

of, and loss of Natural Resources resulting from releases of hazardous substances into the environment.

B. The Complaint alleges that Settling Defendant is the successor in interest to or otherwise legally responsible for the acts and omissions of various entities that owned and operated three ore smelters and related operations located in Caney, Dearing and Neodesha, Kansas (hereinafter collectively the “Blue Tee Smelters”).

C. Investigations have concluded that hazardous substances including heavy metals, have been released at and from the Blue Tee Smelters in such amounts as to cause injury to natural resources under the Trusteeship of the Plaintiffs.

D. The Settling Defendant does not admit any liability arising out of the occurrence alleged in the Complaint, including the alleged release of hazardous substances and Natural Resource Damages.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 1345, and 1367, Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607, 9613(b) and K.S.A. 65-3430, 65-171, and K.S.A. 65-161 *et seq.*, and the Court has personal

jurisdiction over Settling Defendant. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), (c) and § 1395(a) and Section 113(b) of CERCLA. For purposes of this Consent Decree only, Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

II. PARTIES BOUND

2. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs and their departments, agencies and instrumentalities, and upon Settling Defendant and its respective successors and assigns. Any change in ownership or corporate status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

III. DEFINITIONS

3. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601, and in Section 11.14 of the Natural Resource Damages ("NRD") regulations, 43 CFR § 11.14. In addition, whenever the following terms are used in this Decree, they shall have the following meanings:

a. "Blue Tee Smelters" shall mean the ore smelters owned and/or operated by the American Zinc Lead & Smelting Company in Neodesha, Caney, and Dearing, Kansas and as depicted in Appendix A.

b. "Damage Assessment Costs" shall mean all costs associated with the planning, design, implementation, and oversight of the Plaintiffs' damage assessment process. The damage assessment process addresses the extent and quantification of the injury to, destruction of, or loss of Natural Resources and the services provided by those resources

resulting from the release of hazardous substances, and the planning of restoration or replacement of such Natural Resources and the services provided by those resources, or the planning of the acquisition of equivalent resources or services, and any other costs necessary to carry out the Plaintiffs' responsibilities with respect to those Natural Resource injuries resulting directly or indirectly from the releases of hazardous substances, including all related enforcement costs.

c. "Date of Lodging" shall mean the date on which the Plaintiffs give the Court notice of the Consent Decree, subject to the public comment period referred to in Section XIII.

d. "Day" means a calendar day unless expressly stated to be a "Working Day." "Working Day" shall mean a day other than a Saturday, Sunday or a Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next Working Day.

e. "Defendant", "Settling Defendant" or "Blue Tee" shall mean Blue Tee Corp.

f. "Effective Date" shall mean the date that the District Court signs the Consent Decree and enters it as a judicial order.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The

applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. “KDHE” shall mean the Kansas Department of Health and Environment.

i. “Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Kansas.

j. “Natural Resource Damages” shall mean any past and future damages recoverable by the United States or the State on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of the services or functions of Natural Resources resulting from the Blue Tee Smelter Releases, including, but not limited to (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable requirements of the State of Kansas.

k. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

l. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

m. “Parties” shall mean the Plaintiffs and Blue Tee.

n. “Plaintiffs” shall mean the United States on behalf of DOI, and the State of Kansas, by and through KDHE and the Secretary of KDHE.

o. “Specified Native Prairie” shall mean the approximately 80 acres of Kansas native prairie located at W2 of the NE/4 of Section 33, Township 21 South, Range 19 East Anderson County, Kansas and as more particularly described in Appendix B.

p. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

q. “Smelter Releases” shall mean the release of hazardous substances including but not limited to lead, zinc, cadmium and arsenic, that have occurred at and from the Blue Tee Smelters into area soils and sediments.

r. “State” shall mean the State of Kansas, including its departments, agencies, and instrumentalities.

s. “Trustees” shall mean the Natural Resource Damages Trustees who are the Secretary of the Kansas Department of Health and Environment and the United States Department of the Interior, Fish and Wildlife Service.

t. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

IV. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide herein for the payment by Settling Defendant of the costs of acquisition and management of property equivalent to the Natural Resources allegedly injured, destroyed, or lost as a result of the Smelter Releases; (ii) to provide for the conveyance of the Specified Native

Prairie as provided in Section VI, representing some equivalent Natural Resources and paid for by Settling Defendant, to The Nature Conservancy; (iii) to provide for the grant of a conservation easement to the Plaintiffs for the property provided for in Section VI; (iv) to provide for payment in advance by Settling Defendant to KDHE for the benefit of The Nature Conservancy in accordance with a final restoration plan developed by KDHE and the Department of the Interior, Fish and Wildlife Service of all costs of future Natural Resource Damages relating to the Smelter Releases, including but not limited to the long-term management of such Natural Resources; (v) to provide for reimbursement by Settling Defendant of past Natural Resource Damage Assessment Costs incurred by the United States and the State of Kansas; (vi) to resolve Settling Defendant's liability for Natural Resource Damages as provided herein; and (vii) to avoid potentially costly and time-consuming litigation.

V. PAYMENTS

5. Settling Defendant shall pay a total of \$180,298.27 plus Interest as indicated below to Plaintiffs in three separate payments as follows:

a. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall make a payment of \$88,989.27 plus Interest calculated from the Date of Lodging to the United States to reimburse the DOI for past costs associated with assessing federal Natural Resource Damages arising from Smelter Releases. Settling Defendant shall make this payment by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-06280/4, NRDAR Account No. 14X5198, and "United States Natural Resource Damages Past Costs re: Blue Tee Kansas Smelters." Payment shall be made in accordance with written instruction

provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office of the District of Kansas after the Date of Lodging.

b. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall make a further payment of \$58,041 plus Interest calculated from the Date of Lodging to the United States and KDHE for Natural Resource Damages. The \$58,041 shall be used jointly by DOI and KDHE for the assessment, planning, restoration, acquisition and/or rehabilitation of the equivalent of the injured Natural Resources resulting from the Smelter Releases and long-term management of such Natural Resources in accordance with a final restoration plan to be developed by the KDHE and DOI. This amount shall be managed as part of, and held in a distinct account within, DOI's NRDAR Fund (NRDAR Account No. 14X5198) designated as "Blue Tee Kansas Smelters." Settling Defendant shall make this payment by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-06280/4, NRDAR Account No. 14X5198, and "United States Natural Resource Damages re: Blue Tee Kansas Smelters." Payment shall be made in accordance with written instruction provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office of the District of Kansas after the Date of Lodging.

c. Within thirty (30) days of the Effective Date, Settling Defendant shall pay at total of \$33,268 to KDHE. Of this amount, (1) \$16,000 shall be for KDHE payment to The Nature Conservancy for operation and maintenance of the Restoration Plan developed by Trustees for the Specified Native Prairie to be transferred thereto pursuant to Section VI below and (2) \$17,268 shall be to reimburse KDHE for past costs. Settling Defendant shall make this

payment by certified or cashier's check payable to the "Kansas Department of Health and the Environment" and delivered to:

Bureau of Environmental Field Services
Attn: Leo Henning
Charles Curtis Building
1000 SW Jackson, Suite 430
Topeka, KS 66612-1367

VI. PROPERTY ACQUISITION

6. Within ninety (90) days of the Effective Date, Settling Defendant shall cause the current owner of the Specified Native Prairie to convey fee simple title to the Specified Native Prairie by warranty deed ("Deed") to The Nature Conservancy without payment from The Nature Conservancy, free and clear of all liens and encumbrances except the Exceptions from Coverage as set forth in Schedule B of the Commitment for Title Insurance (hereinafter "Exceptions from Coverage"), a copy of which is attached as Appendix C hereto. The Plaintiffs acknowledge that Settling Defendant has not made, nor does Settling Defendant hereby make, any representations or warranties as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Specified Native Prairie except as expressly set forth in this Section.

7. Defendant shall pay the current owner of the Specified Native Prairie the purchase price and related costs necessary to effect conveyance of the Specified Native Prairie to The Nature Conservancy as described in this Section, and neither Plaintiffs nor The Nature Conservancy shall have any liability for payment of said purchase price or related costs. Settling Defendant shall pay for an Owner's ALTA Title Insurance Policy ("Policy") insuring fee simple title to the Specified Native Prairie in The Nature Conservancy in the amount of the purchase

price as of the time and date of recording of the Deed, subject only to the “Exceptions from Coverage.”

8. At the same time as the transfer of the Specified Native Prairie, Settling Defendant shall record or cause to be recorded a conservation easement (“Easement”) on the Specified Native Prairie with the Register of Deeds of Anderson County, Kansas, in accordance with the Uniform Conservation Easement Act, K.S.A. 58-3810 *et seq.* that is enforceable under the laws of the State of Kansas by KDHE, and that substantially conforms with Appendix D.

9. Prior to the transfer of the Specified Native Prairie, Settling Defendant shall ensure that all real estate and other taxes applicable to Specified Native Prairie up to the date of transfer are paid in full and that no liens or encumbrances exist on Specified Native Prairie other than the Exceptions from Coverage. Settling Defendant shall direct the title insurance company to provide the Policy to The Nature Conservancy, with a copy to the Plaintiffs, and a certified copy of the original recorded Easement showing the clerk's recording stamps, as soon as each are available (which Settling Defendant anticipates being no more than fifteen days after the transfer of title to the Specified Native Prairie to The Nature Conservancy).

10. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their authorities and rights to obtain access and information under CERCLA and any other applicable statute or regulations.

VII. STIPULATED PENALTIES

11. If any payment required by Sections V (Payments) is not made by the date specified in that Section, Settling Defendant shall be liable for Interest and for the following stipulated penalties for each day such payment is late:

<u>Days Late</u>	<u>Penalty</u>
1 – 30	\$1,000/day
31 – 60	\$2,000/day
Beyond 60 days	\$3,000/day

12. If Defendant does not perform the obligations set forth in Section VI above, including causing the conveyance of the Specified Native Prairie and placement of a conservation easement thereon, within ninety (90) days of the Effective Date, Settling Defendant shall be liable for Natural Resource Damages in the amount of \$50,000 to be payable by the method specified in Paragraph 5.b. unless Settling Defendant demonstrates that it undertook its best efforts to comply with the requirements of Section VI but was nonetheless unable to do so for reasons beyond its control.

13. Penalties shall accrue as provided in this Section regardless of whether Plaintiffs have notified Settling Defendant of the payment delinquency or made a demand for payment, but Penalties are not required to be paid until thirty (30) days following receipt by Settling Defendant of a written demand by any of the Plaintiffs for payment of such stipulated penalties. Any such written notice and demand shall identify to which Plaintiff payment shall be made, with a copy to all parties to this Consent Decree.

14. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

15. All stipulated penalties owed by Settling Defendant with respect to late payment of past costs to the United States shall be paid to the United States Department of Justice by the method specified below. All stipulated penalties owed by Settling Defendant with respect to late payment of past costs to the State shall be paid to the State by the method specified below. All

other stipulated penalties owed by Settling Defendant shall be paid to the DOI's NRDAR Fund as specified in Paragraph 5a. All payments of stipulated penalties shall be made as follows:

a. To the State:

By certified or cashier's check payable to the "Kansas Department of Health and Environment" and delivered to:

Bureau of Environmental Field Services
Attn: Leo Henning
Charles Curtis Building
1000 SW Jackson, Suite 430
Topeka, Kansas 66612-1367

b. To the U.S. Department of Justice:

By certified or cashier's check payable to the "U.S. Department of Justice" and delivered to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
re: DOJ # 90-11-2-06280/4, Blue Tee Kansas Smelters

16. In addition to the stipulated penalties and Interest on late payments as provided in this Section, if the payments required by Section V or VI of this Consent Decree or the stipulated penalties provided for by this Section are not made, Settling Defendant shall be liable for Interest on such penalties and any costs and attorneys fees incurred by Plaintiffs in collecting any amounts owing.

17. Payments due under this Section shall be in addition to any other remedies or sanctions that may be available to the Plaintiffs on account of Settling Defendant's failure to comply with the terms of this Consent Decree.

VIII. EFFECT OF SETTLEMENT

18. Except as specifically provided in Paragraphs 19-20 of this Decree, the Plaintiffs covenant not to sue or to take civil or administrative action against Settling Defendant for Natural Resource Damages resulting from the Smelter Releases at the Blue Tee Smelters under CERCLA, 42 U.S.C. § 9607, or other applicable federal, State or common law. This covenant not to sue takes effect upon the Effective Date and is conditioned upon satisfactory performance by Settling Defendant of its obligations under this Consent Decree including the transfer of the Specified Native Prairie and placement of a conservation easement thereon as required by Section VI. This Covenant Not to Sue extends only to Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS

19. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve their rights to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages based on injury to, destruction of or loss of Natural Resources resulting from conditions not known to the Trustees at the Date of Lodging of this Consent Decree or if other information received by the Trustees after the Date of Lodging of this Consent Decree indicates that there is injury to, destruction of, or loss of Natural Resources of a type unknown or of a magnitude significantly greater than was known at the Date of Lodging of this Consent Decree for which Settling Defendant is legally responsible. Except as provided in Paragraph 24 below, Settling Defendant preserves all of its defenses in such proceedings.

20. Notwithstanding any other provision of this Consent Decree, the covenants not to sue in Paragraph 18 shall apply only to matters addressed in that paragraph and Plaintiffs reserve all other claims including but not limited to:

- a. claims based on a failure by Settling Defendant to satisfy any requirement imposed upon it by this Consent Decree;
- b. claims for criminal liability;
- c. claims for recovery of the costs of removal or remedial action, injunctive relief or administrative order enforcement under any provision of federal or state law including but not limited to: Section 311 of the Clean Water Act, 33 U.S.C. § 1321 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, including claims under Section 107(a)(4)(D) of CERCLA, 42 U.S.C. § 9607 (a)(4)(D), for the costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i); and
- d. claims for Natural Resource Damages not resulting from the Smelter Releases at the Blue Tee Smelters.

X. COVENANT OF SETTLING DEFENDANT

21. Settling Defendant hereby covenants not to sue or to assert any judicial, administrative or legislative claims or causes of action against the United States or the State, or their contractors or employees, with respect to Natural Resource Damages resulting from the Smelter Releases or the payments required by this Consent Decree, including, but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. Any claims against the United States, including any department, agency or instrumentality of the United States or the state of Kansas, under CERCLA Sections 107 or 113, relating to Natural Resources Damages resulting from the Smelter Releases;

c. Any claims against the State of Kansas before the Kansas joint committee on special claims relating to Natural Resource Damages resulting from the Smelter Releases.

XI. CONTRIBUTION PROTECTION

22. The Parties agree, and by entering this Consent Decree, this Court hereby finds, that Settling Defendant is entitled as of the Effective Date, to protection from contribution actions or claims provided by Section 113 (f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law for “matters addressed” by this Consent Decree. The “matters addressed” in this Consent Decree are all Natural Resource Damages resulting from the Smelter Releases at the Blue Tee Smelters incurred by the United States, the State of Kansas or Settling Defendant.

23. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. This Consent Decree does not affect, waive or in any way impair any agreements that Settling Defendant may have with any third party. Except as provided by Paragraphs 18 & 21, each of the Parties, including Settling Defendant, expressly reserve any and all rights (including, but not limited to, any right to contribution) defenses, claims, demands and causes of action that it may have against any person not a signatory hereto.

24. In any subsequent administrative or judicial proceeding initiated by the United States pursuant to Section IX (Reservation of Rights) for injunctive relief, recovery of response costs, penalties, Natural Resource damages or other relief relating to the Smelter Releases, Settling 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-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by the United States and the State set forth in Section VIII of this Consent Decree.

25. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by them for matters related to Natural Resource Damages relating to the Smelter Releases or this Consent Decree, they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim, unless the giving of such advance notice would subject such suit or claim to a defense that it is barred by the statute of limitations or other time-related defense.

26. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States and the KDHE within ten (10) days of service of the complaint. In addition, Settling Defendant shall notify the United States and the KDHE within ten (10) days of receipt of any Motion for Summary Judgment with respect to such a claim, and within ten (10) days of receipt of any order from a court setting such a case for trial.

27. Nothing in this Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R § 300.700(d).

XII. CONSENT DECREE MODIFICATIONS

28. Any material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree, in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree in writing. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XIII. LODGING AND PUBLIC COMMENT

29. The Parties acknowledge that this Consent Decree will be subject to a public comment period of not less than thirty (30) days. Consequently, entry of the Decree after lodging shall be deferred to allow the time necessary for the Plaintiffs to obtain and evaluate public comments on this Consent Decree. The Plaintiffs reserve the right to withdraw their consent to this Consent Decree if comments received disclose facts or considerations that show that this Consent Decree is inappropriate, improper, inadequate, or otherwise not in the public interest. Settling Defendant consents to the entry of this Consent Decree by the Court without further notice. Settling Defendant further agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless either the United States or the State of Kansas has notified the Defendant in writing that they no longer support entry of the Consent Decree.

XIV. NOTICE

30. Any notice required hereunder shall be in writing and shall be delivered to the following:

As to the United States:

Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044

Restoration Fund Manager
Natural Resource Damage Assessment and Restoration Program
U.S. Department of the Interior
1849 C Street, NW, MS - 4449
Washington, D.C. 20240
Re: Blue Tee Kansas Smelters

Field Supervisor
Manhattan Ecological Services Field Office
U.S. Fish and Wildlife Service
2609 Anderson Ave.
Manhattan, KS 66502

As to the Kansas Department of Health and Environment:

Leo Henning
Bureau of Environmental Field Services
Charles Curtis Building
1000 SW Jackson, Suite 430
Topeka, Kansas 66612-1367

As to the Settling Defendant:

Thomas J. Grever
Shook, Hardy & Bacon LLP
2555 Grand Blvd
Kansas City, MO 64108

31. Each Party to this Consent Decree may change the person(s) it has designated to receive notice for that party, or the addresses for such notice, by serving a written notice of such change on each of the other Parties to this Consent Decree.

XV. SIGNATORIES/SERVICE

32. Each undersigned representative of each Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to legally execute this Consent Decree, and to bind the party he or she represents to this Consent Decree.

33. This Consent Decree may be signed in counterparts and such counterpart signature pages shall be given full force and effect.

34. Settling Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of Civil Procedure and other applicable Local rules of this Court including, but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the Complaint in this action unless or until this Court expressly declines to enter this Consent Decree.

XVI. ENTIRE AGREEMENT

35. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Plaintiffs on the one hand and Settling Defendant on the other hand with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written between the Plaintiffs and Settling Defendant. No other document, nor any representation, inducement, agreement, understanding,

or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XVII. JUDGMENT

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE
DISTRICT OF KANSAS

FOR THE UNITED STATES OF AMERICA:

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. Blue Tee Corp. subject to the public notice and comment requirements of Section XIII of this Consent Decree.

Dated: 12/7/2010

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice

Dated: 1/13/2011

ELIZABETH L. LOEB
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4180 fax
(202) 616-8916 direct

BARRY R. GRISSOM
United States Attorney
District of Kansas

TANYA SUE WILSON
Assistant United States Attorney
Ks. S.Ct. No. 11116
Federal Building, Suite 290
444 S.E. Quincy Street
Topeka, KS 66683-3592
Telephone: (785) 295-2850
Facsimi
E-mail:

FOR THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al.
v. Blue Tee Corp. subject to the public notice and comment requirements of Section XIII of
this Consent Decree.

Dated: Nov 3, 2010

JOHN W. MITCHELL
Acting Secretary
Kansas Department of Health and
Environment

PAUL GERARD MARX
Special Assistant Attorney General
Kansas Department of Health and Environment

FOR SETTLING DEFENDANT BLUE TEE CORP.

WE HEREBY CONSENT to the entry of the Consent Decree in United States et

al. v. Blue Tee Corp.

Date 11/30/10

Name	
Title	<i>Special Counsel</i>
Address	<i>1 N. Maple Avenue</i>
Phone	<i>Greensburg, PA 15601</i>
Fax	<i>724-837-6221</i>
Email	<i>724-837-0971</i>

Agent Authorized to Accept Service on Behalf of Above Signed Party:

Name: Thomas Grever

Title: Attorney

Address: Shook, Hardy & Bacon LLP

2555 Grand Boulevard

Kansas City, Missouri 64108

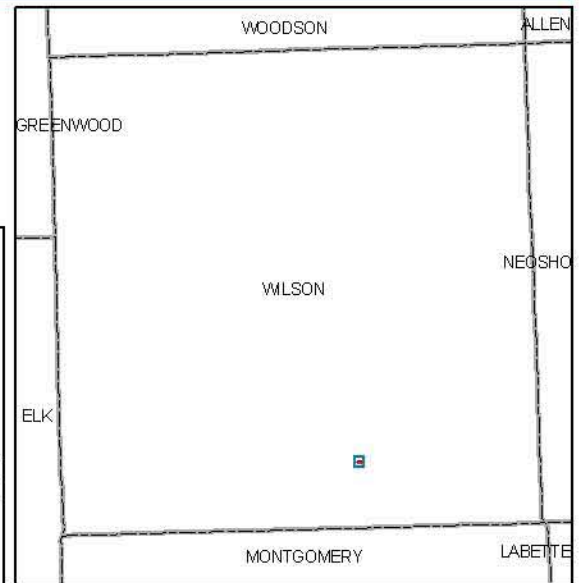
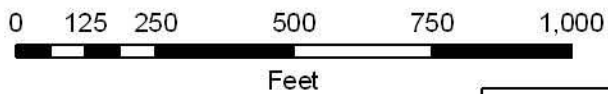
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APPENDIX A





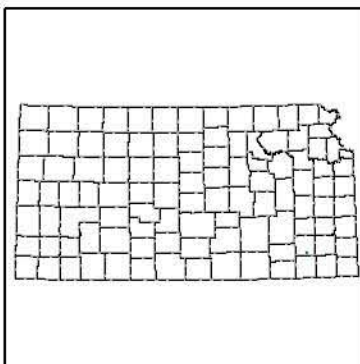
Appendix A. American Zinc Lead & Smelting Company, Neodesha Smelter

Site Location: SE/4 Section 18, Township 30 South, Range 16 East



Legend

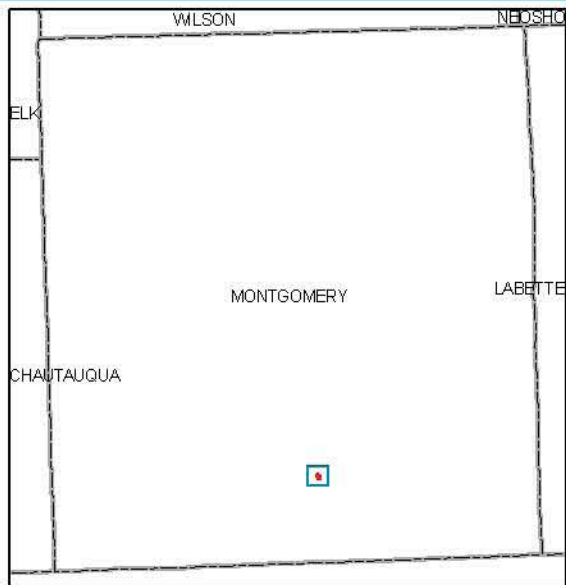
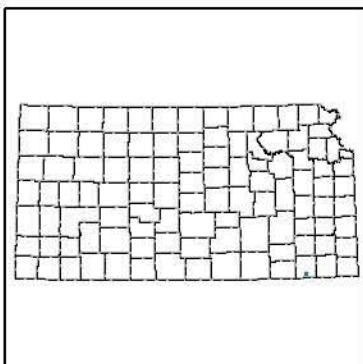
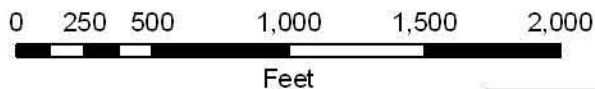
-  County Boundary
-  Site Boundary





Appendix A. American Zinc Lead & Smelting Company, Dearing Smelter

Site Location: NW/4 of Section 25, Township 34 South, Range 15 East



Legend

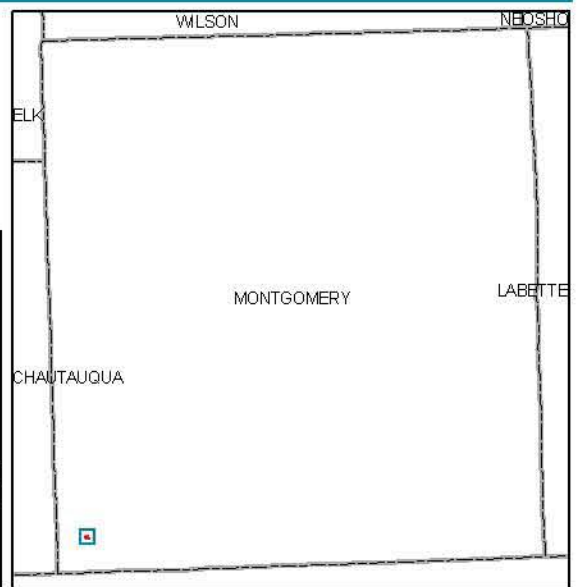
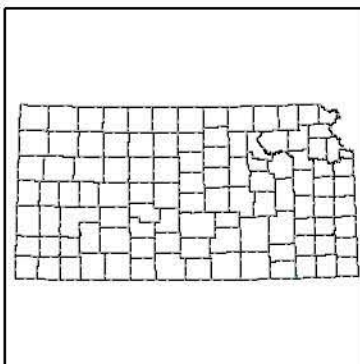
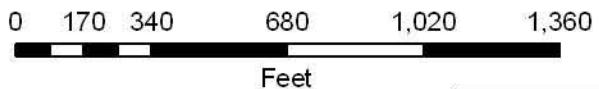
-  Site Boundary
-  County Boundary





Appendix A. American Zinc Lead & Smelting Company, Caney Smelter

Site Location: S/2 of Section 1, Township 35 South, Range 13 East



Legend

-  Site Boundary
-  County Boundary

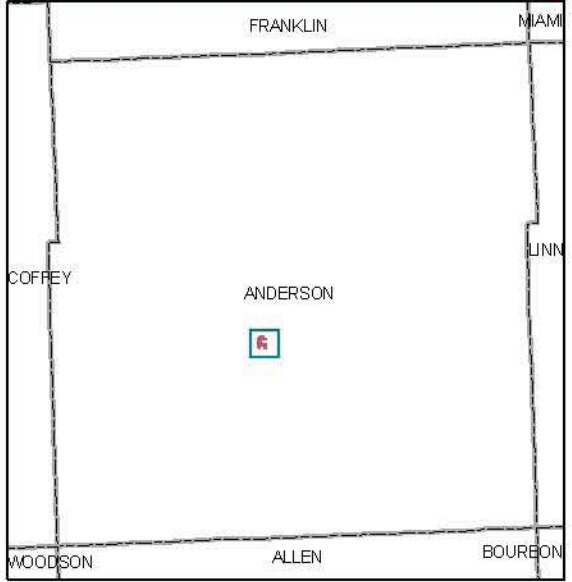
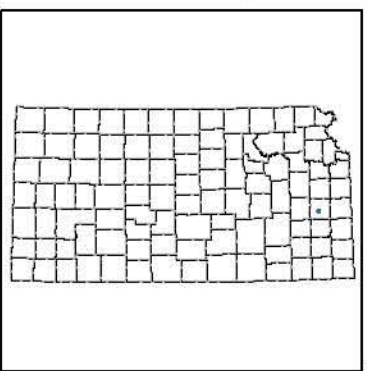
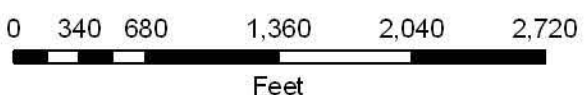


APPENDIX B



Appendix B. Specified Native Prairie

Site Location: W/2 of the NE/4, Section 33, Township 21 South, Range 19 East

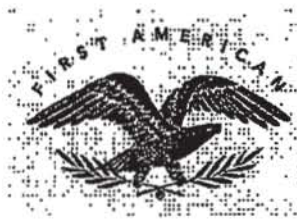


Legend

- Boundary
- County Boundary



APPENDIX C



COMMITMENT FOR TITLE INSURANCE

Issued by

First American Title Insurance Company

First American Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the Land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

First American Title Insurance Company

BY: _____
PRESIDENT

ATTEST: _____
SECRETARY



Issued by and through its Authorized Agent:

Anderson County Abstract Co.
109 East 4th
Garnett, Kansas 66032
785.448.2426

Issued by: Anderson County Abstract Co.

Name and Address of Title Insurance Company:
First American Title Insurance Company
1 First American Way, Santa Ana, CA 92707

SCHEDULE A

Commitment Number:

1. Effective Date: November 9, 2010 at 9:00 AM

2. Policy or Policies to be issued:

Policy Amount:

a. ALTA Owners Policy (6-17-06)
Proposed Insured:

\$82,000.00

to be determined,

b. ALTA Loan Policy (6-17-06)
Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

A. Scott Ritchie, Carol L. Ritchie and A. Scott Ritchie
III, Trustees of the A. Scott Ritchie Revocable Living
Trust under agreement dated June 6, 2007,

5. The land referred to in this Commitment is described as follows:

Tract #1:

The West Half (W/2) of the West Half (W/2) of the Northeast
Quarter (NE/4) of Section Thirty-three (33), Township Twenty-one
(21) South, Range Nineteen (19) East of the Sixth Principal
Meridian,

Tract #2:

The East Half (E/2) of the West Half (W/2) of the Northeast
Quarter (NE/4) of Section Thirty-three (33), Township Twenty-one
(21) South, Range Nineteen (19) East of the Sixth Principal
Meridian, all in Anderson County, Kansas.

Issued by: Anderson County Abstract Co.

Name and Address of Title Insurance Company:
First American Title Insurance Company
1 First American Way, Santa Ana, CA 92707

SCHEDULE B

Commitment Number:

I. Requirements:

A. Instruments in insurable form which must be executed, delivered and duly filed for record:

1. Obtain a warranty deed from A. Scott Ritchie, Carol L. Ritchie and A. Scott Ritchie III, Trustees of the A. Scott Ritchie Revocable Living Trust under agreement dated June 6, 2007, to the yet to be determined purchaser, and file said deed of record.

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- 1. Any lien, or right to lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by Public Records.
- 2. Any encroachment, encumbrance, violation, variation or adverse circumstances affecting Title that would be disclosed by an accurate and complete survey of the Land or that could be ascertained by an inspection of the Land.
- 3. Easements, or claims of easements, not shown by the Public Records.
- 4. Right or claims of parties in possession not shown by the Public Records.
- 5. Taxes, or special assessments, if any, not shown as existing liens by the Public Records.

C. Special Exceptions:

1. General taxes and special assessments for the year 2010 and subsequent years, not yet due and payable. Taxes for the year 2009 in the sum of \$145.50 are paid in full, with tax ID#08001100. Taxes for the year 2010 in the sum of \$134.04 are unpaid.

2. Terms and provisions of the oil and gas lease dated June 23, 1924, filed August 19, 1924 at 8:00 A.M., recorded in Book 4 O&G, at page 164, between J. T. Watkins, et ux, lessors, and Odessa Oil Corp., lessee.

3. Financing statements, if any, affecting crops growing or to be grown on the land in question.

Issued by: Anderson County Abstract Co

... Schedule B Continued

No liability is assumed hereunder for financing statements not recorded in the Real Estate Records, which may affect crops growing or to be grown on the land above described.

4. Rights of the public, State of Kansas, County of Anderson and the Municipality in and to that part of the premises in question, if any, taken or used for road purposes.

INVOICE

ANDERSON COUNTY ABSTRACT CO., LLC

109 East Fourth Avenue
 Garnett, KS 66032-1502
 785-448-2426
 Fax: 785-448-6999

Date: November 9, 2010

To: A. Scott Ritchie Trust,

REAL ESTATE	Recording Fees	Title Ins.	Abst.
Title Insurance covering: W/2 W/2 NE/4 & E/2 W/2 NE/4 Sec. 33, Twp. 21, Rng. 19, (Reissue credit given.)		\$420.00	
SUBTOTAL	\$0.00	\$420.00	\$ 0.00
Delivered to:		TOTAL	\$420.00

APPENDIX D

APPENDIX D

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted this ___ day of _____, 2010, by THE NATURE CONSERVANCY, a non-profit corporation existing under and by virtue of the laws of the District of Columbia (the "Conservancy") to the State of Kansas ("Grantee").

RECITALS:

A. PROTECTED PROPERTY. The Conservancy is the owner in fee simple of approximately eighty (80) acres of real property in Anderson County, Kansas, which is legally described in Exhibit A attached hereto and incorporated by reference herein ("Protected Property").

B. CONSERVATION VALUES. The Protected Property, in its present state, has significant natural, aesthetic, scientific and educational values as a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder (collectively, "Conservation Values").

In particular, the Protected Property is considered to be a highly functional and intact native prairie ecosystem, and thus, it provides a tremendous variety of ecological services. Native prairie is one of the most endangered ecosystems in the world. In addition to providing valuable breeding habitat for numerous species of migratory grassland birds, the Protected Property contains a significant number of the federally-listed Mead's milkweed plants, and several state-listed Species in Need of Conservation. Of the original acres of tallgrass prairie that remain, only a fraction are equivalent to the ecological services provided by the Protected Property in its current state.

C. EXISTING USES AND IMPROVEMENTS. The Protected Property has historically been used to harvest hay. The Conservation Values of the Protected Property have not been and are not likely to be adversely affected to any substantial extent by uses of the Protected Property for cutting, baling or removing hay which presently exist on the Protected Property or which are authorized under this Easement.

D. QUALIFIED HOLDER. Grantee is a sovereign state government with the authority to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is an entity that is permitted by law to hold conservation easements.

GRANT OF CONSERVATION EASEMENT:

THEREFORE, in consideration of and for the facts above recited, and of the mutual covenants, terms, conditions and restrictions herein contained, and pursuant to the laws of the State of Kansas, and in particular Kansas Statutes Annotated 58-3810 *et seq.*, the Conservancy hereby grants and conveys as an absolute and unconditional gift unto Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following terms and conditions (“Easement”):

1. **PURPOSE.** It is the purpose of this Easement to assure that the Protected Property will be retained forever substantially undisturbed in its natural condition as native prairie and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. The Conservancy intends that this Easement will confine the use of the Protected Property to activities that are consistent with the purpose of this Easement.

2. **PROHIBITED USES/RESTRICTIONS.** Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1. **Commercial Activity.** Except as specified in Paragraph 3 below, there shall be no industrial, commercial, agricultural or commercial recreational activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

2.2. **Structures.** There shall be no construction or placing of any house, garage, barn or other building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those permitted, required or allowed by Grantee for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on the Protected Property. Notwithstanding the foregoing, Grantor may erect temporary and/or portable structures on the Protected Property in conjunction with any restoration, monitoring, or research activities conducted on the Protected Property. For the purpose of this Easement, “temporary and/or portable structures” are defined as those that are removable, non-damaging free-standing structures.

2.3. **Subdivision.** The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as an entity.

2.4. **Mining.** There shall be no mining, drilling, exploring for or removal of minerals from the Protected Property.

2.5. **Topography.** There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner except in conjunction with activities otherwise specifically authorized herein.

2.6 Cultivation. There shall be no tilling or plowing of native prairie on the Protected Property.

2.7. Water. There shall be no manipulation or alteration of creeks, streams, surface or subsurface springs or other bodies of water or the shorelines thereof or any activities on or uses of the Protected Property detrimental to water purity or quality.

2.8. Dumping. There shall be no dumping of trash, garbage, hazardous or toxic substance or other unsightly or offensive material.

2.9. Roads. There shall be no building of new roads or other rights of way except for paths and foot trails consistent with the preservation of the Protected Property. Existing roads may be maintained but shall not be widened or improved.

2.10. Vehicles. There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational vehicles on the Protected Property, except for emergencies and except in conjunction with activities otherwise allowed by this Conservation Easement. Cars, trucks, farm equipment, ATVs and other vehicles shall not be considered as recreational vehicles when used for purposes allowed by this Conservation Easement (e.g., mowing and baling of prairie hay and activities related to natural resource management and research). All permitted vehicle use shall be conducted in a manner that minimizes damage to the Conservation Values of the Protected Property.

2.11. Plant Removal and Introduction. Excavation or removal of native plants on the Protected Property is prohibited, except for the express purpose of scientific study or experimentation by those possessing any and all necessary and valid authorization and scientific or other collecting permits and licenses. No non-native tree or other plant shall be planted on the Protected Property. Non-native or invasive native species of grasses and trees shall be managed in a manner to maintain or enhance the conservation value of the Protected Property

2.12. Spraying. Herbicides may be used for the control of state designated noxious weeds and for the control of invasive plant species, but the use of such herbicides shall be designed to minimize any adverse impact on the diversity of native plant species. Any herbicide, insecticides, fungicide or rodenticide shall be used 1) only in those amounts and with a frequency of application that constitute the minimum necessary for control; 2) shall be used in compliance with all applicable regulation and label application recommendations; and 3) shall be applied in a manner that minimizes impacts to non-target species.

2.13. Density. Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferrable development rights scheme, cluster development arrangement or

otherwise; provided, however, that with prior written consent of Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

3. **THE CONSERVANCY'S RESERVED RIGHTS.** The Conservancy reserves for the Conservancy, and successors and assigns, all rights as owners of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

3.1. **Conveyance.** The Conservancy, its successors and assigns may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement, and written notice is provided to Grantee in accordance with paragraph 5.5 below.

3.2. **Haying and Grazing.** The Protected Property may be used for haying native plant communities and prescribed grazing of livestock in a manner that will: (a) maintain native prairie plant and animal communities, (b) minimize erosion, (c) minimize invasion by exotic plants by retaining healthy vegetative cover, and (d) protect sensitive aquatic resources such as riparian areas, pools, ponds, springs and seeps.

3.3. **Fences.** The Conservancy may, but shall not be obligated to, repair, replace, maintain, improve or remove any fence located on the Protected Property as of the date of this Conservation Easement, and may increase the amount of fencing over the amount present as of the date of this Conservation Easement.

3.4. **Roads, Crossings and Dams.** In order to prevent erosion and soil loss, the Conservancy may relocate any existing unimproved pasture roads/trails on the Protected Property and add new pasture roads/trails on the Protected Property, provided that the disturbance to soils is minimized. Existing roads may be maintained, and erosion control or repair activities that may result in topographic changes may be made to roads, crossings or dams that are adversely affected by erosion. Abandoned roads shall be returned to native vegetation cover, either by letting natural succession occur or by replanting with appropriate, native species (based on soil type) using local ecotypes.

3.5. **Native Species.** The Conservancy may undertake to restore and/or enhance the native plant and animal communities on the Protected Property to the extent consistent with the other terms of this Conservation Easement.

3.6. **Hunting and Fishing; Other Non-intensive Outdoor Recreation.** The Conservancy reserves the right to allow hunting and fishing for native or naturalized species on the Protected Property in compliance with all state and federal laws and regulations. The Conservancy may allow other non-intensive outdoor recreational activities including but not limited to hiking, nature observation, outdoor education and nature study, and enjoyment of open space on the Protected Property.

3.7. Signs. The Conservancy may place on the Protected Property interpretive signs, such as signs identifying that the Protected Property is protected by this Conservation Easement, or signs identifying prairie habitat improvements, as well as “no hunting,” “no trespassing” or similar signs.

3.8. Preservation. The Conservancy shall be obligated to undertake activities necessary to maintain or enhance the Conservation Values of the Protected Property.

3.9. Timber Resources. The Conservancy may harvest any timber resources from the Protected Property for its own use or for commercial use.

4. **GRANTEE’S RIGHTS AND REMEDIES**. In order to accomplish the conservation purposes of this Easement, Grantee shall have the following rights and remedies:

4.1. Remedies. Grantee shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of the Conservancy set forth herein. Grantee, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act.

Nothing herein shall be construed to entitle Grantee to institute any enforcement proceeding against the Conservancy for any changes to the Protected Property due to causes beyond the Conservancy’s control, such as changes caused by fire, flood, storm, infestations, natural deterioration, provided, however, that the Conservancy shall notify Grantee of any occurrence which would adversely affect or interfere with the conservation purpose of the Easement, whether caused by the acts or omissions of the Conservancy or third parties.

Grantee shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and the Conservancy waives any bond requirement otherwise applicable to any petition for such relief. Grantee shall have the right to report to regulatory authorities any environmental conditions, or any potential or actual violations of environmental laws, with respect to the Protected Property.

All reasonable costs incurred by Grantee in enforcing the terms of this Easement against the Conservancy, including, without limitation, costs and expenses of suit and reasonable attorneys’ fees, and any costs of restoration necessitated by the Conservancy’s violation of the terms of this Easement shall be borne by the Conservancy; provided, however, that if the Conservancy ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

4.2. Right of Entry. Grantee shall have the right to enter the Protected Property in a reasonable manner and at reasonable times.

4.3. Discretionary Consent. Grantee’s consent for any activities requiring Grantee’s

consent under paragraph 2 or 3 above may be given under the following conditions and circumstances. Requests for permission for activities requiring Grantee's consent under paragraph 2 or 3 shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activities (a) do not violate the purpose of this Easement; and (b) either enhance or do not impair any significant Conservation Values of the Protected Property. Notwithstanding the foregoing, the Conservancy and Grantee have no right or power to agree to any activities that would result in the termination of this Easement or to allow residential, commercial or industrial activities not provided for herein.

Other than circumstances described in paragraphs 2 or 3 herein, it is Grantee's presumption that this Conservation Easement will not be amended or modified. In the event of truly unforeseen circumstances or exceptional situations, Grantee may agree to amend or modify this Easement, but in no event shall such amendment be made without compliance with any state laws regarding the amendment of conservation easements. Any amendment must also meet the requirements described in (a) and (b), above.

5 GENERAL PROVISIONS.

5.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Conservancy, the Conservancy's successors and assigns.

5.2. Easement Documentation. The Conservancy and Grantee agree that the natural characteristics, the ecological and aesthetic features, the physical condition and the Conservation Values of the Protected Property at the time of this grant are documented in an Easement Documentation Report, prepared by Grantee and signed and acknowledged by the Conservancy and a representative of Grantee, establishing the condition of the Protected Property at the time of this grant and including reports, maps, photographs and other documentation.

5.3. Access. Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

5.4. Assignment. This Easement is in gross and may be assigned or transferred by Grantee. Grantee agrees that, if it transfers or assigns its interest in this Easement:

a. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder; and

b. The transferee or assignee will be required to carry out in perpetuity the conservation purposes which this Easement was originally intended to advance.

5.5. Subsequent Transfers by the Conservancy. Unless this Easement is extinguished, as set forth below, the Conservancy agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Conservancy in any subsequent deed or other legal instrument by which the Conservancy divests itself of any interest in the Protected Property. The Conservancy agrees to notify Grantee, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

5.6. Extinguishment. The Conservancy agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Protected Property as a whole at that time. The proportionate value of Grantee's property rights shall remain constant.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings), then upon the sale, exchange or involuntary conversion of the Protected Property, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the Easement described above. Grantee will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

5.7. Title Warranty. The Conservancy hereby warrants and represents that the Conservancy is seized of the Protected Property in fee simple and have good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances except for a hay lease, granted to D. Richard Wiley, the term of which permits one hay harvest through October 30, 2010, and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

5.8. Real Estate Taxes. The Conservancy agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property and that Grantee shall have no duty or responsibility to manage or maintain the Protected Property.

5.9. Costs and Liabilities. The Conservancy retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Conservancy shall keep Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by the Conservancy.

5.10. Re-recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Conservancy appoints Grantee the Conservancy's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on the Conservancy's behalf. Without limiting the foregoing, the Conservancy agrees to execute any such instruments upon request.

5.11. Definitions. The terms "the Conservancy" and "Grantee" as used herein shall be deemed to include, respectively, the Conservancy, and its successors and assigns in title to the Protected Property, and Grantee, its successors and assigns.

5.12. Notices. Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to the following address or such address as may be hereafter specified in writing:

State of Kansas
c/o
Secretary, Department of Health and Environment
Natural Resources Trustee
1000 SW Jackson
Topeka, KS 66612
ATTN: Leo Henning

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
ATTN: General Counsel

With a copy to:

The Nature Conservancy
Midwestern Resource Office
1101 West River Parkway, Suite 200
Minneapolis, MN 55415

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

5.14. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of Kansas Statutes Annotated 58-3810 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any

LEGAL DESCRIPTION

EXHIBIT A

West half of the North East Quarter of Section 33, Township 21S, Range 19E, Anderson County
Kansas. (W/2 NE/4 Section 33-21S-19E)