IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA and THE STATE OF WEST VIRGINIA by and through the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
TRANS ENERGY, INC.,	)	
Defendant.	)	

CONSENT DECREE

WHEREAS, Plaintiffs the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and the State of West Virginia ("the State"), by and through the West Virginia Department of Environmental Protection ("WVDEP"), filed the Complaint herein against Defendant Trans Energy, Inc., alleging that Defendant violated Sections 301(a) and 404 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a) & 1344, the West Virginia Water Pollution Control Act ("West Virginia WPCA"), W. Va. Code Chapter 22, Article 11, and the West Virginia Dam Control Act ("West Virginia DCA"), W. Va. Code Chapter 22, Article 14;

WHEREAS, the Complaint alleges that Defendant violated CWA Sections 301(a) and 404, Sections 6 and 8 of the West Virginia WPCA, §§ 22-11-6 and 22-11-8, Section 5 of the West

Virginia DCA, § 22-14-5, and applicable regulations (including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1 *et seq.*) by discharging pollutants, including dredged or fill material, and/or controlling and directing the discharge of pollutants, including dredged or fill material, into waters of the United States and/or the State, and constructing dams within the State, without authorization, at various locations in Marshall, Wetzel, and Marion Counties, West Virginia (the "Sites"), as identified by Site name in Appendix A and as more fully defined by the impacts identified in delineations that are approved pursuant to Appendix B;

WHEREAS, Defendant has responded to Requests for Information issued by EPA on September 28 and December 17, 2012;

WHEREAS, Defendant has been negotiating with EPA to bring the sites identified in Appendix A into compliance with Sections 301(a) and 404 of the CWA and Sections 6 and 8 of the West Virginia WPCA and has been working to come into compliance with the West Virginia DCA;

WHEREAS, as part of its cooperation, Defendant prepared and presented to Plaintiffs its analyses of impacts at all of Defendant's existing horizontal drilling well pads, impoundments, ponds, pipelines, and associated access roads in West Virginia existing as of June 2014, and provided Plaintiffs an opportunity to visit the locations to further assess such analyses;

WHEREAS, as part of the negotiations, Defendant presented Plaintiffs on August 18, 2014 with proposed "conceptual restoration plans" for the Goshorn/Timothy James Hubbs Impoundment Site, the Stout Well Pad Site, and the Dewhurst Well Pad Site, on August 20 with

proposed "conceptual restoration plans" for the Lucey Impoundment Site and the Anderson Well Pad and Impoundment Site, and on August 22 with proposed "conceptual restoration plans" for the Keaton Impoundment Site and the Christopher Impoundment Site (collectively, "conceptual restoration plans"). See Appendix E.

WHEREAS, the conceptual restoration plans consist generally of annotated aerial photographs or maps depicting the location and aerial extent of the aquatic resources that Defendant proposes to reconstruct at each Site for which a conceptual restoration plan has been provided;

WHEREAS, the conceptual restoration plans do not include engineering or design data and, due to limitations in mapping software, may not depict fully certain features such as level of proposed restored sinuosity;

WHEREAS, the Parties agree that the conceptual restoration plans are limited to concepts and do not constitute restoration plans as required by Paragraph 22 and Appendix B;

WHEREAS, recognizing the limitations described herein, Plaintiffs generally find acceptable the location and extent of aquatic resources proposed to be reconstructed as depicted in the conceptual restoration plans, subject to receiving and finding satisfactory the delineations and detailed restoration plans required by Paragraph 22 and Appendix B and subject to being provided with sufficient information and confirming the safety and stability of the proposed designs;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States and the State in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and Sections 6 and 8 of the West Virginia WPCA, §§ 22-11-6 and 22-11-8, and applicable regulations

(including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1 *et seq.*) at or from the Sites; (2) to require Defendant to come into compliance with the West Virginia DCA at those sites that fall within its jurisdiction; (3) to require Defendant, at its own expense and at the direction of EPA, to restore and/or mitigate the impacts caused by its allegedly unlawful activities; and (4) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d) and W. Va. Code § 22-11-22;

WHEREAS, Defendant neither admits nor denies any liability for the claims set forth in the Complaint;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' civil claims under the CWA set forth in the Complaint regarding the Sites, and the State's claims under the West Virginia WPCA and the West Virginia DCA set forth in the Complaint regarding the Sites;

WHEREAS, the Plaintiffs and Defendant agree that settlement of this case is in the public interest, that settlement of this matter will avoid the costs and uncertainties of litigation, and that entry of this Consent Decree is the most appropriate means of resolving the claims against Defendant in this case;

WHEREAS, Plaintiffs and Defendant agree that the restoration of the Sites by Defendant, consistent with Sections II and III of Appendix B, is a central objective of this Consent Decree;

WHEREAS, Defendant has submitted evidence to the United States regarding current constraints on cash flow; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims against Defendant in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA, the West Virginia WPCA, the West Virginia DCA and all other applicable federal and state law,

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and, (as to the West Virginia DCA and West Virginia WPCA) pursuant to the Court's pendent jurisdiction.

2. Venue is proper in the Northern District of West Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendant conducts business in this District, the subject properties are located in this District, and the causes of action alleged herein arose in this District.

3. For the purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344; Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22; and, Section 5 of the West Virginia DCA, W.Va. Code § 22-14-5.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendant, its officers, directors, agents, employees and servants, and its successors and assigns, and the Plaintiffs and their respective officers, directors, agents, employees and servants. Defendant is responsible for compliance with the CWA, the West Virginia WPCA, the West Virginia DCA, and this Consent Decree at the Sites, at any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree and in the future construction and operation of OG Facilities (as defined herein) covered by the terms of Paragraph 29 of this Consent Decree. In the event that Defendant hires contractors to perform any work at the Sites or at any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree that may involve land disturbance, any earth-disturbing work in connection with any other activity under this Consent Decree, and any earth-disturbing work in the future construction and operation of Facilities covered by the terms of Paragraph 29(a)(i) of this Consent Decree (including, but not limited to, land disturbance outside the Limits of Disturbance at any existing Facilities), Defendant shall inform such contractor(s) of the requirements of this Decree by incorporating the requirements of Paragraph 29(a)(ii)(c), (d), (f) and (g) into its contracts for such construction or earth-disturbing activities. In any action to enforce this Consent Decree against Defendant, Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, contractors, successors or assigns or any person, firm or corporation (including, but not limited to, contractors of Defendant, but not including any independent land

owner (subject to the requirements of Appendix B)) acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer by Defendant of ownership or other interest in the Sites or any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraphs 9, 22 or 23 and/or Appendix B of this Consent Decree shall not alter or relieve Defendant of its obligation to comply with all of the terms of this Consent Decree, unless and until Defendant has provided Plaintiffs with evidence of a successor agreement and Plaintiffs agree a successor entity may assume part or all of such obligations and thereby relieve Defendant of the obligations assumed by a successor, and this Decree is modified accordingly. At least fifteen (15) days prior to the transfer of ownership or other interest in any Sites or any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraphs 9, 22 or 23 and/or Appendix B of this Consent Decree by Defendant that alters Defendant's rights or responsibilities to conduct surface activities at such Sites or such project, Defendant shall provide written notice and a true and correct copy of this Consent Decree to its successors in interest to such Sites or such project and shall contemporaneously notify the United States Department of Justice, EPA, the United States Army Corps of Engineers ("the Corps"), and the State at the addresses specified in Section XI below that such notice has been given. As a condition to any such transfer by Defendant, Defendant shall reserve all rights necessary to comply with the obligations of Paragraph 9, 22, 23, & 36 and/or Appendix B of this Consent Decree, unless and until Plaintiffs agree a successor entity may assume part or all of such obligations and thereby relieve Defendant of same, and this Decree is modified accordingly.

III. DEFINITIONS

Terms used in this Consent Decree that are defined in the CWA, the West Virginia WPCA, the West Virginia DCA or in regulations promulgated pursuant to the CWA, the West Virginia WPCA or the West Virginia DCA shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the definitions in the following subparagraphs shall apply.

"Fair Market Value" means the difference between the relevant property value (a) before the restriction to be imposed pursuant to this Consent Decree is placed and (b) as if the restriction to be imposed pursuant this Consent Decree is in place as of a current date. Absent an objection from EPA as set forth below, such difference in value shall be determined by an appraisal that complies with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or Yellow Book) and is performed by an appraiser who (a) is a State Certified General Real Property Appraiser, (b) is in good standing with the licensing authority where the credential was issued, (c) has demonstrated competency in compliance with UASFLA in conducting appraisals of properties with and without the restriction of the type to be imposed pursuant to this Consent Decree, (d) can provide documentation of appraisal education courses attended including course completion for the restriction to be imposed pursuant to this Consent Decree, and (e) has been approved by EPA, in consultation with the State, in writing. If EPA, in consultation with the State, does not object to the proposed appraiser within 60 days following notification of the selection of the proposed appraiser, the proposed appraiser shall be approved for the purpose of

performing the appraisal. If EPA, in consultation with the State, does not object to the appraised difference in value within 30 days of receipt of the appraisal, then that figure shall be the Fair Market Value for the purposes of this Consent Decree. If EPA, in consultation with the State, objects to the appraised difference in value as not complying with the UASFLA standards within 30 days of receipt of the appraisal, and the parties cannot otherwise resolve EPA's objection, then the Fair Market Value shall be determined pursuant to the Dispute Resolution provisions in Section VIII of this Consent Decree.

"Impoundment" means a man-made excavation or diked area for the retention of fluids.

"Limits of Disturbance" means the outermost boundary of the area planned to be disturbed by construction, material storage, grading, grubbing, or landscaping as indicated by the design plan submitted to the State in an application to obtain a permit to construct.

"OG Facility" or "OG Facilities" means any surface impoundments, ponds, compressor stations, pipelines, well pads, and associated access roads that were or will be constructed or modified by Defendant, including its officers, directors, agents, employees, contractors and servants.

"Qualified Wetlands Professional" (QWP) means an individual trained to identify potential aquatic resources by education and experience. A QWP shall include one who has obtained a four-year degree in a wetland-related field and has completed at least a basic delineation training course (minimum of 24 hours of course time) in wetland science offered by professional trade associations, societies, government agencies or universities.

"Obligate" means to impose an obligation in the contract between Trans Energy, Inc. and its earth-disturbing contractor and to enforce such contractual obligations as necessary and appropriate to ensure that such contractor fully and timely meets the requirements imposed in the contract pursuant to this Consent Decree and to prevent a pattern of non-compliance with such requirements by the contractor.

"Sites" means all of the locations where the Complaint filed with this Consent Decree alleges violations of the CWA and/or the West Virginia WPCA and/or the West Virginia DCA, as listed and fully described in Appendix A.

IV. SCOPE AND EFFECT OF CONSENT DECREE

6. Compliance with this Consent Decree shall constitute a complete and final settlement of all civil and administrative claims for injunctive relief and penalties for the matters alleged in the Complaint against Defendant under CWA Sections 301 and 404, under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, and under Section 5 of the West Virginia DCA, § 22-14-5, concerning discharge of dredged and/or fill material to aquatic resources at the Sites as such discharges are identified pursuant to Section I of Appendix B. Accordingly, Plaintiffs hereby release Defendant from, and covenant not to sue Defendant again with respect to, the civil claims for injunctive relief and civil penalties alleged in the Complaint against Defendant under CWA Sections 301 and 401, under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, and under Section 5 of the West Virginia DCA, § 22-14-5, concerning discharge of dredged and/or fill material to aquatic

Brown, Sally A

From: Bandy, Jeremy W
Sent: Thursday, September 04, 2014 1:37 PM
To: Brown, Sally A
Subject: FW: Trans Energy
Attachments: removed.txt; ENV_DEFENSE-#692872-v1-Trans_Energy__Christopher_Tolling_Agreement.PDF; ENV_DEFENSE-#692241-v2-Trans_Energy__Consent_Decree_Final_pdf_.PDF

CONFIDENTIAL

Please print and place in my box.

Thanks

Jeremy

From: Shamet, Stefania [mailto:Shamet.Stefania@epa.gov]
Sent: Tuesday, September 02, 2014 4:00 PM
To: Bandy, Jeremy W; Adipietro, Dana M LRP
Cc: Andreescu, Stephanie; Traver, Carrie
Subject: FW: Trans Energy

FYI. It's been lodged and is being processed by the Clerk. Press release expected by 4:30.

From: Berman, Amanda (ENRD) <Amanda.Berman@usdoj.gov>
Sent: Tuesday, September 2, 2014 1:34 PM
To: NeumannC@gtlaw.com; CPower@babstcalland.com
Cc: Shamet, Stefania
Subject: RE: Trans Energy

Chris and Kip –

Attached are complete executed versions of both the CD and Tolling Agreement. The US Attorney's office is in the process of transmitting the Complaint and CD to the Court, and we expect both to be filed/lodged today. I will let you know when that has happened. It may then take a few hours to go up on ECF (that happens at the clerk's end). Best,

Amanda

From: NeumannC@gtlaw.com [mailto:NeumannC@gtlaw.com]
Sent: Friday, August 29, 2014 4:06 PM
To: Berman, Amanda (ENRD)
Subject: RE: Trans Energy

Amanda,

Here is Bob Christopher's signature page for the tolling agreement. Let me know if you end up filing and lodging today or Tuesday.

Best,

Chris.

From: Berman, Amanda (ENRD) [mailto:Amanda.Berman@usdoj.gov]
Sent: Friday, August 29, 2014 10:55 AM
To: Neumann, Christopher (Shld-Den-LT-Env)
Subject: Re: Trans Energy

Chris -

I'm expecting to have all signatures today, but we are planning to file and lodge simultaneously on Tuesday. Any press would not occur until then.

Was your team able to locate Mr. Christopher?

Best,

Amanda

From: NeumannC@gtlaw.com [mailto:NeumannC@gtlaw.com]
Sent: Thursday, August 28, 2014 04:21 PM Eastern Standard Time
To: Berman, Amanda (ENRD)
Subject: Trans Energy

Amanda,

We are still trying to get Bob Christopher to sign the tolling agreement. The company sent a team out to his house today, and I should hear back soon.

Can you remind me your plan for tomorrow? Are you going to file the complaint in the afternoon? Are you going to issue a press release? It sounds like you were thinking you might need until Tuesday to lodge the decree. Is that still the plan?

We are just preparing the company for press inquiries, and trying to get a sense of your latest thinking so that we can be ready.

Best,

Chris.

Christopher J. Neumann
Shareholder
Greenberg Traurig, LLP | 1200 17th Street, Suite 2400 | Denver, Colorado 80202
Tel 303.572.6551 | Fax 720.904.7651
NeumannC@gtlaw.com | www.gtlaw.com

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resources at the Sites as such discharges are identified pursuant to Section I of Appendix B, subject to Defendant's compliance with this Consent Decree.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, Section 2 of the West Virginia WPCA, W. Va. Code § 22-11-2, and Section 2 of the West Virginia DCA, W. Va. Code § 22-14-2. All plans, studies, construction, remedial maintenance, compliance programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain compliance with, and to further the purposes of, the CWA and the West Virginia WPCA and West Virginia DCA.

8. Defendant and its agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at or from the Sites, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The parties acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184 (Feb. 21, 2012), authorizes the discharge of dredged and/or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions provided in Nationwide Permit 32 (including but not limited to General Conditions 18 and 20), West Virginia's Standard Conditions for CWA 401 Certification of Nationwide Permit 32, and the terms and conditions of this Consent Decree, including Paragraph 22 and Appendix B. The parties further acknowledge that Nationwide Permit 32 authorizes fill left in place consistent with a restoration plan approved pursuant to Appendix B.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

11. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

12. This Consent Decree in no way affects the rights of the United States or the State as against any person not a party to this Consent Decree. This Consent Decree shall not be construed to create rights in, or to grant any cause of action to, any party that is not a party to this Consent Decree.

13. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

15. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Defendant, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the

subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved as specified in Paragraph 6 of this Consent Decree.

16. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

V. SPECIFIC PROVISIONS

CIVIL PENALTIES

17. Defendant shall pay a civil penalty totaling $3,000,000, with half of the total penalty ($1,500,000) to be paid the United States and half ($1,500,000) to be paid to the State.

Defendants shall pay one-third of that amount ($1,000,000), to be split evenly between the United States and the State, no later than 90 days after entry of this Consent Decree.

Defendant shall pay the remaining two-thirds of the penalty ($2,000,000), to be split evenly between the United States and the State, no later than 180 days after entry of this Consent Decree.

To the extent that the civil penalty is not paid in full within thirty (30) days of the Effective Date of this Consent Decree, Defendants shall be liable for interest on the unpaid portion of the civil penalty, as provided for in 28 U.S.C. § 1961, accruing as of the thirty-first day following the Effective Date of this Consent Decree. The interest shall be computed daily from the thirty-first (31st) day following the Effective Date of this Consent Decree until the date full payment is made. The interest shall also be compounded annually.

18. Defendant shall make the above-referenced payments to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) in accordance with the written instructions to be provided by the United States Department of Justice, referencing EPA Region 3 and the DOJ case number 90-5-1-1-19980. Any payments received after 4:00 P.M. (Eastern Time) will be credited on the next business day.

19. At the time of the making the payments as set forth in Paragraphs 17 and 18, Defendant shall send by mail and email a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the civil penalty owed pursuant to this Consent Decree in United States, et al. v. Trans Energy, Inc., and referencing the DOJ case number, 90-5-1-1-19980, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendant shall also send a copy of the EFT form, transaction record, and transmittal letter by email to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

20. Defendant shall make the payments to the State, as required by Paragraph 17 above, by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. The payments shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

21. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state, or local income tax.

RESTORATION, MITIGATION AND PRESERVATION

22. Defendant shall perform restoration and mitigation projects at the Sites identified in Appendix A under the terms and conditions set forth in Appendix B. Appendices A and B are both appended hereto and incorporated herein by reference. Upon completion of the terms and conditions of Appendix B at any Site identified in Appendix A, Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, de-water, drain or otherwise similarly disturb soils, vegetation, and/or water resources in any manner whatsoever at any such Site, except as approved by EPA (in consultation with the Corps) and the State or except as consistent with any Conservation Easement or Deed Restriction obtained for the Site pursuant to Paragraph 23.

23. To ensure that Defendant takes all reasonable steps to prevent disturbance at all Sites, Defendant shall, within one-hundred and eighty (180) days after entry of this Consent Decree:

(a) For all Sites that Defendant holds in fee simple, record (or deliver to the grantee for recording) conservation easements ("Conservation Easements") with the deed recording office for the county where the parcel is located. The Conservation Easements shall comply with West Virginia's Conservation and Preservation Easements Act, W. Va. Code Chapter 20, Article 12, identify EPA, the Corps, and WVDEP as third-party beneficiaries (unless that agency is a holder of the easement), and be substantially similar to the sample attached as

Appendix C. The Conservation Easements must be granted to the WVDEP, the West Virginia Division of Natural Resources, or a "holder" satisfying the definition set forth at W. Va. Code Section 20-12-3(b) agreed to by EPA (in consultation with the Corps) and by WVDEP (in consultation with the West Virginia Division of Natural Resources). Upon recording of the Conservation Easements (or upon delivery to the grantee for recording), Defendant shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI; or

(b) For all Sites that Defendant does not hold in fee simple, makes and documents a reasonable attempt to secure and record a Conservation Easement with the deed recording office for the county where the parcel is located. Each Conservation Easement shall comply with West Virginia's Conservation and Preservation Easements Act, W. Va. Code Chapter 20, Article 12, identify EPA, the Corps, and WVDEP as third-party beneficiaries (unless that agency is a holder of the easement), and be substantially similar to the sample attached as Appendix C. Each Conservation Easement must be granted to the WVDEP, the West Virginia Division of Natural Resources, or a "holder" satisfying the definition set forth at W. Va. Code Section 20-12-3(b) agreed to by EPA (in consultation with the Corps) and by WVDEP (in consultation with the West Virginia Department of Natural Resources). Upon recording of each Conservation Easement (or upon delivery to the grantee for recording), Defendant shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI. In the event that a Conservation Easement is not secured for any Site after Defendant has made and documented a reasonable attempt to secure one, Defendant shall make a reasonable attempt to secure and record deed restrictions ("Deed Restrictions") for the subject parcel with the deed

recording office for the county where the parcel is located. The Deed Restrictions shall be substantially similar to the sample attached as Appendix D, and shall provide that each deed, title, or other instrument conveying an interest in the subject parcel shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. Upon recording of the Deed Restrictions Defendant shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI.

(c) For the purposes of this Paragraph, Defendant makes and documents a reasonable attempt to secure a Conservation Easement or a Deed Restriction by presenting the property owner with a certified letter, copied to EPA, the Department of Justice, the Corps, and the State at the mail and email addresses set forth in Section XI below, setting forth an offer to purchase or otherwise obtain the Conservation Easement or Deed Restrictions for a price reflecting at least the Fair Market Value for the Conservation Easement or Deed Restriction. Nothing in this Paragraph shall foreclose Defendant from negotiating with the property owner or offering a price that is less than the Fair Market Value.

(d) In the event that Defendant is unable to secure a Conservation Easement or Deed Restrictions after making a reasonable attempt to do so as required by Paragraphs 23 (a) & (b), then Defendant shall notify EPA and the United States by email at the addresses set forth below in Paragraph 56 within 200 days after entry of this Consent Decree and Defendant shall, as directed by EPA (in consultation with WVDEP and the Corps), provide additional compensatory mitigation sufficient to off-set the loss of permanent protection for the subject parcel or parcels.

24. If the Conservation Easements or Deed Restrictions described in Paragraph 23 are found to be materially defective or unlawful at any time, the United States and/or the State may: (1) enforce this Paragraph against Defendant, or its successors or assigns, to obtain the granting of a conservation easement or deed restriction for the subject parcel that complies with applicable law; or (2) require additional compensatory mitigation sufficient to off-set the loss of permanent protection of a specific site in accordance with Paragraph 23(d).

COMPLIANCE ASSURANCE PROGRAM

25. Compliance. As required by existing law with regard to the discharge of dredged and/or fill material, Defendant and its wholly owned subsidiaries shall comply with Section 404 of the CWA and applicable regulations, shall comply with Sections 6 and 8 of the WPCA, W. Va. Code §§ 22-11-6 and 22-11-8, and applicable regulations (including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1, *et seq.*), shall not violate the prohibition in Section 301(a) of the CWA by discharging dredged or fill material to waters of the United States without a permit, and shall obtain all necessary CWA or WPCA permits and authorizations prior to undertaking any action that may involve the discharge of dredged or fill material to waters of the United States at any Facilities subject to Paragraph 29(a)(i) of this Consent Decree.

26. Training. Within thirty (30) days after entry of this Consent Decree, Defendant shall develop a training program to ensure compliance with the CWA with respect to the discharge of dredged and/or fill material and to ensure implementation of the Compliance Protocol required in Paragraph 29. The training also shall include training on the proper

installation of culverts consistent with Nationwide Permit 14. The training program shall be provided to employees and contractors of Defendant and Defendant's corporate affiliates whose responsibilities include the design and construction of Defendant's OG Facilities, and to employees of Defendant and Defendant's corporate affiliates who supervise employees and contractors whose responsibilities include the design and construction of Defendant's OG Facilities, for a period of five years after the entry of this Consent Decree. The training program shall be provided to employees and contractors working on existing projects within 90 days after entry of this Consent Decree, and to employees and contractors working on future projects within 60 days of their hiring or engagement to perform construction or modification subject to Paragraph 29(a)(i); provided, however, that any employee or contractor shall only be required to attend such training program once per year. Defendant shall provide annually a certification that it has provided the training required by this paragraph. Such certification shall comply with Paragraph 33 and be provided to the persons identified in Section XI.

27. List of Facilities. For a period of five years after the entry of this Consent Decree, Defendant shall establish and provide to EPA, the Corps, and the State, upon their written request as specified below, at the mail and email addresses set forth in Section XI, a list of all well pads and impoundments constructed or under construction by, or on behalf of, Defendant in West Virginia. The list required by this Paragraph shall identify the latitude/longitude of each such facility, the county where the facility is located, and the type of operation; provided, however, that nothing in this Paragraph shall preclude EPA, the Corps, or the State from requesting additional information in accordance with applicable law. Within 30 days of a written request by EPA, the

Corps, or the State, a current list shall be provided to representatives of EPA, the Corps, and/or the State and shall include any such facilities existing or under construction as of the date of the request. Defendant may assert that all or portions of such list include confidential business information ("CBI"). If Defendant asserts that all or portions of such list include CBI, EPA, the Corps, and the State will follow their existing procedures for handling CBI. See 40 C.F.R. §§ 2.201-2.215 and 2.302; 32 C.F.R. §§ 286.12(d), and 518.13(d); W. Va. Code § 29B-1-4; and WVDEP Communication Policy #10 (Information Requests).

28. Designation of Compliance Representatives.

a. Within 21 days after the entry of this Consent Decree, Defendant shall designate, and for a period of five years thereafter shall maintain, one Compliance Representative with responsibility for oversight of all activities that involve or may involve discharges of dredged or fill material into waters of the United States for each of Defendant's OG Facilities. The Compliance Representative must:

(i) be an employee of Defendant or Defendant's corporate affiliates;

(ii) have completed the training described in Paragraph 26 not later than 60 days after entry of this Consent Decree or, with respect to a Compliance Representative designated pursuant to Paragraph 28(c), within 30 days of such designation;

(iii) serve as Defendant's point of contact for EPA, the Corps, and WVDEP with respect to matters involving Defendant's compliance with the CWA, the West Virginia WPCA, and the West Virginia DCA, as each is applied to the discharge of dredged

and/or fill material, for OG Facilities; provided, however, that any communications regarding compliance with this Consent Decree shall include the addressees identified in Paragraph 56.E;

(iv) be authorized by Defendant and have the responsibility to supervise the actions of the Facility Compliance Representatives, as described below, and all work necessary to meet the requirements of Sections 301 and 404 of the CWA and the requirements of the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities; and

(v) be responsible for providing and updating the list of facilities described in Paragraph 27 above.

b. Within 21 days after the entry of this Consent Decree, Defendant shall designate, and for a period of five years thereafter shall maintain, at least one Facility Compliance Representative for each OG Facility. Defendant may designate the same Facility Compliance Representative for one or more OG Facilities covered by this subparagraph. The Facility Compliance Representative must fulfill all responsibilities and requirements as set forth below, regardless of the number of OG Facilities where that individual has been designated as the Facility Compliance Representative. Each Facility Compliance Representative shall:

(i) be an employee of Defendant or Defendant's corporate affiliates, or a contractor qualified to perform such duties;

(ii) have completed the training described in Paragraph 26 above not later than 90 days after entry of this Consent Decree or, with respect to a Facility Compliance Representative designated pursuant to Paragraph 28(c), within 30 days of such designation;

(iii) be authorized by Defendant and have the responsibility to supervise all work necessary (including work performed by contractors, sub-contractors and consultants) to comply with Sections 301 and 404 of the CWA and to meet the requirements of the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities within West Virginia;

(iv) be authorized by Defendant and have the responsibility to order Defendant's employees, contractors, sub-contractors, consultants, and other agents to take appropriate actions to ensure compliance, and address any failure to comply, with Sections 301 and 404 of the CWA and with the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities within West Virginia;

(v) report to the Compliance Representative regarding compliance with the CWA and the West Virginia WPCA with respect to such OG Facilities; and

(vi) ensure that operations at such OG Facilities are consistent with the Compliance Protocol described in Paragraph 29 below.

c. If the position of Compliance Representative or Facility Compliance Representative becomes vacant and Defendant replaces him or her within 30 days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 28. However, the gap in designation shall not excuse non-compliance with any other requirement of this Consent Decree. Defendant shall notify EPA, the State, and the Corps of any change in a Compliance Representative or Facility Compliance Representative within fifteen days of the hiring or designation of such replacement.

29. Compliance Protocol. Within thirty (30) days of the entry of this Consent Decree, and for a period of five years thereafter, Defendant shall implement the Compliance Protocol described in this Paragraph at all of its OG Facilities at which any construction or modification commences within five years of entry of this Decree:

a. The Compliance Protocol shall include the following elements:

(i) Prior to the submission of any application to conduct any activity that would involve earth disturbing activity (1) at any new OG Facility; or (2) at any existing OG Facility where the earth disturbing activity would occur outside the Limits of Disturbance or would occur within the Limits of Disturbance and may result in new impacts to aquatic resources or impacts to aquatic resources not authorized pursuant to CWA Section 404, the West Virginia WPCA, and the West Virginia DCA, Defendant shall use a Qualified Wetlands Professional, trained in the implementation of the 1987 Corps Wetlands Manual and Regional Supplements, as may be amended, to visit such OG Facility and prepare a written assessment regarding the potential presence of all aquatic resources (including, but not limited to, streams and wetlands), both within the Limits of Disturbance and within 300 horizontal feet beyond the Limits of Disturbance of the OG Facility ("Pre-Application Assessment"). In the event that Defendant, after making a reasonable effort, cannot obtain access to property that is beyond the Limits of Disturbance, the Qualified Wetlands Professional may rely upon remote sensing data to identify aquatic resources on such property for the purpose of the Pre-Application Assessment. The remote sensing data must include review of the NRCS Soil Survey Geographic Database for the presence of mapped hydric soils; the 1:4,800 Scale WV SAMB Stream Layer available at

http://wvgis.wvu.edu/data/dataset.php?ID=265; USGS topographic map (1:24,000 scale); and National Hydrography Dataset; and U.S. Fish and Wildlife Service National Wetlands Inventory. In addition, the Pre-Application Assessment based on such remote sensing data must include an analysis of reasonably available aerial photographs and topographic features, such as contours, to identify small streams not identified in the WV SAMB Stream Layer or the USGS National Hydrography Dataset;

(ii) To the extent that a Pre-Application Assessment identifies potential impacts to aquatic resources (including but not limited to streams and wetlands) within the Limits of Disturbance or within 300 horizontal feet beyond the Limits of Disturbance of the OG Facility and Defendant does not elect to pursue an alternative for the construction activity that would avoid impacts to aquatic resources based upon a Pre-Application Assessment, Defendant shall:

(a) Prepare documentation of the consideration of alternatives for such OG Facility that would involve fewer impacts to aquatic resources, and documentation of why such alternatives were not selected, including, as applicable, why such alternatives were not deemed practicable as that term is defined at 40 C.F.R. § 230.3(q);

(b) Design such OG Facility to avoid and minimize, to the maximum extent practicable, impacts to aquatic resources within the Limits of Disturbance or within 300 horizontal feet of the Limits of Disturbance of the proposed OG Facility;

(c) Implement construction techniques at such OG Facility that: are certified by a registered professional engineer as consistent with sound engineering practices; ensure rapid stabilization of disturbed earth; and provide for temporary and permanent seed

planting (including the exclusive use of native, non-invasive species) and appropriate erosion and sediment controls consistent with the State or local Erosion & Sediment Handbook applicable to the proposed physical operation location;

(d) Submit, prior to construction of such OG Facility, all necessary permit applications, including but not limited to, any necessary application pursuant to the West Virginia WPCA, and any necessary application pursuant to Section 404 of the CWA for the discharge of dredged and/or fill material, including but not limited to individual permits or any applicable Nationwide Permits for which a preconstruction notification is required;

(e) Comply with the advance notification requirements of this Consent Decree, described in Paragraph 30 below;

(f) Delay construction of such OG Facility until all required permits and/or authorizations for the discharge of dredged and/or fill material are received from the Corps and/or the State;

(g) Stabilize disturbed areas, and restore any affected aquatic resources, as soon as practicable at such OG Facility. This obligation may be satisfied by compliance with any applicable permit that requires stabilization at such OG Facility.

b. Defendant shall incorporate the Compliance Protocol into Defendant's standard operating procedures, including any applicable manuals or other documentation setting forth such procedures, ensure that the Compliance Protocol is provided to each Facility Compliance Representative, and obligate Defendant's contractors performing the land disturbing activities described in Paragraph 29(a)(i) to comply with the Compliance Protocol.

c. Nothing in this Paragraph 29 shall be interpreted to relieve Defendant of the requirements of the CWA or the West Virginia WPCA, including the requirement to obtain authorization under Section 404 of the CWA for the discharge of dredged or fill material into waters of the United States. Moreover, except for the claims resolved under Paragraph 6 of this Consent Decree, Plaintiffs reserve in full their authority to institute a civil, criminal, or administrative action pursuant to the CWA and/or the West Virginia WPCA and/or the West Virginia DCA for any unauthorized discharge of dredged or fill material.

30. Advance Notification. For a period of twelve months after entry of this Consent Decree, Defendant shall, prior to undertaking any construction in West Virginia that may involve discharges of dredged or fill material into waters of the United States that Defendant believes would qualify for a Nationwide Permit under the CWA but would not otherwise require submission of preconstruction notification, submit advance notice to all parties listed in Section XI and in accordance with Nationwide Permit General Condition 31.

VI. NOTICES AND OTHER SUBMISSIONS

31. Until such time as Defendant certifies completion of all tasks required by Paragraph 22 and Appendix B of this Consent Decree, except for the monitoring requirements set forth in Appendix B, each March 30 and September 30 Defendant shall provide the United States and the State with a written status report detailing Defendant's progress toward completing all tasks required by this Consent Decree. The status report shall be sent to the mail and email addresses specified in Section XI of this Consent Decree. Defendant shall be considered to have timely submitted a status report by emailing it to EPA and the United Stateson the required date,

with copies to be sent via first-class U.S. mail to EPA, the United States, and the State on that date as well.

32. If a required task has been completed, the notice shall specify the date when it was completed. If the required task was completed after the scheduled time for such completion required by the Consent Decree, the notice shall explain the reasons for such delay.

33. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendant shall, by signature of a senior management official, certify such notices, documents and reports as follows:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

34. During the existence of this Consent Decree, and for at least five years after the termination of this Consent Decree, Defendant shall preserve and retain all records, documents, and information of any kind now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in Paragraphs 22, 23, 29 and 30 of this Consent Decree (including all referenced Appendices), regardless of any corporate retention policy to the contrary. During the existence of this Consent Decree, and for at least five years after the termination of this Consent Decree, Defendant shall require that its contractors and

agents preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Paragraphs 9, 22, 23, 26, 27, 29 and 30 this Consent Decree (including all referenced Appendices).

35. At the conclusion of the document retention period, Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Defendant shall deliver any such records or documents to EPA or the State, as applicable. Defendant may assert that all or portions of such records or documents include CBI. If Defendant asserts that all or portions of such records or documents include CBI, EPA, the Corps, and the State will follow their existing procedures for handling CBI. See 40 C.F.R. §§ 2.201-2.215 and 2.302; 32 C.F.R. §§ 286.12(d), and 518.13(d); W. Va. Code § 29B-1-4; and WVDEP Communication Policy #10 (Information Requests). The Defendant may also assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege, it shall provide the United States or the State, as applicable, with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no final documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

36. Inspections.

a. Until termination of this Consent Decree, Defendant shall give its consent to the United States, WVDEP, and their authorized representatives and contractors at all reasonable times to enter OG Facilities owned or operated by Defendant to perform the activities set forth in this Paragraph. The Parties acknowledge that there may be OG Facilities not owned by Defendant at which consent of additional parties or other authorization for entry may be necessary.

(i) Monitor the activities required by this Consent Decree;

(ii) Verify any data or information submitted to the United States or WVDEP pursuant to this Consent Decree;

(iii) Obtain samples as authorized by the CWA;

(iv) Inspect and evaluate Defendant's restoration, mitigation and/or preservation activities taken pursuant to this Consent Decree; and

(v) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This Paragraph 36 of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States or WVDEP to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

VIII. DISPUTE RESOLUTION

37. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section VIII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

38. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the parties to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond sixty (60) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and/or the State, on the one hand, and Defendant, on the other, cannot be resolved by informal negotiations, then the written position advanced by the United States following consultation with the State shall be considered binding unless, within thirty (30) days after the end of the informal negotiations period, the Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States, in consultation with the State, shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable), and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

39. If the United States or the State believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, the United States or the State may move the Court for a resolution of the dispute prior to the expiration of the sixty (60) day period for informal negotiations. Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the terms and conditions of this Consent Decree, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

40. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Section X below regarding payment of stipulated penalties.

IX. FORCE MAJEURE

41. Defendant shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event or series of related events arising from causes beyond the control of Defendant, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or

climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits, unless Defendant has timely applied for such federal, state or local permits and has provided all information required by the federal, state, or local authority in connection with such permit(s).

42. If Defendant believes that a Force Majeure event has affected its ability to perform any action required under this Consent Decree, Defendant shall notify the United States and the State in writing within ten (10) calendar days after the Force Majeure event at the addresses listed in Section XI. Such notice shall include a discussion of the following:

A. what action has been affected;

B. the specific cause(s) of the delay;

C. the length or estimated duration of the delay; and

D. any measures taken or planned by Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States and the State any additional information that Defendant deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States and the State shall constitute a waiver of any claim of Force Majeure as to the event in question.

43. If the United States, after a reasonable opportunity for consultation with the State, determines that the conditions constitute a Force Majeure event, then the deadline for the affected

action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with the United States and the State to determine when to begin or resume the operations that had been affected by any Force Majeure event.

44. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, Defendant or the United States (in consultation with the State) may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

45. Defendant shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by Defendant, including its contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have avoided or prevented noncompliance by due diligence; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

46. After entry of this Consent Decree, if Defendant fails to timely fulfill any requirement of the Consent Decree (including Appendix B), then Defendant shall pay a stipulated penalty to the United States and the State for each violation of each requirement of this Consent Decree as follows:

A.	For Day 1 up to and including Day 30 of non-compliance	$1,000.00 per day
B.	For Day 31 up to and including 60 of non-compliance	$2,000.00 per day
C.	For Day 61 and beyond	$3,000.00 per day

of non-compliance

A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree. Stipulated penalties under this Section X shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

47. Defendant shall pay any stipulated penalty within forty-five (45) days of the date Defendant receives a demand by either Plaintiff. The Plaintiff making the demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff by electronic or first-class mail. Defendant shall pay 50 percent of the total stipulated penalty amount to the United States and 50 percent to the State.

48. Either the United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties that would otherwise be due to it under this Consent Decree.

49. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII and/or the Force Majeure provisions in

Section IX shall be resolved upon motion to this Court as provided in Paragraphs 37-40 (Dispute Resolution).

50. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

51. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Section IX above) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

52. In the event that a stipulated penalty payment is applicable and not made on time, Defendant shall be liable for interest on such penalties in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

53. Defendant shall make any payment of a stipulated penalty to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice

account in accordance with written instructions to be provided by the United States Department of Justice, referencing EPA Region 3 and the DOJ case number 90-5-1-1-19980. Any payments received after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, at the time of the making the payment as set forth in this Paragraph, Defendant shall send by mail a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for stipulated penalties owed pursuant to this Consent Decree in United States, et al. v. Trans Energy, Inc., and referencing the DOJ case number, 90-5-1-1-19980, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendant shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

54. Defendant shall make any payment of a stipulated penalty to the State by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. The payment shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

55. Subject to Paragraph 6 of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendant's violation of this Consent Decree or applicable law.

XI. ADDRESSES

56. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses. The Parties may notify other Parties of a change in contact information without seeking modification of the Consent Decree.

A. TO EPA:

(1) Stefania D. Shamet
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029
Shamet.Stefania@epa.gov

(2) Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Amanda Berman
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
amanda.berman@usdoj.gov

C. TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222
Dana.M.Adipietro@usace.army.mil

Jon Coleman
Chief, Southern Section, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 20th Floor
Pittsburgh, PA 15222

D. TO THE STATE/WVDEP:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

E. TO DEFENDANT:

Trans Energy, Inc.
Attn: President
P.O. Box 393
210 Second St., 2nd Floor
St. Marys, WV 26170
johncorp@transenergyinc.com

Christopher J. Neumann
Greenberg Traurig, LLP
1200 Seventeenth Street
Twenty-Fourth Floor

Denver, CO 80202
neumannc@gtlaw.com

Christopher Power
Babst Calland Clements and Zomnir, P.C.
United Center
500 Virginia Street East
Charleston, WV 25301
cpower@babstcalland.com

XII. COSTS OF SUIT

57. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action, except that the United States and/or the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree, other than an action pursuant to the Dispute Resolution provisions set forth in Section VIII, or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. PUBLIC COMMENT

58. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States and the State is subject to the requirements of 28 C.F.R. § 50.7, and the W. Va. Code R. § 47-10-16.2.c, which provide for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

59. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

60. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by the United States, the State, and Defendant and approved by the Court; provided, however, that schedules for the completion of tasks required by Article V, including but not limited to Paragraph 22 and Appendix B and revisions to plans submitted and approved pursuant to Appendix B, may be modified by written agreement of the United States, the State, and Defendant.

XVI. TERMINATION

61. Except for the third sentence of Paragraph 22 and Paragraphs 24, 34, and 35, this Consent Decree may be terminated by either of the following:

a. Defendant, the United States, and the State may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

b. After Defendant has paid the civil penalty and fulfilled all of the obligations in Paragraphs 9, 17-20, 22-23 (except for post-restoration monitoring), and 25-30 of this Consent

Decree (including any compliance period associated with those obligations), has complied with all other requirements of this Consent Decree, and has paid any accrued stipulated penalties as required by this Consent Decree, Defendant may serve a Request for Termination on the United States, EPA and the State. The Request for Termination shall state that Defendant has satisfied all requirements of this Consent Decree, including but not limited to all obligations in Paragraphs 9, 17-20, 22-23 (except for post-restoration monitoring), and 25-30, and has implemented the requirements of Paragraphs 25-30 for a period of at least 12 months. The Request for Termination shall also include supporting documentation sufficient to demonstrate that Defendant has satisfied the foregoing criteria. Following service of Defendant's Request for Termination, the Parties may confer informally concerning the Request.

(i) If the United States and the State agree that the Consent Decree may be terminated, the parties shall submit, for the Court's approval, a joint stipulation to terminate the Consent Decree.

(ii) If the United States or the State does not agree that the Consent Decree may be terminated, then Defendant may submit a motion to the Court asking for termination of the Consent Decree without invoking Dispute Resolution under Section VIII of this Consent Decree; provided, however, that Defendant shall not submit such motion until 90 days after service of its Request for Termination on the United States and the State, and Defendant shall bear the burden of proving by a preponderance of the evidence that Defendant's position is in accordance with the terms and conditions of this Consent Decree and the requirements of the CWA (and the West Virginia WPCA, as applicable).

XVII. SIGNATORIES/SERVICE

62. Each of the undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

63. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Plaintiffs and Defendant agree to accept service of process by mail or email with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. APPENDICES

64. The following appendices are attached to and part of this Consent Decree: Appendix A; Appendix B; Appendix C; Appendix D; and Appendix E.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 201_.

_____
United States District Judge

ON BEHALF OF THE UNITED STATES:

SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources Division

Dated: 6/29/2014

Amanda Shafer Berman
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-1950

ON BEHALF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE:

Dated: 8/28/14

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: 8/28/14

SUSAN SHINKMAN
Office Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: August 27, 2014

MARK POLLINS
Division Director, Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: August 27, 2014

BENJAMIN BAHK
Acting Branch Chief, Industrial Enforcement Branch
Water Enforcement Division, Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: 08/27/14

J. CLARKE THURMON
Attorney-Advisor, Water Enforcement Division
Office of Civil Enforcement, U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

ON BEHALF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III:

Dated: 8/27/14

Shawn Garvin
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: 8/26/14

Marcia Mulkey
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: 8/26/14

Stefania Shamet
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

ON BEHALF OF THE WESTVIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Dated: 8/26/14

Scott Mandirola
Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

Dated: 8/26/14

Scott Driver
Associate Attorney
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

ON BEHALF OF DEFENDANT TRANS ENERGY, INC.:

John Corp, President
Trans Energy, Inc.
P.O. Box 393
210 Second St., 2nd Floor
St. Marys, WV 26170

Dated: 8-25-14

Appendix A: Sites

Marshall County, WV:

Christopher Impoundment Site (Northeast of the Intersection of Fork Ridge and Waynesburg Pike)

Goshorn/Timothy James Hubbs Impoundment Site (Southeast of the Intersection of New Bethel/ Goshorn Ridge Road/County Highway 62 and Dixon Ridge)

Keaton Impoundment Site (North of the Intersection of Adams Hill/CountyHighway250/4 and Grave Creek Road/County Highway 64)

Lucey Impoundment Site (Southeast of Fork Ridge (County Highway 17) and Glen Easton Ridge (County Highway 60))

Stout Well Pad Site (Northeast of Intersection of Waynesburg Pike (US-250) and Moose Lake Road)

Wetzel County, WV:

Anderson Well Pad and Impoundment Site (West of Intersection of Slabcamp Run (County Road 84/1) and Slabcamp Road (County Road 84/4))

Blackshere/Dewhurst Site (Accessed off County Road 84 in Wetzel County, West Virginia)

Dewhurst Well Pad Site (Buffalo Run Road south of the Intersection of Buffalo Run Road and Campbell Run (County Road 82/1))

Hart Site (Accessed off County Road 82, near Jacksonburg, in Wetzel County, West Virginia)

Marion County, WV:

Batson Site (Accessed off County Road 6/1, near Metz, Marion County, West Virginia)

Beaty Site (Accessed off Dents run Road (CR 5/4) in Marion County, West Virginia)

Freeland Site (Accessed off County Road 250/4 (Big Run Road) in Marion County West Virginia)

Jones Site (Accessed off County Road 4/3 in Marion County, West Virginia)

Shaver Site (Accessed off County Road 64 in Marion County, West Virginia)

Sivert Site (Accessed off County Road 64 in Marion County, West Virgini

Appendix B: Restoration and Mitigation Work Plan

This Work Plan sets forth the procedures applicable to the restoration work to be undertaken by Trans Energy, Inc. ("Defendant") pursuant to the Consent Decree among the United States of America, the State of West Virginia (by and through the West Virginia Department of Environmental Protection) and Defendant. This Work Plan is incorporated into the Consent Decree.

The sites covered by this Work Plan (collectively, the "Restoration Sites") are those listed in Appendix A to the above-referenced Consent Decree.

I. Delineation Reports

a. For each Restoration Site for which a delineation report has not been approved by EPA, Defendant shall submit a delineation of aquatic resources as they existed prior to disturbance by or on behalf of or in connection with the activities of Trans Energy ("Delineation Report") to the U.S. Environmental Protection Agency ("EPA") for review and approval. Defendant shall utilize a methodology for identifying wetlands and streams in disturbed and undisturbed areas consistent with methods accepted by the EPA and the U.S. Army Corps of Engineers ("Corps").

b. Defendant shall submit Delineation Reports for all Restoration Sites within 120 days of the entry of the Consent Decree. Delineation Reports submitted to and approved by EPA prior to the entry of the Consent Decree will satisfy this requirement.

c. After review of the Delineation Report, EPA will: a) approve the Report, in whole or in part; b) approve the Report upon specified conditions; c) disapprove the Report, in whole or in part; or d) any combination of the above. EPA may disapprove the Delineation Report, in whole or in part based on EPA's determination that the Report is not in accordance with the terms and conditions of the Consent Decree and with the CWA (and the West Virginia WPCA, as applicable), and in such instance EPA will provide a written explanation of the basis for its determination.

d. If EPA disapproves all or part of a Delineation Report, Defendant shall, within 60 days of receipt of EPA's written determination, address the reasons provided for disapproval and resubmit the Delineation Report for approval. If a Delineation Report submitted pursuant to this provision is disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the State, may itself correct the deficiencies in the Report, subject to Defendant's right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree.

II. Restoration Plans and Mitigation Plans

a. Within 120 days of EPA's approval of each Delineation Report, Defendant shall submit a detailed Restoration Plan for the applicable Restoration Site to EPA for approval. The

Restoration Plan must (a) be designed to restore the Restoration Site to approximate pre-disturbance original conditions consistent with the definition of restoration found in 40 C.F.R. § 230.92 (to the extent possible consistent with the need to obtain access to any Site owned or controlled by any person other than the Defendant); (b) include a schedule for implementation (that may be conditioned upon receipt of any required approvals or certifications for such work under the West Virginia Dam Control Act, W.Va. Code Chapter 22, Article 14, for which the Defendant shall make timely application and diligently pursue); (c) include compensation for impacts to streams and wetlands using the West Virginia Stream and Wetland Valuation Metric ("WVSWVM") to determine the appropriate amount of mitigation needed to offset permanent and temporal losses to aquatic resources; (d) ensure that restored areas are stabilized so as to avoid landslides or slips, (e) utilize only native West Virginia species for planting; (f) incorporate quantitative performance measures; (g) establish a calculation of surplus WVSWVM credits, if any; (h) include a post-restoration monitoring plan for a period consistent with this paragraph; and (i) address whether notification to the Corps is required under Nationwide Permit (NWP) General Conditions 18 and 20 (Endangered Species and Historic Properties). For the Lucey Impoundment Site, the Christopher Impoundment Site, the Keaton Impoundment Site, the Goshorn/Timothy James Hobbs Impoundment Site, the Anderson Well Pad and Impoundment Site, the Dewhurst Well Pad Site, and the Stout Well Pad Site, any restoration plan submitted pursuant to this paragraph should be consistent in terms of location and extent of aquatic resources to be reconstructed with the conceptual restoration plans referenced in the Consent Decree or shall satisfy the preceding conditions (a) through (i). In addition, EPA agrees that any schedule for implementation shall allow for restoration on the following sequencing and schedule, or no sooner than the construction season immediately following Trans Energy's receipt of all approvals or permits required for the restoration if received later than these dates: (1) for the Stout Well Pad Site, Dewhurst Well Pad Site, and Blackshere/Dewhurst Site, Hart Site, Batson Site, Beaty Site, Freeland Site, Jones Site, Shaver Site and Sivert Site, during the 2015 construction season; (2) for the Anderson Well Pad and Impoundment Site, the Goshorn/Timothy James Hubbs Impoundment Site, and the Keaton Impoundment Site, during the 2016 construction season; and (3) for the Christopher Impoundment Site and Lucey Impoundment Site, during the 2017 construction season. For any Restoration Site as to which the Delineation Report approved pursuant to Section I identifies total impacts to less than 500 linear feet of aquatic resources and for which permanent preservation in the form of a Conservation Easement or Deed Restriction pursuant to Paragraph 23 of the Consent Decree is secured, the Restoration Plan shall include a post-restoration monitoring plan for a period of at least five years. If, at the end of the five-year period, EPA agrees that quantitative performance measures have been achieved, no further post-restoration monitoring shall be required. If, at the end of the five-year period, EPA does not agree that quantitative performance measures have been achieved, Defendant shall continue post-restoration monitoring for an additional five years. With respect to all other sites, the period for post-restoration monitoring must be at least ten years.

c. After review of the Restoration Plan, EPA in consultation with WVDEP will: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) disapprove the Plan, in whole or in part; or d) any combination of the above. In the event EPA disapproves the Restoration Plan, in whole or in part, it shall provide a written explanation of the

basis for its determination that the Plan is not in accordance with the terms and conditions of the Consent Decree and with the CWA (and the West Virginia WPCA and the West Virginia DCA, as applicable).

d. If EPA disapproves all or part of a Restoration Plan, Defendant shall, within 60 days of receipt of EPA's written determination, address the reasons for disapproval and resubmit the Restoration Plan for approval. If a Restoration Plan submitted pursuant to this provision is disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the State, may itself correct the deficiencies in the Plan and require restoration in accordance with the plan developed by EPA, subject to Defendant's right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree.

e. In the event that the impacted aquatic resources cannot be restored at any Restoration Site in accordance with an approved Restoration Plan due to lack of access after the procedures in Section VI of this Appendix B have been satisfied, Defendant shall notify EPA and develop and submit to EPA a Mitigation Plan. The Mitigation Plan must be submitted to EPA within 60 days of Defendant determining that such Mitigation Plan must be submitted pursuant to this Paragraph. The Mitigation Plan must use WVSWVM to determine the appropriate amount of mitigation needed to compensate for any resources that cannot be restored in accordance with the approved Restoration Plan. Defendant may satisfy any such additional mitigation obligations by (i) applying excess mitigation credits established at other Sites in accordance with Paragraph 23(d) of the Consent Decree and Section III of this Appendix B; (ii) purchasing additional mitigation credits from mitigation banks authorized to sell offsite mitigation credits; (iii) proposing a mitigation project to be completed or funded by Defendant that includes long-term protection for mitigation areas via a conservation easement, deed restriction, or other appropriate mechanism; or (iv) otherwise undertaking compensatory mitigation in a manner consistent with 40 C.F.R. §§ 230.91-230.98 (2013). The Mitigation Plan must provide long-term protection for mitigation areas via a conservation easement or other appropriate instrument and must address whether notification to the Corps is required under NWP General Conditions 18 and 20 (Endangered Species and Historic Properties). A single Mitigation Plan may be used to compensate for unrestored impacts at multiple sites within an 8-digit HUC, or within an approved service area for a mitigation bank authorized to sell offsite mitigation credits. Defendant may seek EPA's approval to utilize a single Mitigation Plan within an approved service area.

f. After review of Defendant's Mitigation Plan, EPA will: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) disapprove the Plan, in whole or in part, or d) any combination of the above. In the event EPA disapproves the Mitigation Plan, in whole or in part, it shall provide a written explanation of the basis for its determination that the Plan is not in accordance with the terms and conditions of the Consent Decree and with the CWA (and the West Virginia WPCA, as applicable).

g. If EPA disapproves all or part of a Mitigation Plan, Defendant shall, within 60 days of receipt of EPA's disapproval, address the reasons for disapproval and resubmit the Mitigation Plan for approval. If a Mitigation Plan submitted pursuant to this provision is disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the

State, may itself correct the deficiencies in the Plan and require mitigation in accordance with a plan developed by EPA, subject to Defendant's right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree.

III. Restoration and Mitigation

Upon approval of a Restoration Plan (either with or without conditions or modifications by EPA), the Restoration Plan is incorporated into this Appendix B, and Defendant shall implement the Plan as approved or modified by EPA, subject to Defendant's right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree. Restoration and mitigation work at each Restoration Site shall be executed in accordance with the schedule for implementation in the Restoration Plan and NWP 32. In the event additional compensatory mitigation is required pursuant to Paragraph 23(d), such obligation may be offset by mitigation at other Sites identified in Appendix A that are located within the same approved mitigation bank service area, provided: the amount of compensatory mitigation achieved at the Offset Site exceeds the compensatory mitigation obligations specified in the Offset Site's approved Restoration Plan pursuant to Appendix B; the Offset Site is subject to a Conservation Easement or Deed Restriction obtained in accordance with Paragraph 23 of the Consent Decree; and the excess compensatory mitigation comprising available offset credits was not generated from the fact that the Offset Site is subject to a Conservation Easement or Deed Restriction.

IV. Communications

All other correspondence related to this Work Plan should be submitted to the EPA representatives to whom communications are to be made pursuant to Section XI of the Consent Decree.

V. Extensions of the Timeframes Above

Defendant shall perform the actions required by this Work Plan within the time limits set forth herein. EPA recognizes that delineation and restoration activities may be delayed because of unanticipated seasonal and weather conditions, issues relating to landowner access, and leases and other transfers or conveyances of possession of Restoration Sites. Extension requests based on these issues will not be unreasonably denied.

VI. Access to Third-Party Sites

a. If any Site or Restoration Site is owned or controlled by persons other than Defendant, Defendant shall use best efforts to secure from such persons an agreement to provide access to the Site for Defendant, the United States, the State, and their representatives, contractors, and subcontractors, to conduct any activity pursuant to the Consent Decree including, but not limited to, the activities set forth in any plan submitted pursuant to this Appendix B and Paragraph 36 of the Consent Decree. "Best efforts" for the purposes of this Section VI includes efforts commenced no later than 30 days after EPA's approval or development of a Restoration Plan pursuant to Section II of this Work Plan, or no later than 30 days after entry of the Consent

Decree for Sites for which there is a conceptual restoration plan referenced in the Consent Decree and, to the extent Defendant's access rights at any Restoration Sites are insufficient to implement the applicable Restoration Plan, includes an offer of reasonable compensation to obtain such additional rights as may be needed to implement the applicable Restoration Plan.

b. If, within 60 days of EPA's approval or development of a Restoration Plan pursuant to Section II of this Work Plan, or within 60 days after entry of the Consent Decree for Sites for which there is a conceptual restoration plan as referenced in the Consent Decree, Defendant has not obtained an agreement to provide access as described above, Defendant shall notify Plaintiffs in writing at the addresses set forth in Section XI of the Consent Decree, and shall include in that notification a summary of the steps that Defendant has taken to attempt to comply with this Paragraph VI, including documentation of any offer of reasonable compensation to obtain such additional rights. The United States may, in its unreviewable discretion, assist Defendant in obtaining access. If Defendant has used best efforts and access is not obtained by Defendant or the United States for any reason, and Defendant is unable to complete its obligations under the Consent Decree, then Defendant shall, consistent with Section II of this Work Plan, provide compensatory mitigation to off-set the loss of any areas that could not be restored due to lack of access.

Appendix C: Model Conservation Easement

Prepared by: [AUTHOR]

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement is made this [DATE] day of [MONTH], 201[X], by [GRANTOR], whose address is [ADDRESS], located in [CITY], [COUNTY], [STATE], hereinafter referred to as "Grantor", in favor of the [GRANTEE], hereinafter referred to as "Grantee," with the United States Environmental Protection Agency ("EPA"), the West Virginia Department of Environmental Protection ("WVDEP") and the United States Army Corps of Engineers ("USACE") as Third-Party Beneficiaries with rights as provided in this Conservation Easement, pursuant to the West Virginia Code, Chapter 20, Article 12, Conservation and Preservation Easements Act, § 20-12-2 et. seq.

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in the [PROPERTY TITLE] (hereinafter "the Property"), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, [COUNTY] at Deed Book [BOOK], Page [PAGE]; and

WHEREAS, that certain portion of the surface of the Property described on Exhibit A attached hereto (the "Conserved Area") possesses open space and natural values (collectively, "Conservation Values") of great importance to Grantor, the people of [COUNTY], and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia; and

WHEREAS, Grantee qualifies as a "holder" pursuant to W. Va. Code § 20-12-3; and

WHEREAS, Grantor, having the authority to do so, intends to enter into this Conservation Restriction in order to grant to Grantee a Conservation Easement on the Property to restrict subsequent disturbance and/or development of the Conserved Area in perpetuity; and

WHEREAS, Grantee affirms that this Conservation Easement represents a unique and valuable asset to the quality of life in [COUNTY] and the state of West Virginia and that by the acceptance of this Conservation Easement that it will act in good faith to uphold the conservation

easement and not seek to benefit from its conversion or elimination. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Conserved Area for the benefit of this generation and the generations to come in the future; and

WHEREAS, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of [*Case name*], Civil Action No. _____ ("Trans Energy CD"), Grantor and Grantee agree that USACE, EPA, and WVDEP, and their successor agencies (collectively "Third Parties"), are third-party beneficiaries under this conservation easement, except that nothing herein creates a property interest in the Federal Government of the State of West Virginia with regard to the Conserved Area;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the facts recited above and the terms, conditions and restrictions contained herein, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants and restrictions in favor of Grantee:

1. Grantor hereby conveys, transfers, assigns and grants to Grantee a Conservation Easement with respect to the Conserved Area.

2. This Grant of Conservation Easement shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors and assigns, in perpetuity.

3. The following activities are prohibited in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species or as necessary to accomplish restoration and/or mitigation described in Paragraph 9; provided, however, that hunting, trapping and fishing shall not be prohibited:

    a. Removal, excavation, dredging, or disturbance of the surface;

    b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;

    c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;

    d. Installation of structures;

    e. Placement of pavement or other impervious materials;

    f. Alteration of the existing pattern of vegetation through removal, destruction, or planting of vegetation;

g. Except to the extent necessary to return the Conserved Area to a use consistent with its use prior to Trans Energy, Inc.'s ("Trans Energy, Inc.'s") initial entry onto the Conserved Area, conversion of, or expansion into, any portion of the Conserved Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);

h. The use of fertilizers, herbicides or pesticides;

i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates to Grantee that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of Grantee;

j. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;

k. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Grant of Conservation Easement.

4. Grantor shall record this Conservation Easement in the Land Records of the county or counties where the property is located within sixty (60) days of the effective date of this Conservation Easement. Grantor shall provide Grantee, Trans Energy, and Third Parties with proof of recordation and give notice of this Grant of Conservation Easement to current record title holders of easements in the Conserved Area within thirty (30) days of recording by the County Clerk.

5. Notwithstanding any provisions to the contrary, this Grant of Conservation Easement is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record within twenty (20) years prior to the date of this Grant of Conservation Easement, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a legal description sufficient to identify the boundaries of the Conserved Area. Grantor certifies to Grantee and Third Parties that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Grant of Conservation Easement.

6. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to the rights of Grantee under this Grant of Conservation Easement.

7. Grantee, Trans Energy, and Third Parties shall have the right to:

   a. enter upon the Conserved Area for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Grant of Conservation Easement, or for any other purpose authorized by this easement or by the Trans Energy, Inc. CD. When practicable, such entry shall be upon prior reasonable notice to the property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;

   b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property or the environment; and

   c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.

8. In the event of a breach of this Conservation Easement by Grantor or another party, Grantee and/or Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, Grantee and/or Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Conservation Easement: provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including Grantee's and/or Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of Grantee and/or Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the Trans Energy, Inc. CD.

9. Trans Energy, Inc. and/or its contractors shall have the right to enter upon the Conserved Area for the purpose of performing any work required by a restoration or mitigation plan approved under the Trans Energy CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.

10. Grantor shall provide Grantee, Trans Energy, Inc. and Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.

11. Grantor agrees that the terms, conditions, restrictions and purposes of this Conservation Easement will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or

other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.

12. Any notice, demand, request, consent, approval or communication under this Conservation Easement shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

_____
_____
_____

To Grantee:

_____
_____
_____

To Trans Energy:

_____
_____
_____

To Third Parties:

TO EPA:

(1) Stefania D. Shamet
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029

(2) Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency

Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

TO THE CORPS:

Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

Chief, Southern Section, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

TO WVDEP:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

13. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

14. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Conservation Easement and the right to manage the Conserved Area in accordance with the provisions of the West Virginia Conservation and Preservation Easements Act, West Virginia Code 20-12-1, *et seq*.

15. This instrument conveys no additional right of access by the general public to any portion of the Property.

16. Grantor shall be responsible for acts of its own negligence consistent with the provisions of the West Virginia Conservation and Preservation Easements Act, West Virginia Code 20-12-1, *et seq.*

17. This Conservation Easement shall survive any merger of the fee and restriction interest in the Conserved Area.

18. Upon prior written notice to Grantor, Trans Energy, Inc. and Third Parties, Grantee may assign its rights under this Grant of Conservation Easement to any qualified holder satisfying the definition set forth in West Virginia Code Chapter 20-12-3. No assignment may be made unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purposes and terms of this Grant of Conservation Easement. If any such assignee ceases to exist, ceases to be a qualified holder under West Virginia Code Chapter 20-12-3, or abandons this easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this Grant of Conservation Easement, the Easement and rights of enforcement shall revert to Grantee. If Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Court shall appoint a successor using the doctrine of *cy pres*.

19. Taxes, Insurance.

    a. Grantor shall keep Conserved Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

    b. Grantor agrees to pay any real estate taxes or other assessments levied on the Conserved Area. If Grantor becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, Grantee, at its option, shall, after written notice to Grantor, have the right to purchase and acquire Grantor's interest in the Conserved Area or to take such other actions as may be necessary to protect Grantee's interest in the Conserved Area and to assure the continued enforceability of this Conservation Easement.

20. Eminent Domain, Proceeds.

    a. Whenever all or part of the Conserved Area is taken in the exercise of eminent domain so as to substantially abrogate the restrictions imposed by this Conservation Easement, the Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

    b. In the event that all or a portion of this Conserved Area is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Grantee shall be entitled to the proceeds of such sale, exchange or conversion. Grantee shall use its share of the proceeds in a manner consistent with the purpose of this Grant of Conservation Easement, and in consultation with Third Parties.

21. Miscellaneous.

a. The laws of the State of West Virginia shall govern the interpretation and performance of this Conservation Easement.

b. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. This Conservation Easement sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the easement, all of which are merged herein. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in a writing executed by the parties hereto.

d. Should there be more than one Grantor, the obligations imposed by this Conservation Easement upon each Grantor shall be joint and several.

e. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and all parties having or acquiring any right, title or interest in the Conserved Area, including holders of subdivision deeds, and shall continue as a servitude running in perpetuity with the Conserved Area.

f. The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

g. Execution of this Conservation Easement does not constitute a waiver of the rights or ownership interest of the State of West Virginia in public trust property.

h. This Conservation Easement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.

22. Notwithstanding anything contained herein to the contrary, except for de minimis modifications as discussed below, any modification or termination of this Conservation Easement shall require the prior written approval of Grantee, its successors or assigns, and Third Parties. Amendments to this Conservation Easement must be in writing by all parties hereto, and must be consistent with the conservation purposes of this Grant. Grantor shall record any modification or termination of this Conservation Easement in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide Grantee, Trans Energy, Inc. and Third Parties with proof of recordation within thirty (30) days of

recording by the County Clerk. Grantor reserves unto itself the right to undertake de minimis modifications of the Conserved Area that are approved by Grantee. A "de minimis modification" is a modification that results in an increased level of protection of or does not affect the natural resources protected by this Conservation Easement within the Conserved Area.

23. For any modification, transfer, conveyance, or assignment accomplished under paragraphs 10, 18 or 22, Grantor shall amend this instrument by preparing and submitting to Grantee for review and approval:

    a. A revised plan and metes and bounds description for the area to be preserved under the modified Conservation Easement (hereinafter the "Modification Documents"); and

    b. An Amended Conservation Easement that reflects the modifications to the original Conservation Easement, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Conservation Easement set forth in the Modification Documents.

24. Grantor shall record the documents listed in paragraph 23, above, in the same manner and place as this original Conservation Easement was recorded.

25. This Grant of Conservation Easement may only be removed pursuant to West Virginia Code 20-12-4 and consistent with this Grant of Conservation Easement.

TO HAVE AND TO HOLD unto [GRANTEE], its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Easement shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.

IN WITNESS WHEREOF, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the [RELEVANT COUNTY].

[GRANTOR]

By:_____
Name:_____
Title:_____

STATE OF _____
COUNTY OF _____

Be it remembered that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public, personally appeared: [NAME] and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of said [NAME].

_____
Printed Name:_____
A Notary Public of _____

My Commission Expires: _____

EXHIBIT A

CONSERVED AREA

EXHIBIT B

CONSENT TO COMPLY WITH GRANT OF CONSERVATION EASEMENT

With respect to its rights in the "Conserved Area," as defined in the Grant of Conservation Easement made on [DATE] by [GRANTOR], whose address is [ADDRESS], located in [CITY], [COUNTY], [STATE], in favor of [GRANTEE], Trans Energy, Inc. hereby expressly consents to comply with the restriction of said Grant of Conservation Easement. This Consent is made pursuant to West Virginia Code § 20-12-4(d).

By: Trans Energy, Inc. _____
Name: _____
Title: _____

Appendix D: Model Deed Restriction

Prepared by: [AUTHOR]

DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTIONS FOR CONSERVATION ("Declaration") made this _____ day of _____, 2013, by [*Name of Landowner*] ("Grantor"), having an address at _____;

WITNESSETH:

WHEREAS, [GRANTOR] is the owner of certain real property located in the [PROPERTY TITLE] (hereinafter "the Property"), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, [COUNTY] at Deed Book [BOOK], Page [PAGE]; and

WHEREAS, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of that certain portion of the surface of the Property described on Exhibit A attached hereto (the "Conserved Area") in perpetuity;

WHEREAS, the Conserved Area possesses open space and natural values (collectively, "Conservation Values") of great importance to Grantor, the people of [COUNTY], and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of [*Case name*], Civil Action No. _____ ("Trans Energy, Inc. CD"), Grantor agrees that USACE, EPA, and WVDEP, and their successor agencies (collectively "Third Parties"), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the State of West Virginia with regard to the Conserved Area;

NOW THEREFORE, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants and restrictions:

1. This Declaration shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors and assigns, in perpetuity. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide Trans Energy, Inc. and Third Parties with proof of recordation and give notice of this Declaration to current record title holders of easements in the Conserved Area within thirty (30) days of recording by the County Clerk.

2. The following activities are prohibited in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species or as necessary to accomplish restoration and/or mitigation described in Paragraph 7; provided, however, that hunting, trapping and fishing shall not be prohibited:

   a. Removal, excavation, dredging, or disturbance of the surface;

   b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;

   c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;

   d. Installation of structures;

   e. Placement of pavement or other impervious materials;

   f. Alteration of the existing pattern of vegetation through removal, destruction, or planting of vegetation;

   g. Except to the extent necessary to return the Conserved Area to a use consistent with its use prior to Trans Energy, Inc.'s ("Trans Energy, Inc.'s") initial entry onto the Conserved Area, conversion of, or expansion into, any portion of the Conserved Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);

   h. The use of fertilizers, herbicides or pesticides;

   i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;

   j. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;

   k. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Declaration.

3. It is the purpose of the Declaration to assure that the Conserved Area will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Area.

4. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record within twenty (20) years prior to the date of this Declaration, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a legal description sufficient to identify the boundaries of the Conserved Area. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Declaration.

5. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to this Declaration.

6. The Conserved Area is subject to the Trans Energy, Inc. CD. Each deed, title or other instrument conveying an interest in the Conserved Area shall contain a notice stating that the Property is subject to the Trans Energy, Inc. CD and shall reference the recorded location of the Trans Energy, Inc. CD and any restrictions applicable to the Property under the Trans Energy, Inc. CD.

7. Trans Energy, Inc. and Third Parties shall have the right to:

   a. enter upon the Conserved Area for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the Trans Energy, Inc. CD. When practicable, such entry shall be upon prior reasonable notice to the property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;

   b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property or the environment; and

   c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.

8. Grantor grants to Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an

enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the Trans Energy, Inc. CD.

9. Trans Energy, Inc. and/or its contractors shall have the right to enter upon the Conserved Area for the purpose of performing any work required by a restoration or mitigation plan approved under the Trans Energy, Inc. CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.

10. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Declaration.

11. Grantor shall provide Trans Energy, Inc. and Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.

12. Grantor agrees that the terms, conditions, restrictions and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.

13. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide Trans Energy, Inc. and Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.

14. For any modification, transfer, conveyance, or assignment accomplished under paragraphs 10 or 11, Grantor shall amend this instrument by preparing and submitting:

    a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the "Modification Documents"); and

b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.

15. Grantor shall record the documents listed in paragraph 12, above, in the same manner and place as this original Declaration was recorded.

16. Miscellaneous.

a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.

b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.

d. The covenants, terms, conditions and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.

e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.

f. The covenants, terms, conditions, restrictions and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.

17. Any notice, demand, request, consent, approval or communication under this Declaration shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

_____

_____

_____

To Trans Energy, Inc.:

_____

_____

_____

To Third Parties:

TO EPA:

(1) Stefania D. Shamet
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029

(2) Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

TO THE CORPS:

Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

Chief, Southern Section, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

TO WVDEP:

Chief Inspector

Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

18. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

IN WITNESS WHEREOF, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the [RELEVANT COUNTY].

[GRANTOR]

By:_____
Name:_____
Title:_____

STATE OF _____
COUNTY OF _____

Be it remembered that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public, personally appeared: [NAME] and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of said [NAME].

_____
Printed Name:_____
A Notary Public of _____

My Commission Expires: _____

EXHIBIT A

CONSERVED AREA

Appendix E: Conceptual Restoration Plans

This Appendix consists of the following attachments:

August 18 proposed "conceptual restoration plans" for (1) the Goshorn/Timothy James Hubbs Impoundment Site, (2) the Stout Well Pad Site, and (3) the Dewhurst Well Pad Site;

August 20 proposed "conceptual restoration plans" for (4) the Lucey Impoundment Site and (5) the Anderson Well Pad and Impoundment Site;

August 22 proposed "conceptual restoration plans" for the (6) Keaton Impoundment Site and the (7) Christopher Impoundment Site

Docket No. CWA-03-2013-0058DW
Goshorn Impoundment Site
Confidential Settlement Communication
Subject to Rule 408 of the Federal Rules of Evidence

POTESTA

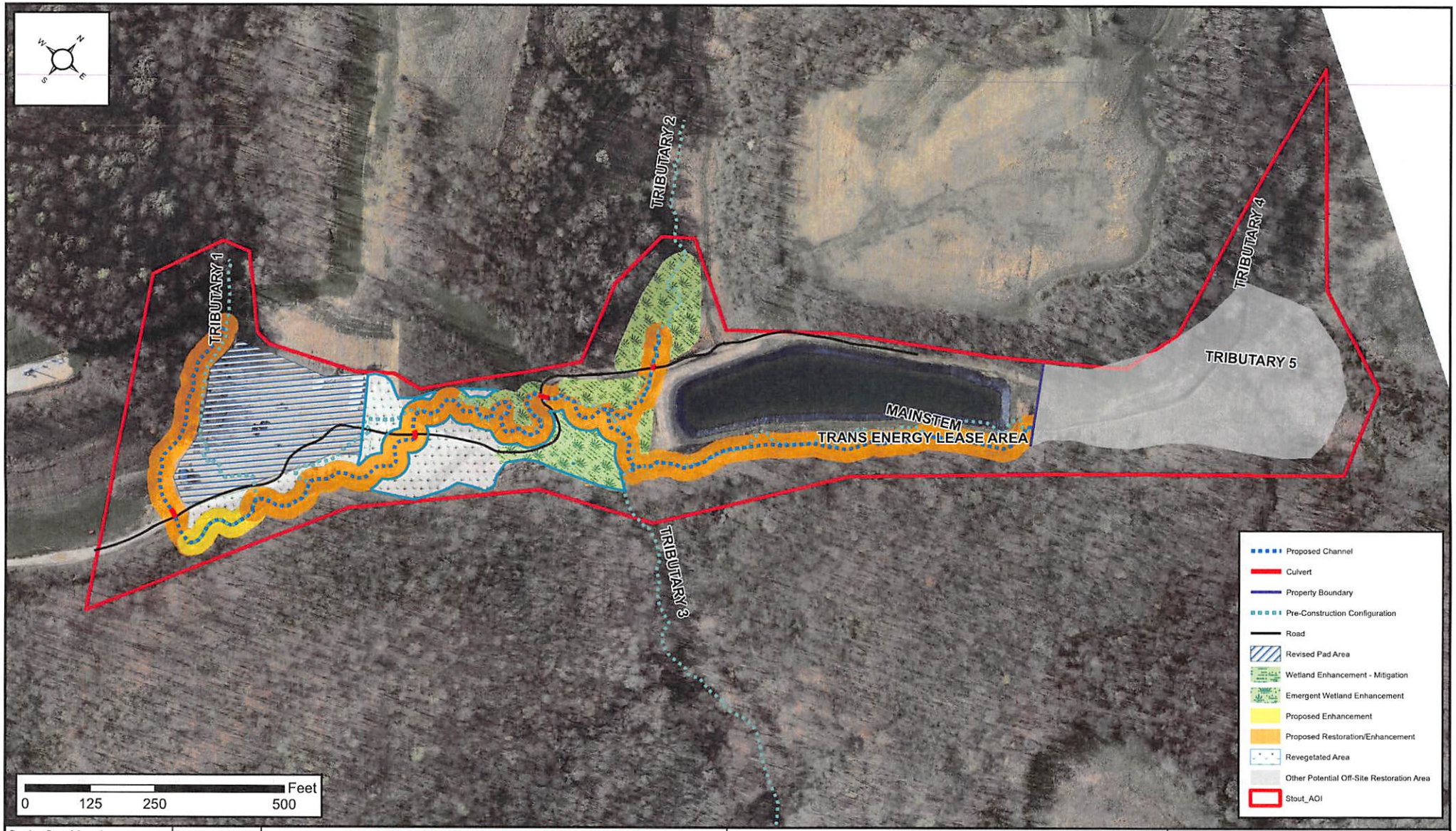
Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304
Office: (304) 342-1400 Fax: (304) 343-9031
E-mail: potesta@potesta.com

SCALE: 1" = 215
DATE: August 2014
PN: 0101-12-0443
DRAWN: JLY
CHECKED:
APPROVED:

TRANS ENERGY, INC.
210 Second Street
St. Marys, West Virginia 26170

MAPPING FOR VISUAL REPRESENTATION ONLY
Stream Restoration Mapping
Near Cameron, Marshall County, West Virginia
For Informational Purposes Only

FIGURE 2



Scale: See Mapping	Drawn: JLY
Date: AUGUST 2014	Review: JLY
Project No.: 0101-12-0443	Approve: JLY
I:\Projects\2012\12_0443\Map Documents\	

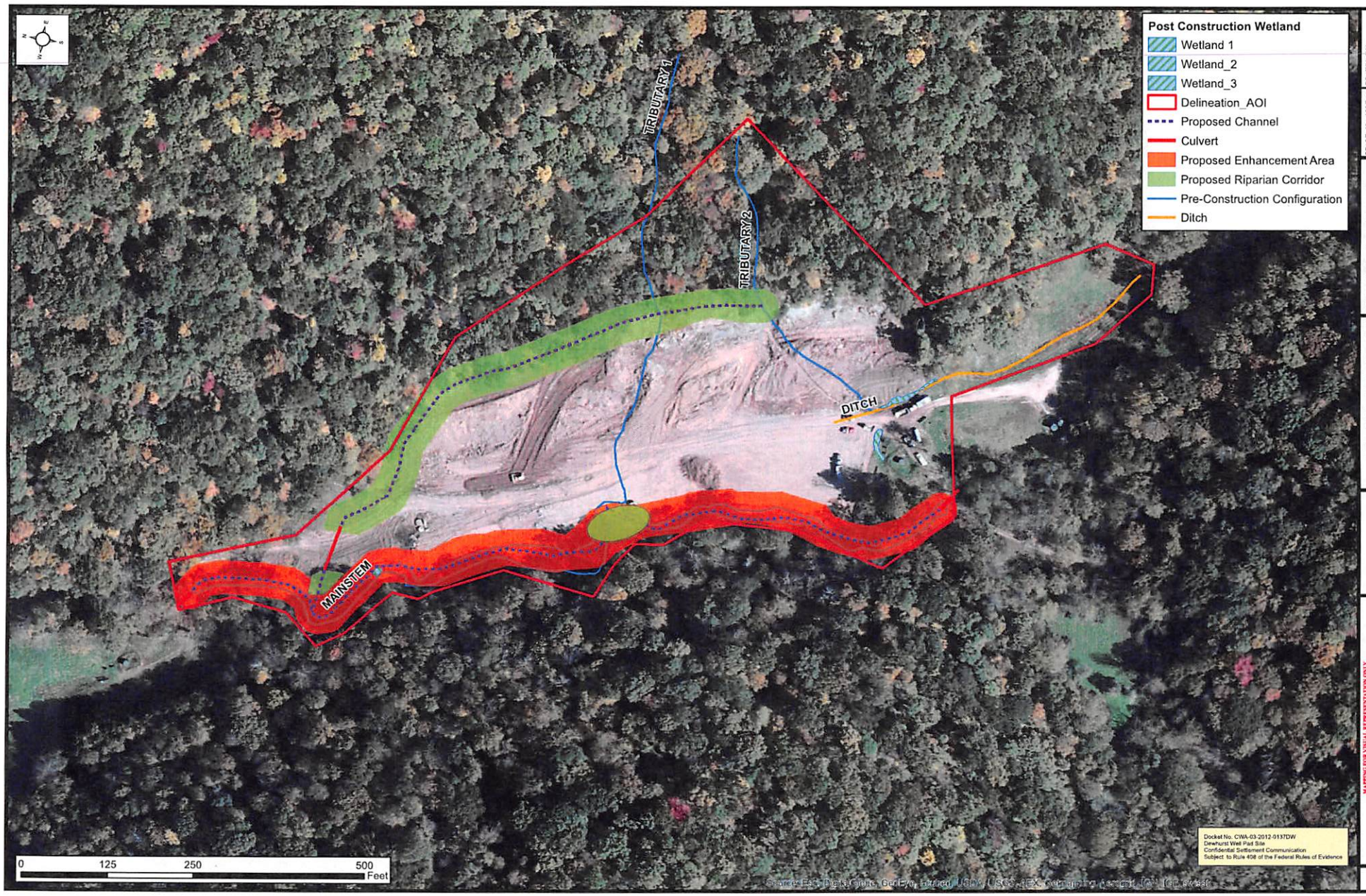
Dkt. No. CWA-03-2012-0280DW - Stout Well Pad Site
Confidential Settlement Communication,
Subject to Rule 408 of the Federal Rules of Evidence

Mapping For Visual Representation Only - Not For Construction

Basemapping provided by Kelly Surveying, Inc
Prepared by Blue Mountain Aerial Mapping

Figure No. 2
Conceptual Stream Restoration Mapping
Cameron, West Virginia 7.5 Minute USGS Quadrangle
Near Cameron, Marshall County, West Virginia

POTESTA
ENGINEERS AND ENVIRONMENTAL CONSULTANTS



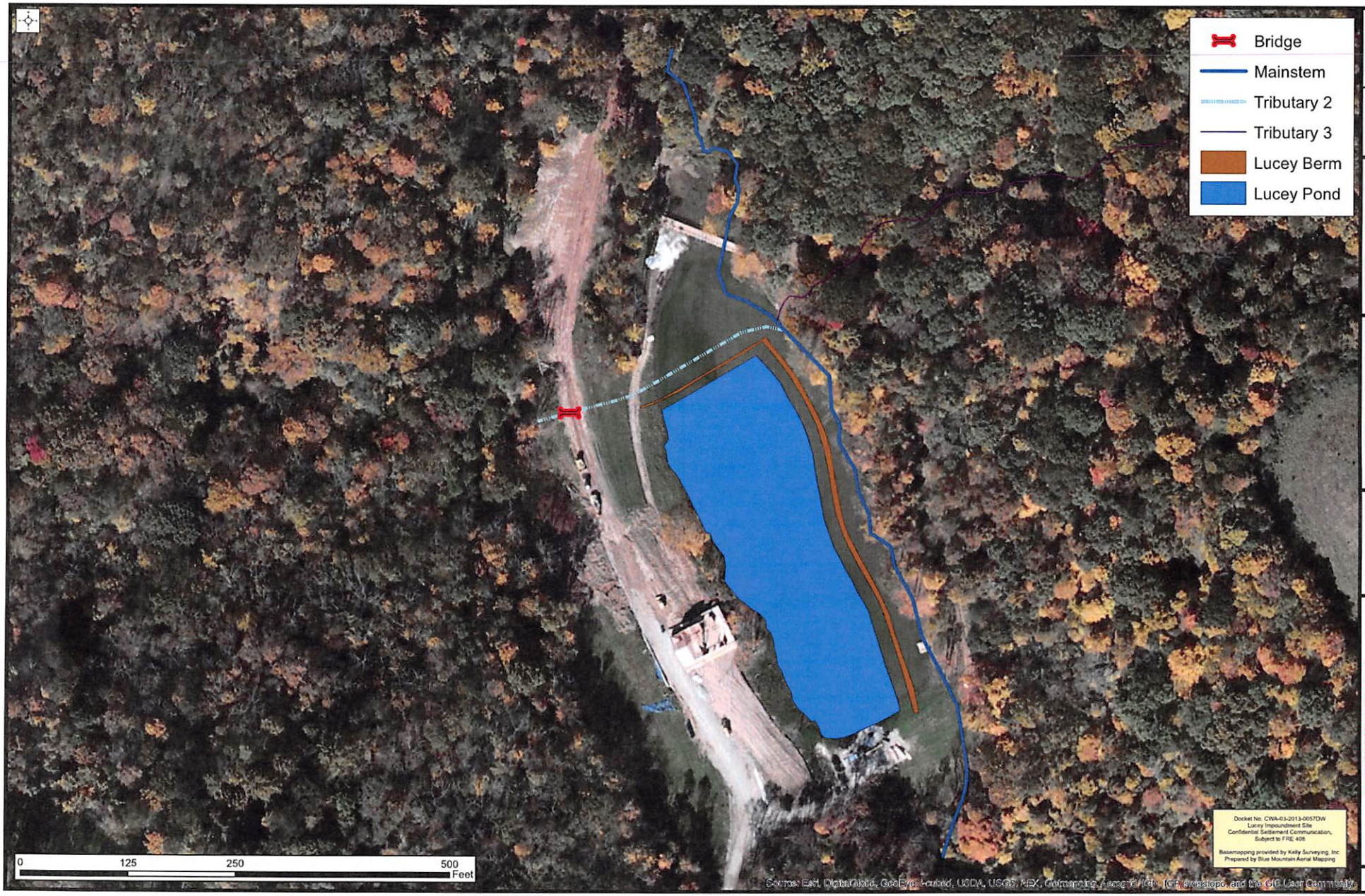
POTESTA

Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304
Office: (304) 342-1400 Fax: (304) 343-9031
E-mail: potesta@potesta.com

SCALE: 1" = 125 Feet
DATE: August 2014
PN: 0101-12-0443
DRAWN: JLY
CHECKED:
APPROVED:

MAPPING FOR VISUAL REPRESENTATION ONLY
Revised Restoration Mapping
Dewhurst Well Pad Site
Wetzel County, West Virginia
For Informational Purposes Only

FIGURE 1



MAPPING FOR VISUAL REPRESENTATION ONLY
Plan View - Conceptual Restoration
Lucey Pond
Near Cameron, Marshall County, West Virginia
For Informational Purposes Only

Trans Energy, Inc.
210 Second Street
St. Marys, West Virginia 26170

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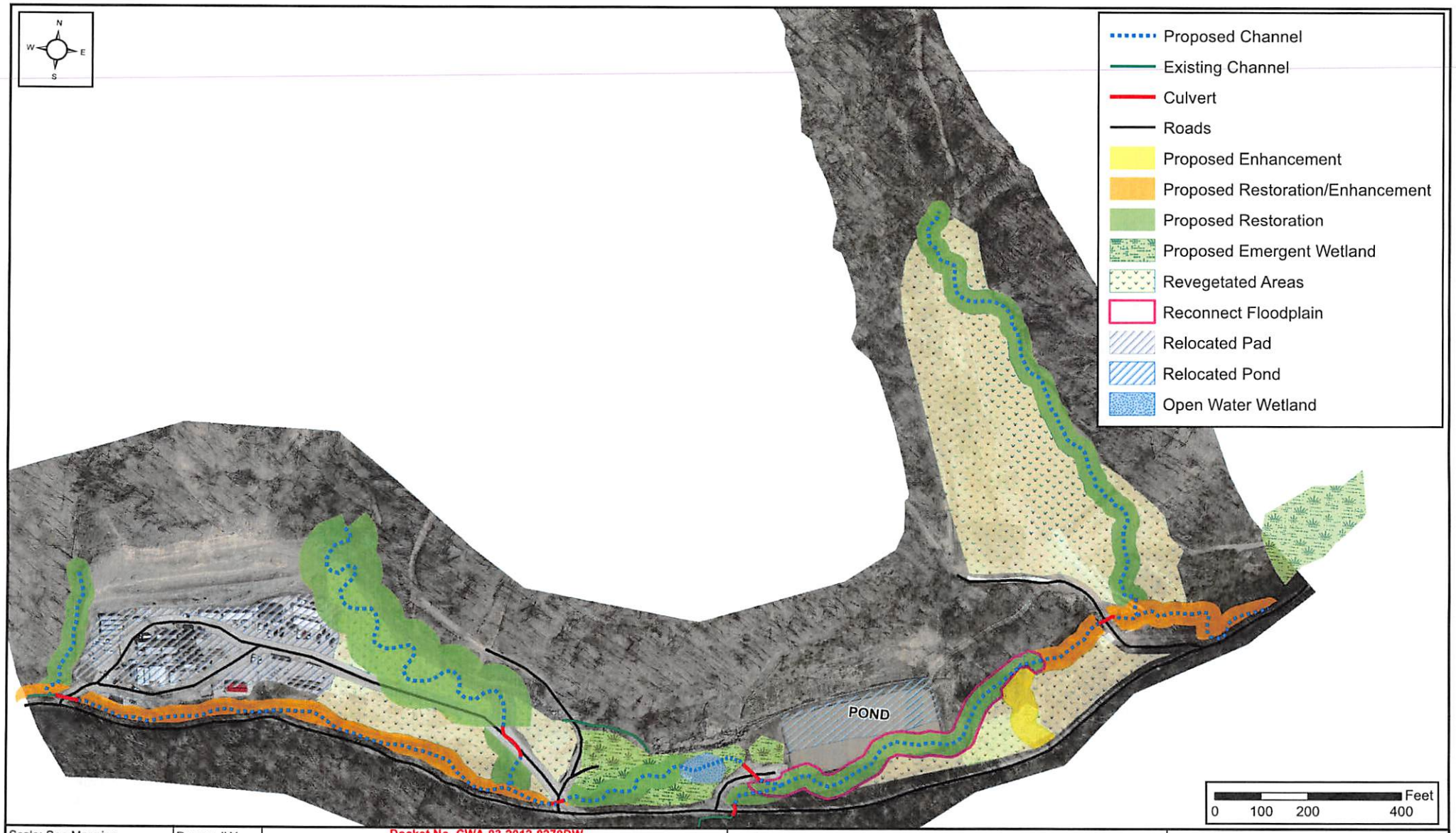
Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304
Office: (304) 342-1400 Fax: (304) 343-9031
E-mail: potesta@potesta.com

SCALE: 1" = 100'
DATE: JULY 2014
PN: 0101-12-0443-000
DRAWN: CHH
CHECKED: JY
APPROVED: JY

FIGURE 2

Legend
Restored Mainstem Channel
Restored Tributary 1
Restored Tributary 2
Restored Tributary 3
Lower Pond
Upper Pond A
Potential Upper Pond B
Berms
Low Water Crossing
Road
Jeep Trail
Culverts
Bottomless_Culvert
Post Construction Wetland
100 50 0 100 Feet
Docket No. CWA-03-2012-0055DW
Christopher Impoundment Site
Confidential Settlement Communication
Subject to Rule 408 of the Federal Rules of Evidence
Notes: Restoration of Mainstem and Tributary 3 may result in impacts to existing Post Construction Wetland
Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community
POTESTA
Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304
Office: (304) 342-1400 Fax: (304) 343-9031
E-mail: potesta@potesta.com
SCALE: 1" = 100'
DATE: JUNE 2014
PN: 0101-13-0380
DRAWN: CADD
CHECKED: KR
APPROVED: JLY
TRANS ENERGY, INC
210 SECOND STREET
SAINT MARYS, WEST VIRGINIA
MAPPING FOR VISUAL REPRESENTATION ONLY
Plan View - Conceptual Restoration
Christopher Pond
Marshall County, West Virginia
For Informational Purposes Only
Figure 2



Scale: See Mapping	Drawn: JLY
Date: AUGUST 2014	Review: JLY
Project No.: 0101-12-0443	Approve: JLY

I:\Projects\2012\12_0443\Map Documents\

Docket No. CWA-03-2012-0279DW
Anderson Impoundment & Well Pad Site
Confidential Settlement Communication,
Subject to Rule 408 of the Federal Rules of Evidence

Mapping For Visual Representation Only - Not For Construction
Basemapping provided by Kelly Surveying, Inc
Prepared by Blue Mountain Aerial Mapping

Figure No. 2
Conceptual Restoration Mapping
Folsom, West Virginia 7.5 Minute USGS Quadrangle
Near Jacksonburg, Wetzel County, West Virginia

POTESTA
ENGINEERS AND ENVIRONMENTAL CONSULTANTS

MAPPING FOR VISUAL REPRESENTATION ONLY

Plan View - Conceptual Restoration
Keaton Pond
Near Cameron, Marshall County, West Virginia

For Informational Purposes Only

TRANS ENERGY, INC.
210 Second Street
St. Marys, West Virginia 26170

POTESTA

Potesta & Associates, Inc.
ENGINEERS AND ENVIRONMENTAL CONSULTANTS
700 B MacCorkle Avenue, S.E.
Charleston, West Virginia 25314
Office: (304) 343-1400 Fax: (304) 343-9031
www.potesta.com

SCALE: 1" = 125 ft
DATE: August 2014
PN: 0101-12-0443
DRAWN: JLY
CHECKED: jly
APPROVED: JLY

FIGURE 1