

EMERGENCY WATERSHEDS PROGRAM  
FLOODPLAIN

WARRANTY EASEMENT DEED

Agreement #75-6740-0-811

THIS WARRANTY EASEMENT DEED is made by and between Thad Duerre and Victoria L. Duerre of RR1, Box 242, Bristol, SD 57219 (hereafter referred to as the "Landowner"), Gramor(s), and the UNITED STATES OF AMERICA (hereafter referred to as the "United States"). The Landowner and the United States are jointly referred to as the "Parties."

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Purposes and Intent. The purposes of this easement are: to allow the unimpeded reach and flow of any waters in, over, upon, or through the easement area; to retard runoff and prevent soil erosion through the restoration, protection, or enhancement of the floodplain; to restore, protect, manage, maintain, and enhance the functional values of wetlands, riparian areas, conservation buffer strips, and other lands; to conserve natural values including fish and wildlife habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education; and to safeguard lives and property from floods, drought, and the products of erosion. It is the intent of the United States to allow the landowner the opportunity to participate in the restoration and management activities on the easement area and, at the discretion of the United States to provide for compatible uses which may include haying, grazing, and timber harvest under the provisions approved by the United States.

Authority. This easement deed acquisition is authorized by 16 U.S.C. § 2203, as amended, and 7 U.S.C. § 428a. The acquiring agency is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Ninety Thousand, One Hundred  
two Dollars and Eighteen  
Cents.

NOW THEREFORE, for and in consideration of the sum of Dollars (\$90,102.18), Landowner hereby grants and conveys with general warranty of title to the United States of America and its assigns, forever, 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 in perpetuity and shall bind the Landowner(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 warranty 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 warranty 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.

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.

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 the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited of the Landowner on the easement area:

1. Altering of woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
2. Dumping refuse, wastes, sewage or other debris;
3. Harvesting wood products;
4. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
5. Diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means;
6. Building or placing buildings or structures on the easement area;
7. Planting or harvesting any crop; and
8. Receiving any disaster assistance from the Secretary of Agriculture.

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 on easement lands designated as Category 1 or Category 2, as provided for in Part IV, must be approved in writing by the United States prior to implementation by the Landowner.

C. Fences. Except for establishment costs incurred by the United States and replacement costs not due to the Landowners negligence or malfeasance in association with Category 1 and Category 2 designated easement lands, all other costs involved in establishment, replacement, and 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 the United States any conditions or events which may adversely affect the floodplain or 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 the United States may prescribe at its discretion, an activity on the easement area as a compatible use. A compatible use authorization will only be made upon a determination by the United States that the proposed use is consistent with the long term protection and enhancement of the floodplain, riparian, wetland, and other values of the easement area. The United States may prescribe the type, amount, method, timing, intensity, and duration of the compatible use.

B. Definitions. For purposes of this Part:

1. "Haying" means the use of the land for the production of forage from long-term stands of adapted forage plants such as grasses and legumes.
2. "Grazing" means the use of the land for the direct consumption of forage by animals.
3. "Timber Harvesting" means the use of the land for silviculture and associated curing and extraction of wood products.
4. "Cropping" means the use of the land for the cultivation and growing of crops for harvest which may include production of fruits and nuts in orchards and vineyards.

C. Specifications Related to Land Use Categories. The easement area has been classified according to one or more land use categories as indicated on the attached EXHIBIT D which is appended to and made a part of this warranty easement deed:

1. Category 1 Lands: Areas on which the United States will not authorize any activity as a compatible use.
2. Category 2 Lands: Areas on which the United States may authorize an activity as a compatible use, including, but not limited to, managed timber harvest, periodic haying, or grazing. The United States will not authorize an activity related to cropping as a compatible use on these areas nor will the United States authorize an activity related to haying or grazing if such areas are being returned to woody vegetation.
3. Category 3 Lands: Areas on which the United States did not acquire the rights to, and will not by the terms of this warranty easement deed prohibit of the Landowner, the activities specifically identified under Sections A1, A3, or A7 of Part III of this warranty easement deed to the extent that such activities are for the specific purpose of cropping, haying, grazing, or timber harvest. It is understood that in the easement area designated as Category 3 all other rights, title, and interest have been acquired by the United States unless expressly reserved to the Landowner in Part II of this warranty easement deed.

PART V. Rights of the United States. The rights of the United States include, but are not limited to:

A. Management activities. The United States shall have the right to enter unto the easement area, regardless of land use category, to undertake, at its own expense or on a cost share basis with the Landowner or other entity, any activities (including removal of levees or other hydrologic alteration) to restore, protect, manage, maintain, enhance, and monitor the floodplain and other values of the easement area, including the reach and flow of waters. The land categories identified and described in Part IVC of this warranty easement deed shall not be construed to interfere with any of these management activities. It is the intent of the United States to give the Landowner the opportunity to participate in the restoration and management activities on the easement area.



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 United States may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the United States 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.

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 floodplain 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 delegates, 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 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 Emergency Watersheds 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).

[Can insert reference to delegation of easement management, monitoring, and enforcement responsibilities to sponsor organization.] 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 and its successors and 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 5 day of Sept, 2000  
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Landowner(s): ) [Signature] (Seal)  
                          ) Thad Duerre  
                          ) [Signature] (Seal)  
                          ) Victoria L. Duerre

**Acknowledgment**

In the State or Commonwealth of Day, County, Borough or Parish of  
Day, on this 5 day of Sept, 2000 before me, the undersigned,  
a Notary Public in and for said jurisdiction, personally appeared

Thad Duerre Victoria L Duerre

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that  
they executed the same as 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.

(NOTARIAL SEAL)

[Signature]  
Notary Public

My Commission Expires:



Prepared by Prairie Partners, Inc., Box 403, Brookings, SD 57006  
(tel: 605-692-4000), for James River Water Development Dist. and NRCS.

**Exhibit A- Description of Easement Area**  
Emergency Watershed Protection Program.  
NRCS Contract No. 75-6740-0-811  
Landowner Name: Thad Duerre and Victoria Duerre

All of Tracts 1, 2 and 3 of the Plat of Duerre's Conservation Easement in the W1/2-SW1/4, the NW1/4 and the NE1/4 all in Section 11, T119N, R59W of the 5<sup>th</sup> Principal Meridian, Clark County, South Dakota containing 389.53 acres, more or less. The plat which is recorded in Book of Plats No. 142-A there in according to the plat of record in Clark County Register of Deeds Office.

**Exhibit B** Access by road right-of-way.

**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 USSFWS. 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.

**Exhibit D**  
**Program:** Emergency Watershed Protection Program  
**Landowner name** Thad Duerre and Victoria L. Duerre  
**Number of Acres in Category II, 389.53 Acres**

Category	Tract	Acres	Qtr. Section	Section	Twp.	Range
II	1	77.68	W1/2-SW1/4	11	119	59
II	2	154.98	NW1/4	11	119	59
II	3	156.87	NE1/4	11	119	59

**Total** 389.53 Acres

No zoning Board action needed; there has been no change in land use.

  
Thad Duerre

  
Victoria L. Duerre