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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 BROCK MASLONKA,

13 Defendant.

14 No. \_\_\_\_\_

15 **COMPLAINT**

16 The United States of America, by the authority of the Attorney General and  
17 at the request of the United States Environmental Protection Agency (“EPA”), files  
18 this Complaint and alleges as follows:

19 **NATURE OF THE ACTION**

20 1. This is a civil action commenced under section 309(b) and (d) of the  
21 Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d). The United States seeks  
22 injunctive relief and civil penalties against Brock Maslonka (“Defendant”) for the  
23 discharge of dredged and/or fill materials into waters of the United States in Pend  
24 Oreille County, Washington, without authorization by the United States

1 Department of the Army, in violation of section 301(a) of the CWA, 33 U.S.C.  
2 § 1311(a).

3 2. The property that is the subject of this Complaint (“the Site”) is  
4 located along Washington State Highway 20 in Pend Oreille County, Parcel  
5 Number 443307509002, within Section 7, Township 33 North, Range 44 East.  
6 This real estate is identified in Exhibit A.

7 3. In this action, the United States seeks to: (1) enjoin the discharge of  
8 pollutants into waters of the United States without a permit, in violation of CWA  
9 section 301(a), 33 U.S.C. § 1311(a), at or from the Site; (2) enjoin Defendant to  
10 comply with the CWA’s requirements; (3) require Defendant, at his own expense  
11 and at EPA’s direction, to restore and/or mitigate the damages caused by his  
12 unlawful activities; and (4) pay civil penalties as provided in section 309(d) of the  
13 CWA, 33 U.S.C. § 1319(d).

#### 14 **JURISDICTION AND VENUE**

15 4. This Court has jurisdiction over the subject matter of this action  
16 pursuant to section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C.  
17 §§ 1331, 1345, and 1355.

18 5. Venue is proper in the Eastern District of Washington under CWA  
19 section 309(b), 33 U.S.C. § 1319(b), and under 28 U.S.C. § 1391(b) and (c),  
20 because Defendant resides in this District, the subject property is located in this  
21 District, and the cause of action alleged in the Complaint arose in this District.

22 6. Notice of the commencement of this action has been provided to the  
23 State of Washington as required by CWA section 309(b), 33 U.S.C. § 1319(b).

24

**THE PARTIES**

7. The Plaintiff is the United States of America. The United States Department of Justice is vested with the authority to bring this action under 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

8. Defendant is a private individual who resides and conducts business in the Eastern District of Washington. Upon information and belief, Defendant resides or at one time resided at 417372 Highway 20, Cusick, Washington, 99119.

9. Upon information and belief, at all times relevant to the Complaint, Defendant either owned and/or otherwise controlled the Site that is subject of this Complaint and/or otherwise controlled the activities that occurred on such property.

**STATUTORY AND REGULATORY BACKGROUND**

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

11. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued under CWA section 402 or 404, 33 U.S.C. §§ 1342 or 1344, or by other CWA provisions not applicable here. Strict liability applies under the CWA.

12. 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 (“Corps”), to issue permits for the discharge of dredged and/or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

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

4 14. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to  
5 include, among other things, dredged spoil, rock, sand, and cellar dirt.

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

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

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

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

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

## 20 **FACTUAL BACKGROUND**

21 20. Upon information and belief, Defendant purchased the Site in 1992.  
22 The Site comprises approximately 158 contiguous acres located in Pend Oreille  
23 County, Washington.

24

1           21. Upon information and belief, at all times relevant to this Complaint,  
2 Defendant owned, controlled, and/or operated the Site.

3           22. Perkins Slough, a perennial stream and tributary of the Pend Oreille  
4 River with a relatively permanent flow into the receiving water, flows from west to  
5 east across the Site.

6           23. Perkins Slough's flow exits the Site along the eastern boundary and  
7 converges with the Pend Oreille River less than a mile downstream of the Site.

8           24. The Pend Oreille River, a tributary of the Columbia River, flows  
9 across parts of Idaho, Washington, and Canada and is currently used, was used in  
10 the past, and is susceptible to use in interstate and/or foreign commerce, and is a  
11 traditional navigable water ("TNW") under the Rivers and Harbors Act, 33 U.S.C.  
12 §§ 403, 404.

13           25. The Pend Oreille River and its associated marshes and wetlands are a  
14 haven for fish, wildlife, and visitors who wish to recreate and/or simply experience  
15 the area's natural beauty.

16           26. Perkins Slough serves as an important feeding area for waterfowl, an  
17 important source of aquatic macrophytes, and an important backwater habitat to  
18 the Pend Oreille River. The Slough transports a relatively permanent flow of water  
19 to the Pend Oreille River, supporting the River's navigability, augmenting  
20 pollutant assimilation, and supporting the River's flora and faunal assemblages.  
21 For example, the Pend Oreille River is critical habitat for the threatened Bull Trout,  
22 and its tributaries, including Perkins Slough, transport a steady volume of water to  
23 the Pend Oreille River to provide habitat for this and other species.

24

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