IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and *ex rel.* JOSEPH P. BRUSCATO, State's Attorney for Winnebago County, Illinois,	)	
Plaintiff,	)	
v.	)	No. 09 CH 905
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, a Delaware corporation,	)	
Defendant.	)	

CONSENT ORDER

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LIST OF ABBREVIATIONS, ACRONYMS, AND DEFINITIONS USED IN THIS CONSENT ORDER

Act	Illinois Environmental Protection Act, 415 ILCS 5/1, et seq.
Allocated program costs	Program costs that are related to the overall program operations, including but not limited to, fiscal services, bill preparation and clerical duties, of all applicable Illinois EPA organizational units
Amended Complaint	The First Amended Complaint for Injunctive Relief and Civil Penalties filed with the Seventeenth Judicial Circuit, Winnebago County, on June 20, 2012
Agreed Interim Order	The Agreed Interim Order entered by the Court on July 9, 2009
Board	Illinois Pollution Control Board
CC&P	Chicago, Central & Pacific Railroad Company, a Delaware corporation
Complaint	The Complaint for Injunctive Relief and Civil Penalties filed with the Seventeenth Judicial Circuit, Winnebago County, on July 9, 2009, and given Case Number 09 CH 905
Defendant	Chicago, Central & Pacific Railroad Company, a Delaware corporation
derailment	The June 19, 2009 derailment of a Chicago, Central & Pacific Railroad train at the Mulford Road rail crossing near the intersection of South Mulford Road and Sandy Hollow Road, in the southeast section of Rockford and Perryville, Winnebago County, Illinois
Derailment Site	The Mulford Road rail crossing near the intersection of South Mulford Road and Sandy Hollow Road, in the southeast section of Rockford and Perryville, Winnebago County, Illinois
Direct program costs	Includes, but are not limited to, all related payroll costs for all applicable Illinois EPA organizational units, travel costs, and costs associated with photographs, maps, and laboratory services relating to the oversight, review, and evaluation of the Defendant's investigation at the Site. Direct program costs shall not include attorneys' costs or costs incurred in connection with any dispute resolution proceeding in which the Defendant is the prevailing party.
EPTF	Environmental Protection Trust Fund
First Amendment to the Agreed Interim Order	The First Amendment to the Agreed Interim Order entered by the Court on December 16, 2009
Fish Code	Fish and Aquatic Life Code, 515 ILCS 5/1-1, et seq.
Future Response Costs	All reasonable and necessary future costs incurred by the Illinois EPA in its oversight of the investigation and remediation of the Site, and its review and evaluation of documents and reports submitted to it pursuant to the Agreed Interim Order, First Amendment to the Agreed Interim Order, and this Consent Order, including, but not limited to, all costs associated with Community Relations activities
IDNR	Illinois Department of Natural Resources
Illinois EPA	Illinois Environmental Protection Agency

Indirect costs	Costs incurred by the Illinois EPA in day-to-day operations, including but not limited to, the operation and maintenance of buildings, utilities and administrative costs
NRD	Natural Resource Damage
Parties to the Consent Order	People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, Joseph P. Bruscato, State's Attorney for Winnebago County, Illinois, the Illinois Environmental Protection Agency, the Illinois Department of Natural Resources, and Chicago, Central & Pacific Railroad Company, a Delaware corporation
Plaintiff	People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own behalf and on behalf of the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources, and Joseph P. Bruscato, State's Attorney for Winnebago County, Illinois
Response Costs	All unpaid, reasonable and necessary costs incurred by the Illinois EPA from October 1, 2014 to December 31, 2014. Response Costs shall include direct program costs, allocated program costs, and indirect costs.
Site	The general area surrounding and including the Derailment Site, including the unnamed tributary adjacent to the railroad track and any other areas which were or are threatened or impacted by the releases of ethanol, natural gasoline and their degradation byproducts originating from product released during the derailment.
State Natural Resource Trustees	The Director of the Illinois Department of Natural Resources and the Director of the Illinois Environmental Protection Agency
Wildlife Code	Wildlife Code, 520 ILCS 5/1.1, et seq.

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PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and *ex rel.* JOSEPH P. BRUSCATO, State's Attorney for Winnebago County, Illinois,	)	
Plaintiff,	)	
v.	)	No. 09 CH 905
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, a Delaware corporation,	)	
Defendant.	)	

CONSENT ORDER

The Parties to the Consent Order have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. This Consent Order supersedes and replaces the Agreed Interim Order entered on July 9, 2009 and the First Amendment to the Agreed Interim Order entered on December 16, 2009. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding violations of the Act, the Board regulations, the Wildlife Code, the Fish Code, and common law Public Nuisance alleged in the Amended Complaint except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter. This Consent Order or the performance hereunder by Defendant shall not create any

right on behalf of any person or entity not a party hereto.

A. Parties

1. On July 9, 2009, the Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, and by Joseph P. Bruscato, State's Attorney for Winnebago County, Illinois, on his own motion, pursuant to Sections 43(a) and 42(d) and (e) of the Act, 415 ILCS 5/43(a), 42(d) and (e) (2006), against the Defendant.

2. On June 20, 2012, the Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA and IDNR, and by Joseph P. Bruscato, State's Attorney for Winnebago County, Illinois, on his own motion, pursuant to Sections 43(a) and 42(d) and (e) of the Act, 415 ILCS 5/43(a), 42(d) and (e) (2010), against the Defendant.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012).

4. The IDNR is an administrative agency of the State of Illinois, created by Section 1-5 of the Illinois Department of Natural Resources Act, 20 ILCS 801/1-5 (2012), and charged, *inter alia*, with the duty of enforcing the Fish Code, 515 ILCS 5/5-5 (2012), and the Wildlife Code, 520 ILCS 5/1.10 (2010).

5. At all times relevant to the Amended Complaint, CC&P was and is a Delaware corporation in good standing with the Illinois Secretary of State.

B. Allegations of Non-Compliance

Plaintiff contends that the Defendant has violated the following provisions of the Act and relevant regulations, codes and common law:

Count I:	Substantial Danger to the Environment, Public Health and Welfare, pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a);
Count II:	Air Pollution, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a), and Section 201.141 of the Board Air Pollution regulations, 35 Ill. Adm. Code 201.141;
Count III:	Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a);
Count IV:	Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d);
Count V:	Restoration of Aquatic Life and Wildlife, pursuant to Section 1-150 of the Fish and Aquatic Life Code, 515 ILCS 5/1-150, and Section 1.10 of the Wildlife Code, 520 ILCS 5/1.10; and
Count VI:	Common Law Public Nuisance.

C. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Amended Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Background

1. The Plaintiff alleges in its Amended Complaint that, as the result of a June 19, 2009 derailment of a CC&P train at the Derailment Site, a substantial danger to public health and the environment was created. The Plaintiff makes the following allegations regarding the derailment, which allegations are neither admitted nor denied by CC&P.

2. At approximately 8:36 p.m., a CC&P train derailed at the Mulford Road rail crossing at the Derailment Site. Nineteen (19) tank cars derailed. These tank cars were located in the middle of the train.

3. Each derailed tank car contained approximately 30,000 gallons of denatured ethanol. Upon information and belief, the denatured ethanol was a mixture of 90-92% ethanol and 8-10% natural gasoline.

4. Thirteen (13) of the derailed tank cars caught fire. The Defendant represents that the majority of these derailed tank cars' contents (approximately 244,640 to 266,928 gallons) were consumed in a fire. The Plaintiff makes no assertion as to the accuracy of the Defendant's estimates of tank car contents consumed by the fire.

5. The Defendant represents that approximately 57,035 gallons to 79,323 gallons of denatured ethanol were released into the surrounding soils and into a nearby unnamed tributary to the Kishwaukee River, potentially impacting groundwater and other surface waters. The Plaintiff makes no assertion as to the accuracy of the Defendant's estimates of denatured ethanol released into the soil and unnamed tributary.

6. The derailment resulted in an emergency response including multiple fire departments.

7. On June 19, 2009 at approximately 9:00 p.m., an estimated 600 homes and buildings in the surrounding half-mile area from the Derailment Site were evacuated out of a concern for potential vapor releases, explosions, and fire. On June 20, 2009 at 1:30 a.m., an additional 100 residents of homes and buildings were contacted about evacuation.

8. On June 20, 2009 at approximately 5:00 p.m., the burning denatured ethanol was extinguished.

9. On June 20, 2009 at approximately 5:30 p.m., the evacuation was lifted.

10. Additionally, the area within a one (1) mile radius of the Derailment Site contains approximately 100 private drinking water wells and two (2) community water supply wells.

11. On June 21, 2009, at approximately 8:00 a.m., the Illinois Conservation Police began receiving reports of fish dying in the Rock River near Grand Detour, Ogle County, Illinois, which is downstream of the Derailment Site.

12. The Illinois Department of Natural Resources ("IDNR"), Division of Fisheries, determined that the fish kill extended approximately 54 miles along the Rock River.

13. The IDNR estimated the total number of fish killed (all species) was 72,372.

14. The Plaintiff alleges that the release of the ethanol / natural gasoline mixture from the derailment caused the fish kill and natural resource damages in the Rock River.

15. On July 9, 2009, an Agreed Interim Order was entered by the Court requiring Defendant to complete certain tasks within a limited timeframe.

16. On December 16, 2009, the Court entered the First Amendment to the Agreed Interim Order.

E. Sampling and Compliance Activities to Date

1. The Defendant has complied with all terms and requirements, including sampling and reporting requirements, of the Agreed Interim Order and First Amendment to the Agreed Interim Order.

2. The Defendant has investigated the release and potential release of denatured ethanol into surface water, groundwater, and soil at and around the Derailment Site. The results of the investigation show no ethanol remains at and around the Derailment Site.

3. Pursuant to paragraph 42 of the First Amendment to the Agreed Interim Order, the Defendant has paid $17,968.42 for deposit into the Oil Spill Response Fund, and $7,519.73 for deposit into the Hazardous Waste Fund, for response costs incurred by Illinois EPA prior to December 16, 2009.

4. Pursuant to paragraph 43 of the First Amendment to the Agreed Interim Order, the Defendant has paid an additional $186,073.46 for deposit into the Hazardous Waste Fund for response and oversight costs incurred by Illinois EPA after December 16, 2009 and through September 30, 2014.

II. APPLICABILITY

A. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in the Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2012).

B. The Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Consent Order.

C. No change in ownership, corporate status or operator of the rail line shall in any way alter the responsibilities of the Defendant under this Consent Order.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the

following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Illinois EPA

1. Payment

a. The Defendant shall make a payment of One Hundred and Thirty Thousand Dollars ($130,000.00). Payment shall be tendered at time of entry of this Consent Order.

b. Payment shall be made by corporate check payable to the Illinois EPA for deposit into the EPTF.

c. The case name and case number shall appear on the face of the corporate check.

2. Cost Recovery

a. The Defendant shall reimburse the Illinois EPA for its Response Costs through December 31, 2014. Defendant shall have no obligation to reimburse Illinois EPA for any Response Costs incurred after December 31, 2014.

b. The Plaintiff will provide an invoice to the Defendant for Response Costs incurred from October 1, 2014 to December 31, 2014 with supporting documentation.

i. The supporting documentation shall include, at a minimum: (1) hours billed by each biller; (2) a summary of the work performed each day by each biller and the corresponding job title of each biller; and (3) copies of invoices for all outside services and equipment.

c. Within sixty (60) days of the receipt of the invoice, the Defendant shall pay, unless contested pursuant to Section III.I (Dispute Resolution) of this Consent Order, the

Response Costs detailed therein by means of a check made payable to the Illinois Environmental Protection Agency for deposit into the Hazardous Waste Fund.

d. The case name, case number, LPC# 2010300106 and the LP52 code 7B0 shall appear on the face of the check. The Defendant shall send the check and a copy of the Illinois EPA invoice to:

Division of Administration
Fiscal Services Section
Illinois EPA
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

e. A copy of the check and the transmittal letter shall be sent to:

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

f. The dispute resolution procedures set forth in Section III.I of this Consent Order shall be the exclusive mechanism for resolving disputes regarding the Defendant's obligation to reimburse the Illinois EPA for its Response Costs.

g. If the Defendant fails to make any Response Costs payment required by this Consent Order on or before the date upon which the payment is due, the Defendant shall be in default and the remaining unpaid balance of the payment, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

h. Pursuant to Section 42(g) of the Act, interest shall accrue on any Response Costs amount owed by the Defendant not paid within the time prescribed herein. Interest on

unpaid Response Costs shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any Response Costs amount that is due, such partial payment shall be first applied to any interest on unpaid Response Costs then owing. All interest payments shall be made in accordance with Sections III.A.2.d and e of this Consent Order.

B. Winnebago County Payment

1. The Defendant shall make a payment of Twenty Thousand Dollars ($20,000.00). Payment shall be tendered at time of entry of this Consent Order.

2. Payment shall be made by corporate check payable to the County of Winnebago.

3. The case name and case number shall appear on the face of the corporate check.

C. State Natural Resource Trustees - Future Compliance

In order to promote the goals of the Fish and Aquatic Life Code and Wildlife Code to conserve, distribute, introduce and restore aquatic life, birds and mammals, the Defendant shall make the following Restoration Payments and implement the below Restoration Project.

1. Big Bend State Fish & Wildlife Area

a. The Defendant shall make a payment of One Hundred and Fifty Thousand Dollars ($150,000.00). Payment shall be tendered at the time of entry of this Consent Order.

b. Payment shall be made by corporate check payable to the "Natural Resource Restoration Trust Fund". The case name and case number shall appear on the face of the check.

c. The Restoration Payment will be used exclusively for such restoration and enhancement activities at Big Bend State Fish & Wildlife Area, including, but not necessarily limited to, efforts to restore oxbow functions as connected to the Rock River and other wetland

restoration efforts. Examples of such efforts include, but may not be limited to, replacing and maintaining structures to control wetland water levels; thereby, enhancing wetland function and creating shallow excavations to expand wetland habitat. The overall plans for restoration at Big Bend State Fish & Wildlife Area are attached hereto as Attachment A. However, if circumstances beyond the State Natural Resource Trustees' control prevent such activities as stated above, then a restoration plan of an alternative will be released for a 30-day public comment period. The plan will identify how the funds will be used to address services lost to the public as a result of the injury to aquatic systems. The Defendant's obligations under this Section III.C.1 are limited, in all instances, to payment of $150,000.00.

2. Franklin Creek State Natural Area

a. The Defendant shall make a payment of One Hundred and Twenty Thousand Dollars ($120,000.00). Payment shall be tendered at the time of entry of this Consent Order.

b. Payment shall be made by corporate check payable to the "Natural Resource Restoration Trust Fund". The case name and case number shall appear on the face of the check.

c. The Restoration Payment will be used exclusively for such restoration and enhancement activities at Franklin Creek State Natural Area, including, but not necessarily limited to, efforts to restore a meander scar functions to the Franklin Creek in the Rock River Watershed. Such efforts include, but may not be limited to, excavating an area along Franklin Creek to an appropriate elevation with a minimum of a 10:1 slope along the periphery, thereby, enhancing wetland function, improving water quality of Franklin Creek, and expanding habitat for many resources. Native wetland vegetation will be planted. Stream gauges will be installed

to monitor the function of the wetland. Conceptual plans for restoration at Franklin Creek State Natural Area are attached hereto as Attachment B. However, if circumstances beyond the State Natural Resource Trustees' control prevent such activities as stated above, then a restoration plan of an alternative will be released for a 30-day public comment period. The plan will identify how the funds will be used to address services lost to the public as a result of the injury to aquatic systems. The Defendant's obligations under this Section III.C.2 are limited, in all instances, to payment of $120,000.00.

3. Rock River Flathead Catfish Spawning Structure and Fry Habitat Restoration

a. Within thirty (30) days of entry of this Consent Order, the Defendant shall apply for all required permits and approvals for the Restoration Project described herein, and the IDNR will be a co-applicant on all required permits and approvals. Within thirty (30) days of obtaining all permits and approvals, the Defendant shall commence implementation of the Restoration Project Scope of Work entitled "Rock River Flathead Catfish Spawning Structure and Fry Habitat Restoration", attached hereto as Attachment C. The Restoration Project shall be completed within one (1) year of receiving all required permits and approvals to commence the Restoration Project.

b. Within thirty (30) days of completion of the Restoration Project described in Paragraph 3(a) above, the Defendant shall submit a Restoration Project Completion Report to the persons listed in Section III.J of this Consent Order for review and approval,. If the State Natural Resource Trustees disapprove the Restoration Project Completion Report or any part thereof, the Defendant shall, within forty-five (45) days of receipt of notice of such disapproval, submit a revised report to the State Natural Resource Trustees that addresses all deficiencies identified by the State Natural Resource Trustees.

c. In the event that the Restoration Project listed in Paragraph 3(a) above is not completed within one (1) year of receiving all required permits and approvals to commence the Restoration Project, the Defendant shall make an additional payment equal to the value of the Restoration Project ($150,000.00) no later than the date by which the Restoration Project should have been completed. Payment shall be made by corporate check payable to the "Natural Resource Restoration Trust Fund". The case name and case number shall appear on the face of the check. Payment should be mailed to:

Illinois Department of Natural Resources
Fiscal Services
One Natural Resources Way
Springfield, Illinois 62702

A copy of the corporate check and any transmittal letter shall be sent to:

Gerald T. Karr
Supervising Attorney
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

d. The State Natural Resource Trustees will provide oversight of all aspects of the Restoration Project described above in Paragraph 3 and in the Scope of Work contained in Attachment C.

4. Future Oversight Costs

a. The Defendant shall make a payment of Five Thousand Seven Hundred Dollars ($5,700.00). Payment shall be tendered at or before the time of entry of this Consent Order.

b. Payment shall be made by corporate check payable to the "Natural Resource Restoration Trust Fund." The case name and case number shall appear on the face of

the check.

c. The payment referenced in Paragraph 4.a, above, shall be in full payment of all of the Department of Natural Resources future oversight costs incurred in overseeing the implementation of the "Rock River Flathead Catfish Spawning Structure and Fry Habitat Restoration". The Defendant's obligations under this Section III.C.4 are limited, in all instances, to payment of $5,700.00.

5. Stipulated Penalties, Interest, and Default

a. If the Defendant fails to make the payments specified in Section III.A.1, Section III.A.2, Section III.B.1, Section III.C.1, Section III.C.2, or Section III.C.4 or comply with the requirements in Section III.C.3 by the dates specified in this Consent Order, the Defendant shall pay stipulated penalties in the following amounts for each violation until such time as compliance is achieved:

Period of Noncompliance	Stipulated Penalty
1st to 30th Calendar Days	$250.00 per day, per violation
After 30th Calendar Day	$500.00 per day, per violation

b. In the event the Attorney General or the IDNR determines that a violation that would be subject to stipulated penalties has occurred, the Attorney General or the IDNR may, within fourteen (14) days of receipt of the information upon which such determination is based, provide a written notification of such violation to the Defendant. Failure by the Attorney General or the IDNR to provide such written notification within the fourteen (14) day period shall not be construed to be a waiver of the Plaintiff's right to seek stipulated penalties. All stipulated penalties shall be due and payable within thirty (30) calendar days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

c. If the Defendant fails to make any stipulated penalty payment required by this Consent Order on or before the date upon which the stipulated penalty payment is due, the Defendant shall be in default and the remaining unpaid balance of the stipulated penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

d. Pursuant to Section 42(g) of the Act, interest shall accrue on any stipulated penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid stipulated penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any stipulated penalty amount that is due, such partial stipulated penalty payment shall be first applied to any interest on unpaid stipulated penalties then owing.

e. All payments required by Section III.C.5 of this Consent Order shall be made by corporate check payable to the "Natural Resource Restoration Trust Fund". Payments shall be sent by first class mail and delivered to:

Illinois Department of Natural Resources
Fiscal Services
One Natural Resources Way
Springfield, Illinois 62702

f. The case name and case number shall appear on the face of the corporate check. A copy of the corporate check and any transmittal letter shall be sent to:

Gerald T. Karr
Supervising Attorney
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Right of Entry

1. In addition to any other authority, the Illinois EPA, its employees and representatives, the Attorney General, her agents and representatives, and the Winnebago County State's Attorney, his agents and representatives, shall have the right of entry into and upon the portions of the Site owned by or under control of the Defendant and which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, the Attorney General, her employees and representatives, and the Winnebago County State's Attorney, his agents and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. The Defendant's agents and representatives shall be permitted to accompany the Illinois EPA, Attorney General's Office, and Winnebago County State's Attorney's Office during inspections on property owned by the Defendant at the Site. Employees, agents and representatives of the Illinois Attorney General's Office, Illinois EPA, and Winnebago County State's Attorney's Office shall give CC&P seventy-two (72) hours advance notice, or as otherwise agreed between CC&P and the Plaintiff, by calling Brian Hayden of CC&P at (218) 343-8235 prior to conducting any inspection or work involving the placement or presence of any person, equipment or vehicle within twenty-five (25) feet of the centerline of any railroad track at the Site and shall obtain CC&P's approval, which shall not be unreasonably withheld, prior to conducting any inspection or work involving the placement or presence of any equipment or vehicle within twenty-five (25) feet of the centerline of any railroad track at the Site. CC&P shall, prior to entry of this Consent Order, provide the Illinois Attorney General's Office, Illinois EPA and the Winnebago County State's Attorney's Office with copies of the CC&P documents

Safety Guidelines for Contractors, *Instructions to Excavators for the Protection of Underground S&C Cables*, and *Special Notice Concerning the Protection of Fiber Optic Cables*.

E. Compliance with Other Laws and Regulations

This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state, or local laws or regulations, including but not limited to the Act and the Board Regulations.

F. Future Violations

The Defendant shall cease and desist from future violations of the Act, Board Regulations, Fish and Aquatic Life Code, Wildlife Code, and common law that were the subject matter of the Amended Complaint.

G. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of Section III.C.1 through 4 of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the IDNR (Beth Whetsell of the IDNR at 217-557-7816) within three (3) days of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Parties to the Consent Order shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

H. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court

shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by certified mail to those persons identified in Section III.J of this Consent Order, and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives identified in Section III.J (Notice and Submittals) of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report, plan, payment, or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order. The Illinois EPA, the IDNR, and/or Illinois Attorney General's Office approval of a request for modification will not be unreasonably refused.

I. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Plaintiff's rejection of a request for modification of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where the Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure* and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than twenty-one (21) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the Parties to the Consent Order, unless the Parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation, or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the Parties to the Consent Order are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative

record, it is against the manifest weight of the evidence.

J. Notice and Submittals

Except for payments, the submittal of any notice, reports, plans, or other documents required under this Consent Order, shall be delivered to the following designated representatives as specified:

As to the Plaintiff

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Phone: (312) 814-0609
jvanwie@atg.state.il.us
CD copy

Gerald T. Karr
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CD copy

John Waligore
Assistant Counsel
Division of Legal Counsel
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Phone: (217) 306-4247
John.Waligore@Illinois.gov
CD copy

Shelly L. Knuppel
Office of Legal Counsel
Illinois Department of Natural Resources

One Natural Resources Way
Springfield, Illinois 62702-1271
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CD copy

Beth Whetsell
Contaminant Assessment Section
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
Phone: (217) 557-7816
Beth.Whetsell@Illinois.gov

David J. Kurlinkus
Deputy State's Attorney - Civil Division
Winnebago County
400 West State Street, Suite 804
Rockford, Illinois 61101
Phone: (815) 319-4713
DKurlinkus@wincoil.us
CD copy

As to the Defendant

Robert M. Baratta, Jr.
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311 South Wacker Drive, Suite 3000
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Richard A. Verkler
Counsel, Environment
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17641 South Ashland Avenue
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Phone: (708) 332-4356
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Devin Sprinkle
Regional Manager – Environment
CN Operations
17641 South Ashland Avenue
Homewood, Illinois 60430
Phone: (708) 332-3850

devin.sprinkle@cn.ca

K. Release from Liability

In consideration of the Defendant's payment of $130,000.00 to the EPTF, $20,000.00 to Winnebago County, any specified costs and accrued interest, its commitment to comply with the provisions of the Act, Board regulations, Fish Code, Wildlife Code and common law Public Nuisance that were the subject matter of the Amended Complaint, its implementation to completion of the Restoration Projects, payment of Restoration Payments, and payment of costs contained in Sections III.A.2 and III.C, above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for any matters that were the subject of the Complaint and/or Amended Complaint. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on July 9, 2009 and/or Plaintiff's Amended Complaint filed on June 20, 2012. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to the following:

a. criminal liability;

b. liability for future violations; and

c. the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), other than the Defendant.

L. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the Parties to the Consent Order, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General of the State of Illinois, and *ex rel.* JOSEPH P. BRUSCATO, Winnebago County State's Attorney

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

DATE: 2/19/15

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: _____
JOHN J. KIM, Chief Legal Counsel

DATE: 2/18/15

WINNEBAGO COUNTY STATE'S ATTORNEY

BY: _____
DAVID J. KURLINKUS
Deputy State's Attorney
Civil Division

DATE: 3/4/15

ILLINOIS DEPARTMENT OF NATURAL RESOURCES

BY: _____
WAYNE ROSENTHAL, Director

DATE: 2/5/15

BY: _____
SHELLY L. KNUPPEL
Assistant General Counsel

DATE: 2/4/2015

FOR THE DEFENDANT:

CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY

BY: Michael J. Novak

Its GENERAL COUNSEL

DATE: MARCH 2, 2015

ENTERED:

J. E. Prochaska
JUDGE

DATE: 3/4/15

Attachment A.

Draft Scope of Work: Big Bend State Fish and Wildlife Area Wetland Restoration

Prepared for: The Office of the Illinois Attorney General

Prepared by: Natural Resource Conservation Service and Illinois Department of Natural Resources

May 8, 2014

PROJECT OVERVIEW AND DESIGN SCOPE

Big Bend State Fish and Wildlife Area (BBSFWA) is a 2,376 acre site located along the Rock River west of Prophetstown, Illinois (Figure 1). The area has approximately 250 acres of upland forest, with the remainder of the property being a mix of native grassland, forests, two oxbows and several small wetlands and marshes lying in the Rock River floodplain. The BBSFWA is a very complex system that is highly influenced by Rock River flood pulses and other natural disturbances, readily changing site conditions. The site is preserved by an NRCS Emergency Watersheds Protection Program Floodplain easement. The purpose of the easement is to *restore, protect, manage, maintain, and enhance the functional values of floodplains, wetlands, riparian areas, and other lands, for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education*.

The project outlined here focuses on the enhancement of a large oxbow system within BBSFWA that directly borders the Rock River as well as several small wetlands south of the oxbow (Figure 2). Such a project will restore benefits to and enhance an area that has lost wetland habitat along the Rock River over the years. Additional wetlands upstream of the town of Erie, IL., will provide additional flood protection to this community.

<u>Oxbow Restoration (9 and 10)</u>

In early 2000s, NRCS implemented various site restoration projects, including, but not limited to, a crossing with a flap gate to control water in a small ditch (10) and a notched levee with water control structure (9) on the large oxbow island (Figure 2). Reinforcing the crossing and repairing the flap gate will allow for a stable crossing onto the island during burning and maintenance activities. Widening the levee in the vicinity of structure #9 and stabilizing the notch will be completed, allowing for better management of the water levels in the large oxbow system. Completely armoring the notch should also stop the gully from advancing further into the wetland. Without restoration enhancement activities in this area, the function of the oxbow system would be compromised, reducing benefits to Rock River natural resources; ultimately, leading to fewer habitats for birds, mammals and fish.

With better management of water levels, the oxbow will provide a more stable environment for spawning and rearing of many fish species. Allowing the river to have sole control would certainly cause more damage; silt deposition, gully formation, and fish entrapment among other detrimental consequences.

Wetland Restoration (A, B, C, D, 5, and 6)

In areas depicted as A, B, C, D, 5 and 6 on Figure 2, minor excavations, armoring a wetland overflow and spring seep drainage, and installation of water control structures will be implemented in an effort to facilitate floodwater storage, in turn providing additional shallow water wetland habitat for natural resources.

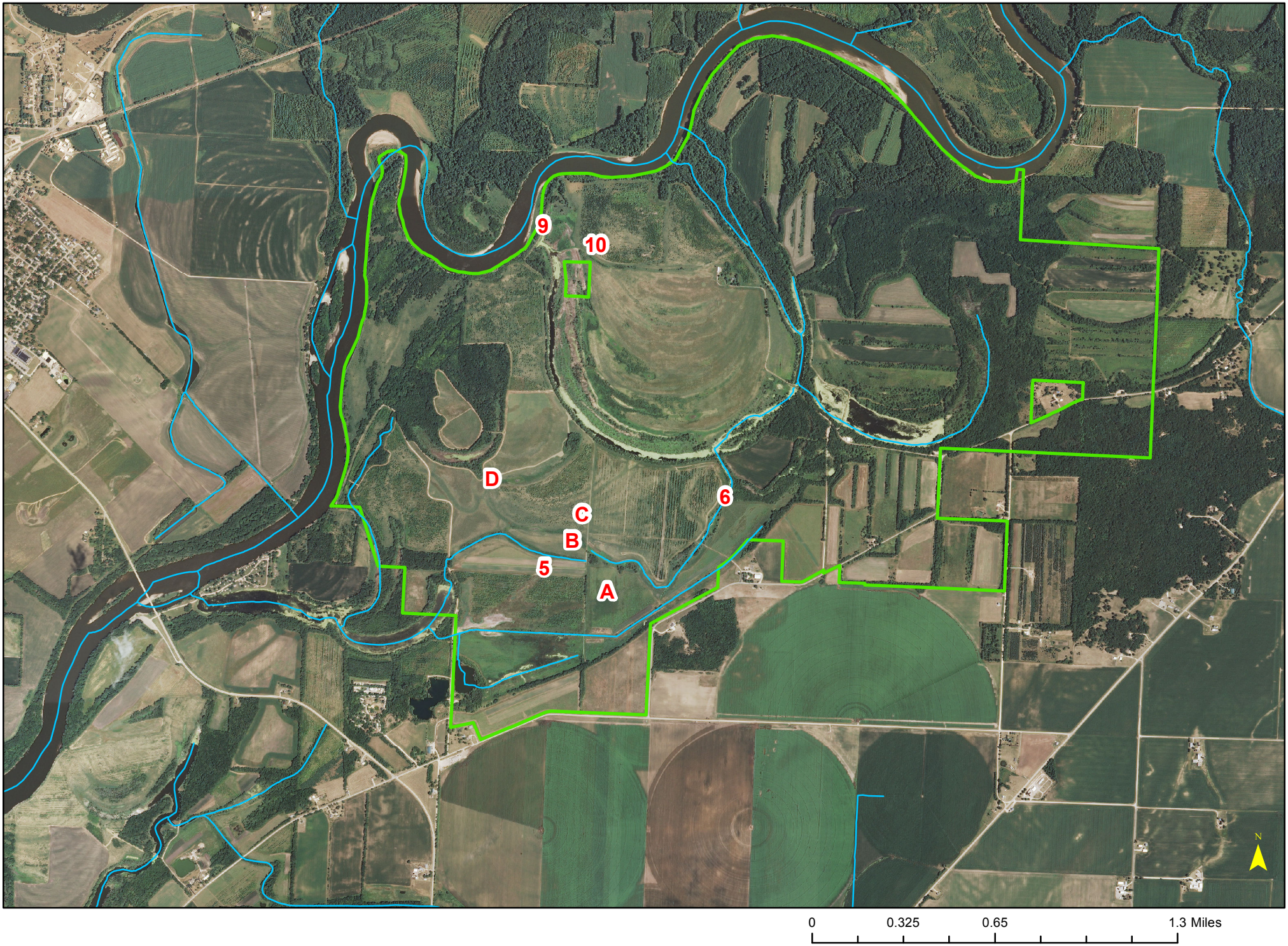
SUMMARY

BBSFWA has the potential to provide a diverse mix of habitats for a variety of natural resources, including but not limited to, moist soil, flooded shallow flats, open water, submerged and emergent vegetation, and flooded brood/roost habitat along with upland nesting habitat.
The IDNR and NRCS objective is to provide the best habitat possible for a variety of natural resources (i.e., fish, wildlife, groundwater) while still being practical and broad-minded. Such a project will restore benefits to and enhance an area that has lost wetland habitat along the Rock River over the years. Additional wetlands upstream of the town of Erie, IL., will provide additional flood protection to this community.

Figure 1. Approximate location of Big Bend State Fish and Wildlife Area, Whiteside County, IL. (red point)

Figure 2. Big Bend State Fish and Wildlife wetland area, Rock River Watershed Restoration Project Alternatives

*** the identified areas are for illustration purposes only. Defined project areas to be determined during design phase**



Attachment B.

Draft Scope of Work: Franklin Creek State Natural Area Wetland Restoration

Prepared for: The Office of the Illinois Attorney General

Prepared by: Illinois Department of Natural Resources

June 18, 2014

PROJECT OVERVIEW AND DESIGN SCOPE

IDNR has proposed wetland restoration along Franklin Creek within the Franklin Creek State Natural Area (SNA), Lee County, Illinois (Figure 1 and 2). Franklin Creek is a tributary of the Rock River, feeding the River near Grand Detour. A wetland along Franklin Creek will filter run-off from surrounding land, improving overall water quality of the stream. An overall improvement to the water quality of Franklin Creek will improve the aquatic life of the creek and improve water quality and aquatic life of the river it feeds, the Rock River. Such a project will restore benefits to and enhance an area that has lost wetland habitat along the Rock River over the years.

The conceptual wetland along Franklin Creek can be described as follows:

A small-scale wetland will be created along Franklin Creek west of Monday's bridge (Figure 2 and 3); excavation of defined inlets at elevations will allow interaction with Franklin Creek during flood conditions. As floodwaters inundate this wetland, some portions may have permanent water while others will provide ephemeral ponding of water. Both permanent water and ephemeral ponds provide critical habitat for wetland species. Both habitats play a role in filtration of field run-off and improvements to water clarity and overall quality providing benefits to aquatic resources.

SUMMARY

Franklin Creek SNA has the potential to provide a diverse mix of habitats for a variety of natural resources, including but not limited to, shallow water wetland habitat.

The IDNR objective is to provide the best habitat possible for a variety of natural resources (i.e., fish, wildlife, groundwater) while still being practical and broad-minded. A wetland restoration project along Franklin Creek corridor has a high likelihood of improving water quality, thereby, improving the aquatic life system of the tributary and the Rock mainstem, including Species in Greatest need of Conservation as identified in Illinois' Wildlife Action Plan

Figure 1. Approximate Location of Franklin Creek State Natural Area, Lee County, Illinois (red dot).

draft 061814

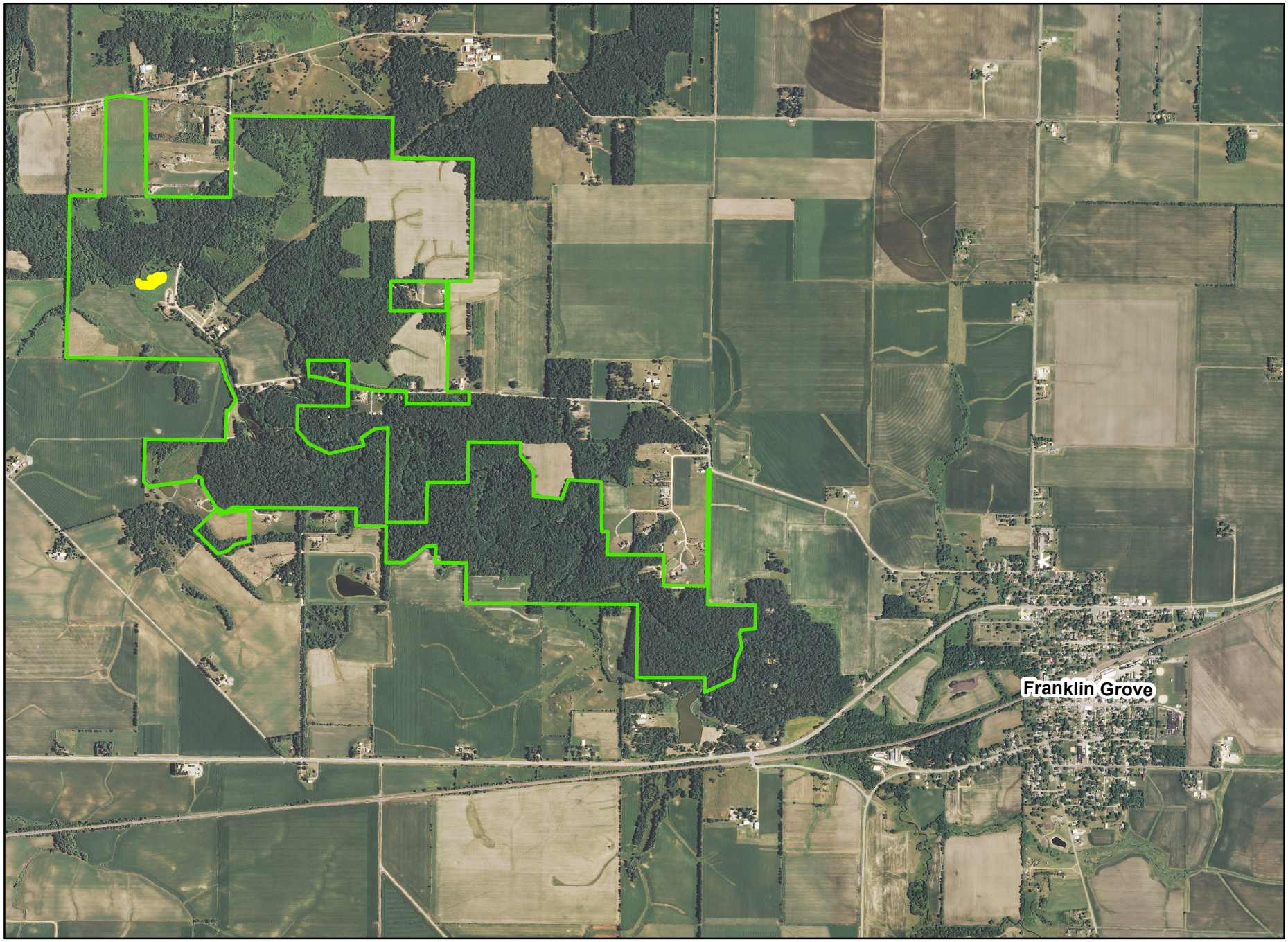


Figure 2. Franklin Creek State Natural Area (outlined in green) and proposed wetland restoration project site (outlined in yellow).

draft 061814

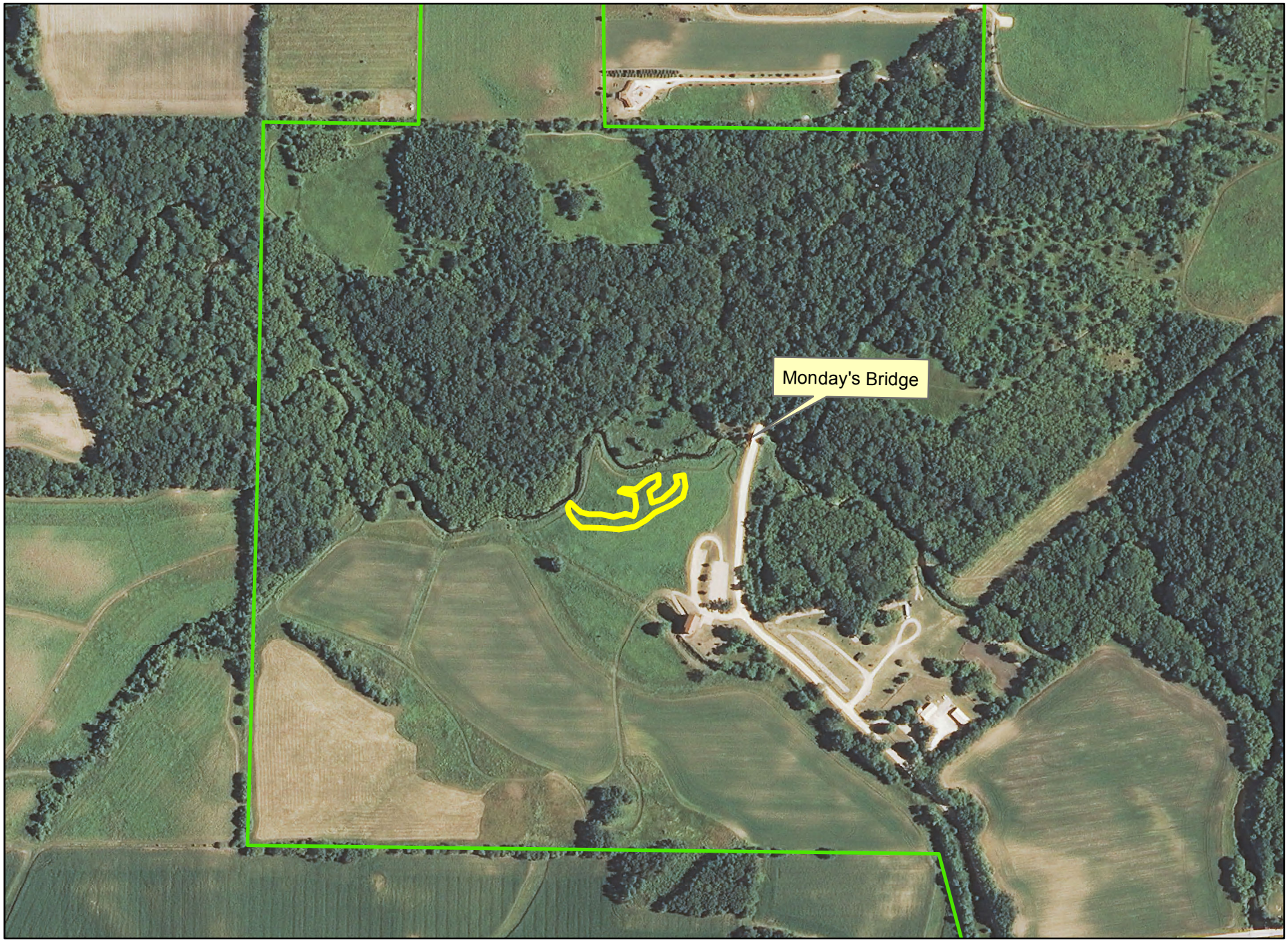


Figure 3. Franklin Creek State Natural Area (outlined in green) proposed wetland restoration project site (outlined in yellow). draft 061814

SCOPE OF WORK:

Rock River Flathead Catfish Spawning Structure and Fry Habitat Restoration

Prepared for:

Chicago Central & Pacific Railroad

17641 South Ashland Ave
Homewood, Illinois 60430

Prepared by:

EnviroScience
Excellence In Any Environment

5070 Stow Rd.
Stow, OH 44224
800-940-4025
www.EnviroScienceInc.com

Date: July 2, 2014

INTRODUCTION

EnviroScience, Inc. (ES) is pleased to submit a Scope of Work (SOW) to Chicago Central & Pacific Railway (CCP) to construct flathead catfish spawning structures (FCSS) in the Rock River. Original specifications in the Rock River Watershed Restoration Project Alternatives - Segment B have since been modified to reduce installation logistics and handling of materials. The alternative flathead catfish spawning structures (AFCSS) have been designed to simplify logistics, improve installation efficiency and reduce cost, all while maintaining a life expectancy consistent with the original design.

Three stream segments have been preselected by the IDNR for the placement of 20 AFCSS within the Rock River. IDNR Fisheries biologists report that the flathead catfish population in the mainstem of the Rock River is struggling, natural recovery is slow and re-colonization is limited by multiple dams within the Rock River. The construction and introduction of the AFCSS will provide essential habitat requirements for spawning flathead catfish and promote re-colonization.

TASK ONE – FABRICATION OF AFCSS

The frame will be constructed of 0.25'' epoxy paint coated square solid stock welded together with two 6.5" vertical 0.5" galvanized threaded studs, with overall dimensions of 40'' by 40'' (Figure 1 (1)) (Digital Image 1). The shape of the frame creates two horizontal attachment sites and a centralized "spine" underneath the corrugated pipe and concrete. The frame unifies the structure to increase rigidity and cohesiveness of the structure. The frame will be attached to a galvanized wire basket with stainless steel safety wire and together will be referred to as the frame & basket. The wire basket is 48" x 52" with 4" vertical sides and constructed of 0.12" gauge galvanized wire. Eight 80lb concrete bags will be placed within the frame & basket, creating an approximately 650lb base (Figure 1 (2)) (Digital Image 2).

The simulated hollow log will be constructed of 4' long double walled corrugated plastic culvert with an inside diameter of 24", smooth interior and a single capped end (Figure 1 (3)) (Digital Image 3). Two holes will be drilled into the culvert to later assist with attachment to the frame & basket. Fry habitat will be constructed of six 3" inside diameter PVC pipes 3' in length, with eight to fifteen 2" random drilled holes, fastened together with stainless steel hardware. The fry habitat will be fastened to the corrugated culvert with stainless steel hardware, together these will be referred to as the spawning structure (Digital Image 4).

TASK TWO – INSTALLATION OF AFCSS

Three stream segments have been preselected by the IDNR and include: Sauk Valley Community College (SVCC) (Figure 2), Riverside Park (Figure 3) and Dixon (Figure 4). A total of 20 AFCSS will be constructed, 10 will be installed at the SVCC stream segment, and 5 installed at the Riverside Park and Dixon stream segments.

ES divers will survey for potential site locations for AFCSS at each stream segment (SVCC, Riverside Park and Dixon). Site selection criteria will include: spacing of AFCSS be a minimum 40'- 50', minimal boat traffic, relatively level substrate and clear of large debris. At each site a GPS coordinate will be recorded and later provided on GIS based mapping.

Once a site has been selected and deemed suitable for an AFCSS, an ES diver will place a frame & basket with the appropriate orientation (capped end towards shore). Concrete bags will be lowered down and placed into position by the diver. Finally, attaching the spawning structure to the frame & basket will be accomplished by lining up the threaded studs on the frame with the two predrilled holes in the corrugated culvert. The diver will

utilize galvanized hardware to fasten the spawning structure to the frame & basket. The final product is represented in Digital Image 4.

Once all AFCSS structures have been placed in suitable locations, an upstream and downstream regulatory buoy will be placed in line with the AFCSS. This will serve as a warning to the public as to the location of possible in water obstructions. Buoys are constructed of solid vinyl and have a five year factory no fading warranty, each buoy has a stainless steel mooring eye (Digital Image 5) and is marked “hazard”. Each buoy will have a 400lb concrete anchor and be attached with a stainless steel cable.

TASK THREE –REPORTING AND MAPPING

ES will provide a report within 30 business days of its completion. The report will include a description of the installation activities, maps of the site locations and an appendix containing digital images of the project sites and activities.

PROJECT SCHEDULE

Installation of the AFCSS will begin when weather and river conditions allow and permitting coordination is completed with USACE, IDNR and CCP.

PROJECT ORGANIZATION

Mr. Ryan Schwegman will act as field manager for EnviroScience and will coordinate directly with CCP and IDNR throughout the project.

LIST OF FIGURES

Figure 1. Flathead Catfish Spawning Structure Schematic

Figure 2a. Sauk Valley Community College

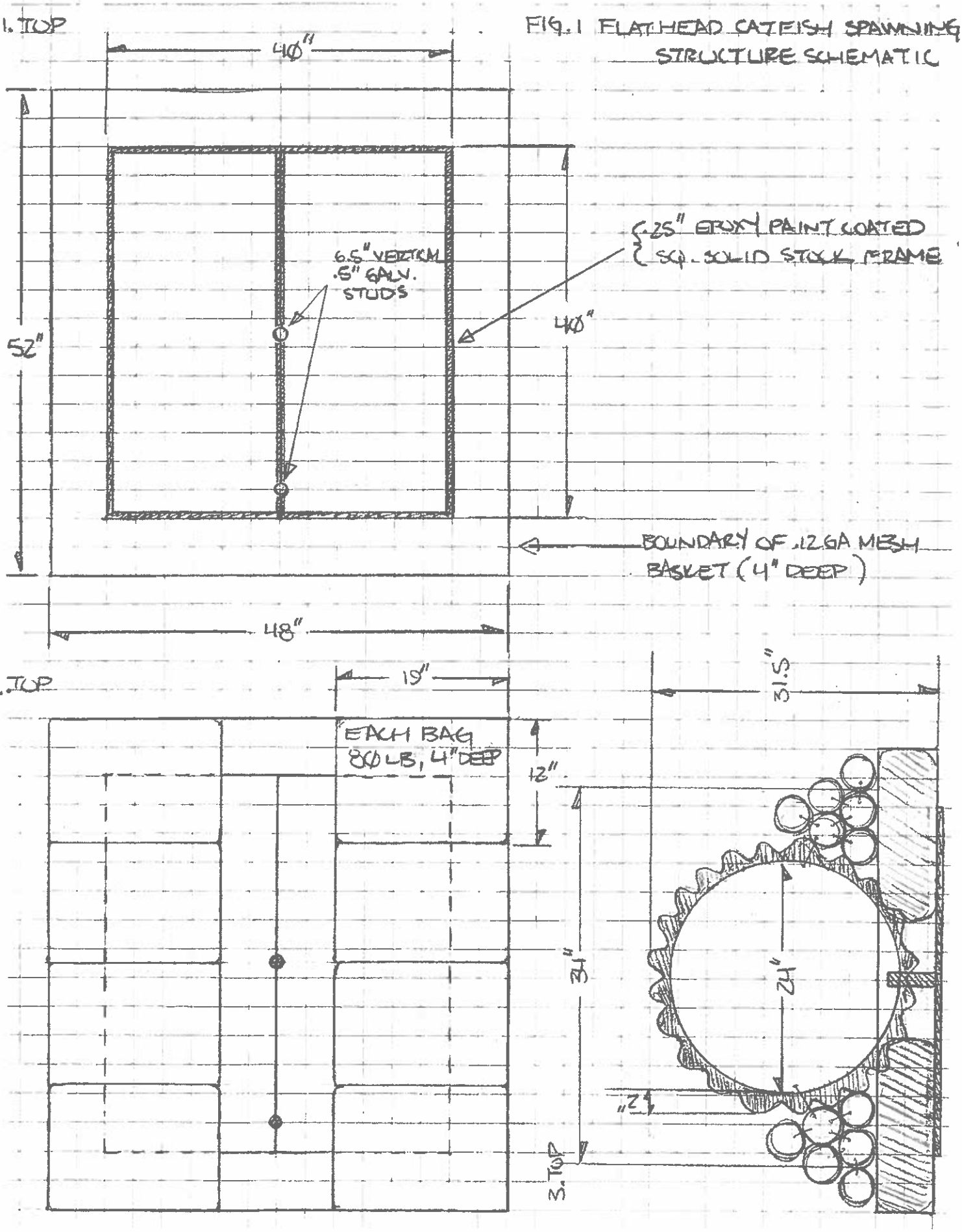
Figure 2b. Riverside Park

Figure 2c. Dixon

LIST OF ATTACHMENTS

Attachment A. Digital Images

FIG. 1 FLATHEAD CATFISH SPAWNING STRUCTURE SCHEMATIC



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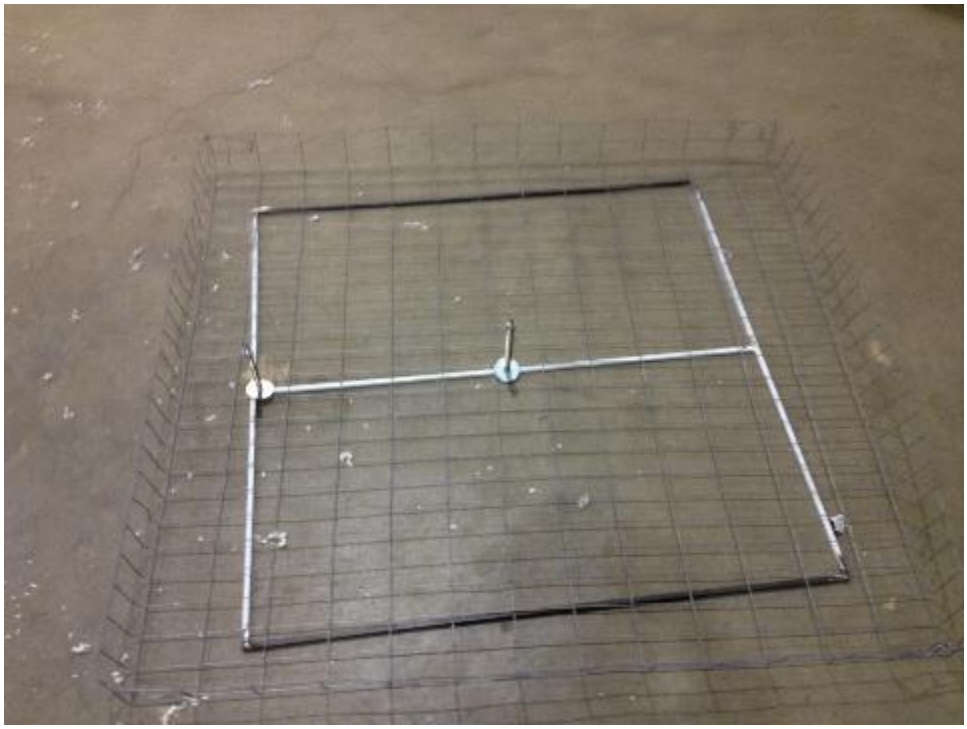
Attachment A.

Digital Images



Digital Image 1. Frame & basket.

Digital Image 2. Concrete bags inside the frame & basket.

Digital Image 3. Double walled corrugated plastic culvert

Digital Image 4. Completed alternative flathead catfish spawning structure.

Digital Image 5. Regulatory Buoys