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After Recording/Returto:  
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Klamath County, Oregon



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U.S. Department of Agriculture  
Natural Resources Conservation Service  
12/2009

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Fee: \$107.00

## WARRANTY EASEMENT DEED IN PERPETUITY

### WETLANDS RESERVE PROGRAM EASEMENT NO. 66-0436-9-112

**THIS WARRANTY EASEMENT DEED** is made by and between **James M. Root and Valerie K. Root, as tenants by the entirety** (hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA**, by and through the Commodity Credit Corporation (CCC) (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

#### Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the easement area. By signing this deed, the Landowner agrees to the restoration of the Easement Area and grants the right to carry out such restoration to the United States.

Authority. This easement deed acquisition is authorized by Title XII of the Food Security Act of 1985, as amended (16 U.S.C. §3837), for the Wetlands Reserve Program.

**NOW THEREFORE**, for and in consideration of the sum of **Four Hundred Seventy Nine Thousand, One Hundred Dollars (\$479,100.00)**, the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, (the Grantee), in perpetuity, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.



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SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the easement area, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of the Landowner to enjoy the rights reserved on the easement area without interference from others.
- C. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. Recreational Uses. The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. Undeveloped recreational use may include hunting equipment, such as, tree stands and hunting blinds that are rustic and customary for the locale as determined by NRCS.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.
- F. Water uses and water rights. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D which is appended to and made a part of this easement deed, if applicable.



PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the easement area:

1. haying, mowing, or seed harvesting for any reason;
2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
3. dumping refuse, wastes, sewage, or other debris;
4. harvesting wood products;
5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means, except as specifically set forth in EXHIBIT D, if applicable;
7. building, placing, or allowing to be placed structures on, under, or over the easement area, except for structures for undeveloped recreational use;
8. planting or harvesting any crop;
9. grazing or allowing livestock on the easement area;
10. disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
11. use of the easement area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
12. any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the easement area; and
13. any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the land that is subject to the easement if such activities will alter, degrade, or otherwise diminish the functional value of the eligible land.

B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and

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local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.

- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the easement area are prohibited on the easement or easement boundary.
- D. Use of water for easement purposes. The landowner shall use water for easement purposes as set forth in EXHIBIT D, which is appended to and made a part of this easement deed, if applicable.
- E. Protection of water uses and water rights. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.
- F. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- G. Reporting. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.
- H. Survival. Irrelevant of any violations by the Landowner of the terms of this deed, this easement survives and runs with the land for its duration.

PART IV. Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

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- A. Management activities. The United States has the right to enter the easement area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States may apply to or impound additional waters, in accordance with State water law, on the easement area in order to maintain or improve wetland and other natural values.
- B. Access. The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.
- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the NRCS determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify or terminate this easement (16 U.S.C. §3837e(b)) is reserved to the Secretary of Agriculture in accordance with applicable law.
- D. Violations and Remedies - Enforcement. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this easement deed constitute things of value to the United States and this easement deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,
  2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.



PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.
- B. Rules of Construction and Special Provisions. All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Wetlands Reserve Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.
- C. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards or conduct (including common law) concerning air, water, solid waste, hazardous materials or substance, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Landowner warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any government authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Landowner further warrants that it has no actual knowledge

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of a release or threatened release of Hazardous Materials, as such substance and wastes are defined by applicable Federal and State law.

- D. General Indemnification. Landowner shall indemnify and hold harmless, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and cost of actions, sanctions asserted by or on behalf of any person or government authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the easement area, which may arise from, but is not limited to, Landowner's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this easement deed, or violations of any Federal, State, or local laws, including all Environmental Laws.



**TO HAVE AND TO HOLD**, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this 26<sup>th</sup> day of January, 2011.

Landowners:

James M. Root

Valerie K. Root

**ACKNOWLEDGMENT**

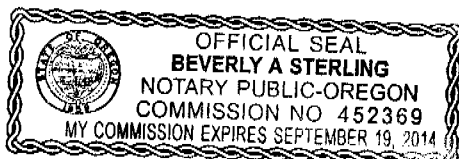
STATE OF Oregon

COUNTY OF Jackson

On this 26<sup>th</sup> day of January, 2010, before me, the undersigned, a Notary Public in and for the said State, personally appeared James M. Root and Valerie K. Root, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of Oregon  
Residing at Medford, OR.  
My Commission  
Expires 9-19-14  
Beverly A. Sterling

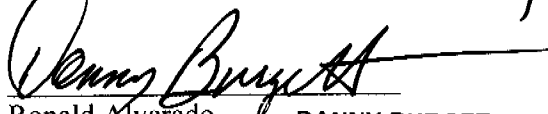




### ACCEPTANCE BY GRANTEE:

I DANNY BURGETT (name), Acting STC (title), being the duly authorized representative of the United States Department of Agriculture, Natural Resources Conservation Service, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the United States of America, Grantee.

Dated this 1 day of February, 2011.

  
Ronald Alvarado DANNY BURGETT, Acting STC  
State Conservationist

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

### NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

### PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.



## CROOKED CREEK 1 WRP

Landowner: Jim and Valerie Root  
County: Klamath  
WRP Contract No: #66-0436-9-112

### EXHIBIT "A"

#### Description of easement areas:

Wetland Reserve Program (WRP) Conservation easement over a parcel of land owned by grantors in Sections 24 and 25, Township 34 South, Range 7½ East, and Section 30, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon. The easement areas being a portion of that property conveyed to **Jim and Valerie Root**, as described in Deed Volume M96, page 16403, of the deed records of said Klamath County. The easement areas are more particularly described as follows:

Beginning at a 5/8" iron pin marking the southwest corner of Parcel 2 of Land Partition 63-94, according to the official plat thereof on file in the office of the Klamath County Clerk, and shown on record of survey number 5684, said monument being South 77°55'26" West, 1487.47 feet from the Northeast corner of said Section 25; thence North 84°17'57" West, 420.66 feet; thence South 70°16'48" West, 339.99 feet; thence South 53°03'22" West, 307.99 feet; thence South 29°46'27" West, 134.01 feet; thence South 44°41'17" West, 224.00 feet; thence South 30°27'02" West, 201.00 feet; thence South 03°12'43" East, 42.10 feet; thence South 22°19'26" East, 415.26 feet to a 5/8" iron pin on the mean high water line of Wood River; thence southerly along the easterly bank of Wood River a distance of 4,770 feet, more or less, to a point on the south line of said Section 25; thence South 89°11'54" East, 422.52 feet to a brass cap monument at the E1/16 corner on said south line; thence South 89°14'33" East, 1319.85 feet to a brass cap monument at the SE corner of said Section 25; thence South 87°52'32" East, 494.44 feet; thence North 19°17'43" West, 2366.39 feet; thence North 10°42'49" West, 1267.57 feet; thence North 10°32'19" West, 1499.99 feet; thence North 86°35'51" East, 154.57 feet; thence North 04°31'39" East, 65.53 feet; thence North 05°59'18" West, 151.32 feet; thence North 01°23'40" West, 423.45 feet; thence North 01°24'04" West, 423.39 feet; thence North 23°38'46" West, 58.45 feet; thence North 14°54'33" West, 220.30 feet; thence North 39°59'09" West, 167.71 feet; thence North 15°40'34" West, 283.73 feet; thence North 02°26'37" West, 285.66 feet; thence North 08°12'12" East, 167.00 feet; thence North 48°01'48" West, 683.91 feet; thence North 19°57'57" East, 261.79 feet; thence North 48°41'55" East, 281.36 feet; thence North 82°02'31" East, 115.85 feet; thence North 13°14'32" East, 477.73 feet to a point on the north line of Parcel 2 of said Land Partition No. 63-94; thence

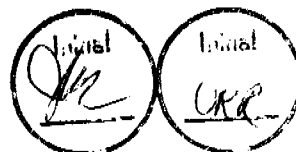


South 78°38'10" West, 234.90 feet, more or less, to the center of Crooked Creek; thence southerly along the center of Crooked Creek, being the westerly line of said Parcel 2, 6690 feet more or less to its intersection with a line running North 26°43'32" West from the southwest corner of said Parcel 2; thence South 26°43'32" East, 312.74 feet, more or less to the Point of Beginning.

Subject to any easements, reservations, or restrictions on record or now in effect.  
The above described WRP Conservation Easement contains 236 acres, more or less.

#### EXHIBIT "B"

Ingress and egress access to the WRP easement described in Exhibit "A", is provided by an existing 60' wide easement and a 200' wide easement to the property owned by the grantors, from the 60' wide county road, "Modoc Point Road," as shown on the Crooked Creek 1 WRP Map of Survey.



United States Department of Agriculture

**NRCS**

Natural Resources Conservation Service  
1201 Lloyd Blvd  
Suite 900  
Portland, Oregon 97232  
503-414-3226 Fax: 503-414-3103

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## Warranty Easement Deed

### Exhibit C

**Not Applicable**



**Helping People Help the Land**  
An Equal Opportunity Provider and Employer



**Crooked Creek I**  
**EXHIBIT D**  
**WATER USES AND WATER RIGHTS**

**I. Water Uses and Water Rights Reserved to the Grantor ("Landowner")**  
(Warranty Easement Deed Part II.F.)

- A. Identify with specificity each water use<sup>1</sup> that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement.

[The landowner reserves the right to divert the lawfully allocated amount of water from Agency Spring and Crooked Creek, as required by State Law, to meet the requirements for irrigation water delivery to other water righted properties not under the WRP easement.]

- B. For each water use described above, identify the water right<sup>2</sup>, or portion of a water right, that is associated with that use. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

[The reserved water rights, points of diversion, and conveyance structures are those that existed prior to execution of the WRP easement and are recorded by the State of Oregon, Department of Water Resources State Engineer, for the tributaries named above and that are lawfully allocated.]

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<sup>1</sup> For purposes of this exhibit, the term "water use" means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose.

<sup>2</sup> For purposes of this exhibit, the term "water right" means an instrument, filing, or document that is associated with a particular water use. The term "water right" may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.



- C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.
- D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.
- E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.

**II. Encumbered Water Uses and Water Rights for Easement Purposes**  
(Warranty Easement Deed, Part III.D.)

- A. Describe with specificity water uses that the NRCS determines are necessary to accomplish the purposes of the easement.

[NRCS specifically encumbers water rights that fall within the boundaries of this WRP easement as identified in the legal boundary survey, for the purpose of restoring fish and wildlife habitat. The intended use of the water right is to maintain instream flows by not diverting water on to the land, except that it maybe used to establish vegetation during restoration activities or otherwise determined necessary for management.]

- B. For each water use described in II.A. above, identify any associated existing water right or portion of a water right. These water rights



are encumbered by the Warranty Easement Deed<sup>3</sup> for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

[Specifically NRCS encumbers those water rights that fall within the WRP easement as indentified by the legal boundary survey, that are listed in the following State of Oregon Certificate(s) of Water Right; 35561 priority date 1960.]

### **III. PROTECTION OF ENCUMBERED WATER RIGHTS**

(Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.
- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

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<sup>3</sup> By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.

