



Control Number: 37778



Item Number: 361

Addendum StartPage: 0

**SOAH DOCKET NO. 473-10-2461
DOCKET NO. 37778**

APPLICATION OF LCRA TRANS-	§	
MISSION SERVICES CORPORATION	§	
TO AMEND A CERTIFICATE OF	§	BEFORE THE STATE OFFICE
CONVENIENCE AND NECESSITY FOR	§	
THE PROPOSED TWIN BUTTES TO	§	OF
McCAMEY D CREZ 345-KV TRANS-	§	
MISSION LINE IN TOM GREEN, IRION	§	ADMINISTRATIVE HEARINGS
AND SCHLEICHER COUNTIES, TEXAS	§	

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**KNICKERBOCKER RANCH I LP'S RESPONSE
TO LCRA TSC'S OBJECTION & MOTION TO STRIKE
DIRECT TESTIMONY OF DREW SYKES**

On March 24, 2010, LCRA Transmission Services Corporation ("LCRA TSC") filed an Objection and Motion to Strike Prefiled Direct Testimony of Knickerbocker Ranch I, LP Witness Drew Sykes. The objection and motion should be denied for the reasons stated in this response, which takes up each group of objections by the basis asserted.

As an introductory general point of law, Knickerbocker Ranch cites TEX. GOVT. CODE § 2001.081, which allows evidence that is inadmissible under the rules of evidence as applied in district courts to be admitted in contested cases if the evidence is (1) necessary to ascertain facts not reasonably susceptible of proof under those rules, (2) not precluded by statute, and (3) of a type that a reasonably prudent person commonly relies on.

Personal Knowledge of Drew Sykes

LCRA TSC objects to portions of Mr. Sykes's testimony as unqualified opinion testimony that lacks proper basis. Mr. Sykes is not offering expert testimony.¹ If testimony of a witness is substantially based on his or her personal knowledge, it is admissible.² "A witness may testify about a fact if his knowledge of that fact was gained through personal observation, and he may state reasonable inferences to be drawn from that observation."³ "If the [witness's] belief is

¹ LCRA TSC Objections at 1.

² *Texas Rules of Evidence Handbook* 564 (2009-2010) ("*Handbook*").

³ *Southwick v. State*, 701 W.W.2d 927, 930 (Tex. App.—Houston [1st Dist.] 1985, no pet.) (allowing officers to testify as to purpose of obscene devises based partly on personal experience as vice squad officers and partly on having read magazine advertisements).

primarily based on hearsay, it is inadmissible. But, if the belief is substantially based on admissible evidence, . . . then it should be admitted.⁴ “The rule explicitly states that the foundation of personal knowledge may be shown either by the witness’s own testimony or by circumstantial evidence.”⁵ Thus, even without evidence of the exact source of a witness’s knowledge, a court may infer that the witness has knowledge based on his occupation and observations.⁶ “Rule 602 also works in tandem with Rule 701, which limits the admission of a lay witness’s opinions to those that are ‘rationally based on the perception of the witness.’”⁷ The latter rule allows a witness’s testimony to be admitted “without a predicate showing that the facts forming the basis of that opinion are the result of personal knowledge.”⁸

Mr. Sykes stated that his testimony was based on “the company’s application, discovery responses, and personal familiarity with the ranch and the surrounding area.” In the affidavit of Mr. Sykes attached to this response, Mr. Sykes affirms again that his statements are supported by his personal knowledge of the underlying facts.

Specific Testimony

Page 5, lines 17-19; page 6, lines 11-14. The testimony addresses the length of span required to traverse land irrigated by pivot and rolling irrigation systems on Knickerbocker Ranch. The question is primarily one of the distance across the irrigated fields. Such a matter is well within the personal knowledge of a landowner such as Mr. Sykes, who is thoroughly aware of the dimensions of the fields and has reviewed the application to determine, as well as anyone can at this point, approximately where the proposed lines may be located. Mr. Sykes affirms his personal knowledge of these matters in the affidavit attached to this response. For the testimony to be admissible, it is not necessary that a witness provide the underlying measurements and calculations in the testimony itself. Those details are, of course, available to LCRA TSC in the normal course of discovery. LCRA TSC complains that Mr. Sykes cannot know the maximum

⁴ *United States v. Mandel*, 591 F.2d 1347, 1370 (4th Cir. 1979).

⁵ *Handbook* at 565.

⁶ *Celotex Corp. v. Tate*, 797 S.W.2d 197, 206 (Tex. App.—Corpus Christi 1990, writ dismissed).

⁷ *Handbook* at 564.

⁸ *Handbook* at 564-65.

spacing between its towers. As noted in the testimony, Mr. Sykes's statement relied on the company's application.⁹

Page 5, lines 25-27. The testimony discusses the difficulty that would be created by having Link A14 traverse pivot and rolling irrigation systems on both sides of Dove Creek in an area of unusually dense riparian woodlands. As Mr. Sykes testifies, Knickerbocker Ranch has enrolled these woodlands and the adjoining fields in the Conservation Reserve Program. If it is necessary that the transmission line use Link A14, it would be highly desirable to cross the creek in a manner that does as little damage as possible to the riparian woodlands. Mr. Sykes makes the relatively straightforward inference that there may be additional damage to the riparian woodlands because the irrigation systems constrain the location of the towers. As noted earlier, the rules of evidence allow a witness to draw reasonable inferences from his observations.

Page 6, lines 25-26; page 8, line 22; page 9, lines 26-27, and page 7, lines 4-5. The testimony notes that (1) there are little, if any, other riparian woodlands in the study area comparable to those on the Knickerbocker Ranch, and (2) the Common Black-Hawk has been seen in Dove Creek since the 1970s. The riparian woodlands on the ranch and the surrounding area are well within Mr. Sykes's personal knowledge and his statements about them are based on his observations of the local area—as he states in the testimony and affirms in the attached affidavit. His observations do not stop at the property lines of his ranch. There would be no purpose served by creating a legal fiction—as LCRA TSC urges—that a landowner's personal knowledge is so restricted. In the same manner, Mr. Sykes does not need a doctorate in ornithology for his statements about the Common Black-Hawk to be admissible. Taken as a whole, his testimony about the Common Black-Hawk is substantially based on his personal observations of the birds on the ranch for several years and reasonable inferences from his personal knowledge. The testimony is admissible into evidence under Rules 602 and 701.

Mixed Question of Law and Fact

LCRA TSC cites the well-known legal principle that a witness may not testify to a question of pure law.¹⁰ Nonetheless, “both lay witnesses and experts may testify to an otherwise-

⁹ Environmental Assessment at 1-7.

¹⁰ LCRA TSC Objections at 3.

admissible ‘ultimate’ opinion under Rule 704.”¹¹ Thus, a lay witness’s testimony that a defendant was “not right in the head” was admissible and sufficient to support a jury verdict of insanity.¹² Similarly, in will-contest cases, evidence of “mental condition and mental ability or lack of it which does not involve legal definitions, legal tests, or pure questions of law should be admitted.”¹³

Specific Testimony

Page 6, line 15. In the cited testimony, Mr. Sykes’s expresses that in his opinion, it would “amount to a taking” if LCRA TSC were to prevent the full operation of the ranch’s rolling and pivot irrigation systems by placing towers too close together. The statement is an opinion about the severe consequence of placing towers so close together that they would interfere with the operation of the irrigation system: The company would, in effect, be taking the land away from him. The statement is clearly not a statement of pure law: Mr. Sykes expresses himself without referring to any statute or constitutional provision. LCRA TSC’s effort to imply that “taking” is a term of art fails to provide grounds for striking the testimony.

Hearsay Objections

LCRA TSC objects to portions of Mr. Nance’s testimony as hearsay. “Rule 802—the rule against hearsay—applies when the witness’s statement indicates on its face that the witness is repeating what another has told him”¹⁴ Nevertheless, it is not hearsay for a witness to testify as to statements that are not offered for the truth of the matter asserted. That is, “[i]f the relevancy of the statement does not hinge on the truthfulness of the statement, it is not hearsay.”¹⁵

Several exceptions to hearsay are relevant to Mr. Sykes’s testimony. Rule 803(8) provides that the hearsay rule does not exclude public reports of agencies setting forth matters observed pursuant to duty imposed by law. Rule 803(15) provides that statements contained in documents purporting to affect an interest in property are not excluded by the hearsay rule if the matter

¹¹ *Handbook* at 742.

¹² *Pacheco v. State*, 770 S.W.2d 834, 835 (Tex. App.—El Paso 1989), *pet. ref’d*, 769 S.W.2d 942 (Tex.Crim.App.1989) (per curiam).

¹³ *Carr v. Radkey*, 393 S.W.2d 806, 813 (Tex. 1965).

¹⁴ *Handbook* at 563.

¹⁵ *Bell v. State*, 877 S.W.2d 21, 24 (Tex. App.—Dallas 1994, *pet. ref’d*).

stated is relevant to the purpose of the document. Such documents need not be dispositive instruments.¹⁶ Thus, a murder victim's handwritten list of weapons constituted a statement in documents affecting an interest in property under Rule 803(15) and was admitted into evidence.

Specific Testimony

Page 7, lines 15-18; Attachment DS-4. Attachment DS-4 to Mr. Sykes's testimony—*Guadalupe Bass*—is a brochure distributed by the Texas Parks and Wildlife Department ("TPWD"). It is a report on the Guadalupe Bass written by Gary P. Garrett, Ph.D., describing the fish, its range, feeding habits, and other matters pertaining to the fish. As a public report issued by a government agency carrying out a statutory duty to inform the public about wildlife in Texas, the attachment is admissible in evidence under Rule 803(8). Mr. Sykes's quotations from the report and his testimony about the statements in it are likewise admissible.

Page 7, lines 10-13; Attachment DS-3. The testimony refers to statements in Attachment DS-3, which is a literature summary published on the Internet. The summary directly quotes passages from a scholarly article that appeared in the Proceedings of the Southwest Raptor Management Symposium and a paper reprinted in a book surveying changes in bird populations over the past 100 years. The paper is particularly relevant to Mr. Sykes's testimony in that it discusses the impacts of changes in riparian woodlands on birds. Both articles qualify as learned treatises, and the excerpts from them are helpful to the administrative law judge's and the Commission's understanding of the purpose and benefits achievable through the Conservation Reserve Program. The administrative law judge should exercise her discretion to admit the attachment and Mr. Sykes's references to it pursuant to TEX. GOVT. CODE § 2001.081.

Page 7, lines 23-25. The testimony notes that TPWD has recognized the ranch's land as a "rare resource management project." TPWD's statement appears in paragraph 1 of the ranch's contract with the department, which is attached to this reply as part of Mr. Sykes's affidavit.

In the first place, TWPD's statement does not assert anything, but, rather, directs the ranch to participate in a "rare resource management project."¹⁷ Since the statement itself does not "assert

¹⁶ *Handbook* at 894.

¹⁷ It is similar to the Department of Agriculture's recognition of the ranch as a Century Ranch—which LCRA TSC did not object to—and it is likewise admissible. Sykes Direct Testimony at 4.

the truth of a matter,” Knickerbocker Ranch cannot offer it for “the truth of the matter asserted.” Accordingly, Mr. Sykes’s statement is not hearsay and is admissible.

In the second place, the ranch’s contract with TWPD affects an interest in property. Its terms not only restrict the ranch’s use of the land, but also grant rights to the department. For example, the contract grants the department a right of entry onto the property for inspection purposes.¹⁸ The contract survives a change in the ownership of the land and therefore grants rights that run with the land.¹⁹ As is typical in documents affecting interests in property, the ranch warranted that it owned the land and that there were no outstanding rights that interfered with the contract.²⁰ As a result, Mr. Sykes’s references to the contract are admissible into evidence as exceptions to the hearsay rule under Rule 803(15).

Best-Evidence Doctrine

LCRA TSC complains that Mr. Sykes discusses the terms of the ranch’s CRP and TPWD contracts without providing the contracts themselves. It urges that the testimony be stricken as a violation of Rule 1002, often referred to the best-evidence doctrine. Rule 1002 provides that the original document is required to prove the contents of the document. As LCRA TSC recognizes, the best-evidence doctrine applies when the contents of a document are of such primary importance in the litigation that the substantive law requires that the original be introduced into evidence.²¹ The doctrine, however, “does not apply if a document concerns a collateral issue, even when the contents of the document are to be proved.”²² In this case, the documents in question relate to a collateral matter.²³

Moreover, the two central purposes of the doctrine are (1) prevention of error and (2) protection against fraud.²⁴ Because Knickerbocker Ranch has provided the CRP contract to LCRA TSC in response to a discovery request,²⁵ there is no question of error or fraud raised by Mr. Sykes’s

¹⁸ Memorandum of Understanding at ¶ 3.

¹⁹ *Id.* at ¶ 7.

²⁰ *Id.* at ¶ 10.

²¹ *Id.* at 1000; LCRA TSC Objections at 5.

²² *Id.*

²³ The earlier discussion concerning the hearsay exception for documents affecting an interest in property also applies to the CRP contract.

²⁴ *Handbook* at 1003.

²⁵ Knickerbocker Ranch’s Response to LCRA TSC’s RFI 1-2.

testimony, and the purposes of the best-evidence doctrine would not be served by striking the testimony. Knickerbocker Ranch has no objection to LCRA TSC's offering the CRP and TPWD contracts into evidence if LCRA TSC believes that ends of justice would thereby be promoted.

Specific Testimony

Page 8, lines 1-6, lines 17-21, and lines 27-30; page 9, lines 1-12 and lines 16-22. The testimony discusses the terms of the ranch's CRP and TPWD contracts. The adverse effect of the transmission line on Dove Creek is a primary issue in this case. This is not a contracts case. The routing of the transmission line will not depend on the precise wording of the two contracts. They are decidedly collateral matters.

Mr. Sykes discusses the contracts primarily to demonstrate the significance of the federal Conservation Reserve Program and the state Landowner Incentive Program. The contracts describe the goals of the programs and the methods by which those goals are to be attained. Secondly, Mr. Sykes sought to show that the transmission line would cause the ranch to abrogate the contracts. These matters are collateral to establishing the adverse impact of the transmission line on the riparian woodlands along Dove Creek. Striking his testimony about the contracts is not required by the rules of evidence and would serve no purpose.

Knickerbocker Ranch respectfully requests that the administrative law judge overrule LCRA TSC's objection to and motion to strike testimony.

Respectfully submitted,



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Attorneys for Knickerbocker Ranch I LP

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on March 31, 2010, by facsimile, e-mail, or first-class mail.

A handwritten signature in cursive script, appearing to read "Charles Smaistrle", written over a horizontal line.

Robert A. Rima
Charles Smaistrle

**AFFIDAVIT OF DREW SYKES
CONCERNING DIRECT TESTIMONY**

Before me, the undersigned authority, on this day personally appeared **Drew Sykes** ("Affiant"), who, being first duly sworn, upon his oath stated:

1. My testimony on pages 5 and 6 concerning the length of spans necessary to clear field irrigated by pivot irrigation systems on the Knickerbocker Ranch reflects my own personal estimates and calculations based on walking the fields and aerial photographs.
2. My testimony on pages 6, 8, and 9 regarding the riparian woodlands on Dove Creek and the lack of comparable habitat in the area are based on my personal observations of the geography within the LCRA TSC study area, including Dove Creek from its source to where it joins Spring Creek and personal knowledge of the other rivers and creeks.
3. Attached to this affidavit are true and correct copies of (1) the Conservation Reserve Program Contract between Knickerbocker Ranch I, LP and the federal government and (2) the Texas Parks and Wildlife Department letter and Memorandum of Understanding by which Knickerbocker Ranch is participating in a rare resource management project funded by the department.



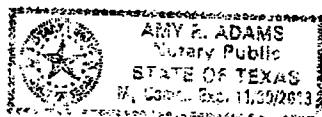
Drew Sykes

STATE OF TEXAS

§
§
§

COUNTY OF TOM GREEN

Sworn to and subscribed before me on the 3 day of March 20 10
by Drew Sykes.





Notary Public

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CRP-1
(01-30-97)U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation1. ST. & CO. CODE & C/D
484512. SIGN-UP NUMBER
24

CONSERVATION RESERVE PROGRAM CONTRACT

3. CONTRACT NUMBER
814. ACRES FOR ENROLLMENT
84.2

7. COUNTY OFFICE ADDRESS AND PHONE NO. (area code)

TOM GREEN COUNTY FARM SERVICE AGENCY

3514 Devonian, Ste A

San Angelo, Texas 76903 915/653-1246

5. FARM NUMBER
29746. TRACT NUMBER(S)
3024

8. OFFER (Select one)

STANDARD

ENVIRONMENTAL PRIORITY

9. CONTRACT PERIOD

FROM MM-DD-YYYY TO MM-DD-YYYY

01-01-02

9-30-2016

THIS CONTRACT is entered into between the Commodity Credit Corporation (referred to as "CCC") and the undersigned owners, operators, or tenants (who may be referred to as "Owner", "Operator", and "Tenant", respectively) on the farm identified above. The undersigned person or persons may hereafter collectively be referred to as "the Participant". The Participant agrees to place the designated acreage into the Conservation Reserve Program ("CRP") for the stipulated contract period from the date the Contract is executed by the CCC or other use set by CCC. The Participant also agrees to implement on such designated acreage the Conservation Plan developed for such acreage and approved by the CCC and the Participant. Additionally, the Participant and CCC agree to comply with the terms and conditions contained in this Contract including the Appendix to this Contract, entitled Appendix to CRP-1, Conservation Reserve Program Contract (referred to as "Appendix"). By signing below, the Participant acknowledges that a copy of the Appendix for the applicable sign-up period has been provided to such person. Such person also agrees to pay such liquidated damages in an amount specified in the Appendix if the Participant withdraws prior to CCC acceptance or rejection. The terms and conditions of this contract are contained in this Form CRP-1 and in the CRP-1 Appendix and any addendum thereto. BY SIGNING THIS CONTRACT PRODUCERS ACKNOWLEDGE RECEIPT OF THE FOLLOWING FORMS: CRP-1; CRP-1 Appendix and any addendum thereto; CRP-2; and if applicable, CRP-15 and CRP-1 Continuation.

10. OFFER FOR PERMISSION TO ALLEY CROP

In order to participate in CRP under CP19, Alley Cropping, I/we submit an offer of \$_____ per acre reduction, from the amount specified in item 11A, in the annual rental payments for permission to produce agricultural commodities on eligible acres in accordance with the provisions for alley cropping set out in the applicable regulations. I/we understand that for each year of the CRP contract the annual rental payment will be reduced by the amount agreed to above, which reduction must be a reduction of at least 50 percent in the annual rental payment.

11A. Rental Rate Per Acre (\$)

\$44.00

12. Identification of CRP Land (See Reverse for additional space)

B. Annual Contract Payment (\$)

\$3704.80

A. Tract No.

B. Field No.

C. Practice

D. Acres

E. Total C/S

C. First Year Payment (\$)

2778.00

3024

17, 18

CP22, RIPARIAN BUFFER

84.2

0

(Item 11C applicable only to continuous signup
when the first year payment is prorated.)

13. OWNERS, OPERATORS, AND TENANTS

A. OPERATOR NAME AND ADDRESS

KNICKERBOCKER RANCH 1, LP

P O BOX 67

KNICKERBOCKER TX 76939

100 %

SOCIAL SECURITY NUMBER

75-2628077-

SIGNATURE

DATE

12-02-01

B. OWNER NAME AND ADDRESS

SOCIAL SECURITY NUMBER

SIGNATURE

DATE

C. NAME AND ADDRESS

SOCIAL SECURITY NUMBER

SIGNATURE

DATE

COPY

14. CCC USE ONLY - Payments
according to the shares
are approved.

SIGNATURE OF CCC REPRESENTATIVE

DATE

Olin Tischer

12-5-01

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is the Food Security Act of 1985, (Pub. L. 99-198), as amended, and regulations promulgated at 7 CFR PART 1410 and the Internal Revenue Code (26 USC 6109). The information requested is necessary for CCC to consider and process the offer to enter into a Conservation Reserve Program Contract, to assist in determining eligibility, and to determine the correct parties to the contract. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in determination of ineligibility for certain program benefits and other financial assistance administered by USDA agency. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0125. The time required to complete this information collection is estimated to average 4 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. RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D. C. 20250-9410 or call (202) 720-5864 (voice or TDD). USDA is an equal opportunity provider and employer.

☐ Original - County Office Copy☒ Owner's Copy☐ Operator's Copy☐ NRCS Copy

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U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

APPENDIX TO FORM CRP-1, CONSERVATION RESERVE PROGRAM CONTRACT

1 DEFINITIONS

The following definitions are applicable to the Conservation Reserve Program (CRP) Contract:

- A** CRP contract or CRP-1 means the program documents including the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the CRP and receipt of CRP payments.
- B** Current agricultural market value for offer evaluation purposes means the amount in dollars per acre, determined by CCC to be the adjusted price at which the land placed in the CRP could be rented based on the average cash rental rate, or equivalent, per acre, paid for dryland cropland at the time at which this contract is signed by the participant.
- C** Vegetative cover means perennial or permanent grasses, legumes, forbs, and shrubs with a life span of 10 years or more, or trees.
- D** All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Conservation Reserve Program which are found at 7 CFR Part 1410.

2 ELIGIBILITY REQUIREMENTS FOR CONSERVATION RESERVE PROGRAM

- A** By signing the CRP contract, the participant, except in the case of persons qualifying solely as a tenant, certifies that such participant will control the land subject to the contract for the contract period and, if applicable, the easement period and shall, upon demand, provide evidence to CCC demonstrating that such participant will control the land for that period.
- B** Land otherwise eligible for the CRP shall not be eligible, except as agreed otherwise, in writing, by CCC, if the land is subject to a deed or other restriction prohibiting the production of agricultural commodities or where a benefit has or will be obtained from a Federal agency in return for the participant's agreement not to produce such commodities on the land during the same time as the land would be enrolled in the CRP. By offering land for enrollment, the participant certifies as a condition for payment that no such restrictions apply to such land, except as agreed otherwise, in writing, by CCC.

3 RESTRICTIONS ON PAYMENTS TO FOREIGN PERSONS

- A** Any person who enters into this CRP contract or participates in such contract at any time who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.) shall be ineligible to receive annual rental payments under this contract unless such person meets the requirements of 7 CFR Part 1400 which shall be applicable to this contract.

- B Persons succeeding to a CRP contract subject to a reduction in payment under this paragraph 3 for any preceding party shall not be eligible for payments during the contract period greater than those that could have been received by such preceding party.

4 AGREEMENT

A The participant agrees:

- (1) That the applicable CRP-2 and CRP-1 and its addenda shall be considered an offer to enter into the Conservation Reserve Program on the terms specified on Form CRP-1 and their addenda. The offer, until revoked, may be accepted by CCC provided further, that, liquidated damages may apply in the case of a revocation as specified elsewhere in this Appendix;
- (2) To place eligible land into the CRP for a period of 10 years, or as agreed to by CCC for a longer period not to exceed 15 years, from the effective date of the CRP contract executed by CCC;
- (3) To comply with the terms and conditions of the Conservation Plan;
- (4) To establish, maintain, and replace, as specified in the CRP contract, the practices agreed to in the Conservation Plan;
- (5) Not to harvest or sell, nor otherwise make commercial use of trees or forage or other cover on the CRP land including the shearing or shaping of trees for future use as Christmas trees (the participants may conduct pruning, thinning, stand improvement, or other activities consistent with customary forestry practices on land that is planted to trees); provided further, however, that CCC may, in its discretion and only in writing or by publication intended for a general allowance for CRP lands in particular States or regions, permit, in certain emergencies, certain commercial uses, as specified by CCC, which may be conditioned on a reduction in CRP payments otherwise payable under this contract;
- (6) Not to undertake any action on land under the participant's control which tends to defeat the purposes of this contract, as determined by CCC;
- (7) To annually certify crop and land use for the farm with the CCC on the appropriate form, accurately listing all land enrolled in CRP on the farm, not later than the final reporting date determined and announced by the Farm Service Agency, or successor agency;
- (8) To control on land subject to a CRP contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary to avoid an adverse impact on surrounding land taking into consideration water quality, wildlife and other factors;
- (9) Not to disturb the acreage under contract during the primary nesting season for wildlife, except as approved by CCC;
- (10) To annually file required forms requested by CCC for payment limitation determinations; and
- (11) Any payment or portion thereof due any participant will be made by CCC without regard to any question of title under State law, and without regard to any claim or lien which may be asserted by a creditor, except agencies of the U.S. Government. Offsets for debts owed to agencies of the U.S. Government shall be made prior to making any payments to participants or their assigns.

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B CCC agrees, subject to the availability of funds, to:

- (1) Share the cost with owners and operators of establishing an eligible practice, or an identified unit thereof, agreed to in the Conservation Plan, except that, in no case may the share of CCC exceed an amount equal to 50 percent of the price at which the land placed in the CRP could be sold for use as farmland at the time at which this contract is signed by the participant, unless the CCC otherwise approves such amount, provided further, that such approval must specifically reference the particular land placed in the CRP under this contract;
- (2) Pay the agreed-upon annual rental payment, including any incentive payment, based upon the shares to which the parties have agreed as set forth on Form CRP-1 for a period of years not in excess of the contract period;
- (3) Pay to the participant, to the extent required by CCC regulations, an interest penalty on cost-share payments, incentive payments, and all annual rental payments not made by the date, as determined by CCC, the payment is due;
- (4) At the time of contract expiration or termination, reinstate the allotment or quota, required to be reduced for participation in the CRP, subject to the regulations governing Federal farm programs except that in no case may such reinstated allotments or quotas exceed the amount that would have been applicable had there been no CRP contract;
- (5) Make annual rental payments after October 1 of each year of the contract period.

5 CONSERVATION PLAN

A Subject to the approval of CCC, the Conservation Plan will include some or all of the following information and requirements:

- (1) The vegetative or water cover to be established on the CRP land;
- (2) A tree planting plan, developed in cooperation with the Forest Service, if trees are to be established as the vegetative cover on the CRP land;
- (3) A schedule of completion dates for establishment of the cover on the CRP land;
- (4) The level of environmental benefits which must be attained on the CRP land;
- (5) Any other practices required for the establishment or maintenance of the cover on the CRP land including weed, insect, pest, and other controls of undesirable species, and such maintenance as necessary to avoid an adverse impact on surrounding land as determined appropriate by CCC, taking into consideration the needs of water quality, wildlife concerns, and other factors.
- (6) The acreage will not be disturbed during the primary nesting season for wildlife as determined by CCC.

B By signing the Conservation Plan, the participant agrees to implement the practices specified in such Conservation Plan on the CRP land even if such practices differ from those listed on Form CRP-1.

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6 COST-SHARE PAYMENTS

- A** Subject to the availability of funds, cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the conservation plan and with appropriate standards and specifications.
- B** CCC will not make cost-share payments in excess of 50 percent of the actual or average cost of establishing the eligible practice specified in the Conservation Plan as determined by CCC. It is understood that all cost-shares from all sources must be reported to CCC and that a reduction in the CCC cost-share may be made if there are other cost-shares received. Such reductions will be made to the extent required or allowed by the program regulations.
- C** Except as otherwise provided for in program regulations, cost-share assistance may be made available under the CRP only for the establishment or installation of an eligible practice. In order to receive cost-share assistance, the participant, upon completion of the practice, must file Form AD-245 or similar form approved by CCC, for approval by CCC.

7 PROVISIONS RELATING TO TENANTS AND LANDLORDS

- A** Payments shall not be paid under this CRP contract if CCC determines that:
 - (1) The landlord or operator has:
 - (a) when the acreage offered is not enrolled in the CRP at the time of signup:
 - (1) not provided tenants who have an interest in the acreage being offered at the time of signup an opportunity to participate in the benefits of the program;
 - (2) reduced the number of tenants on the farm as a result of or in anticipation of enrollment in the CRP.
 - (b) when the acreage offered is enrolled in the CRP at the time of signup, not provided tenants with an interest in the CRP contract acreage an opportunity to participate in the benefits of the program if:
 - (1) the tenants are otherwise involved in farming other acreage, as determined by CCC, on the farm at the time of signup; or
 - (2) the tenants have an interest in the acreage being offered on the effective date of the new CRP-1.
 - (2) The landlord or operator has deprived any tenant of any benefits to which such tenant would otherwise be entitled.
 - (3) If any such conditions as identified in (1) and (2) occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded with interest and no further payments shall be made.
- B** After this CRP contract is approved, the operator or tenant may, with the approval of CCC, be replaced for purposes of the CRP contract and for payments to be made under the contract if such tenant or operator, as determined by CCC:
 - (1) leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of, or because of, participation in the program;

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- (2) fails to maintain tenancy, as determined by CCC, throughout the CRP contract period;
 - (3) files for bankruptcy and the trustee or debtor in possession fails to affirm this CRP contract;
 - (4) dies during the term of this CRP contract and the administrator of the operator or tenant's estate (or a similar person with authority to administer the affairs of the operator or tenant) fails to succeed to this contract within the time required by CCC; or
 - (5) was removed for cause, as determined by CCC.
- C The removal of an operator or tenant from the agreement shall not release the operator or tenant from liabilities for actions arising before such removal.

8 ERRONEOUS REPRESENTATION AND SCHEME AND DEVICE

- A A participant who is determined to have erroneously represented any fact affecting a determination with respect to this CRP contract and the regulations applicable to this CRP contract, adopted any scheme or device which tends to defeat the purposes of this CRP contract, or made any fraudulent representation with respect to this contract will not be entitled to payments or any other benefits made in accordance with this CRP contract and the participant must refund to CCC all payments received by such participant, plus interest and liquidated damages thereon, with respect to the CRP contract. Such liquidated damages will be determined in accordance with paragraph 9 of this Appendix.
- B Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this CRP contract will bear interest at the rate which CCC was required to pay for its borrows from the United States Treasury on the date of the disbursement by CCC of the monies to be refunded. Interest will accrue from the date of such disbursement by CCC.
- C The remedies provided under paragraph 8A of this Appendix shall be applicable in addition to any remedies under criminal and civil fraud statutes, including 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729, or any other remedy available under law.

9 LIQUIDATED DAMAGES

It is mutually agreed that in the event the CRP contract is breached by the participant, the CCC will suffer substantial damages which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments received plus interest due, for breach of contract prescribed in this contract, the participant agrees to pay an amount equal to the product obtained by multiplying: (1) 25 percent of the rental payment rate per acre on Form CRP-1 by, (2) the number of acres that are the subject of the CRP contract. Such amount shall be due as liquidated damages in addition to such other damages or amounts as may be due, and not as a penalty.

10 NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE CONTRACT

CCC agrees that, if any changes of any terms and conditions of this CRP contract, including changes necessary to reconcile the practices listed on the CRP-1 to those specified in the conservation plan, become necessary prior to the date that this contract is approved on behalf of CCC, CCC will notify the persons signing the CRP-1 of such change and such person will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from the offer. The participant agrees to notify the CCC of an intention to withdraw from the offer within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.

11 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in the contract.

12 TERMINATION OF CONTRACT; JOINT LIABILITY

If a participant fails to carry out the terms and conditions of this CRP contract but CCC determines that such failure does not warrant termination of this CRP contract, CCC may require such participant to refund, with interest, payments received under this CRP contract, or require the participant to accept such adjustments in the subsequent payment as are determined to be appropriate by CCC. Participants that sign the CRP-1 with zero percent interest in the annual rental payment shall not be held responsible for contract compliance.

13 CONTRACT MODIFICATIONS

A CCC may modify this contract to add, or substitute certain practices when:

- (1) The installed practice failed to adequately control erosion through no fault of the participants;
- (2) The installed measure has deteriorated because of conditions beyond the control of the participants;
or
- (3) Another practice will achieve at least the same level of environmental benefits.

B Concurrence of NRCS and the conservation district may be obtained by CCC when modifications to this contract involve a technical aspect of a participant's Conservation Plan.

14 EFFECTIVE DATE AND CHANGES TO CONTRACT

The CRP contract is effective when, as determined by CCC, it has been signed by the participants, and an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the CRP contract may not be revoked or revised unless by mutual agreement between the parties. If, after the effective date of this contract, CCC determines that the offered acreage was erroneously enrolled or otherwise ineligible for enrollment, CCC may terminate the contract. Such termination shall not effect payments already made to the participant as of the time of termination. Within the dates established by CCC, the CRP contract must be signed by all required participants.

In the event that a statute is enacted during the period of this CRP contract which would materially change the terms and conditions of this CRP contract, the CCC may require the participants to elect between acceptance of modifications in this CRP contract consistent with the provisions of such statute or termination of this CRP contract.

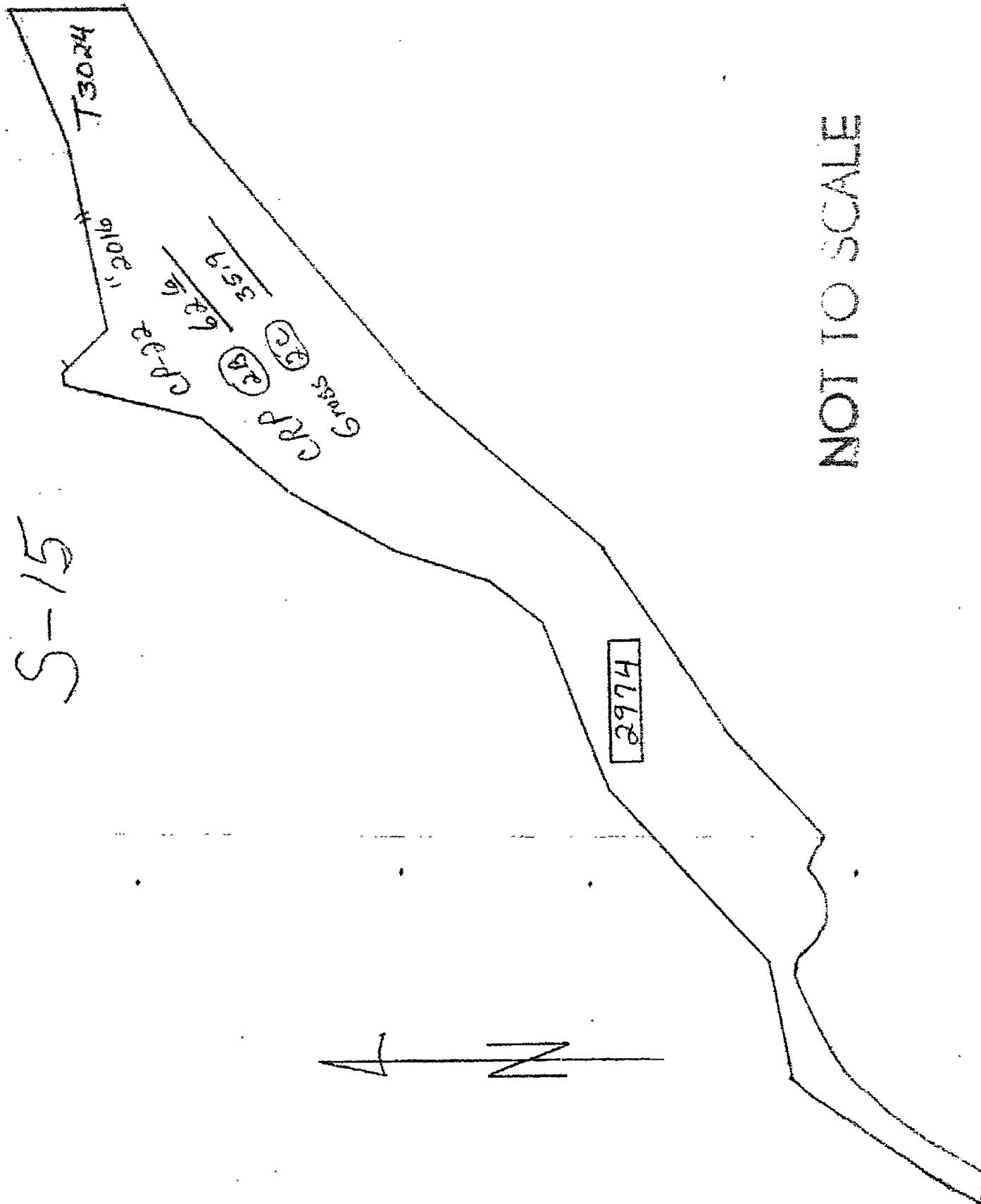
15 REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 1410 for the CRP are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

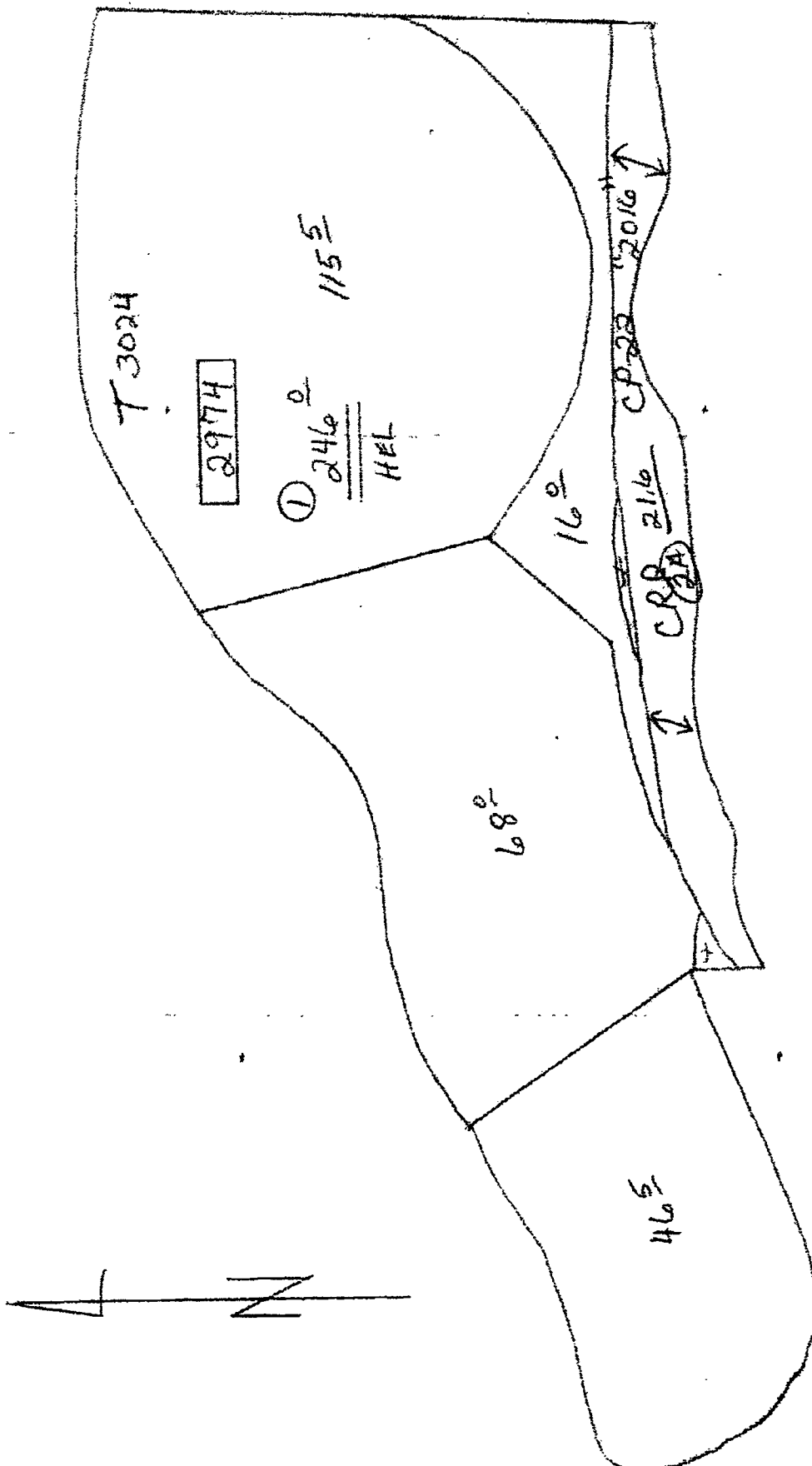
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S-15



NOT TO SCALE

T-15



000018

NOT TO SCALE



Natural Resources Conservation Service
San Angelo Field Office
3514 Devonian Dr.
San Angelo, Texas 76903-8128
915-655-3521 ext3

Gary Grogan

Conservation Plan

Knickerbocker Ranch I. L. P.
P.O. BOX 67
Knickerbocker,, TX 76939-0067

Excluded

Tract: 3024

Use Exclusion

Livestock will be excluded from the area.

Field	Planned Amount	Month	Year	Applied Amount	Date
16	14.8 AC.	12	2001		
19	21.1 AC.	12	2001		
Total:	35.9 AC.				

Upland Wildlife Habitat Management

Create, maintain or enhance area(s) to provide upland wildlife flood and cover.

Field	Planned Amount	Month	Year	Applied Amount	Date
16	14.8 AC.	12	2001		
19	21.1 AC.	12	2001		
Total:	35.9 AC.				

Riparian Buffer

Tract: 3024

Upland Wildlife Habitat Management

The Riparian Buffer will not be grazed in order to enhance the value of the buffer, to improve the quality of nesting and roosting habitat for turkey, and to enhance both food and cover for white-tailed deer.

Field	Planned Amount	Month	Year	Applied Amount	Date
17	62.6 AC.	12	2001		
18	21.6 AC.	12	2001		
Total:	84.2 AC.				

RIPARIAN BUFFER

OPERATION AND MAINTENANCE. The riparian buffer will be maintained to meet CP22. Grazing or haying is prohibited. Maintain fence to exclude livestock. Selectively remove woody plants when numbers exceed 240 plants per acre. Removal can be by chemical or mechanical means. Non-native woody species will be controlled. Cost share is not available for any required operation and maintenance of the buffer.

Field	Planned Amount	Month	Year	Applied Amount	Date
17	62.6 Ac.	12	2001		
18	21.6 Ac.	12	2001		
Total:	84.2 Ac.				

NATURAL REGENERATION

NATURAL REGENERATION . Allow natural regeneration to establish the required number and diversity of plant communities needed to protect water quality, provide wildlife habitat and contribute to the aquatic community. Establishment of the required number and diversity of plants will occur in two years or the producer will be required to establish the cover without cost share assistance.


Field	Planned Amount	Month	Year	Applied Amount	Date
17	62.6 Ac.	12	2001		
18	21.6 Ac.	12	2001		
Total:	84.2 Ac.				

CP-22 RIPARIAN BUFFER

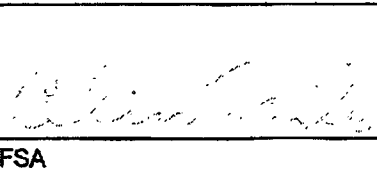
A riparian buffer is planned on marginal pastureland as shown on the plan map. Establishment of the buffer will be through natural regeneration. Natural regeneration will permit the establishment of the needed vegetation provided existing cover is reduced and livestock are excluded. The existing trees and vegetative cover are not functioning as a riparian buffer because of the lack of sufficient understory.

Field	Planned Amount	Month	Year	Applied Amount	Date
17	62.6 Ac.	12	2001		
18	21.6 Ac.	12	2001		
Total:	84.2 Ac.				

CERTIFICATION OF PARTICIPANTS



Knickerbocker Ranch J. L. P. Date 11/2/01



FSA Date

CERTIFICATION OF:

Gary Grogan Date

CONSERVATION DISTRICT

Tom Green Date

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

SECTION I - SERVICE REQUEST AND COST					
1. KIND OF SERVICE REQUEST	2. PROGRAM CROP OR LAND USE	3. NO. ACRES	4. NO. PLOTS	5. COST	6. BASIC FARM RATE
<input type="checkbox"/> Stake and Reference	CRP 22			35.00	\$
<input type="checkbox"/> Measurement after Planting					7. TOTAL ACREAGE COST
<input type="checkbox"/> Remeasurement					
OTHER					\$
(Specify)					8. TOTAL COST OF SERVICE REQUESTED
					\$ 35.00
	TOTAL →				

9. PERSON MAKING REQUEST				10. CASH RECEIPT			
I hereby agree to pay the cost of the service as requested.				PAYMENT RECEIVED FOR SERVICES REQUESTED			
SIGNATURE OF PERSON MAKING REQUEST				SIGNATURE OF COUNTY OFFICE EMPLOYEE			
DATE				DATE			
11. FOR REMEASUREMENT ONLY				12. SPECIAL INSTRUCTIONS TO REPORTER			
No Refund <input type="checkbox"/> REFUND FOR (Crab or service)							
AMOUNT	CHECK NO.	DATE	APPROVAL	REPORTER NAME	DATE ISSUED	DATE RETURNED	
\$							

SECTION II - RECORD OF MEASUREMENT SERVICE PERFORMED											
TRACT NO.	FIELD NO.	CROP OR LAND USE	ACRES DETERMINED			CRP	20	21	22	23	24
			GROSS	DEDUCTIONS	NET						
13	14	15	16	17	18	19					
13024	2A	CRP- 22	21.6	-	21.6	21.6					
	2B	CRP- 22	62.6	-	62.6	62.6					
25. MEASURED ACREAGE											
26. OFFICIAL ACREAGE											
TOTALS						84.2					

27. REPORTER: All required determinations for this farm visit have been made in accordance with applicable procedures.	REPORTER <u>Kyle Miller</u>	DATE <u>7/24/02</u>
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I have read the measurement service statements and dishonored check statements on the back of the Operators Receipt . Based on County Office records, the land designated for (ACR ☐ or CU for PAYMENT ☐) (meets ☐ , does not meet ☐ , cannot be verified as meeting ☐) the cropping requirements or other eligibility requirements, as applicable.

PRODUCER'S INITIALS

DATE _____



December 20, 2001

Knickerbocker Ranch 1, L.P.
P.O. Box 67
Knickerbocker, Texas 76939

Dear Fund Recipient:

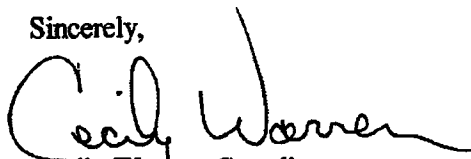
This is to inform you that your application for funding through TPW's *Landowner Incentive Program* (LIP) for a riparian buffer establishment has been approved for funding in the amount of \$6000.00 .

In order to enter into this funding agreement, please sign both copies of the Memorandum of Understanding and fill in the Payee Identification Worksheet. When completed, please return all three to the Texas Parks and Wildlife Department address on this letterhead so that the appropriate signatures may be obtained from this department.

If you have any questions regarding this, please call me at (512) 389-4799.

Thank you for your interest in the conservation of Texas' rare resources!

Sincerely,


Cecily Warren, Coordinator
Landowner Incentive Program

*Give Thanks for
the Memories...*



Lone Star Legacy.

*Give to the
Lone Star Legacy
Endowment Fund*

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, (hereinafter referred to as the AGREEMENT) dated _____, between Knickerbocker Ranch 1, LP, P.O. Box 67, Knickerbocker, Tx, 76939, the Landowner-Cooperator (hereinafter referred to as the COOPERATOR), and the Texas Parks and Wildlife Department (hereinafter referred to as the DEPARTMENT) is entered into pursuant to the Landowner Incentive Program as established by the General Appropriation Act, 77th Legislature, Article VI, Texas Parks and Wildlife Rider 9.

1. The COOPERATOR will participate in a rare resource management project by installing a riparian buffer or grass filter strip on the COOPERATOR's land located in Tom Green County, Texas, (hereinafter referred to as the property) more fully described in the Plan, filed with the Natural Resource Conservation Service with financial support by the DEPARTMENT.
2. The COOPERATOR retains all rights and responsibilities of owner of the property including the right to control trespass and the responsibility for taxes, assessments and damage claims.
3. The COOPERATOR grants the DEPARTMENT the right to enter the property at reasonable times to inspect completed work. The DEPARTMENT will notify COOPERATOR prior to such access, unless there are overriding considerations. It is clearly understood and agreed by the parties that the COOPERATOR is making its property available for monitoring by the DEPARTMENT.
- 4a. Under the terms of this agreement, the DEPARTMENT will provide an amount not to exceed \$ 6000.00 to the COOPERATOR.
- 4b. The parties agree that the DEPARTMENT shall be the administrator of this AGREEMENT and shall disburse any funds made available by this AGREEMENT to the COOPERATOR. Funding for the project is provided by the State Landowner Incentive Program.
5. The COOPERATOR and the DEPARTMENT must agree in writing to any changes in the AGREEMENT.
6. Other than those that currently exist under law, the DEPARTMENT assumes no liability for damage or injury on the above-described acreage during the term of this AGREEMENT.
7. The terms of this AGREEMENT shall be in effect on the described land for the period of this AGREEMENT. It is the intent of the DEPARTMENT that a change in ownership shall not change the terms of this AGREEMENT.
8. The COOPERATOR will give 30 days notice to the DEPARTMENT of planned or pending changes of ownership of the property.
9. At the end of the term of this AGREEMENT, the COOPERATOR assumes full and complete ownership and responsibility for all wildlife developments made during this agreement on the project tract. There shall be no obligation to any of the parties of the AGREEMENT after the term of the AGREEMENT has expired.
10. The COOPERATOR warrants and guarantees ownership of the above-described land and warrants that there are no outstanding rights that interfere with this agreement.

AVAILABILITY OF FUNDS

This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by

the Texas Legislature, or otherwise made available, to the Texas Parks and Wildlife Department.

PERIOD OF AGREEMENT/TERMINATION OF AGREEMENT

The terms of this AGREEMENT will be in force for a period of 15 years beginning on the date of execution of the AGREEMENT. At the end of the term of this AGREEMENT, the buffer project will become the property of the COOPERATOR, unless terminated before the end of its term.

This AGREEMENT may be terminated in writing by either party with thirty (30) days advance notice. If this AGREEMENT is terminated by the COOPERATOR before the term of this agreement, the COOPERATOR will reimburse the DEPARTMENT for the DEPARTMENT's costs for the project on the property. If this agreement is terminated by the DEPARTMENT, then the DEPARTMENT may, at its option, remove any project developments placed on the land.

In the event that either party determines that the other party is in default of this contract and such default places at risk property of the non-defaulting party, the non-defaulting party may act immediately and without notice to the defaulting party to protect their property. If the COOPERATOR is in default of this AGREEMENT, the COOPERATOR shall reimburse to the DEPARTMENT all payments made to the COOPERATOR by the DEPARTMENT.

SEVERABILITY

This contract is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this AGREEMENT if it can be given effect without the invalid parts.

ENTIRETY OF AGREEMENT

This AGREEMENT supersedes all other agreements, either oral or written, between the parties to this AGREEMENT, with respect to the subject matter of this AGREEMENT. This AGREEMENT contains the entire understanding of the parties and all of the covenants and agreements between the parties with respect to the subject matter of this AGREEMENT. There are no other oral or written agreements between the parties respecting this subject matter other than this document or its appendices and Exhibits. Any notices required under this agreement shall be given when delivered either by personal delivery in writing or by certified mail, postage prepaid, return receipt requested at the following addresses of the parties:

COOPERATOR addressed to Knickerbocker Ranch 1, LP, P.O. Box 67, Knickerbocker, Tx, 76939, and to DEPARTMENT addressed to Cecily A. Warren, 4200 Smith school Rd, Austin, Tx, 78744-3291.

COOPERATOR AFFIRMATIONS

1. By signing this agreement, the COOPERATOR affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the Agreement. Failure to sign the Agreement, or signing it with a false statement, shall void the Agreement.
2. By signing this Agreement, the COOPERATOR affirms that he is not currently delinquent in the payment of any franchise tax owned to the State of Texas.
3. By signing this Agreement, the COOPERATOR affirms that neither the COOPERATOR nor the firm, corporation, partnership, or institution represented by the COOPERATOR, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws.
4. Under Section 2155.04 of the Texas Government code (relating to the collection of state and local sales and use taxes) the COOPERATOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and/or payment withheld if this certification is inaccurate.

5. COOPERATOR agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed the State of Texas.

6. COOPERATOR certifies that they are in compliance with Section 618.001 of the Government Code, relating to contracting with the current or former executive head of a State agency, or contracting with a person who employs a current or former executive head of a State agency. If section 618.001 applies, COOPERATOR will complete the following information:

Name of former executive: _____

Name of State agency: _____

Date of separation from State agency: _____

Position with COOPERATOR: _____

Date of employment with COOPERATOR: _____

TEXAS FAMILY CODE AFFIRMATION

Under section 231.006, Family Code, the COOPERATOR certifies, by signing this Agreement, that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if his certification is inaccurate.

In addition, section 231.006 also requires that this Agreement include the name and social security number of an individual owner, a sole proprietor and all partners, shareholders, or owners with an ownership interest of at least twenty-five (25) percent of the business entity entering into this contract. Failure to provide this information may result in the cancellation of the Agreement.

If the certification required herein is shown to be false, the contract/vendor is liable to the state for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract.

MODEL NOTIFICATION CLAUSE

The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color national origin, age, and sex (in educational activities) or disability.

INDEMNITY

COOPERATOR agrees to indemnify and hold harmless the DEPARTMENT its officers, directors, agents, and employees from and against any and all claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including payment of reasonable attorney fees and disbursements), arising out of: (1) all services performed or actions taken by either party in connection with this Agreement including the operation and management of any event or activity incidental thereto; (2) the failure of COOPERATOR, or those acting on his/her behalf, to comply with the terms and conditions of this Agreement, or (3) the use by COOPERATOR, or those acting on his/her behalf, of DEPARTMENT'S recommended management practices subsequent to the term of this agreement.

DISPUTES

The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used by the DEPARTMENT and the COOPERATOR to attempt to resolve all disputes arising under this Agreement.

SIGNATURES

IN WITNESS WHEREOF, the parties or their duly authorized agents have each caused this AGREEMENT to be signed on this the _____ day of _____, 2001.

DEPARTMENT

DATE

IN WITNESS WHEREOF, the COOPERATOR has hereunto set his/her hand and seal on the day first above written.



COOPERATOR

1/1/02

DATE

452-15-5132

Social Security Number or Vendor I.D. Number

Drew Sykes