

## WARRANTY EASEMENT DEED

WETLANDS RESERVE PROGRAM  
AGREEMENT NO. 66-6740-7-188

THIS WARRANTY EASEMENT DEED is made by and between Richard Fossum  
of RR1, Box 121, Claire City, SD 57224  
(hereafter referred to as the "Landowner"), Grantor(s), and the UNITED STATES OF AMERICA, by and through  
the Commodity Credit Corporation (hereafter referred to as the "United States"), Grantee. The Landowner and the  
United States are jointly referred to as the "Parties."

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 habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic  
values, and environmental education. It is the intent of CCC to give the Landowner the opportunity to participate in  
the restoration and management activities on the easement area.

**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 Seven Thousand Four Hundred Twenty and  
Dollars (\$ 7,420.92 ), the Grantor(s), hereby grants and conveys with general warranty of title to the  
UNITED STATES OF AMERICA and its assigns, the Grantee, for 30 years, 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 30 years and shall bind the  
Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

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. see Exhibit A

**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, 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 quiet enjoyment of the rights reserved on the easement area.

C. **Control of Access.** The right to prevent trespass and control access by the general public.

88274  
State of South Dakota }  
County of Roberts } ss.  
Carol Mattheisen }  
Register of Deeds }  
Filed for record this 15<sup>th</sup> day of Jan., 1998  
at 2:25 o'clock P.M. and recorded in Book m65  
of Mac page 276-283  
Jee: 24.00 Deputy

D. Recreational Uses. The right to undeveloped recreational uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.

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. see attached

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

A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and are prohibited of the Landowner 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;
6. diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means;
7. building or placing buildings or structures on the easement area;
8. planting or harvesting any crop; and
9. grazing or allowing livestock on the easement area.

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 CCC 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.

D. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.

E. Reporting. The Landowner shall report to CCC any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

**PART IV. Allowance of Compatible Uses by the Landowner.**

A. General. The United States may authorize, in writing and subject to such terms and conditions CCC may prescribe at its 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 such use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. CCC 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 shall have the right to enter unto the easement area to undertake, at its own expense or on a cost share basis with the Landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters 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.

C. Easement Management. The Secretary of Agriculture, by and through CCC may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that CCC 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 CCC in accordance with applicable law.

D. Violations and Remedies - Enforcement. The Parties agree that this easement deed may be introduced in any enforcement proceeding 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, successors, 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.

PART VII. Special Provisions (if any).

Grantor'(s) vested drainage rights, if any, are hereby subordinated to the interest of the United States in the easement area.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its successors and assigns for 30 years. 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 15th day of December, 1997.

Landowner(s):

) Richard Fossum (Seal)  
)  
)  
) \_\_\_\_\_ (Seal)

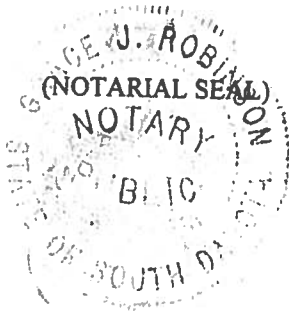
Acknowledgment

In the State or Commonwealth of South Dakota, County, Borough or Parish of  
Roberts, on this 15th day of December, 1997, before me, the undersigned,  
a Notary Public in and for said jurisdiction, personally appeared Richard Fossum

\_\_\_\_\_

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that  
he executed the same as his free act and deed,

IN TESTIMONY WHEREOF, I have hereunto my hand and Notarial Seal subscribed and affixed in said  
jurisdiction, the day and year above written.



Grace Robinson  
Notary Public

My Commission Expires: May 31, 1998

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

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OMB DISCLOSURE STATEMENT

Public reporting burden for this collection of information is approximately (60) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture Clearance Office OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0578-0013), Washington, D.C. 20503.

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Exhibit A - Wetlands Reserve Program Contract No. 66-6740-7-188

All of Fossum Outlot 1 in Government Lot 4 of Section 3 consisting of 33.87 acres  
T. 127 N., R. 52 W., of the 5th P.M., Roberts County, South Dakota, including  
access thereto, the plat of which is recorded in Book 2 Page  
Q 28.  
Cabinet

Book M65 Page 282

### Exhibit C

Subsurface mineral exploration and removal activities in reference to mineral, oil and gas within the boundaries of the easement area may be authorized by NRCS in accordance with a plan as developed by the landowner, NRCS, and USFWS. The plan will contain provisions which minimize adverse impacts to the wetland functions and values and will be in compliance with all Federal, state, and local laws and regulations governing disturbance of a wetland.