

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
THOMAS AND AMY VILLEGAS,)	
)	
Defendants.)	
)	

COMPLAINT

The United States of America (“Plaintiff”), through its undersigned attorneys, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges, upon its best information and belief, as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under sections 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d). The United States is seeking injunctive relief and civil penalties against Thomas and Amy Villegas (the “Villegases” or “Defendants”) for the discharge of pollutants into the waters of the United States at their property in Section 13, Township 12 North, Range 28 West and Section 18, Township 12 North, Range 27 West in Lincoln County, Nebraska (the “Site”), without authorization by the United States Department of Army Corps of Engineers, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. Plaintiff seeks to: (1) enjoin the discharge of pollutants into waters of the United

States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); and (2) require Defendants, at their own expense and with oversight from EPA, to restore and/or mitigate the damages caused by its unlawful activities.

JURISDICTION, VENUE, NOTICE AND AUTHORITY

3. This Court has jurisdiction over the subject matter over the claims in this Complaint pursuant to CWA sections 309(b), 33 U.S.C. §§ 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in the United States District Court for the District of Colorado pursuant to CWA sections 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b)(1) and (c), because the Defendants reside in this District.

5. Notice of the commencement of this action has been provided to the State of Nebraska pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this case is vested in the United States Department of Justice pursuant to CWA section 506, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

7. Defendants Thomas and Amy Villegas are persons who reside at 25599 WCR 4, Hudson, Colorado 80642.

8. Defendants are persons within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

9. Thomas Villegas owns a company incorporated in Colorado, Colorado Siteworks, that offers services including excavation, site grading, and backfill.

STATUTORY AUTHORITY

10. The Clean Water Act is designed to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

11. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued pursuant to CWA section 404, 33 U.S.C. § 1344.

12. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

13. CWA section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

14. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, solid waste, chemical wastes, wrecked or discarded equipment, dredged spoil, rock, sand and cellar dirt.

15. CWA section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

16. 33 C.F.R. § 328.4(c) (1993) states that the United States’ regulatory jurisdiction over “waters of the United States” for non-tidal waters, which includes rivers, “extends to the ordinary high water mark [(‘OHWM’)].”

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include

“any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container . . . from which pollutants are or may be discharged.”

18. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

19. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

GENERAL ALLEGATIONS

20. Amy Villegas owns two of the three parcels that comprise the Site. Colorado Siteworks owns the remaining parcel.

21. The Site includes a portion of the Platte River as well as relatively permanent tributaries to the Platte and adjacent wetlands.

22. Based on information and belief, in or around June 2017 through May 2021, Defendants and/or persons acting on their behalf used earth moving equipment to excavate and clear vegetation from adjacent wetlands, widen existing tributaries, create ponded areas, construct roadways, create culverted road crossings, and construct berms at the Site.

23. In performing these activities, Defendants and/or persons acting on their behalf discharged dredged or fill material including dirt, spoil, rock, culverts, trees, and sand into waters of the United States including relatively permanent tributaries to the Platte River and wetlands adjacent to those tributaries.

24. The Platte River is a traditionally navigable water in reaches upstream and downstream of the Site. At the Site, the Platte River is a relatively permanent tributary of the Missouri River, a traditional navigable water.

25. The Platte River at the Site constitutes a “water[] of the United States” under CWA section 502(7), 33 U.S.C. § 1362(7).

26. Defendants discharged dredged or fill material into relatively permanent tributaries of the Platte River, which also constitute “waters of the United States” under CWA section 502(7), 33 U.S.C. § 1362(7).

27. Defendants discharged dredged or fill material into wetlands with a continuous surface connection to relatively permanent tributaries of the Platte River, which tributaries are “waters of the United States,” under CWA section 502(7), 33 U.S.C. § 1362(7), which makes the wetlands themselves “waters of the United States,” under CWA section 502(7), 33 U.S.C. § 1362(7).

CLAIM FOR RELIEF

CWA Section 301 and 404: Unauthorized Discharge of Dredged or Fill Material into Waters of the United States

28. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 27.

29. Through the activities described above, Defendants and/or persons acting on their behalf discharged dredged or fill material into waters of the United States.

30. The dredged or fill material discharged includes, among other things, dirt, rock, and sand, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

31. Defendants and/or persons acting on their behalf used mechanized land-clearing and earth-moving equipment that resulted in the discharges. This equipment constitutes “point source[s]” as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

32. Defendants have discharged pollutants from various point sources into waters of the United States, within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

33. Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged and/or fill material into waters of the United States, as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

34. Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of pollutants, specifically dredged and/or fill material, into waters of the United States.

35. Defendants are liable for civil penalties for each day in violation of CWA section 301(a), 33 U.S.C. § 1311(a), in an amount determined by CWA section 309(d), 33 U.S.C. § 1319(d), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 2015, and its implementing regulations.

36. Unless enjoined, Defendants’ discharges are likely to continue to remain in waters of the United States, in violation of CWA section 301, 33 U.S.C. § 1311.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

1. That Defendants be permanently enjoined from discharging or causing the discharge of dredged and/or fill material or other pollutants into waters of the United States at the Site except in compliance with the CWA;
2. That Defendants be ordered to undertake measures, at their own expense and with oversight from the Environmental Protection Agency, to effect complete restoration of the waters of the United States at the Site and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;
3. That Defendants be assessed a civil penalty pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), for violations of CWA section 301(a), 33 U.S.C. § 1311(a);
4. That the United States be awarded costs and disbursements in this case; and
5. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Dated: April 10, 2024

Respectfully submitted,

OF COUNSEL:

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Environment & Natural Resources Division

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ATTORNEY FOR PLAINTIFF

JS 44 (Rev. 10/20) District of Colorado

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Dep't of Justice, PO Box 7611, Washington DC 20044, 202-598-9530

DEFENDANTS

Tom and Amy Villegas

County of Residence of First Listed Defendant Weld County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Vanessa Silke, Baird Holm, 1700 Farnam Street, Suite 1500 Omaha, NE 68102, 402-636-8266

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 33 U.S.C. § 1311(a)

☐ AP Docket

Brief description of cause: Illegal discharge to waters of the United States

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/10/2024

PHILLIP DUPRE

Digitally signed by PHILLIP DUPRE
Date: 2024.04.10 08:55:13 -0400

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.