

MEMORANDUM OF AGREEMENT

**Between the Illinois Department of Natural Resources and Bunge Milling, Inc.
Regarding Kickapoo State Park – Pond 6 Site
Vermillion County, Illinois**

I. Parties

This Memorandum of Agreement (“MOA”) is between the Illinois Department of Natural Resources (“IDNR”) and Bunge Milling, Inc. (“Bunge”). IDNR and Bunge are collectively referred to hereafter as the “Parties.”

II. Authority

- A. The State Parks Designation Act, 20 ILCS 840/0.01 et seq., designated certain areas as State Parks, Memorials, Parkways, Boating Access Areas, Recreation Areas and Conservation Areas and vested jurisdiction over State Parks, including Kickapoo State Park in Vermillion County, to IDNR.
- B. The State Parks Act, 20 ILCS 835/0.01 et seq., authorizes IDNR to have the care, control, supervision, and management of all State parks heretofore acquired by the State to be open to and to be for the benefit and enjoyment of the people of the State.
- C. The Department of Natural Resources (Conservation) Law, 20 ILCS 805-100 and 805-105, empowers IDNR to take all measures necessary for the conservation, preservation, distribution, introduction, propagation, and restoration of fish, mussels, frogs, turtles, game, wild animals, wild fowls, birds and fauna and flora.
- D. The Department of Natural Resources (Conservation) Law, 20 ILCS 805-120 empowers IDNR to exercise all rights, powers, and duties conferred by law and to take measures that are necessary for the prevention of pollution of and engendering of sanitary and wholesome conditions in rivers, lakes, streams, and other waters in this State that will promote, protect, and conserve fauna and flora.
- E. The Department of Natural Resources (Conservation) Law, 20 ILCS 805-515 empowers IDNR to enforce the laws of the State and the rules and regulations of the Department in or on any lands owned, leased, or managed by the Department.
- F. The Fish and Aquatic Life Code, 515 ILCS 5/1-150 empowers IDNR to take all measures necessary for the conservation, distribution, introduction, and restoration of aquatic life. Section 5/5-5 of the Fish and Aquatic Life Code, 515 ILCS 5/5-5 vests ownership and title to all aquatic life in Illinois with the State of Illinois.
- G. The Rivers, Lakes, and Streams Act, 615 ILCS 5/1 et seq., provides IDNR with full and complete jurisdiction of every public body of water in the State of Illinois for the purpose of

protecting the rights and interests of the State of Illinois, or the citizens of the State of Illinois.

- H. The Natural Resources Restoration Trust Fund Act, 20 ILCS 882/1 et seq., creates a fund for the investigation, assessment, restoration, or replacement of injured or damaged natural resources.

III. Background

The following background was prepared by IDNR as the basis for the Funding and Participation Agreement entered into by the Parties on December 1, 2015, and this background is presented here and agreed upon by the Parties for purposes of settlement only. Additionally, Bunge makes no admission regarding the facts set forth in this stipulation of background, and this MOA shall not be interpreted as including any such admission.

- A. The Kickapoo State Park ("Kickapoo") is located west of Danville, in Vermilion County, and is a designated state park under Section 1 of the State Parks Designation Act, 20 ILCS 840/1. Kickapoo consists of 2,842 acres, including 22 deep water ponds ranging in size from 0.2 of an acre to 57 acres. Among these deep water ponds is Pond 6, which is used for fishing, hiking and boating ("Pond 6").
- B. Kickapoo Pond 6 is connected to the Middle Fork of the Vermilion River, designated as a National Wild and Scenic River by the National Park Service, by means of a small stream within Kickapoo that flows north from the north end of Pond 6.
- C. Bunge, an Illinois corporation, owns and operates a corn dry milling facility at 321 E. North Street, Danville, Illinois ("Bunge Facility"). Bunge also owns property located south and west of Kickapoo near Grays Siding on US Route 150 east of Oakwood, Vermilion County, Illinois ("Bunge Site").
- D. The Bunge Site includes 32 acres that is located south and west of Kickapoo near Grays Siding on US Route 150 east of Oakwood, Vermilion County, Illinois. The Bunge Site is also located directly adjacent to the west of Kickapoo and shares a common north-south boundary line with Kickapoo.
- E. An unnamed tributary stream drains surface waters from the Bunge Site ("Drainage Stream") and directs these surface waters down-gradient and to the east into Kickapoo and Pond 6. Pond 6 is located in the southwestern portion of Kickapoo. Pond 6 also contains a sediment delta ("Pond 6 Delta") located at the confluence of Pond 6 and the Drainage Stream.
- F. According to the inspection report of the Illinois Environmental Protection Agency ("IEPA"), dated 12/5/2012, a portion of the Drainage Stream on the Bunge Site was filled from about 1995 through January 2006 with coal combustion ash ("CCA") that was generated from the circulating fluidized bed co-gen unit used at the Bunge Facility in Danville, Illinois.

- G. From about 1995 through January 2006, CCA from the Bunge Facility was transported to and deposited at the Bunge Site into a portion of the Drainage Stream on the Bunge Site at depths ranging from approximately 10 to 60 feet without cover material. Sometime between 2012 and 2013, Bunge graded and covered the CCA deposited into this portion of the Drainage Stream on the Bunge Site, and constructed a surface water diversion system to direct surface water runoff on the Bunge Site into the Drainage Stream.
- H. On July 5, 2013, the Illinois Prairie Research Institute at the University of Illinois Urbana-Champaign campus ("IPRI") conducted a field reconnaissance investigation at Kickapoo and the Bunge Site at the request of IDNR. The IPRI obtained samples of deposited stream sediments and CCA materials at various points within Pond 6, including the Pond 6 Delta, and in the Drainage Stream leading from Pond 6 and upstream onto the Bunge Site. The analytical results for the IPRI samples indicate the presence of CCA in Pond 6 and the Drainage Stream in Kickapoo.

IV. Statement of Facts

- A. On December 1, 2015, IDNR and Bunge entered into a Funding and Participation Agreement ("FPA") for the purpose of providing a framework for a cooperative evaluation of the potential for injury to natural resources or any services provided by those natural resources resulting from the presence of CCA in the Drainage Stream and in Pond 6 at Kickapoo. The FPA set forth procedures for (a) coordinating data collection and assessment activities agreed to by the Parties to determine the extent of any injuries to natural resources or services provided by those resources arising from release(s) at or from the Bunge Site ("Assessment Activities"); (b) paying costs incurred by IDNR and its consultant IPRI for the Assessment Activities; and (c) evaluating the data collected to determine whether there has been any injury to natural resources or services provided by these natural resources arising from the presence of CCA at Pond 6 at Kickapoo and, if so, to quantify such injury.
- B. As part of the FPA, IDNR developed a Site Assessment Study Plan for Pond 6. Bunge agreed, as part of the FPA and under the direction, guidance, and monitoring of IDNR and/or its designated contractors, to gather, analyze, and evaluate data, samples and other information and the performance of any interim activities to further the assessment process in accordance with the Site Assessment Study Plan for Pond 6.
- C. Per the FPA, Bunge agreed to pay all reasonable costs that were incurred by IDNR for the Assessment Activities.
- D. On June 6, 2016, the Parties executed a First Modification of the FPA to reflect revisions to the Site Assessment Study Plan and the revised total budget for the Assessment Activities.
- E. IPRI conducted the field sampling in accordance with the Site Assessment Study Plan between May and September 2016, which consisted of collecting water, sediments, and biota (fish, snails, and odonates), and analyzing those samples for potentially toxic constituents known to be present in fly ash, and which therefore may also be impairing

resident biota. Identical sampling efforts also took place in Long Pond in Kickapoo, which was considered a reference or background site.

- F. On May 3, 2017, the Parties executed a Second Modification of the FPA to reflect an extension of the deadline for IPRI to complete the final written report pursuant to the Site Assessment Study Plan.
- G. While it had been established that fly ash from the Bunge Site was present in Pond 6, IDNR concluded that the concentrations of elements contributing to the fly ash signature in water and sediments within Pond 6 do not exceed Illinois regulatory limits or toxicity thresholds that IDNR examined.
- H. Additionally, under the FPA, the Parties agreed to attempt in good faith to reach a negotiated resolution of any potential claims as soon as practicable.

V. Bunge Compliance Resolution

- A. Assessment Costs: To date, Bunge reimbursed IDNR a total of one hundred and four thousand, five hundred twenty two dollars and 90 cents (\$104,522.90) for the reasonable costs incurred by IDNR for the Assessment Activities. Remaining costs outstanding are associated with the proposed Pond 6 Access Improvements, as described on Attachment A to this MOA. Attachment B to this MOA includes itemized costs for such Pond 6 Access Improvements.
- B. Bunge shall submit payment to IDNR for the costs of the Pond 6 Access Improvements in the amount of forty-seven thousand, seven hundred and fifteen dollars (\$47,715.00) within 14 days of execution of this MOA by both Parties. Payment shall be made by certified check or money order payable to the Natural Resources Restoration Trust Fund pursuant to the Natural Resources Restoration Trust Fund Act and shall be sent to:

Illinois Natural Resources
Attn: Thomas Heavisides
Office of Resource Conservation – ORC
One Natural Resources Way
Springfield, IL 62702-1271
- C. IDNR (and/or through its contractors and representatives) shall complete the Pond 6 Access Improvements on or before December 31, 2019. In the event of circumstances unforeseen at this time by the Parties, the December 31, 2019 completion deadline may be extended by mutual agreement of the Parties. Bunge agrees to not unreasonably withhold its consent to such agreement.

VI. Release

- A. In consideration of Bunge's reimbursement to IDNR of \$104,522.90 for the costs of the Assessment Activities, and payment of \$47,715.00 for the proposed Pond 6 Access

Improvements, described above in Section V, IDNR releases, waives and discharges Bunge from any further potential liability or penalties related to the subject matter of the FPA and this MOA, including any liability under the State Parks Act, 20 ILCS 835/1 et seq., the Rivers, Lakes, and Streams Act, 615 ILCS 5/1 et seq., and any other statute cited in Section II above. This MOA in no way affects Bunge's responsibility to comply with all laws and administrative rules.

- B. The release set forth above does not extend to any matters other than those expressly specified in the FPA and this MOA. IDNR reserves all rights of the State of Illinois against Bunge with respect to all other matters, including but not limited to liability for future violations that concern contaminants not known or tested for as of the date of execution of this MOA.
- C. Upon execution of this MOA, the Parties' previous obligations under the FPA are hereby released.

VII. Modification and Termination

Any modification of this MOA must be in writing and executed by the Parties. This MOA shall remain in effect until all affirmative obligations imposed upon the Parties by this MOA is satisfactorily completed.

VIII. Survival

The release set forth in Section VI shall survive the termination of this MOA, or the termination of the participation of any Parties as provided in Section VII.

IX. Effective Date

The Effective Date of this MOA shall be the date of the last affixed signature. The Effective Date of any Attachment shall be the date set forth in such Attachment. The term of this MOA is from the Effective Date until the purposes set forth herein are accomplished unless the Parties agree otherwise in writing, or this MOA is terminated under the provisions of Section VII.

X. Notice

- A. Notices and other required information shall be submitted to the appropriate Party representative as follows:

For: Bunge Milling, Inc.
Michelle Bublitz
Bunge North America, Inc.
Michelle.Bublitz@bunge.com
1391 Timberlake Manor Parkway
Chesterfield, MO 63017

With copy to:
Katherine D. Hodge
HelperBroom, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Katherine.Hodge@heplerbroom.com

For: Illinois Department of Natural Resources
Thomas Heavisides
Office of Resource Conservation – ORC
One Natural Resources Way
Springfield, IL 62702-1271
tom.heavisides@illinois.gov

- B. The Parties may designate different contact personnel upon written notice to all other Parties. In all cases in which this MOA provides for “notice in writing,” such notice is effective when first received. Notice may be given by U.S. Mail, delivery service, or personal delivery, to the other Parties’ designated representatives.

XI. Severability

Whenever possible, each provision and term of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision or term of this Agreement shall be held to be prohibited by or invalid under such applicable law, or determined to be void or unenforceable for any reason, then such provision or term shall be ineffective only to the extent of such prohibition, invalidity or unenforceability, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement. In that event, the prohibited, invalid or unenforceable provision shall be modified to the minimum extent necessary to make it permissible, valid and enforceable, unless the result of any such invalidity or unenforceability shall be to cause a material failure of consideration to the party seeking to sustain the validity or enforceability of the subject provision.

XII. Other Claims

- A. IDNR assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Bunge or its representatives in their performance of any activities required, authorized, or implemented under this MOA. The IDNR shall not be a party, or be held out as a party, to any contract entered into by Bunge or by its directors, officers, employees, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this MOA.
- B. Bunge assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of IDNR or its contractors or representatives in their performance of any activities required, authorized, or implemented under this MOA. Bunge shall not be a party, or be held out as a party, to any contract entered into by IDNR or by its directors, officers,

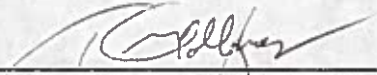
employees, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this MOA.

XIII. Signatories; Counterparts

Each undersigned representative of a signatory to this MOA certifies that he or she is fully authorized to enter into the terms and conditions of this MOA and to bind such signatory, its directors, officers, employees, contractors, successors and assigns to this document.

This MOA may be executed in one or more counterparts.

BUNGE MILLING, INC.:

By: 
Timothy J. Gallagher, Senior Vice President

Dated: 2/2/18

ILLINOIS DEPARTMENT OF NATURAL RESOURCES:

By: 
Wayne Rosenthal, Director

Dated: 3/12/18

Approved for Execution by:

By: 
Eric Lohrenz, General Counsel







Dated: 3/9/2018

APPROVED FOR EXECUTION

Date: 3/9/2018

Legal Counsel: 

Legend

-  Gravel Existing Access Road
-  Blot doak
-  Concrete Slab
-  2 Foot Contour
-  10 Foot Contour
-  Existing Lincoln Challenge Trail

0 10 20 40 Feet

Add 3" CA6 to existing roadway and parking areas (+/- 1,450' x 20')

Pour 12' x 30' concrete boat ramp slab and 20' X 12" concrete top at existing ramp. Add gravel to existing parking area to accommodate two cars with trailers.

Install two 8' dock sections & 6' gangway

Save Existing 12' Tree In Parking Area

Pond 6
Normal Pool 547

Pond 6 Access Improvements
Dock Detail Concept 8/23/17

Source: Ted L. Hain, LLC, 2017. All Rights Reserved. GNS-1105-05-001-1. 10/15/17

Attachment B

DRAFT-IDNR ENGINEERING ESTIMATE

Site: Kickapoo
Project: Pond 6 Access
Project #:
Date: 8/223/17
Prepared by: Louls Yockey

ITEM	QUANTITY	UNITS	UNIT COST	TOTALS
1 Mobilization & Demobilization	1	ls	\$2,000.00	\$2,000.00
2 Clear Vegetation (300 ft x 20 ft)	700	sy	\$5.00	\$3,500.00
3 Minor Grading	1	ls	\$1,000.00	\$1,000.00
4 Gravel Existing Roadway (1450 ft x 20 ft x 3 in)	403	tons	\$27.00	\$10,881.00
5 Gravel New Parking Lot (3000 sq ft x 6 in)	83	tons	\$27.00	\$2,241.00
6 Boat Ramp				
7 Excavation	1	ls	\$1,000.00	\$1,000.00
8 Aggregate fill material	50	tons	\$27.00	\$1,350.00
9 Concrete - Ramp (30 ft x 12 ft x 8 inch)	9	yds	\$600.00	\$5,400.00
10 Concrete - Top of Ramp (20 ft x 12 ft x 8 inches)	6	yds	\$550.00	\$3,300.00
11 Insurance & Bonds	1	ls	\$1,000.00	\$1,000.00
12 16' floating dock with 6 spud poles and 6' gangway	1	ls	\$6,500.00	\$6,500.00
			Subtotal	\$38,172.00
Contractors Overhead & Profit			15%	\$5,725.80
Construction Contingency			10%	\$3,817.20
			Total Cost	<u>\$47,715.00</u>

