



# State Revolving Fund Loan Programs

## Drinking Water, Wastewater, Nonpoint Source

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### ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT

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#### NEWTON COUNTY REGIONAL WATER AND SEWER DISTRICT New Well Field, Water Treatment Plant, Storage Tank and Distribution System SRF PROJECT DW 16 11 56 01

**DATE: July 22, 2016**

**TARGET PROJECT APPROVAL DATE: August 23, 2016**

#### I. INTRODUCTION

The above entity has applied to the Drinking Water State Revolving Fund (SRF) Loan Program for a loan to finance all or part of the drinking water project described in the accompanying Environmental Assessment (EA). As part of facilities planning requirements, an environmental review has been completed which addresses the project's impacts on the natural and human environment. This review is summarized in the attached EA, which can also be viewed at <http://www.in.gov/ifa/srf/>.

#### II. PRELIMINARY FINDING OF NO SIGNIFICANT IMPACT (FNSI)

The SRF Drinking Water Program has evaluated all pertinent environmental information regarding the proposed project and determined that an Environmental Impact Statement is not necessary. Subject to responses received during the 30-day public comment period, and pursuant to Indiana Code 4-4-11, it is our preliminary finding that the construction and operation of the proposed facilities will result in no significant adverse environmental impact. In the absence of significant comments, the attached EA shall serve as the final environmental document.

#### III. COMMENTS

All interested parties may comment upon the EA/FNSI. Comments must be received at the address below by the target approval date above. Significant comments may prompt a reevaluation of the preliminary FNSI; if appropriate, a new FNSI will be issued for another 30-day public comment period. A final decision to proceed, or not to proceed, with the proposed project shall be effected by finalizing, or not finalizing, the FNSI as appropriate. Comments regarding this document should be sent within 30 days to:

April Douglas  
Senior Environmental Manager  
State Revolving Fund  
100 N. Senate Ave. IGCN 1275  
Indianapolis, IN 46204  
317-234-7294  
[adouglas@ifa.in.gov](mailto:adouglas@ifa.in.gov)

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**ENVIRONMENTAL  
ASSESSMENT**

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**I. PROJECT IDENTIFICATION**

Project Name and Address:                    **New Well Field, Water Treatment Plant, Storage Tank  
and Distribution System**  
Newton County Regional Water and Sewer District  
4117 South 240 West, Suite 100  
Morocco, IN 47963

SRF Project Number:                         DW 16 11 56 01

Authorized Representative:                 Randy Decker, Board President

**II. PROJECT LOCATION**

The project area is located within Colfax Township in Newton County on the Fair Oaks Quadrangle Map in 30N, 8W, section 36. See Figure 1.

**III. PROJECT NEED AND PURPOSE**

The Newton County Regional Water and Sewer District is proposing drinking water system improvements to supply a new cheese and whey production plant, a hotel and other proposed facilities.

**IV. PROJECT DESCRIPTION**

The proposed project consists of the construction of a new water treatment facility and associated buildings and equipment, a new water storage tank, three (3) new groundwater wells and buildings with access drives, a new water distribution system, electrical service, fencing, telemetry equipment and related items.

**V. ESTIMATED PROJECT COSTS, AFFORDABILITY AND FUNDING**

A. Selected Plan Estimated Cost Summary

**Construction Costs**

Wells	\$ 683,050
Water Treatment Plant	3,419,000
Water Mains	724,750
Elevated Water Storage Tank	1,095,500
Contingency	<u>592,000</u>
<b>Construction Sub-Total</b>	<b>\$ 6,514,300</b>

### Non-Construction Costs

Preliminary Well Field Investigation	\$ 200,000
Design, Permitting and Bidding	1,070,000
Construction Administration and Observation	860,000
Archaeological Investigation	7,000
Labor Standards	6,000
Electrical Service from REMC	80,000
Administration	12,700
Legal, Bond, Rate Consultant	250,000
<b>Non-Construction Sub-Total</b>	<b>\$ 2,485,700</b>
<b>Total Estimated Project Cost</b>	<b>\$ 9,000,000</b>

- B. Newton County Regional Water and Sewer District will finance the project with a loan from the State Revolving Fund Loan Program for a 20-year term at an annual fixed interest rate to be determined at loan closing. The actual loan amount will depend on the bids received.

## VI. DESCRIPTION OF EVALUATED ALTERNATIVES

**Water Source:** The No Action alternative was eliminated because the District would not be able to provide water to the proposed service area. New groundwater well locations, capacity, and quality of the water were investigated. Three production wells will meet the District's demand. *The selected alternative is construction of three new groundwater wells.*

**Water Treatment:** The No Action alternative was eliminated because the District would not be able to provide potable water to the proposed service area. Treatment alternatives were evaluated to remove sulfide and ammonia. *The selected alternative is construction of a new water treatment plant with air stripping, chemical oxidation, detention and filtration.*

**Water Storage:** The No Action alternative was eliminated because the system would not be able to provide water storage needed for emergency and fire flow requirements. *The selected alternative is construction of a new elevated water storage tank.*

**Water Distribution:** The No Action alternative was eliminated because the District would not be able to provide water to the proposed service area. A new water distribution system will connect the new well field and treatment facility to the new elevated water storage tank, and will convey water to future water customers. *The selected alternative is construction of a new water distribution system.*

## VII. ENVIRONMENTAL IMPACTS OF THE FEASIBLE ALTERNATIVES

### A. Direct Impacts of Construction and Operation

**Disturbed/Undisturbed Land:** The proposed project includes construction of a new elevated water tower, water treatment plant, three groundwater wells, and the installation of approximately 13,000 feet of water main.

Impacts to undisturbed land for the water main will be temporary. It is expected the corridor for the raw and finished water mains will be approximately 20 feet wide. The mains will be installed in farmland and along roads.

Permanent impacts will occur for the groundwater wells and associated sanitary setbacks, water

treatment plant, and water tower.

**Structural Resources** (Figure 2): Construction and operation of the project will not alter, demolish or remove historic properties. If any visual or audible impacts to historic properties occur, they will be temporary and will not alter the characteristics that qualify such properties for inclusion in or eligibility for the National Register of Historic Places. The SRF's finding pursuant to Section 106 of the National Historic Preservation Act is: "*no historic properties affected.*"

**Surface Waters** (Figure 3): The water mains will be installed via open-cutting unless directional drilling is preferred to avoid impacts at waterway and state road crossings.

The project will not adversely affect outstanding state resource waters listed in 327 IAC 2-1.3-3(d), exceptional use streams listed in 327 IAC 2-1-11(b), Natural, Scenic and Recreational Rivers and Streams listed in 312 IAC 7-(2), or Salmonid Streams listed in (327 IAC 2-1.5-5(a)(3) or streams on the Outstanding River List for Indiana.

**Wetlands** (Figure 4): Wetlands are not identified within the project area.

**Floodplain** (Figure 5): The project will not occur within the floodplain.

**Groundwater:** Dewatering may be required to temporarily lower the groundwater table in some areas while installing the water mains. Minor fluctuations in groundwater levels will be temporary in nature.

Please note that three production wells are being installed and the water table in the area is likely to be lowered because of it.

**Plants and Animals:** The finished water main corridor will be 20 feet wide from the road and will impact no wooded area and the raw water main will impact 0.15 acres of wooded area.

**Prime Farmland:** The project will not convert prime farmland.

**Air Quality:** Construction activities may generate some noise, fumes and dust, but should not significantly affect air quality.

**Open Space and Recreational Opportunities:** The project will neither create nor destroy open space or recreational opportunities.

**Lake Michigan Coastal Program:** The project will not affect the Lake Michigan Coastal Zone.

**National Natural Landmarks:** Construction and operation of the proposed project will not affect National Natural Landmarks.

## **B. Indirect Impacts**

Newton County Regional Water and Sewer District's Preliminary Engineering Report (PER) states: *The District, through the authority of its council, planning commission or other means will ensure that future development, as well as future drinking water systems or treatment works projects connected to SRF-funded facilities will not adversely impact wetlands, wooded areas, steep slopes, archaeological/historical/structural resources or other sensitive environmental resources. The District will require new development and infrastructure projects to be*

*constructed within the guidelines of the USFWS, IDNR, IDEM, and other environmental review authorities.*

### **C. Comments from Environmental Review Authorities**

In correspondence dated June 13, 2016 regarding the Drinking Water Project and Hotel/Convention Center locations, the Indiana Department of Natural Resources Division of Historic Preservation and Archaeology stated:

*Pursuant to IC 13-18-21 and 32 IAC 14 and Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and 36 C.F.R. Part 800, the Indiana State Historic Preservation Officer ("Indiana SHPO") is conducting an analysis of the materials dated May 11, 2016 and received by the Indiana SHPO on the same date, for the above indicated project in Colfax Township, Newton County, Indiana.*

*Based on our analysis, it has been determined that no historic properties will be altered, demolished, or removed by the proposed project.*

*In regard to archaeology, we concur with the opinion of the archaeologist, as expressed in the Phase Ia archaeological field reconnaissance survey report (Plunkett, 04/29/2016), that archaeological sites 12-N-0373—12-N-0377 (all of which were identified during these archaeological investigations) do not appear eligible for inclusion either in the Indiana Register of Historic Sites and Structures ("IRHSS") of the National Register of Historic Places ("NRHP"). No further archaeological investigations appear necessary in the portions of the proposed project that were surveyed during the archaeological reconnaissance survey.*

*Additionally, we note that, according to Figure 2, Site map for 12-N-376, apparently the easternmost boundary of the site was determined by a single sequential negative shovel probe placed five meters to the north, a single sequential negative shovel probe placed five meters to the east, and a single sequential negative shovel probe placed five meters to the south of Shovel Probe #2. Please note that, as indicated in the Revised Policy for Shovel Test Probes in Indiana (Glass, 03/10/2009), once artifacts are recovered or if on a known or reported site, spacing is to be reduced to five meters near the periphery of the site and continued until two sequential negative probes are excavated, to determine the site boundaries. Please be advised that, per the current Draft Guidebook for Indiana Historic Sites and Structures Inventory-Archaeological Sites, the DHPA must be consulted with prior to implementation of changes in field methodology or survey techniques.*

*As a reminder, please note that an archaeological site survey forms for sites 12-N-0320 — 12-N-0323 should be entered into the Indiana DHPA SHAARD database.*

*If any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 & 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 & 29 does not obviate the need to adhere to applicable federal statutes and regulations, including but not limited to 36 C.F.R. 800.*

In correspondence dated June 30, 2016 regarding the proposed factory site, the Indiana Department of Natural Resources Division of Historic Preservation and Archaeology stated:

*Pursuant to IC 13-18-21 and 32 IAC 14 and Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and 36 C.F.R. Part 800, the Indiana State Historic Preservation Officer ("Indiana SHPO") is conducting an analysis of the materials dated June 13, 2016 and*

received by the Indiana SHPO on the same date, for the above indicated project in Colfax Township, Newton County, Indiana.

Based on our analysis, it has been determined that no historic properties will be altered, demolished, or removed by the proposed project.

Thank you for the submission of the archaeological short report by Bennett of Accidental Discoveries, LLC (6/10/16). We concur with the results of the archaeological survey and no sites eligible for listing in the National Register of Historic Places were located by the archaeological reconnaissance.

In correspondence dated April 12, 2016, the United States Fish and Wildlife Service stated:

*These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U.S. Fish and Wildlife Service's Mitigation Policy.*

*The proposed project includes the development of 3 new wells, a water treatment plant, a water tower, and both raw water and finished water mains; this system will service a new hotel and a cheese and whey production plant. The 3 wells are proposed at various locations between County Line Road and CR 550 East, north of Division Road; the treatment plant is proposed for the east side of CR 550 East about 0.25 mile north of Division Road. These facilities would be constructed in what is now cropland and connected by the raw water mains within 50-foot wide right-of-way. An alternative location for the water treatment plant is within a savanna/woodland on the west side of CR 550 East, which would require the removal of 3 acres of trees; therefore, this alternative site is not acceptable. An alternative location for Well #3 is in cropland west of CR 550 East near Curtis Creek; this site is acceptable if the original site is not feasible.*

*The finished water main is proposed to follow CR 550 East northward to SR 14, where it will branch to the east and west to serve the proposed developments and a new water tower. The Preliminary Engineering report indicates that the finished water mains will be within a 180-foot wide right-of-way along these roadways, but it is not explained why such a large ROW is needed. The Report also states that the finished water main will impact 12.9 acres of wooded area along CR 550 East, again without explanation. Given that the water line along CR 550 East is supposed to be 3,300 feet long, and the right-of-way, including the existing road, is 180 feet wide, the total acreage within that area is 13.6. Stating that 12.9 acres will be cleared for the water main seems to indicate that the entire 3,300-foot long by 180-foot wide corridor will be cleared. We believe that is excessive land clearing for the placement of a water main.*

*The environmental document will need to explain why 12.9 acres of woodland will be cleared to install the finished water main. Mitigation for this loss will be necessary. We support the upland woodland mitigation guidelines of the Indiana Department of Natural Resources contained in their Information Bulletin #17 (<http://www.in.gov/legislative/iac/20140806-IR-312140295NRA.xml.pdf>), which states that the standard minimum mitigation ratio for non-wetland forest losses of more than 1 acre is to be 2:1 (2 acres replanted for every acre destroyed), planted as close to the impact site as possible.*

*The proposed new waste water collection system will service the same proposed developments as the new water system. Approximately 1 mile of new gravity sewer (size not indicated) will be constructed within the existing right-of-way on the north side of SR 14 east to County Line Road to Lift Station #1. Approximately 7 miles of 12-inch sanitary sewer force main will be constructed from Lift Station #1 north along the west side of County Line Road within an existing 35-foot wide easement; 2 additional lift stations will be constructed along that route.*

*The existing waste water package plant along CR 700 North will be removed and replaced by a new waste water treatment plant on 5 acres. This proposed project will affect mowed roadway right-of-way cropland.*

#### *Endangered Species*

*The proposed project is within the range of the federally endangered Indiana bat (Myotis sodalis) and the threatened northern long-eared bat (Myotis septentrionalis). If the water system project actually requires the removal of 12.9 acres of woodlands, this tree clearing must take place during the time period between 1 October and 1 April in order to avoid impacts to the bats. With this tree clearing restriction in place, we agree that the proposed projects are not likely to adversely affect these endangered and threatened species.*

*This precludes the need for further consultation on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. However, should new information arise pertaining to project plans or a revised species list be published, it will be necessary for the Federal agency to reinitiate consultation.*

Please note that the initial Drinking Water information received and reviewed indicated "The finished water main corridor will impact 12.9 acres of wooded area and the raw water main will impact 0.15 acres of wooded area." The final version of the Preliminary Engineering Report notes "the finished water main corridor will be 20 feet wide from the road and will impact no wooded area and the raw water main will impact 0.15 acres of wooded area."

In correspondence dated April 18, 2016 the Department of Natural Resources Environmental Unit Stated:

*The Indiana Department of Natural Resources has reviewed the above referenced project per your request. Our agency offers the following comments for your information and in accordance with the National Environmental Policy Act of 1969.*

*If our agency has regulatory jurisdiction over the project, the recommendations contained in this letter may become requirements of any permit issued. If we do not have permitting authority, all recommendations are voluntary.*

*Regulatory Assessment: This proposal may require the formal approval of our agency pursuant to the Flood Control Act (IC 14-28-1) for any proposal to construct, excavate, or fill in or on the floodway of a stream or other flowing waterbody which has a drainage area greater than one square mile. If an outfall structure or utility line crossing is proposed, it may qualify for a general license under Administrative Rule 312 LAC 10-5 (see enclosures). Please submit more detailed plans to the Division of Water's Technical Services Section if you are unsure whether or not a permit will be required.*

*The well and pumping equipment must be installed by a water well driller and water well pump installer, respectively, that are licensed in the State of Indiana, and must be constructed in accordance with IC 25-39 and Rule 312 LAC 13. Contact the Division of Water at (317) 232-4160 or toll free at (877) 928-3755, if the project involves any water withdrawals (including permanent and/or temporary dewatering) having an aggregate withdrawal capacity of 70 gpm or more.*

*Natural Heritage Database: The Natural Heritage Program's data have been checked. The state endangered Upland Sandpiper (Bartramia longicauda) has been documented within this project area.*

*Fish & Wildlife Comments: Avoid and minimize impacts to fish, wildlife, and botanical resources to the greatest extent possible, and compensate for impacts. The following are recommendations that address potential impacts identified in the proposed project area:*

*1) Upland Sandpiper: Construction activities have the potential to disturb areas that provide suitable nesting habitat for upland sandpipers, such as hay fields. Therefore, to avoid impacts to this species, we recommend construction activities take place outside the breeding season which occurs mid-May to the end of July.*

*2) Directional Boring: We recommend that all creek or stream crossings be done using a trenchless method. If the open-trench method is necessary and the only feasible option at any of the planned stream crossings due to the site conditions, then the following measures should be implemented:*

- a) Any open-trench stream crossing should be timed to coincide with the low-water time of year (typically mid- to late-summer).*
- b) Restore disturbed streambanks using bioengineering bank stabilization methods and revegetate disturbed banks with native trees, shrubs and herbaceous plants. Stream bank slopes after project completion should be restored to stable-slope steepness (not steeper than 2:1).*
- c) The cleared width through any forested area should be the minimum needed to install the line and no more than 20 feet wide through the forested area to allow the canopy to close over the line.*
- d) Use graded stone or riprap to protect the section of trench below the normal water level from scour or erosion (any stone or riprap fill in the streambed must not be placed above the existing streambed elevation to avoid creating a fish passage obstruction).*

*3) Bank Stabilization: Minimize the use of riprap and use alternative erosion protection materials whenever possible. Where riprap must be used, we recommend placing only enough riprap to provide stream bank toe protection, such as from the toe of the bank up to the ordinary high water mark (ohwm). From the ohwm to the top of the bank, we recommend using erosion control blankets or turf reinforcement mats instead of riprap as these are compatible with vegetation growth and provide equal or better erosion control protection than riprap. The use of erosion control blankets, turf reinforcement mats, and other similar materials seeded with a native plant seed mix will allow a natural, vegetated stream bank to develop that is also protected from erosion problems.*

*4) Riparian Habitat: We recommend a mitigation plan be developed (and submitted with the permit application, if required) if habitat impacts will occur. The DNR's Floodway Habitat Mitigation guidelines (and plant lists) can be found online at:  
<http://www.in.gov/legislative/iac/20120801-IR-312120434NRA.xml.pdf>.*

*Impacts to non-wetland forest over one (1) acre should be mitigated at a minimum 2:1 ratio. If less than one acre of non-wetland forest is removed in a rural setting, replacement should be at a 1:1 ratio based on area.*

*5) Wetland Habitat: Due to the presence or potential presence of wetlands on site, we recommend contacting and coordinating with the Indiana Department of Environmental Management (IDEM) 401 program and also the US Army Corps of Engineers (USACE) 404*

program. Impacts to wetlands should be mitigated at the appropriate ratio (see guidelines above).

The additional measures listed below should be implemented to avoid, minimize, or compensate for impacts to fish, wildlife, and botanical resources:

1. Revegetate all bare and disturbed areas with a mixture of grasses (excluding all varieties of tall fescue), legumes, and native shrub and hardwood tree species as soon as possible upon completion.
2. Minimize and contain within the project limits inchannel disturbance and the clearing of trees and brush.
3. Do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.
4. Do not cut any trees suitable for Indiana bat or Northern Long-eared bat roosting (greater than 3 inches dbh, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) from April 1 through September 30.
5. Do not construct any temporary runarounds, causeways, or cofferdams.
6. Use minimum average 6 inch graded riprap stone extended below the normal water level to provide habitat for aquatic organisms in the voids.
7. Do not use broken concrete as riprap.
8. Underlay the riprap with a bedding layer of well graded aggregate or a geotextile to prevent piping of soil underneath the riprap.
9. Minimize the movement of resuspended bottom sediment from the immediate project area.
10. Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.
11. Seed and protect all disturbed streambanks that are 3:1 or steeper with heavy-duty net-free biodegradable erosion control blankets to minimize the entrapment and snaring of small wildlife such as snakes and turtles (follow manufacturer's recommendations for installation); seed and apply mulch on all other disturbed areas.

In correspondence dated April 7, 2016 the Natural Resources Conservation Service Stated:

*The proposed water system improvements in Newton County, Indiana, as referred to in your letter received March 16, 2016 and your e-mail received March 31, 2016, will cause a conversion of prime farmland.*

## **VIII. MITIGATION MEASURES**

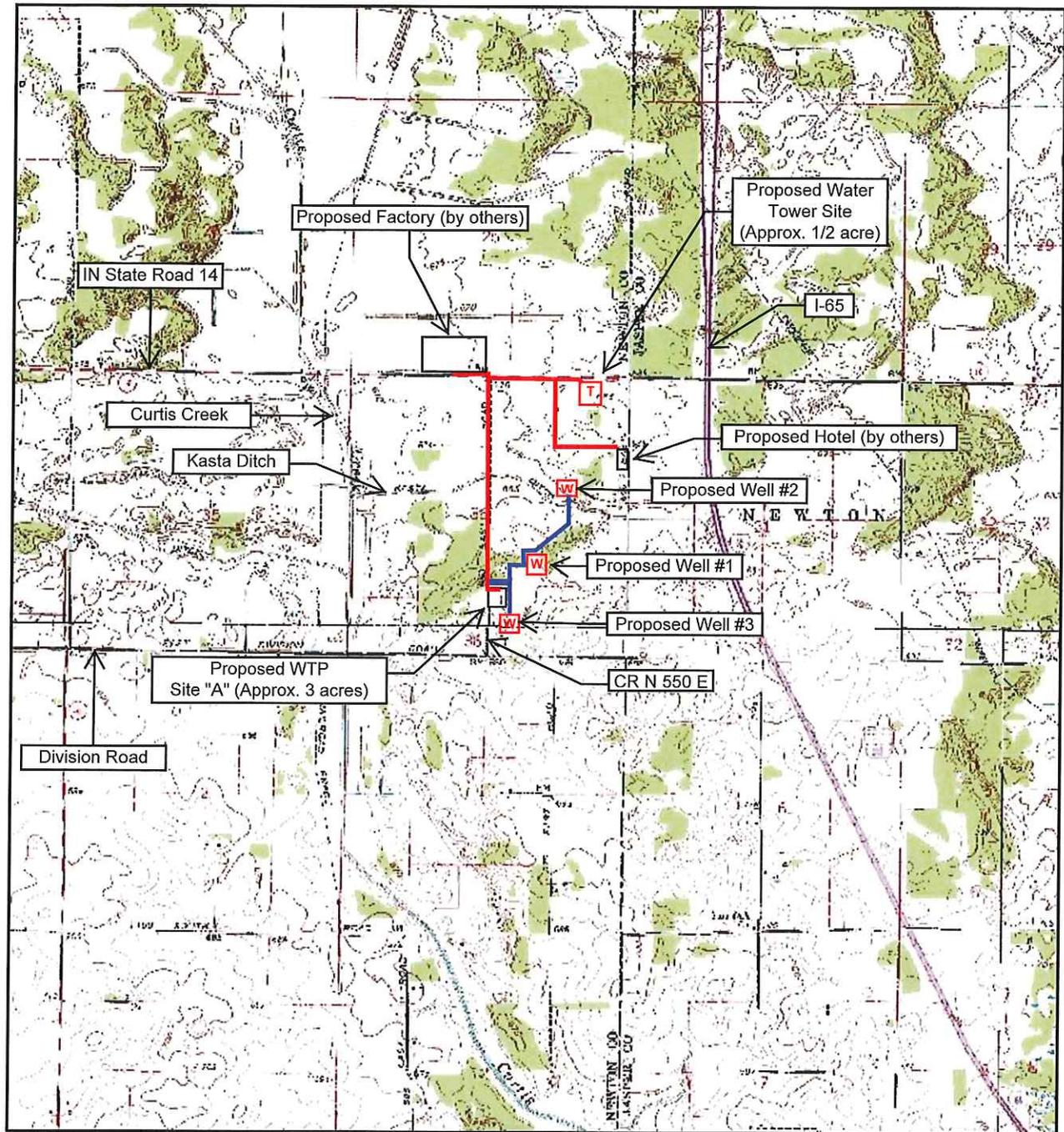
Newton County Regional Water and Sewer District's PER states:

*Erosion control measures will be implemented during all construction activity. Areas disturbed by construction will be restored and revegetated with seeding and other measures such as erosion*

*control blankets, as necessary. A Rule 5 Permit for stormwater runoff associated with construction activities is expected for this Project since it will disturb more than one acre of land. Wetlands and waterway impacts will be avoided where possible. Tree removal will be avoided where possible. Tree cutting restrictions may be required to minimize the potential for impacts to the Indiana Bat. Construction restrictions are recommended to minimize the potential for impacts to the Upland Sandpiper.*

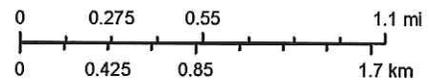
## **IX. PUBLIC PARTICIPATION**

A properly noticed public hearing was held on June 8, 2016, at 4:00 pm CST/5:00 PM EST at the Newton County Government Center (201 N. 3<sup>rd</sup> Street, Kentland, IN 47951) to discuss the PER. There were no comments or questions regarding the project at the hearing. No written comments were received during the 5-day comment period following the hearing.



March 15, 2016

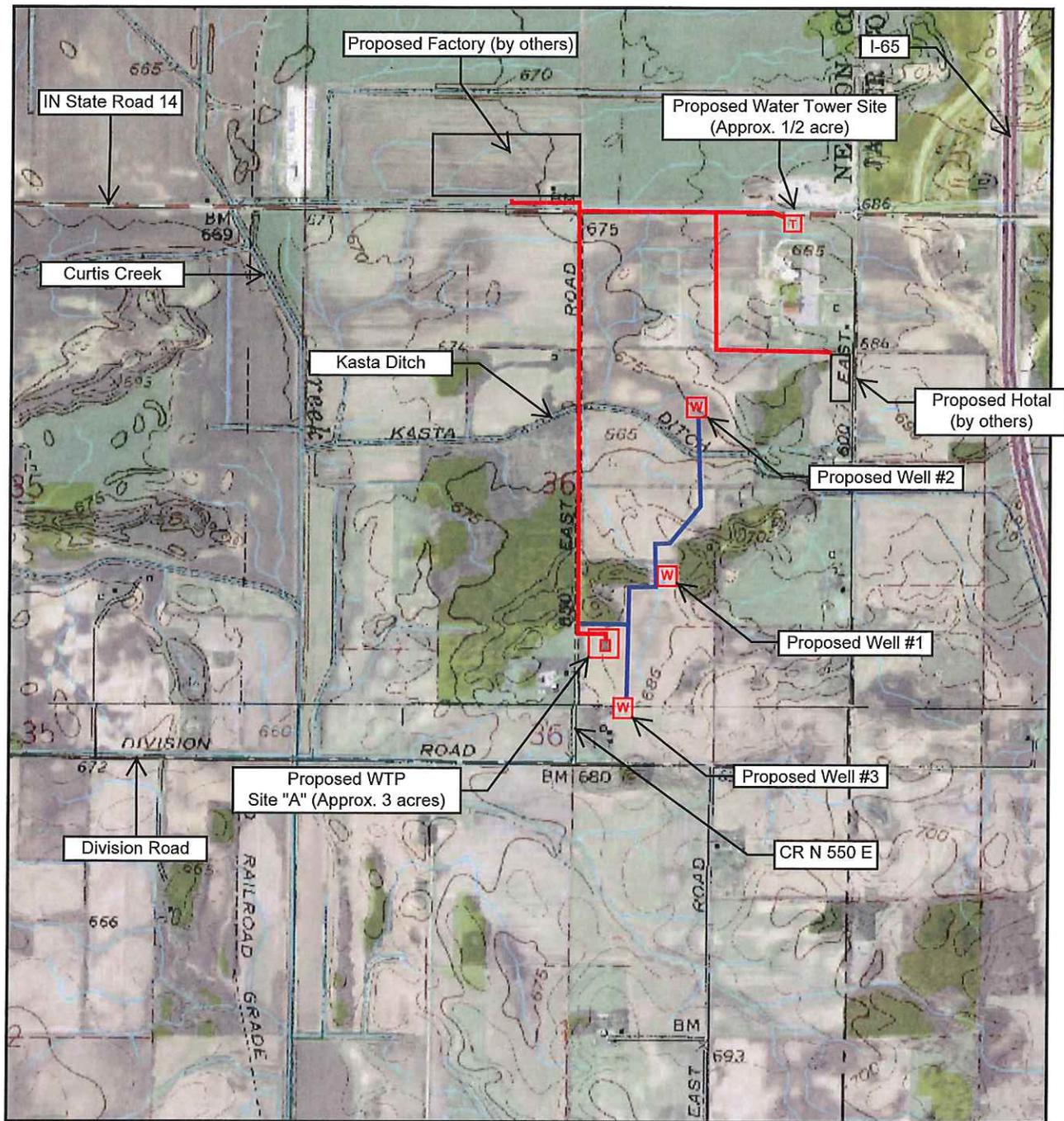
- State Boundary
- Stream Features
- Rivers (NHD)
- Proposed Finished Water Main
- Proposed Raw Water Main



Source: IndianaMAP

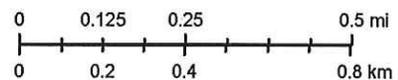
## FIGURE 1 - USGS TOPOGRAPHIC MAP





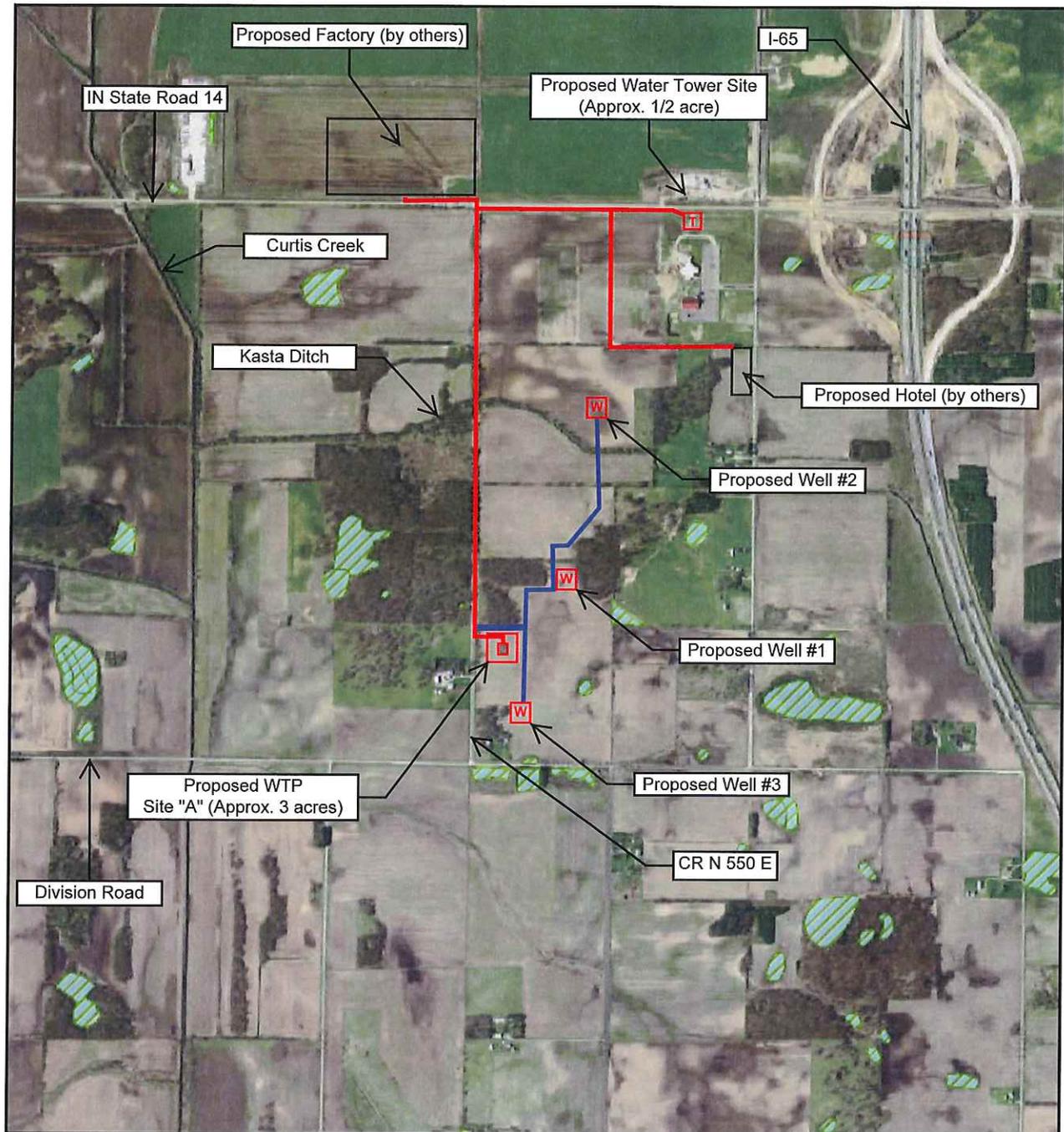
March 14, 2016

- State Boundary
- Streams (Local-Resolution NHD)
- State Boundary
- Stream Features
- Rivers (NHD)
- Proposed Finished Water Main
- Proposed Raw Water Main



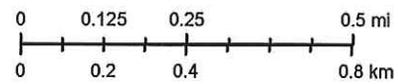
Source: IndianaMAP

### FIGURE 3 - SURFACE WATER MAP



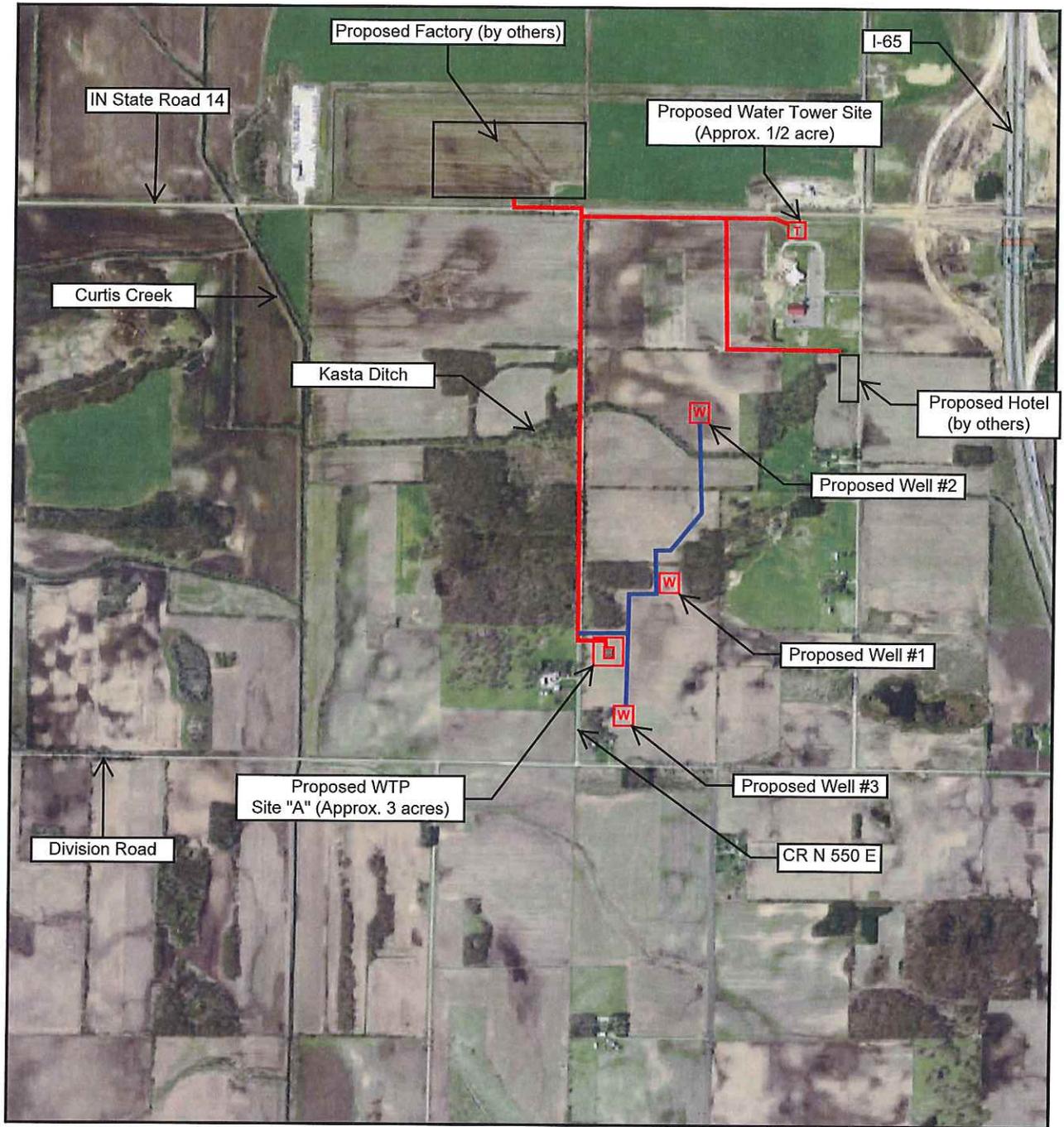
March 15, 2016

-  Wetlands NWI (USFWS)
-  Wetlands Project Metadata NWI (USFS)
-  State Boundary
-  Stream Features
-  Rivers (NHD)
-  Proposed Finished Water Main
-  Proposed Raw Water Main



Source: IndianaMAP

## FIGURE 4 - WETLANDS MAP

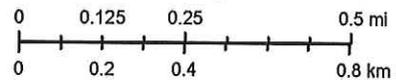


March 14, 2016

**Floodplains - FIRM (May 2015)**

- 0.2% Risk (aka 500-year Flood Zone)
- 1% Risk (aka 100-yr Flood Zone)
- Floodway
- State Boundary

- Stream Features
- Rivers (NHD)
- Proposed Finished Water Main
- Proposed Raw Water Main



Source: IndianaMAP

## FIGURE 5 - FLOODPLAINS MAP

## ARTICLE 10. FLOOD PLAIN MANAGEMENT

### **312 IAC 10-2-42 "Utility line crossing" defined**

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 42. "Utility line crossing" means the utility crosses the waterway in a straight line at an angle of between forty-five (45) degrees and one hundred thirty-five (135) degrees from the streambank and does not parallel the waterway for more than fifty (50) feet in the floodway before crossing unless the parallel portion of the line is contained within existing road right-of-way. (*Natural Resources Commission; 312 IAC 10-2-42; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

### Rule 5. General Licenses and Specific Exemptions from Floodway Licensing

#### **312 IAC 10-5-0.3 Determining project eligibility for a general license; general criteria**

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 0.3. (a) Except as provided in subsections (b) and (c), a project for a utility line crossing, the removal of logjams and obstructions, or the placement of outfall projects within a floodway is eligible for a general license if the project satisfies the requirements of this rule. For the removal of logjams and obstructions, these requirements include the procedures established by section 0.6 of this rule.

(b) Subsection (a) does not authorize a project in any of the following circumstances:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water's environmental unit has been obtained.

(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).

(3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(4) For a utility line crossing, below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.

(5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) Subsection (a) does not authorize the removal of logjams or obstructions within one-half (½) mile of any of the following:

(1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(2) A known mussel resource.

(3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(d) The limitations contained in subsection (b) and subsection (c) [subsections (b) and (c)] do not apply to section 7 of this rule.

(*Natural Resources Commission; 312 IAC 10-5-0.3; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875*)

#### **312 IAC 10-5-2 General licensing for utility line crossings**

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-27-7; IC 14-28-1; IC 14-29-1

Sec. 2. Except as provided in sections 3 and 4 of this rule, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 to place a utility line in or on a floodway where:

(1) the drainage area of a river or stream is at least one (1) square mile at the downstream end of the line's floodway segment; or

(2) a dam or levee regulated under IC 14-27-7 is affected.

(*Natural Resources Commission; 312 IAC 10-5-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002*)

#### **312 IAC 10-5-3 Aerial electric, telephone, or cable television lines; general license**

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is authorized without a written license issued by the department under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

(1) the activity does not disturb the bed of the waterway beneath the line;

(2) the activity conforms with the minimum clearance requirements of section 4(b)(9) of this rule;

(3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and

(4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

(*Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3876*)

312 IAC 10-5-4 Qualified utility line crossings; general license

Authority: IC 14-10-2-4

Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes a general license for the placement of a qualified utility line crossing in a floodway.

(b) A person who wishes to implement a project for the placement of a qualified utility line crossing on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause water pollution as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for a general license under this subsection.

(c) A person who elects to act under this section must comply with the general conditions under subsection (b). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.; 25 IR 1545; errata filed Mar 13, 2002, 11:51 a.m.; 25 IR 2521; filed Aug 2, 2004, 3:18 p.m.; 27 IR 3876*)

## ARTICLE 10. FLOOD PLAIN MANAGEMENT

### Rule 5. General Licenses and Specific Exemptions from Floodway Licensing

#### 312 IAC 10-5-8 Qualified outfall projects; general license

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes a general license for the placement of a qualified outfall project in a floodway.

(b) A person who wishes to implement a project for the placement of a qualified outfall project on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms to the following conditions:

- (1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.
  - (2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.
  - (3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.
  - (4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.
  - (5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.
  - (6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.
  - (7) The size of the outfall project shall not exceed any of the following dimensions:
    - (A) Ten (10) square feet in cross-sectional flow area as determined by the summation of cross-sectional area of conduits within the outfall project area for an outfall structure.
    - (B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.
    - (C) An area of disturbance thirty (30) feet wide.
  - (8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.
  - (9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.
  - (10) The outlet structure shall:
    - (A) be supported by a headwall, slopewall, or anchored end section; and
    - (B) conform to the bank of the waterway.
  - (11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.
  - (12) Construction debris and material not used as backfill shall be removed from the floodway.
- (c) A person who elects to act under this section must comply with the general conditions under subsection (b). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.; 25 IR 1546; errata filed Jan 16, 2002, 1:14 p.m.; 25 IR 1906; filed Aug 2, 2004, 3:18 p.m.; 27 IR 3880*)