

Yazoo Backwater Area Pumps Project: U.S. Environmental Protection Agency Sued for Failing to Issue 404 Veto



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The environmental organization Earthjustice filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) in the United States District Court for the District of Columbia against the United States Environmental Protection Agency (“EPA”) in regards to the Yazoo Backwater Area Pumps Project (“Project”).

The Complaint alleges that EPA’s failure to veto the Project violates Section 404 of the Clean Water Act.

Earthjustice filed the action on behalf of the following environmental organizations:

- American Rivers
- National Audubon Society
- Sierra Club
- Healthy Gulf

The Project is a United States Army Corps of Engineers (“Corps”) Civil Works project that is designed to address flooding concerns in an area situated between the Mississippi and Yazoo Rivers in west-central Mississippi. This area has often been denominated the “Yazoo Backwater Area” (“Area”). A Project component would include a pumping station that would pump surface water out of the Area during high water events on the Mississippi River.

The proposed Project has a history that was originally conceived in 1941. A levee was completed in 1978. However, a remaining portion of the Project was the installation of pumps. Proponents of the Project argued that the pumps are critical to evacuating rainfall that occurs in the Delta which becomes trapped on the land side of the levee and drainage structures.

EPA determined in 2008 that the Project would adversely impact at least 67,000 acres of wetlands and other waters of the United States. Pursuant to Section 404 of the Clean Water Act it vetoed the Project based on its conclusion that such impacts would result in unacceptable adverse effects on fishery areas and wildlife.

Section 404(c) of the Clean Water Act authorizes EPA to prohibit, restrict, or deny the specification of any defined area in waters of the United States (including wetlands) as a disposal site for the discharge of dredged or fill material whenever it determines, after noticing opportunity for public hearing, that such discharge into waters of the United States will have an unacceptable adverse effect on:

- Municipal water supplies;
- Shellfish beds and fishery areas (including spawning and breeding areas);

- Wildlife; or
- Recreational areas

EPA had initiated a Section 404(c) review of the Project because its construction would involve activities subject to Clean Water Act jurisdiction.

The Project has been resurrected during the Trump Administration. In 2020 the District Commander of the Corps' Vicksburg District stated:

. . . recurring flooding has demonstrated the need to complete the Yazoo Backwater Area Pump Project feature. . .

The Corps also argued that environmental impacts to wetlands and aquatic resources caused by the Project would be substantially less than originally calculated.

Nevertheless, EPA's 2008 veto (also referenced as a "Final Determination") was still in place. However, the Region 4 Office of EPA in a November 30, 2020, letter to the Corps determined that the Project as revised was not subject to the previous 2008 Final Determination. This was based on the federal agency's view that the Project described in the Corps' Draft Supplemental Environmental Impact Statement had a number of differences from the 2008 version.

Earthjustice argues in its January 12th Complaint that EPA is in fact revoking the 2008 Clean Water Act veto. Further, it contends that such revocation:

- Contravenes the explicit terms of the agency's own veto
- Violates the Clean Water Act
- Disregards core principles of administrative law,
- Did not seek public comment nor provide a rational explanation for this reversal

The Complaint further alleges that the Project:

- Includes the same 14,000 cfs pumping plant prohibited by the EPA veto
- Would discharge fill material in the same wetlands prohibited by the veto
- Would operate the same operating plant under the same parameters prohibited by the veto
- Would drain the same project area prohibited by the veto
- Would cause unacceptable adverse impacts to wetlands and fisheries by degrading at least 38,774 acres of wetlands (a level exceeding the amount prohibited by the veto)

A copy of the Complaint can be downloaded [here](#).