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Floyd



July 20, 2004

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

Dear Mr. Swenson:

Thank you for the opportunity to offer comments on the Grassland Reserve Program. We have heard from several constituents in regards to the provisions of this interim final rule. The following are some of their comments, mainly regarding the terms of the Conservation Easement Deed.

1. **Document.** The title "Conservation Easement Deed" is inconsistent with provisions throughout the document which intermingle the separate legal concepts of a deed and an easement.
2. **Landowner protection.** There is no protection for the landowner for the future evolution and amendment of the conservation plans, constituting a conveyance by the landowner of all uses of the property and a present consent to future taking.
3. **Indemnity.** 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, 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.
4. **Transfer of land.** The landowner is effectively transferring his right, title and interest in the land, and he is transferring it forever and without recourse. However, the landowner will never lose his status as an unconditional insurer for any and all loss which occurs on the land.

The Texas Department of Agriculture is concerned about the degree of effectiveness of this program as well as the extent of landowner participation under these current interim rules. Again, thank you for the opportunity to provide input into the shaping of the final rule for this program to assist in protecting our natural resources. Please feel free to contact me if you have any questions.

Sincerely

Martin A. Hubert
Deputy Commissioner

MAH/clb

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leader in agriculture while
providing efficient and
extraordinary service.*