

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:17-cv-02030
)	
BLACK TEA OIL, LLC,)	
CHRISTOPHER C. LEIKER, and)	
TRANS PACIFIC OIL CORP.,)	
)	
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) and 311(b)(7) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d) and 1321(b)(7). The United States is seeking injunctive relief and civil penalties against Black Tea Oil, LLC (“BTO”), Christopher C. Leiker, and Trans Pacific Oil Corporation (“TPOC”) for the discharge and/or maintenance of pollutants into the waters of the United States at multiple oil drilling, extraction and storage operation locations on leases in Logan County, Kansas, 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). The United States is seeking injunctive relief and civil penalties against BTO for failing

to prepare and implement a Spill Prevention Control and Countermeasures (“SPCC”) Plan for its operations in Logan County and Gove County, Kansas, in accordance with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, promulgated under the authority of section 311(j) of the CWA, 33 U.S.C. § 1321(j).

2. The United States is also seeking injunctive relief against TPOC on the grounds that TPOC would be unjustly enriched were it allowed to continue operating these three wells without authorization by the United States Department of Army Corps of Engineers. TPOC is also a necessary party to this action under Federal Rule of Civil Procedure 19(a).

3. BTO, TPOC, and Mr. Leiker are hereinafter collectively referred to as the “Defendants.”

4. In this action 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); (2) require Black Tea Oil and Mr. Leiker, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; (3) require Trans Pacific Oil Corporation, at their own expense and at the direction of EPA, to restore and/or mitigate the damages to the waters of the United States caused by the oil wells and appurtenances that it owns and/or operates and that were placed into the Smoky Hill River without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (4) require Black Tea Oil, Mr. Leiker, and Trans Pacific Oil Corporation to pay civil penalties as provided in 33 U.S.C. §§ 1319(d) and 1321(b)(7).

JURISDICTION, VENUE, NOTICE AND AUTHORITY

5. This Court has 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.

6. Venue is proper in the United States District Court for the District of Kansas 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, the Defendants reside in this District, the subject property is located in this District, and the cause of the action and violations alleged herein arose in this District.

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

THE PARTIES

8. 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 CWA section 506, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

9. Defendant Black Tea Oil, LLC, is a limited liability company organized and existing under the laws of the State of Kansas, whose principal place of business is located at: 1014 East 29th Street, Hays, Kansas 67601.

10. BTO is an oil well drilling and oil production operation company that operates in western Kansas. BTO currently, or at previous times relevant to this Complaint, constructed, owned, and operated oil extraction wells and associated equipment at various locations in Logan and Gove County, Kansas.

11. Defendant Christopher C. Leiker is a private individual who resides at 1000 West 37th Street, Hays, Kansas 67601.

12. Christopher C. Leiker is the sole member¹ of BTO.

¹ Owners of an LLC are called members.

13. Christopher C. Leiker is the President and/or Chief Executive Officer of BTO.

14. Mr. Leiker controlled the activities of BTO at all times relevant to this Complaint.

15. Mr. Leiker had responsibility and authority to ensure that BTO complied with the CWA, and Mr. Leiker also had the ability to promptly correct any CWA violations.

16. Between 2011 and 2015, Mr. Leiker held himself out to the Kansas Department of Health and Environment, Kansas Corporation Commission, and U.S. Army Corps of Engineers, as the primary contact for BTO for environmental compliance.

17. At all times relevant to this Complaint, Mr. Leiker managed, directed, or made decisions about environmental compliance for BTO.

18. Defendant Trans Pacific Oil Corporation is a privately owned company that engages in oil and gas exploration and production. TPOC's principal place of business is located at 100 South Main, Suite 200, Wichita, Kansas 67202.

19. In TPOC's absence from this action, the court cannot accord complete relief among existing parties. In addition, disposing of the action in TPOC's absence may impair or impede TPOC's ability to protect its interest and/or leave BTO and Mr. Leiker with inconsistent obligations because of TPOC's interest in several of the wells at issue in this action.

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

STATUTORY AND REGULATORY AUTHORITY

21. 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).

22. 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.

23. 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 to navigable waters at specified disposal sites, after notice and opportunity for public comment.

24. 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.”

25. 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.

26. CWA section 502(7), 33 U.S.C. 1362(7), defines “navigable waters” as “waters of the United States.” “Waters of the United States” has been further defined to include: (i) all waters which are currently used, were used in the past or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7) and 40 C.F.R. § 232.2.

27. 33 C.F.R. 328.4(c) states that the United States’ jurisdiction over “waters of the United States” for non-tidal waters, which would include rivers, “extends to the ordinary high water mark [(‘OHWM’)].”

28. 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.”²

29. 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.”

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

31. CWA section 404(e), 33 U.S.C. § 1344(e), authorizes the United States Army Corps of Engineers (“Corps”) to issue permits on a state, regional, or nationwide basis for certain categories of activities involving discharges of dredged or fill material.

32. The Corps issued a nationwide permit, Nationwide Permit 12 (“NWP 12”), for utility line activities effective March 19, 2012 and expiring March 18, 2017. *Notice, Reissuance of Nationwide Permits*, 77 Fed. Reg. 10,184 (Feb. 21, 2012).

33. The Corps issued a nationwide permit, (“NWP 14”), for linear transportation projects effective March 19, 2012 and expiring March 18, 2017. *Notice, Reissuance of Nationwide Permits*, 77 Fed. Reg. 10,184 (Feb. 21, 2012).

² On June 29, 2015, EPA and the Department of the Army promulgated a new rule, with an effective date of August 28, 2015. The new rule amends 33 C.F.R. § 328.3 and 40 C.F.R. § 232.2 and defines “waters of the United States” to include, in relevant part: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to waters described in (i) and (ii); (iv) wetlands or other waters adjacent to the waters described in (i)-(iii); and (v) waters located within 4,000 feet of the high tide line or ordinary high water mark of tributaries to waters identified in (i) and (ii), provided that they have a significant nexus to the waters described in (i)-(ii). Implementation of the new rule has been stayed by the Sixth Circuit Court of Appeals. *In re: Environmental Protection Agency and Department of Defense Final Rule; “Clean Water Rule: Definition of Waters of the United States,”* 80 Fed. Reg. 37,054 (June 29, 2015), 803 F.3d 804, 808 (6th Cir. 2015).

Spill Prevention Control and Countermeasure Plan

34. CWA section 311(j)(1), 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges”

35. Pursuant to the authority of CWA section 311(j)(1), the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

36. Pursuant to 40 C.F.R. § 112.3(b), an owner or operator of an onshore facility that became operational after November 10, 2011 and that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States, must prepare and fully implement an SPCC plan in accordance with 40 C.F.R. § 112.7 within six months after beginning operations.

37. Pursuant to 40 C.F.R. § 112.9(d)(3), owners or operators of onshore oil production facilities must, for flowlines and intra-facility gathering lines that are not provided with secondary containment in accordance with 40 C.F.R. § 112.7(c), unless they have submitted a response plan under 40 C.F.R. § 112.20, provide in their Spill, Prevention, Control and Countermeasures Plan for the following: (a) an oil spill contingency plan following the

provisions of 40 C.F.R. Part 109; and (b) a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that might be harmful. 40 C.F.R. § 112.9(d)(3)(i) & (ii).

38. Pursuant to 40 C.F.R. § 112.9(d)(4), owners or operators of onshore oil production facilities must prepare and implement a written program of flowline/intra-facility gathering line maintenance. The written program must address procedures to: (a) Ensure that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment; (b) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in 40 C.F.R. § 112.1(b), such that, for flowlines and intra-facility gathering lines that are not provided with secondary containment in accordance with 40 C.F.R. § 112.7(c), the frequency and type of testing must allow for the implementation of a contingency plan as described in 40 C.F.R. Part 109; (c) Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly schedule visual inspections, tests, or evidence of a discharge; and (d) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

Enforcement Authorities

39. 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).

40. 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).

41. CWA section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), authorizes the commencement of an action for civil penalties against any person who fails to refuses to comply with any regulation issued under CWA section 311(j), 33 U.S.C. § 1321(j).

GENERAL ALLEGATIONS

42. Defendants are engaged in the exploration of production of oil through oil drilling, extraction and storage operations. In furtherance of their oil production operations, BTO and Mr. Leiker and/or persons acting on their behalf constructed and/or operated, and/or controlled and directed the construction and operation of numerous oil wells, well pads, access roads, pipelines, surface impoundments and other structures and apparatuses on oil and gas leases in Logan County, Kansas.

43. BTO and Mr. Leiker's oil production operations in Logan County resulted in unauthorized discharges of "pollutants" as that term is defined in section 502(6) of the CWA, 33 U.S.C. 1362(6), including dredged and/or fill material into rivers, streams, tributaries and/or wetlands at the Sites, including the Smoky Hill River, and tributaries thereto.

44. BTO and Mr. Leiker did not apply for nor obtain any permit from the Corps, or qualify for NWP 12 or 14, for any discharges of dredged 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, for its activities in Logan County, Kansas.

Waters of the United States

45. The Smoky Hill River is a seasonal relatively permanent interstate water, running

575 miles from eastern Colorado into western Kansas, which flows directly or indirectly into a traditionally navigable water, Kanopolis Lake, which is formed by a dam on the river. The area of the Smoky Hill River impacted by Defendants has a significant chemical, physical and biological nexus to Kanopolis Lake and other downstream traditionally navigable waters.

46. The Smoky Hill River's tributaries impacted by BTO and Mr. Leiker in Logan County include Ladder Creek, Caulk Creek, Twin Butte Creek, and their unnamed tributaries. All of these water bodies have been identified by the U.S. Fish and Wildlife Service's National Wetland Inventory as "Riverine, Intermittent, Streambed, Seasonally Flooded" waterbodies.

47. Ladder Creek, Caulk Creek, Twin Butte Creek and their unnamed tributaries have a significant nexus to and/or are relatively permanent waters that flow to the Smoky Hill River.

48. The wetlands impacted by BTO and Mr. Leiker are adjacent to, in that they have a continuous surface connection with, and/or have a significant nexus to those tributaries and to other downstream waters, including, but not limited to, the Smoky Hill River.

49. The Smoky Hill River constitutes a "water[]" of the United States" under CWA section 502(7), 33 U.S.C. 1362(7).

50. Ladder Creek, Caulk Creek, Twin Butte Creek and their unnamed tributaries affected by Defendants constitute "waters of the United States" under CWA section 502(7), 33 U.S.C. 1362(7).

51. The wetlands impacted by BTO and Mr. Leiker constitute "waters of the United States" under CWA section 502(7), 33 U.S.C. 1362(7).

52. BTO and Mr. Leiker's activities in Logan County have impacted 1.25 miles of stream in Logan County, Kansas by constructing wells, well pads, road crossings and laying pipelines in the Smoky Hill River and tributaries, and leading to an increase in sediment load in

the Smoky Hill River and tributaries as well as changing stream channel morphology for the Smoky Hill River and its tributaries.

Specific Unauthorized Discharges Related to Well Construction

53. BTO and Mr. Leiker constructed three wells in Logan County in which both the well pumpjack and drilling pad were located below the ordinary high water mark of the Smoky Hill River. The names of these wells, the area of discharge into the Smoky Hill River, and the well completion dates are as follows:

Well Site	Area of Discharge	Date Completed
Krebs B1	0.75 acres	Oct. 31, 2013
Krebs P1	0.46 acres	Jan. 31, 2014
Rose Trust B3	0.2 acres	Jan. 9, 2015

54. Effective June, 2015, TPOC purchased and was assigned the rights to operate the Krebs B1, Krebs P1, and Rose Trust B3 wells, along with a working interest in them, from BTO. TPOC took over operations of these wells from BTO effective June, 2015. TPOC is the current operator of these wells.

55. BTO and Mr. Leiker constructed four wells in Logan County in which the well drilling pad was located below the ordinary high water mark of the Smoky Hill River. The names of these wells, the area of discharge into the Smoky Hill River, and the well completion dates are as follows:

Well Site	Area of Discharge	Date Completed
Krebs G3	0.15 acres	June 26, 2014
Krebs N6	0.4 acres	June 18, 2014
DFK 5	0.3 acres	Dec. 8, 2014
Pahls C	0.08 acres	Sept. 8, 2014

56. Effective June 2015, TPOC purchased and was assigned the rights to operate the Krebs G3, Krebs N6, and DFK 5 wells, along with a working interest in them, from BTO. TPOC took over operations of these wells from BTO effective June, 2015. TPOC is the current operator of these wells.

57. BTO and Mr. Leiker completed construction of the Fairleigh D well in Logan County on or about April 3, 2015. The drilling pad of the Fairleigh D well extends approximately 0.02 acres into an unnamed tributary of Ladder Creek.

58. BTO and Mr. Leiker completed construction of the Fairleigh A2 well in Logan County on or about January 30, 2015. The drilling pad of the Fairleigh A2 well extends into Caulk Creek. In addition, during the course of its construction of Fairleigh A2 and through storm water erosion at the Fairleigh A2 well site, BTO and Mr. Leiker discharged dredge or fill material into waters of the United States

59. In approximately April 2014, BTO and Mr. Leiker began construction on the Krebs M2 well in Logan County. In the course of its construction activities at the Krebs M2 well site, BTO and Mr. Leiker discharged dredged or fill material into the Smoky Hill River. Specifically, BTO and Mr. Leiker's activities resulted in the creation of a dredge pile measuring approximately 125 linear feet in perimeter, a fresh water pit measuring approximately 4.5 feet deep and 180 feet in perimeter, and in the clearing of approximately 1 acre of land for a well drilling pad, all within the Smoky Hill River.

60. BTO and Mr. Leiker and/or persons acting on their behalf used mechanized earth-moving equipment and oil drilling and operation equipment to accomplish the discharges alleged in Paragraphs 53-59. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

Unauthorized Discharges Related to Utility Line Activities

61. In the course of construction of oil wells in Logan County, the BTO and/or Mr. Leiker used, or caused to be used, mechanized earth-moving equipment to lay electrical, transmission and product lines between wells, tank batteries and generators. BTO and/or Mr. Leiker disturbed approximately 4,317 linear feet of waters of the United States, including, but not limited to, the Smoky Hill River, Caulk Creek, Ladder Creek, and Twin Butte Creek, in laying utility lines.

62. BTO and/or Mr. Leiker's discharges of dredged or fill material into waters of the United States related to the laying of electrical, transmission and product lines were without authorization, that is, without and/or in violation of a permit issued pursuant to 33 U.S.C. § 1344, including Nationwide Permit 12.

63. BTO and/or Mr. Leiker and/or persons acting on their behalf used mechanized earth-moving equipment and oil drilling and operation equipment to accomplish the discharges alleged in Paragraphs 61-62. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

Unauthorized Discharges Related to Road Construction

64. In the course of construction of wells in Logan County, BTO and Mr. Leiker used, or caused to be used, mechanized earth-moving equipment to construct intra-facility roads between wells, tank batteries and generators. BTO and Mr. Leiker disturbed approximately 341 linear feet of Water of the United States, including, but not limited to, the Smoky Hill River, Caulk Creek, and Ladder Creek, at 19 stream crossing.

65. BTO and Mr. Leiker's discharges of dredged or fill material into waters of the United States related to the construction of intra-facility roads and were conducted without

authorization, that is, without and/or in violation of a permit issued pursuant to 33 U.S.C. § 1344, including Nationwide Permit 14.

66. BTO and Mr. Leiker and/or persons acting on their behalf used mechanized earth-moving equipment and oil drilling and operation equipment to accomplish the discharges alleged in Paragraph 64-65. This equipment constitutes “point sources” as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

TPOC’s Operation and Maintenance of Wells Within the Smoky Hill River

67. Effective June 2015, TPOC purchased and was assigned the rights to operate the Krebs B1, Krebs P1, and Rose Trust B3 wells, along with a working interest in them.

68. Prior to this purchase, TPOC knew or should have known about the CWA violations alleged in this Complaint, including that the Krebs B1, Krebs P1, and Rose Trust B3 wells required, but did not have, permits issued under section 404 of the CWA by the Corps.

69. TPOC is currently receiving benefits from the operation of the Krebs B1, Krebs P1, and Rose Trust B3 wells.

70. TPOC has not applied for an after-the-fact permit under section 404 of the CWA for the discharges related to the Krebs B1, Krebs P1, and the Rose Trust B3 wells.

71. TPOC failed to obtain all relevant authorization from the State of Kansas to operate the Krebs B1, Krebs P1, and Rose Trust B3 wells within the ordinary high water mark of the Smoky Hill River.

72. TPOC’s continuing operations of the Krebs B1, Krebs P1, and the Rose Trust B3 wells constitutes the unauthorized maintenance of a pollutant discharged into the Smoky Hill River.

SPCC: CWA Section 311 Allegations

73. BTO owned and operated one or more “facilities,” as that term is defined in 40 C.F.R. § 112.2, on and in connection with the following oil and gas leases in Logan and Gove County, Kansas, each of which was and is located near or in the vicinity of the Smoky Hill River: The Rose Trust lease, the Krebs BG and MN leases, the Hibbert A & B leases, the Krebs H & O leases, the Krebs Q and F leases, the Krebs DFK and Z leases, the Krebs M SWD lease, the Pahls lease, the Krebs A SWD lease, the Ellis lease, and the Free B SWD lease. Each of these facilities possess oil storage tank batteries, production equipment, and oil gathering lines.

74. Each of the facilities referenced in Paragraph 73 had an aggregate above ground oil storage capacity greater than 1,320 gallons.

75. Each of the facilities referenced in Paragraph 73 was and is an onshore facility within the meaning of CWA section 311(a)(10), 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

76. Each of the facilities referenced in Paragraph 73 became operational after November 10, 2011.

77. Each of the facilities referenced in Paragraph 73 is a non-transportation-related facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

78. Each of the facilities referenced in Paragraph 73 was and is a non-transportation related on-shore facility engaged in the drilling, producing, gathering, and storing of oil and oil products that, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. Part 110, into or upon navigable waters of the United States or adjoining shorelines.

79. BTO was therefore required by 40 C.F.R. § 112.3(b) to prepare and implement

SPCC plans for each facility referenced in Paragraph 73 within six months after the beginning of the facility's operations.

80. 40 C.F.R. § 112.3 required the SPCC plans BTO was required to prepare and implement for each facility referenced in Paragraph 73 to comply with the requirements of 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

81. The facilities owned and operated by BTO at or in connection with the Rose Trust lease began operations in January 2015. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

82. The facilities owned and operated by BTO at or in connection with the Krebs BG and MN leases began operations in October 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 9, 2015.

83. The facilities owned and operated by BTO at or in connection with the Hibbert A & B leases began operations in September 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

84. The facilities owned and operated by BTO at or in connection with the Krebs H & O leases began operations in January 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 9, 2015.

85. The facilities owned and operated by BTO at or in connection with the Krebs Q and F leases began operations in January 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

86. The facilities owned and operated by BTO at or in connection with the Krebs DFK lease began operations in June of 2014. On information and belief, BTO did not prepare and implement an SPCC plan for those facilities until on or about July 2015.

87. The facilities owned and operated by BTO at or in connection with the Krebs Z lease began operations in January 2015. On information and belief, BTO did not prepare and implement an SPCC plan for those facilities until on or about July 2015.

88. The facilities owned and operated by BTO at or in connection with the Krebs M SWD lease began operations in April 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

89. The facilities owned and operated by BTO at or in connection with the Pahls lease began operations in August 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

90. The facilities owned and operated by BTO at or in connection with the Krebs A1 SWD lease began operations in September 1, 2013. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 9, 2015.

91. The facilities owned and operated by BTO at or in connection with the Ellis lease began operations in July 2014. BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015.

92. The facilities owned and operated by BTO at or in connection with the Free B SWD lease began operations in September 2014. On information and belief, BTO did not prepare and implement an SPCC plan for those facilities until on or about July 7, 2015

93. The SPCC plans ultimately prepared and implemented by BTO for the facilities referenced in Paragraph 73 did not meet the following requirements: (A) the requirement in 40 C.F.R. § 112.7(b) to predict the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure; (B) the requirement in 40 C.F.R. § 112.7(c) to provide appropriate containment and/or diversionary

structures or equipment to prevent such a discharge as described in 40 C.F.R. § 112.7(b); and (C) the requirement in 40 C.F.R. § 112.7(d) that, if Defendants determine that it is not practicable to install any of the structures or pieces of equipment listed in 40 C.F.R. § 112.7(c) and (h)(1), and in 40 C.F.R. §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), to prevent a discharge as described in 40 C.F.R. § 112.1(b), then they must clearly explain in the SPCC plan why such measures are not practicable, and provide in both (1) an oil spill contingency plan following the provisions of 40 C.F.R. § 109; and (2) a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

94. At all relevant times when the facilities referenced in Paragraph 73 were owned and operated by BTO, each and every facility was connected to one or more intra-facility flowlines.

95. At all relevant times when the facilities referenced in Paragraph 73 were owned and operated by BTO, the flowlines running to and from each and every facility were not provided with secondary containment in accordance with 40 C.F.R. § 112.7(c).

96. BTO has never certified under 40 C.F.R. § 112.20(e) that any of its facilities referenced in Paragraph 73 could not reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines.

97. BTO failed to provide, in the SPCC plans for each and every of facility referenced in Paragraph 73, either: (a) an oil spill contingency plan following the provisions of 40 C.F.R. Part 109; or (b) a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that might be harmful.

98. BTO has never provided for any of its SPCC plans for any of the facilities

referenced in Paragraph 73, a written program of flowline/intra-facility gathering line maintenance that meets the requirements of 40 C.F.R. § 112.9(d)(4)(i) – (iv).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Against BTO and Mr. Leiker)

CWA Section 404: Unauthorized Fill in Waters of the United States

99. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20 and 42 through 66.

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

101. 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).

102. BTO and Mr. Leiker 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).

103. BTO and Mr. Leiker have discharged pollutants from various point sources into streams, rivers and other waters of the United States, within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), and within the meaning of the federal regulations implementing the CWA at 40 C.F.R. §§ 122.2, 232.2.

104. BTO and Mr. Leiker 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. In addition, BTO and Mr. Leiker discharged pollutants into waters of the State without authorization from the State.

105. BTO and Mr. Leiker 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.

106. Each well site at which such material was discharged into waters of the United States constitutes a separate violation, and each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

107. Under CWA sections 309(b) and (d), 33 U.S.C. §§ 1319(b) & (d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 69 Fed. Reg. 7121 (February 13, 2004), 74 Fed. Reg. 626 (January 7, 2009), 78 Fed. Reg. 66,643 (November 6, 2013), 40 C.F.R. Part 19, BTO and Mr. Leiker are liable for a civil penalty of up to \$37,500 per day for each violation of CWA section 301(a), 33 U.S.C. § 1311(a).

108. Unless enjoined, BTO and Mr. Leiker's discharges are likely to continue to remain in waters of the United States, in violation of CWA section 301, 33 U.S.C. § 1311.

SECOND CLAIM FOR RELIEF
(Against TPOC)

CWA Section 404: Maintenance of Unauthorized Fill in Waters of the United States

109. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20, 42 through 72, and 99 through 108.

110. TPOC's maintenance of the Krebs B1, Krebs P1, and Rose Trust B3 wells, constitutes a continuing discharge of dredged or fill material into waters of the United States.

111. 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).

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

113. TPOC has violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its maintenance of a pollutant, specifically dredged and/or fill material, in waters of the United States.

114. Under CWA sections 309(b) and (d), 33 U.S.C. §§ 1319(b) & (d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 69 Fed. Reg. 7121 (February 13, 2004), 74 Fed. Reg. 626 (January 7, 2009), 78 Fed. Reg. 66,643 (November 6, 2013), 40 C.F.R. Part 19, BTO and Mr. Leiker are liable for a civil penalty of up to \$37,500 per day for each violation of CWA section 301(a), 33 U.S.C. § 1311(a).

115. Unless enjoined, the three wells operated by TPOC are likely to continue to remain in waters of the United States, in violation of CWA section 301, 33 U.S.C. § 1311.

THIRD CLAIM FOR RELIEF
(Against TPOC)

Unjust Enrichment

116. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20, 42 through 72, and 99 through 108.

117. The Krebs B1, Krebs P1, and Rose Trust B3 wells were built within the ordinary

high water mark of the Smoky Hill River without a permit from the Secretary of the Army, acting through the Chief of Engineers, as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

118. TPOC purchased a working interest in these three wells and currently operates these three wells. Through its acquisition of a working interest in these wells and its operation of these three wells, TPOC has received and is continuing to receive the benefits from three wells placed within the OHWM of the Smoky Hill River without permit from the Secretary of the Army, acting through the Chief of Engineers, under CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

119. TPOC knew or should have known that these three wells had not received the required permits from the Secretary of the Army, acting through the Chief of Engineers, as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) prior to acquiring them.

120. Under the circumstances, TPOC's continued operation of these three wells would be unjust.

FOURTH CLAIM FOR RELIEF **(Against BTO)**

CWA Section 311 and 40 C.F.R. § 112.3(b): Failure to Prepare and Implement **SPCC Plans in Accordance with 40 C.F.R. Part 112**

121. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20 and 73 through 98.

122. For the reasons alleged herein, BTO was subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 and was required, for each facility referenced in Paragraph 73, to prepare and implement an SPCC plan in accordance with 40 C.F.R. § 122.7 and any other applicable section of 40 C.F.R. Part 112, within six months of the beginning of operations at that

facility. *See* 40 C.F.R. § 112.3 and 40 C.F.R. § 112.3(b).

123. BTO did not prepare or implement SPCC plans for any of the facilities referenced in Paragraph 73 until the dates indicated in Paragraphs 81 - 92.

124. As set forth in Paragraph 93, above, the SPCC plans ultimately prepared and implemented by BTO for the facilities referenced in Paragraph 73 did not and do not meet the requirements of 40 C.F.R. § 112.7.

125. As set forth in Paragraph 93, above, the SPCC plans ultimately prepared and implemented by BTO for each and every facility referenced in Paragraph 73 did not and does not meet the requirements of 40 C.F.R. § 112.9(d)(3).

126. BTO's failure to prepare and implement an SPCC plan for each and every facility referenced in Paragraph 73 within six months of the start of operations at that facility and/or Defendants' failure to prepare and implement an SPCC plan at each and every facility referenced in Paragraph 73 meeting the requirements of 40 C.F.R. § 112.7 constitutes a violation of 40 C.F.R. sections 112.3 and 112.3(b) at each such facility.

127. Under CWA sections 311(b)(7)(C) and (b)(8), 33 U.S.C. §§ 1321(b)(7)(C) & (b)(8), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 69 Fed. Reg. 7121 (February 13, 2004), and 74 Fed. Reg. 626 (January 7, 2009), 78 Fed. Reg. 66,643 (November 6, 2013), 40 C.F.R. Part 19, BTO is liable for a civil penalty of up to \$37,500 per day for each violation of CWA section 301(a), 33 U.S.C. § 1311(a), and 40 C.F.R. §§ 112.3 & 112.3(b) at each facility referenced in Paragraph 73.

FIFTH CLAIM FOR RELIEF
(Against BTO)

CWA Section 311 and 40 C.F.R. § 112.9: Failure to Prepare and Implement a Written Program of Flowline/Intra-Facility Gathering Line Maintenance in Accordance with 40 C.F.R. § 112.9

128. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20 and 73 through 98.

129. For the reasons alleged herein, BTO is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 and was required, for each facility referenced in Paragraph 73, to prepare and implement a written program of flowline/intra-facility gathering line maintenance meeting the requirements of 40 C.F.R. § 112.9(d)(4)(i) – (iv).

130. As set forth in Paragraph 93, above, BTO failed, for each and every facility referenced in Paragraph 73, above, to prepare and implement a written program of flowline/intra-facility gathering line maintenance that meets the requirements of 40 C.F.R. § 112.9(d)(4)(i) – (iv).

131. BTO's failure to prepare and implement a written program of flowline/intra-facility gathering line maintenance that meets the requirements of 40 C.F.R. § 112.9(d)(4)(i) – (iv) for each and every facility referenced in Paragraph 73 constitutes a violation of 40 C.F.R. sections 112.3, 112.3(b), and 112.9(d) at each such facility.

132. Under CWA sections 311(b)(7)(C) and (b)(8), 33 U.S.C. §§ 1321(b)(7)(C) & (b)(8), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 69 Fed. Reg. 7121 (February 13, 2004), and 74 Fed. Reg. 626 (January 7, 2009), 78 Fed. Reg. 66,643 (November 6, 2013), 40 C.F.R. Part 19, BTO is liable for a civil penalty of up to \$37,500 per day for each violation of CWA section 301(a), 33 U.S.C. § 1311(a), and 40 C.F.R. §§ 112.3 &

112.3(b) at each facility referenced in Paragraph 73.

PRAYER FOR RELIEF

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

That BTO, Mr. Leiker, and TPOC 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 CWA;

That BTO, Mr. Leiker, and TPOC, or any combination thereof, be ordered to undertake measures, at their own expense and at the direction of the Environmental Protection Agency, to effect complete restoration of the waters of the United States at issue herein and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;

That TPOC be ordered to allow the performance of measures by BTO and/or Mr. Leiker to completely restore the waters of the United States at the Site to their pre-fill condition under the direction of EPA;

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

That BTO be assessed a civil penalty pursuant to CWA section 311(b)(7)(C) & (b)(8), 33 U.S.C. § 1321(b)(7)(c) & (b)(8) for each violation of CWA section 311(j), 33 U.S.C. § 1321(j) and the regulations promulgated thereunder;

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

That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Dated: January 18, 2017

Respectfully submitted,

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