

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VARCA VENTURES, INC., and
WILDCAT MINING CORPORATION,

Defendants.

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the United States Environmental Protection Agency, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act (“CWA” or “Act”), to obtain injunctive relief and civil penalties against Varca Ventures, Inc. (“Varca”) and Wildcat Mining Corporation (“Wildcat”) (collectively, “Defendants”), for discharging pollutants into waters of the United States in La Plata County, Colorado, without authorization by the United States Department of the Army, in violation of CWA section 301(a), 33 U.S.C. § 1311(a), and for violation of a compliance order issued by the United States Environmental Protection Agency (“EPA”) to Defendants pursuant to CWA section 309(a)(3), 33 U.S.C. § 1319(a)(3).

2. In this action, the United States seeks (a) to 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); (b) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (c) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d).

JURISDICTION AND VENUE

3. This Court had jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this District of Colorado pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the Defendants conduct business in this District and the cause of action alleged herein arose in this District.

5. Notice of the commencement of this action has been provided to the State of Colorado 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 action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant Varca is a corporation organized under the laws of Nevada with a business address of 1630 Ringling Blvd., Sarasota, FL 34236.

8. Defendant Wildcat is a corporation organized under the laws of Nevada with a business address of 1630 Ringling Blvd., Sarasota, FL 34236.

9. At all times relevant to the Complaint, the Defendants owned, leased, and/or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled the activities that occurred on such property.

STATUTORY BACKGROUND

10. 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.

11. 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.

12. 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.”

13. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, and cellar dirt.

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

15. Regulations codified at 33 C.F.R. § 328.3(a)(1), (2), (5), and (7), and 40 C.F.R. § 232.2, define “waters of the United States” to include: (a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (b) all interstate waters; (c) tributaries to such waters; and (d) wetlands adjacent to such waters or their tributaries.

16. Regulations codified at 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

18. CWA section 502(5), 33 U.S.C. § 1362(5), defines “person” to include “an individual [or] corporation.”

19. CWA section 309(a)(3), 33 U.S.C. § 1319(a)(3), authorizes the Administrator of EPA to issue an order requiring any person in violation of CWA section 301(a), 33 U.S.C. § 1311(a), to comply with CWA section 301(a).

20. 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).

21. 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), or any order issued by the Administrator of EPA under CWA section 309(a), 33 U.S.C. § 1319(a).

GENERAL ALLEGATIONS

22. From some time in 2008 through the present, and at times better known to the Defendants, the Defendants and/or persons acting on their behalf, discharged dredged or

fill material into waters of the United States without a permit under CWA section 404 at the approximately 275-acre May Day Idaho Mine Complex property located in Section 28, Township 36 North, Range 11 West, N.M.P.M., La Plata County, Colorado (the "Site").

23. Waters of the United States on the Site include (a) wetlands adjacent to the La Plata River, which have a continuous surface connection with the La Plata River, and (b) Little Deadwood Gulch, a tributary that flows at least seasonally or intermittently and flows into the La Plata River.

24. The La Plata River is a perennial, interstate water. It is also a tributary of the San Juan River, which is a navigable-in-fact interstate water.

25. The wetlands on the Site, either alone or in combination with similarly situated waters in the region, have a significant nexus to and/or substantially affect, the chemical, physical, or biological integrity of downstream interstate and/or traditional navigable waters, including the La Plata River and the San Juan River.

26. Little Deadwood Gulch is a tributary which, either alone or in combination with similarly situated waters in the region, has a significant nexus to and/or substantially affects, the chemical, physical, or biological integrity of downstream interstate and/or traditional navigable waters, including the La Plata River and the San Juan River.

27. Little Deadwood Gulch, the La Plata River, the San Juan River, and their adjacent wetlands, constitute waters of the United States and navigable waters under CWA section 502(7), 33 U.S.C. § 1362(7).

28. The dredged or fill material that the Defendants and/or persons acting on their behalf caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

29. The Defendants and/or persons acting on their behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes a “point source” as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

30. Other than for a portion of their discharges relating to a mine access road crossing adjacent to the La Plata River, Defendants did not obtain a permit from the Secretary of the Army, acting through the Corps of Engineers, for the discharges of dredged or fill material into waters of the United States, as required and authorized, respectively, by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344.

31. For some of their discharges during 2008 and 2009 to wetlands adjacent to the La Plata River, the Defendants obtained authorization from the Corps of Engineers.

32. The Defendants either owned, leased, or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

33. The Defendants conducted, contracted for, supervised, and/or otherwise controlled the unauthorized activities at issue described in Paragraph 22 above.

34. Each Defendant is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

36. Each Defendant has violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Site.

37. Pursuant to CWA section 309(a), 33 U.S.C. § 1319(a), on April 9, 2012, EPA issued an “Administrative Order for Compliance” (“2012 Compliance Order”) to Defendants. In the 2012 Compliance Order, EPA found that Defendants had discharged

dredged and fill material into waters of the United States at the Site without a CWA section 404 permit. The 2012 Compliance Order required Defendants to immediately terminate all unauthorized discharges of dredged or fill material into waters of the United States without a valid permit as of the date of the 2012 Compliance Order or in the future.

38. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

39. Unless enjoined, Defendants are likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain in the Site in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

FIRST CLAIM FOR RELIEF
(Discharge into Waters of the United States Without a Section 404 Permit)

40. Plaintiff United States repeats and realleges the allegations set forth in Paragraphs 1 through 39 above.

41. Defendants have violated and/or continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by discharging, without authorization, pollutants, including dredged and/or fill material, into waters of the United States, including adjacent wetlands, at the Site.

42. Defendants' discharges of dredged and/or fill material at the Site resulted in the filling or adverse impacts to creeks, ponds, drainages, wetlands, and/or other waters of the United States.

43. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

44. Unless enjoined, Defendants are likely to continue to discharge dredged or fill material into and/or allow dredged or fill material to remain in waters of the United States at the Site in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

45. Pursuant to CWA section 309, 33 U.S.C. § 1319, and 40 C.F.R. Part 19, Defendants are liable for injunctive relief and civil penalties of up to \$37,500 per day per violation for violations committed after January 12, 2009.

SECOND CLAIM FOR RELIEF
(Violation of Compliance Order)

46. Plaintiff United States repeats and realleges the allegations set forth in Paragraphs 1 through 45 above.

47. On April 1, 2012, EPA issued the 2012 Compliance Order to Defendants and served it on Defendants on or about that date.

48. On August 1, 2014, EPA issued a notice of violation of the 2012 Compliance Order to Defendants, stating that Defendants had not finalized a required restoration and compliance plan to address the original violations set forth in the 2012 Compliance Order in response to comments from EPA and the Corps of Engineers, and stating that Defendants had made additional unpermitted discharges of dredged and fill material into waters of the United States since the date of the 2012 Compliance Order. The notice of violation directed Defendants to comply with the 2012 Compliance Order.

49. The 2012 Compliance Order specified certain actions that Defendants were required to complete in order to come into compliance with the Clean Water Act.

50. Defendants did not comply with certain requirements of the 2012 Compliance Order.

51. Pursuant to CWA section 309, 33 U.S.C. § 1319, and 40 C.F.R. Part 19, Defendants are liable for civil penalties of up to \$37,500 per day per violation for each violation of the 2012 Compliance Order.

PRAYER FOR RELIEF

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

A. That Defendants be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the Clean Water Act;

B. That Defendants be enjoined to undertake measures, at Defendants' own expense and at the direction of EPA, to effect complete restoration of the Site and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;

C. That Defendants be assessed, pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

D. That Defendants be assessed, pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of violation of the Compliance Order;

E. That the United States be awarded costs and disbursements in this action; and

F. That this Court grant Plaintiff United States of America such other relief as the Court deems just and proper.

Respectfully submitted,

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Environment and Natural Resources Division

Dated: August 8, 2016

By: /s/ Daniel Pinkston
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