

## **AGREEMENT**

### **BETWEEN**

#### **THE U.S. DEPARTMENT OF AGRICULTURE COMMODITY CREDIT CORPORATION**

### **AND**

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

#### **HIGH PLAINS 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 Division of Wildlife, (CDOW), to implement a Conservation Reserve Enhancement Program (CREP) for the enhancement of habitat for wildlife populations, including the ring-necked pheasant and other ground nesting birds, improved public access and enhanced recreation opportunity, improvement of water quality, reduction of soil erosion and reduction of agricultural chemical and sediment runoff in the High Plains Region of eastern Colorado.

#### **I. PURPOSE**

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and the State, certain cropland acreage in the targeted region to be enrolled in the Colorado High Plains CREP project area. (Figure 1)

#### **II. GENERAL PROVISIONS**

The goals of the Colorado High Plains CREP are to enroll up to 30,000 eligible cropland acres to significantly improve habitat for pheasants and other ground nesting birds, improve public access and recreational opportunity, and reduce the agricultural chemicals and sediment entering waters of the State from agricultural lands.

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

1. Restore and enhance 30,000 acres of upland habitat.
2. Provide public access and recreational opportunity on 30,000 acres.
3. Reduce soil erosion from approximately 205,000 tons per year to approximately 45,000 tons per year, a total reduction of approximately 160,000 tons per year.
4. Reduce fertilizer and pesticide application from enrolled acres by approximately 750 tons from 2004 levels over a fifteen year period.

5. 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.

### **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 CDOW, 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 CDOW incentive program for the enhancement of upland habitat and recreational access.
2. Eligible practices for this CREP are:
  - CP4D (Permanent Wildlife Habitat, Noneasement)
  - CP12 (Wildlife Food Plot)
  - CP24 (Establishment of Permanent Vegetative Cover as Cross Wind Trap Strips)
3. For the Colorado High Plains CREP, cropland and practice enrollment goals are as follows:
  - CP4D – 27,000 acres
  - CP24 – 3,000 acres

4. The CRP contracts for acres enrolled in this CREP must 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 a 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. To be eligible for a CRP contract under this CREP, agricultural producers must also agree to secure both of the following:
  - An approved CDOW Pheasant Habitat Improvement Program contract. (This is a State CDOW Agreement between the producer and the CDOW that specifies contract and applicable adjacent acreage, applicable CREP practices on CREP contract acreage, and State incentives on CREP acreage) and,
  - An approved CDOW Walk-In Access Contract. (This is a contract allowing public access under certain criteria on CREP contract and applicable adjacent acreage.

Note: Both the CDOW Pheasant Habitat Improvement Program contract and the CDOW Walk-In Access contract will be applicable to CRP acres and adjacent cropland acres identified by CDOW. Such contracts may not be inconsistent with the terms and purposes of the CRP contract on the CRP contracted land.

## 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, for all practices under this Agreement except CP12. The total of all cost-share payments, from any sources, shall not exceed 100 percent of the participants' out of pocket expenses.

2. Make annual rental payments based on dryland cropland rental rates for each eligible enrolled cropland acre. The per-acre, maximum cropland rate of payment is equal to the sum of:
  - a. The posted dryland cropland CRP soil rental rate per acre based on the 3 predominant soils on the eligible dryland cropland acreage offered according to FSA CRP National Directives, i.e., the base soil rental rate, and;
  - b. A maintenance incentive payment per acre in an amount according to FSA CRP National Directives. This incentive payment will be considered a rental payment for payment limitation purposes.
3. Make a one-time Practice Incentive Payment (PIP) for practice CP24 consistent with FSA CRP National Directives. The PIP is considered part of the annual rental payment for payment limitation purposes.
4. Administer contracts for lands approved under the CREP.
5. Develop conservation plans in accordance with FSA CRP National Directives.
6. Conduct annual compliance reviews according to FSA CRP National Directives.
7. Provide information to landowners concerning the CREP
8. Provide technical assistance for the CREP in general.
9. Permit successors-in-interest to enroll under CREP in the same manner allowed for by other CRP contracts.
10. 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**

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. A one-time Colorado Pheasant Habitat Incentive Payment, issued after the CCC CRP contract is approved, to producers on acres enrolled under this CREP as follows:
  - \$700 per block for each Habitat Resource Block, defined as one contiguous block of approximately 40 acres enrolled, and;
  - \$100 per corner for each Corner Resource Area, defined as irrigated center pivot corners of approximately 7 to 9 acres in size enrolled, or

- \$500 if all four Corner Resource Areas are enrolled
2. Cost-share with all participants for an amount equal to 100 percent of the eligible reimbursable costs for practice CP12 as established by CDOW;
  3. An annual Colorado Pheasant Incentive Payment to producers on all acres enrolled under this CREP paid through the CDOW Pheasant Habitat Improvement Program (PHIP) as follows:
    - Five dollars per acre for Habitat Resource Blocks or CP24 (Establishment of Permanent Vegetative Cover as Cross Wind Trap Strips).
    - Ten dollars per acre for Corner Resource Areas;
  4. An annual Colorado Walk-In Access Incentive payment to all producers on all acres enrolled under this CREP paid through CDOW Walk-In Access Program as follows:
    - One dollar and fifty cents for Habitat Resource Blocks or CP24 (Establishment of Permanent Vegetative Cover as Cross Wind Trap Strips).
    - Five dollars per acre for Corner Resource Areas.
  5. All costs associated with an annual monitoring and evaluation program.
  6. Technical assistance in the development of conservation plans.
  7. 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.
  8. Provide conservation planning assistance for the entire farm or ranch to participating agricultural landowners on a voluntary basis.
  9. Establish an Enhancement Program Steering Committee, which may include representatives from the State Technical Committee, Colorado Department of Agriculture, Colorado Division of Wildlife, Pheasants Forever, agricultural groups, conservation groups, and local governments. This group will serve as advisory to the state's implementation of the CREP.
  10. Seek agricultural landowners willing to offer eligible and appropriate land for enrollment in the CREP.
  11. 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 Natural Resource Conservation Service and Division of

Wildlife for agricultural landowners offering to enroll eligible acreage in the CREP.

12. Implement a broad campaign for continuous public information and education regarding the CREP.
13. Ensure that the CREP is coordinated with other agricultural and natural resource conservation programs at the State and federal level.
14. 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, shall provide a report to the CCC summarizing the status of enrollments under this CREP and progress on fulfilling the other commitments of this program. The annual report to the CCC shall include the level of program participation, the ongoing results of the monitoring program and recommendations to improve the CREP, if any. The report shall 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.
15. 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.
16. Take all reasonable steps to enforce the requirements of the contract between the State and participants to ensure optimal conservation and all other project goals are achieved.
17. 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.)

The State also agrees to temporarily release the participant from any contractual 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 the State are subject to the appropriation and availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this CREP project, 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 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.
3. Neither the State nor the CCC shall 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 shall not be responsible for the acts of any others and the results thereof.
5. Enrollment will be accepted until December 31, 2007 or until the 30,000 acre enrollment goal is reached, whichever comes first, unless this Agreement is 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 CDOW.
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.

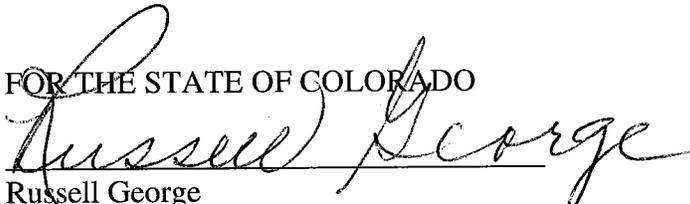
**IT IS SO AGREED:**

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

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

Date 4-21-06

**FOR THE STATE OF COLORADO**  
  
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Russell George  
Executive Director, Department of Natural Resources  
State of Colorado

Date 4-21-06

Figure 1

