AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF AGRICULTURE COMMODITY CREDIT CORPORATION

AND

THE STATE OF COLORADO CONCERNING THE IMPLEMENTATION OF A CONSERVATION RESERVE ENHANCEMENT PROGRAM

REPUBLICAN RIVER CREP

This Memorandum of Agreement is entered into between the United States Department of Agriculture (USDA), Commodity Credit Corporation (CCC) and the State of Colorado (State) acting by and through the Department of Natural Resources, for the use and benefit of the Wildlife Commission and the Division of Wildlife, to implement a Conservation Reserve Enhancement Program (CREP) to improve water quantity and quality, enhance habitat for wildlife populations, including several declining species in the Republican River Basin, reduce irrigation water consumptive use, and reduce agricultural chemical and sediment runoff in the Ogallala Aquifer and associated streams.

I. PURPOSE

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and Colorado, certain irrigated and non-irrigated cropland acreage in the targeted watershed to be enrolled in the Colorado Republican River CREP project area (Figure 1).

II. GENERAL PROVISIONS

The goals of the Colorado Republican River CREP are to enroll up to 35,000 eligible cropland acres to significantly reduce the amount of irrigation water consumptive use and reduce agricultural chemicals and sediment from entering waters of the State from agricultural lands and transportation corridors. The reduction of ground and surface water use and of non-point source contaminants, through establishment of permanent vegetative covers, will also enhance associated wildlife habitat, both terrestrial and aquatic, and help conserve energy.

The specific goals of this Agreement are to achieve, to the extent practical when fully implemented, the following:

1. Reduce irrigation water use for agricultural purposes from the Ogallala Aquifer by five percent.

2. Seek, by State purchase of landowner~~'~~s' permanent water rights through the Republican River Water Conservation District Water Activity Enterprise (CRRWCD), 30,000 to 35,000 acre-feet of annual water savings.

3. Reduce soil erosion from approximately 478,312 tons to approximately 105,000 tons per year, a total reduction of approximately 373,512 tons per year.

4. Reduce annual fertilizer and pesticide application from enrolled acres by approximately 2,931 tons per year from 2004 levels.

5. Restore and enhance a minimum of 30 miles of riparian habitat and 500 acres of degraded wetlands.

6. Help ensure adequate stream flow to accommodate the life requirements of targeted fish species~~;~~ including the stonecat, suckermouth minnow, brassy minnow, and plains minnow.

7. Provide a mechanism for farmers and ranchers to assist them in meeting State and local water quantity and water quality requirements.

8. Provide a mechanism for farmers and ranchers to address wildlife issues in affected areas where agriculture may have a negative impact on the targeted wildlife species.

9. In addition to the goal listed in Item Number 5, enroll up to 1000 acres of riparian buffer and wetland practices to permit natural restoration of stream and wetland hydraulic and geomorphic characteristics which meet habitat requirement of the targeted fish species.

10. Reduce by approximately five percent from 2004 levels, the number of ground water wells containing nitrogen levels above EPA standards.

11. Through reductions in groundwater pumping, reduce the total use of electricity by 2.1 million kilowatt hours.

III. AUTHORITY

The CCC has the authority under the provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 et seq.), and the regulations at 7 CFR part 1410 to perform all its activities contemplated by this Agreement. In accordance with the 1985 Act, CCC is authorized to enroll land in CRP through December 31, 2007.

The State has the authority under the Colorado Wildlife Act, specifically sections 33-1-105(1)(b), (e), (f) and (g), C.R.S., to enter into and perform all its activities contemplated by this Agreement.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be, promulgated by USDA/CCC and the State of Colorado, or any other governmental entity participating in the CREP. This Agreement is intended to aid in the administration of the Conservation Reserve Program (CRP). Other authorities may also apply.

IV. PROGRAM ELEMENTS

In determining CCC's share of the cost of practice establishment, CCC shall use the appropriate CRP regulations and National FSA CRP Directives. All approved conservation plans shall be consistent with applicable CRP statutes, regulations, and specifications, and shall be in accordance with USDA policies for similar enrollments and this Agreement.

1. This CREP consists of a continuous sign-up USDA CRP component and a Colorado State incentive program for the purchase of permanent water rights and permanent retirement of irrigation water use by landowners for all irrigated cropland enrolled into the program.

2. Eligible practices for this CREP are:

    - CP2 (Establishment of Permanent Native Grasses)
    - CP4D (Permanent Wildlife Habitat, Noneasement)
    - CP22 (Riparian Buffer) (Cropland Only)
    - CP23 (Wetland Restoration)
    - CP23A (Wetland Restoration, Non-Floodplain)

3. For the Colorado Republican River CREP, cropland and practices enrollment goals are as follows:

    - CP22, CP23, and CP23A – up to 1,500 acres
    - CP2 and CP4D– up to 33,500 acres

4. The CRP contracts for acres enrolled in this CREP will be for a period of 14 to 15 years.

5. Eligible landowners in the project area will also continue to be allowed to offer other eligible acreage for enrollment during general or other continuous CRP enrollment periods.

6. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR Part 1410, and the provisions of this Agreement. In the event of a conflict, CRP regulations will be controlling.

7. No lands may be enrolled under this program until the USDA's CREP Program Manager approves a detailed Colorado State FSA supplement to the Farm

Service Agency Handbook 2-CRP, which will provide a thorough description of this program and applicable practices.

8. Irrigated cropland requirements for land to be eligible for enrollment under this program, as determined by the Deputy Administrator, FSA, are as follows:

- Irrigated cropland must have been irrigated at the rate of not less than ½ acre foot per acre for four out of the six years, 1996-2001.

- Irrigated cropland must have been irrigated with not less than ½ acre foot per acre for the planting of an irrigated annual crop within 24 months prior to submission of an offer.

- Irrigated cropland must be physically and legally capable of being irrigated in a normal manner when offered for enrollment, or in cases where the irrigated cropland has been enrolled in the 2006 Republican River Water Conservation District Water Activity Enterprise One Year Lease Program, within 12 months after being offered for enrollment, as determined by the Deputy Administrator for Farm Programs, FSA.

- Irrigated cropland shall only be eligible for this CREP when producers submit a completed and signed State certification agreement, "Colorado Republican River Water Conservation District Water Activity Enterprise Agreement ("CRRWCD Agreement"), which certifies that the producer will permanently cease applying irrigation water on all irrigated cropland acres accepted for enrollment into this CREP upon the beginning of the CRP contract period unless otherwise allowed by CCC. In addition, after CRP contracts are entered into, all participants who irrigate enrolled irrigated cropland with ground water must submit to the Colorado Ground Water Commission either a "Request to Cancel a Well Permit" for the well permit for all irrigated cropland enrolled, or an "Application to Reduce Permitted Acres and Authorized Annual Appropriation" if a portion, but not all, of a well permit will be retired to ensure that the producer's total irrigated acreage and cropped acres are reduced by no fewer than the number of enrolled irrigated cropland acres. Further, all participants who irrigate enrolled irrigated cropland with surface water must submit an application for a change of water right with the District Court for Water Division No. 1 to change the use from agricultural irrigation to in-stream use for the water right that has been used to irrigate the enrolled irrigated cropland and shall agree to dedicate the use of such rights to the State of Colorado, Colorado Water Conservation Board, for in-stream flow purposes and/or to the Republican River Water Conservation District for compliance with the Republican River Compact by using such surface water right to increase stream-flow in the Republican River Basin. The execution of the legal well retirement or legal reduction in permitted acres will become effective upon State approval of the application. The required water reductions must be commensurate with the goals of the program

and at a minimum equal to the water amount normally used to irrigate the enrolled acres.

- All irrigated cropland associated with one or more wells or surface water sources must be offered for CREP combined as a single manageable unit to facilitate water rights/use management. Partial field or farm enrollments that would require pro-rated well or pro-rated surface water use reductions are not eligible.

9. For non-irrigated (dryland) cropland to be eligible to be enrolled under this program, the land must be a center-pivot corner enrolled with the adjacent irrigated center-pivot cropland area, as determined by the Deputy Administrator. No more than 5,000 acres of eligible non-irrigated (dryland) cropland corners may be enrolled under this program.

10. Participants may be allowed to apply not more than 1/2 acre foot of irrigation water to enrolled irrigated land during the first 12 months of a CRP contract under this program, but only if/when necessary to establish the vegetative conservation cover as outlined in an approved conservation plan, as determined by CCC. Otherwise, no irrigation water may be applied to the land at any time during the term of the CRP contract except as further agreed to by CCC.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

1. Cost share with all participants for 50 percent of the eligible reimbursable costs for establishment of approved conservation practices. (The total of all cost-share payments, from any sources, shall not exceed 100 percent of the participants' out-of-pocket expenses.)

2. Under this CREP, make annual rental payments based on the posted county irrigated rental rate for each eligible enrolled irrigated acre in which a State Republican River Water Conservation District Water Activity Enterprise Agreement has been secured with the participant.

The per-acre maximum irrigated rental rate will be equal to the sum of:

a. The most current weighted-average posted irrigated cropland rental rate per acre for the enrolled land~~.~~, and;

b. A maintenance incentive payment per acre in an amount according to National FSA CRP Directives. This payment is considered a rental payment for payment limitation purposes.

3. Make annual rental payments based on dryland cropland rental rates for each eligible enrolled dryland center-pivot corner cropland acre. The per-acre, maximum cropland rate of payment in all cases is equal to the sum of:

    a. Posted dryland cropland soil rental rate per acre based on the three predominant soils on the eligible dryland acreage offered according to National FSA CRP National Directives, i.e., the base soil rental rate, and;

    b. A maintenance incentive payment per acre in an amount according to National FSA CRP Directives. This payment will be considered a rental payment for payment limitation purposes.

4. Make a one-time incentive payment equal to 25 percent of the cost of restoring the hydrology of the site for practices CP23 and CP23A consistent with FSA National CRP Directives. This incentive payment shall be in addition to those provided elsewhere in this paragraph. This payment is considered a rental payment for payment limitation purposes.

5. Make a one-time Practice Incentive Payment (PIP) for practice CP22 consistent with National FSA CRP Directives. This payment is considered a rental payment for payment limitation purposes.

6. Make a one-time Signing Incentive Payment (SIP) for practice CP22 consistent with National FSA CRP Directives. This payment is considered a rental payment for payment limitation purposes.

7. Administer contracts for lands approved under the CREP.

8. Develop conservation plans in accordance with National FSA CRP Directives.

9. Conduct annual compliance reviews according to National FSA CRP Directives.

10. Provide information to landowners concerning the CREP and technical assistance for the CREP in general.

11. Permit successors-in-interest to enroll under CREP in the same manner allowed for by other CRP contracts.

12. Share appropriate data with the State to facilitate State monitoring efforts in accord with the procedures and restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, and other applicable laws.

VI. STATE COMMITMENTS

In determining State Direct Payments, Cost-share, and Bonus Payments, made through the CRRWCD, the location of the well for ground water irrigated cropland or the point of diversion for surface water irrigated cropland will be the point that is used to calculate the

operative distance from the South Fork and the North Fork of the Republican River in the schedule set out in this paragraph.

Colorado agrees to contribute not less than 20 percent of the overall costs of the CREP, through payments to program participants, new funding for the CREP project, or in-kind contributions, as agreed to by the CCC, including:

1. Direct payments to participants for permanent water rights retirement paid in an equal payment in each of three years (year 5, year 10, and year 15). Payments will range from $100 per acre for any irrigated acres four miles or greater from the South Fork and the North Fork of the Republican River to $600 per acre for any surface irrigated acres less than one mile from the South Fork or the North Fork of the Republican River.

2. Cost-share with all participants for eligible reimbursable costs for practice installation on specific CREP Conservation Practices upon practice completion on irrigated acres at the following rates:

   - Ten percent for practice CP22 acreage.
   - Thirty percent for all practices, except practice CP22 acreage, that are established less than one mile from the South Fork or North Fork of the Republican River.
   - Twenty percent for all practices, except practice CP22 acreage, that are established greater than one mile but less than two miles from the South Fork or North Fork of the Republican Rivers.
   - Fifteen percent for all practices, except practice CP22 acreage, that are established greater than two miles but less than four miles from the South Fork or North Fork of the Republican Rivers.
   - Five percent for all practices, except practice CP22 acreage, that are established greater than four miles from the South Fork or North Fork of the Republican Rivers.

   The total of all cost-share payments, from all sources, shall not exceed 100 percent of the participants' out-of-pocket expenses.

3. A one-time Bonus Payment, paid directly to the participant within 30 days of the effective date of the CRP-1 Contract on enrolled CREP irrigated acres at the following rates:

   - One hundred twenty dollars ($120.00) per acre for surface water irrigated acres less than one mile from the North Fork or the South Fork of the Republican River.

- Thirty five dollars ($35.00) per acre for ground water irrigated acres that are less than one mile from the North Fork or the South Fork of the Republican River.

- Twenty five dollars ($25.00) per acre for ground water irrigated acres that are greater than one mile but less than two miles from the North Fork or the South Fork of the Republican River.

- Fifteen dollars ($15.00) per acre for ground water irrigated acres that are greater than two miles but less than four miles from the North Fork or the South Fork of the Republican River.

- Ten dollars ($10.00) per acre for ground water irrigated acres that are greater than four miles from the North Fork or the South Fork of the Republican River.

4. An annual rental payment on enrolled irrigated acres paid within 30 days of participant receiving CRP-1 annual rental payment from CCC at the following rates:

    - Fifty dollars ($50.00) per acre per year for surface water irrigated acres less than one mile from the North Fork or the South Fork of the Republican River.

    - Twenty five dollars ($25.00) per acre per year for ground water irrigated acres that are less than one mile from the North Fork or the South Fork of the Republican River.

    - Fifteen dollars ($15.00) per acre per year for ground water irrigated acres that are greater than one mile but less than two miles from the North Fork or the South Fork of the Republican River.

    - Ten dollars ($10.00) per acre per year for ground water irrigated acres that are greater than two miles but less than four miles from the North Fork or the South Fork of the Republican River.

5. All costs associated with an annual monitoring and evaluation program.

6. Technical assistance assisting the producer in the development of conservation plans.

7. Technical assistance in assisting the producer in the installation of riparian buffers.

8. Provide staffing support for a full-time CREP administrative coordinator to facilitate and oversee program implementation, coordination, promotional activities, technical assistance, and monitoring and evaluation.

9. Provide conservation planning assistance for the entire farm or ranch to participating agricultural landowners on a voluntary basis.

10. Establish an Enhancement Program Steering Committee, which may include representatives from the State Technical Committee, Republican River Water Conservation District, Colorado Division of Water Resources, Colorado Department of Agriculture, Colorado Division of Wildlife, Colorado Water Conservation Board, agricultural groups, conservation groups, and local governments. This group will serve as advisory to the State's implementation of the CREP.

11. Seek agricultural landowners willing to offer eligible and appropriate land for enrollment in the CREP.

12. Facilitate the provision of technical assistance from the local soil and water conservation districts and other cooperators to develop conservation plans, in cooperation with the USDA's Natural Resources Conservation Service and Division of Wildlife for agricultural landowners offering to enroll eligible acreage in the CREP.

13. Implement a broad campaign for continuous public information and education regarding the CREP.

14. Ensure that the CREP is coordinated with other agricultural and natural resource conservation programs at the State and federal level.

15. Within 90 days of the end of each Federal fiscal year, the State, in consultation with Farm Service Agency and USDA's Natural Resources Conservation Service, will provide a report to the CCC summarizing the status of enrollments under this CREP and progress on fulfilling all the other commitments of this program, particularly those within section IV. 8 of this agreement. The annual report to the CCC will include the level of program, participation, the ongoing results of the monitoring program and recommendations to improve the CREP, if any. The report will also include any comparisons of the targeted wildlife species habitat characteristics and population trends where there is a significant enrollment in this program and such comparison can demonstrate a positive impact on the species.

16. Within 90 days of receipt from the CCC of a report outlining annual federal CREP expenditures, the State will submit information to CCC summarizing its annual CREP expenditures. In the event that the State has not obligated 20 percent of the overall costs for a relevant federal fiscal year, the State may be required by CCC to fulfill its obligation within 90 days, or to provide some other mutually agreed-upon remedy.

17. In any case in which the CCC secures a CRP contract with an agricultural producer at an irrigated rental rate, ensure:

- The permanent retirement of the quantity of water that has been applied to that land for agricultural irrigation purposes;

- Management of the water under contract to ensure water savings conservation;

- Non-use, except as provided under this Agreement, of any surface or well water which, prior to enrollment in the CRP under this Agreement, had been used to irrigate the enrolled land, except as allowed for under the terms of this Agreement. Among other assurances as may be necessary or appropriate, the Colorado Agreement will require that the participant and/or State does not use, affect, transfer, sell, exchange or otherwise apply the surface or well water during the CRP contract period, except as agreed to by USDA.

- Take all reasonable steps to enforce the requirements of agreements between the State and participants to ensure optimal water conservation and all other project goals are achieved.

18. Seek the approval of this Agreement by such independent boards, commissions, or other bodies within the State as may be necessary or appropriate to maximize the accomplishment of the objectives of this Agreement and each CRP offer and notify the CCC of the results of the requests for such approval within a six month period beginning from the time of the CREP offer of eligible cropland. (A "CREP offer" is a signed CRP-1 and CRP-2 form submitted by a producer to the FSA County Office).

Colorado also agrees to temporarily release the participant from any contractual or easement restrictions on crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture in order to address a national emergency.

VII. MISCELLANEOUS PROVISIONS

1. All financial commitments of the USDA/CCC and Colorado are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 days and any necessary modifications will be made to this Agreement.

2. All CRP contracts under this CREP will be subject to all limitations set forth in the regulations at 7 CFR Part 1410, including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between owners or operators and the State may impose additional conditions not in conflict with those under the CRP regulations, but only as approved by the USDA.

3. Neither the State nor the CCC will assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.

4. The State and the CCC agree that each party will be solely responsible for its own acts and results to the extent authorized by law and will not be responsible for the acts of any others and the results thereof.

5. The Agreement will remain in force and effect until terminated by USDA, CCC or Colorado. This Agreement may be terminated by either party upon written notice. Such termination will not alter responsibilities regarding existing contractual obligations under the CREP between participants and USDA or CCC, or between participants and Colorado.

6. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee, is delegated authority to carry out this Agreement and, with the Governor of Colorado, or the Governor's designee, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The provisions of this Agreement may only be modified by written Agreement between the parties.

7. USDA, CCC, and FSA shall not be party to, or responsible for any water rights contracts, water use enforcement activity, water savings compliance or monitoring efforts, or any other State or local water laws or ordinances.

8. Acreage will be enrolled in CRP contracts under this Agreement until December 31, 2007 or when the 35,000 acre project limit is reached, whichever comes first.

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF AGRICULTURE AND THE COMMODITY CREDIT CORPORATION

Date 4-21-06

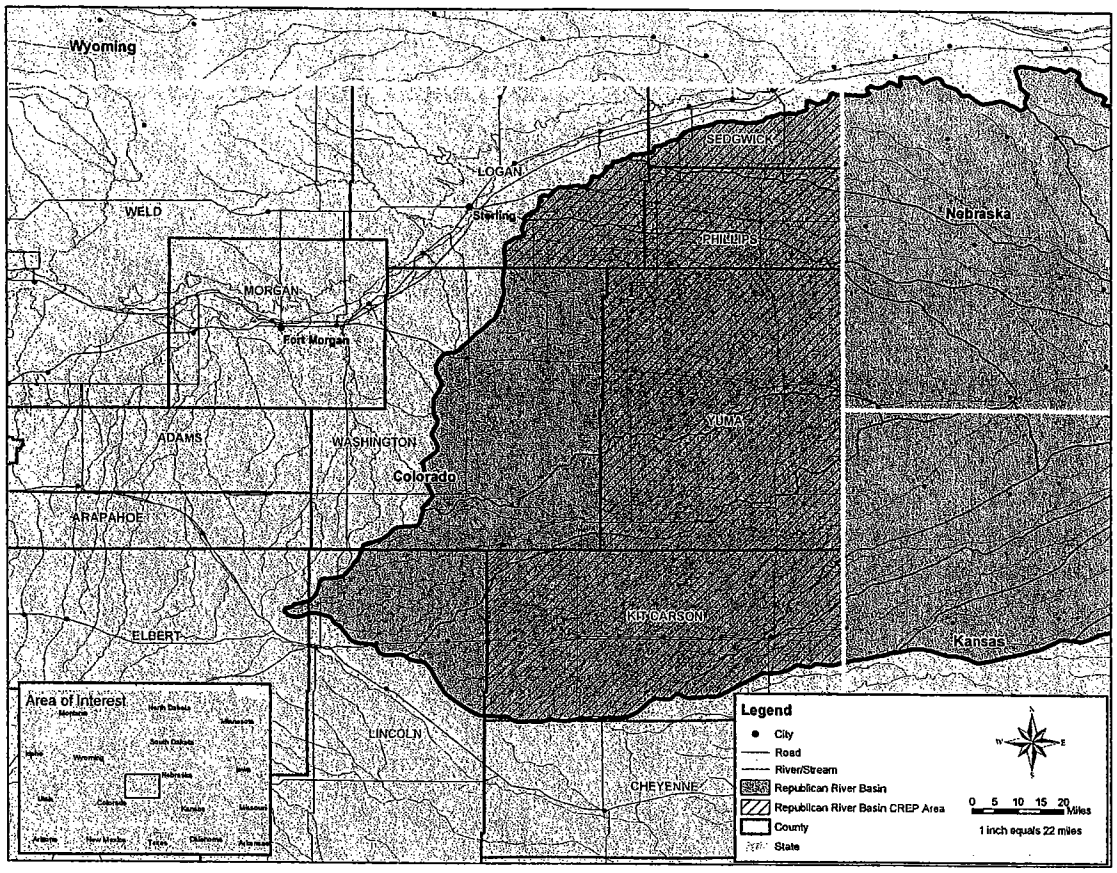
Mike Johanns
Secretary
U.S. Department of Agriculture
Chairman of the Board
Commodity Credit Corporation

FOR THE STATE OF COLORADO

Date 4-21-06

Russell George
Executive Director, Department of Natural Resources
State of Colorado

Figure 1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