

## WARRANTY EASEMENT DEED IN PERPETUITY

### WETLANDS RESERVE PROGRAM EASEMENT NO. 66-0436-12-01BBC

**THIS WARRANTY EASEMENT DEED** is made by and between **Terry Marie Bengard** (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 Million Five Hundred Twenty Nine Thousand Four Hundred Seventy Two and 51/100 dollars (\$4,529,472.51)**, 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.

Return to: **AmeriTitle**  
0094857  
BT1452234W

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

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:

- 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

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, loses, 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 14th day of March, 2013.

Landowner:

  
Terry Marie Bengard

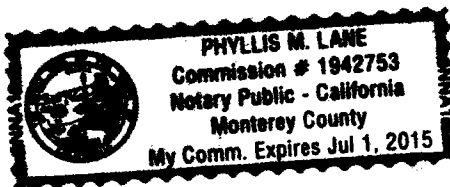
**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On this 14th day of March, 2013, before me, the undersigned, a Notary Public in and for the said State, personally appeared Terry Marie Bengard, 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.

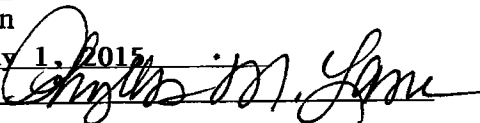


Notary Public for the State of CALIFORNIA  
Residing at 60 West Alisal Street, Salinas, CA 93901

My Commission

Expires July 1, 2015

No. 1942753





**ACCEPTANCE BY GRANTEE:**

I Ronald Alvarado (name), State Conservationist (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 20 day of March, 2013.



Ronald Alvarado  
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 (202) 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.

## **BENGARD**

Landowner: Terry Marie Bengard  
County: Klamath  
WRP Contract No: #66-0436-12-01BBC

### **EXHIBIT "A"**

#### **Description of easement areas:**

Wetland Reserve Program (WRP) Conservation easement over a parcel of land owned by grantors in Sections 5, 8, 16, 17, 20, and 21, Township 34 South, Range 7-1/2 East of the Willamette Meridian, Klamath County, Oregon. The easement areas being a portion of that property conveyed to **Terry Marie Bengard**, as described in Deed Volume M98, Page 24357 of the deed records of said Klamath County. The easement area is more particularly described as follows:

Commencing at a 5/8" iron rod with 2-1/2" aluminum cap marking the SW corner of said Section 20, thence along the west line of said Section 20, North 00°15'29" East, 1966.56 feet to an angle point of the centerline of an irrigation canal, said point being the **True Point of Beginning** of this description; thence along the west line of said Sections 20, 17, 8, and 5 generally following the centerline of said irrigation canal, North 00°15'29" East, 14,134.52 feet to a point on the southwesterly toe of the Seven Mile Canal access road; thence along said toe of access road South 61°35'17" East, 752.44 feet; thence South 31°32'20" East, 1071.06 feet; thence leaving said toe of access road South 51°43'28" West, 297.44 feet; thence South 19°27'50" West, 282.28 feet; thence South 03°46'44" East, 57.51 feet; thence South 70°33'06" East, 284.27 feet; thence South 72°48'48" East, 525.17 feet to a point on the southwesterly toe of the Seven Mile Canal access road; thence along said toe of access road South 34°10'39" East, 1788.35 feet; thence South 32°01'06" East, 1649.09 feet; thence South 33°42'28" East, 356.48 feet; thence South 40°51'46" East, 8507.12 feet; thence leaving said toe of access road South 21°44'59" West, 157.92 feet; thence South 11°12'52" East, 172.77 feet to a point being 70 feet at right angles southeasterly of the centerline of the Dixon-McQuiston Levee; thence parallel to and 70 feet southeasterly of said Dixon-McQuiston Levee South 44°55'11" West, 5881.78 feet to the intersection of said line with the South line of said Section 20; thence leaving said Dixon-McQuiston Levee parallel line, along the south line of said Section 20, North 89°49'02" West, 968.45 feet to the intersection of the south line of said Section 20 with the centerline of an irrigation canal; thence along the centerline of an irrigation canal, North 39°06'37" West, 831.57 feet; thence North 47°03'07" West, 32.36 feet; thence North 64°12'50" West, 92.89 feet; thence North 43°51'54" West 95.37 feet; thence North 57°23'10" West, 46.27 feet; thence North 64°36'54" West, 858.79 feet; thence North 34°27'52" West, 89.78 feet; thence North 74°32'48" West, 2763.97 feet to the **Point of Beginning**.

Excepting therefrom a 10' strip of land centered over an existing overhead power line, said line beginning North 00°15'29" East, 375.84 feet more or less from the Southwest corner of said Section 5 and extending South 42°34'03" East 1694.51 feet more or less to the said WRP boundary line.

Subject to any easements, reservations, or restrictions on record or now in effect.

The above described Bengard WRP Conservation Easement contains a total of 1848.01 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 County Road right of way of McQuiston Road to the dirt road and irrigation access located on the southwesterly bank of the Seven Mile Canal as presently located per D.V. 240, PG 62 and D.V. 273, PG. 380, and more particularly described as follows:

A strip of land 100 ft wide and approximately  $\frac{3}{4}$  of a mile long commencing at the intersection of the center line of Sec. 6, T 34S, Range 7  $\frac{1}{2}$  E., W.M, with the southwesterly bank of the Seven Mile Canal; extending thence southeasterly along the southwesterly bank of the Seven Mile Canal a distance of  $\frac{3}{4}$ ths of a mile, more or less, to the east section line of said Sec. 6.

and

A tract of land 60 ft wide along the south bank of Seven Mile Canal in Lots 20, 21 and 22 in Sec. 6, T 34S, Range 7  $\frac{1}{2}$  E., W.M. This 60 ft. width is to extend Southwesterly at right angles to the south high water mark of Seven Mile Canal from a point 30 ft. northwesterly from the center line of the bridge, which point is 620 feet northwesterly along the south bank of Seven Mile Canal from the south line of Lot 20 to the east line of Lot 22, Sec. 6; said tract containing three acres, more or less, in Lots 20, 21, and 22 Sec. 6, T 34S, Range 7  $\frac{1}{2}$  E., W.M. Klamath County, Oregon.

to several field access points located at the west line of Section 5, near the center of Section 8, the west line of Section 16, and the northeast corner of Section 12, Township 34 South, Range 7-1/2 East of the Willamette Meridian, Klamath County, Oregon.

# MAP OF SURVEY

BENGARD - WETLAND RESERVE PROGRAM EASEMENT  
SITUATED IN SECTIONS 5, 8, 16, 17, 20, AND 21  
TOWNSHIP 34 SOUTH, RANGE 7 1/2 EAST, WILLAMETTE MERIDIAN  
KLAMATH COUNTY, OREGON

WRP #66-0436-12-01BBC

SURVEYED FOR:

UNITED STATES OF AMERICA  
USDA - NATURAL RESOURCES CONSERVATION SERVICE  
WETLAND RESERVE PROGRAM  
1201 NE LLOYD BLVD. # 900  
PORTLAND, OR 97232  
OCTOBER 2012

LAND OWNER: TERRY MARIE BENGARD

## CERTIFICATION

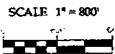
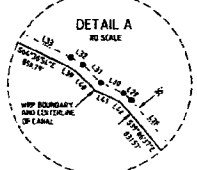
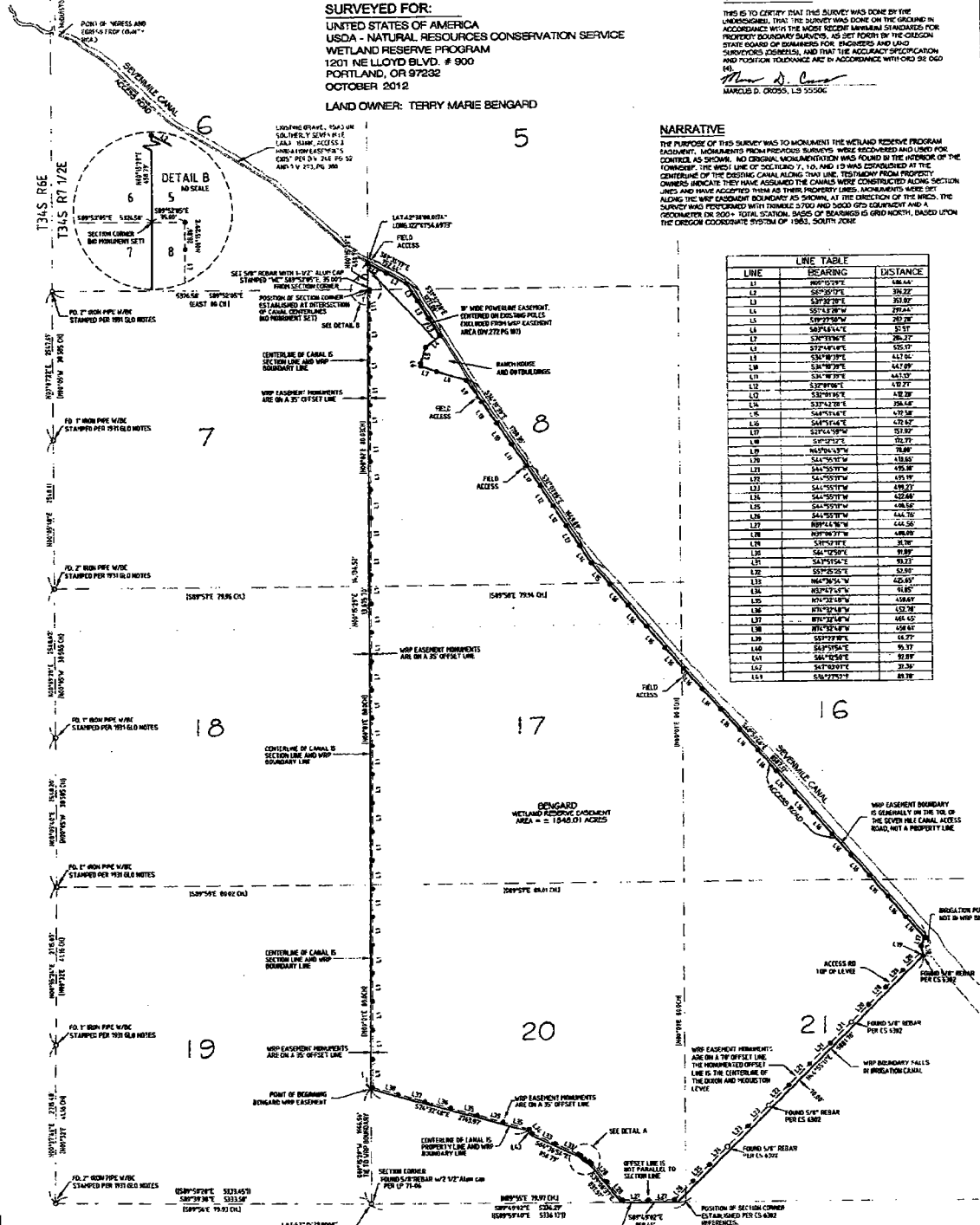
THIS IS TO CERTIFY THAT THIS SURVEY WAS DONE BY THE UNDERSIGNED, THAT THE SURVEY WAS DONE ON THE GROUND IN ACCORDANCE WITH THE MOST RECENT MEASUREMENTS FOR PROPERTY BOUNDARY SURVEYS, AS SET FORTH BY THE OREGON STATE BOARD OF SURVEYORS FOR EASEMENTS AND LAND SURVEYORS JENSEN, AND THAT THE ACCURACY SPECIFICATION AND POSITION TOLERANCE ARE IN ACCORDANCE WITH ORS 31.000 045.

MARCUS D. CROSS, L.S. 55506

## NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO MONUMENT THE WETLAND RESERVE PROGRAM EASEMENT. MONUMENTS FROM PREVIOUS SURVEYS WERE RECOVERED AND USED FOR CONTROL AS SHOWN. NO ORIGINAL MONUMENTATION WAS FOUND IN THE INTERIOR OF THE EASEMENT. THE WEST LINE OF SECTIONS 7, 10, AND 13 WAS ESTABLISHED AT THE CENTERLINE OF THE DESIRED CANAL ALONG THAT LINE. TESTIMONY FROM PROPERTY OWNERS INDICATES THEY HAVE ASSURED THE CANALS WERE CONSTRUCTED ALONG SECTION LINES AND HAVE ACCEPTED THEM AS THEIR PROPERTY LINES. MONUMENTS WERE SET ALONG THE WRP EASEMENT BOUNDARY AS SHOWN, AT THE CORNER OF THE WRP. THE SURVEY WAS MONUMENTED WITH TRIMBLE 5700 AND 5600 GPS SURVEYOR AND A GROUNDWATER DEPTH TOTAL STATION. BASES OF BEARINGS IS GRID NORTH, BASED UPON THE OREGON COORDINATE SYSTEM OF 1983, SOUTH ZONE.

LINE	BEARING	DISTANCE
L1	N89°52'30"E	186.64
L2	S65°02'00"E	38.22
L3	S37°32'30"E	80.88
L4	S55°43'30"W	292.61
L5	S89°52'30"E	287.78
L6	S45°44'45"E	51.57
L7	S37°32'30"E	286.27
L8	S72°34'00"E	135.07
L9	S34°39'30"E	443.04
L10	S34°39'30"E	447.09
L11	S34°39'30"E	443.07
L12	S37°32'30"E	439.27
L13	S37°32'30"E	439.28
L14	S37°32'30"E	439.28
L15	S44°39'30"E	439.87
L16	S72°34'00"E	439.87
L17	S37°32'30"E	439.27
L18	S34°39'30"E	443.04
L19	S34°39'30"E	443.04
L20	S34°39'30"E	443.04
L21	S34°39'30"E	443.04
L22	S34°39'30"E	443.04
L23	S34°39'30"E	443.04
L24	S34°39'30"E	443.04
L25	S34°39'30"E	443.04
L26	S34°39'30"E	443.04
L27	S34°39'30"E	443.04
L28	S34°39'30"E	443.04
L29	S34°39'30"E	443.04
L30	S34°39'30"E	443.04
L31	S34°39'30"E	443.04
L32	S34°39'30"E	443.04
L33	S34°39'30"E	443.04
L34	S34°39'30"E	443.04
L35	S34°39'30"E	443.04
L36	S34°39'30"E	443.04
L37	S34°39'30"E	443.04
L38	S34°39'30"E	443.04
L39	S34°39'30"E	443.04
L40	S34°39'30"E	443.04
L41	S34°39'30"E	443.04
L42	S34°39'30"E	443.04
L43	S34°39'30"E	443.04
L44	S34°39'30"E	443.04
L45	S34°39'30"E	443.04



**LEGEND:**  
 • FOUND MONUMENT AS NOTED  
 • SET SURVEY BEARING AND YELLOW PLASTIC CAP MARKED TRIMBLE CROSS GROUP LUT  
 UNLESS OTHERWISE SHOWN ON MAP  
 WRP EASEMENT AND PROPERTY LINE  
 SECTION LINES  
 1/4 SECTION BEARING AND DISTANCE BY LUT 71.06  
 1/4 SECTION BEARING AND DISTANCE BY 1:501 GENERAL LAND OFFICE SURVEY NOTES  
 1/4 SECTION BEARING AND DISTANCE BY 1:501 GENERAL LAND OFFICE SURVEY NOTES

BASIS OF BEARING IS GRID NORTH OF THE OREGON COORDINATE REFERENCE SYSTEM (OCRS) BOUNDARY. THE ZONE AND THE FOLLOWING PROJECTION DEFINITION:  
 • TRANSVERSE MERCATOR PROJECTION NORTH AMERICAN DATUM OF 1983  
 • EARTH OF GRID ORIGIN: 41°50'00" N  
 • CENTRAL MERIDIAN: 121°45'00" W  
 • FALSE MERIDIAN: 121°45'00" W  
 • FALSE EASTING: 100,000.000 M  
 • CENTRAL MERIDIAN SCALE: 1.000000 (exact)

**REGISTERED PROFESSIONAL LAND SURVEYOR**  
 M. D. CROSS  
 M. D. CROSS  
 55506  
 PROJECT NO. 1246  
 SHEET 1 of 1

**EXHIBIT D**  
**WATER USES AND WATER RIGHTS**  
**Bengard WRP**

**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.

Divert water from 7 mile canal to the WRP easement according to WRP Hydrology Management Plan for the purpose of emergent wetland wildlife habitat. Drain water off easement according to the WRP Hydrology Management Plan. Convey water from the 7 mile canal to the interior irrigation canal to the point of diversion onto the WRP easement. Amount of water diverted from the 7 mile canal will be no more than allowed through existing Certificate of Water Right #309.

- 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 water right will be retained by the Landowner and will be used for emergent wetland wildlife habitat.

- C. For each water right identified above, the Landlord retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would irreversibly damage the conservation values of the easement, as determined by NRCS in its sole judgment.

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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.

- 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.

The existing water right is necessary for the restoration of the emergent wetland. The final water uses and quantities are pending final designs.

- 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.

State of Oregon County of Klamath Certificate of Water Right #309, dated January 26, 1910 for the purpose of irrigation of 15,962.6 acres and shall not exceed 200.5 cubic feet per second. Location is Lot 3, Section 3 T 34S, R 7 1/2E of W. M., 2470 feet South and 940 feet East from the NW Corner, section 3.

**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.

<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.

- 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.