July 16, 2004

Mr. Richard Swenson
Director
Easement Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013-2890

Delivered via e-mail

Dear Mr. Swenson:

The Grassland Reserve Program is an exciting, innovative, public-private conservation partnership. Unfortunately, because of the poorly written, overreaching and onerous Warranty Easement Deed, the program will not achieve its vast potential. It is doomed to be just one more government program that began as a great idea and floundered because of poor implementation.

As the Warranty Easement Deed is written, its provisions exclude people who truly care about their land and conservation. It will appeal to only those people who are in desperate straits and turn to the program as a last resort, or to those people who are content to "take the money and run." The Warranty Easement Deed removes the conservation incentive for most conscientious land stewards because they must give up more than they gain by participating.

Please know that my family and I support the Grassland Reserve Program. In fact, our Laurels Ranch Trust, a seventh-generation family ranch that has continuously operated in the Texas Hill Country since 1851, is one of 19 properties in Texas selected to participate in the program's initial offering. It appears that we will have to decline the opportunity, unless the Warranty Easement Deed is drastically revised.

In addition to ranching, I serve as Vice President Emeritus of the Texas Wildlife Association. Our organization represents more than 30 million acres of private land owned by people who are dedicated to effective land and wildlife stewardship. In this position, I had the opportunity to meet Under Secretary Mark Rey at a White House meeting with President Bush. I have been corresponding with Mr. Rey about the shortcomings of the Warranty Easement Deed since December 2003.

I share this with you, not to drop names, but to demonstrate that I am – and have been – committed to seeing the program succeed. In reality this program won't succeed without private land stewards, and to this point our perspective and needs have been overlooked.

Below you will find a set of comments prepared by James H. Barrow, a prominent San Antonio attorney who specializes in real estate law. Mr. Barrow is also a fourth-

generation ranch owner who serves on the Texas Wildlife Association Executive Committee. As a real estate attorney, he is obviously knowledgeable about conservation easements, deeds and the like. As a rancher, he understands what it takes to put conservation on the ground.

COMMENTS TO GRASSLAND RESERVE PROGRAM
CONSERVATION EASEMENT DEED
Prepared by James H. Barrow
Law Offices of James H. Barrow, P. C.
San Antonio, TX 78205

1. The title "Conservation Easement Deed" perfectly illustrates the conflicting and confusing provisions throughout the document which intermingle the separate legal concepts of a deed and an easement. Instead of granting rights via a deed, the document should simply be a "conservation easement" burdening the entire tract with certain delineated restrictions on use. As in any blanket easement, the beneficiary of the easement (NRCS) will then have the right to enforce such use restrictions. This would be no different that granting a pipeline easement which contains delineated provisions on grantee's use of the easement, for example. As written, the document meanders repeatedly back and forth between prohibited, permitted, restricted, and reserved uses, and cannot seem to decide whether it is a grant or a reservation. It is "cut and paste" without thought. The specific uses which are to be prohibited should be delineated and then a separate enforcement provision identifying the beneficiary and its rights should be added. After the prohibited uses are listed, an affirmative reservation of all other rights and uses should be made in favor of the grantor. There is simply no need for a "deed". It is an easement.

2. Paragraph VI(C) provides that the property rights of grantee are unaffected by subsequent amendments or repeal of the Grassland Reserve Program. This is completely unacceptable and is analogous to a sale of land in which the seller gains certain consideration, in addition to the purchase price, but then the buyer may simply choose to ignore the additional consideration. A quick example is the dynamic effect upon the landowner's ad valorem taxes based upon the existence or non-existence of the program. If the program is amended or repealed, then the rights of grantee should be adjusted accordingly. The seller and the land should not be burdened with the rights of the government if there is no longer a government program.

3. The document frequently refers to a conservation plan and its future evolution and amendment. This provides zero protection for the landowner and in essence constitutes a conveyance by the landowner of <u>all</u> uses of the

property and a present consent to future taking. The easement should speak for itself, just like any real estate document.

4. Paragraph V of the document provides for assignability of Grantee's interest in the easement. If Grantee desires to assign its interest, such assignment should require the consent of landowner, which may be withheld at landowner's sole discretion, or in the alterative, the benefits of the program should terminate, and if necessary, recapture of program benefits can occur as now provided for in many other governmental programs and laws.

5. Paragraph VI (H) provides for an unconditional and universal indemnity by Grantor for all environmental loss. Grantor should not be required to make any warranty regarding the environmental or other condition of the property, having provided Grantee the right of pre-closing inspection and research. Further and incredibly, paragraph VI (I) of the document provides for an unconditional and absolute indemnity by Grantor in favor of Grantee, which in essence makes the grantor an insurance company for all time with respect to the land.

6. The cumulative effect of all of the foregoing is plain and unmistakable: the landowner is effectively transferring of his right, title, and interest in the land, and he is transferring it <u>forever</u> and without recourse. Except by the way, the landowner will <u>never</u> lose his status as an unconditional insurer for any and all loss which occurs on the land.

As you can see, the Warranty Easement Deed is flawed badly – and Mr. Barrow's comments only address the major issues. There are problems such as unreasonable demands for access, contradictory paragraphs throughout the plan that make it unclear what the land stewards' responsibilities are and many other issues that need to be addressed from a land stewardship perspective and then corrected.

Please know that these comments are offered in the spirit of cooperation. I want the Grassland Reserve Program to succeed. I want to be able to participate and help keep our family ranch going for another seven generations. I stand ready to discuss this with you over the telephone, via e-mail or in person. If necessary, I am willing to travel to Washington D.C. and meet with you (or anyone you deem appropriate) to provide a land steward's "on-the-ground" perspective of this program, its challenges and its opportunities.

Public-private partnerships are the key to long-term conservation success. I would be honored to assist you in unlocking the Grassland Reserve Program's vast potential. Please feel free to contact me per the information below.

Yours for a clean and enjoyable outdoors,

David Keith Langford, Trustee
The Laurels Ranch Trust
P.O. Box 1059
Comfort, Texas 78013
(830) 995-2147-home
(210) 827-0306-mobile
dkl@texas-wildlife.org