

**AGREEMENT BETWEEN**  
**THE U.S. DEPARTMENT OF AGRICULTURE**  
**COMMODITY CREDIT CORPORATION**  
  
**AND**  
  
**THE STATE OF SOUTH DAKOTA**  
  
**CONCERNING THE IMPLEMENTATION OF THE**  
**JAMES RIVER WATERSHED CREP PROJECT**

This Agreement is entered into between the United States Department of Agriculture (USDA), Commodity Credit Corporation (CCC), and the State of South Dakota (South Dakota) to implement a Conservation Reserve Enhancement Program (CREP) for the improvement of water quality, soil erosion, flood control and the enhancement of wildlife habitat through the establishment of permanent vegetative cover. The CREP is part of the Conservation Reserve Program (CRP), operated by the Farm Service Agency (FSA) for CCC.

**1 PURPOSE**

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and South Dakota, certain Conservation Reserve Program acreage in the targeted watershed to be enrolled in the James River Watershed CREP Project. (See Figures 1 & 2)

**2 GENERAL PROVISIONS**

The goals of the James River Watershed CREP Project are to enroll up to 100,000 eligible acres to provide wildlife habitat, recreational access, and improve water quality associated with agricultural lands. In addition, flooding and associated damage to agricultural lands and personal property will be reduced by restoring the hydrology and upland buffers of prairie pothole wetlands and establishing permanent vegetation along drainages leading into the James River.

The primary goals of this Agreement, when fully enrolled, are to achieve, to the extent practicable, the following:

- 2.1** Restore the environmental functions on 60,000 acres of wetlands and associated buffers, and reduce peak flooding by 2% for a 25 year storm event and 1% for a 100 year storm event.
  
- 2.2** Establish 25,000 acres of permanent vegetation to serve as natural filters for pollutants and sediment and to create prime nesting cover for migratory and resident wildlife species.

- 2.3 Establish 15,000 acres of buffers for riparian areas and filter strips.
- 2.4 Provide a reduction of sediment pollution on agricultural land previously used for row crops by 90% from 60,000 tons/year to 54,000 tons/year.
- 2.5 Provide a reduction of phosphorus and nitrogen on agricultural land previously used for row crops by 65% from 221,000 lbs/year to 144,000 lbs/year for phosphorus, and from 840,000 lbs/year to 546,000 lbs/year for nitrogen.
- 2.6 Provide a reduction of sediments and nutrients entering waterways from lands adjacent to enrolled riparian buffer acres by 50% from 4,200 tons/year to 2,100 tons/year for sediment, from 10,400 lbs/year to 5,200 lbs/year for phosphorus and from 56,000 lbs/year to 28,000 lbs/year for nitrogen.
- 2.7 Stabilize 90% of the channels in reaches where 34 miles of riparian buffers are installed through the establishment of riparian vegetation and removal of livestock.
- 2.8 Produce an additional 285,000 pheasants annually.
- 2.9 Contribute an additional 60,000 ducks to the fall flight annually.
- 2.10 Create an additional 85,000 acres of breeding habitat for wetland and grassland dependent species including bobolink, upland sandpiper, chestnut collared longspur, western meadowlark, grasshopper sparrow and savannah sparrow, dickcissel, and sedge wren.

### 3 AUTHORITY

The CCC has the authority under 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.

Authority for the State of South Dakota to participate in this Agreement is contained in South Dakota Codified Laws §§ 41-2-23, 41-3-3 and 1-24-2.

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 South Dakota, or any other governmental entity participating in the CREP. This Agreement is intended to aid in the administration of the Conservation Reserve Program (CRP).

## 4 PROGRAM ELEMENTS

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

- 4.1 The South Dakota CREP project area is fully located within the current Prairie Pothole National Conservation Priority Area.
- 4.2 The CRP contracts for acres enrolled in this CREP must be for a period of 10 to 15 years.
- 4.3 Eligible producers will not be denied the opportunity to offer eligible acreage for enrollment during general or continuous CRP enrollment periods.
- 4.4 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, the CRP regulations will be controlling.
- 4.5 No lands may be enrolled under this program until the USDA's CREP Program Manager approves a detailed South Dakota amendment to the National CRP directives which will provide a thorough description of this program and applicable practices, and until completion of the appropriate level of environmental analysis required by the National Environmental Policy Act of 1969, as amended, and related Statutes, Executive Orders and Departmental Regulations, and in accordance with 7 CFR 799.
- 4.6 Eligible practices for this CREP include:
  - CP4D - Permanent Wildlife Habitat (Cropland Only)
  - CP10 - Vegetative Cover-Grass-Already Established (Cropland Only)
  - CP21 - Filter Strip (Cropland Only)
  - CP22 - Riparian Buffer (Cropland and Marginal Pastureland)
  - CP23 - Wetland Restoration, 100 Year Floodplain (Cropland Only)
  - CP23A - Wetland Restoration, Non-Floodplain (Cropland Only)
  - CP29 - Marginal Pastureland-Wildlife Habitat Buffer (Cropland and Marginal Pastureland)
  - CP30 - Marginal Pastureland-Wetland Buffer (Cropland and Marginal Pastureland)
  - CP37 - Duck Nesting Habitat Initiative (Cropland Only)

#### 4.7 Estimated Acreage Enrollment by Conservation Practice

- CP4D - up to 15,000 acres
- CP10 - up to 10,000 acres
- CP21 - up to 5,000 acres
- CP22 - up to 500 acres
- CP23 - up to 2,000 acres
- CP23A - up to 18,000 acres
- CP29 - up to 4,750 acres
- CP30 - up to 4,750 acres
- CP37 - up to 40,000 acres

#### 4.8 A minimum total block size of at least 40 acres for any one offer and contract is required to participate, (a “block” is a contiguous, or nearly contiguous, parcel of land, as determined by CCC), except that:

- A CREP participant may offer a combination of CREP land and adjacent non-CREP acres in order to meet the 40 acre minimum block size requirement. Under no circumstance can any acres be eligible to generate CRP payments if they are not, on their own, CRP-eligible; that is eligible to participate in the CRP under normal CRP rules. The non-CREP acres must also be enrolled in the South Dakota Game, Fish and Parks (SDGFP) -sponsored habitat and access programs for the duration of the CREP contract, or,
- The 40 acre minimum block requirement may be waived on a case-by-case basis by the Farm Service Agency State Committee in consultation with the CREP Steering Committee established in 6.8, below, and, for those producers who are considered either a Socially Disadvantaged Farmer or Rancher as defined by section 2501(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)(2)), or a Beginning Farmer or Rancher as defined by section 343(a)(8) of the Consolidated Farm and Rural Development Act (7 U.S.C 1991 (a)), or Limited Resource Farmer or Rancher as defined by the regulations in 7 CFR Part 1466.3 and who cannot meet the 40 acre requirement, as determined by CCC.

#### 4.9 At least 51 percent of all the land under each offer and contract must be located within the CREP project area to be eligible. Land that is located outside the project area must be offered as a block with land in the CREP project area. That is, all offered land must be in the CREP project area except in those cases where there is a block offer for land in which the block crosses the boundary for the project area, in which case at least 51% of the block must be within the boundaries of the project area. “Block” for this purpose has the same meaning as given in 4.8. All restrictions in this agreement apply to all acres in the block including, but not limited to, the rule that no acre may

generate CRP payments if the acre does not meet all the normal CRP rules and requirements.

## 5 FEDERAL COMMITMENTS

USDA and CCC agree to:

- 5.1 Cost-share with participants for up to 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 producer's out of pocket expenses.
- 5.2 Make a one-time Practice Incentive Payment (PIP) for practices consistent with the provisions in National CRP directives, except that PIP payments shall not be available for practice CP4D and CP10 acreage, PIP one-time payments will be considered rental payments for payment limitation purposes.
- 5.3 Make a one-time Signing Incentive Payment (SIP) for practices consistent with the provisions in National CRP directives, except that SIP payments shall not be available for practice CP4D and CP10 acreage. SIP one-time payments will be considered rental payments for payment limitation purposes.
- 5.4 Make an annual rental payment for each eligible acre enrolled according to the following:

The per-acre, maximum rental rate for acres enrolled on cropland is equal to the sum of:

- the most current local weighted-average soil rental rate for the 3 predominant soils on the eligible acreage offered consistent with the provisions in National CRP directives, i.e., the base soil rental rate; and
- for all practice acreage offered and contracts, except for practice CP4D and CP10 acreage, an annual 20 percent incentive payment of the base soil rental rate for practices consistent with the provisions in National CRP directives, and
- a maintenance incentive payment in an amount consistent with the provisions in National CRP directives.

The per-acre, maximum rental rate for acres enrolled on Marginal Pastureland (MPL) is equal to the sum of:

- The most current posted local CRP MPL per acre rental rate consistent with the provisions in National CRP directives, i.e., the posted MPL rental rate; and
  - an annual 20 percent incentive payment based on the MPL rental rate for practices consistent with the provisions in National CRP directives; and
  - a maintenance incentive payment in an amount consistent with the provisions in National CRP directives.
- 5.5** Pay for CRP mid-contract management practices as required by National CRP directives once for 10 year contracts and up to twice for up to 15 year contracts using rates as established through National CRP directives, which rates may not exceed 50% of the actual cost of those practices. This payment is not considered an annual rental payment for payment limit purposes.
- 5.6** Administer contracts for lands enrolled under the CREP.
- 5.7** Assist in developing conservation plans.
- 5.8** Conduct compliance reviews according to Handbook 2-CRP to ensure compliance with the CRP contract.
- 5.9** Provide information to producers regarding South Dakota's CREP.
- 5.10** Permit successors-in-interest to enroll under CREP in the same manner as allowed for under any other CRP contract.
- 5.11** Share appropriate data, in accordance with the procedures, restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, including Section 1619 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-234, section 1619), Section 2004 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, section 2004), and other applicable laws, with the State to facilitate State monitoring efforts according to the provisions in the Memorandum Of Understanding between the South Dakota State FSA Office and the State of South Dakota CREP Cooperators.

## 6 STATE COMMITMENTS

South Dakota agrees to:

- 6.1 Contribute not less than 20 percent or more than 30 percent of the overall annual program costs, and/or in-kind services. Of this required 20 percent, not less than 10 percent of the total project costs will be in the form of either direct new payments to the participants and/or new funding for the CREP project.
- 6.2 Make direct cost share payments for up to 10% of the producers' out of pocket costs for establishment of approved practices. Total of all cost share payments, from any sources, shall not exceed 100 percent of the producer's out of pocket expenses.
- 6.3 Provide an annual payment to all approved participants equal to the sum of 40 percent of the weighted-average rental rate for acres enrolled on cropland or MPL enrolled under this CREP.
- 6.4 Enroll all CREP CRP acreage in a State public recreation access program for hunting and fishing on all land enrolled under this CREP and inform all CREP CRP applicants of this requirement prior to the completion of each CREP contract; however, such access shall be in accordance with all federal and state laws.
- 6.5 Pay all costs of acres enrolled in other SDGFP hunting and fishing access programs for adjacent non-CREP acres used to either round out CREP tracts to meet the 40 acre minimum block size, or to improve access to CREP acres.
- 6.6 Pay all costs associated with annual CREP monitoring programs.
- 6.7 Provide technical assistance in the development of conservation practices on adjacent non-CREP acres.
- 6.8 Establish, consistent with the Federal Advisory Committee Act (5 U.S.C. Title 5, Appendix) a CREP Steering Committee, which will include representatives from the State Technical Committee, FSA, South Dakota Department of Agriculture, South Dakota Department of Game, Fish and Parks, South Dakota Department of Environment and Natural Resources, other agriculture and conservation groups and local governments. This group will advise the South Dakota's Governor's Office on the implementation of the CREP.
- 6.9 Seek applicants willing to offer eligible and appropriate land for enrollment in the CREP.

- 6.10** Facilitate the provision of technical assistance from local conservation districts in promoting CREP.
- 6.11** Implement a broad campaign for continuous public information and education regarding CREP.
- 6.12** Work to ensure coordination with other agricultural conservation programs of State and Federal agencies.
- 6.13** Within 90 days after the end of each federal fiscal year, South Dakota shall provide a report to FSA summarizing the status of enrollments under this CREP and progress on fulfilling the other commitments of the 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 expenditures; and, recommendations to improve the program.
- 6.14** Within 90 days after the end of the federal fiscal year, South Dakota will submit information summarizing its overall costs for the program. In the event that the State has not obligated 20 percent of the overall costs for the project, the State may be required by CCC to fulfill its obligation within 90 days, or by providing some other mutually agreed-upon remedy.
- 6.15** Provide a CREP Coordinator to serve as a liaison with USDA and other partners, lead monitoring program, provide annual reports and complete contracts with participating landowners to cover non-federal match.
- 6.16** Temporarily release the participant from any State-imposed 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.
- 6.17** As necessary, share appropriate data, in accordance with the procedures, restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, including Section 1619 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-234, section 1619), Section 2004 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, section 2004), and other applicable laws, with the CCC and State of South Dakota CREP Cooperators in furtherance of the requirements and goals of this Agreement.

## **7 MISCELLANEOUS PROVISIONS**

- 7.1** All commitments by USDA and South Dakota are subject to the availability of funds. In the event either party is subject to a funding limitation, it will notify

the other party within 30 days and any necessary modifications will be made to this Agreement.

- 7.2 All CRP contracts under this CREP shall 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.
- 7.3 Neither the State nor the USDA shall assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- 7.4 The State and USDA 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 the results thereof.
- 7.5 For new CRP contract acreage enrollment this agreement shall remain in effect as long as statutory authority for new contract enrollment under CRP continues, or the 100,000 acres program goal is reached, whichever comes first. For contracted land enrolled in CRP and State programs this agreement shall remain in effect for the duration of these contracts, except that either party may, upon providing thirty (30) days prior written notice to the other party, terminate this agreement at any time and CCC may terminate without waiting the 30 days if determined appropriate by CCC or may allow the State to terminate without waiting the 30 days. Such termination will not alter responsibilities regarding existing contractual obligations under the CREP between participants and USDA or CCC, or between participants and State.
- 7.6 The Deputy Administrator for Farm Programs, Farm Service Agency or their designee, has authority to carry out this Agreement, and with the Governor of South Dakota or 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.
- 7.7 All notices or other communication required under this Agreement shall be in writing and sent to the address set forth below or such authorized designees as a party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail or, if personally delivered, when received by such party.

If to USDA/CCC: USDA Farm Service Agency  
ATTN: CREP Program Manager  
USDA/FSA/CEPD/STOP 0513  
1400 Independence Ave., S.W.  
Washington, D.C. 20250-0513

If to STATE: South Dakota Department of Game, Fish and Parks  
ATTN: Habitat Section  
523 E. Capitol Avenue  
Pierre, SD 57501

- 7.8 All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.
- 7.9 This Agreement is intended to only govern the rights and interest of the parties named herein. It is not intended to, does not, and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

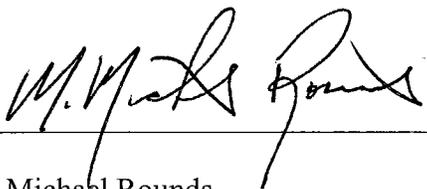
In Witness Whereof, the parties here have set their hands as of the dates indicated herein below.



Tom Vilsack  
Secretary of Agriculture

10-23-09

Date

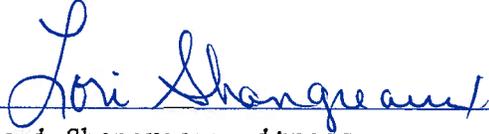


M. Michael Rounds  
Governor  
State of South Dakota

10-9-09

Date

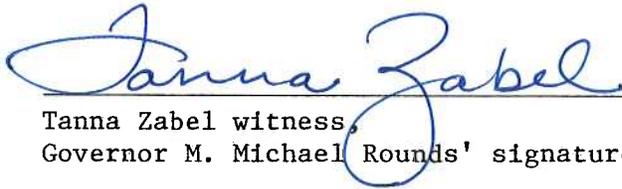
The undersigned witnesses the signing of the Conservation Reserve Enhancement Program Agreement between the State of South Dakota and the U.S. Department of Agriculture.



Lori Shangreaux witness,  
Governor M. Michael Rounds' signature

October 9, 2009

Date



Tanna Zabel witness,  
Governor M. Michael Rounds' signature

October 9, 2009

Date

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Figure 1. Shaded Relief Map of James River Watershed Basin in South Dakota.

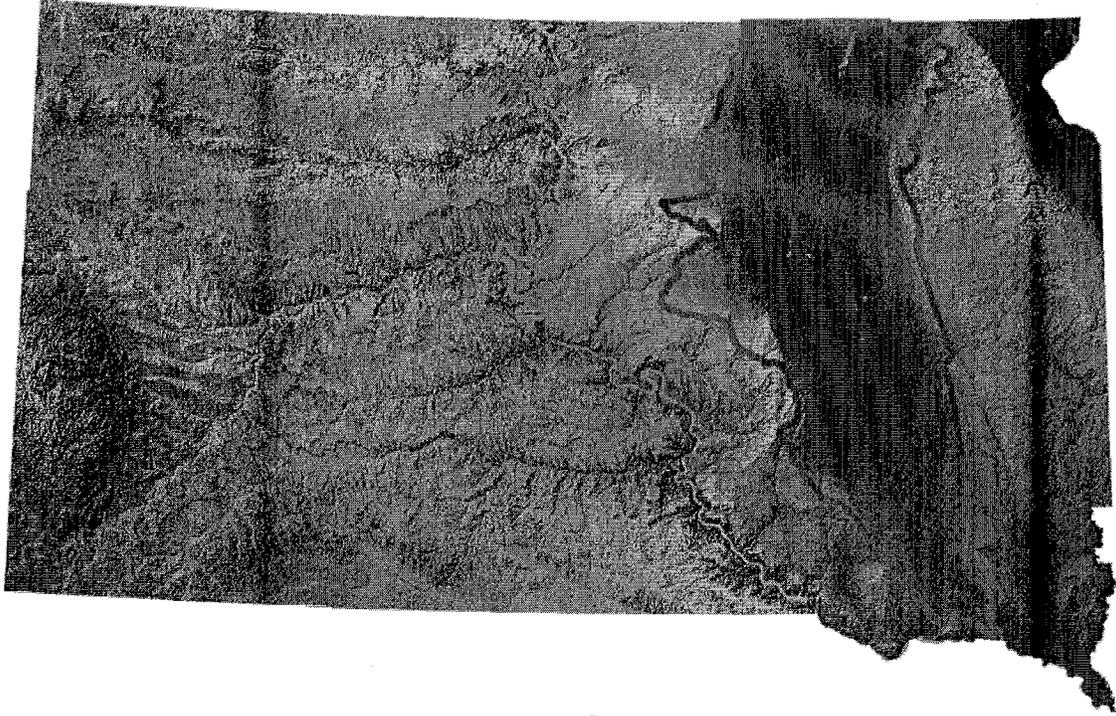


Figure 2. County Boundary Map of James River Watershed Basin in SD.

