

**UNITED STATES DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
GRANT OF EASEMENT FOR WILDLIFE HABITAT CONSERVATION**

THIS INDENTURE, by and between \_\_\_\_\_ hereinafter referred to as Grantors, and the UNITED STATES OF AMERICA, hereinafter referred to as United States, acting by and through the Secretary of the Interior or her authorized representative.

**WITNESSETH**

**WHEREAS**, the Migratory Bird Conservation Act, 16 U.S.C. Sections 715a-715s; the Fish and Wildlife Act of 1956, 16 U.S.C. Sections 742a-742j; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. Sections 3901-3932; and the Land and Water Conservation Fund Act 1965, 16 U.S.C. 4601-9(a)(1) authorize the Secretary of the Interior to acquire lands and waters or interests therein for the development, advancement, management, conservation, and protection of fish and wildlife resources. The purpose of this easement is to preserve and protect in perpetuity the habitat quality of the lands delineated on Exhibit A by maintaining the wetland, riparian and upland habitat areas to provide water, cover, and food for a variety of native aquatic, terrestrial and avian wildlife;

AND

**WHEREAS**, the lands described below contain habitat suitable for use as a Wildlife Habitat Conservation Area.

**NOW, THEREFORE**, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_), to the Grantors in hand paid, the receipt of which is hereby acknowledged, Grantors hereby grant and convey unto the United States, and its assigns, commencing with the acceptance of this indenture by the Secretary of the Interior or her authorized representative, a conservation and wildlife easement in perpetuity in the lands described on Exhibit A, including any and all appurtenant water rights, of the Grantors, together with the right of ingress and egress on, over, across and through any and all lands of the Grantors by authorized representatives of the United States for the purpose of monitoring the Grantors' compliance with the terms hereof. Grantors covenant with the United States on behalf of themselves, their heirs, executors, administrators, successors, and assigns, forever, to do and refrain from doing upon Grantors' said lands the various activities hereinafter recited, it being hereby agreed that the doing of and refraining from said activities upon said lands is and shall be for the benefit of the United States through the preservation and conservation of the land. No rights herein are granted to the general public for access to or entry upon the land subject to this grant of easement for any purpose. The lands to which the terms of this easement apply are located in \_\_\_\_\_ County, State of \_\_\_\_\_, to wit:

Subject, however, to all valid, existing leases and existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, telegraph and telephone lines, cable lines, and all outstanding mineral rights vested in third parties as of the effective date hereof.

The conveyance hereunder shall be effective on the date of the execution of this Indenture by the Secretary of the Interior or her authorized representative; provided, however, that such acceptance must be made within \_\_\_\_\_ calendar months from date of the execution of this Indenture by the Grantors, or any subsequent date as may be mutually agreed upon in writing by the parties hereto prior to the expiration of such date; and provided further, however, that in the event such acceptance is not made by such date, this Indenture shall be null and void.

The Grantors, for themselves and for their heirs, successors, assigns, lessees, and any other person claiming under them, covenant and agree that they will cooperate in the maintenance and protection of the habitat areas, delineated on the map(s) attached hereto as Exhibit A and on file in the Office of the Regional Director, U.S. Fish and Wildlife Service, as Wildlife Habitat Conservation Areas for the protection of fish and wildlife resources and to maintain the quality of these lands to provide cover for wildlife and food for a varied array of native aquatic, terrestrial, and avian wildlife. The parties acknowledge that an Easement Documentation Report will be prepared for the property, at the expense of the U.S. Fish and Wildlife Service, to document the physical and biological characteristics of the property at the time of the grant of this easement. A copy of this Report shall be maintained on file by both the Grantor and the U.S. Fish and Wildlife Service and by this reference made a part hereof. The parties hereby acknowledge that the Report will accurately reflect the condition of the property subject to this easement at the time of conveyance.

This easement shall limit the use of the property to activities that are consistent with the conservation purposes identified herein, including ranching, grazing, haying, hunting, fishing, and those uses and practices consistent with the terms hereof and identified in Exhibit C.

The restrictions hereby imposed upon the use of said lands of the Grantors and the activities which Grantors covenant to refrain from doing upon said lands, except as may be authorized from time to time by the express prior written consent of the U.S. Fish and Wildlife Service, are identified in Exhibit D.

This instrument, including the above referenced map(s) attached as Exhibit A, Exhibit B Report, and Exhibits C and D, sets forth the sole and complete agreement of the parties with respect to the Easement. It is understood that this Indenture imposes no other obligations or restrictions upon the Grantors and that neither they nor their successors, assigns, lessees, nor any other person or party claiming under them shall, in any way, be restricted from utilizing all of the subject lands in the customary manner for agricultural purposes except as provided herein.

It is further understood that the rights and interests granted to the United States herein shall be administered by the U.S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. Sec. 668dd, as part the Bear River Watershed Conservation Area.

## SPECIAL PROVISIONS

1. This Easement shall not be binding upon the United States until accepted on behalf of the United States by the Secretary of the Interior or her authorized representative, although this Easement is acknowledged by the Grantors to be presently binding upon them and to remain so until the expiration of said period for acceptance, as hereinabove described, by virtue of the payment to the Grantors, by the United States, of the sum of ONE DOLLAR (\$1.00), the receipt of which is hereby expressly acknowledged by Grantors.

2. Notice of acceptance of this Indenture shall be given to the Grantors by certified mail addressed to \_\_\_\_\_ and shall be effective upon the date of mailing, and such notice shall be binding upon all Grantors without sending a separate notice to each.

3. Payment of the consideration will be made by a United States Treasury check or by electronic funds transfer after acceptance of this Easement by the Secretary of the Interior or her authorized representative and after the Attorney General, or in appropriate cases, the Solicitor of the Department of the Interior, shall have approved the easement interest thus vested in the United States.

4. The United States acknowledges that a tax deduction may be available for sales or donations of real property interests to the United States at or below the fair market value. It is the Grantor's obligation to establish the amount of the charitable contribution involved in such sale for federal tax purposes, and the United States makes no representation or warranty concerning the tax consequences of this transaction, including the value and deductibility of any intended charitable gift. If a charitable gift is claimed by the Grantor(s) in conjunction with this transaction, and to the extent not already set forth herein, the Grantors must establish that this easement incorporates, and to the extent applicable, meets and implements the requirements set forth in the Section 170(h) of the Internal Revenue Code and associated regulations required for any donation to be considered a "qualified conservation contribution" as defined by those provisions and regulations.

This easement is in gross. At the time of the conveyance of this Conservation Easement to the United States, this Conservation Easement gives rise to a real property right, immediately vested in the United States. The United States' interest in the property shall be valued at not less than the ratio of the fair market value of this conservation easement to the unrestricted fair market value of the Property, as these values are determined on the date of acceptance of this conservation easement.

5. The United States shall have the right to enforce, by all means provided by the National Wildlife Refuge System Administration Act and other applicable law (including but not limited to judicial proceedings at law or in equity), the provisions of this Conservation Easement including but not limited to the right to require the restoration of the property to its condition on the date of this easement, subject to the terms of Exhibits C and D set forth herein.

6. Any ambiguities in this easement shall be construed in a manner which best achieves the purposes of protecting and enhancing fish and wildlife habitat and improving water quality.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ in the year 20\_\_\_\_\_.

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**EXHIBIT A:**

**MAPS**

**(Including building envelope, water features, roads, annual crop areas)**

**EXHIBIT B:**

**LEGAL DESCRIPTION (Including water rights)**

## EXHIBIT C:

### PERMITTED USES AND PRACTICES

The following uses and practices by the Grantor, though not an exhaustive recital of all uses and practices of said lands, are hereby deemed to be consistent with the conservation purposes of the Easement. Any proposed activities or uses that may impact the conservation and habitat values described in Exhibit A and/or in the Easement Documentation Report but not identified below shall require prior written approval by the U.S. Fish and Wildlife Service. In addition, certain uses and practices identified below are subject to specific conditions or require prior approval. Any activities or provisions requiring prior written approval should be submitted in writing to the \_\_\_\_\_ National Wildlife Refuge which will approve or deny such requests in a reasonable time frame. The permitted uses must also conform to other applicable local and state laws and regulations. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

1. Maintain, repair and/or replace the existing dwellings and associated outbuildings, with buildings of the same purpose and/or utility, in substantially the same location, for the (insert number of residences) existing residence(s) located in (insert legal description), as shown and described on Exhibit A. The Grantor is responsible for complying with all applicable laws, ordinances and regulations concerning future maintenance, repair or replacement of these existing building sites, as applicable.
2. Maintain, repair and replace existing agricultural buildings and structures of the same purpose and/or utility, in substantially the same location and size, including but not limited to corrals, hay sheds, loafing sheds, barns, or other non-residential buildings, and water facilities including but not limited to reservoirs, stock ponds, headgates, weirs, pipelines, irrigation ditches (including burning of ditches), or wells, that support agricultural uses of the property and other uses permitted herein; and with prior written approval by the U.S. Fish and Wildlife Service, construction and/or development of new water facilities, reservoirs and stock ponds; provided that any maintenance, repair, replacement, construction or development activities do not create or cause long-term impairment to the ecosystem or associated wetlands or wildlife habitat on lands identified in Exhibit A. Grantor agrees to remove, at their own expense, any unauthorized structure erected without written approval.
3. Livestock grazing is permitted.
4. The landowner shall be responsible for the compliance with all applicable laws for the control of noxious or invasive plant species on the easement.
5. Existing roads and trails located on the property at the time of the grant of this easement delineated in Exhibit A may be maintained, repaired, or replaced with the same type of road within the existing road footprint.
6. Grant a road right-of way or construct a road for a permitted use identified in this Exhibit with prior written approval of the U.S. Fish and Wildlife Service. Grantor's written request shall include a construction plan describing the purpose of the road, its location and, to the extent deemed necessary by the U.S. Fish and Wildlife Service, information on the road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and other special concerns such as culvert placement, bridges, fords, buffer strips, reseeding and/or reestablishment of vegetation, and fish and wildlife impacts and mitigating efforts. Grantor may relocate existing unimproved pasture roads/trails (two-track ranch trails) on the property and may add new unimproved pasture roads/trails on the property with the prior written consent of the Service.
7. Subject to all prior leases and outstanding mineral rights in third parties as of the effective date hereof, exploration for and extraction of oil, gas, other hydrocarbons, and/or other minerals (including, but not limited to, sand, gravel, clay, and aggregate) (collectively, "hydrocarbons and/or minerals") delineated

in Exhibit A must be conducted in a manner that does not constitute surface mining and that is in accordance with the following conditions and with prior written approval by the U.S. Fish and Wildlife Service:

- a. Exploration for or extraction of hydrocarbons and/or minerals must be conducted in a manner consistent with reasonable, site specific conditions developed by the Fish and Wildlife Service to protect the conservation values of the property. No refineries or secondary production facilities may be located on the property, and any hydrocarbons produced from the property must be transported by pipeline or other means approved in advance by the Fish and Wildlife Service.
  - b. Travel for the purpose of hydrocarbon and/or mineral development shall be restricted to existing roads or to new roads approved in advance by the Fish and Wildlife Service.
  - c. Areas of surface disturbance shall have only limited and localized impact and must be mitigated by restoring soils to the original contours and replanting native vegetation, as specified in a mitigation plan approved by the Fish and Wildlife Service.
  - d. Grantors agree not to enter into any lease or other agreement for the exploration or development of the interests in any hydrocarbon and/or mineral substance, unless such lease or other agreement includes the provisions of this section (7), and unless such lessee or other party agrees in writing to carry out any hydrocarbon and/or mineral exploration or development activity in strict accordance with all of the restrictions of this paragraph. Nonetheless, the Grantors shall remain liable for compliance with all of the terms and conditions of this Easement.
8. Hunting and Fishing in accordance with all state and federal regulations.
9. Sell, exchange, devise or gift said lands into no more than TWO parcel(s) solely for agricultural purposes. Sale or conveyance of an undivided interest in the Protected Property shall not constitute a division of the property, so long as the interest remains undivided from the whole and the configuration of the property remains as described in this Conservation Easement or as permitted by this paragraph. The owner of an undivided interest in any portion of the property shall not have a right of exclusive occupancy or exclusive use of any portion of the property, or any right to have the property partitioned. Furthermore, if the property is divided into more than one parcel as herein provided, the Grantor must comply with all federal, state and local laws, ordinances, and regulations concerning subdivision, including, if required, the surveying of the parcel to be sold and the submission of the proposed separate tract to state and/or local review authority for approval. Grantor shall furnish to the U.S. Fish and Wildlife Service a copy of any document or conveyance utilized to affect the transfer of the property upon execution of said document or conveyance. Both parcels will continue to be subject to this easement.
10. Cropland areas identified on Exhibit A are exempt from Paragraph 9 of Exhibit D. If any cropland areas are restored to native vegetation, then Paragraph 9 of Exhibit D will apply to such restored areas.
11. Minor surface disturbances associated with the construction of structures or buildings as authorized under Paragraphs 1 through 2 of this Exhibit.
12. Grantors will cooperate in maintenance of the Wildlife Habitat Conservation Area by maintaining permanent vegetative cover on said habitat areas, as follows: There shall be no haying or mowing the areas not identified as croplands Exhibit A for any reason until after July 31<sup>st</sup> in any calendar year, no alteration of upland, wetland, and riparian habitats or other natural features by digging, plowing, disking or otherwise destroying the vegetative cover on the habitat areas delineated on Exhibit A, unless prior approval in writing is granted by the U.S. Fish and Wildlife Service; except that grazing the aforesaid lands is permitted at any time throughout the calendar year without approval in writing.

## **EXHIBIT D: PROHIBITED USES AND PRACTICES**

The following uses and practices on the property are hereby deemed to be inconsistent with the purpose of the easement because they would alter the topography, wildlife habitat, or other natural features, and are expressly prohibited *except as otherwise provided in Exhibit C* or as expressly authorized by a prior recorded easement, lease, or other instrument:

1. Draining, causing the draining of, or permitting the draining of the wetlands areas delineated on Exhibit A or any waters appurtenant thereto by construction of ditches, or by any means, direct or indirect, whether through transfer of appurtenant water rights or otherwise; and/or filling, causing or permitting the filling in with earth or any other material or leveling, causing or permitting the leveling of any part or portion of said delineated wetland areas. This includes lakes, ponds, marshes, sloughs, oxbows, swales, swamps, potholes, and other wholly or partially water-covered areas, now existing or subject to recurrence through natural or man-made causes; provided, always, that the lands covered by this conveyance shall include any enlargements of said wetland areas resulting from normal or abnormal increased water.
2. Applying for any new water right appropriation (except for stock or domestic water uses that are not in excess of \_\_\_\_\_ State exempt flow rates) that may negatively affect water use on the Wildlife Habitat Conservation Areas delineated on Exhibit A; severing or attempting to sever water rights that are appurtenant to the Wildlife Habitat Conservation Areas delineated on Exhibit A, or changing or attempting to change their point of diversion, place of use, time of use, or type of use; or otherwise taking any action may negatively affect existing water use on the Wildlife Habitat Conservation Areas delineated on Exhibit A unless prior approval in writing is granted by the U.S. Fish and Wildlife Service. To the extent allowed by applicable law, Grantors will continue the historic water use on the lands that comprise the Wildlife Habitat Conservation Areas delineated on Exhibit A in accordance with current practices. Appurtenant water shares may not be disposed of and must be used according to historical practices. Landowner shall pay all annual costs associated with use of such shares.
3. Except as provided in Exhibit C, digging, excavating, plowing, disking, cutting, filling, burning, chemical applications removing or otherwise destroying the vegetative cover upon said lands delineated on Exhibit A. Vegetation management activities that are determined by the U.S. Fish and Wildlife Service to be beneficial to wildlife and their habitats, and compatible with the purposes of this easement, may be permitted through a Special Use Permit prior to conducting the vegetation management.
4. Except as provided in Exhibit C, erecting, constructing or placing any structures, buildings or improvements including but not limited to dwellings, trailers, mobile homes or temporary living quarters, agricultural buildings, structures, water facilities, reservoirs and stock ponds.
5. Except as provided by Exhibit C and subject to all prior leases and outstanding mineral rights vested in third parties as of the effective date hereof, exploring for and/or developing or extracting minerals, hydrocarbons, clay, sand, gravel, soil, peat, rock or any other materials on or below the surface of the property.
6. Dumping or disposing of refuse and/or any material which is harmful to wildlife or considered to contaminate soil, grasslands, groundwater, streams, lakes or wetlands.
7. Except as permitted by Exhibit C, constructing any new roads or granting of road right-of-way easements.
8. Erecting, constructing, developing or placing any commercial energy facility on the lands subject to the Easement, or using the property in support of a commercial energy facility or infrastructure. Examples of such energy facility include, but are not limited to, wind, solar, geothermal, nuclear, and ethanol.

Nothing in this paragraph shall prevent the landowner, with the prior written approval of the U.S. Fish and Wildlife Service, from non-commercially producing alternative energy (including wind, solar, and geothermal energy) for use on the property subject to this Conservation Easement.

9. Except as permitted by Exhibit C, conversion of existing vegetation to crops. The planting, overseeding or interseeding of non-native grasses, or other non-native plant species into existing areas of native vegetation is prohibited on the property.
10. Establishment of high density animal confinement facilities, such as a feedlot or other livestock confinement facility such as Animal Feeding Operations (AFOs) or Concentrated Animal Feeding Operations (CAFOs) as defined by Federal, State and local laws as of the effective date of this easement, or as of the date the facility is proposed if said definition is subsequently amended to be more restrictive.