

AGREEMENT

BETWEEN

THE U.S. DEPARTMENT OF AGRICULTURE  
COMMODITY CREDIT CORPORATION

AND

THE STATE OF OREGON

AND

CLEAN WATER SERVICES  
OF THE COUNTY OF WASHINGTON STATE OF OREGON

CONCERNING THE IMPLEMENTATION OF A  
CONSERVATION RESERVE ENHANCEMENT PROGRAM

I. PURPOSE

This Agreement is between the Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA), the State of Oregon (State), and Clean Water Services of the County of Washington, State of Oregon (CWS) to implement a Conservation Reserve Enhancement Program (CREP), as proposed in "Oregon's Riparian Enhancement Initiative" dated September 1998, to assist in the recovery of fish species which have been listed as threatened or endangered species under the federal Endangered Species Act.

The intended outcome of this Agreement in particular is to enhance the ability of participants to enroll certain acreage under the Conservation Reserve Program (CRP), where deemed desirable by USDA, CCC and the State. This Agreement is not intended to supersede any rules or regulations, which have been, or may be, promulgated by either USDA or CCC.

This agreement modifies and replaces for future enrollments the Memorandum of Agreement titled *Agreement Between the United States Department of Agriculture Commodity Credit Corporation and the State of Oregon Concerning the Implementation of a Conservation Reserve Enhancement Program* signed on Oct. 17, 1998 and amended on June 21, 2000. Contracts approved after the date of signing of this agreement will be covered by the terms of this modification and contracts approved prior to that signing date will be covered by the provisions of the original agreement as amended.

## II. GENERAL PROVISIONS

A number of fish species native to Oregon have been either listed or proposed for listing as threatened or endangered species under the federal Endangered Species Act. This Agreement for this Oregon CREP seeks to help alleviate some of these problems.

It is the intent of USDA, CCC and the State that this CREP will address the following objectives:

1. Restore 100 percent of the area enrolled for the riparian forest buffer practice to a properly functioning condition in terms of distribution and growth of woody plant species, filtration of nutrients and sediment from agricultural runoff, shade, and stabilization of stream banks under normal non-flood conditions as provided for by FSA Handbook and the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG).
2. Provide a way for farmers and ranchers to voluntarily meet the water quality requirements established under federal law and under Oregon's agricultural water quality laws.
3. Subject to other limitations, attain enrollments up to the following **annual** enrollment targets, including those within the existing Oregon CREP enrollment, for the following geographic regions within Oregon during the duration of this agreement:

### COASTAL BASINS:

- 1,250 acres of riparian forest buffer.
- 1,000 acres of restored wetlands.
- 2,250 total acres (180 total stream miles) of riparian forest, wetland, and wildlife buffers.

### COLUMBIA BASIN:

- 8,000 acres of riparian forest buffer and filter strips.
- 1,000 acres of restored wetlands.
- 9,000 total acres (700 stream miles) of riparian forest, wetland, and wildlife buffers.

### INTERIOR DRAINAGES:

- 3,500 acres of riparian forest buffer and filter strips.
  - 1,000 acres of restored wetlands.
  - 4,500 total acres (375 stream miles) of riparian forest, wetland, and wildlife buffers.
4. Conduct effectiveness monitoring of CREP projects in each of the three regions by:
    - Developing a study plan by December 30, 2004,
    - Identifying study watersheds and implementing field studies by December 30, 2005, and

- Providing data and monitoring results by December 30, 2006 and 2007.

5. Implement these Additional Provisions Specific to the Tualatin Watershed Option:

A. The Tualatin Watershed Option is sponsored by Clean Water Services (CWS), an Oregon County Service District and political subdivision of state government organized under Chapter 451 of the Oregon Revised Statutes with headquarters in Hillsboro, Oregon.

B. The additional benefits and assistance available through the Tualatin Watershed Option will be the responsibility of CWS, which is a party to this agreement.

### III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended, 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 1985 Act authorizes the CCC to enter into agreements with States to use the CRP in a cost-effective manner to further specific conservation and environmental objectives of a State and the nation. Other authorities may also apply.

The authority for the State to enter into this Agreement is Article V, sections 1 and 13 of the Oregon Constitution. In this agreement, obligations of the "State" are limited to powers and authorities committed to the Governor of Oregon.

The authority for CWS to enter into this agreement is provided by ORS Chapter 451 and the approval of this agreement by the CWS Board of Directors. CWS is an Oregon County Service District and political subdivision of state government organized under Chapter 451 of the Oregon Revised Statutes.

### IV. PROGRAM ELEMENTS

USDA, CCC, and the State agree that:

A. This Oregon CREP will consist of a special continuous sign-up CRP component and a State incentive program. The Oregon CREP will seek to enroll up to 100,000 acres, including acreage previously enrolled under the Oregon CREP, located along any of the following:

- (1) Streams inhabited by fish listed under Federal law as threatened or endangered species,
- (2) Streams where Agricultural Water Quality Management Plans have been developed pursuant to Oregon Revised Statute (ORS) 568.930 to 568.933, or

- (3) Streams on reservation or tribal trust lands.

The Oregon CREP seeks to restore up to 5,000 acre, including acreage enrolled under the Oregon CREP, of wetlands on cropland and marginal pastureland, which are either hydrologically connected to these streams or located in coastal estuaries. A minimum **total** of 1,250 acres of the 5,000 acres of wetlands shall be wetlands located in coastal estuaries.

B. The eligible practices for the Oregon CREP will be the following:

- (1) CP21 Filter Strips,
- (2) CP22 Riparian Buffer Strips,
- (3) CP23 Wetland Restoration,
- (4) CP29 Marginal Pastureland Wildlife Habitat Buffer, and
- (5) CP30 Marginal Pastureland Wetland Buffer.

For purposes of this CREP, practices shall be installed as specified by FSA and the NRCS, unless otherwise specified in this agreement:

C. For lands to be devoted to CP22, CP29 and CP30, the maximum average width of the practice may exceed 180 ft. but the practice shall meet the minimum design specification needed for water quality purposes as specified by FSA.

D. For any land to be enrolled after the signing of this addendum agreement, such land shall be eligible for enrollment under this CREP only if it is adjacent to a stream segment that is, as determined by the Deputy Administrator for Farm Programs (DAFP) one of the following:

- (1) Determined to support any of the fish species listed in the Oregon Amendment to 2-CRP,
- (2) Within an area where an Agricultural Water Quality Management Area Plan has been developed and approved pursuant to ORS 568.900 to 568.933, or
- (3) On reservation or tribal trust land.

E. Additional Program Elements Specific to the Tualatin Watershed Option:

- (1). The Tualatin Watershed Option will consist, within this Oregon CREP, of an incentive program, paid for by CWS, that increases the benefits and assistance available to participants within certain portions of the Tualatin River Watershed.
- (2) The only eligible practice for the Tualatin Watershed Option is CP22 (Riparian Buffer strip).
- (3). The eligible streams for the Tualatin Watershed Option will be all streams identified as perennial streams on United States Geological Survey quadrangle maps, upstream from the Durham wastewater treatment facility (see Map Attachment).

## V. FEDERAL COMMITMENTS

USDA and CCC agree to:

A. Cost share with participants for up to 50 percent of the eligible reimbursable costs of establishing all approved conservation practices. Cost-share from all sources shall not exceed 100 percent of the participant's out-of-pocket expenses.

B. Make an annual rental payment for each eligible enrolled acre. The rental rate for non-irrigated land will be calculated as specified by FSA. Rental rates for irrigated land will be established by the DAFP on a watershed basis using existing data. CCC will pay the irrigated rental rate, as so established for irrigated land, whether cropland or marginal pastureland, only if the participant agrees to enter into an agreement with the State, which is acceptable to CCC, to lease for the life of the CRP contract or transfer for purposes of a permanent easement, the surface water allocated to those lands to the State for in-stream flow purposes; otherwise, non-irrigated rental rates will apply.

For the purposes of this agreement, irrigated land means any irrigated cropland and marginal pastureland that has been irrigated during 2 out of the past 5 years as of the date of enrollment. DAFP may also implement additional irrigated rental rate eligibility provisions to qualify for the irrigated rental rate payment. CCC will approve offers based on applicable irrigated land rental rates provided the participant certifies to enter into an agreement with the state to lease the in-stream water right appurtenant to the enrolled area and maintain such agreement for the life of the CRP contract.

Marginal Pastureland Rental Rates that have been approved by the DAFP for CRP use shall be applied in making rental rate determinations in those cases in which non-irrigated marginal pastureland is enrolled under this CREP as provided in Handbook 2-CRP. Irrigated Land Rental Rates shall be applied in making rental rate determinations for irrigated marginal pastureland but only when water right leases or transfer and other conditions of this agreement have been made and met.

Incidental, non-irrigated croplands and/or marginal pasture lands, not to exceed 10% of the eligible CREP acreage adjacent to irrigated CREP land, are eligible to be enrolled at the irrigated rental rate, and can only be enrolled where needed to address the conservation issue underlying the enrollment.

C. Make an annual incentive payment, as a percentage of the base CRP contract annual rental rate otherwise applicable to the land to be enrolled in the CREP (as calculated under paragraph V.B. without regard to other incentives or payments), in the following amounts:

- (1) For land enrolled either as CP22, CP23, CP29, or CP30, 50 percent; and
- (2) For land enrolled as practice CP21, 25 percent.

D. Make a cumulative impact incentive payment based on enrollment along a particular stream segment in any case where a total of at least 50 percent of the stream bank within

a 5-mile stream segment is enrolled in the CRP under this CREP. Individuals eligible for this payment will be participant(s) in the CREP along that stream segment. The payment shall be a one-time incentive payment and shall equal four times the applicable base per year rental rate for each acre enrolled (as calculated under paragraph V.B. without regard to incentives or other payments).

E. Make an annual “maintenance” incentive payment for each enrolled acre in the same manner as with other similar continuous CRP contracts.

F. Administer contracts for lands approved under the CREP.

G. Provide information to landowners concerning the Oregon CREP program and technical assistance for the CREP program in general.

H. Permit successors-in-interest to enroll under CREP in the same manner as allowed for other CRP contracts as specified by FSA.

I. Share appropriate data, in accord with and subject to procedures and restrictions and exemptions established under the Freedom of Information Act, federal privacy laws and other applicable laws, with the State and its political subdivisions to facilitate State program administration and monitoring efforts.

J. Make a one-time CRP Signing Incentive Payment (SIP) for enrollment for the following practices: CP21, CP22, CP29, and CP30 as specified by FSA.

K. Make a one-time CRP Practice Incentive Payment (PIP) for enrollments for the following practices: CP21, CP22, CP29, and CP30 as specified by FSA.

L. For wetlands restoration, CCC will pay a one-time incentive payment equal to 25 percent of the cost of hydrology restoration as specified by FSA.

M. Payments under this section, except those under “A”, shall be considered rental payments for the purposes of per person per year CRP payment limits provided by statute or regulation.

## VI. STATE COMMITMENTS

The State will:

A. Contribute not less than 20 percent of the overall program costs.

B. Be responsible to:

(1) Make direct cost share payments to approved participants of 25 percent of the eligible reimbursable costs for establishing conservation practices under this CREP. Cost-share from all sources shall not exceed 100 percent of the participant’s out-of-pocket expenses.

- (2) Pay all costs associated with an annual monitoring program;
- (3) Provide technical assistance in the development of conservation plans, including installation of forested riparian buffers; and
- (4) Provide conservation planning assistance for the entire farm to enrolled participants on a voluntary basis.

C. Establish an Enhancement Program Advisory Committee, which will include representatives from the State Technical Committee, Farm Service Agency, Natural Resources Conservation Service, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of Agriculture, Oregon Department of Forestry, Oregon Department of Fish and Wildlife, Extension Service, Clean Water Services, agriculture groups, conservation groups, local governments, American Indian Tribes, and watershed councils. This group will advise the Oregon Watershed Enhancement Board on the implementation of the CREP.

D. Promote the program and seek eligible participants willing to offer eligible and appropriate land for enrollment in the CREP. Implement a broad campaign for continuous public information and education regarding the CREP.

E. Coordinate and facilitate technical assistance from the local soil and water conservation districts, watershed councils, technical service providers, and other cooperators to develop conservation plans and implement practices, in cooperation with the Natural Resource Conservation Service, Oregon Department of Forestry, Oregon Department of Agriculture, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department for applicants offering to enroll eligible acreage in the CREP.

F. Ensure that the CREP is coordinated with other agricultural and natural resources conservation programs at the State and Federal levels.

G. Ensure that within 90 days of the end of each Federal fiscal year, the Oregon Watershed Enhancement Board will provide a report to FSA summarizing the status of enrollments under this CREP and progress on fulfilling the other commitments of this program. The annual report to FSA shall include: level of program participation; the results of the annual monitoring program; a summary of non-federal CREP program expenditures; recommendations to improve the program; and other applicable information as specified by FSA. The report shall include an analysis of data gathered evaluating the effectiveness of the program.

H. Within 90 days of the end of each Federal fiscal year, will submit information summarizing its overall costs for the program. In the event that the State has not obligated at least 20 percent of the overall costs for a relevant Federal fiscal year, the State will fulfill its obligations within 90 days by paying the shortfall to CCC, or by providing some other mutually agreed-upon remedy.

I. In any case in which USDA executes a CRP contract with a participant at the irrigated land rate, enter into or continue a lease or transfer with that participant for the quantity of

water which had been applied to that land and shall allocate that water for in stream flow use. The State shall monitor compliance with its lease and notify USDA in writing of any violations of the lease.

J. Seek the approval of this agreement by such independent board or bodies within the State as may be necessary or appropriate to maximize the accomplishment of the objectives of this agreement and notify USDA of the results of the request for such approval.

K. Seek voluntary permanent easements and permanent in-stream water right transfers for lands enrolled in CREP. Easements and transfers shall remain in place for no less time than the duration of the CRP contract under the terms of this agreement.

L. Make direct cost-share payments for 75% of the costs of certain water developments, watering facilities, pipelines, and livestock crossings. To be eligible for this cost-share, these practices must be specified in the conservation plan for the subject land enrolled in CREP, specified in the State Cost Share Contract, and not be eligible for cost-share by the CCC/USDA. Cost-share from all sources shall not exceed 100% of participant's out-of-pocket costs.

M. Pay transaction costs, including any Certified Water Rights Examiner fees, public notice fees, application fees, and other costs as determined on a case-by-case basis, for permanent in-stream water right transfers for lands enrolled in CREP at the irrigated rental rate, as determined by the state.

N. For applicable CREP participants who voluntarily agree, pay application fees for in-stream leases for lands enrolled in CREP at the irrigated rental rate.

O. Purchase permanent in-stream water right transfers for lands enrolled in CREP at the irrigated rental rate. Purchases will be made on a per-acre basis and purchase will be determined by the State.

P Additional Commitments Specific to the Tualatin Watershed Option:

Clean Water Services will:

1. Assume the cost of Tualatin Watershed Option conservation practices that exceed amounts reimbursed by CCC and the State of Oregon, provided that participants have elected to have CWS or its contractor assume responsibility for the implementation of conservation practices. Cost-share from all sources shall not exceed 100% of producers' out-of-pocket costs.

2. Assume the cost of required maintenance and practice management activities at the request of the participant when the participant has elected to have CWS or CWS's contractor assume responsibility for maintenance as agreed to in the conservation plan.

3. Make incentive payments to participants of \$127.50 per acre per year of Tualatin Watershed Option enrollment for irrigated cropland, and a payment between \$39 and \$102 per acre per year of Tualatin Watershed Option enrollment for non-irrigated cropland depending on soil type. These payments will be in addition to annual rental payments made by CCC under the Oregon CREP.
4. Make incentive payments to participant of \$127.50 per acre per year of Tualatin Watershed Option enrollment on irrigated marginal pastureland. Make incentive payments to participant in the amount of \$66 per acre per year of Tualatin Watershed Option enrollment for non-irrigated marginal pastureland. These payments will be in addition to annual rental payments made by CCC under the Oregon CREP.
5. Make direct cumulative impact incentive payments to participants in any case where a total of at least 50 percent of the stream bank within a stream segment that is at least two miles long but less than five miles long is enrolled in the Tualatin watershed. Individuals eligible for this payment will be participants in the Tualatin Watershed Option along that stream segment. The payment will be determined according to Paragraph V.D.
6. Provide participants a lump sum bonus payment when water rights leased to the State of Oregon for in stream use under the Tualatin Watershed Option requirements have a priority date that precedes the priority dates of water rights that are usually suspended each summer. The priority date is the date of the water right appropriation by the Oregon Water Resources Department. In times of shortage, water rights with earlier priority dates have priority to be fully satisfied before less senior rights are satisfied. The bonus payment will be \$20 per acre per year of enrollment in the Tualatin Watershed Option. The bonus payment will be increased to \$30 when the land enrolled in the Tualatin Watershed Option and to which the water rights are appurtenant exceeds 5 acres. Priority dates that qualify for the payment will vary by stream, and will be established by CWS.
7. Provide participants a lump sum bonus payment when water rights that would otherwise be leased pursuant to paragraph 6 of this section are transferred permanently to the State of Oregon for in-stream use. The bonus payment will be the amount that would be paid for a fifteen-year lease under paragraph 6 of this section, including the more than 5-acre bonus, if applicable. The bonus payment will be in addition to any other payments to participants made by the State of Oregon for permanent transfers.
8. Pay all transaction costs for water rights leases and permanent transfers, to the extent these costs are not paid by the State of Oregon.
9. Purchase, for either CWS or CWS's contractor, conservation easements on land enrolled in the Tualatin Watershed Option when participants elect to provide such easements. The duration of the easements will be: 1) permanent, 2) thirty (30) years, or 3) twenty (20) years, at the participant's option. The amount paid for permanent conservation easements will be 30% of the net present value of the total Tualatin Watershed Option annual program payments if the land were enrolled in the Tualatin Watershed Option for 15 years. "Annual program payments" for this purpose will consist

of the sum of the annual soil rental rate, practice incentive payment in accordance with paragraph V.K., and maintenance payments. Easement purchase payments will be made on a lump sum basis, and payment for easements will be in addition to all other Tualatin Watershed Option payments, including annual payments. The amount paid for thirty-year easements will be 75% of the amount paid for permanent easements. The amount paid for twenty-year easements will be 50% of the amount paid for permanent easements.

10. Fund the cost of a full-time Tualatin Soil and Water Conservation District employee who will provide program outreach, technical assistance to participants, and manage contracts for planting and maintenance work.

11. Assist with the processing of water rights leases and permanent transfers.

12. Within ninety (90) days of the end of each Federal fiscal year, CWS will provide a report to Oregon and FSA summarizing the status of enrollments under the Tualatin Watershed Option and progress on fulfilling the other commitments of the Tualatin Watershed Option. The annual report to Oregon and FSA will include: level of program participation; a summary of non-federal Tualatin Watershed Option program expenditures; recommendations to improve the program; and other applicable information according to FSA specifications.

13. Assume responsibility for any damage that occurs to agricultural drainage tile: 1) during the implementation of the Tualatin Watershed Option conservation practices, or 2) for a limited time thereafter, due to the roots of trees or shrubs planted as part of the Tualatin Watershed Option conservation practices.

Q. The State of Oregon, CWS and others, as applicable must temporarily release participants from any contractual or other restriction on crop production during the CRP contract period if such release is determined to be necessary by the U.S. Secretary of Agriculture in order to address a national emergency.

## VII. MISCELLANEOUS PROVISIONS

A. All commitments by USDA/CCC and the State are subject to the availability of funds. In particular, the State's commitments are subject to Article XI, section 7 of the Oregon Constitution, which limits the State's ability to incur debts or obligations. In the event either party is subject to a funding limitation, it will notify the other party expeditiously and any necessary modifications will be made to this Agreement.

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

C. Neither the State nor USDA/CCC shall assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.

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

E. Additional Provisions Specific to the Tualatin Watershed Option:

1. All commitments by USDA/CCC, Oregon and CWS are subject to the availability of funds. In the event either party is subject to a funding limitation, it will notify the other party expeditiously and any necessary modifications will be made to this agreement. In the event demand or expected demand for the Tualatin Watershed Option enrollment exceeds CWS's Tualatin Watershed Option annual budget appropriation, the parties may agree to limit annual enrollment or to offer enrollment on a first-come-first served or other basis without amending this agreement. However, all offers shall be consistently considered and any method used as ranking criteria, if applicable, shall be applied in a fair and equitable manner.

2. CWS is committed to an adaptive management approach in pursuing the objectives of the Tualatin Watershed Option. Should it become evident that a change in program benefits is needed to make the Tualatin Watershed Option more efficient or to meet the program objectives, the parties will work together to make an appropriate change to the program. All program changes will require a modification of this agreement. All program changes that require an increase in funding or other resources will be the responsibility of CWS.

F Any party to this agreement may terminate the agreement at any time on written notice to the other parties. Such terminations will not affect responsibilities for land already enrolled in the CRP. This agreement provides no rights to third parties.

**IT IS SO AGREED:**

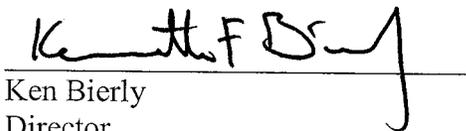
**FOR THE U.S. DEPARTMENT OF AGRICULTURE AND THE COMMODITY CREDIT CORPORATION**



John Johnson  
Deputy Administrator for Farm Programs  
Farm Service Agency,  
US Department of Agriculture/Deputy Vice President  
Commodity Credit Corporation

12-9-04  
Date

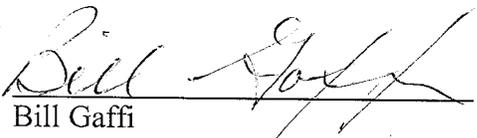
**FOR THE STATE OF OREGON**



Ken Bierly  
Director  
Oregon Watershed Enhancement Board

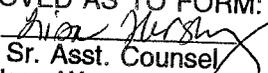
11-5-04  
Date

**FOR CLEAN WATER SERVICES**



Bill Gaffi  
General Manager  
Clean Water Services

11/10/04  
Date

APPROVED AS TO FORM:  
BY:   
Sr. Asst. Counsel  
Clean Water Services