

EXHIBIT D
WATER USES AND WATER RIGHTS

I. **Water Uses and Water Rights Reserved to the Grantor (“Landowner”)**
(Warranty Easement Deed Part II.F.)

- A. Identify with specificity each water use¹ that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement.

[DESCRIBE RESERVED WATER USES HERE]

- B. For each water use described above, identify the water right², 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.

[IDENTIFY RESERVED WATER RIGHT DETAILS HERE]

- C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. “Substantial

¹ 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.

² 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.

maintenance, repair, or reconstruction” means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.

- 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.F.)

- A. Describe with specificity water uses that the NRCS determines are necessary to accomplish the purposes of the easement.

[DESCRIBE ENCUMBERED WATER USES HERE]

- 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 Deed³ 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.

[IDENTIFY ENCUMBERED WATER RIGHT DETAILS HERE]

³ 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.

III. PROTECTION OF ENCUMBERED WATER RIGHTS

(Warranty Easement Deed Part III.G.)

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.
- 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.