UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CONSERVATION LAW FOUNDATION, Plaintiff v. ENVIRONMENTAL PROTECTION AGENCY, Stephen L. Johnson, Administrator and ENVIRONMENTAL PROTECTION AGENCY REGION 1, Robert W. Varney Regional Administrator Defendants	Case No.: **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, for its Complaint against Defendants, states as follows

NATURE AND PURPOSE OF ACTION

1. This case arises out of the United States Environmental Protection Agency's (EPA) failure to fulfill the requirements of the Clean Water Act (CWA) and Administrative Procedure Act (APA) in reviewing and approving the Lake Champlain Phosphorus Total Maximum Daily Load (Champlain TMDL) drafted and submitted by the State of Vermont's Agency of Natural Resources Department of Environmental Conservation (VT DEC). Specifically, Plaintiff brings this action as a result of Defendants' violation of provisions of the CWA, in particular 33 U.S.C. §§ 1311, 1313 and regulations applicable thereto, and the APA, in particular 5 U.S.C. § 706.

PARTIES

2. Plaintiff Conservation Law Foundation (CLF) is a not-for-profit corporation incorporated under the laws of the Commonwealth of Massachusetts and with a principal place of business at 15 East State St., Montpelier, VT 05602.

3. Founded in 1966, CLF's mission is to solve the most significant environmental challenges facing New England's Environment through the use of law, economics, and science to conserve natural resources, protect public health and promote vital communities in our region.

4. CLF is a "person" as defined by the APA, codified at 5 U.S.C. § 551(2).

5. Restoring and maintaining the chemical, physical, and biological integrity of the New England's waters, including Lake Champlain, is a primary focus of CLF's Clean Water and Healthy Forest Program.

6. CLF's Vermont Advocacy Center employs the Lake Champlain Lakekeeper, a licensed member of the International Waterkeeper Alliance, whose function involves monitoring lake water quality through an on-lake presence, raising awareness of the water quality problems facing Lake Champlain, and promoting solutions to those problems on behalf of CLF's members and all those who seek to use and enjoy Lake Champlain.

7. CLF is a member-supported organization with approximately 4,000 members who live within one day's drive of Lake Champlain, and many of whom live and/or work within the Lake Champlain watershed.

8. On behalf of itself and its members, CLF has been involved extensively in local, state, and federal efforts to restore water quality in Lake Champlain and reduce pollution in the

Lake's watershed, including the public process surrounding Defendants' review and approval of the Champlain TMDL.

9. As a result of the acts and omissions of Defendants alleged herein, CLF members have suffered and will continue to suffer and/or may suffer injuries to their aesthetic, environmental, recreational, and economic interests in enjoying and using Lake Champlain.

10. CLF's aesthetic, environmental, recreational, and economic interests in enjoying and using Lake Champlain are injured due to the lack of progress toward attainment and maintenance of water quality standards in numerous segments of Lake Champlain resulting in part from the numerous and serious flaws in Defendants' review and approval of the Champlain TMDL.

11. The 2008 "State of the Lake" report published by the Lake Champlain Basin Program documents this lack of progress, concluding that based on long term trends accounting for the most recent monitoring data four segments of Lake Champlain are "deteriorating" and "no segments are improving."

12. Defendant EPA is the agency of the United States Government responsible for administering and implementing the CWA.

13. Defendant Stephen Johnson, Administrator of EPA, (Johnson) is charged under 33 U.S.C. § 1313(d)(2) with the oversight of EPA decisions and actions affecting VT DEC's TMDL submissions and is sued in his official capacity only. If ordered by the Court, Johnson has the authority and responsibility to remedy the harm inflicted by Defendant's actions.

14. Defendant EPA Region 1 is responsible for administering and implementing EPA's responsibilities under the CWA in Vermont.

15. Defendant Robert Varney, Regional Administrator of EPA Region 1, (Varney) is charged under 40 C.F.R. § 130.7(d) with the oversight of EPA decisions and actions affecting VT DEC's submissions and is sued in his official capacity only. If ordered by the Court, Varney has the authority and responsibility to remedy the harm inflicted by Defendant's actions.

JURISIDICTION AND VENUE

16. The jurisdiction of the Court is invoked under 28 U.S.C. § 1331.

17. The relief requested is authorized by 22 U.S.C. § 2201 and 5 U.S.C § 706.

18. Venue is appropriate in this judicial district and in accord with 28 U.S.C. § 1391(e) because the Lake that is the subject of this action is located, in part, in this judicial district.

STATUTORY AND REGULATORY BACKGROUND

19. Congress enacted the CWA in 1972, establishing "the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985." 33 U.S.C. § 1251.

20. Congress further established as an interim goal wherever attainable "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water to be achieved by July 1, 1983" Id.

21. To advance these national goals, the CWA requires, among other things, that states establish water quality standards (WQS) and periodically identify waters that do not meet those standards even after imposition of nationwide, technology-based pollution control standards set by EPA under the CWA. 33 U.S.C. § 1313(a)-(d); 40 C.F.R. § 131.2.

22. Upon identification of such degraded waters, states must develop an overall pollution limit for each of the degraded waters, called Total Maximum Daily Load, established "at levels necessary to attain and maintain the applicable narrative and numerical WQS." 40 C.F.R. § 130.7(c)(1); 33 U.S.C. § 1313(d)(1)(C).

23. A TMDL must include the sum of (1) allowable pollution from each existing or future point sources (called wasteload allocations (WLAs)), 40 C.F.R. § 130.2(h); (2) allowable pollution from nonpoint and natural background sources, if any (called load allocations (LAs)), id. § 130.2(g); and a margin of safety which takes account any lack of knowledge concerning the relationship between pollution controls and water quality, 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1). 40 C.F.R. § 130.2(i).

24. CWA regulations also require that "[d]eterminations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters." 40 C.F.R. § 130.7(c)(1).

25. CWA regulations define TMDL wasteload allocations as a "type of water quality-based effluent limitation." 40 C.F.R. § 130.2(h).

26. Under the CWA and its regulations, water quality based effluent limitations are those more stringent than technology-based effluent limitations and thus comprise requirements "necessary to achieve water quality standards established under the CWA" and "must control all pollutants…that are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standards." 40 C.F.R. § 122.44(d)(1)(i); 33 U.S.C. § 1311(b)(1)(C).

27. Pursuant to EPA guidance, in a water impaired by both point and nonpoint sources, where a point source is given a less stringent wasteload allocation based on assumption that nonpoint sources load reductions will occur, reasonable assurances that the nonpoint source reductions will happen must be provided in order for the TMDL to be approvable.

28. Upon completion, states must submit TMDLs to the Defendants for approval. 40 C.F.R. § 130.7.

29. Vermont WQS contain numeric water quality criteria for phosphorus concentration in all segments of Lake Champlain at Section 3-01(B)(2)(c)(Table 3).

30. Vermont WQS require that the numeric water quality criteria for all Lake Champlain segments "shall be achieved as the annual mean total phosphorus concentration in the photosynthetic depth (euphotic) zone in central, open water areas of each lake segment. Section 3-01(B)(2)(c)(Table 3).

FACTUAL BACKGROUND

Description of Lake Champlain

31. Lake Champlain is a water of the United States and an international waterbody shared by the States of Vermont and New York and the Canadian province of Quebec.

32. Lake Champlain is 120 miles long, with a surface area of 435 square miles and a maximum depth of 400 feet.

33. The watershed is roughly 8,234 square miles and drains nearly half the land area of Vermont.

34. Lake Champlain is one of the largest fresh water lakes in the United States.

35. Lake Champlain provides drinking water supply for approximately 250,000 people, and is a recreational attraction for countless residents of the New England Region and beyond, generating millions of tourism-related dollars for the state of Vermont each year.

Description of the Water Quality Violation

36. In 1991, Vermont WQS incorporated numeric, in-lake total phosphorus concentration criteria for each segment of Lake Champlain.

37. Vermont adopted these criteria, with Defendants' approval, as part of a concerted effort to address the impairment of Lake Champlain uses—such as contact recreation and

aesthetics—that resulted from nuisance levels of algae blooms, some of which can be toxic, and other aquatic plants whose growth is stimulated in part by excess in-lake concentrations of phosphorus.

38. These numeric standards remain in Vermont Water Quality Standards that have been reviewed and approved by EPA in 1996, 1999, 2006, and 2008.

39. The criteria were derived, in part, from a lake user survey analysis of the relationship between aesthetic values, varying uses made of the lake for recreation in and on the water, and total phosphorus concentrations.

40. Due to ongoing phosphorus pollution resulting in in-lake phosphorus concentrations that exceeded the numeric criteria in the VWQS, Vermont's year 2000 CWA Section 303(d) list of waters failing to meet EPA-approved state WQS included the following nine segments of Lake Champlain: Otter Creek, Port Henry, South Lake A, South Lake B, Missisquoi Bay, Northeast Arm, St. Albans Bay, Main Lake, Shelburne Bay.

41. The violations of VT WQS numeric criteria discussed in the preceding paragraph were longstanding and were reflected in prior iterations of Vermont's CWA Section 303(d) list.

42. Phosphorus pollution enters Lake Champlain from multiple point and nonpoint sources in Vermont, New York, and Quebec.

43. Point sources that discharge phosphorus pollution to Lake Champlain and are subject to CWA permitting include, but are not limited to, municipal sewage treatment plants, industrial wastewater treatment facilities, combined sewer overflow infrastructure associated with municipal sewage treatment plants, concentrated animal feeding operations, and stormwater discharges that contribute to WQS violations or are significant contributors of pollutants, stormwater discharges from municipal separate storm sewer systems, stormwater discharges

from construction sites disturbing greater than one acre, and stormwater discharges associated with industrial activity.

44. Nonpoint sources that discharge phosphorus pollution into Lake Champlain include, but are not limited to, diffuse soil erosion and runoff from, among other things, agricultural operations of all sizes and types, transportation surfaces, developed areas containing impervious surfaces, construction sites disturbing less than one acre of ground, poor maintenance of gravel roads and the proliferation of driveways along town roads; and soil erosion resulting from certain forestry activities.

Defendants' Flawed TMDL Review Approval Process

45. Based on information in the administrative record, Defendants began their review and approval process for the Champlain TMDL in March 2001, although on information and belief, it is possible that the process began prior to that date.

46. By letter dated November 4, 2002, The United States EPA gave final approval to the Lake Champlain TMDL.

Insufficiently Stringent Wasteload Allocations and Lack of Reasonable Assurances

47. EPA guidance requires that in a water impaired by both point and nonpoint sources, where regulators set a less stringent wasteload allocation than would otherwise be required by the CWA based on an assumption that nonpoint source load reductions will occur, the regulator promoting, advancing, or approving such less stringent allocation shall provide reasonable assurances that the nonpoint sources reductions will actually happen before the TMDL can be approved.

48. In the administrative record of the Champlain TMDL, Defendant EPA Region 1 admits that reasonable assurances are necessary to the determination of whether the load and wasteload allocations in VT DEC's Champlain TMDL will achieve water quality standards.

49. Defendants' approved the Champlain TMDL with less stringent wasteload allocations for point sources than would otherwise be required based on an insufficiently-supported determination that VT DEC nonpoint source control programs, many of which were unimplemented, would succeed in timely achieving dramatic and unprecedented nonpoint source load reductions.

50. Defendants' approval of the Champlain TMDL allows NPDES-permitted wastewater treatment discharges to increase their discharges of the pollutant of concern—phosphorus—even though many of these discharges contribute to ongoing violations of Vermont Water Quality Standards and were contributing to violations of water quality standards at the time of Defendants' approval.

51. Defendants' reasonable assurances analysis relied on questionable representations about the predicted effectiveness of numerous, unproven nonpoint source controls as the required reasonable assurances that nonpoint source controls were sufficient to offset increases in point source loads allowed in the approved WLAs.

52. These representations about anticipated nonpoint source pollution reduction were wholly unsupported by data on the quantitative effectiveness of identified nonpoint source controls, and the status and feasibility of their implementation.

53. Defendants' erred further in their review and approval of the Champlain TMDL, including review of the required reasonable assurances, by arbitrarily and capriciously accepting VT DEC's flawed fundamental assumptions about pollutant loading, tributary flow

regimes, lake water levels, and average water temperature derived from data collected during the 1991 hydrologic year and predictive models based in part or in whole on such data.

54. For example, pollution reductions called for in the Champlain TMDL are in some instances expressed as percentage reductions from loadings observed in or predicted by models based on the 1991 hydrologic base year.

55. The assumptions discussed ¶¶ 53-54 directly affect the legal sufficiency of Defendants' approval decisions with respect to aspects of the Champlain TMDL, including but not limited to, wasteload allocations, load allocations, the overall loading capacity, seasonal variation, critical conditions assessment, and the margin of safety.

56. When reviewing and approving the Champlain TMDL submitted by VT DEC, Defendants knew or should have known of then-existing data demonstrating higher levels of average annual overall pollutant loadings and nonpoint loadings to Lake Champlain in the decade immediately preceding approval than those observed in the 1991 hydrologic base year.

57. Such data also demonstrates that average annual precipitation levels in the Lake Champlain Basin during certain intervals in the decade immediately preceding approval were higher than those observed in the 1991 hydrologic base year.

58. Defendants' review and approval of the Champlain TMDL failed to consider the impact that such higher precipitation levels could have on fundamental assumptions and predictions supporting the Champlain TMDL.

59. Conversion of land in the Lake Champlain basin from forested and agricultural uses to urban, suburban, and exurban uses are linked to increases in point sources and nonpoint sources of pollution.

60. Defendants' review and approval of the Champlain TMDL also failed to account for the effect that conversion of land within the Lake Champlain basin from forested and agricultural uses to urban, suburban, and exurban uses would have on assumptions and predictions about existing and anticipated pollutant loadings in the Champlain TMDL submission, including but not limited to those derived from the 1991 hydrologic base year.

Failure to Require a Margin of Safety

61. Defendants approved the Champlain TMDL despite the absence of a margin of safety that accounted for the substantial lack of knowledge concerning the relationship between certain pollution controls proposed in the Champlain TMDL and lake water quality.

62. The Champlain TMDL lacks an express allocation of Lake Champlain's overall loading capacity to the margin of safety.

63. Instead, Defendants based their approval decision on a so-called "implicit" margin of safety purportedly provided by conservative assumptions in the modeling employed by VT DEC when crafting its TMDL submission to Defendants.

64. As alleged in paragraphs 49-60, VT DEC modeled anticipated pollution reductions from imposition of pollution controls and corresponding water quality responses thereto on numerous flawed and unreliable data and assumptions about effectiveness of proposed pollution controls, and the status and feasibility of their implementation.

65. Since Defendants' approval of the Champlain TMDL, overall pollution reductions predicted in the Champlain TMDL administrative record have not occurred.

66. Data shows that pollution has in fact increased from certain sources subject to the WLAs and LAs in the Champlain TMDL.

67. Because of the fatal flaws in the "implicit" margin of safety described in ¶ 64, Defendants' acted arbitrarily, capriciously, and contrary to the CWA by failing to require an express allocation of Lake Champlain's overall loading capacity to the margin of safety.

Failure to Accurately Account for Point Sources

68. Defendants acted in violation of CWA implementing regulations including 40 C.F.R. §§ 122.44(d), 130.2(g), by approving a gross WLA for nonwastewater point sources, rather than requiring individual allocations.

69. Defendants' failure to require individual allocations for nonwastewater point sources resulted in approval of a TMDL that does not accurately account for all point sources and their loading.

70. The gross WLA groups together a large, undefined, geographically-disparate universe of point and nonpoint sources subject to differing state and federal regulations and permitting programs.

71. Defendants' approval of the Champlain TMDL without first requiring establishment of individual WLAs for non-wastewater point sources frustrates proper administration of N.P.D.E.S. permitting for the point sources lumped together in the gross WLA because CWA regulations require that such permits be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge." 40 C.F.R. § 122.44(d)(1)(vii)(B).

72. Defendants' approval of the legally-deficient gross WLA for such sources has resulted and will continue to result in the failure to adequately control these pollution sources via TMDL implementation.

73. The failure to adequately control existing and future non-wastewater point sources of pollution via TMDL implementation flowing from the circumstances discussed in ¶¶ 68-73

have delayed and will continue to delay attainment and maintenance of VT WQS in Lake Champlain.

Failure to Analyze Climate Change When Approving the Establishment of Wasteload Allocations, Load Allocations, the Overall Loading Capacity, Critical Conditions, Seasonal Variation, and the Margin of Safety

74. In approving the Champlain TMDL, Defendants completely failed to consider then-existing, widely-known, peer-reviewed scientific findings demonstrating an ongoing and increasing trend of accelerated climate change.

75. Defendants's failure to consider accelerated climate change fatally compromised its analysis of the fundamental justifications supporting the Champlain TMDL's legal sufficiency.

76. In 1978, Congress enacted the National Climate Program Act, noting that "[w]eather and climate change affect food production, energy use, land use, water resources and other factors vital to national security and human welfare." P.L. 95-367, sec. 2, Sept. 17, 1978, 92 Stat. 601 (codified at 15 U.S.C. § 2901 (1)).

77. Again, in 1987 Congress called for a "coordinated national policy on global climate change" in the Global Climate Protection Act. Pub.L. 100-204, Title XI, §§ 1101 to 1106, Dec. 22, 1987, 101 Stat. 1407.

78. Defendants are an agency of the federal government and certain responsible representatives of that agency with broad research, rulemaking, permitting, enforcement, policy-making, and funding authority over "food production, energy use, land use, water resources and other factors vital to national security and human welfare."

79. Significant examples of then-existing, widely-known, and peer-reviewed scientific findings demonstrating an ongoing and increasing trend of accelerated climate change include, but are not limited to, those produced by a variety of federal agencies and departments.

80. Significant examples of such then-existing, widely-known, and peer-reviewed scientific findings demonstrating an ongoing and increasing trend of accelerated climate change include, but are not limited to, those produced by federally-funded academic research.

81. Significant examples of such then-existing, widely-known, and peer-reviewed scientific findings demonstrating an ongoing and increasing trend of accelerated climate change include, but are not limited to, those produced by blue-ribbon panels focused solely on climate-change research and sanctioned by International bodies of which the United States was a member such as the United Nations.

82. Defendants' review and approval process ignored then-existing scientific findings that documented and predicted major climate-related impacts on regional water resources including or resulting from the following:

a. changes in precipitation and their effect on the magnitude and timing of runoff.
b. increasing pollutant loads flushed into waters from failing or overwhelmed waste management systems
c. altered water temperature
d. altered flow regimes
e. altered water levels

83. One year prior to the approval of the Champlain TMDL, a White House-commissioned, National Research Council Report concluded that global temperatures were in fact, rising. CLIMATE CHANGE: AN ANALYSIS OF SOME KEY QUESTIONS 1 (2001) (NRC Report).

84. The NRC Report discusses several secondary effects of global temperature rise, including increased rainfall rates.

85. Defendants' Champlain TMDL approval process and final agency decision failed to consider then-occurring and predicted climate change-induced changes in precipitation and their effect on the magnitude and timing of runoff, increasing pollutant loads flushed into waters from failing or overwhelmed waste management systems, altered water temperature, altered flow regimes, and altered water levels.

86. Defendants' Champlain TMDL approval process and final agency decision unlawfully failed to analyze water resources impacts associated with documented and predicted climate change in so far as such changes were highly relevant to, among other things, the establishment of WLAs, LAs, the overall loading capacity, seasonal variation analysis, critical conditions analysis, and establishment of the margin of safety.

87. Based on the foregoing, the Champlain TMDL does not meet the minimum legal requirements set forth by the Clean Water Act and its implementing regulations

88. In November 2002, despite the numerous unlawful deficiencies identified in the foregoing paragraphs, Defendant EPA Region 1, acting on behalf of Defendant U.S. EPA, approved the final TMDL.

89. Defendants' approval of the Champlain TMDL constitutes final agency action subject to judicial review under 5 U.S.C. § 704.

COUNT I

90. Plaintiff re-alleges all preceding paragraphs of its Complaint.

91. The Champlain TMDL fails to satisfy the requirement of the CWA and its implementing regulations because it includes WLAs for point sources that are less stringent than required by, inter alia, 33 U.S.C. §§ 1311(b)(1)(C); 1313(d)(1)(C); 40 C.F.R. §§ 122.44, 130.7 and as a result the attainment and maintenance of VT WQS numeric phosphorus criteria and designated

uses affected by excess levels of phosphorus concentration will be delayed or will not occur at all.

92. Defendants' approval of the Champlain TMDL alleged herein violates provisions of the APA, 5 U.S.C. § 706(2) because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with provisions of the CWA and its implementing regulations.

93. Defendants' failure to promulgate TMDLs that satisfy all of the requirements of the CWA constitutes agency action unlawfully withheld and unreasonably delayed in violation of 5 U.S.C. § 706(1).

94. Based on the foregoing paragraphs, Plaintiff is entitled under 5 U.S.C. § 706 to an order setting aside Defendants' approval of the Champlain TMDL and an order compelling Defendants to comply with the requirements of the CWA and its implementing regulations

COUNT II

95. Plaintiff re-alleges all preceding paragraphs of its Complaint.

96. The Champlain TMDL fails to satisfy the requirements of the CWA because it fails to include a legally-sufficient margin of safety as required by, inter alia, 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. §§ 130.2, 130.7 and as a result the attainment and maintenance of VT WQS numeric phosphorus criteria and designated uses affected by excess levels of phosphorus concentration will be delayed or will not occur at all.

97. Defendants' approval of the Champlain TMDL alleged herein violates provisions of the APA, 5 U.S.C. § 706(2) because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with provisions of the CWA and its implementing regulations.

98. Defendants' failure to promulgate TMDLs that satisfy all of the requirements of the CWA constitutes agency action unlawfully withheld and unreasonably delayed in violation of 5 U.S.C. § 706(1).

99. Based on the foregoing paragraphs, Plaintiff is entitled under 5 U.S.C. § 706 to an order setting aside Defendants' approval of the Champlain TMDL and an order compelling Defendants to comply with the requirements of the CWA and its implementing regulations.

COUNT III

100. Plaintiff re-alleges all preceding paragraphs of its Complaint.

101. The Champlain TMDL fails to satisfy the requirements of the CWA because it fails to accurately account for point source loading in the WLA as required by, inter alia, 33 U.S.C. §§ 1311(b)(1)(C), 1313(d)(1)(C); 40 C.F.R. §§ 122.44, 130.2, 130.7 and as a result the attainment and maintenance of VT WQS numeric phosphorus criteria and designated uses affected by excess levels of phosphorus concentration will be delayed or will not occur at all.

102. Defendants' approval of the Champlain TMDL alleged herein violates provisions of the APA, 5 U.S.C. § 706(2) because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with provisions of the CWA and its implementing regulations.

103. Defendants' failure to promulgate TMDLs that satisfy all of the requirements of the CWA constitutes agency action unlawfully withheld and unreasonably delayed in violation of 5 U.S.C. § 706(1).

104. Based on the foregoing paragraphs, Plaintiff is entitled under 5 U.S.C. § 706 to an order setting aside Defendants' approval of the Champlain TMDL and an order compelling Defendants to comply with the requirements of the CWA and its implementing regulations.

COUNT IV

105. Plaintiff re-alleges all preceding paragraphs of its Complaint.

106. Defendants' actions, findings, and conclusions made without analyzing water resources impacts associated with documented and predicted climate change when approving the establishment of wasteload allocations, load allocations, the overall loading capacity, critical conditions assessment, seasonal variation assessment, and the margin of safety in the approved Champlain TMDL, were arbitrary, capricious, and abuse of discretion, and were otherwise not in accordance with, inter alia, the CWA, 33 U.S.C. §§ 1311(b)(1)(C), 1313(d)(1)(C); 40 C.F.R. §§ 122.44, 130.2, 130.7 and as a result the attainment and maintenance of VT WQS numeric phosphorus criteria and designated uses affected by excess levels of phosphorus concentration will be delayed or will not occur at all.

107. Defendants' approval of the Champlain TMDL alleged herein violates provisions of the APA, 5 U.S.C. § 706(2) because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with provisions of the CWA and its implementing regulations.

108. Defendants' failure to promulgate TMDLs that satisfy all of the requirements of the CWA constitutes agency action unlawfully withheld and unreasonably delayed in violation of 5 U.S.C. § 706(1).

109. Based on the foregoing paragraphs, Plaintiff is entitled under 5 U.S.C. § 706 to an order setting aside Defendants' approval of the Champlain TMDL and an order compelling Defendants to comply with the requirements of the CWA and its implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays the Court for the following relief:

1. A declaratory judgment that Defendants violated the CWA and its implementing regulations by approving the Champlain TMDL because the Champlain TMDL establishes less stringent wasteload allocations for point sources of pollution than would be otherwise required and fails to contain legally-sufficient reasonable assurances that offsetting reductions in nonpoint source pollution will occur.
2. A declaratory judgment that Defendants violated the CWA and its implementing regulations by approving the Champlain TMDL because the Champlain TMDL fails to include a legally-sufficient margin of safety.
3. A declaratory judgment that Defendants violated the CWA and its implementing regulations by approving the Champlain TMDL because the Champlain TMDL does not accurately account for point sources in the WLAs.
4. A declaratory judgment that Defendants' actions, findings, and conclusions in reviewing and approving the Champlain TMDL were arbitrary, capricious, and abuse of discretion, and were otherwise not in accordance with the CWA and the APA because their failure to analyzing water resources impacts associated with documented and predicted climate change when approving the establishment of wasteload allocations, load allocations, the overall loading capacity, seasonal variation, critical conditions assessment, and the margin of safety.
5. A declaratory judgment that Defendants violated the CWA and its implementing regulations by approving the Champlain TMDL because the numerous flaws in its review

and approval process deprive Defendants' of a legally-sufficient basis to conclude that the approved TMDL would result in the attainment and maintenance of VT WQS.

6. A declaratory judgment that Defendants' approval of the Champlain TMDL constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the provisions of the CWA and its implementing regulations in violation of the APA.
7. An order setting aside Defendants's approval of the Champlain TMDL, and compelling Defendants to comply with the requirements of the CWA and its implementing regulations by establishing a new Champlain TMDL to implement Vermont WQS for Lake Champlain.
8. Such additional judicial determinations and orders as may be necessary to effectuate the foregoing prayer for relief.
9. An award and judgment to CLF of its costs, disbursements, and reasonable attorneys' fees and witness's fees incurred herein as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412 and 28 U.S.C. § 2202.

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