

CREP – Agreement between USDA and the State of Washington, Including Amendments 1 and 2

AGREEMENT

BETWEEN

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

AND

**THE STATE OF WASHINGTON
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) and the State of Washington (State) to implement a Conservation Reserve Enhancement Program (CREP) to assist in the recovery of salmon species that have been listed as threatened or endangered species under the federal Endangered Species Act.

II. GENERAL PROVISIONS

A number of salmonid species native to Washington have been either listed or proposed for listing as threatened or endangered species under the federal Endangered Species Act. Agricultural activities in riparian corridors, along with agriculture-related impacts on water quality, have contributed to habitat loss of these coldwater fish species in Washington. This Agreement for this Washington CREP is designed to help alleviate some of these problems.

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

1. Restoration of 100 percent to the area enrolled for the riparian forest practice to a properly functioning condition in terms of distribution and growth of woody plant species.
2. Reduction of sediment and nutrient pollution from agricultural lands adjacent to the riparian buffers by more than 50 percent.
3. Establishment of adequate vegetation on enrolled riparian areas to stabilize 90 percent of stream banks under normal (non-flood) water conditions.

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4. Reduction of the rate of stream water heating to meet State ambient water quality standards by planting adequate vegetation on all riparian buffer lands.
5. Provision of a contributing mechanism for farmers and ranchers to meet the water quality requirements established under federal law and under Washington's water quality laws.
6. Provision of adequate riparian buffers on 2,700 stream miles to permit natural restoration of stream hydraulic and geomorphic characteristics which meet habitat requirements of salmonids.

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

III. 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. In accordance with the 1985 Act, CCC is authorized to enroll land in *--CRP through December 31, 2007.--*

Sections 1230, 1234, and 1242 of the 1985 Act authorize 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 Washington to enter into this Agreement is RCW 43.06.120, Laws of Washington.

IV. PROGRAM ELEMENTS

USDA, CCC, and Washington agree that:

- A. The Washington CREP will consist of a special continuous sign-up CRP component and a State of Washington incentive. The Washington CREP will seek to enroll up to 100,000 acres of agricultural lands adjacent to water bodies that provide, or have the potential to provide, important habitat for salmonids. These water bodies can be identified using maps from the 1993 Salmon and Steelhead Stock Inventory Report (SASSI) or updates to SASSI maps carried out by local conservation districts with the concurrence of Washington Department of Fish and Wildlife (WDFW) and Tribal fisheries biologists. Regular updates to SASSI carried out by WDFW can also be used to identify eligible lands. Where better data are available, important salmonid habitat can also be identified using one of the following processes:

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1. Under guidance from Washington legislative engrossed substitute House Bill 2496, an act relating to salmon recovery planning, the Washington State Conservation Commission is generating reports identifying habitat factors in each Water Resource Inventory Area (WRIA) that limit the production of salmonids. These Habitat Limiting Factors Analyses identify the known and presumed distribution of salmonids and the salmonid habitat in need of restoration. Eligible agricultural lands adjacent to these areas will be considered eligible for CREP.
2. The Salmon and Steelhead Habitat Inventory and Assessment Project (SSHIAP) is completing a GIS-based inventory of salmonid habitat conditions throughout WRIs 1-23, and ultimately throughout the state. Eligible agricultural lands adjacent to streams identified by SSHIAP with known or presumed presence of salmonids will be considered eligible for CREP.
3. In cases where SASSI, SASSI updates, Habitat Limiting Factors Analysis or SSHIAP have not been completed, eligible streams may be designated if the conservation district, WDFW, and Tribal biologists all agree riparian habitat is a significant limiting factor for salmonids. The criteria for these updates will include all streams in watersheds with known presence of SASSI stocks that are below natural barriers to fish passage and meet appropriate habitat requirements for the species of interest (e.g. gradient < 12%).

Updates to the eligible streams for CREP, based on the criteria above, will be reviewed and approved annually by the Washington Conservation Commission and the Washington State FSA Committee, in consultation with the Washington State Technical Advisory Committee. In no case will the number of eligible stream miles exceed 10,000 miles.

- B. The Riparian Buffer (practice code CP22) is the only CRP practice authorized under this Agreement.

In determining CCC's share of the cost of practice establishment, CCC shall use the appropriate CRP procedures. All approved conservation plans shall be consistent with applicable CRP statutes and regulations. Until the Natural Resources Conservation Service issues a new practice standard for Riparian buffers in the State of Washington, Riparian Buffers shall be constructed in accord with the Riparian Buffer practice standard (practice code 391A) currently contained in the Field Office Technical Guide, except with respect to the minimum buffer width. The minimum buffer width shall be no less than 75 percent of the site potential tree height which shall be defined for most sites as the average height, at 100 years of growth of the tallest conifer species native to the site. For sites that historically supported black cottonwoods as the largest tree, the site potential tree height is the average height of a 50-year old black cottonwood. For croplands where trees were not historically present, or cannot be re-established, shrubs may be planted and the minimum riparian buffer width shall be 50 feet. The

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maximum buffer width shall be determined in accordance with 2-CRP and Field Office Technical Guide procedure. Modifications to these Field Office Technical Guides adopted subsequent to the date of this Agreement will be implemented as appropriate to achieve the overall purposes of this Agreement in a cost-effective manner.

- C. The continuous sign-up CRP contracts for acres enrolled in this CREP must be a minimum of 10 years, but may not exceed a maximum of 15 years.
- D. Eligible producers will not be denied the opportunity to offer eligible acreage for enrollment during general or continuous CRP enrollment periods.
- E. 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.
- F. The Deputy Administrator for Farm Programs, Farm Service Agency, is delegated authority to carry out this Agreement, and with the Governor of Washington or his designee, may further amend this Agreement consistent with the provisions of the 1985 Act and the regulations at 7 CFR part 1410. The provisions of this Agreement may only be modified by written agreement between the parties.
- G. This Agreement shall remain in force and effect until terminated by USDA, CCC or Washington. 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 Washington.
- H. No lands may be enrolled under this program until the USDA's Deputy Administrator for Farm Programs, in consultation with USDA's Natural Resource Conservation Service, concurs with a detailed Washington Amendment to 2-CRP which will provide a thorough description of this program and applicable practices.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Cost share with producers for 50 percent of the eligible reimbursable costs of all approved conservation practices.

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- B. **Make an annual rental payment for each eligible enrolled acre. The rental rate in all cases shall be the rate for non-irrigated land and will be calculated based on the existing CCC approved cropland Soil Rental Rates (SRR)**
- C. **Make an additional 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 incentive payments), in the following amounts:**
 - (1) **for land to be established as riparian buffers, 100 percent; and**
 - (2) **for lands protected under the Growth Management Act (RCW 75.090) as agricultural lands of State significance, 10 percent.**
 - (3) **subject to the availability of funds, pay a one-time Signing Incentive Payment (CRP-SIP) in accordance with 2-CRP procedure; and**
 - (4) **subject to the availability of funds, pay a one-time Practice Incentive Payment (PIP) in accordance with 2-CRP procedure.**
- D. **Make an annual “maintenance” incentive payment for each enrolled acre in the same manner as with other CRP contracts.**
- E. **Administer contracts for lands approved under the CREP.**
- F. **Develop conservation plans for treatment of a unit of land or water to address identified natural resource problems by devoting eligible land to permanent vegetative cover or other comparable practices, and review conservation plans developed by others for applicants offering to enroll eligible acreage in the CREP.**
- G. **Conduct annual compliance reviews according to Farm Service Agency Handbook 2-CRP to ensure compliance with the CRP contract.**
- H. **Provide information to landowners concerning Washington’s CREP program and technical assistance for the CREP program in general.**
- I. **Permit successors-in-interest to enroll under CREP in the same manner as allowed for under any other CRP contract.**
- J. **Share appropriate data, in accord with procedures and restrictions and exemptions established under the federal Freedom of Information Act, federal privacy laws and other applicable laws, with the State of Washington to facilitate State monitoring efforts.**

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VI. STATE COMMITMENTS

Washington will:

- A. Contribute not less than 20 percent of the overall annual program costs.
- B. Be responsible for:
 - (1) making the following payments to approved participants:
 - (i) 10 percent of the eligible reimbursable cost for all conservation practices established under this CREP; and
 - (ii) the difference between 100 percent, and the percent paid by CCC, of the eligible costs for animal damage control device for conifers; and
 - (iii) a maintenance incentive equal to 100 percent of the eligible costs for annual maintenance of riparian buffers where continued action is needed to maintain buffer to specifications, for up to 5 years from the establishment date; and
 - (iv) to compensate those already enrolled in the program prior to the USDA program changes of April 6, 2000, in the same manner as those enrolling after the date of this Amendment.
 - (2) paying all costs associated with the annual monitoring program;
 - (3) providing technical assistance in the development of conservation plans, including installation of forested riparian buffers;
 - (4) providing conservation planning assistance for the entire farm to enrolled producers on a voluntary basis; and
 - (5) providing grant funds for removal of fish barriers and installation of other salmonid habitat restoration practices.
- C. Establish an Enhancement Program Steering Committee, which will include representatives from the State Technical Committee, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Agriculture, Washington Department of Natural Resources, Washington Department of Fish and Wildlife, Extension Service, agriculture groups, conservation groups, local governments and Tribal government. This group will advise the Governor's Joint Natural Resources Cabinet on the implementation of the CREP.
- D. Seek applicants willing to offer eligible and appropriate land for enrollment in the CREP.
- E. Facilitate the provisions of technical assistance from the local conservation districts, and other cooperators to develop conservation plans; in cooperation with the Natural Resource Conservation Service and Washington State Conservation Commission for applicants offering to enroll eligible acreage in the CREP.

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- F. Implement a broad campaign for continuous public information and education regarding the CREP.
- G. Ensure that the CREP is coordinated with other agricultural and natural resource conservation programs at the State and Federal level.
- H. Within 90 days of the end of each Federal fiscal year, the Conservation Commission shall 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; and, recommendations to improve the program. The report shall include a comparison of salmon habitat characteristics and population trends in streams where there is significant enrollment in this program with similar streams where program participation is not significant.
- I. Within 90 days of the end of the Federal fiscal year, state 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 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.

VII MISCELLANEOUS PROVISIONS

- A. All commitments by USDA and the State 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.
- B. 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 if approved by CCC. *State reimbursement contract to ensure State gets money back in the event of default. Approved by WA-AG & CCC*
- C. Neither the State nor USDA 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 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.

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IT IS SO AGREED:

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

/s/ Dan Glickman
DAN GLICKMAN
Secretary
U.S. Department of Agriculture and
Chairman of the Board
Commodity Credit Corporation

October 19, 1998
Date

FOR THE STATE OF WASHINGTON

/s/ Gary Locke
GARY LOCKE
Governor
State of Washington

October 19, 1998
Date