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

THE UNITED STATES OF
AMERICA, and THE STATE OF
ALASKA,

Plaintiffs,

v.

DURAN CONSTRUCTION
COMPANY LLC, MARCIANO
DURAN, and JOSETTE DURAN,

Defendants.

Case No. 1:22-cv 00091-JMK

COMPLAINT

Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff the State of Alaska (“State”), on behalf of the Alaska Department of Environmental Conservation (“ADEC”), file this Complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought under Section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), and Alaska Statute (“AS”) 46.03.760(e) and AS 46.03.765. The United States alleges that Duran Construction Company LLC (“Duran Construction”) and Marciano Duran (collectively, “Section 404 Defendants”) discharged pollutants into waters of the United States in violation of

Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, the Section 404 Defendants have discharged dredged material and/or fill material to waters of the United States at three sites (collectively, the “Sites”) in the City and Borough of Juneau, Alaska, without authorization by the United States Department of the Army, in violation of the CWA. The State alleges that Duran Construction, Marciano Duran, and Josette Duran (collectively, “Storm Water Defendants”) discharged pollutants into waters of the United States at the Sites in violation of Section 301 of the CWA, 33 U.S.C. § 1311, 18 Alaska Administrative Code (“AAC”) 83.015(a), and 18 AAC 83.405. Specifically, the Storm Water Defendants have discharged pollutants, including, without limitation, storm water associated with industrial activity, including construction activity, to waters of the United States at the Sites without authorization from the State or in violation of applicable State permit conditions, in violation of the CWA, 18 AAC 83.015(a), and 18 AAC 83.405. The Sites are discussed further below and are referred to herein as the S&S Ponds Site, the Vista del Sol Site, and the Vista del Mar Site.

2. In this action, Plaintiffs seek: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), 18 AAC 83.015(a), and 18 AAC 83.405; (2) to require Defendants, at their own expense and at the direction of EPA and ADEC, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in CWA Section 309(d), 33 U.S.C. § 1319(d), and AS 46.03.760(e).

JURISDICTION, VENUE, NOTICE, AND AUTHORITY

3. This Court has jurisdiction over the subject matter of these actions and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

4. This Court has supplemental jurisdiction over Alaska's state law claims in this action pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims as to form part of the same case or controversy.

5. Venue is proper in the District of Alaska under CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, the Sites are located in this District, and the causes of action alleged herein arose in this District.

6. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), notice of the commencement of this action has been provided to the State of Alaska, which joins this action as a co-plaintiff.

7. Authority to bring this civil action on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366. Authority to bring this civil action on behalf of the State of Alaska is vested in the Alaska Department of Law by AS 44.23.020.

DEFENDANTS

8. Duran Construction is a limited liability company organized in Alaska in 2004 with its business address at 9360 Glacier Highway, Suite 202, Juneau, Alaska 99801.

9. Marciano Duran is a private individual residing in Juneau, Alaska. He is the President of Duran Construction.

10. Josette Duran is a private individual residing in Juneau, Alaska. She is the Vice President of Duran Construction.

11. Each of the Defendants is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 18 AAC 83.990(47).

12. At all times relevant to this Complaint, as discussed further below, Defendants and/or persons acting on their behalf were responsible for the discharges of pollutants into waters of the United States without the required permits, or in violation of such permits, at the Sites.

STATUTORY AND REGULATORY BACKGROUND

A. Clean Water Act General Provisions

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

14. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, among other things, a permit issued under CWA Section 402 or 404, 33 U.S.C. §§ 1342 or 1344, or by other CWA provisions not applicable here.

15. 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.”

16. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, biological materials, dredged spoil, rock, sand, and cellar dirt.

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, corporation, partnership [or] association”

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

B. Clean Water Act Section 404

20. CWA Section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the U.S. Army Corps of Engineers (“the Corps”), 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.

21. “Fill material” is defined as any material other than trash or garbage which replaces portions of the waters of the United States with dry land or which changes the elevation of a water body for any purpose. 40 C.F.R. § 232.2.

22. “Dredged material” is defined as material that is excavated or dredged from waters of the United States. 40 C.F.R. § 232.2.

C. Clean Water Act Section 402 and Related Alaska Law

23. AS 46.03.010 provides that “[i]t is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.”

24. Under Section 402(a) of the CWA, EPA may issue National Pollutant Discharge Elimination System (“NPDES”) permits for the discharge of any pollutant, or combination of pollutants, to the waters of the United States. 33 U.S.C. § 1342(a).

25. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA may authorize a state to establish and administer under state law an NPDES permitting program.

26. AS 46.03.020(12) authorizes ADEC to take all actions necessary to receive authorization from EPA to administer and enforce an NPDES program in accordance with CWA Section 402, 33 U.S.C. § 1342.

27. EPA approved Alaska’s application to establish and administer under Alaska law an Alaska version of the NPDES permitting program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

28. 18 AAC 83 establishes the Alaska Pollution Discharge Elimination System (“APDES”) permit system and implements the program in accordance with Section 402 of the CWA, 33 U.S.C. § 1342, and in a manner that meets the purposes of AS 46.03 and the requirements adopted by reference in 18 AAC 83.010.

29. 18 AAC 83.015(a) prohibits a person from discharging pollutants from any point source into waters of the United States in the state without first obtaining an APDES permit from ADEC, except in circumstances not present here.

30. 18 AAC 83.990(23) defines “discharge of a pollutant” to include any addition of any pollutant or combination of pollutants to waters of the United States from any point source.

31. 18 AAC 83.990(49) defines “pollutant” to include dredged spoil, solid waste, biological materials, wrecked or discarded equipment, rock, sand, and industrial waste.

32. 18 AAC 83.990(48) defines “point source” to include any discernable, confined, and discrete conveyance, including any pipe, ditch, channel, or conduit.

33. 18 AAC 83.990(47) defines “person” to include an individual, association, partnership, corporation, or an agent or employee thereof.

34. APDES permittees must comply with all conditions of their permits, and any permit noncompliance is a violation of Alaska law and the CWA. 18 AAC 83.405(b); 33 U.S.C. §§ 1311(a), 1319(a); 40 C.F.R. §§ 122.41(a) & 123.25(a).

35. Under Sections 309 and 402(i) of the CWA, 33 U.S.C. §§ 1319 and 1342(i), the United States retains concurrent authority with authorized states to enforce violations of permits issued under CWA Section 402, 33 U.S.C. § 1342.

36. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)) provide that facilities with discharges of

storm water associated with industrial activity are subject to permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

37. EPA regulations, adopted by reference in Alaska, define “storm water discharge associated with industrial activity” to include, among other things, discharges from “industrial plant yards,” “material handling sites,” “refuse sites,” “sites used for the storage and maintenance of material handling equipment,” “areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water,” “construction activity” and “small construction activity.” 40 C.F.R. §§ 122.26(b)(14), 122.26(b)(14)(x), 122.26(b)(15)(i); *see* 18 AAC 83.010(b)(3) (adopting 40 C.F.R. § 122.26 by reference).

38. “Construction activity” includes “clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area,” and also includes “the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.” 40 C.F.R. § 122.26(b)(14)(x); *see* 18 AAC 83.010(b)(3) (adopting 40 C.F.R. § 122.26 by reference).

39. “Small construction activity” includes clearing, grading, and excavating that result in “the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.” 40 C.F.R. § 122.26(b)(15)(i); *see* 18 AAC 83.010(b)(3) (adopting 40 C.F.R. § 122.26 by reference).

40. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13); *see* 18 AAC 83.010(b)(3) (adopting 40 C.F.R. § 122.26 by reference).

41. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.1 *et seq.* Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a general permit. 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(c)(1).

42. 18 AAC 83.205 grants ADEC authority to issue a general APDES permit to cover one or more categories of discharge or facilities.

43. The Alaska Construction General Permit (“CGP”) authorizes storm water discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb five or more acres of land, and where those discharges enter waters of the United States directly or through a storm water conveyance system or a municipal separate storm sewer system. The CGP also authorizes storm water discharges from certain construction support activities and some non-storm water discharges commonly associated with construction sites. The goal of the CGP is to minimize erosion and reduce or eliminate the discharge of pollutants from construction sites through implementation of appropriate control measures.

44. The Alaska Multi-Sector General Permit (“MSGP”) authorizes and sets conditions on the discharge of pollutants in industrial storm water from certain industrial activities to waters of the United States. The MSGP establishes control measures and best management practices that must be used to control the types and amounts of pollutants that can be discharged from certain industrial activities.

45. To obtain coverage under the CGP or MSGP, an operator must meet eligibility requirements, submit to ADEC a complete and accurate Notice of Intent (i.e., permit application form), pay the permit fee, and develop a Storm Water Pollution Prevention Plan (“SWPPP”) according to the CGP or MSGP requirements.

D. Clean Water Act Enforcement Provisions

46. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation of a permit issued under CWA Section 402, 33 U.S.C. § 1342.

47. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), subjects any person who violates CWA Section 301, 33 U.S.C. § 1311, or any condition or limitation in a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, to civil penalties.

48. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), establishes civil penalties for violations of the CWA payable to the United States of up to \$25,000 per day for each violation. Section 309(d) of the CWA further specifies that in determining the amount of a civil penalty, a court “shall consider the seriousness of the violation or violations, the

economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.” 33 U.S.C. § 1319(d).

49. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134, Sec. 31001(s)), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note), as reflected in the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, EPA may seek civil penalties of up to \$59,973.00 per day per violation of the CWA for violations occurring after November 2, 2015, and assessed on or after January 12, 2022. 40 C.F.R. § 19.4.

E. Alaska Law Enforcement Provisions

50. AS 46.03.760(e) provides that a person who violates or causes or permits to be violated a regulation, lawful order of ADEC, or a permit or term or condition of a permit issued under the APDES program is liable, in a civil action, to the State of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues.

51. AS 46.03.765 authorizes the Alaska superior court to enjoin a violation of “this chapter . . . or of a regulation, a lawful order of [ADEC], or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter”

FACTUAL ALLEGATIONS

A. The S&S Ponds Site

i. Location and Description

52. The S&S Ponds Site is located at or near 6225 Alaway Avenue in Juneau, Alaska. It is a roughly 29-acre parcel within Section 34, T. 40 S., R. 66 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.354539° N., Longitude 134.507383° W.

53. The Site lies between Switzer Creek and Lemon Creek in a tidal marsh area and includes three ponds that are intermittently connected to one another by surface hydrology.

54. The Site is named for S&S Development Company, which owned the Site and used it for sand and gravel excavation dating back to at least the 1970s. In 1977, the Corps issued to the S&S Development Company a CWA Section 404 permit for the Site, after the Corps determined that the Site contained waters of the United States.

55. A constructed berm generally separates the S&S Ponds from Lemon Creek but surface water flows through a culvert that connects the two water bodies. Water generally flows from the S&S Ponds to Lemon Creek, which is tidally influenced up to and beyond the top elevation of the culvert connecting the creek to the S&S Ponds. At these locations, Lemon Creek is a tidal water, subject to the ebb and flow of the tide. In addition, water flows from Lemon Creek to the S&S Ponds.

56. Lemon Creek flows to Gastineau Channel and is a tributary to Gastineau Channel.

57. The S&S Ponds also are connected by surface water to Switzer Creek, which flows to Gastineau Channel and is a tributary to Gastineau Channel. Up to and beyond its connection with the S&S Ponds, Switzer Creek is a tidal water, subject to the ebb and flow of the tide.

58. Gastineau Channel is a traditional navigable water used in interstate or foreign commerce and is subject to the ebb and flow of the tide. It is part of the Gulf of Alaska within the Pacific Ocean, a United States territorial sea.

59. Prior to the excavation of the ponds and the construction of the berm separating it from Lemon Creek, the S&S Ponds Site was a wetland tidal marsh, regularly flooded by the Pacific Ocean's high tides.

60. All or portions of the S&S Ponds are tidal waters that remain subject to the ebb and flow of the tide. Those waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. The S&S Ponds are below the Pacific Ocean's high tide line. The S&S Ponds also are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce.

61. The S&S Ponds are impoundments of other waters of the United States, including Lemon Creek, Gastineau Channel, wetlands, and Switzer Creek. The S&S Ponds are standing bodies of open water that contribute surface flow to Lemon Creek, Switzer Creek, and Gastineau Channel in a typical year. The S&S Ponds also may be inundated by flooding from Lemon Creek, Switzer Creek, and Gastineau Channel in a typical year.

62. The S&S Ponds may be tributaries to Lemon Creek, Switzer Creek, and Gastineau Channel. The S&S Ponds are relatively permanent, perennial, or intermittent waters that contribute surface flow to Lemon Creek, Switzer Creek, and Gastineau Channel in a typical year. The S&S Ponds also have a significant nexus to Lemon Creek, Switzer Creek, and Gastineau Channel.

ii. Clean Water Act Section 404 Violations (Dredged and/or Fill Material)

63. Through the early 2000s, S&S Development Company excavated the S&S Ponds Site and discharged gravel and sand at this site with CWA Section 404 permits that the Corps periodically modified and extended.

64. The Corps issued its final CWA Section 404 permit modification and extension for the S&S Ponds Site to S&S Development Company in April 2000. That permit expired at the end of March 2010.

65. As a condition of authorizing dredge and fill activities related to gravel excavation, the April 2000 permit required restoration of 28 acres of the site, including construction of two channels for fish habitat and breaching of a dike between Lemon Creek and Switzer Creek to allow for tidal exchange.

66. The April 2000 permit specified that all restoration must be completed by the time the ten-year term of the permit expired, and further provided that, in the event of the sale of this site, the new owner must assume the permit terms and conditions.

67. The S&S Development Company owned and operated the S&S Ponds Site until 2009. In June 2009, less than a year before the permit expired and restoration work

was due to be completed, Duran Construction purchased the S&S Ponds Site from S&S Development Company.

68. The transfer deed explicitly referenced the CWA Section 404 permit then in place. As of the filing of this Complaint, neither S&S Development Company nor Duran Construction has completed the restoration work required by the April 2000 permit.

69. Duran Construction has owned and operated the S&S Ponds Site continuously since 2009.

70. The Corps notified Duran Construction by letters in April 2010 and August 2010 that the company was not authorized to conduct excavation work at the Site without a CWA Section 404 permit, and that the company was required to cease excavation work until it obtained such a permit.

71. There has been no CWA Section 404 permit coverage for activities at the S&S Ponds Site after 2010, when the permit acquired by S&S Development Company expired. As of the filing of this Complaint, no CWA Section 404 permit has been applied for or been issued for the S&S Ponds Site after the prior permit expired in 2010.

72. After the April 2000 Section 404 permit expired in 2010, Duran Construction has continuously operated the S&S Ponds Site for mechanized sand and gravel excavation, which has resulted in the discharge of dredged and/or fill material into waters of the United States. This site also is used for storage of sand and gravel material.

73. On December 13, 2019, the Corps issued Duran Construction a Notice of Violation for unauthorized discharges in violation of the CWA. The notice requested a response from the company within ten days of its receipt.

74. The Notice of Violation specifically addressed Duran Construction's activities that used mechanized earthmoving equipment to discharge fill material into S&S Ponds to create a roughly 80-foot-wide, earthen peninsular pad extending 150 feet into one of the ponds.

75. Duran Construction requested, and the Corps granted, three time extensions of the deadline to respond to the Notice of Violation, ultimately extending the deadline to March 29, 2020.

76. During the same period that Duran Construction requested and obtained these extensions from the Corps, Duran Construction began excavating the earthen pad and discharging dredged and/or fill material into the S&S Ponds Site without authorization under CWA Section 404.

77. By April 14, 2020, two weeks after the lapse of the extended deadline to respond to the Corps' Notice of Violation, Duran Construction had excavated most or all of the earthen pad from the S&S Ponds Site without CWA Section 404 authorization.

78. Duran Construction has not provided a written response to the Corps' December 13, 2019 Notice of Violation.

79. In November 2020, EPA and ADEC obtained and executed administrative warrants for entry and inspection of the S&S Ponds Site.

80. During the November 2020 inspection, EPA, the Corps, and ADEC observed conditions and circumstances of Duran Construction's ongoing, unauthorized, and mechanized sand and gravel excavation, discharge, processing, classification, and stockpiling activities, and related operations, at the S&S Ponds site.

81. On May 12, 2021, EPA, the Corps, ADEC, and the Alaska Department of Fish and Game ("ADF&G") inspected the S&S Ponds Site and observed additional conditions and circumstances of the ongoing, unauthorized, and mechanized sand and gravel excavation, discharge, processing, and stockpiling activities at the S&S Ponds Site.

82. During a September 2021 site visit, EPA and ADEC observed additional conditions and circumstances of Duran Construction's ongoing, unauthorized, and mechanized sand and gravel excavation, discharge, processing, and stockpiling activities at the S&S Ponds Site.

83. As of the filing of this Complaint, Duran Construction continues to conduct unauthorized, mechanized sand and gravel excavation, discharge, processing, and stockpiling activities at the S&S Ponds Site.

84. The activities described in Paragraphs 63-83 above resulted in the unauthorized discharges of "pollutants," as defined in CWA Section 502(6), 33 U.S.C. § 1362(6), including dredged and/or fill material, into "waters of the United States," as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the S&S Ponds Site.

85. The Section 404 Defendants used mechanized land-clearing and earthmoving equipment to accomplish the discharges. This equipment constitutes “point sources” as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

86. Duran Construction owns the property at the S&S Ponds Site and performed the work that resulted in the unauthorized discharges at that site.

87. Marciano Duran is President of Duran Construction. During Duran Construction’s ownership of the S&S Ponds Site, Marciano Duran had knowledge of, had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the S&S Ponds Site. In addition, Marciano Duran was responsible for, and communicated with regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran also had operational control over construction plans and specifications, and had day-to-day control of the activities at the S&S Ponds Site that were necessary to ensure compliance with any applicable permit requirements.

88. The Section 404 Defendants have violated and continue to violate CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged and/or fill material into waters of the United States at the S&S Ponds Site.

89. Unless enjoined, the Section 404 Defendants are likely to continue to discharge dredged and/or fill material into, and to allow dredged and/or fill material to remain in, the S&S Ponds Site in violation of CWA Section 301, 33 U.S.C. § 1311.

iii. Clean Water Act and Alaska Law Violations for Storm Water

90. During their operations of the S&S Ponds Site, the Storm Water Defendants discharged storm water associated with industrial activity, within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), into “waters of the United States,” as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the S&S Ponds Site.

91. In November 2020, EPA and ADEC obtained and executed administrative warrants for entry and inspection of the S&S Ponds Site.

92. During this November 2020 inspection, EPA, the Corps, and ADEC observed conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity at the S&S Ponds Site associated with the ongoing sand and gravel excavation, discharging, processing, classification, and stockpiling activities, and related operations, at the site.

93. On December 18, 2020, ADEC issued to Duran Construction and Marciano Duran a Notice of Enforcement based on the failure to obtain APDES MSGP authorization for the storm water discharges. The Notice of Enforcement instructed the recipients to provide information about when the S&S Ponds Site was purchased and to describe the extent of gravel extraction operations conducted there since 2015. The deadline for providing the information was December 31, 2020, but ADEC granted a request to extend that deadline to January 31, 2021. As discussed further below, the Storm Water Defendants did not provide information until April 6, 2021.

94. On March 25, 2021, ADEC issued Duran Construction a Notice of Violation for unauthorized discharges at the S&S Ponds Site. The notice requested a response within twelve days of receipt.

95. On April 6, 2021, Josette Duran provided a partial response to the Notice of Violation and requested clarification on whether MSGP coverage was required for the S&S Ponds Site.

96. On May 5, 2021, ADEC responded to the Storm Water Defendants, reiterated the need for MSGP coverage at the S&S Ponds Site, and directed the Storm Water Defendants to obtain such coverage immediately.

97. On May 12, 2021, EPA, the Corps, ADEC, and ADF&G inspected the S&S Ponds Site and observed additional conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity. Among other things, ADEC observed that the conditions at S&S Ponds, such as spills and leaks of pollutants and placement of material stockpiles adjacent to S&S Ponds, would not comply with the requirements of ADEC's MSGP even if the Storm Water Defendants had obtained such permit coverage. While on the site, ADEC again informed Josette Duran of the need for MSGP coverage.

98. During a September 2021 site visit, EPA and ADEC observed additional conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity at the S&S Ponds Site. Among other things, ADEC observed that the conditions at the S&S Ponds, such as spills and leaks of pollutants and placement of material stockpiles adjacent to the S&S Ponds, would not comply with the conditions of

Alaska's MSGP even if the Storm Water Defendants had obtained such permit coverage. While on the site, ADEC again informed Josette Duran of the need for MSGP coverage.

99. As of the filing of this Complaint, the Storm Water Defendants have not applied for or obtained an APDES permit (MSGP) authorizing discharges of storm water associated with industrial activity at the S&S Ponds Site.

100. The discharges of storm water associated with industrial activity described in Paragraphs 90-99 above constituted unauthorized and unpermitted discharges of a pollutant within the meaning of 18 AAC 83.015(a) and 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

101. Storm water discharges associated with industrial activity described in Paragraphs 90-99 above such as the ongoing sand and gravel excavation, discharging, processing, and stockpiling activities, and related operations, constitute discharges from a "point source" for purposes of Alaska law and the CWA. 18 AAC 83.990(48); 33 U.S.C. § 1362(14); 40 C.F.R. §§ 122.1 & 122.26 (adopted by reference at 18 AAC 83.010(b)(3)).

102. Duran Construction owns the property at the S&S Ponds Site and performed the work that resulted in the unauthorized discharges at that site.

103. Marciano Duran and Josette Duran are President and Vice President, respectively, of Duran Construction. During Duran Construction's ownership of the S&S Ponds Site, Marciano Duran and Josette Duran had knowledge of, had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the S&S Ponds Site. In addition,

Marciano Duran and Josette Duran were responsible for, and communicated with regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran and Josette Duran also had operational control over construction plans and specifications, and had day-to-day control of the activities at the S&S Ponds Site that were necessary to ensure compliance with any applicable permit requirements. In addition, Marciano Duran and Josette Duran had operational control over industrial activities, including the ability to modify those activities, at the S&S Ponds Site.

104. The Storm Water Defendants have violated and continue to violate 18 AAC 83.015(a) and CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of storm water associated with industrial activity at the S&S Ponds Site.

105. Unless enjoined, the Storm Water Defendants are likely to continue to discharge storm water associated with industrial activity and to allow pollutants to remain in place at the S&S Ponds Site in violation of 18 AAC 83.015(a) and CWA Section 301(a), 33 U.S.C. § 1311(a).

B. The Vista del Sol Site

i. Location and Description

106. The Vista del Sol Site is located at or near 7502 Glacier Highway in Juneau, Alaska. It lies within Section 32, T. 40 S., R. 66 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.360248° N., Longitude 134.546841° W.

107. The Vista del Sol Site sits directly north of Glacier Highway between downtown Juneau and Mendenhall Valley.

108. The Vista del Sol Site presently consists of a nearly completed housing development in which phased construction began in the early 2000s. Prior to development, the property at the Vista del Sol Site supported a complex of forested wetlands that abutted unnamed tributary creeks within a watershed system known locally as the “Fireweed Creeks.”

109. In May 1992, the Corps provided a previous owner of the Vista del Sol Site with an Approved Jurisdictional Determination in which the Corps concluded that there were a significant amount of waters of the United States on the property adjacent to Gastineau Channel. The determination stated that “an individual permit would be required for any discharges of dredged or fill material on the property.”

110. In January 2002, the Corps provided an Approved Jurisdictional Determination to Duran Construction. In that determination, the Corps concluded, among other things, that the property contained wetlands and other waters of the United States subject to regulatory jurisdiction under the CWA.

111. The construction activities at the Vista del Sol Site have highly modified the unnamed tributaries and adjacent wetlands, including by, among other things, extensively rerouting the creeks and filling the wetlands.

112. One or more of the unnamed tributaries are tributaries to Gastineau Channel. One or more of the unnamed tributaries are relatively permanent, perennial, or intermittent waters that contribute surface flow to Gastineau Channel in a typical year. In addition, one or more of the unnamed tributaries are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and the use, degradation

or destruction of which could affect interstate or foreign commerce. One or more of the unnamed tributaries also have a significant nexus to Gastineau Channel.

113. Some or all of the impacted wetlands are adjacent to the unnamed tributaries. Some or all of the wetlands are bordering, contiguous, or neighboring the unnamed tributaries, or were so prior to some or all of the unauthorized discharges at the Vista del Sol Site. In addition, some or all of the impacted wetlands abut the unnamed tributaries or abutted them prior to some or all of the unauthorized discharges at the Vista del Sol Site, are inundated by flooding from the unnamed tributaries or were inundated by such flooding prior to some or all of the unauthorized discharges at the Vista del Sol Site, and/or are physically separated from the unnamed tributaries only by a natural berm, bank, dune, or similar natural feature, or by an artificial structure that allows for a direct hydrologic surface connection between the wetlands and the unnamed tributaries in a typical year (or were so prior to some or all of the unauthorized discharges at the Vista del Sol Site). The impacted wetlands also have a significant nexus to the unnamed tributaries and to Gastineau Channel.

114. Gastineau Channel is a traditional navigable water used in interstate or foreign commerce and is subject to the ebb and flow of the tide. It is part of the Gulf of Alaska within the Pacific Ocean, a United States territorial sea.

ii. Clean Water Act Section 404 Violations (Dredged and/or Fill Material)

115. The 1992 Approved Jurisdictional Determination that the Corps provided to a previous owner of the Vista del Sol Site concluded that the property contained a

significant amount of waters of the United States and that an individual CWA Section 404 permit would be required for discharges of dredged or fill material on the property.

116. In January 2001, after Duran Construction purchased the Vista del Sol Site property, Duran Construction requested a new jurisdictional determination.

117. Thereafter, the Corps provided a new Approved Jurisdictional Determination. The new jurisdictional determination concluded, among other things, that the property consisted of wetlands and other waters of the United States subject to the Corps' regulatory jurisdiction under the CWA.

118. In 2001 and 2002, Duran Construction mechanically cleared and discharged dredged and fill material at the Vista del Sol Site without applying for or receiving a CWA Section 404 permit.

119. In April 2002, the Corps issued Duran Construction a Notice of Violation, which alleged that the company discharged thousands of cubic yards of sand and gravel into approximately 50,000 square feet of waters of the United States at the Vista del Sol Site, in violation of the CWA.

120. In 2004, the Corps issued Duran Construction a provisional, after-the-fact CWA Section 404 permit for its allegedly unauthorized activities at the Vista del Sol Site. Among other conditions, the provisional permit required the company to pay in-lieu-fees or submit to the Corps a mitigation plan for approval.

121. Duran Construction failed to comply with the conditions of the provisional, after-the-fact permit.

122. The Corps referred the enforcement matter to EPA, which issued Duran Construction two Administrative Compliance Orders that ultimately resulted in the company's payment of \$20,000 of in-lieu fees in 2012.

123. As of the filing of this Complaint, no CWA Section 404 permit has been applied for or been issued for discharges of dredged or fill material at the Vista del Sol Site occurring after Duran Construction paid the in-lieu fees in 2012.

124. By December 2019, Duran Construction again was discharging dredged and/or fill material into waters of the United States at the Vista del Sol Site without the required CWA Section 404 permit from the Corps.

125. Specifically, Duran Construction used mechanized land-clearing and earthmoving equipment to divert and reroute a section or "reach" of an unnamed creek that flows through the Vista del Sol Site to an adjacent property. These activities resulted in the discharge of dredged and/or fill material into the creek below its ordinary high water mark.

126. On December 23, 2019, after receiving a public complaint, the Corps issued Duran Construction a second Notice of Violation for the Vista del Sol Site. The Notice of Violation cited the company for the discharge of sand, rock, or soil into the unnamed creek in violation of the CWA.

127. In November 2020, EPA and ADEC obtained and executed administrative warrants for entry and inspection of the Vista del Sol Site.

128. During the November 2020 inspection, EPA, the Corps, and ADEC observed conditions and circumstances of Duran Construction's ongoing, unauthorized,

and mechanized earthmoving work that caused the diversion and rerouting of the unnamed creek, along with additional, unauthorized discharges of dredged and/or fill material.

129. In December 2020, EPA, the Corps, and ADEC obtained additional information about the conditions and circumstances of Duran Construction's continued work to divert and reroute the unnamed creek. This work resulted in additional, unauthorized discharges of dredged and/or fill material into waters of the United States.

130. In January 2021, the Corps and ADEC observed additional conditions and circumstances of Duran Construction's ongoing, unauthorized, and mechanized earthmoving work, including continued impacts on the unnamed creek.

131. Also in January 2021, Duran Construction acknowledged that it had diverted and re-routed the creek with "approximately 18.89 cubic yards" of fill material to create a rerouted drainage 85 feet long, three feet wide, and two feet deep.

132. During a September 2021 site visit, EPA and ADEC observed additional conditions and circumstances of Duran Construction's ongoing, unauthorized, and mechanized earthmoving activities at the Vista del Sol Site.

133. The activities described in Paragraphs 115-132 above resulted in the unauthorized discharges of "pollutants," as defined in CWA Section 502(6), 33 U.S.C. § 1362(6), including dredged and/or fill material, into "waters of the United States," as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the Vista del Sol Site.

134. The Section 404 Defendants used mechanized land-clearing and earthmoving equipment to accomplish the discharges. This equipment constitutes “point sources” as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

135. Duran Construction owns the property at the Vista del Sol Site and performed the work that resulted in the unauthorized discharges at that site.

136. Marciano Duran is President of Duran Construction. During Duran Construction’s ownership of the Vista del Sol Site, Marciano Duran had knowledge of, had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the Vista del Sol Site. In addition, Marciano Duran was responsible for, and communicated with regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran also had operational control over construction plans and specifications, and had day-to-day control of the activities at the Vista del Sol Site that were necessary to ensure compliance with any applicable permit requirements.

137. The Section 404 Defendants have violated and continue to violate CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged and/or fill material into waters of the United States at the Vista del Sol Site.

138. Unless enjoined, the Section 404 Defendants are likely to continue to discharge dredged and/or fill material into, and to allow dredged and/or fill material to remain in place at, the Vista del Sol Site in violation of CWA Section 301, 33 U.S.C. § 1311.

iii. Clean Water Act and Alaska Law Violations for Storm Water

139. During construction of the Vista del Sol subdivision, the Storm Water Defendants discharged storm water associated with industrial activity, within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), including, without limitation, storm water associated with construction activity, into “waters of the United States,” as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the Vista del Sol Site.

140. For the period from December 2009 through June 2011, ADEC issued CGP authorization to Duran Construction for construction storm water discharges to Gastineau Channel associated with disturbance of seven acres of construction activities at the Vista del Sol Site.

141. The SWPPP submitted to ADEC in 2009 indicated that Marciano Duran was the SWPPP contact and that he possessed an Alaska Certified Erosion and Sediment Control Lead (“AK-CESCL”) certification. The training required for this certification is a two-day course that includes erosion and sedimentation processes, regulatory requirements, Storm Water Pollution Prevention Plans, Best Management Practices (“BMPs”), inspection, record-keeping, and cold climate challenges to support compliance with the ADEC CGP. To become certified, an individual must attend the entire course and pass a written exam.

142. ADEC also issued CGP authorization to Duran Construction for the period from December 2011 to January 2016 for construction storm water discharges to

Gastineau Channel associated with disturbance of seven acres of construction activities at the Vista del Sol Site.

143. In February 2016, ADEC re-issued the CGP and allowed authorized permittees to submit a new Notice of Intent by May 1, 2016, to continue their CGP coverage.

144. Rather than seeking authorization under the new CGP, the Storm Water Defendants submitted a notice of termination to ADEC for their CGP authorization at the Vista del Sol Site. The April 30, 2016, termination notice stated that final stabilization had been achieved on all portions of the Vista Del Sol Site for which Duran Construction was responsible, that all ground-disturbing construction activity or use of support activities was completed, and that all temporary BMPs had been removed. Josette Duran, Vice President of Duran Construction, certified under penalty of law that the notice was prepared under her direction and that the information in the notice was true, accurate, and complete. The certification provided that Josette Duran was aware that there were significant penalties for submitting false information, including the possibility of fines for violations.

145. In a May 24, 2016, letter, ADEC acknowledged receipt of the termination notice and notified the Storm Water Defendants that CGP permit coverage had been terminated.

146. On December 10, 2019, in response to a public complaint regarding the deposition of sediment from a construction project, ADEC and the ADF&G performed a

joint inspection of the Vista del Sol Site. They observed conditions, including inadequate sediment and erosion and source controls, that would have violated the CGP if the Storm Water Defendants had obtained such permit coverage.

147. On January 3, 2020, based on observations of the construction activity at the Vista del Sol Site, ADEC issued Duran Construction a Notice of Violation for discharges of sediment without APDES permit coverage. The Notice of Violation required a response by January 31, 2020, and directed Duran Construction to obtain CGP coverage or eliminate storm water discharges from the site. The Notice of Violation also required photographs that showed that BMPs had been implemented.

148. On January 29, 2020, Marciano Duran responded to the Notice of Violation. Mr. Duran stated that conditions at that time prevented installation of BMPs but that certain BMPS would be installed at thaw or during spring. None of the Storm Water Defendants applied for or obtained CGP coverage at that time for the Vista del Sol Site.

149. On October 22, 2020, Duran Construction submitted a Notice of Intent for APDES permit coverage under the CGP. ADEC granted CGP coverage later that day.

150. In November 2020, EPA and ADEC obtained and executed administrative warrants for entry and inspection of the Vista del Sol Site.

151. During this November 2020 inspection, EPA, the Corps, and ADEC observed conditions and circumstances of numerous failures to comply with the requirements of the CGP at the Vista del Sol Site. The noncompliance issues included failure to manage erosion and failure to install and maintain proper BMPs.

152. In December 2020, ADEC issued to Duran Construction a Notice of Enforcement and information request regarding the noncompliance issues observed in November 2020.

153. In January 2021, ADEC visited the Vista del Sol Site and identified several additional violations of Duran Construction's APDES permit.

154. In February 2021, ADEC visited the Vista del Sol Site for the purpose of photographing the SWPPP and associated documents, after earlier volunteering to do so.

155. In March 2021, ADEC issued to Duran Construction an additional Notice of Violation regarding ongoing noncompliance issues.

156. As of June 2021, both Marciano Duran and Josette Duran were AK-CESCL certified.

157. In August 2021, ADEC issued to Duran Construction an additional Notice of Violation regarding ongoing noncompliance issues.

158. During a September 2021 site visit, EPA and ADEC observed additional conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity including, without limitation, storm water associated with construction activity, at the Vista del Sol Site. For example, ADEC observed that large sediment loading, in violation of Duran Construction's APDES permit, was readily apparent.

159. After the APDES permit expired in 2016, the Storm Water Defendants did not have an APDES permit for their construction activities at the Vista del Sol Site until they obtained APDES CGP coverage in October 2020.

160. After APDES permit coverage was obtained in October 2020, the Storm Water Defendants committed numerous violations of the CGP.

161. The construction activity at the Vista del Sol Site resulted in a total land disturbance of greater than one acre. In addition, that construction activity is part of a common plan of development that will ultimately disturb more than one acre of land.

162. The discharges of storm water associated with construction activity described in Paragraphs 139-161 above constituted unauthorized and unpermitted discharges of a pollutant within the meaning of 18 AAC 83.015(a) and 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

163. The storm water discharges associated with construction activity described in Paragraphs 139-161 above constitute discharges from a “point source” for purposes of Alaska law and the CWA. 18 AAC 83.990(48); 33 U.S.C. § 1362(14); 40 C.F.R. §§ 122.1 & 122.26 (adopted by reference at 18 AAC 83.010(b)(3)).

164. Duran Construction owns the property at the Vista del Sol Site and performed the work that resulted in the unauthorized discharges at that site.

165. Marciano Duran and Josette Duran are President and Vice President, respectively, of Duran Construction. During Duran Construction’s ownership of the Vista del Sol Site, Marciano Duran and Josette Duran had knowledge of, had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the Vista del Sol Site. In addition, Marciano Duran and Josette Duran were responsible for, and communicated with

regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran and Josette Duran also had operational control over construction plans and specifications, and had day-to-day control of the activities at the Vista del Sol Site that were necessary to ensure compliance with any applicable permit requirements.

166. The Storm Water Defendants have violated and continue to violate 18 AAC 83.015(a), AAC 83.405(b), and CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of storm water associated with industrial activity, including, without limitation, construction activity, at the Vista del Sol Site.

167. Unless enjoined, the Storm Water Defendants are likely to continue to discharge storm water associated with industrial activity, including, without limitation, construction activity, at the Vista del Sol Site and to allow pollutants to remain in place at the Vista del Sol Site in violation of 18 AAC 83.015(a), AAC 83.405(b), and CWA Section 301(a), 33 U.S.C. § 1311(a).

C. The Vista del Mar Site

i. Location and Description

168. The Vista del Mar Site is located at or near 12320 Glacier Highway in Juneau, Alaska. It lies within Section 22, T. 40 S., R. 65 E., Copper River Meridian; Latitude 58.3852° N., Longitude 134.6606° W.

169. The Vista del Mar Site is adjacent to the Tongass National Forest and overlooks Auke Bay, northwest of Juneau's population centers. The Vista del Mar Site is

located immediately west of the lower elevation portions of the Waydelich Creek watershed and sits on an unnamed slope, forested wetland/tributary complex.

170. Prior to 2018, Duran Construction purchased 113 acres of undeveloped property. Subsequently, as part of its efforts to build a subdivision, Duran Construction began building a “pioneer access road” in wetlands and other waters of the United States on the 113-acre property. The Vista del Mar Site consists of the pioneer access road area, including the locations of the unauthorized discharges that occurred during its construction. The unauthorized, mechanized land-clearing and earthmoving activities resulted in discharges of dredged and/or fill material, including logs, branches, debris/slash, soils, sediments, gravel, and rocks below the ordinary high water mark of unnamed tributaries and into adjacent wetlands. The area disturbed for the pioneer access road encompasses approximately 1.4 acres.

171. The Vista del Mar Site includes a portion of a large, unnamed slope, forested wetland and tributary complex. The unnamed tributary complex includes several “first order” headwater streams that flow through the area cleared for the “pioneer access road.” The unnamed first order tributaries at the Vista del Mar Site flow for most of the year when they are not frozen.

172. West of the Vista del Mar Site, several of these first order channels converge into a single, “second order” channel. This unnamed tributary flows south by southeast, through a culvert installed under the Glacier Highway, and into Auke Bay.

173. The bed and bank features of the first order channels at the Vista del Mar Site are embedded in—and, at their upstream ends, transition into—the slope, forested

wetland complex at this site. The slope, forested wetland complex includes organic soils that are perennially saturated to the surface.

174. The unnamed tributaries are relatively permanent, perennial, or intermittent waters that contribute surface flow to Auke Bay in a typical year. The unnamed tributaries also have a significant nexus to Auke Bay.

175. The impacted wetlands are adjacent to the unnamed tributaries. The wetlands are bordering, contiguous, or neighboring the unnamed tributaries, or were so prior to some or all of the unauthorized discharges at the Vista del Mar Site. In addition, some or all of the impacted wetlands abut the unnamed tributaries or abutted them prior to some or all of the unauthorized discharges at the Vista del Mar Site, are inundated by flooding from the unnamed tributaries or were inundated by such flooding prior to some or all of the unauthorized discharges at the Vista del Mar Site, and/or are physically separated from the unnamed tributaries only by a natural berm, bank, dune, or similar natural feature, or by an artificial structure that allows for a direct hydrologic surface connection between the wetlands and the unnamed tributaries in a typical year (or were so prior to some or all of the unauthorized discharges at the Vista del Mar Site). The impacted wetlands also have a significant nexus to the unnamed tributaries and to Auke Bay.

176. Auke Bay is a traditional navigable water used in interstate or foreign commerce and is subject to the ebb and flow of the tide. It is part of the Gulf of Alaska within the Pacific Ocean, a United States territorial sea.

ii. Clean Water Act Section 404 Violations (Dredged and/or Fill Material)

177. In December 2017, Duran Construction began constructing a “pioneer access road” at the Vista del Mar Site as part of a larger common development plan to construct a housing subdivision.

178. To construct the pioneer access road, Duran Construction used mechanized land-clearing and earthmoving equipment to discharge dredged and/or fill material into waters of the United States. Specifically, Duran Construction discharged dredged and/or fill material below the ordinary high water mark of unnamed “first order” tributary streams and into adjacent wetlands at the Vista del Mar Site.

179. Duran Construction did not apply for or receive a CWA Section 404 permit from the Corps authorizing these discharges of dredged and/or fill material into waters of the United States at the Vista del Mar Site.

180. After local authorities alerted the Corps that Duran Construction was placing fill material into wetlands at the Vista del Mar Site for the construction of the pioneer access road, the Corps issued Marciano Duran a letter in April 2018 that requested permission to access and inspect the Vista del Mar Site. The Corps’ letter requested a response within ten days. Duran Construction did not respond to the letter.

181. On August 27, 2020, the Corps issued Duran Construction a letter regarding the unauthorized work at the Vista del Mar Site. The Corps’ letter requested information about the work and specified that the response was due within ten days.

182. Duran Construction responded with a letter on October 7, 2020. Duran Construction did not grant the Corps’ request to visit and inspect the Vista del Mar Site.

183. Shortly thereafter, the Corps referred the matter to EPA. In November 2020, EPA obtained and executed an administrative warrant for entry and inspection of the Vista del Mar Site.

184. During this November 2020 inspection, EPA and the Corps observed conditions and circumstances of the unauthorized discharge of dredged and/or fill material at the Vista del Mar Site associated with construction of the pioneer access road.

185. On February 3, 2021, Duran Construction acknowledged the placement of gravel and woody debris at the Vista del Mar Site.

186. During a September 2021 site visit, EPA and ADEC observed additional conditions and circumstances of the unauthorized discharge of dredged and/or fill material at the Vista del Mar Site associated with construction of the pioneer access road.

187. The activities described in Paragraphs 177-186 above resulted in the unauthorized discharges of “pollutants,” as defined in CWA Section 502(6), 33 U.S.C. § 1362(6), including dredged and/or fill material, into “waters of the United States,” as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the Vista del Mar Site.

188. The Section 404 Defendants used mechanized land-clearing and earthmoving equipment to accomplish the discharges. This equipment constitutes “point sources” as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

189. Duran Construction owns the property at the Vista del Mar Site and performed the work that resulted in the unauthorized discharges at that site.

190. Marciano Duran is President of Duran Construction. During Duran Construction’s ownership of the Vista del Mar Site, Marciano Duran had knowledge of,

had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the Vista del Mar Site. In addition, Marciano Duran was responsible for, and communicated with regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran also had operational control over construction plans and specifications, and had day-to-day control of the activities at the Vista del Mar Site that were necessary to ensure compliance with any applicable permit requirements.

191. The Section 404 Defendants have violated and continue to violate CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged and/or fill material into waters of the United States at the Vista del Mar Site.

192. Unless enjoined, the Section 404 Defendants are likely to continue to discharge dredged and/or fill material into, and to allow dredged and/or fill material to remain in place at, the Vista del Mar Site in violation of CWA Section 301, 33 U.S.C. § 1311.

iii. Clean Water Act and Alaska Law Violations for Storm Water

193. During construction of the “pioneer access road,” the Storm Water Defendants discharged storm water associated with industrial activity, within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), including, without limitation, storm water associated with construction activity, into “waters of the United States,” as set forth in CWA Section 502(7), 33 U.S.C. § 1362(7), at the Vista del Mar Site.

194. In November 2020, EPA obtained and executed an administrative warrant for entry and inspection of the Vista del Mar Site related to discharges of dredged and/or fill material.

195. During this November 2020 inspection, EPA and the Corps observed conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity, including, without limitation, storm water associated with construction activity, at the Vista del Mar Site associated with construction of the pioneer access road.

196. During a May 2021 site inspection, EPA, the Corps, ADEC, and ADF&G observed conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity, including, without limitation, storm water associated with construction activity, at the Vista del Mar Site associated with construction of the pioneer access road.

197. During a September 2021 site visit, EPA and ADEC observed conditions and circumstances of the unauthorized discharge of storm water associated with industrial activity including, without limitation, storm water associated with construction activity, at the Vista del Mar Site associated with construction of the pioneer access road.

198. As of the filing of this Complaint, the Storm Water Defendants have never obtained an APDES permit (CGP) authorizing discharges of storm water associated with the construction activity at the Vista del Mar Site.

199. The construction activity resulted in a total land disturbance of greater than one acre. In addition, construction of the pioneer access road is part of a larger common plan of development that will ultimately disturb more than one acre of land.

200. The discharges of storm water associated with construction activity described in Paragraphs 193-199 above constitute unauthorized discharges of a pollutant within the meaning of 18 AAC 83.015(a) and 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

201. The storm water discharges associated with construction activity described in Paragraphs 193-199 above constitute discharges from a “point source” for purposes of Alaska law and the CWA. 18 AAC 83.990(48); 33 U.S.C. § 1362(14); 40 C.F.R. §§ 122.1 & 122.26 (adopted by reference at 18 AAC 83.010(b)(3)).

202. Duran Construction owns the property at the Vista del Mar Site and performed the work that resulted in the unauthorized discharges at that site.

203. Marciano Duran and Josette Duran are President and Vice President, respectively, of Duran Construction. During Duran Construction’s ownership of the Vista del Mar Site, Marciano Duran and Josette Duran had knowledge of, had decision-making and/or approval authority over, and planned, supervised, and/or directed the unauthorized construction activities of Duran Construction at the Vista del Mar Site. In addition, Marciano Duran and Josette Duran were responsible for, and communicated with regulatory authorities regarding, the unauthorized activities and environmental compliance issues related to those activities. Marciano Duran and/or Josette Duran also had operational control over construction plans and specifications, and had day-to-day

control of the activities at the Vista del Mar Site that were necessary to ensure compliance with any applicable permit requirements.

204. The Storm Water Defendants have violated and continue to violate 18 AAC 83.015(a) and CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of storm water associated with industrial activity, including, without limitation, construction activity, at the Vista del Mar Site.

205. Unless enjoined, the Storm Water Defendants are likely to continue to discharge storm water associated with industrial activity, including, without limitation, construction activity, at the Vista del Mar Site and to allow pollutants to remain in place at the Vista del Mar Site in violation of 18 AAC 83.015(a) and CWA Section 301(a), 33 U.S.C. § 1311(a).

FIRST CLAIM FOR RELIEF

CWA Section 301 and 404 violations at the S&S Ponds Site

206. The United States re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

207. As alleged in Paragraphs 63 through 88 above, on numerous occasions, the Section 404 Defendants and/or persons acting on their behalf caused dredged and/or fill material to be discharged from point sources into waters of the United States at the S&S Ponds Site.

208. The dredged and/or fill material that the Section 404 Defendants caused to be discharged includes, among other things, dredged spoil, rock, sand, and/or cellar dirt, all of which are “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C.

§ 1362(6).

209. The Section 404 Defendants were not authorized by a permit issued under CWA Section 404, 33 U.S.C. § 1344, for the discharges of dredged and/or fill material into waters of the United States, 33 U.S.C. § 1362(7), at the S&S Ponds Site, as required by CWA Section 301(a), 33 U.S.C. § 1311(a).

210. Due to the unpermitted discharge of dredged and/or fill material into waters of the United States at the S&S Ponds Site, the Section 404 Defendants are liable to the United States for injunctive relief and civil penalties under 33 U.S.C. § 1319(b) and (d).

SECOND CLAIM FOR RELIEF

Storm water violations at the S&S Ponds Site

211. The State re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

212. As alleged in Paragraphs 90 through 104 above, on numerous occasions, the Storm Water Defendants and/or persons acting on their behalf caused storm water “discharge[s] associated with industrial activity,” within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), from point sources to waters of the United States, 33 U.S.C. § 1362(7), at the S&S Ponds Site.

213. The discharges of storm water associated with industrial activity constitute unauthorized and unpermitted discharges of a pollutant within the meaning of 18 AAC 83.015(a) and 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

214. The Storm Water Defendants were not authorized by an APDES permit (MSGP) for the storm water discharges associated with industrial activity at the S&S Ponds Site, as required by 18 AAC 83.015(a).

215. Due to the unpermitted discharge of storm water associated with industrial activity into waters of the United States at the S&S Ponds Site, the Storm Water Defendants are liable to the State for injunctive relief and civil penalties under AS 46.03.760(e) and AS 46.03.765.

THIRD CLAIM FOR RELIEF

CWA Section 301 and 404 violations at the Vista del Sol Site

216. The United States re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

217. As alleged in Paragraphs 115 through 137 above, on numerous occasions, the Section 404 Defendants and/or persons acting on their behalf caused dredged and/or fill material to be discharged from point sources into waters of the United States at the Vista Del Sol Site.

218. The dredged and/or fill material that the Section 404 Defendants caused to be discharged includes, among other things, dredged spoil, rock, sand, and/or cellar dirt, all of which are “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

219. The Section 404 Defendants were not authorized by a permit issued under CWA Section 404, 33 U.S.C. § 1344, for the discharges of dredged and/or fill material

into waters of the United States, 33 U.S.C. § 1362(7), at the Vista Del Sol Site, as required by CWA Section 301(a), 33 U.S.C. § 1311(a).

220. Due to the unpermitted discharge of dredged and/or fill material into waters of the United States at the Vista Del Sol Site, the Section 404 Defendants are liable to the United States for injunctive relief and civil penalties under 33 U.S.C. § 1319(b) and (d).

FOURTH CLAIM FOR RELIEF

Storm water violations at the Vista del Sol Site

221. The State re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

222. As alleged in Paragraphs 139 through 166 above, on numerous occasions, the Storm Water Defendants and/or persons acting on their behalf caused storm water “discharges[s] associated with industrial activity,” within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), including, without limitation, storm water associated with construction activity, from point sources to waters of the United States, 33 U.S.C. § 1362(7), at the Vista del Sol Site.

223. The discharges of storm water associated with industrial activity, including, without limitation, construction activity, constitute unauthorized and unpermitted discharges of a pollutant within the meaning of 18 AAC 83.015(a), 18 AAC 83.405, 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

224. During the time that the Storm Water Defendants did not have permit coverage under the CGP, the Storm Water Defendants were not authorized by an APDES permit for the storm water discharges associated with industrial activity including, without limitation, storm water associated with construction activity, at the Vista del Sol Site, as required by 18 AAC 83.015(a).

225. During the time that the Storm Water Defendants had permit coverage under the CGP, the Storm Water Defendants violated conditions of that permit, in violation of 18 AAC 83.405 and CWA Section 301(a), 33 U.S.C. § 1311(a).

226. Due to the unpermitted discharge of storm water associated with industrial activity, including, without limitation, construction activity, into waters of the United States at the Vista del Sol Site, the Storm Water Defendants are liable to the State for injunctive relief and civil penalties under AS 46.03.760(e) and AS 46.03.765.

FIFTH CLAIM FOR RELIEF

CWA Section 301 and 404 violations at the Vista del Mar Site

227. The United States re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

228. As alleged in Paragraphs 177 through 191 above, on numerous occasions, the Section 404 Defendants and/or persons acting on their behalf caused dredged and/or fill material to be discharged from point sources into waters of the United States at the Vista Del Mar Site.

229. The dredged and/or fill material that the Section 404 Defendants caused to be discharged includes, among other things, dredged spoil, rock, sand, and/or cellar dirt, all of which are “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

230. The Section 404 Defendants were not authorized by a permit issued under CWA Section 404, 33 U.S.C. § 1344, for the discharges of dredged and/or fill material into waters of the United States, 33 U.S.C. § 1362(7), at the Vista Del Mar Site, as required by CWA Section 301(a), 33 U.S.C. § 1311(a).

231. Due to the unpermitted discharge of dredged and/or fill material into waters of the United States at the Vista Del Mar Site, the Section 404 Defendants are liable to the United States for injunctive relief and civil penalties under 33 U.S.C. § 1319(b) and (d).

SIXTH CLAIM FOR RELIEF

Storm water violations at the Vista del Mar Site

232. The State re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 205.

233. As alleged in Paragraphs 193 through 204 above, on numerous occasions, the Storm Water Defendants caused storm water “discharge[s] associated with industrial activity,” within the meaning of CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26 (adopted by reference in 18 AAC 83.010(b)(3)), including, without limitation, storm water associated with construction activity, from point sources to waters of the United States, 33 U.S.C. § 1362(7), at the Vista del Mar Site.

234. The discharges of storm water associated with industrial activity, including, without limitation, construction activity, constitute unauthorized and unpermitted discharges of a pollutant within the meaning of 18 AAC 83.015(a) and 18 AAC 83.990(23), as well as CWA Section 301, 33 U.S.C. § 1311, and CWA Section 502(12), 33 U.S.C. § 1362(12).

235. The Storm Water Defendants were not authorized by an APDES permit (CGP) for the storm water discharges associated with industrial activity including, without limitation, storm water associated with construction activity, at the Vista del Mar Site, as required by 18 AAC 83.015(a).

236. Due to the unpermitted discharge of storm water associated with industrial activity, including, without limitation, construction activity, into waters of the United States at the Vista del Mar Site, the Storm Water Defendants are liable to the State for injunctive relief and civil penalties under AS 46.03.760(e) and AS 46.03.765.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court order the following relief:

1. That Defendants be permanently enjoined from discharging or causing the discharge of pollutants into any waters of the United States except in compliance with the Clean Water Act and Alaska law;
2. That Defendants be enjoined to undertake measures, at their own expense and at the direction of EPA and ADEC, to completely restore the S&S Ponds, Vista del Sol, and Vista del Mar Sites and conduct mitigation for the unauthorized impacts to waters of the United States, as appropriate;

United States v. Duran
Const. Co. LLC, No. 1:22-cv____

Page 49

3. That Defendants be assessed civil penalties under Clean Water Act Section 309(d), 33 U.S.C. § 1319(d), and AS 46.03.760(e) for each day of each violation of Clean Water Act Section 301(a), 33 U.S.C. § 1311(a), 18 AAC 83.015(a), and 18 AAC 83.405;
4. That Plaintiffs be awarded costs and disbursements in this action; and
5. That this Court grant Plaintiffs such other relief as the Court deems just and proper.

December 9, 2022

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United States v. Duran
Const. Co. LLC, No. 1:22-cv____

Page 50

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