Illinois Department of Natural Resources CONSERVATION PLAN

(Application for an Incidental Take Authorization) Per 520 ILCS 10/5.5 and 17 Ill. Adm. Code 1080

150-day minimum required for public review, biological and legal analysis, and permitting

PROJECT APPLICANT: Gateway Regional Water Company

PROJECT NAME: Kinmundy/Farina Farm Water Main Extensions

COUNTY: Marion and Fayette

AMOUNT OF IMPACT AREA: Of the 19.4 acres to be impacted, only 1.78 acres are

suitable habitat.

1.

A) Area to be Affected:

Gateway Regional Water Company (GRWC) is planning capital improvements to service the City of Kinmundy and Village of Farina with a safe and reliable source of potable water. The improvements include a master meter station and booster pump station that will be located on a one-acre site south of Kinmundy. There will also be three (3) segments (See Attachment 2) of water main installed ranging from 8-inch to 10-inch PVC. Segment 1: Is located in Marion County in Alma and Salem Township. It starts at Williams Road running south along Currie Road stopping before Tonti Road in Section 25/26. Segment 2: Is located in Marion County in Kinmundy Township. Starting at Kinlou Road running south along Highway 27 turning west on Armstrong Road stopping at the far edge of Section 25. Segment 3: Is located in Fayette and Marion Counties in Meagham and Laclede Townships. Starting at High 185 running south cross country to County Road 2400 turning into Sullivan Road ending on the other side of Chestnut Street crossing the rail road tracks. The water main will be trenched in, roads and creeks will be directionally bored, railroads and State Highways will be bored and jacked. Construction will take place in private easements and road right of way.

The area affected by this project covers approximately 8 miles along Currier Road, Armstrong Road, Sullivan Road and some cross-country areas. Species affected by the Incidental Take Authorization are the Eryngium Stem-Borer Moth, Loggerhead Shrike, Greater Prairie Chicken, Ornate Box Turtle and the Upland Sandpiper. This project is funded by Rural Development. 100% of the easements have been signed and recorded. See Attachment 1 for a list of property owners. Road permits have been obtained from both the County roadway departments, Townships and the State. Roads that will be directionally bored are: Basom Road, Brubaker Road, Currie Road, Broom Road, Williams Road, Armstrong Road, Wilson Road and Kinlou Road. Union Pacific Railroad will be bored and jacked. For the entire project area and individual sections of the project see maps in Attachment 2

B) Biological data:

Upon IDNR's review of the ECO CAT it was determined that the project is likely to have an adverse impact on the Eryngium Stem Borer-Moth (*Papaipema eryngii*), Greater Prairie Chicken (*Tympanuchus cupido*), Upland Sandpiper (*Bartramia longicauda*), Ornate Box Turtle (*Terrapene ornata*) and the Loggerhead Shrike (*Lanius ludovicianus*).

The Greater Prairie Chicken's habitat consists of native tall-grass prairie. Prime original habitat apparently was where prairie was intermixed with oak woodland. Currently found in areas of tall-grass prairie (especially native prairie, now a rare type), including places where such habitat is interspersed with agricultural fields. Greater prairie chickens do not migrate. They are territorial. The breeding/nesting season begins April 1st and runs through August 1st. Threats include loss of prairies and human disturbance during breeding season. Sources: http://www.audubon.org/field-guide/bird/greater-prairie-chicken https://en.wikipedia.org/wiki/Greater-prairie-chicken

The Upland Sandpiper's habitat consists of grassy prairies, open meadows, fields. Favored nesting habitat is native grassland, with mixture of tall grass and broadleafed weeds. In the northeast, where natural grassland is now scarce, may be found most often on airports. During migration they stop on open pastures, lawns and almost never on mudflats or other typical shorebird habitats. The breeding/nesting season begins April 1st and runs through August 1st.

Threats include loss of prairies and human disturbance during breeding season. Sources: https://en.wikipedia.org/wiki/Upland_sandpiper

The Ornate Box Turtle's habitat is chiefly a prairie and treeless environments with scattered brush vegetation. The turtle spends much of its time in underground burrows or shallow excavations called "forms", where they shelter from the heat of the day; they are most active in early mornings and late afternoons from late April to September. Threats include habitat destruction from agriculture, construction and development.

Sources: https://en.wikipedia.org/wiki/Ornate box turtle

The Loggerhead Shrike's habitat is semi-open country with lookout posts; wires, trees, scrub. They breed in any kind of semi-open terrain, from large clearings in wooded regions to open grassland or desert with a few scattered trees or large shrubs. In winter, in totally treeless country fences or wires provide hunting perches. It establishes "larders" by impaling prey (large insects and small mammals) on thorns or twigs for later consumption. Their nesting season is May

through August. Threats include destruction of habitat for the bird to nest and thorny brush removal that eliminates places for the birds to establish their larders.

Sources: http://www.audubon.org/field-guide/bird/loggerhead-shrike

The Eryngium Stem-Borer Moth's habitat requires the Rattlesnake master plant for reproductive purposes which is found widely in prairies. Year round the moth could be present in the plant as eggs, larvae, pupa or adult stages. Threats include the destruction of habitat from mowing, agriculture, construction and development.

Sources: IDNR EcoCAT Review 1705219 dated 03/29/2017 (Attachment 8)

At this time no biological surveys have been conducted in this area. Sources for the information above were obtained from the corresponding web addresses.

C) Description of project activities:

The water main will be installed by a trenching machine in accordance with Illinois Department of Agriculture Water and Sewer Line Construction Standards and Policies. All water main is to be installed below grade with a minimum of 42" of cover. Construction requires dirt and vegetation to be disturbed temporarily and some brush clearing. Dirt will be immediately backfilled the same day. There will be construction equipment and construction noise.

U.S. Fish and Wildlife Service was consulted on October 21, 2016 regarding the proposed project. Please see the review in Attachment 5. The United State Army Corps of Engineers was consulted on October 6, 2016 regarding the proposed project. See their comments in Attachment 6.

Construction is estimated to begin late Winter 2020 and be completed by Summer 2021.

D) Adverse effects on listed species;

The maximum trench width is 24-inches and the maximum construction area is 20 feet. It is uncertain how many individuals will be taken.

Construction noise will result in the harassment and disbursement of the Loggerhead Shrike, Upland Sandpiper and the Greater Prairie Chicken. Trenching and construction vehicular activity will result in destroying nests and habitat of the ornate box turtle or possibly crushing them. Any open trenches that need to be left open overnight will be required to be covered and checked the next day before construction can begin. The Erygium Stem-Borer Moth's habitat, the Rattlesnake Master Plant will be destroyed during any trenching and digging. This will result in the destruction of the larvae.

Based on the species, habitat and length of project area we estimate that at least 1 of each species will be harassed/taken. For the most, see section 2.A for the numbers we estimate harassing/taking.

2)

A) Measures to Minimize Impact and Mitigation

In order to minimize the chances of incidental taking of the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth the proposed water main installation construction will avoid breeding seasons which occur April thru September. Also, the construction area will be kept at a maximum of 20 feet wide to avoid disturbing prairie habitat. The total area to be disturbed is approximately 19.4 acres. Of the 19.4 acres only 1.78 acres are considered suitable habitat.

Following these mitigation measures we anticipate the taking of:

- 3- Greater Prairie Chicken (*Tympanuchus cupido*)
- 5- Upland Sandpiper (Bartramia longicauda)
- 8 Ornate Box Turtle (*Terrapene ornata*)
- 3 Loggerhead Shrike (*Lanius ludovicianus*)
- 50 Eryngium Stem-Borer Moth (*Papaipema eryngii*)

B) Plans for management of the area:

Once water main is installed the area disturbed will be returned back to its original state which will include planting grasses, therefore, not affecting or change the previous habitat.

C) All measures to be implemented to avoid, minimize, and mitigate:

In order to minimize the chances of incidental taking of the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth the proposed water main installation construction will avoid breeding seasons which occur April thru September. Also, the construction area will be kept at a maximum of 20 feet wide to avoid disturbing prairie habitat. Water main installation will be returned to its original state by reseeding grasses. The grass mixture be Class 2 Roadside Mixture 7/ from the IDOT Standard Specifications for Road and Bridge Construction, Adopted April 1, 2016. See Attachment 7. All persons on the construction job will be informed of the possibility of the threatened species being present in the project area and will be provided with information, pictures of each species, and contact information for IDNR. See Attachment 3. If a Greater Prairie Chicken or Upland Sandpiper is seen within 20 feet of the construction site, the contractor will halt construction until the chicken(s) and sandpiper(s) have left the area to avoid harassment. If the Ornate Box Turtles are found in the construction path the contractor will halt construction. One of the authorized persons designated by this ITA must be

contacted and they must document the location of the turtle and the current state of the turtle. If the turtle is in good health and unharmed from construction activity the turtle can be placed in an open box and placed in the shade away from the loud equipment and the project can continue. The area where the turtle was found must be constructed within 24 hours of picking the turtle up. Then the turtle must be returned to where it was found. See Attachment 4. Should any turtles have harm come to them due construction, this must be documented and the turtle(s) must be transported to the state licensed Herrick Wildlife Center, 1032 East 3300 Avenue, Herrick, IL 62431, 618-428-5266. It will be difficult for anyone to see the Eryngium Stem-borer moth, however, a picture of the Rattlesnake master plant will be provided for identification. If plants greater than 50-100 are located in the construction path the contractor will attempt to avoid disturbing them. Designated personnel must keep precise records of any findings of any species and contact IDNR within 24 hours of these findings.

Mitigation to the maximum extent for this project will consist of compensatory mitigation from GRWC in the amount of \$4,450.00 to support the need for woody species removal at Twelve-Mile Prairie and \$4,450.00 to the Illinois Wildlife Preservation Fund earmarked for conservation of all the listed species in this permit.

D) Monitoring:

There will be a resident project representative present on the job site to ensure that the contractors are abiding by all rules and regulations when installing water main in the areas that the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth may be present.

A post-construction monitoring of the conservation plan will take place by an experienced species biologist, 1 year after construction has been completed. Emily Fortschneider will conduct a species survey and report to IDNR.

E) Adaptive management practices:

If an unforeseen circumstance occurs that affects the effectiveness of the measure instituted to minimize or mitigate the effects of the proposed action on the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth the job will shut down until the owner can consult with IDNR to further discuss the situation and their options.

F) Verification that adequate funding exists:

This project is being funded by the Rural Development Water Loan & Grant program. The program provides funding for clean and reliable drinking water in eligible rural areas. The funding is applicable to this project due to its geographical nature and providing safe reliable water to residents that rely on old wells, cisterns and ponds. Also, in this case this project will also allow the City of Kinmundy to decommission their failing water treatment plant and the Village of Farina to have an emergency connection. The program offers up to a 40-year

payback period. Rural towns and residents do not have a lot of income so this longer pay back period helps keep water bills within reason and Gateway can still pay off their loan and maintain their system. There are adequate funds to carry out all aspects of the conservation plan.

3)

Alternate #1:

Chose a different route that avoids any habitat of the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth. This alternative was not chosen because all other possible routes were costly and resulted that the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth was in the vicinity of the project.

Alternate #2:

Do not install water main. This option was not chosen because this project is increasing service to the Village of Farina due to local economic development expansion and provide initial service to the City of Kinmundy. Gateway, as supplier of water to the Village of Farina, must be able to deliver that water to the Village so that the Village can meet the developments demands.

The need for connecting to a regional water supply entity such as Gateway is evidenced by the City Council of Kinmundy choosing to abandon a longstanding policy of operating its own water treatment plant. USDA-Rural Development has had a long history of communication with the Kinmundy political leadership regarding the problems of operating a small water treatment facility, the cash flow and indebtedness of the City, and the options available to Kinmundy ... including the option of connecting to Gateway Regional Water Company.

Alternate #3:

Install water main along proposed roadways within right-of-way and easements. This Alternate was chosen because it is cost efficient and will disturb the least amount of ground where the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth could be.

4)

The proposed project will not reduce the likelihood of the survival of the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth within the State of Illinois. An area of approximately 8 miles will be temporarily disturbed to install water main and then returned to its original state. All throughout Marion and Fayette County and not far from the project sites are numerous IDNR and Nature Preservation sites that will not be disturbed during construction that provide habitat for the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth.

5)	Implementing Agreement: A) Emily Y. Fortschneider And
	Engineering Technician/Biologist/LEED Green Associate
	Keith Ritter 7 Leth Qittu
	Craig Olsen Aug Alle
	Project Engineer U
	Lindsey Bowlin
	Project Engineer
	Wally Cox Natter J? Cox
	Project Engineer /

- B) Emily Y. Fortschneider is the preparer of the conservation plan for the Gateway Regional Water Company. Keith Ritter is the Gateway Regional Water Company Board Chairman. Ms. Fortschneider will be responsible for any changes that need to be made to the conservation plan and also to make sure that the plan is followed through. Mr. Ritter will be responsible to make sure the plan is followed through and to publish all necessary publications required by the Incidental Taking process. Construction is to start in the late winter of 2020. Craig Olsen, Lindsey Bowlin and Wally Cox will be responsible for monitoring the construction site for signs of the Greater Prairie Chicken, Upland Sandpiper, Ornate Box Turtle, Loggerhead Shrike, Eryngium Stem-Borer Moth and contacting IDNR. Ms. Fortschneider will monitor and conduct a species surveys throughout the project. See Attachment 9 for the schedule. There will also be another report submitted to IDNR 90 days after construction has been completed.
- C) Ms. Fortschneider, Mr. Ritter, Mr. Olsen, Ms. Bowlin and Mr. Cox have authority to execute the conservation plan and legal authority to carry out their respective obligations and responsibilities under the conservation plan.
- D) Gateway Regional Water Company is in compliance with all other federal, State and local regulations pertinent to the proposed action and is able to execute the conservation plan.
- E) There are no other necessary federal authorizations needed for taking to complete this project.

PLEASE SUBMIT TO: Incidental Take Authorization Coordinator, Illinois Department of Natural Resources, Division of Natural Heritage, One Natural Resources Way, Springfield, IL, 62702 OR DNR.ITAcoordinator@illinois.gov

Proposed Water System Improvements to Serve Kinmundy & Farina Gateway Regional Water Company

Segment #1 Parcels

Wyett H & W H Colclasure

William G & Lila Williams

Mary Joh & Charles Hughes

Johnathan David Walters

Linda Miselbrock Trust

Schnitker ET AL Earl & Shirley

Jane Ellen Hunter

Ray & Russel Jr Vandeveer

Jason & Biran Michael Farms, Inc.

Bob L & Heather Hassebrock

Brian and Jason Michael

Nature S Acres Inc.

Baker Living Trust Doris R Trustee

Nature Acres Inc.

Robert D & Landak Alderson

Patricia & Bradley Hunter

Currie Melvin Trustee

John R Siegler

Dennis Billy Glenn

Patricia Currie

Richard & Linda E Parnell

Gary D & Sara Gergeni

Peggy J & David E Collier

Melvin Currie Truske

Penelope Scott

Sara Squibb Gergeni

Segment #2 Parcels

David E Richardson Trust

Bryce A & Shirley Geiler

Mary Sebastion Sololner

Shirley K Geiler

Leonard & Sue Ellen Rose

Betsy Ann Oleary

Patrick K Oleary

Natures Acres Inc.

Brenda & Richard Williamson

Coletta Etal Gardner

Rodney & Robert Etal Armstrong

Steve Armstrong

Darria & Ann N Hout

Kevin R Rose

Segment #3 Parcels

Carolyn Sigrist

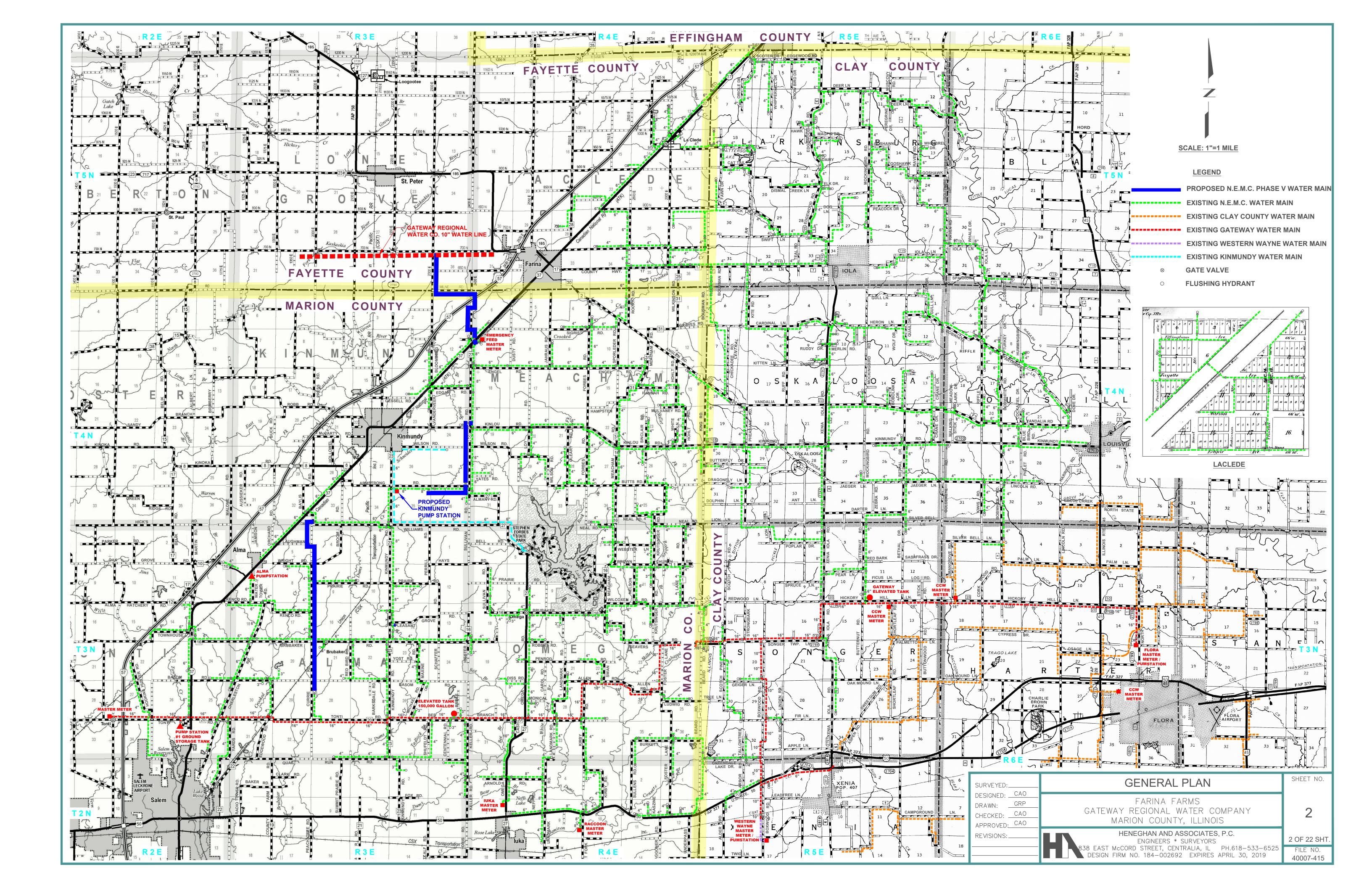
Juanita Sigrist

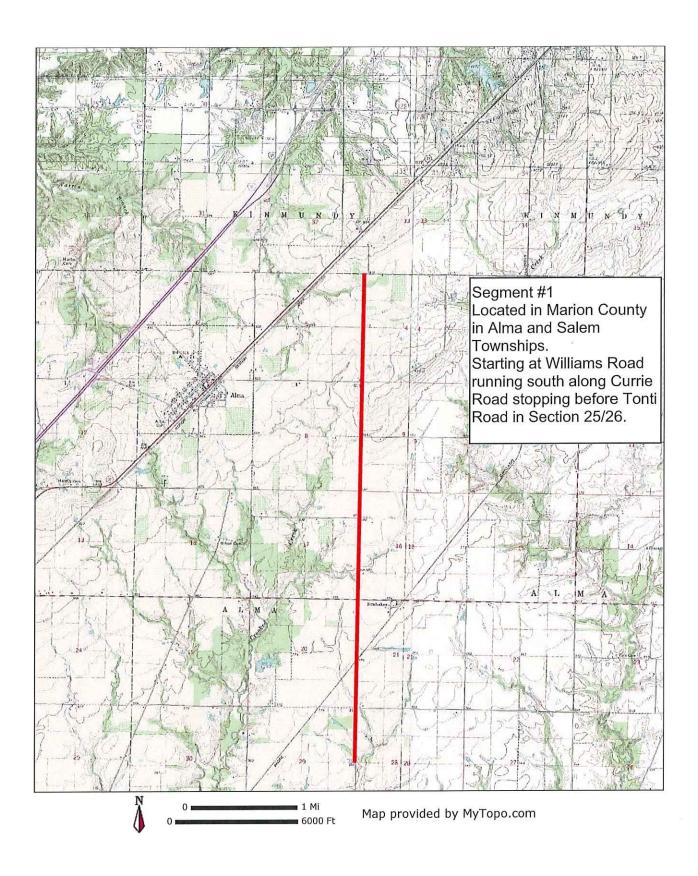
Glenn Robert Sigrist

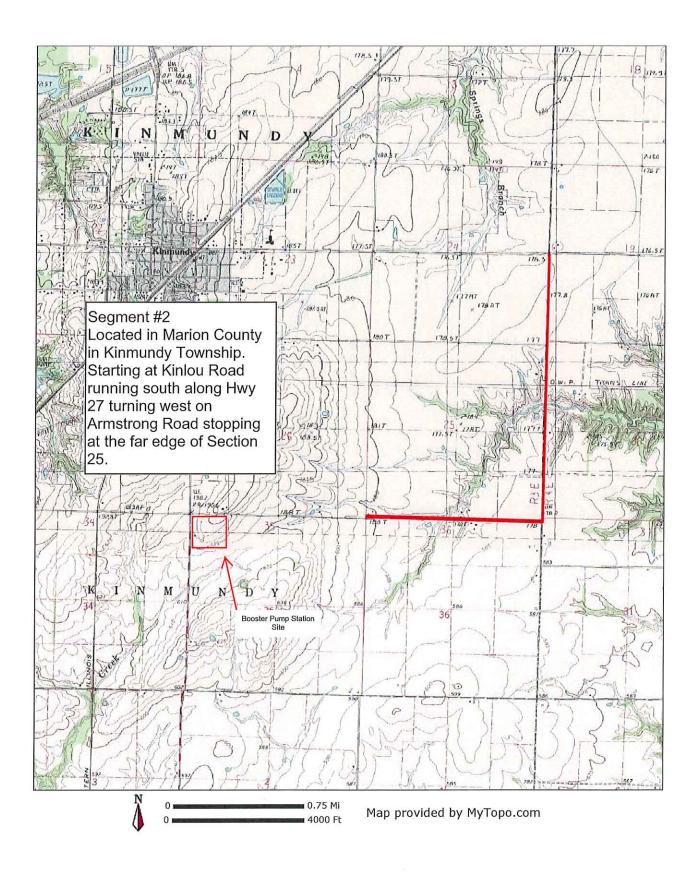
Lynn Terry Moeller

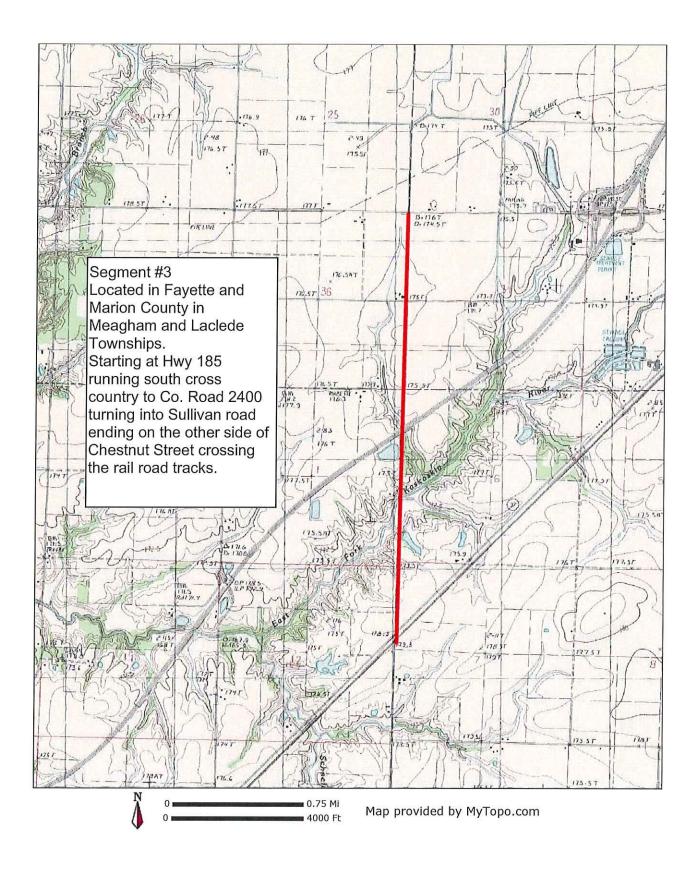
Triangle Farming Group, Inc.

Seger Egg Corp.











The Greater Prairie Chicken

(Tympanuchus cupido)

Where you could see one:

Segment #3:

Located in Fayette and Marion County in Meagham and Laclede Townships.

Starting at Hwy 185 running south cross country to Co. Road 2400 turning into Sullivan road ending on the other side of Chestnut Street crossing the rail road tracks.

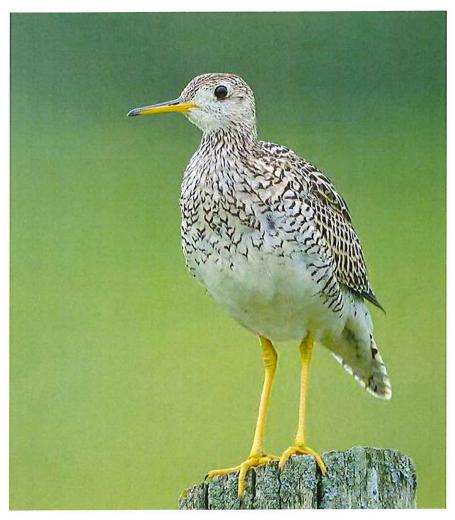
Segment #2:

Booster Pump Station Site Only. Located on Armstrong Road Kinmundy Township Section 25. Segment #1:

Located in Marion County in Alma and Salem Townships.

Starting at Williams Road running south along Currie Road stopping before Tonti Road in Section 25/26.

What should you do if you see/injure one:



Upland Sandpiper

(Bartramia longicauda)

Where you could see one:

Segment #3:

Located in Fayette and Marion County in Meagham and Laclede Townships.

Starting at Hwy 185 running south cross country to Co. Road 2400 turning into Sullivan road ending on the other side of Chestnut Street crossing the rail road tracks.

Segment #2:

Located in Marion County in Kinmundy Township.

Starting at Kinlou Road running south along Hwy 27 turning west on Armstrong Road stopping at the far edge of Section 25.

What should you do if you see/injure one:



Eryngium Stem Borer Moth (Papaipema eryngii)



Rattlesnake Master Plant (*Eryngium Yuccifolium*)

Where you could see one:

Segment #3:

Located in Fayette and Marion County in Meagham and Laclede Townships.

Starting at Hwy 185 running south cross country to Co. Road 2400 turning into Sullivan road ending on the other side of Chestnut Street crossing the rail road tracks.

Segment #2:

Booster Pump Station Site Only. Located on Armstrong Road Kinmundy Township Section 25. What should you do if you see/injure one:



Ornate Box Turtle

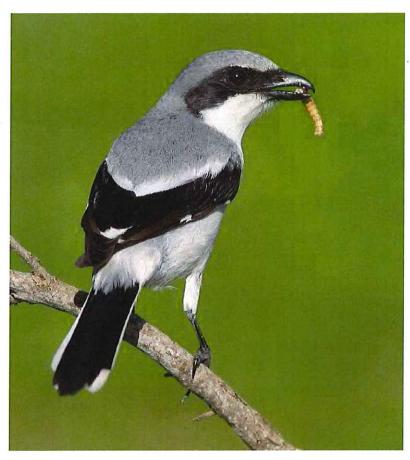
(Terrapene ornata)

Where you could see one: Segment #2:

Located in Marion County in Kinmundy Township.

Starting at Kinlou Road running south along Hwy 27 turning west on Armstrong Road stopping at the far edge of Section 25.

What should you do if you see/injure one:



Loggerhead Shrike (*Lanius ludovicianus*)

Where you could see one:

Segment #3:

Located in Fayette and Marion County in Meagham and Laclede Townships.

Starting at Hwy 185 running south cross country to Co. Road 2400 turning into Sullivan road ending on the other side of Chestnut Street crossing the rail road tracks.

Segment #2:

Located in Marion County in Kinmundy Township.

Starting at Kinlou Road running south along Hwy 27 turning west on Armstrong Road stopping at the far edge of Section 25.

What should you do if you see/injure one:

IDNR

Region IV Office – Southern Illinois 11731 State Highway 37 Benton, IL 62812 618-786-3323

Emily Fortschneider Heneghan & Associates, P.C. 1004 State Highway 16 Jerseyville, IL 62052 618-498-6418

Craig Olsen, Lindsay Bowlin, Wally Cox, Val Schlossler Heneghan & Associates, P.C. 838 East McCord Centralia, IL 62801 618-535-6525

Herrick Wildlife Rescue 1032 East 3300 Ave Herrick, IL 62431 618-428-5266

MEMO

TO: Federal Energy Regulatory Commission

FROM: Emily Y. Fortschneider, Engineering Technician

DATE: October 21, 2016

RE: Section 7 Endangered Species Act Consultation

Gateway Regional Water Company

Kinmundy/Farnia Farms Water Main Expansion

File No. 40007-415

Gateway Regional Water Company is proposing capital improvements to service Kinmundy and Farnia Farms with a safe and reliable source of potable water.

The improvements include a master meter station and booster pump station on a one acre site south of Kinmundy. There will also be three segments of water main installed ranging from 8-inch to 10-inch PVC. PVC water main will be trenched in, roads and creeks will be directionally bored, railroads and State Highways will be bored and jacked. Construction will take place in private easements and R.O.W. Existing sites are agricultural fields. The project area consists of approximately 13 acres.

Gateway carefully reviewed the U.S. Fish and Wildlife technical assistance website on October 21, 2016, for federally listed threatened and endangered species. According to the website Fayette County has five endangered/threatened species. They are the Indiana Bat, Eastern Prairie Fringed Orchid, Northern long-eared bat, piping plover and rattlesnake-master borer moth. Marion County has three endangered/threatened species. They are Indiana Bat, Northern long-eared bat and rattlesnake-master borer moth.

The action area for the proposed project is agricultural row crop and road right of way.

For these reasons, we conclude the Gateway Regional Water Company's Kinmundy/Farnia Farms Water Main Expansion has "no effect" on the above species or proposed or designated critical habitat. However, since there could be some tree felling Gateway Regional Water Company's Kinmundy/Farnia Farms Water Main Expansion concludes to have "no adverse effect" on the Indiana Bat and the Northern Long-eared bat. If tree felling is to occur between the months of April 1 and September 30 then a tree survey will be conducted and submitted to FWS for further review.

If we do not receive a reply from you within thirty (30) days, we will assume that you do not have any objections to the proposed project and that the proposed project has received a satisfactory review.

If you need additional information, or require additional documentation, please call. Thank you.

Sincerely,

Emily Y. Fortschneider Engineering Technician

> Concurrence Provided U.S. Fish and Wildlife Service Marion, Illinois

Fish and Wildlife Biologist



DEPARTMENT OF THE ARMY ST. LOUIS DISTRICT CORPS OF ENGINEERS 1222 SPRUCE STREET ST. LOUIS, MISSOURI 63103-2633

January 9, 2017

Regulatory Branch File Number: MVS-2016-851

Jack Hendrick Gateway Regional Water Company 1120 Tonti Road Sandoval, Illinois 62882

Dear Mr. Henkrick:

We have reviewed your project plans, submitted by Heneghan and Associates, P.C., for your water system upgrades for Kimmundy and Farina. The project involves the installation of a new master meter station, booster pump station, and three segments of a new water main. Each segment will be trenched 8-inch to 10-inch PVC. The three segments have seven stream crossings total, and will be directionally bored. The stream crossings are summarized in the table below:

	Channe	Lat	Long	Local Waterway:
Segment	Stream	38.815	-88.808	Mississippi River:
1	East Fork Kaskaskia River	38.761	-88.808	Wabash River
2	Unnamed Tributary to Lost Fork	38.752	-88.818	Wabash River
2	Unnamed Tributary to Lost Fork			East Fork Kaskaskia River
3	Unnamed Tributary to Lone Groove Branch	38.715	-88.883	East Fork Kaskaskia River
3	Unnamed Tributary to Crooked Creek	38.697	-88,883	
3	Unnamed Tributary to Brubaker Creek	38,679	-88.883	East Fork Kaskaskia River
3	Unnamed Tributary to Brubaker Creek	38,665	-88.883	East Fork Kaskaskia River

Based upon a review of the U.S. Geological Survey 7.5-minute topographical map, National Wetland Inventory, and the submittal, we have determined that the tributaries to East Fork Kaskaskia River and Wabash Rivers, may possess an ordinary high water mark at these locations and be considered jurisdictional waters of the United States. Therefore, the placement of fill material below the ordinary high water elevations would require a permit from this office.

The Corps of Engineers has determined that this activity will have no effect on endangered species, and is authorized under Section 404 of the Clean Water Act by existing Department of the Army nationwide permits for *Utility Line Activities*, as described in the February 21, 2012, Federal Register, Reissuance of Nationwide Permits; Notice (77 FR 10272), Appendix A (B) (12). This NWP verification is valid until March 18, 2017, which is the expiration date for this NWP. Should your project plans change, or if your activity is not complete by March 18, 2017, you must contact this office in writing for another permit determination. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence, or are under contract to commence, this activity before March 18, 2017, you will have 12 months from that date to complete the activity under the present terms and conditions of this NWP. If you need more than one additional year to complete the authorized activity, or if work has not

commenced and is not under contract to commence, you will need to get a new verification under the 2017 NWPs or have the remaining work authorized by another type of permit. Enclosed is a copy of the nationwide permit and conditions and management practices with which you must comply.

In accordance with General Condition number 30 of the Nationwide Permit, a compliance certification (Attachment A of this package) must be completed within 30 days of project completion or the permit issuance may be revoked and considered null and void.

The Illinois Environmental Protection Agency Division of Water Pollution Control (IEPA/WPC) has conditionally issued general Section 401 Water Quality Certification for this nationwide permit, subject to the special conditions and three general conditions (see enclosure). These conditions are part of the Corps permit. If you have any questions regarding the water quality certification conditions, you may contact Dan Heacock, with IEPA, at 217-782-3362.

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other federal, state or local approvals before beginning work. This permit does not convey property rights, nor authorize any injury to property or invasion of other rights.

You are reminded that the permit is based on submitted plans. Variations from these plans shall constitute a violation of Federal law and may result in the revocation of the permit. If this nationwide permit is modified, reissued, or revoked during this period, the provisions described at 33 CFR 330.6(b) will apply.

The jurisdictional determination for this project is considered a preliminary jurisdictional determination in accordance with Corps regulations at 33 CFR Part 331. A preliminary jurisdictional determination is an expedited determination that does not require interagency coordination, but is also not appealable. If you consent to the findings of this PJD, please sign and date the enclosed Preliminary Jurisdictional Determination Form and return it to this office at the letterhead address. If you do not agree with the PJD, you may request an Approved Jurisdictional Determination, which may be appealed, by contacting our office for further instruction.

If you have any questions please contact Matthew Collins at (314) 331-8626 or matthew.p.collins@usace.armv.mll. Please refer to file number MVS-2016-851. The St. Louis District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to go to our Customer Service Survey found on our web site at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

eith a ME Mullen

Keith McMullen

Supervisory Regulatory Project Manager Regulatory Branch

Copy Furnished: (electronically w/o enclosures) Steve Altman, IDNR-Office of Water Resources Dan Heacock, IEPA Emily Fortschneider, Heneghan and Associates, P.C.

STATE OF ILLINOIS CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION 2012 GENERAL AND SPECIFIC CONDITIONS NWP 12 - UTILITY LINE ACTIVITIES

These conditions ensure that the activities carried out under Nationwide Permits (NWPs) do not violate the Water Quality Standards of the State of Illinois resulting in permanent damage to habitat, increased turbidity, reduced bank and channel stability, and/or impacts to the biological and chemical integrity of the waters. These conditions are in addition to, not a replacement for, those conditions included by the federal authorities. Proposed projects authorized by the NWPs listed above that cannot be conducted within the conditions listed below must apply for individual Clean Water Act Section 401 Water Quality Certification.

Applications for certification should be sent to the Illinois Environmental Protection Agency, Division of Water Pollution Control, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois, 62794-9276. An issued certification becomes part of the Clean Water Act Section 404 Permit. Therefore, it expires with the 404 Permit unless explicitly stated otherwise.

GENERAL CONDITIONS FOR ALL NWPs

- 1. An individual 401 water quality certification will be required for any activities permitted under these Nationwide Permits for discharges to waters designated by the State of Illinois as Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b).
- 2. Projects requiring authorization under Section 404 of the Clean Water Act must implement Best Management Practices (BMPs) to protect water quality, preserve natural hydrology and minimize the overall impacts to aquatic resources during and after construction. If the project involves a water with an approved Total Maximum Daily Load (TMDL) allocation for any parameter, measures which ensure consistency with the assumption and requirements of the TMDL shall be included. TMDL program information and water listings are available at www.epa.state.il.us/water/imdl/. If the project involves an impaired water listed on the Illinois Environmental Protection Agency's Section 303(d) list for suspended solids, turbidity, or siltation, measures designed for at least a 25year, 24-hour rainfall event shall be incorporated. Impaired waters are identified at www.epa.state.il.us/water/tmdl/303d-list.html.
- 3. Prior to proceeding with any work in accordance with any Nationwide Permit, potential impacts to threatened or endangered species shall be identified through use of the State's Ecological Compliance Assessment Tool (EcoCAT) at http://dnrecocat.state.il.us/ecopublic/. If potential impacts to State threatened or endangered species are identified, the Illinois Department of Natural Resources shall be consulted with.

SPECIFIC CONDITIONS FOR NWP 12 - Utility Line Activities

- 1. Case-specific water quality certification from the Illinois BPA will be required for:
 - A. activities in the following waters:
 - i. Lake Calumet
 - ii. Fox River (including the Fox Chain of Lakes)

 - iv. All Public and Food Processing Water Supplies with surface intake facilities. The Illinois EPA's Division of Public Water Supply at 217/782-1020 may be contacted for information on these water supplies.

- B. activities in the following waters if material is sidecast into waters of the State or wetlands:
 - i. Chicago Sanitary and Ship Canal
 - ii. Calumet-Sag Channel
 - iii. Little Calumet River
 - iv. Grand Calumet River
 - v. Calumet River
 - vi. South Branch of the Chicago River (including the South Fork)
 - vii. North Branch of the Chicago River (including the East and West Forks and the Skokie
 - viii. Chicago River (Main Stem)
 - ix. Des Plaines River
 - x. Saline River (in Hardin County)
 - xi. Richland Creek (in St. Clair and Monroe Counties)
 - xii. Rock River (in Winnebago County)
 - xiii. Illinois River upstream of mile 229.6 (Illinois Route 178 bridge)
 - xiv. Illinois River between mile 140.0 and 182.0
 - xv. Pettibone Creek (in Lake County)
 - xvi. DuPage River (including the East and West Branches)
 - xvii. Salt Creek (Des Plaines River Watershed)
 - xviii. Waukegan River (including the South Branch)
- 2. Section 401 water quality certification is hereby issued for all other waters, with the following conditions:
 - A. The applicant for Nationwide Permit 12 shall not cause:
 - i. violation of applicable provisions of the Illinois Environmental Protection Act;
 - ii. water pollution defined and prohibited by the Illinois Environmental Protection Act;
 - iii. violation of applicable water quality standards of the Illinois Pollution Control Board, Title
 - 35, Subtitle C: Water Pollution Rules and Regulation; or
 - iv. interference with water use practices near public recreation areas or water supply intakes.
 - B. The applicant for Nationwide Permit 12 shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
 - C. Material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
 - i. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;
 - ii. Side cast material is not placed within ponds or other water bodies other than wetlands; and
 - iii. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site (refer to Condition 2.F), or used as backfill (refer to Condition 2.D and 2.E).
 - D. Backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only
 - i. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
 - ii. Excavation and backfilling are done under dry conditions.

E. Backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.

- F. All material excavated which is not being used as backfill as stipulated in Condition 2.D and 2.E shall be stored or disposed in self-contained areas with no discharge to waters of the State. Material shall be disposed of appropriately under the regulations at 35 Il. Adm. Code Subtitle G.
- G. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant for Nationwide 12 shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant for Nationwide 12 shall be responsible for obtaining an NPDES Storm Water Permit required by the federal Clean Water Act prior to initialing construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
- H. The applicant for Nationwide 12 shall implement erosion control measures consistent with the Illinois Urban Manual" (IEPA/USDA, NRCS; 2011).
- I. The use of directional drilling to install utility pipelines below surface waters of the State is
 - i. All pits and other construction necessary for the directional drilling process are located outside
 - ii. All drilling fluids shall be adequately contained such that they cannot cause a discharge to surface waters of the State. Such fluids shall be treated as stipulated in Condition 2.F; and
 - iii. Erosion and sediment control is provided in accordance with Conditions 2.B, 2.G, and 2.H.
- J. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Material excavated or dredged from the surface water or wetland shall not be used to construct the temporary facility. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
- K. The applicant for Nationwide 12 that uses temporary work pads, cofferdams, access roads or other temporary fills in order to perform work in creeks, streams, or rivers for construction activities shall maintain flow in the these waters during such construction activity by utilizing dam and pumping, fluming, culverts or other such techniques.
- L. Permanent access roads shall be constructed of clean coarse aggregate or non-erodible nonearthen fill material that will not cause siltation. Material excavated or dredged from the surface water or wetland shall not be used to construct the access road in waters of the state. The applicant for Nationwide 12 that constructs access roads shall maintain flow in creeks, streams and rivers by installing culverts, bridges or other such techniques.

COMPLETED WORK CERTIFICATION

Date of Issuance: January 9, 2017

File Number; MVS-2015-851

Name of Permittee: Jack Hendrick — Gateway Regional Water Co.

Name of Project: Water System Upgrades for Kimmundy and Farina

Section 5, 20, and 29, Township 3N, Range 3E and Sections 1 and 25, Township 4 N, Range 3E

River Basin/County/State: Mississippi River / Marion County / Illinois

Project Manager: Matthew Collins

Upon completion of this activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers Attn: Regulatory Branch (OD-F) 1222 Spruce Street St. Louis, Missouri 63103-2833

(Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification or revocation.)

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee	Date
Signature of Permittee	

		:"	



U.S Army Corps Of Engineers St. Louis District

Nationwide Permit Summary

No. 12, UTILITY LINE DISCHARGES (NWP Final Notice, 77 FR 10271)

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United Stales, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or sturry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United Stales, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavalion may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 Inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-Ildal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½- acre of waters of the United States. This NWP does not authorize discharges into non-Ildal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal

wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials, (See general condition 3'.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, Ilquid, Ilquescent, or sturry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siling Clearinghouse, which will evaluate potential effects on military activities,

NATIONWIDE PERMIT CONDITIONS

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401_water.quality certification and/ or Coastal... Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 epply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

- 1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or after the structural work or obstructions caused thereby, without expense to the United States, No claim shall be made against the United States on account of any such removal or alteration.
- 2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be sultably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- Spawning Areas, Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable, Activities that result in the physical destruction (e.g., through excavallon, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

- 5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphali, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 7. Water Supply Intakes. No activity may occur in the proximity of a public water supply Intake, except where the activity is for the repair or improvement of public water supply Intake structures or adjacent bank stabilization.
- 8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aqualic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- 10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. Equipment. Heavy equipment working in wellands or muditals must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
- 13, Removal of Temporary Filis. Temporary fills must be removed in their entirely and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety, and compilance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- 16. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
- 16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for

such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the preconstruction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete preconstruction notification. In cases where the non-Federal applicant has Identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still walt for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permil, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world web pages at http://www.fws.gov/or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

-(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800,3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still walt for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with Intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse

effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

- 21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wellands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.
- 23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- (c) Compensatory miligation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of miligation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory miligation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory miligation projects provided to offset

losses of aqualic resources must comply with the applicable provisions of 33 CFR part 332.

- (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, welland restoration should be the first compensatory mitigation option considered.
- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(e)(2)–(14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory miligation requirements (e.g., resource type and amount to be provided as compensatory miligation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require preconstruction notification, the district engineer may require compensatory miligation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aqualic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory miligation, the district engineer may waive or reduce the requirement to provide welland compensatory miligation for wetland losses.
- (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible miligation. For activities

resulting in the loss of marine or estuarine resources, permitteeresponsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, miligation may be required to reduce the adverse effects of the project to the minimal level.
- 24. Safety of impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
- 28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- 29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit,

Including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)	

(Date)

- 30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory miligation. The success of any required permittee-responsible miligation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:
- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activityspecific conditions;
- (b) A statement that the Implementation of any required compensatory miligation was completed in accordance with the permit conditions. If credits from a miligation bank or in-lieu fee program are used to satisfy the compensatory miligation requirements, the certification must include the documentation required by 33 CFR 332,3(I)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and miligation..
- 31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the Information needed to make the PCN complete. As as a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still Incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, If the permittee was required to notify the Corps pursuant to general condillon 18 that listed species or critical habital might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties. or that any consultation required under Section 7 of the Endangered Species Acl (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues

the walver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) <u>Contents of Pre-Construction Notification</u>: The PCN must be in writing and include the following information:

 Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and Indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity compiles with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4)The PCN must include a delineation of wellands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Welland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as

appropriate:

(5) If the proposed activity will result in the loss of greater than \$\textstyle{10}\$-acre of wellands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory miligation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstraling compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed. and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wall an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame, concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for miligation to ensure the net adverse environmental effects to the aqualic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision:

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public Interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the walver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and Indirect effects caused by the NVVP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the

NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wellands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory miligation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory miligation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering miligallon, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory milligation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final miligation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory miligation. If the prospective permittee elects to submit a compensatory miligation plan with the PCN, the district engineer will expeditiously review the proposed compensatory miligation plan. The district engineer must review the proposed compensatory miligation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aqualic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a limely written response to the applicant.

 If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a miligalion plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that milligation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed milligation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When milligation is required, no work In waters of the United States may occur until the district engineer has approved a specific miligation plan or has determined that prior approval of a final miligation plan is not practicable or not necessary to ensure timely completion of the required compensatory miligation.,

The response will state that the project can proceed under the terms

and conditions of the NWP, including any activity specific conditions

added to the NWP authorization by the district engineer.

E. Further Information

- District Engineers have authority to determine if an activity compiles with the terms and conditions of an NWP.
- NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
- 3. NWPs do not grant any property rights or exclusive privileges.
- 4. NWPs do not authorize any injury to the property or rights of others.
- NWPs do not authorize interference with any existing or proposed Federal project.

F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to miligate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the pilling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 80).

Independent utility: A lest to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases

of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aqualic area to dry land, increase the boltom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory miligation that may be used to offset losses of aqualic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavaled. Waters of the United States lemporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands configuous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters' include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submilled by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of

appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource, Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparlan areas: Riparlan areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparlan areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparlan areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or sultable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish atlached to shells or shell fragments (i.e., spat on shell). Sultable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/ developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped welland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/ developer or parinership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "plecemeated" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aqualic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other poliutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wellands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pler, boal dock, boat ramp, wharf, delphin, welr, boom, breakwater, buikhead, revelment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, ald to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A lidal wetland is a wetland (i.e., water of the United States) that is inundated by (idal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable thythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aqualic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent— meaning bordering, contiguous, or neighboring—to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands,

ATTACHMENT 7

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Seeding	

Art. 250.07

Seeding

	T			766				
	lb/acre (kg/hectare)	100 (110) 60 (70) 40 (50)	60 (70) 20 (20) 20 (20) 20 (20) 60 (70)	150 (170) 20 (20) 10 (10) 20 (20) 100 (110)	50 (55) 40 (50) 10 (10)	60 (70) 20 (20) 30 (20) 60 (70)	5 (5) 20 (20) 5 (5) 2 (2) 12 (12) 10 (10) 30 (35) 50 (55) 15 (15) 5 (5)	20 (20) 20 (20) 10 (10) 12 (12) 10 (10) 5 (5) 50 (55)
TABLE 1 - SEEDING MIXTURES	Seeds lb/ac	Ky Bluegrass Perennial Ryegrass Creeping Red Fescue	Biluegrass Perennial Ryegrass Red Fescue (Audubon, Sea Link, or Epic) Hard Fescue 811, Spartan II, or Reliant IV) Fulls Salt Grass 1/ or Salty Alkaligrass	Fine Leaf Turf-Type Fescue 3/ Perennial Ryegrass Red Top Creeping Red Fescue Tall Fescue (Inferno, Tarheel II, Quest, Blade Runner, or	Falcon IV) Perennial Ryegrass Creeping Red Fescue Red Top	Tall Fescue (Inferno, Tarheel II, Quest, Blade Runner, or Falcon IV) Perennial Ryegrass Red Fescue (Audubon, Sea Link, or Epic) Hard Fescue (Rescue 911, Spartan II, or Reliant IV) Fults Salt Grass 1/ or Salty Alkaligrass	Elymus Canadensis (Canada Wild Rye) 5/ Perennial Ryegrass Alsike Clover 2/ Desmanthus Illinoensis (Illinois Bundleflower) 2/, 5/ Andropogon Scoparius (Little Bluestem) 5/ Bourleoua Curtipendula (Side-Oats Grama) 5/ Fults Satt Grass 1/ or Satty Alkaligrass Oats, Spring Slender Wheat Grass 5/ Buffalo Grass (Cody or Bowie) 4/, 5/, 9/	Perennial Ryegrass Elymus Canadensis (Canada Wild Rye) 5/ Panicum Vigatum (Switchgrass) 5/ Andropogon Scoparius (Little Blue Stem) 5/ Boutelous Curibendula (Side-Oats Grama) 5/ Petalosternum Candidum (White Prairie Clover) 5/ Rudbeckir Hirta (Black-Eyed Susan) 5/
	Class - Type	1 Lawn Mixture 7/	1A Sall Tolerant Lawn Mixture 7/	1B Low Maintenance Lawn Mixture 7/ 2 Roadside Mixture 7/		2A Salt Tolerant Roadside Mixture 7/	3 Northern Illinois Slope Mixture 7/	3A Southern Illinois Slope Mixture 7/

Class	Class - Type	•	Seeds		lb/acre (kg/hectare)	/hectare)
4	Native Grass 6/, 8/	1, 8/	Andropogon Gerardi			4 (4)
	70		(Big Blue Stem) 5/			
			Andropogon Scoparius (Little Blue Stem) 5/			9 (5)
			Bouteloua Curtipendula	20		5 (5)
va:a			Elymus Canadensis			13
			(Canada Wild Rye) 5/	. (2,000)		5
			Sorghastrum Nutans (Indian Grass) 5/	an Grass) 5/		23
ja:			Annual Ryegrass			25 (25)
			Oats, Spring Perennial Rveorass	e		25 (25)
4₩	Low Profile	,0	Andropogon Scoparius			5 (5)
ya. N	2000	5	Bouteloua Curtipendula	·		5 (5)
			(Side-Oats Grama) 5/ Elymus Canadensis			5
(ii)			(Canada Wild Rye) 5/			:
			Sporobolus Heterolepsis		1 8	0.5 (0.5)
ei-V			Applied Progress			. 26 /25
:\ (a)			Oats, Spring		÷	22 (22) 22 (22)
			Perennial Ryegrass		*****	.15 (15)
48	Wetland Grass and	and	Annual Ryegrass			.25 (25)
	Sedge Mixture 6, 8/	6, 8/	Oats, Spring			25 (25)
			wenaild Glasses (species below)	(MOIBO S	3	(a) :
	Species:		2.4		% By Weight 5	aht 5/
	Calamagro	stis Canaden	Calamagrostis Canadensis (Blue Joint Grass)		12	
	Carex lacu	Carex lacustris (Lake-Bank Sedge)	ank Sedge)	Ž.	9	
١	Carex slips	Sarex slipata (Awl-Fruited Sedge)	ed Sedge)		.	
	Carex stric	arex stricta (Tussock Sedge)	Sedge)		છ (
	Fleocharis	Jacobaris aciculoris (Needle S	cates vulpinordea (nos pedge)	3		
	Eleocharis	obtusa (Blun	Eleocharis obtusa (Blunt Spike Rush)		ი ო :	
	Glyceria st	Slyceria striata (Fowl Manna Grass)	anna Grass)		41.	
	Juncus eff	uncus effusus (Common Rush)	on Rush)		9	
	Juncus ten	Juncus tenuis (Slender Rush)	Rush)		φ σ	
	Jonatica Co	reyi (Tuliey s	Company Company		o . Ş	
	Scirpus ac	eelsia olyzoldes (Rice Cut Glass) Scirous acutus (Hard-Stemmed Bu	Scipus acutus (Hard-Stemmed Bulrush)		2,m 	*
	Scirpus atr	rovirens (Dark	Schrpus atrovirens (Dark Green Rush)	•	ю :	*
	Scirpus flu	Scirpus fluviatilis (River Bulrush)	Bulrush)	S * S	ຕ :	
	Scirpus va	Scirpus validus (Soffstem Bulrush)	m Bulrush)		: :	
	Spartina pr	Spartina pectinata (Cord Grass)	Grass)		4	

ATTACHMENT 8

Bruce Rauner, Governor

Wayne A. Rosenthal, Director

One Natural Resources Way Springfield, Illinois 62702-1271 www.dnr.illinois.gov

March 29, 2017

Ms. Emily Fortschneider Heneghan & Associates, P.C. 1004 State Highway 16 Jerseyville, IL 62052

RE: Gateway Regional Water Company - Kinmundy/Farina Extension - 2

Endangered Species Consultation

EcoCAT Review #1705219

Dear Ms. Fortschneider:

The Department received this proposed action for consultation in accordance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11]; the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17]; and Title 17 *Illinois Administrative Code* Part 1075. Additionally, the Department may offer advice and recommendations for species covered under the *Fish & Aquatic Life Code* [515 ILCS 5, *et seq.*]; the *Illinois Wildlife Code* [520 ILCS 5, *et seq.*]; and the *Herptiles-Herps Act* [510 ILCS 69, *et seq.*].

The proposed action – replacement or installation of a water main along or adjacent public roads – includes a location where a State-listed threatened female **Ornate Box Turtle**, *Terrapene ornata*, was observed on April 26, 2012. This location is about one-quarter mile south of Orchard Road on Sullivan Road. At this point there is a non-tilled grassland west of the road and a grassed waterway east of the road. The territory of this individual may extend on both sides of Sullivan Road. Other grasslands which may support this species border Sullivan Road and portions of Armstrong Road.

The Ornate Box Turtle is a small (about four inches in shell diameter) terrestrial turtle which demonstrates strong fidelity to a relatively small geographical home territory, often less than forty acres. The home territories of multiple individuals frequently overlap, but may extend into tilled lands. The Ornate Box Turtle spends much of its time in underground burrows or shallow excavations called "forms," where they shelter from the heat of the day; they are most active in early mornings and late afternoons from late April into September.

The Ornate Box Turtle's natural camouflage is excellent. It is very difficult to observe unless it is in the open: controlled experiments with trained searchers and radio-tagged individuals have

demonstrated that a trained searcher still has only a 3% chance of spotting an Ornate Turtle which is above ground.

Another Illinois study demonstrated that up to 50% of the nests of this species are sited near breaks in habitat related to human activity, such as roads, fences, and trails; this is likely related to increased solar radiation reaching the ground near such features. This species also has a lengthy underground hibernation period, extending from September to April.

Fairly numerous populations of this species occur on local lands owned by the Department of Natural Resources; this animal is less rare in this locality than elsewhere in Illinois.

For these reasons, the Department believes it is very likely that a project to install a new water main along this route will result in the prohibited taking of one or more Ornate Box Turtles or their eggs, regardless of the time of year the activity is undertaken and in spite of precautions to avoid them. Thus the Department recommends that Gateway Regional Water Company give serious consideration to obtaining an Incidental Take Authorization (ITA) for this species, pursuant to the Department's rules in Part 1090. An ITA will shield Gateway from criminal liability and decrease the chances incidental taking will be lethal.

The Department understands there is an existing water line along this route. Given the fairly recent listing of this species (2009), it is likely the existing water line was installed before the Ornate Box Turtle acquired legal protection.

As indicated by EcoCAT, numerous other State-listed endangered or threatened animals exist in the vicinity, many associated with lands owned by the Department of Natural Resources which are part of the **Prairie Ridge Land & Water Reserve**.

A primary purpose of the Prairie Ridge Reserve lands is to provide essential habitat for the Statelisted endangered **Greater Prairie Chicken**, *Tympanuchus cupido*. The Prairie Chickens are free to roam the larger landscape, and have been documented to sometimes nest within ten feet of public roads, though this usually occurs where larger grasslands abut the right-of-way. It is impossible to say that Prairie Chickens are not occupying roadsides at any given time in this region. These birds are highly mobile except when nesting, but flushing birds still constitutes a prohibited taking, as does disturbing a nest. The nesting period for this species extends from April 1 to August 1; if operations are not undertaken in this period the probability of taking a nest can be avoided. *If this restriction cannot be observed, consideration should be given to seeking an ITA for this species, as well.*

A third species potentially at risk for this proposed action is the **Loggerhead Shrike**, *Lanius ludovicianus*. This bird requires grasslands and thorny shrubs or trees to prosper. It established "larders" by impaling prey (large insects and small mammals) on thorns or twigs for later consumption. It often chooses trees in fence-rows, along roadsides, and in farmyards. Surveys for nesting pairs should be undertaken in May and June. *If trees must be removed during the nesting period for the project to proceed, it may be wise to consider an ITA for this species, since the application period is lengthy*. However, this will not be necessary if the work occurs after August, since young of the year will then have been fledged.

A fourth endangered species of concern in this area is the **Eryngium Stem-Borer Moth**, *Papaipema eryngii*. Although the Department does not have a record from this specific site, the obligate host plant for the caterpillar of this moth, **Rattlesnake Master**, *Eryngium yuccifolium*, is widely distributed in this region. It is often easiest to survey for the plant instead of the moth, but it is difficult to tell if a plant is hosting a caterpillar, since they bore into the stem and tunnel down to the root ball. *If a survey indicates high numbers of the plant are present, an ITA for this species should be considered*. The moth will likely be present throughout the year, as eggs, larvae, pupae, or adults.

The remaining species indicated by EcoCAT are unlikely to be adversely affected by the proposed action because they are for more likely to be present in interior grasslands, rather than grassland edges.

If the existing water line and the route proposed for the new line cross any lands owned by the Department of Natural Resources, it will be necessary to coordinate activities with the Department and the Illinois Nature Preserves Commission, and Gateway will be strictly held to the terms of existing conveyances. However, if such lands are encountered, it is possible additional listed species may be affected and consultation should be continued.

It is the Department's understanding this action is being funded through a grant from the United States Department of Agriculture, but does not entail the expenditure of State of Illinois funds. Consequently, the *Interagency Wetland Policy Act of 1989* does not apply.

Consultation on the part of the Department is closed, unless Gateway desires additional information or advice related to this proposal. In accordance with 17 Ill. Adm. Code 1075.40(h), the Gateway should notify the Department of its decisions regarding these recommendations, whether it will:

- Allow the action to proceed as proposed;
- Require the action to be modified per the Department's recommendations; or
- Forgo the action.

Consultation remains valid for two years unless new information becomes available that was not previously considered; the proposed action is substantially modified; or additional species, essential habitats, or Natural Areas are identified in the vicinity. If the project has not been implemented within two years of the date of this letter, or any of the above listed conditions develop, a new consultation is necessary.

This natural resource review reflects the information existing in the Illinois Natural Heritage Database at the time of the project submittal, and should not be regarded as a final statement on the project being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are encountered during the project's implementation, the applicant must comply with the applicable statutes and regulations. Also, note that closure of consultation does not imply IDNR's authorization or endorsement of the proposed action.

Sincerely,

Link M. Shank

Keith M. Shank, Acting Chief

Impact Assessment Section

Division of Ecosystems and Environment

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