

Prepared by:  
Natural Resources Conservation Service  
200 Fourth Street SW  
Huron, SD 57350  
(605) 352-1204

108,238  
State of South Dakota, County of Roberts  
Filed this 25<sup>th</sup> Day of May 2007 At 10:05  
O'Clock 17 M. Book M73 Page 804  
By Carol Martenson  
Register of Deeds Deputy  
Fees \$ 12.<sup>00</sup>

ACCEPTANCE OF  
WARRANTY EASEMENT DEED  
WETLANDS RESERVE PROGRAM

WRP #66-6740-6-94

WHEREAS Marlyn R. Johnson, Gary Mueller a/k/a Gary L. Mueller, Myrna F. Johnson, and LaVonne Mueller of LaBolt, SD, Grantors signed a Warranty Easement Deed on January 11, 1996 conveying all of their rights, title and interest to certain lands and appurtenant rights of access to the United States of America and reserving certain rights, title and interest, all of which are set out in the Warranty Easement Deed which was recorded in the Office of the Register of Deeds of Roberts County, South Dakota, on March 7, 1996 at 12:15 p.m. in Book M63, Pages 575-584 of Misc.

WHEREAS, the land conveyed in the Warranty Easement Deed consists of 97.60 acres which are more particularly described in Exhibit A which is attached hereto and made a part hereof for all purposes. The access easement conveyed is more particularly described in Exhibit B which is attached hereto and made a part hereof for all purposes;

WHEREAS, the United States of America paid the sum of Twenty-Nine Thousand One Hundred Ninety-One Dollars and Thirty Eight Cents (\$29,191.38) to the named Grantors for their rights, title and interests conveyed to it under that Warranty Easement Deed and did, on March 7, 1996, accept the conveyance of those rights, title and interests.

WHEREAS, the United States of America, acting by and through the Natural Resources Conservation Service, the acquiring agency, desires to memorialize its acceptance of said conveyance.

NOW, THEREFORE, I, Janet L. Oertly, State Conservationist, being the duly authorized representative of the Natural Resources Conservation Service, United States Department of Agriculture, do hereby accept that Warranty Easement Deed on behalf of the United States of America, the Grantee in that Deed.

This acceptance is effective as of March 7, 1996.

Dated this 18<sup>th</sup> day of May, 2007.

Janet L. Oertly

Janet L. Oertly  
State Conservationist

STATE OF SOUTH DAKOTA

COUNTY OF BEADLE

This instrument was acknowledged before me on 18<sup>th</sup> of May, 2007 by Janet L. Oertly in her capacity as State Conservationist, Natural Resources Conservation Service, United States Department of Agriculture, on behalf of the United States of America.

Vicki L. Supler

NOTARY PUBLIC

My Commission expires: 07/09/11

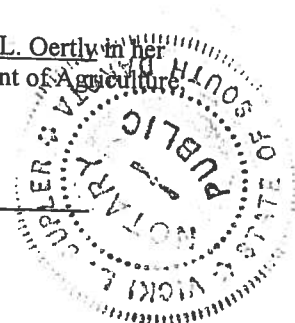


EXHIBIT A

DESCRIPTION OF EASEMENT AREA:

Johnson-Mueller Outlot 1 in the Southwest Quarter (SW ¼) of Section Thirteen (13), Township One Hundred Twenty-Three North (123N), Range Fifty (50) West of the 5<sup>th</sup> P.M., Roberts County, South Dakota; (97.60 acres) excluding road right-of-way, and access thereto, the plat of which is recorded in Book CAB #2, Page M-27, in the Roberts County Register of Deeds Office.

EXHIBIT B

Access via road right-of-way.



### WARRANTY EASEMENT DEED

WETLANDS RESERVE PROGRAM  
AGREEMENT NO. 66-6740-6-94

THIS WARRANTY EASEMENT DEED is made by and between Myrna F. Johnson, LaVonne Mueller of LaBolt, SD a/k/a Marlyn R. Johnson, Gary Mueller, Gary L. Muelle

(hereafter referred to as the "Landowner"), Grantor(s), and the UNITED STATES OF AMERICA, by and through the Secretary of Agriculture, Washington, D.C. 20250 (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) of the 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 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.

**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 Twenty nine thousand one hundred ninety one & 38/100 Dollars (\$ 29,191.38), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, 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, (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.

None

**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.

STATE OF SOUTH DAKOTA } ss. 85020  
ROBERTS COUNTY }  
Filed for record on the 7<sup>th</sup> day of March  
1996 at 12:15 o'clock P.M. and recorded in Book  
M63 page 575-584 of Map.  
Carol Mathison  
Reg. : 33 Register of Deeds.

Book M63 Page 575

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.

NONE

**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 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.

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 NRCS 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 the NRCS 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. 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 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 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 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).

None

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America 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 11<sup>th</sup> day of January, 1996.

Landowner(s):  
) Marilyn R Johnson  
) Myra F Johnson (Seal)  
) Gary Mueller  
) LaVonne Mueller (Seal)

Acknowledgment

In the State or Commonwealth of SD, County, Borough or Parish of \_\_\_\_\_, on this 11th day of January, 1996, before me, the undersigned, a Notary Public in and for said jurisdiction, personally appeared

Robert W. Saff

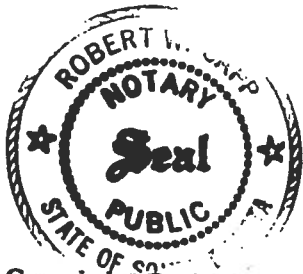
Marlyn R. Johnson, Gary Mueller,  
Myrna F. Johnson and LaVonne Mueller

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_ 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)

Robert W. Saff  
Notary Public



My Commission Expires:

February 22, 1997

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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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Summary of  
Wetlands Reserve Plan of Operation  
for  
Mueller and Johnson's Wetlands Easement Area  
65-6740-6-94

**Purpose and Function:** The primary purpose of this easement is the restoration and protection of wetlands for wildlife (particularly breeding migratory birds), flood storage, water quality protection, and to establish perennial cover for aesthetic quality.

**Summary of Restoration:** Under the WRP contract, Field 1 (97.6 acres) will be placed under a perpetual easement and restored as specified in the Wetland Reserve Plan of Operations (WRPO). The area will be restored as shown on the attached plan map and includes the following:

1. Seed 68.6 acres in field 1 to a mixture of native grasses. Control weeds before seeding with a burndown chemical. Defer livestock grazing and control competitive weeds during establishment period by clipping for two full years after seeding. Specifications for seeding are shown on Form SD-CPA-4, a part of the WRPO.
2. The following restores the hydrologic condition of the wetland(s):
  - a. The ditch(es) draining the wetlands in field 1 will be plugged.
3. The 29 acres of wetland will be allowed to revegetate naturally.

The landowner may also undertake other wetlands and wildlife enhancement measure identified in WRPO that are not required to satisfy the terms of the WRP contact and easement.

**Compatible Uses:** The following uses have been determined to be compatible with the purposes for which the WRP easement is established:

1. Grazing by livestock provided that:
  - a. A 25% harvest efficiency is not exceeded in any given year.
  - b. Nesting birds and other wildlife are not adversely affected.
  - c. Adequate regrowth is allowed to provide winter cover and early spring nesting cover according to WRPO.
2. As an alternative to grazing, the harvesting of one cutting of hay annually between July 15 and September 1, provided the area is not grazed in the same year.
3. Hunting and fishing that is fully consistent with State and Federal regulation, including the leasing of such rights to others. However, the commercial harvest of bait fish is prohibited.



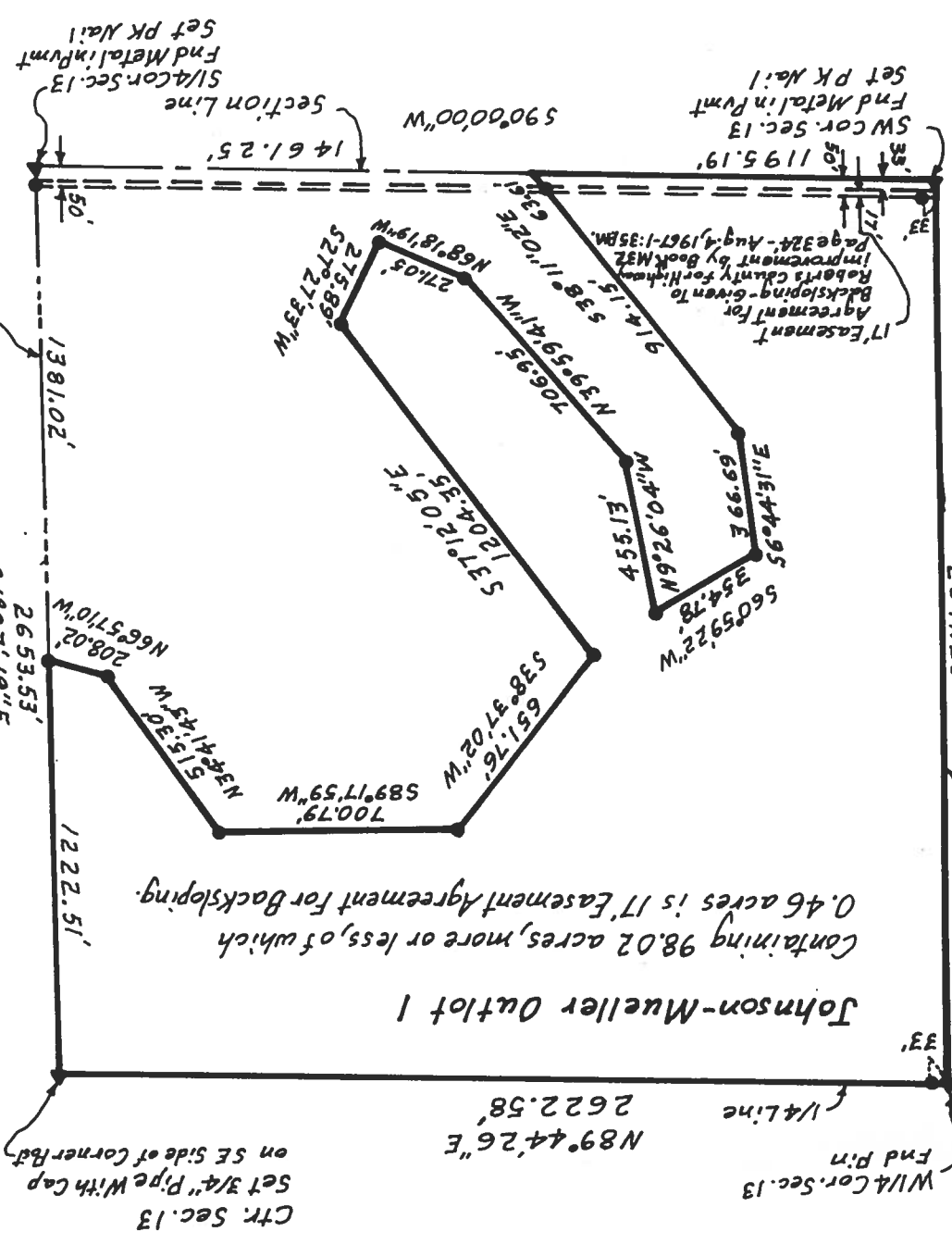
4. Noncommercial firewood harvest. All other timber management shall be according to a plan that is approved by the Natural Resources Conservation Service and the Fish and Wildlife Service before implementation, and maintains the functions and values of the restored wetland(s).
5. Access: An access route will be identified by the landowner to provide USDA personnel or representatives access to perform Wetland Reserve Program duties. The landowner controls all other access rights to the easement area.

Operation and Maintenance: The easement area will be maintained to protect the wetland functions and values for which it was established by:

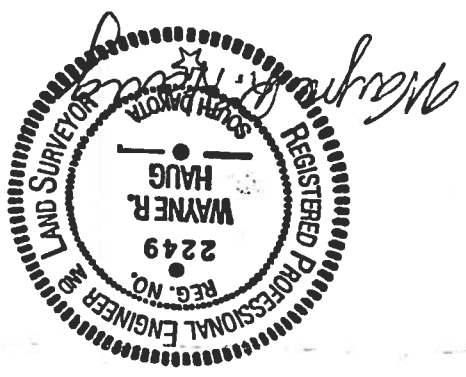
1. The restoration operations identified in items 1, 2 and 3 under "Summary of Restoration" will be planted and/or maintained as the WRPO states.
2. All native grass seedings will have maintenance adequate to facilitate establishment. An evaluation of the success of the seeding will be made after the third growing season to determine whether or not the area needs to be reseeded or whether existing plants are adequate.
3. Areas with noxious weeds will be controlled on the easement area as required by state law with cultural methods, such as mowing, digging, or using herbicides.
4. All chemical use on the easement area will be in accordance with all label requirements and restrictions.

# PLAT OF JOHNSON-MUELLER OUTLOT 1

in the SW 1/4 of section 13, T123N, R50W of the 5th P.M.,  
 Roberts County, South Dakota.



Scale 1" = 500'  
 December 18, 1995  
 3/4" Pipe set  
 with cap



Wayne R. Haug  
 Reg. P.E. & L.S. No. 2249

Prepared by: Haug Engineering & Surveying  
 P.O. Box 737  
 Clear Lake, SD 57226