a little older and have been fully vaccinated.

8. Through my involvement with FWW, I am aware that the Lone Tree wastewater treatment plant has violated its Clean Water Act wastewater discharge permit for several years,² and some of these violations could harm aquatic life in Lone Tree Creek and the South Platte River.

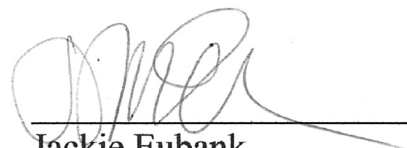
9. I am also aware that, even when slaughterhouses comply with their wastewater discharge permits, they often discharge unsafe amounts of pollution that could harm aquatic life, including high levels of nitrogen, oil and grease, and bacteria. As a result, I am concerned that the water pollution standards for slaughterhouses developed by the U.S. Environmental Protection Agency (“EPA”) are too lax. Even if the Lone Tree wastewater treatment plant never violated its discharge permit again, knowing that the river is nonetheless more polluted than it would be if JBS-Swift Beef had to meet far more protective pollution limits will continue to diminish my overall recreational and aesthetic experience. EPA’s out-of-date standards mean that the water in this area might not be safe for me, my husband, or the turkeys, pelicans, and other wildlife we visit to enjoy.

10. I derive aesthetic value from the South Platte River, and I know that the wildlife I enjoy rely on clean water and a healthy river. But until EPA publishes appropriate standards, I cannot be confident that turkeys will continue to roost in the area where we hunt; too much pollution might force the turkeys to find somewhere else to roost. If that happened, my husband and I would have to find somewhere else to hunt. I would worry less and enjoy the river more if I knew that

² See *id.*

EPA held the Greeley slaughterhouse to appropriate pollution standards. I trust FWW to help enforce appropriate standards, if and when they are put in place.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 5th day of August 2022, in Johnstown, Colorado.


A handwritten signature in black ink, appearing to read "Jackie Eubank", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Jackie Eubank

Exhibit 11

DECLARATION OF JOHN RUMPLER

I, JOHN RUMPLER, declare and state as follows:

1. I am 56 years old, and I live in Brookline, Massachusetts. I am currently Senior Attorney and Clean Water Program Director at Environment America, Inc. (“Environment America”). I have held these positions since the organization’s inception in 2007.

2. Environment America is a member-supported non-profit organization dedicated to making the world a greener and healthier place for all to enjoy. Through its Clean Water Program, Environment America works to protect the nation’s rivers, lakes, streams, and drinking water sources through organizing grassroots campaigns, educating the public, participating in government rulemakings, advocating before agencies and legislative bodies, and litigating to curb water pollution. Since its founding, Environment America has worked to help implement and enforce the federal Clean Water Act. Environment America also has 30 state-based affiliate organizations that mobilize the public to advocate for a clean and healthy environment at the state level.

3. In my roles at Environment America, I direct the organization’s efforts to protect our nation’s waterways and ensure safe drinking water for all Americans. This work includes, but is not limited to, research, policy analysis, advocacy, communications, and public education.

4. Environment America and its 30 state affiliates currently have over 125,000 individual members in all 50 states who contribute financially to the

organization at an annual membership level. Environment America also has hundreds of thousands of supporters who make smaller contributions or take action with the organization through online petitions or other means. Environment America sends regular newsletters and emails to our members and supporters to keep them engaged with our work. Members and supporters of Environment America are homeowners; renters; students; business owners and operators; elected national, state, and local officials; and other residents of the United States who value clean water for its own intrinsic worth, as well as for recreational, business, aesthetic, economic, health-related, and other purposes.

5. Stopping pollution from slaughterhouses and rendering facilities (collectively, MPP facilities) is a significant part of Environment America's Clean Water Program. We have researched and published reports documenting this pollution threat, including our Corporate Agribusiness and the Fouling of America's Waterways report in 2016, Slaughterhouse Pollution factsheet (2020), and Map of Slaughterhouse Pollution (2021).¹ We have also supported and advised on investor shareholder resolutions calling on major companies operating such facilities to curb their water pollution. Environment America played a key role in building public support for the federal government's comprehensive plan to clean up the

¹ See Env't Am., *Corporate Agribusiness and the Fouling of America's Waterways* (2016), https://environmentamerica.org/sites/environment/files/reports/CorpAgFoulingWaterways2016-web_0.pdf; see also Env't Am., *Slaughterhouses Are Polluting Our Waterways* (2020), <https://environmentamericacenter.org/sites/environment/files/reports/Slaughterhouse%20factsheet%20FINAL.pdf> and related map (2021), <https://environmentamerica.org/feature/ame/slaughterhouse-map>.

Chesapeake Bay, which suffers significantly from agribusiness pollution. Our organization also brought a citizen suit against Pilgrim's Pride, alleging numerous Clean Water Act violations related to discharges from its MPP facility in Live Oaks, Florida to the Suwannee River. The company agreed to a \$1.4 million settlement to come into compliance with its current clean water permit limits, but those limits still allow harmful discharges of pollution to the Suwannee River.²

6. In addition, Environment America coordinates the Clean Water Network, which connects local and regional groups concerned about clean water ("watershed groups"), so they can share ideas and resources and more easily access organizing, scientific, and other forms of expertise needed to ensure clean water for future generations. Through the Clean Water Network, we work with more than 250 local and regional watershed groups in all 50 states. Several of these organizations are concerned about pollution from corporate agribusiness operations.

7. For decades, the U.S. Environmental Protection Agency ("EPA" or "Agency") has failed to update inappropriately lax and outdated water pollution standards for MPP facilities. In 2019, when EPA declined to update water pollution control standards or promulgate pretreatment standards for MPP facilities,³ Environment America organized public comments from 102 organizations—including our state affiliates, Clean Water Network watershed groups, socially-

² See NPDES Permit FL0001465, <https://echo.epa.gov/detailed-facility-report?fid=110027375597> (last visited June 10, 2022).

³ See EPA, Preliminary Effluent Guidelines Program Plan 14, 84 Fed. Reg. 57,019 (Oct. 24, 2019).

conscious investors, and others—expressing deep concern over EPA’s failure to act. While EPA has since published a preliminary determination that up-to-date pollution control standards for MPP facilities are necessary, the Agency has not yet committed to revising applicable standards or specified a timeline for the revision process.

8. EPA’s ongoing failure to update water pollution standards for MPP facilities impairs Environment America’s ability to fulfill its mission of protecting the nation’s rivers, lakes, streams, and drinking water sources. EPA’s failure to act also impairs our members’ interests in clean water and a healthy environment. Environment America has members who are directly harmed by high levels of MPP facility water pollution, which will continue in the absence of updated national standards. For instance, Environment America member Robert Wright’s aesthetic, recreational, and professional interests are harmed by MPP facility pollution discharged into the Suwannee River from the Pilgrim’s Pride slaughterhouse in Live Oaks, Florida.

9. If EPA updated MPP facility water pollution standards to reflect currently available pollution control technology, as required by the Clean Water Act, EPA would redress grave harms to Environment America’s programs and to its members, which have resulted from EPA’s failure to revise such standards.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 1st day of August 2022 in Brookline, Massachusetts.

A handwritten signature in black ink, appearing to read 'JR' followed by a stylized 'L' or 'R'.

John Rumpler

Exhibit 12

DECLARATION OF ROBERT KNIGHT

I, ROBERT KNIGHT, declare and state as follows:

1. I am a resident of Gainesville, Florida, and I have lived in Gainesville for 45 years. I have been a member of Environment America, doing business here as Environment Florida, since 2016.
2. I am an environmental scientist and systems ecologist. I hold a Ph.D. in Systems Ecology from the University of Florida, where I subsequently taught as an adjunct professor in the Department of Environmental Engineering Sciences for six years. I have worked as an aquatic and wetlands ecologist in Florida for more than 40 years. Currently, I am the Executive Director of the Howard T. Odum Florida Springs Institute (“Florida Springs Institute” or “Institute”), a non-profit organization that works to document the ecological health of Florida’s springs and educate the public about the threats that face them in order to ensure future generations can enjoy them as we have.
3. I support Environment America because I value its mission to make our world, and Florida in particular, a greener and healthier place for all. I appreciate that Environment America, using grassroots support, research, and advocacy, engages in timely, targeted action that wins tangible improvements in the quality of our environment and our lives. I appreciate that Environment America provides environmental advocates with up-to-date policy and legal analysis of the environmental issues facing the country, and Florida, today.
4. As a member of Environment America, I make financial contributions to the organization to support its work. I have also volunteered my time and

expertise to assist Environment America achieve their mission and goals. For example, I participated in Environment America's lawsuit against Pilgrim's Pride in 2017.

5. I have a great personal and professional interest in the Suwannee River, a wild river that flows about 250 miles from the Okefenokee Swamp in southern Georgia, through Florida, to the Gulf of Mexico. For years, I have enjoyed leading and participating in many daylong and overnight canoe trips on the river. The river is also an important place for me professionally. There are almost 200 springs in the Suwannee River Basin, and I regularly conduct water quality and biological sampling in the river and its springs. Sometimes, I use scuba gear while conducting research at the river and springs.

6. I consider myself very fortunate to have experienced the Suwannee River and springs during the 1970s and 1980s, while they were still relatively healthy. Since that time, I have observed a major degradation in water quality in both the river and the springs, and I have documented this degradation through my research. It is painful for me to witness the continued degradation of these waters. I still visit the river and springs for personal and professional reasons, and I continue to derive benefits from these visits, but I no longer enjoy the river and springs as I once did.

7. As Executive Director of the Florida Springs Institute, I know that industrial animal agriculture, including slaughterhouses and rendering facilities (collectively, MPP facilities), contributes to the degradation of the Suwannee River and springs. At the Institute, we have prepared the "Blue Water Audit," a

GIS analysis of land-use nitrogen sources and groundwater extractions that affect the Floridan aquifer, which is the principal source of water for natural and human systems throughout much of Florida. The Blue Water Audit shows that MPP facilities and other animal agriculture facilities contribute to the more than 5,000 tons of nitrogen impacting the Suwannee River and springs each year.

8. Nitrogen pollution takes a substantial toll on the aquatic environment. In particular, nitrogen spurs algae growth, which depletes dissolved oxygen levels and imperils fish and wildlife. In the Suwannee River, I have watched over time as noxious, unsightly filamentous algae has replaced native vegetation. Algae proliferation has also driven precipitous declines in native fish and wildlife populations in the springs feeding the Suwannee River and other waterbodies throughout Florida.

9. It is my belief that the Pilgrim's Pride poultry processing facility in Live Oak, Florida still discharges total nitrogen, directly into the Suwannee River.¹ I am also aware that Environment America previously sued Pilgrim's Pride to challenge the Live Oak slaughterhouse's violations of its wastewater discharge permit. Despite this lawsuit, and the subsequent settlement, the Live Oak poultry processing facility continues to discharge high levels of nitrogen because EPA's pollution control standards for slaughterhouses are far too lax.²

¹ See Pollutant Loading Report (DMR), Pilgrim's Pride Processing Plant, Live Oak, FL, 32060, https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances/?permit_id=FL0001465 (last visited June 10, 2020).

² See *id.* (noting that in 2021 the Live Oak facility discharged 79,920 pounds of nitrogen).

10. I believe that EPA has failed to revise its pollution control standards for MPP facilities for many years. Now, Environment America is suing EPA to challenge that failure to act and unreasonable delay. I fully support Environment America's lawsuit. It is my understanding that MPP facilities could adopt more advanced pollution control technology. I believe MPP facilities must reduce pollution to protect people and the environment, including the Suwannee River and its springs.

11. If EPA were to fulfill its legal responsibility to establish appropriately stringent pollution control standards for MPP facilities, I would feel encouraged and relieved, because those standards would help to protect the Suwannee River from nitrogen pollution. Over time, I believe lower levels of pollution would lead to a reduction in algae and, eventually, native fish, wildlife, and vegetation might thrive again. If this happened, I would once again take greater pleasure in visiting the Suwannee River and springs, knowing that they were healthy.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this first of September 2022, in Gainesville, Florida.

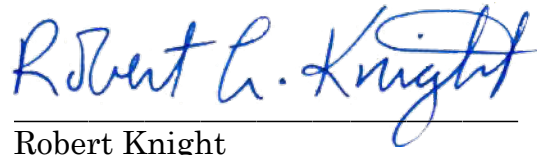

Robert Knight

Exhibit 13

DECLARATION OF LUIS OLMEDO

I, LUIS OLMEDO, declare and state as follows:

1. I am 50 years old, and I live in Imperial, California. I grew up in Brawley, which is located in Imperial County, California. I am the Executive Director of Comité Civico del Valle (“Comité Civico”), located in Brawley, and I have held this position for approximately 20 years.

2. Comité Civico was founded in 1987 on the principle that “informed people build healthy communities.” We endeavor to improve the lives of disadvantaged communities in Imperial County by informing, educating, and engaging the community’s civic participation. Over the years, Comité Civico has grown to serve children, students, community residents, and professionals in various communities through collaboration with other established environmental justice organizations and in partnership with researchers, academics, and government agencies.

3. Comité Civico’s work is driven, in part, by the five independent members of our Board of Directors, all of whom live and work in Imperial County. Board members are responsible for adopting our mission and strategy, managing our resources, ensuring compliance with our mandates as a non-profit, and reviewing and approving our latest initiatives. In addition, Comité Civico’s work reflects the interests of the tens of thousands of supporters who have signed up to receive our email newsletter, follow us on social media, and engage with us in

conferences and in our door-to-door outreach regarding issues related to environmental health in Imperial County.

4. Brawley is one of the most environmentally overburdened communities in California. Our air is degraded by pollution from transportation, field burning, and pesticide use, along with dust from the evaporating Salton Sea. As a result, Imperial County is home to the highest rate of asthma-related hospitalizations in California.

5. The New River, one of the most polluted waterbodies in the country, passes through Brawley on its way to the Salton Sea. As the New River flows north, it is inundated with raw sewage and industrial waste from poorly regulated facilities in Mexico. And the pollution does not stop at the border. In Imperial County, at least 3,000 miles of open-air irrigation canals direct agricultural runoff contaminated with pesticides and other pollutants into the New River.

6. Ensuring access to clean water is central to Komite Civico's mission. In Imperial County, approximately 3,000 rural households do not have access to treated municipal water. Instead, the Imperial Irrigation District requires these rural residents to purchase water for drinking and cooking from a private water company. For showering, washing dishes, and cleaning, rural residents pump raw water from agricultural canals into their homes. To the best of Komite Civico's knowledge, the Imperial Irrigation District does not collect data on the safety of canal water, so Komite Civico is working to identify and quantify contaminants in

this water. We are also developing a community outreach and education campaign to warn rural residents of the health risks associated with canal water.

7. As part of our clean water advocacy, Comite Civico has repeatedly raised concerns about pollution from a slaughterhouse in Brawley, now operated by One World Beef.¹ The slaughterhouse sends its wastewater to the city's municipal wastewater treatment plant, which discharges treated water into the New River. The municipal treatment plant regularly exceeds its permit limits for pollutants found in slaughterhouse wastewater, including nutrients, pathogens, and suspended solids.² Based on this evidence, I believe that the city's wastewater treatment plant is unable to treat the slaughterhouse wastewater properly, and the New River is being subjected to further pollution as a result.

8. The Brawley slaughterhouse has a long history of sending heavily polluted wastewater to the city's wastewater treatment plant. For instance, between May 2009 and May 2011, when the slaughterhouse was operated by National Beef, it received 95 notices of violation from the city of Brawley for discharging ammonia that interfered with the city's wastewater treatment plant. In 2014, the California Regional Water Quality Control Board filed a complaint against National Beef, alleging that the Brawley slaughterhouse had discharged extremely high levels of ammonia and other pollutants into the city's wastewater

¹ See NPDES Permit CAZ468900, <https://echo.epa.gov/detailed-facility-report?fid=110070096177> (last visited June 10, 2022).

² See NPDES Permit CA010452, <https://echo.epa.gov/detailed-facility-report?fid=110030476465> (last visited June 10, 2022).

treatment plant.³ At that time, the facility slaughtered approximately 2,300 cattle every day, and it generated more than 1.6 million gallons of wastewater in the process.⁴ The city's wastewater treatment plant was not designed to handle such a large amount of contaminated industrial wastewater.

9. Even though the Brawley slaughterhouse is now under new management, I believe that it still sends high levels of pollution to the city's wastewater treatment plant, and the city's wastewater treatment plant continues to report permit exceedances for pollutants associated with slaughterhouse wastewater.⁵

10. The city's wastewater treatment plant also has a history of discharge violations. For example, in 2013, the California Regional Water Quality Control Board filed a complaint against the city for its continued permit violations, an action that culminated in a \$1 million settlement agreement.⁶ These costs are shouldered unfairly by Brawley taxpayers.

³ See Cal. Reg. Water Quality Control Bd., Colo. River Basin Reg., *Imperial County Slaughterhouse Faces Proposed \$3.75 Million Fine Following Investigation of Clean Water Act Violations* (Apr. 18, 2014), https://www.waterboards.ca.gov/press_room/press_releases/2014/pr041814_nationalbeef_acl.pdf.

⁴ *Id.*

⁵ See Effluent Limit Exceedances Report, NPDES Permit CA0104523, <https://echo.epa.gov/detailed-facility-report?fid=CA0104523&sys=ICP> (last visited September 1, 2022).

⁶ See Cal. Reg. Water Quality Control Bd., Colo. River Basin Reg., Admin. Civil Liab. Complaint R7-2013-0028, Issued to City of Brawley Wastewater Treatment Plant (Feb. 28, 2013), https://www.waterboards.ca.gov/coloradoriver/water_issues/hot_topics/docs/brawley/trans_letter.pdf.

11. Comite Civico's Board members and supporters are concerned that wastewater from the Brawley slaughterhouse is exacerbating water pollution in and around Brawley. Many people in Brawley, including Comite Civico's Board members and supporters, might like to visit the New River if it were not so polluted. As it is, I cannot imagine wanting to swim in the New River. I do not think that it is safe to swim in that water, and it certainly is not very pleasant to spend time nearby. Personally, I would never fish in the New River. I am sure that the fish are contaminated by pollution and unsafe to eat.

12. As Comite Civico's Executive Director, I am aware that the U.S. Environmental Protection Agency ("EPA") has never established national pretreatment standards for slaughterhouses, even though it is aware that many wastewater treatment plants are incapable of adequately treating pollution from slaughterhouses. The situation in Brawley is a perfect example of why pretreatment standards are so sorely needed.

13. If EPA were to fulfill its legal responsibility to publish pretreatment standards for slaughterhouses, I would feel encouraged that the government was working to alleviate the disproportionate environmental burdens borne by Comite Civico's Board members and supporters, along with other Imperial County residents. I believe that the amount of water pollution in the New River would start to decline, and eventually, the New River might be safe for recreation and fishing. But without action from EPA, I fear that the Brawley slaughterhouse will continue to harm our community by discharging excessive levels of pollutants.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 21st day of December 2022, in Brawley, California.

A handwritten signature in black ink, appearing to be "Luis Olmedo", with a stylized, cursive script.

Luis Olmedo

Exhibit 14

DECLARATION OF LORI ANN BURD

I, LORI ANN BURD, declare and state as follows:

1. I am the director of the Environmental Health Program at the Center for Biological Diversity (“Center”). I have been the director of the Center’s Environmental Health Program since 2015. I am also a member of the Center, and I have been a member since 2012. I currently maintain residences in Portland, Oregon and Tucson, Arizona.

2. The Center is a non-profit, public-interest organization with over 1.7 million members and online activists committed to the preservation, protection, and restoration of native species and the ecosystems upon which they depend—including fish, wildlife, and invertebrates found in and dependent upon major river systems, their tributaries, and other aquatic habitats across the United States. Recognizing that all species have intrinsic value and that preventing the extinction of species is a moral imperative, the Center works on behalf of itself and its members to secure a future for all animals and plants hovering on the brink of extinction, as well as for the ecosystems they need to survive.

3. In support of its mission, the Center advocates, educates, and litigates to enforce and sustain environmental laws, including the Clean Water Act. For example, the Center works to enact, strengthen, and enforce environmental laws to reduce pollution—including water pollution—in the United States, protect imperiled species, and ensure that federal decision-

makers fully consider and publicly disclose the impacts to human health, wildlife, and habitats likely to result from their decisions. The Center also works to advance public programs and campaigns to combat the extensive risks that industrial pollution poses to ecosystems, public health, sustainable food systems, and environmental health. Among other actions, the Center has been involved in litigation, policy advocacy, and campaigns that seek to improve transparency around, and federal oversight of, pollution from large- and industrial-scale animal agriculture, including slaughterhouses and rendering facilities (collectively, “MPP facilities”), under the United States Constitution, the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right-to-Know Act, and other laws.

4. The Center’s Environmental Health Program, along with its Endangered Species, Public Lands, Government Affairs, and Oceans Programs, works to help reduce the threats posed by water pollution to species through scientific, legal, and policy mechanisms. In particular, the Environmental Health Program recognizes that the fate of humans and all species are inextricably intertwined, and that pollution is a major threat to all of us. We work to address harms from animal agriculture, including MPP facilities within the Meat and Poultry Products industrial point source category, as defined by the U.S. Environmental Protection Agency (“EPA”).

5. As both director of the Center’s Environmental Health Program and a member of the Center, I work to protect environmental health and

wildlife from the threats posed by environmental toxins, contamination, and pollution. I am also involved in strategic decision-making at the Center, and I help to set priorities for the Center's work to reduce threats from toxic and industrial pollution, including water pollution from MPP facilities.

6. The Center's and its members' species conservation and recovery interests are impaired by activities that harm imperiled species and their habitats as a result of habitat fragmentation, water and air pollution, and other ecological threats. On behalf of the Center, I strive to represent the interests of our members in areas affected by environmental pollutants, and I am concerned about how poor water quality impacts our members, their families, and the environment and species that they enjoy. I am relieved that the Center works on my behalf and on behalf of our members to sustain and enforce the Clean Water Act and other environmental laws, and to help to reduce threats to water resources and to the species that rely on them. In addition, I appreciate the Center's advocacy and litigation efforts because they provide me and other members of the Center with important information about the dangers of water pollution to public health, species, and the environment.

7. As an organization, the Center is particularly concerned about direct and indirect discharges of water pollution, or effluent, from industrial point sources such as MPP facilities, because these discharges can degrade water quality, harm wildlife, threaten human and environmental health, and

impair our members' scientific, recreational, and aesthetic interests. EPA's longstanding failure to revise effluent limitation guidelines and associated effluent limitations for MPP facilities, together with its unreasonable delay in promulgating pretreatment standards for that industrial point source category, exacerbates these concerns. Indeed, the Center strongly believes that EPA's failure to act and unreasonable delay, which are nationwide in scope, will directly, indirectly, and cumulatively harm endangered and threatened species, thereby impairing the Center's ability to advance its mission and protect the interests of its members.

8. As a member of the Center, I am personally concerned that EPA's failure to promulgate up-to-date water pollution control standards will harm my aesthetic, spiritual, and recreational interests in visiting, viewing, and recreating in and around waterways that receive effluent from MPP facilities. I derive scientific, aesthetic, and moral benefits from the continued existence of aquatic species in the wild, and I enjoy studying and observing endangered and threatened species in their native habitats. I fear that EPA's failure to act and unreasonable delay will threaten the species and habitats that I enjoy viewing, recreating among, and learning about. I am particularly concerned that EPA's failure and delay will impede the long-term survival and recovery of already imperiled aquatic species. I am aware that many other Center members live, work, and recreate in watersheds that are harmed by MPP facility effluent. I understand that many of these members

share my aesthetic, spiritual, and recreational interests; like me, they are concerned and injured by EPA's inaction.

9. I am an avid naturalist, and I enjoy spending time outdoors, especially swimming and recreating in numerous rivers and streams, and observing or attempting to observe species in the wild. I also enjoy hiking along rivers and looking into and around the water for freshwater fish, birds, and mammals. I have concrete plans to engage in these activities in the future, just as I have engaged in them in the past. For example, in the summer of 2019, I set my personal record when swam in 35 different rivers throughout California, Oregon, and Washington, including the Clackamas and Willamette Rivers in Oregon and the Cowlitz River in Washington. I was not quite as ambitious in 2021, but still swam in about a dozen rivers. So far this summer I have swum in eight rivers, including the Columbia and Willamette Rivers, and have plans to swim in many more.

10. I have on many occasions swum in rivers that I now know to be adversely impacted by animal agriculture, and I suspect that I have swum in rivers that receive effluent from MPP facilities. For instance, I understand that the Foster Farms Kelso poultry slaughterhouse in Kelso, Washington discharges effluent into the Lower Coweeman River, roughly two miles or less from the point at which the Coweeman River flows into the Cowlitz River.¹ I

¹ See NPDES Permit WAR003208, <https://echo.epa.gov/detailed-facility-report?fid=110000490834> (last visited June 10, 2022).

believe that I have unintentionally swum in the Cowlitz River very close to the point at which slaughterhouse effluent enters the Cowlitz River from the Coweeman River. I also swam in the Lower Coweeman near this spot in the summer of 2017. I plan to visit the Lower Coweeman River again this summer on my way to the San Juan Islands. I want to swim in the river again, but I am not confident that it is safe to do so. I fear that exposure to slaughterhouse effluent could threaten my health and the health of my friends and family who I enjoy taking on swimming adventures.

11. Visiting and swimming in rivers is one of my favorite ways to recreate and enjoy my personal time. Watching and recreating with birds, fish, and my fellow river enthusiasts (especially my friends, family, and dog) is a great source of pleasure for me. But I fear that EPA's failure to revise effluent limitation guidelines and effluent limitations for MPP facilities, along with its unreasonable delay in publishing pretreatment standards for MPP facilities, could damage the rivers and species that I love. I am concerned that, when my loved ones and I recreate in and near rivers, we are and will continue to be exposed to high levels of MPP facility pollutants, because EPA allows MPP facilities to operate with outdated pollution control technologies.

12. I believe that effective implementation and enforcement of our environmental laws, such as the Clean Water Act, are essential to protecting people and the environment. I also believe that no wildlife species should be

imperiled or driven to extinction by the actions of humans, and biodiversity has an inherent value. I am injured by EPA's failure to update effluent limitation guidelines and effluent limitations for the Meat and Poultry Products industrial point source category and by EPA's unreasonable delay in promulgating pretreatment standards for this point source category, because EPA's inaction runs directly counter both to the rule of law that I believe keeps us safe and also to my deeply held beliefs around the value of protecting rivers and biodiversity. I know that continued high levels of pollution mean less biodiversity and a world that is less rich, interesting, and interconnected. I believe that EPA's failure and delay with respect to effluent limitation guidelines and pretreatment standards will result in decreased biodiversity and a world that is less rich, interesting, and interconnected.

13. In sum, EPA's failure to update effluent limitation guidelines and unreasonable delay in promulgating pretreatment standards for the Meat and Poultry Products industrial point source category harms my interests and the interests of other Center members—and, thus, the interests of the Center itself—by putting human health, threatened and endangered species, and the environment at risk. If EPA were to come into compliance with the requirements of the Clean Water Act and issue updated effluent limitation guidelines and promulgate pretreatment standards for the Meat and Poultry Products industrial point source category, my injuries and the Center's injuries would be redressed.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this first day of August 2022, in Portland, Oregon.

A handwritten signature in cursive script that reads "Lori Ann Burd".

Lori Ann Burd

Exhibit 15

DECLARATION OF DANIELLE WIRTH

I, DANIELLE WIRTH, declare and state as follows:

1. I am 68 years old, and I live in Woodward, Iowa with my husband and our two English Labradors. I have been a member of the Center for Biological Diversity (“Center”) for approximately seventeen years, and I have made monthly financial contributions to the Center for about the same amount of time.

2. I am a naturalist, ecologist, and environmental educator. I hold a Ph.D. from the College of Agriculture and Life Sciences at Iowa State University, where I served as a lecturer in environmental ethics, with an emphasis on empirical science, before my retirement. For ten years, I served as an assistant professor for Drake University’s Environmental Science and Policy Program, where I taught courses on environmental science, ecological restoration, and nature writers throughout history. I also worked at the Iowa Department of Natural Resources (“DNR”), both as a regulator in the Environmental Protection Bureau and as an education specialist, helping to run a resident environmental education facility. Before that, I served as a federal park ranger.

3. I support the Center because its mission—to secure a future for all species, great and small, hovering on the brink of extinction—resonates with me. In addition, I appreciate that the Center employs not only lawyers and media experts, but also skilled scientists who monitor, analyze, and assess scientific research concerning threats to species and their ecosystems. Even though I have a background in ecology, I do not have the time to keep abreast of the latest research

on my own, and I rely on the Center to help keep me informed. I receive other important benefits from my membership with the Center, too. At least once a week, I receive emails updating me on the Center's latest projects. And I often share the Center's educational resources with my colleagues and students.

4. In addition to supporting the Center financially, I help to advance the Center's mission in other ways. For instance, I regularly support the Center's direct-action campaigns by signing petitions and sending letters to my congressional representatives about issues including the importance of preserving the Endangered Species Act and protecting fragile ecosystems. I often fill out surveys to let the Center know what issues are most important to me, and I believe my answers help to influence the work that the Center chooses to pursue.

5. As an engaged citizen of Iowa and a naturalist, ecologist, and environmental educator, I know that industrial animal agriculture—including slaughterhouses and rendering facilities (collectively, "MPP facilities")—heavily pollutes rivers and streams in my state, degrading important and fragile ecosystems. In particular, MPP facilities release high levels of nitrogen, in the form of nitrate and nitrite, which promote algae growth; algae, in turn, depletes dissolved oxygen levels and endangers aquatic species. Blue-green algae is particularly dangerous because it produces microcystins, a class of toxins that can cause liver damage in canines and can be fatal to humans.

6. MPP facilities also release wastewater contaminated with organic matter like hair, fat, and blood. These organic pollutants absorb oxygen as they

decompose, leading to a further reduction in dissolved oxygen levels. Over time, low levels of dissolved oxygen can lead to changes in the number and type of species living in a waterbody. For example, bloodworms thrive in low-oxygen environments. So, when I see bloodworms in waterbodies near my home, I know that the water is polluted with organic matter. As we say in water quality analysis, “bugs don’t lie.” Based on the industries in my area, I know that the organic matter most likely came from MPP facilities or other industrial animal agriculture facilities.

7. In addition, MPP facilities release wastewater containing fecal material, which could include dangerous pathogens that threaten human health, such as *E. coli* and Methicillin-resistant *Staphylococcus aureus*, a bacterium that is nearly impossible to kill with traditional antibiotics. It does not take a science degree to realize that we should do our best to keep these pollutants out of our water.

8. As a Center member, I know that the U.S. Environmental Protection Agency (“EPA”) has failed to revise the existing water pollution standards for MPP facilities for many years, in some cases for over four decades. EPA has failed to update its regulations even though some MPP facilities already have adopted better pollution control technology than is required under current standards. The Center and its allies are now suing to compel EPA to issue up-to-date regulations. I fully support the Center’s lawsuit, because I am committed to protecting Iowa’s aquatic ecosystems from MPP facility pollution.

9. I believe that MPP facility pollution has degraded waterbodies near my home, and EPA's failure to follow the law makes these waterbodies more likely to suffer additional degradation. I derive benefits from visiting, preserving, recreating in, and observing Iowa's aquatic ecosystems and the wildlife that depend upon them—interests that are harmed by EPA's failure to update standards and appropriately limit the amount of pollution that MPP facilities discharge into waterbodies.

10. I am no longer able to enjoy Iowa's waterbodies in the way I once did, because I am afraid that exposure to MPP facility pollution could threaten my health, my husband's health, and the health of our pets. For example, I live about 12 miles from the Tysons Fresh Meats, Inc. slaughterhouse in Perry, Iowa that discharges wastewater into the Raccoon River.¹ The Raccoon River is visibly polluted downstream of the slaughterhouse, and it gives off a putrid odor. My husband enjoys paddling, but he wouldn't paddle in that water out of fear for his health. And, much to their dismay, I will not allow my two English Labradors to swim in the river, because I do not want them to be exposed to slaughterhouse pollution at levels that could threaten their health.

11. As a naturalist, ecologist, and environmental educator, I have aesthetic and moral interests in wildlife and the environment. I enjoy identifying

¹ See NPDES Permit IA0002089, <https://echo.epa.gov/detailed-facility-report?fid=110015757304> (last visited June 10, 2022) (noting significant noncompliance with permit conditions in 2019, as well as permit violations in 2020, 2021, and 2022).

and observing native species, but I am concerned that current levels of MPP facility pollution are degrading habitats and putting native species at risk. I have not seen some of my favorite species, such as soft-shelled turtles and painted turtles, for many years, and I believe MPP facility pollution is to blame. Piping plovers, wonderful little shorebirds that nest and feed along waterways, already are listed as endangered in Iowa—in part, because of our degraded waterways. And, recently, otters have been reintroduced to Iowa. I am thrilled to have otters back in waterbodies near my home, but I worry that MPP facility pollution might prevent otters from thriving here.

12. It is important to me that all species survive and thrive in their natural habitats, whether or not I am able to encounter them. It is my belief that no wildlife species should be driven to extinction by the actions of humans, and no species should be allowed to go extinct if it can be prevented. I feel fulfilled from interacting with nature and protecting wild places, wildlife, and native ecosystems. The loss of species will injure my aesthetic enjoyment of native habitats in my home state. I believe that biodiversity has inherent value and allowing vulnerable wildlife to go extinct would be a moral failure of our society.

13. I am especially concerned about agricultural water pollution, because I have experienced first-hand the damage it can cause. My husband and I used to drink well water. But agricultural pollution made our well water unsafe, so we switched to the Xenia Rural Water System, an expensive alternative to our well. The Xenia Rural Water System purchases water from the city of Des Moines, which

is about 35 miles southeast of our home. As a former DNR employee, I know that Des Moines Water Works has become one of the most sophisticated water treatment plants in the country, because it treats water heavily contaminated with pollution from agriculture. Not every city can afford such a sophisticated system, and we cannot rely on industry to clean up on its own. It is up to EPA to protect people and the environment from agricultural water pollution—and I hope that the Center’s lawsuit will force EPA to start doing its job by taking steps to limit pollution from MPP facilities.

14. If EPA were to revise water pollution standards for MPP facilities, I would feel significantly relieved and encouraged—Iowa’s aquatic ecosystems would receive less pollution, and Iowa’s native and endangered species could live in cleaner, more productive ecosystems. I am confident that stronger water pollution standards for MPP facilities would allow species and habitats to begin to recover, and, in time, I might feel safe recreating in the waterbodies near my home again. In addition, it would be encouraging to know that EPA is holding industry to account and helping to ensure that Center members, like me, can recreate in safer waterways, enjoy our scenic environment, and drink cleaner water. Without action from EPA, our wild spaces don’t stand a chance against MPP facility pollution.

15. According to the great 20th-century ecologist Aldo Leopold: “A thing is right when it maintains the integrity, stability and beauty of the land. It is wrong when it tends otherwise.” Let this simple, brilliant evaluation tool be EPA’s metric. When land is healthy, so are all people and wildlife.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 26th day of August 2022, in Woodward, Iowa.

A handwritten signature in black ink, appearing to read "D. Wirth", written over a horizontal line.

Danielle Wirth, Ph.D.

Exhibit 16

DECLARATION OF KENDRA MELROSE

I, KENDRA MELROSE, declare and state as follows:

1. I am the Chief Programs Officer at the Animal Legal Defense Fund (“ALDF”). As Chief Programs Officer, I am responsible for coordinating ALDF’s activities across several legal and operational programs, including ALDF’s civil Litigation Program, to ensure the best possible outcomes. I also coordinate among ALDF’s program staff and our executive leadership, communications department, and donor and member outreach teams.

2. ALDF is a national nonprofit animal protection organization founded in 1979 that uses education, public outreach, legislation, and litigation to protect the lives and advance the interests of animals, including those raised on concentrated animal feeding operations (“CAFOs”) and those killed and processed at slaughterhouses and rendering facilities (collectively, “MPP facilities”). ALDF is supported by thousands of dedicated attorneys, who volunteer their time and expertise to advance our mission, and more than 350,000 members and supporters nationwide, many of whom live and recreate in close proximity to CAFOs and MPP facilities.

3. ALDF members receive our email distributions and, if they choose, additional educational materials, through which they can learn more about animal law and actions to take to protect animals. ALDF members also participate in our events. ALDF regularly puts on Animal Law Symposia and other webinars or live presentations as part of its Animal Law Academy, where ALDF members can

interact with one another, ask ALDF attorneys and other Program staff questions about their ongoing work, and discuss and opine on organization activities and policies. ALDF surveys its members about potential topics to include in its Animal Law Academy webinars and presentations, its annual Animal Law Conference, and other presentations and panels.

4. In addition, ALDF regularly gives members opportunities to participate in other surveys or polls that help shape ALDF's activities, decision-making processes, and internal and external policies. New ALDF members complete a survey with questions that influence ALDF's activities and subject area emphases, including questions about the part of our work that most interests the member (for example, animals in research or farmed animals and factory farming) and what the members view as the biggest challenge blocking legal improvements for animals.

5. ALDF advocates for more responsible government oversight of the animal agriculture industry, including MPP facilities, to protect the health and quality of life of the animals killed and processed in these facilities and the humans and animals living nearby.

6. ALDF members live and recreate in close proximity to MPP facilities. Noises, odors, and air and water pollution from MPP facilities negatively impact ALDF members' health and quality of life. For example, ALDF members avoid opening their windows, spending time outdoors, and recreating in open spaces because MPP facility pollution makes those activities unbearable. Concerns about

high levels of water pollution from MPP facilities, in particular, and the health consequences of exposure to that pollution, prevent ALDF members from recreating in—or even near—waterbodies that receive pollution from MPP facilities. In addition, ALDF members across the country—not just those who live near MPP facilities—are concerned about the negative impacts that MPP facilities have on the health and wellbeing of the animals killed and processed within them and the animals living in waterbodies degraded by MPP facility pollution.

7. ALDF's work on behalf of farmed animals is a cornerstone of its civil litigation program. In furtherance of its goals, ALDF regularly submits rulemaking petitions and administrative comments to, and files complaints and lawsuits against, federal agencies such as the U.S. Department of Agriculture, Environmental Protection Agency, and Farm Service Agency. These actions seek transparent and adequate regulation of CAFOs and MPP facilities with respect to their effects on animals and the environment, including air and water. ALDF also maintains a docket of cases against federal agencies challenging regulatory exemptions or inadequate oversight of CAFOs and MPP facilities. ALDF further litigates directly against polluting slaughterhouses; it is currently challenging excessive water use and pollution at the Foster Farms slaughterhouse in Livingston, California, in California state court.

8. ALDF further advocates at the state and federal levels for increased oversight of CAFO and MPP facility practices and siting. For example, in 2016 and 2017, ALDF submitted comments in response to a proposal by the Arkansas Farm

Service Agency to provide federal funding to establish a 30,000-head chicken CAFO in Northern Arkansas. ALDF's advocacy was successful in forcing the agency to consider the environmental impacts of CAFOs in two Environmental Assessments under NEPA. In 2018, ALDF submitted comments to the Arkansas Department of Environmental Quality opposing modification of a National Pollutant Discharge Elimination System permit issued under the Clean Water Act that would have allowed a chicken slaughterhouse to discharge untreated waste into the municipal wastewater treatment plant. The Department ultimately required the facility to pre-treat its wastewater. In recent years ALDF has also opposed numerous CAFOs and slaughterhouses in Oregon.

9. ALDF also regularly seeks information through the Freedom of Information Act ("FOIA") and brings suit to compel compliance with FOIA when the government unlawfully withholds information. Specifically with regard to CAFOs, in 2013, ALDF sued FDA for withholding documents related to the animal drug ractopamine, which the industry uses to grow animals more rapidly with less feed. ALDF also brought suit to challenge FDA's decision to withhold FOIA records about hen populations and living conditions on large CAFOs. In 2016, the Ninth Circuit Court of Appeals reversed the district court's judgment and remanded that case for a trial, after which FDA was ordered to disclose records it had previously withheld. ALDF is also currently in litigation against the Farm Service Agency for withholding information about CAFOs that receive federal funds. These are just some examples of our FOIA litigation.

10. The Clean Water Act requires the U.S. Environmental Protection Agency (“EPA”) to set increasingly protective water pollution control standards tied to advances in technology. Currently, pollution control standards for MPP facilities are either nonexistent or woefully out-of-date. ALDF believes that EPA’s failure to publish appropriate water pollution control standards applicable to MPP facilities is unlawful under the Clean Water Act and the Administrative Procedure Act, which in relevant part, prohibits unreasonable agency delay.

11. EPA’s failure to publish appropriate pollution control standards for MPP facilities interferes with ALDF’s ability to fully achieve its mission, including protecting its members, supporters, other humans, and animals from high levels of MPP facility pollution. EPA’s failure to act and unreasonable delay in acting deprive ALDF members and supporters of the protections afforded to them by the Clean Water Act. As a result of EPA’s failure to act and unreasonable delay, ALDF’s members and supporters will be subjected to continued high levels of pollution from MPP facilities that interfere with their right and ability to enjoy their property and the open spaces and waterways in which they wish to recreate. In addition, continued high levels of pollution from MPP facilities will cause ALDF members and supporters to experience further concern for their health, the health of their local environment, and the health of the animals and humans who rely upon that environment.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 31st day of July, 2022, in New York, New York.


Kendra Melrose

Exhibit 17

DECLARATION OF SARA PARKER

I, SARA PARKER, declare and state as follows:

1. I am a resident of Sioux Falls in Minnehaha County, South Dakota. I live in the southeastern part of the city, and I own my home. I have lived in Sioux Falls for 22 years.

2. I am a member of the Animal Legal Defense Fund (“ALDF”). I became a member in August 2019. As a member, I contribute to the organization financially, and I receive regular updates about ALDF’s work through emails, newsletters, and social media. In addition, I engage in ALDF’s legal efforts when I am directly affected by practices ALDF is challenging.

3. Sioux Falls is home to a Smithfield Foods pig slaughterhouse.¹ The slaughterhouse is located less than a mile from the city’s downtown area and approximately one-half mile north of Falls Park, in the center of the city. It is directly adjacent to the Big Sioux River, which runs through the heart of Sioux Falls, on its eastern shore. The Sioux Falls Farmer’s Market is due west across from the slaughterhouse. Since the slaughterhouse is near the very center of Sioux Falls, the smell of the facility is a blight on our community and impacts our quality of life.

4. I live about four miles away from the slaughterhouse, and I can smell its strong, repulsive odor from my home at least once every week or two.

¹ See NPDES Permit SD0000078, <https://echo.epa.gov/detailed-facility-report?fid=110000427823> (last visited June 10, 2022).

5. In addition, I regularly go to enjoy Falls Park with my husband, visit the Farmer's Market, and walk around the parks and bike paths on the southern side of Sioux Falls and along the Big Sioux River. However, my ability to enjoy these areas and activities—Falls Park and the green spaces and bike paths along the Big Sioux River—is hindered by the terrible pollution of the Big Sioux River, caused in significant part by the slaughterhouse. The river is so horribly polluted that I would be afraid to touch its water. Smithfield illegally dumped huge amounts of waste into the river in 2018, leading to dangerous levels of ammonia in the water.

6. When Smithfield has been caught illegally polluting in the past, they seem to get only a slap on the wrist, which does nothing to prevent additional dangerous discharges. I am frustrated that Smithfield does not seem to be held accountable for its pollution in a meaningful way. Indeed, in November 2019, I learned that Smithfield had *again* been fined by the South Dakota Department of Environment and Natural Resources because its Sioux Falls slaughterhouse discharged more than the allowable amounts of pollutants including ammonia and fecal coliform. I read about the 2018 and 2019 illegal discharges in news reports.² I

² See *Smithfield Foods Fined for Water Violations in the Big Sioux River*, Dakota News Now: KSFY (Nov. 19, 2019), <https://www.dakotanewsnow.com/content/news/Smithfield-Foods-fined-for-water-violations-in-the-Big-Sioux-River-565171812.html>; see also *Smithfield Foods Inc. Fined for Surface Water Violations*, Capital J. (Nov. 21, 2019), https://www.capjournal.com/news/smithfield-foods-inc-fined-for-surface-water-violations/article_c4de2936-0af7-11ea-96c1-fbfb0a31cfa1.html; Bart Pfankuch, *State Response to Smithfield Ammonia Release Criticized*, S.D. News Watch (Aug. 22, 2018), <https://www.sdnewswatch.org/stories/state-response-to-smithfield-ammonia-release-criticized/>; Bart Pfankuch, *Rivers at Risk: S.D. Waterways Serve as Dumping Grounds for Human, Industrial, Ag Wastes*, S.D.

am also aware that in 2020, Smithfield was once again found to be in violation of the terms of its permit.³

7. I am aware that ALDF, together with a coalition of other organizations, has challenged the Environmental Protection Agency's failure to update pollution control standards for slaughterhouses such as the Sioux Falls Smithfield one.

8. I am submitting this declaration in support of that lawsuit because, if Smithfield's water pollution is not meaningfully curtailed with 21st-century technology, and if the slaughterhouse is not required to comply with stricter pollution control standards, I fear the already terrible water pollution in the Big Sioux River will continue and may even get worse, and there will be a greater chance of harmful discharges from the already-noncompliant Smithfield slaughterhouse.

9. I am very concerned that continuing water pollution from the slaughterhouse would further hurt our quality of life, as Sioux Falls residents, and make it even more difficult to enjoy Falls Park and the areas around the river that my family and I regularly use for recreation. If Smithfield's pollution is not properly controlled, I will be even more reluctant to go near the river, as I would fear for my safety.

News Watch (Aug. 21, 2018), <https://www.sdnewswatch.org/stories/special-report-s-d-rivers-serve-as-dumping-grounds-for-polluting-wastes/>.

³ See *supra* note 1 (reporting permit violation during the period from October to December 2020).

10. If Smithfield is required to employ proper water pollution control technologies and standards, this will provide me some comfort that water pollution from the plant will not continue to threaten my ability to use and enjoy the river and the public open spaces and bike paths around it.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed this 9th day of August 2022, in Sioux Falls, South Dakota.

Sara Parker

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