

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

IN THE MATTER OF:

Gary & Joan Groenhagen
Oregon, IL;

George Groenhagen and
Robert E. Groenhagen and
Larry Groenhagen
d/b/a
RLG Farms
Oregon, IL;

and

Circle G Farms & Feedlots, Inc.
Oregon, IL

Respondent.

Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Docket No.

CWA-05-2016-0001



CONSENT AGREEMENT AND FINAL
ORDER

JURISDICTIONAL ALLEGATIONS

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (U.S. EPA), Region 5.

4. Respondents are Circle G Farms and Feedlots, Inc., an Illinois corporation, and Gary and Joan Groenhagen, and George Groenhagen, Robert E. Groenhagen and Larry Groenhagen d/b/a RLG Farms (Respondents). Respondents are each a “person” as that term is defined at section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 501.2.

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondents stipulate that U.S. EPA has jurisdiction over the subject matter of this CAFO and waives any jurisdictional objections it may have.

8. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. By executing this CAFO, the Respondents do not admit liability or admit Complainant’s factual allegations set forth in this CAFO. The Respondents’ execution of this CAFO does not constitute a waiver or admission of any kind, including without limitation a waiver of any defense, legal or equitable, which Respondents may have in this or any other administrative or judicial proceeding, other than a proceeding to enforce this CAFO.

STATUTORY AND REGULATORY BACKGROUND

10. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that: “Whenever, on the basis of any information available the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311] . . . the Administrator . . . may, after consultation with the

State in which the violation occurs, assess a . . . class II civil penalty under [section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)]. ”

11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that “Except as in compliance with [section 404 of the CWA] the discharge of any pollutant by any person shall be unlawful.”

12. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: “The Secretary [of the Army] may issue permits . . . for the discharge of dredged or fill material into the navigable waters at specified disposal sites.”

13. Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), defines a “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source.”

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “. . . any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, . . . [or] discrete fissure... from which pollutants are or may be discharged.”

15. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” as “. . . dredged spoil, solid waste . . . biological materials . . . rock, sand [or] agricultural waste discharged into water.”

16. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “. . . the waters of the United States . . .”.

17. Federal regulations, at 40 C.F.R. § 232.2, define the term “waters of the United States” to include rivers, streams and “wetlands.”

18. Federal regulations, at 40 C.F.R. § 230.3(t), define “wetlands” as “those areas that

are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

19. Under Section 309(g) of the Act, 33 U.S.C. §1319(g), the Administrator may assess a civil penalty of up to \$10,000 per day of violation up to a total of \$125,000 for violations of Section 301 of the Act that occurred prior to January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty under section 309(g)(3) of the CWA, 42 U.S.C. § 1319(g)(3), for violations occurring after January 12, 2009 through December 6, 2013, from \$10,000 to \$16,000 per day of violation and from a \$125,000 to a \$177,500 maximum penalty, and for violations occurring after December 31, 2013 increased the statutory maximum penalty to \$187,500.

20. Respondents are Gary and Joan Groenhagen; Robert, Larry and George Groenhagen d/b/a RLG Farms; and Circle G Farms & Feedlots, Inc., which owned and/or operated the several parcels of property known as Tracts 3239, 1267, and 1632, at the time of the discharges described in paragraph 24 below. The Respondents, through the activities of its agents, performed dredging and fill activities to channelize streams on their parcels, drain them, and convert them into farmland.

21. The tributaries on each of the Tracts flow to Stillman Creek, which is tributary to the Rock River, which is a traditional navigable water.

22. The unnamed tributaries on Tracts 1267 and 1632, Black Walnut Creek on Tract 3239, Stillman Creek and the Rock River, are “waters of the United States” pursuant to

ALLEGATIONS OF LIABILITY

23. The Respondents own or operate property located in the NW¼ of Section 29, Township 24 North, Range 11 East, in Ogle County, Illinois (Tract 3239) (see Figure 1 for a map of Tract 3239); and in the NW¼ of Section 27, Township 24 North, Range 11 East, in Ogle County, Illinois (Tract 1267) (see Figure 2 for a map of Tract 1267); and the S ½ of Section 25 and NE ¼ of Section 35, Township 24 North, Range 11 East, in Ogle County, Illinois (Tract 1632) (see Figure 3 for a map of Tract 1632) (cumulatively referred to herein as "the Sites").

24. Respondents excavated and discharged at various parcels that comprise the Sites.

Tract 3239

In October 2010, and at other times known to Respondents, using a track excavator and bulldozer, Respondents excavated 1,300 linear feet of a new channel in Black Walnut Creek and discharged the dredged material into 2,300 linear feet of the original channel. This activity straightened a meandering stream, drained adjacent wetlands, and improved drainage of Tract 3239.

Tract 1267

In April 2011, and at other times known to Respondents, using a track excavator and bulldozer, Respondents excavated 1,030 linear feet of a new channel in an unnamed tributary to Black Walnut Creek and discharged the dredged material into 1,250 linear feet of the original channel. This activity straightened a meandering stream and improved drainage of Tract 1267.

Tract 1632

Between 1999 and 2002, and at other times known to Respondents, using a track

excavator and bulldozer, Respondent Circle G Farms & Feedlots, Inc. excavated 400 linear feet of a new channel in an unnamed tributary to Stillman Creek and discharged the dredged material into 1,010 linear feet of the original channel. This activity straightened a meandering stream and improved drainage of Tract 1632. The location of this activity was on the southern portion of Tract 1632, located in the NE ¼ of Section 35. In August 2011, and at other times known to Respondents, using a track excavator and bulldozer, Respondents excavated 800 linear feet of a new channel in an unnamed tributary to Stillman Creek and discharged the dredged material into 1305 linear feet of the original channel. This activity straightened a meandering stream and improved drainage of Tract 1632. The location of this activity was on the eastern portion of Tract 1632, located in the S ½ of Section 25.

25. Respondents' activities from excavators and bulldozers resulted in the deposit of dredged material in the associated streams at the Site. EPA estimates the length of impacted streams to be a total of 5,865 linear feet. Respondents' excavators and bulldozers constituted "point sources" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). The dredged material constituted "pollutants" within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6). The addition of dredged material into the associated streams on the Site constituted a "discharge of pollutants" within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

26. At no time during the activities referenced in paragraph 24 did the Respondents possess a permit from the Secretary of the Army, through the Army Corps of Engineers, under section 404(a) of the CWA, 33 U.S.C. § 1341(a), authorizing the fill activities in the streambeds at the Sites.

27. Respondents' deposition of dredge material into the streambeds at the Site constitute discharges of pollutants to the waters of the United States without an appropriate permit and consequently violate section 301(a) of the CWA, 33 U.S.C. § 1415(a).

28. Each day the Respondents' dredge material deposits remain in place in the streambeds at the Site constitutes a separate violation of section 301(a) of the CWA, 33 U.S.C. §1311(a).

29. According to 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, the Administrator may assess a penalty not to exceed \$16,000 for each day of violation of section 301 of the CWA to a maximum of \$177,500. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the Administrator to assess a Class II penalty of up to \$16,000 per day for each day during which a violation continues, up to a maximum of \$187,500 for violations occurring after December 6, 2014. The violations in this case took place from 1999 through July 2015.

CIVIL PENALTY

30. Based on an analysis of the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require, as specified in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant has determined that an appropriate civil penalty to settle this action is \$72,000.

31. Within 30 days after the effective date of this CAFO, Respondent must pay the

\$72,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

32. The check must note the case caption and the docket number of this CAFO.

33. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Yone Yu (WW-16J)
Wetlands Enforcement Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondents do not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondents acknowledge that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection

action.

36. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay the United States' enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondents must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue.

GENERAL PROVISIONS

37. This CAFO resolves Respondents' liability, and any liability of the Respondents' owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for only federal civil penalties for the violations and facts alleged in this CAFO.

38. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

39. This CAFO does not affect Respondents' responsibility to comply with the CWA or other applicable federal, state and local laws or regulations.

40. This CAFO is a "final order" for the purposes of any future enforcement action under section 309 of the CWA, 33 U.S.C. § 1319.

41. The terms of this CAFO bind Respondents and Respondents' owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, successors and assigns.

42. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

44. This CAFO constitutes the entire agreement between the parties.

45. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, after having been signed by the Regional Administrator and subject to the requirements of section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

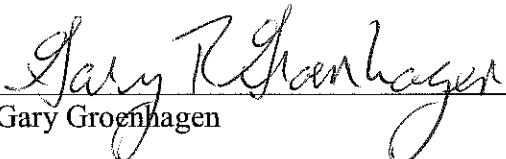
46. Complainant is providing public notice of and reasonable opportunity to comment on the proposed issuance of the CAFO according to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4).

In the Matter of: Gary and Joan Groenhagen, Circle G Farms & Feedlots, Inc., Robert Groenhagen, Larry Groenhagen, and George Groenhagen d/b/a RLF Farms, Respondents, Oregon, Illinois

Docket No:

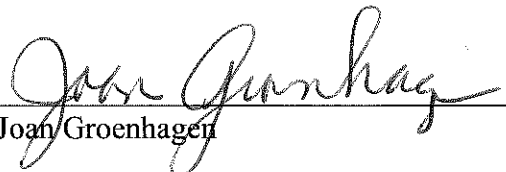
Gary and Joan Groenhagen, Circle G Farms & Feedlots, Inc., Robert Groenhagen, Larry Groenhagen, and George Groenhagen d/b/a RLF Farms, Respondents.

Date: 10-2-15



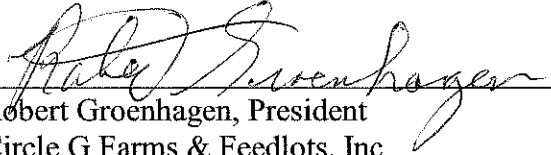
Gary Groenhagen

Date: 10-2-15

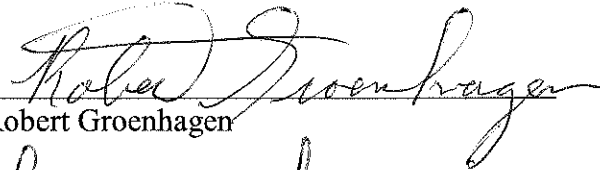


Joan Groenhagen

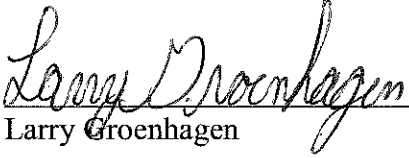
Date: 10-2-15


Robert Groenhagen, President
Circle G Farms & Feedlots, Inc.

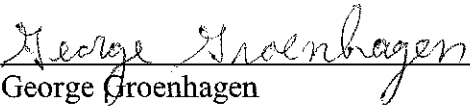
Date: 10-2-15


Robert Groenhagen

Date: 10-2-15


Larry Groenhagen

Date: 10-2-15


George Groenhagen

In the Matter of: Gary and Joan Groenhagen, Circle G Farms & Feedlots, Inc., Robert Groenhagen, Larry Groenhagen, and George Groenhagen d/b/a RLF Farms, Respondents, Oregon, Illinois

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U.S. Environmental Protection Agency, Complainant

Date: October 8, 2015

Tinka G. Hyde
Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5

In the Matter of: Gary and Joan Groenhagen, Circle G Farms & Feedlots, Inc., Robert Groenhagen, Larry Groenhagen, and George Groenhagen d/b/a RLF Farms, Respondents.

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FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: _____

By: _____
Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Figure 1 - Tract 3239

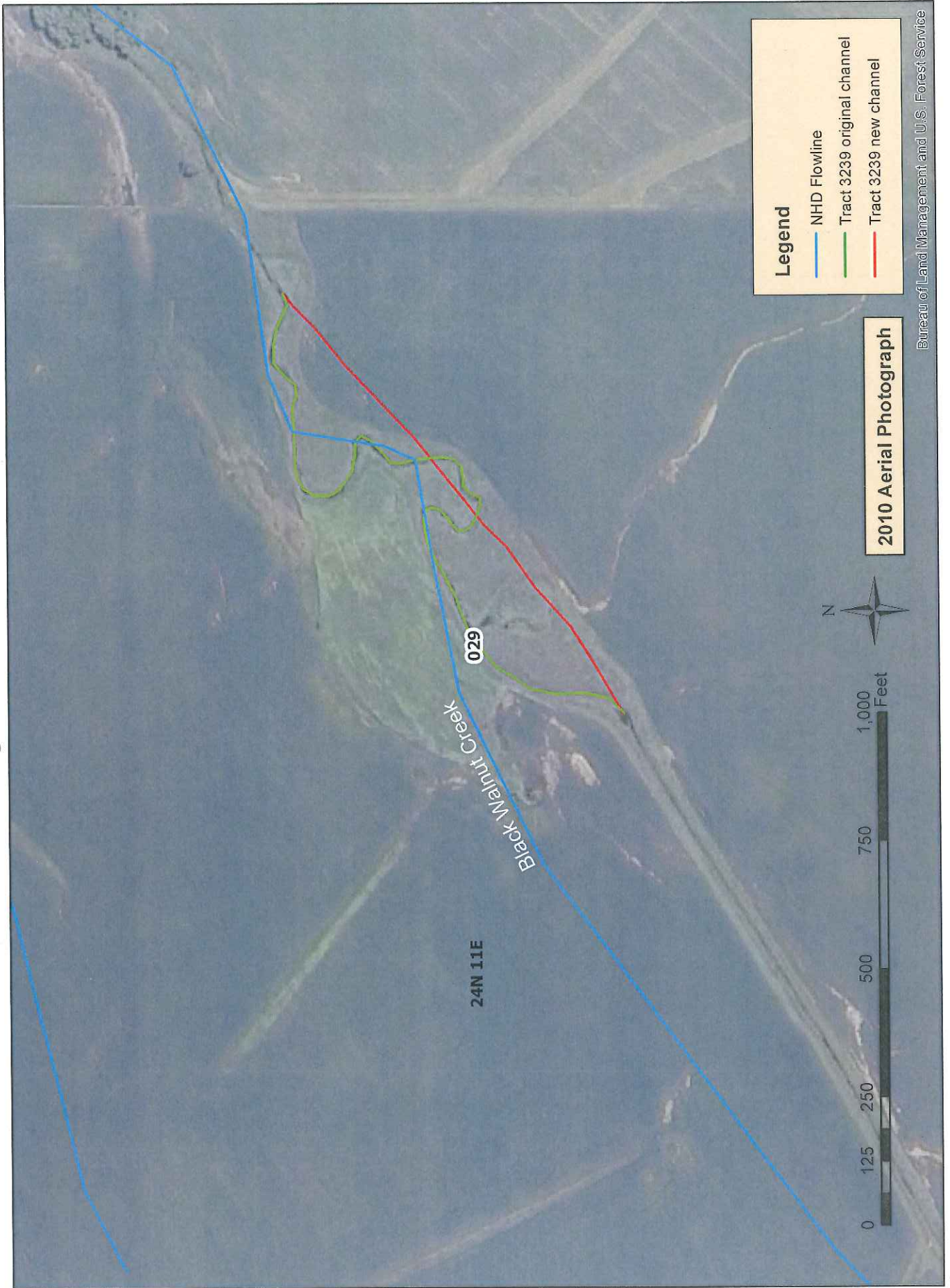


Figure 2 - Tract 1267

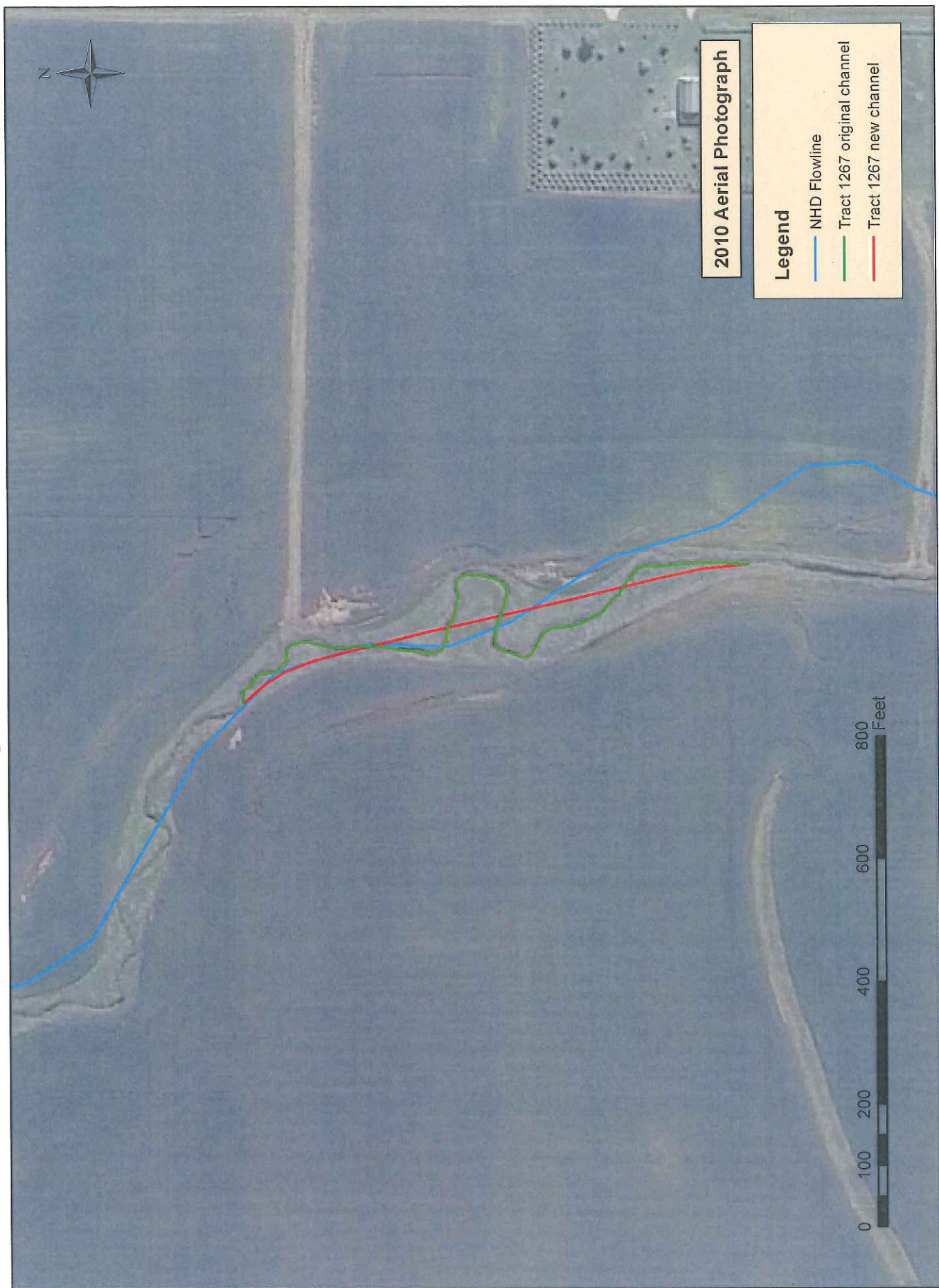


Figure 3 - Tract 1632

