



After Recording Return  
Original Signed Covenant  
to:  
Sandra Treccani  
Toxics Cleanup Program  
Department of Ecology  
4601 N. Monroe St.  
Spokane WA 99205-1295

COURTESY RECORDING

## Environmental Covenant

12/12/16.1.12

**Grantor:** BNSF Railway Company

**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")

**Brief Legal Description:** 11-25-43 S ½  
14-25-43 N ½

**Tax Parcel Nos.:** Railroad Property - no parcel number

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as the BNSF Parkwater Railyard (Facility Site ID # 676). The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Groundwater	Petroleum

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology.

1. *Third and Fourth Quarters 2015 Groundwater Monitoring Report, BNSF Parkwater Railyard, Spokane, Washington* (December 30, 2015)

2. *Final Cleanup Action Plan, BNSF Parkwater Railyard, Spokane, WA* (November 2011)

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its' right as a holder, are not an interest in real property.

## COVENANT

BNSF Railway Company, as Grantor and fee simple owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

## **Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. **Groundwater use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

b. **Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

## **Section 3. Access.**

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice for security and safety purposes and subject to Ecology and its authorized representatives' compliance with railroad safety procedures, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

## **Section 4. Notice Requirements.**



## **Section 5. Modification or Termination.**

- a.** Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
  - i.** Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
  - ii.** If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b.** If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

## **Section 6. Enforcement and Construction.**

- a.** This Covenant is being freely and voluntarily granted by the Grantor.
- b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

h. Neither Ecology nor Grantor intend to include any third party beneficiaries with enforcement rights under this Covenant.

i. By signing this Covenant, the Grantor does not intend to affect the scope of existing preemption under federal law, including but not limited to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 100501.

The undersigned Grantor warrants it holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 13<sup>th</sup> day of October, 2016.

BNSF RAILWAY COMPANY

By: *Kurt Geringer*  
**Kurt Geringer**

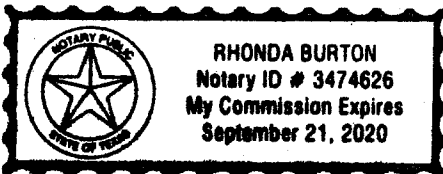
Title: **General Director Real Estate**

STATE OF Texas  
COUNTY OF Tarrant

On this 13<sup>th</sup> day of October, 2016, I certify that Kurt Geringer personally appeared before me, acknowledged that he/she is the General Director Real Estate of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

*Rhonda Burton*  
Notary Public in and for the State of Washington  
Texas

Residing at Carrollton Tx  
My appointment expires 9/21/2020



EXECUTED this 28<sup>th</sup> day of June, 2016.

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

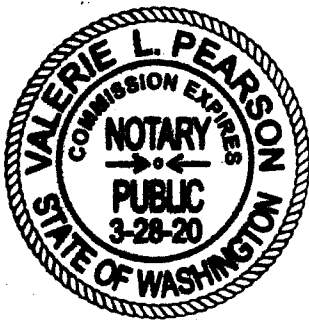
By: \_\_\_\_\_

Title: Program Manager, Toxics Cleanup Program

STATE OF Washington

COUNTY OF Thurston

On this 28<sup>th</sup> day of June, 2016, I certify that James J Pendarowski personally appeared before me, acknowledged that he/she is the TCP Program Manager of Ecology of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.



Valerie L. Pearson  
Notary Public in and for the State of Washington

Residing at

Lacey, Washington

My appointment expires

03-28-2020

**Exhibit A**

**LEGAL DESCRIPTION**



## **BNSF PROPERTY DESCRIPTION**

SITUATE IN THE SOUTH HALF OF SECTION 11 AND THE NORTH HALF OF SECTION 14, TOWNSHIP 25 NORTH, RANGE 43 EAST, WILLAMETTE MERIDIAN, SPOKANE COUNTY WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 81 OF PARKWATER ADDITION, VOLUME "P", PAGE 48 RECORDS OF SPOKANE COUNTY AUDITOR'S OFFICE, LOCATED IN SAID SECTION 11, BEING THE INTERSECTION OF THE SOUTHERLY LINE OF LOT 1, SAID BLOCK 81, AND THE WESTERLY RIGHT OF WAY OF FANCHER ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, DEPARTING WESTERLY RIGHT OF WAY OF SAID FANCHER ROAD, WEST AND SOUTHWESTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF BLOCK 81 AND BLOCK 82 OF SAID PARKWATER ADDITION TO THE INTERSECTION POINT OF A LINE PARALLEL TO AND 50 FEET NORTHWESTERLY FROM THE CENTERLINE OF THE MOST NORTHWESTERLY TRACK #55, PER RECORD DOCUMENT STATE OF WASHINGTON VALUATION DIVISION ON JUNE 6<sup>TH</sup>, 1946, ALSO BEING THE SOUTHEASTERLY LINE OF PARCEL NUMBER 35114.0021, SAID INTERSECTION POINT IS APPROXIMATELY AT THE MID POINT OF THE SOUTHERLY LINE OF LOT 20, SAID BLOCK 82;

THENCE, DEPARTING SOUTHERLY BOUNDARY LINE OF BLOCK 82 OF SAID PARKWATER ADDITION, SOUTHWESTERLY ALONG SAID PARALLEL 50 FOOT LINE AND SOUTHERLY BOUNDARY LINE OF SAID PARCEL NUMBER 35114.0021 TO THE SOUTHWEST CORNER OF SAID PARCEL;

THENCE, DEPARTING SAID 50 FOOT PARALLEL LINE AND SOUTHERLY LINE OF SAID PARCEL NUMBER 35114.0021, SOUTHWESTERLY TO A POINT THAT BEARS SOUTHERLY, 124.62 FEET FROM THE NORTHEAST CORNER OF PARCEL NUMBER 1, AS SHOWN ON RECORD OF SURVEY, AUDITOR'S FILE NUMBER 9403210459, AS RECORDED IN SPOKANE COUNTY AUDITOR'S OFFICE;

THENCE, SOUTHWEST ALONG SAID SOUTHERLY BOUNDARY LINE OF SAID PARCEL NUMBER 1, TO ITS INTERSECTION WITH THE COMMON SECTION LINE BETWEEN SAID SECTION 11 AND SECTION 14;

THENCE, CONTINUING SOUTHWEST IN SAID SECTION 14 ALONG SOUTHERLY BOUNDARY LINE OF SAID PARCEL NUMBER 1, TO A POINT THAT BEARS NORTHEAST, 293.21 FEET FROM THE SOUTHWEST CORNER OF SAID PARCEL NUMBER 1;

THENCE, DEPARTING SOUTHERLY BOUNDARY LINE OF SAID PARCEL NUMBER 1, SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF BNSF RECORD ACO NUMBER 03-0568 AND DOCUMENT NUMBER 20030568, ALSO BEING PARCEL NUMBER 35142.0039, TO A POINT OF INTERSECTION WITH A 50 FOOT RADIUS RIGHT OF WAY CULDESAC OF WISCONSIN AVENUE;

THENCE, SOUTHWESTERLY ALONG THE SOUTHERLY RIGHT OF WAY OF SAID WISCONSIN AVENUE, TO ITS INTERSECTION WITH THE EASTERLY RIGHT OF WAY OF HAVANA STREET;

THENCE, SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY, TO ITS INTERSECTION WITH THE SOUTHERLY LINE OF BNSF RAILROAD RIGHT OF WAY, ALSO BEING THE NORTHWESTERLY CORNER OF CAPITOL ADDITION PLAT, VOLUME "FP", PAGE 17, RECORDS OF SPOKANE COUNTY AUDITOR'S OFFICE;

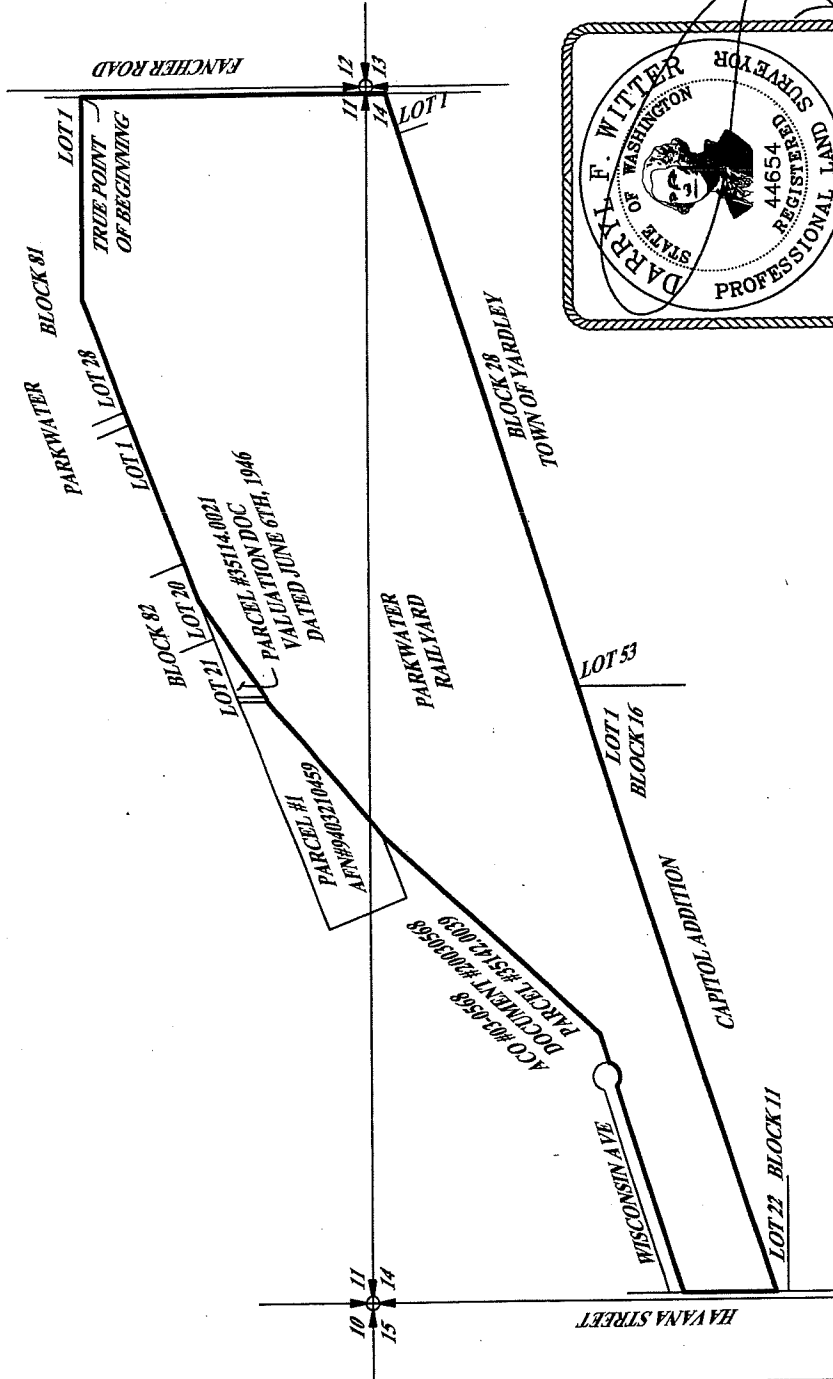
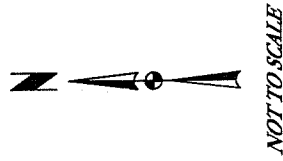
THENCE, DEPARTING SAID EASTERLY RIGHT OF WAY, NORTHEASTERLY ALONG SAID SOUTHERLY RAILROAD RIGHT OF WAY AND THE NORTHERLY LINE OF SAID CAPITOL ADDITION PLAT TO ITS INTERSECTION WITH THE NORTHWESTERLY CORNER OF THE TOWN OF YARDLEY PLAT, BEING THE NORTHWEST CORNER OF LOT 53, BLOCK 28, VOLUME "EP" PAGE 69, RECORDS OF SPOKANE COUNTY AUDITOR'S OFFICE;

THENCE, CONTINUING NORTHEASTERLY ALONG SAID SOUTHERLY RAILROAD RIGHT OF WAY AND THE NORTHERLY LINE OF SAID BLOCK 28 OF THE TOWN OF YARDLEY PLAT TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY OF FANCHER ROAD, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 1, SAID BLOCK 28;

THENCE, DEPARTING SAID SOUTHERLY RAILROAD RIGHT OF WAY, AND THE NORTHERLY LINE OF SAID BLOCK 28, NORTH ALONG SAID WEST RIGHT OF WAY TO THE POINT OF BEGINNING. SAID POINT BEING THE TERMINUS OF THIS DESCRIPTION.

**EXHIBIT MAP**

SITUATE IN THE SOUTH HALF OF SECTION 11 AND THE NORTH HALF OF SECTION 14,  
TOWNSHIP 25 NORTH, RANGE 43 EAST, WILLAMETTE MERIDIAN, SPOKANE COUNTY, WA



*[Handwritten signature]*  
5/12/10

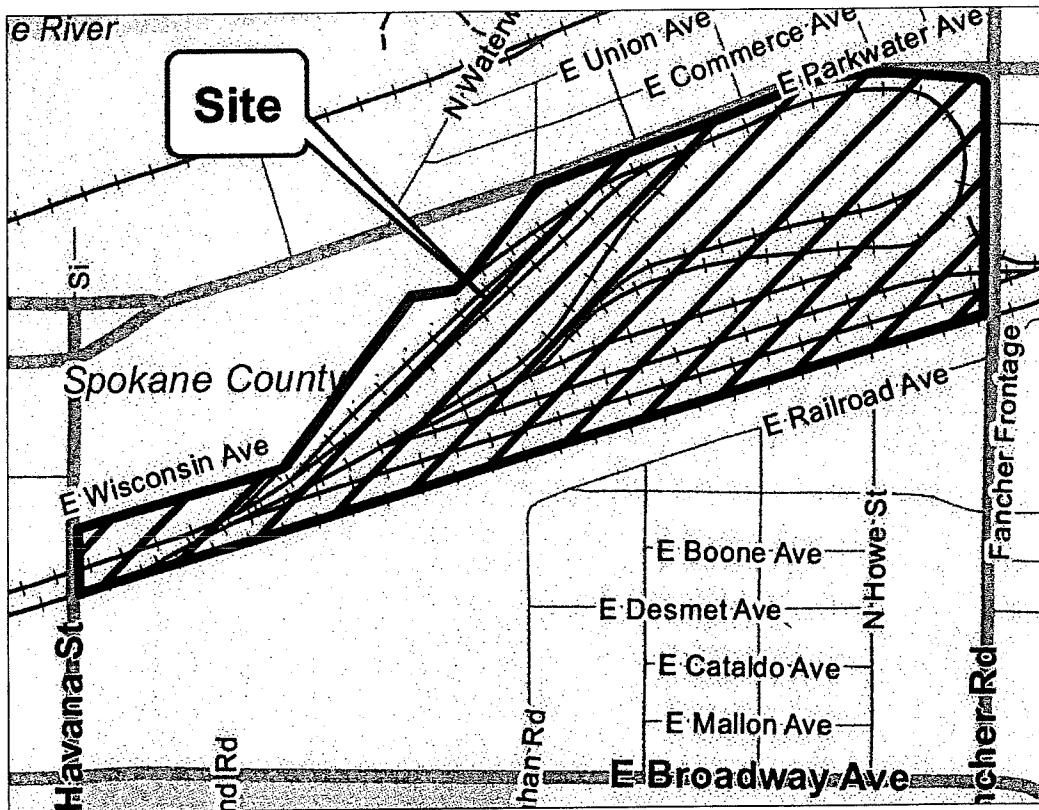
T. 25 N., R. 43 E.

	DRAWN BY: DFW	SHEET
	DATE: 5/13/16	1/1
JOB NO. S16-085	GREAT FALLS-BOZEMAN-KALISPELL-SHELBY SPOKANE LEWISTON WATERBURY CITY MONTANA WASHINGTON NORTH DAKOTA	

**Exhibit B**

**PROPERTY MAP**

**BNSF RAILWAY COMPANY  
 PARKWATER RAIL YARD SITE - SPOKANE, WASHINGTON  
 ENVIRONMENTAL COVENANT**



Data Source: ESRI Data and Map, 2005.



**Kennedy/Jenks Consultants**

BNSF RAILWAY PARKWATER RAILYARD  
 ENVIRONMENTAL COVENANT  
 SPOKANE, WASHINGTON

**MAP OF PROPERTY**

1696110/Exhibit\_B

**EXHIBIT B**