

0003

**AGREEMENT**

**BETWEEN**

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

**AND**

**THE STATE OF NEBRASKA  
CONCERNING THE IMPLEMENTATION OF A  
NEBRASKA PLATTE-REPUBLICAN RESOURCES AREA CREP**

This Memorandum of Agreement (Agreement) is entered into between the United States Department of Agriculture (USDA), Commodity Credit Corporation (CCC), and the State of Nebraska (Nebraska) to implement a Conservation Reserve Enhancement Program (CREP) for the improvement of water quantity and quality, and the enhancement of wildlife habitat through establishment of vegetative cover to reduce irrigation water consumptive use and agricultural chemical and sediment runoff into waters of the State. The CREP is part of the Conservation Reserve Program (CRP), operated by the Farm Service Agency (FSA) for CCC.

**I. PURPOSE**

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and Nebraska, certain acreage in the targeted watersheds to be enrolled in the Nebraska Platte-Republican Resources Area CREP. (Figure 1)

**II. GENERAL PROVISIONS**

The goals of the Nebraska Platte-Republican Resources Area CREP are to enroll up to 100,000 eligible acres to significantly reduce the amount of irrigation water consumptive use, and agricultural chemicals and sediment 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 cover, will also enhance associated wildlife habitat, both terrestrial and aquatic.

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

- A. Reduce the application of water for cropland irrigation in the priority area by

125,000 acre-feet annually from current irrigated usage levels.

- B. Increase surface and ground water retention by a target amount of 85,000 acre-feet of water annually within priority area reservoirs, groundwater tables and streams.
- C. Provide up to 85,000 additional acres of native grassland habitat for wildlife in the priority area, increasing the populations of pheasants and other ground nesting birds by 25 percent in the area.
- D. Provide up to 15,000 additional acres of conservation buffers and restored wetlands.
- E. Seek to reduce the application of triazine products by approximately 93,000 pounds annually, when fully enrolled, from existing application rates in the priority area.
- F. Seek to reduce leaching of nitrate compounds into project area streams and groundwater by 5,900,000 pounds annually, when fully enrolled, from the existing application rates in the priority area.
- G. Seek to reduce the application of phosphate products by approximately 2,440,000 pounds annually, when fully enrolled, from existing application rates in the priority area.
- H. Assist community public water supplies (surface and groundwater) by reducing nitrogen and phosphorus levels from agricultural activities.
- I. Provide educational assistance to project priority area irrigators to develop a more efficient use of applied water, nutrients, and herbicides.
- J. Monitor the aquatic communities and associated habitat parameters in project priority area reservoirs and rivers to determine biological relationships.
- K. For irrigation purposes, reduce the total consumption of fossil fuels by 350,000 gallons and electricity use by 10 million kilowatt hours.

### **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 the CRP through December 31, 2007.

Authority for the State of Nebraska resides in Neb. Rev. Stat., Section 37-342 (Reissue 2004), Neb. Rev. Stat., Section 46-715 (Reissue 2004) and Neb. Rev. Stat., Section 61-206 (Reissue 2003).

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 Nebraska, 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 Farm Service Agency Handbook 2-CRP (USDA's written procedures for implementation of the CRP program). All approved conservation plans shall be consistent with applicable CRP statutes and regulations, specifications, in accordance with USDA policies for similar enrollments and this Agreement.

- A. For purposes of CRP land eligibility under the Nebraska CREP, acreage denoted in Figure 1, attached, has been approved by FSA as a State Conservation Priority Area for Water Quality.
- B. The CRP contracts for acres enrolled in this CREP must be for a period of 10 to 15 years.
- C. Eligible producers in the CREP project area may also continue to offer other eligible acreage for enrollment during CRP's general and continuous enrollment periods.
- D. 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.
- E. No lands may be enrolled under this program until the USDA's CREP Program Manager approves a detailed Nebraska State FSA supplement to Handbook 2-CRP, which will provide a thorough description of this program and applicable practices.
- F. Eligible practices for this CREP are:

CP2 - Establishment of Permanent Native Grasses  
CP4D - Permanent Wildlife Habitat

CP21 - Filter Strips  
CP22 - Riparian Buffer  
CP23 - Wetland Restoration  
CP23A - Wetland Restoration, Non-Floodplain  
CP25 - Rare and Declining Habitat

- G. Irrigation requirements for land to be eligible to be enrolled 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 4 out of the 6 years, 1996-2001.  
Irrigated cropland must be physically and legally capable of being irrigated in a normal manner when offered for enrollment.  
A Nebraska State Water Use Contract is entered into between the producer and the State of Nebraska covering the irrigated cropland acres.

- H. 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.

- I. For the Nebraska CREP, cropland and practices enrollment goals are as follows:

CP2, CP4D, and CP25 - up to 85,000 acres.  
CP21 and CP22 - up to 10,000 acres.  
CP23 and CP23A - up to 5,000 acres.

- J. For the Republican River Basin Area, up to 50,000 acres may be enrolled from those identified in section 4 I., above. (Figure 2).

- K. For the Platte River Basin Area, up to 50,000 acres may be enrolled from those identified in section 4. I., above, as follows:

Up to 40,000 acres may be enrolled in the designated area below Lake McConaughy (Figure 3).  
Up to 10,000 acres may be enrolled in the designated area above Lake McConaughy (Figure 4).

For the Platte River Basin Area outlined in Figure 4, the 10,000 acres are further divided as:

Up to 5,000 acres, served solely by groundwater wells, may be enrolled.

Up to 5,000 acres, served by either groundwater wells and/or surface water allocation, may be enrolled.

- L. Participants may be allowed to apply not more than 1/3 acre foot of irrigation water to enrolled land during the first 12 months of a CREP contract, but only if/when necessary to establish the vegetative conservation cover as outlined in an approved conservation plan. Otherwise, no irrigation water may be applied to the land at any time during the term of the CREP contract except as further agreed to by CCC.

## V. FEDERAL COMMITMENTS

USDA and CCC agree to:

1. Providing cost-share payments to 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 producer's out of pocket expenses.
2. Make a one-time Practice Incentive Payment (PIP) for practices CP21 and CP22 consistent with the 2-CRP Handbook. The PIP is considered as part of the annual rental payment for payment limitation rule purposes.
3. 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 Handbook 2-CRP procedure. The 25 percent incentive payment is considered a rental payment for payment limitation rule purposes.
4. Make CRP land and producer eligibility determinations according to Handbook 2-CRP.
5. Under this CREP, make annual rental payments based on irrigated rental rates for each eligible enrolled irrigated acre in which a State Water Use Contract has already been secured. The per-acre, maximum irrigated rental rate in all cases will be equal to the sum of:
  1. The most current weighted-average, relevant posted irrigated cropland rental rate for the enrolled land for the relevant soil type in the relevant county; and
  2. A maintenance incentive payment in an amount according to the
  3. 2-CRP Handbook; this payment will be considered a rental payment for payment limitation purposes.

- F. Make annual rental payments based on dryland cropland rental rates for each eligible enrolled dryland cropland acre. The per-acre, maximum dryland cropland rate of payment in all cases is equal to the sum of:
  - 1. Posted dryland CRP soil rental rate based on the 3 predominant soils on the eligible dryland acreage offered according to 2-CRP Handbook procedure, i.e., the base soil rental rate; and
  - 2. A maintenance incentive payment in an amount according to the 2-CRP Handbook; this payment will be considered a rental payment for payment limitation purposes.
- G. Make a one-time Signing Incentive Payment (SIP) for practices CP21 and CP22 in accordance with the 2-CRP handbook. The SIP is considered part of the annual rental payment for payment limitation rule purposes.
- H. Administer CRP contracts for land enrolled under the CREP.
- I. Conduct compliance reviews according to the 2-CRP Handbook to ensure compliance with the CRP contract.
- J. Provide information to producers regarding Nebraska's CREP for technical assistance for the CREP program in general.
- K. Divide all payments between landlords and tenants and permit successors-in-interest to existing contracts to participate under CREP in the same manner as allowed for under any other CRP contract as provided in Handbook 2-CRP.
- L. Share appropriate data, in accordance with procedures and restrictions and exemptions established under the Federal Freedom of Information Act, federal privacy laws and other applicable laws, with Nebraska to facilitate State monitoring efforts.

## **VI. STATE COMMITMENTS**

Nebraska agrees to:

- A. Contribute not less than 20 percent nor more than 50 percent of the overall annual program costs, through cash contributions or certain in-kind services. Appendix A indicates the level of support that various local and state agencies have pledged to the project as in-kind services. The in-kind services include current water conservation activities, water quality activities, and

wildlife enhancement activities, proportioned out to reflect the amount of CREP area within each organization's individual jurisdiction.

B. Be responsible for:

1. Providing cost-share payments to all participants for 50 percent of the eligible reimbursable costs for establishment of approved conservation practices, not to exceed five million dollars (\$5,000,000.00). Total of all cost share payments, from any sources, shall not exceed 100 percent of the producer's out of pocket expenses;
2. Paying all costs associated with annual monitoring programs; and
3. Providing other wildlife conservation planning for producers on an as requested basis.

C. Establish an Enhancement Program Steering Committee, which will include representatives from the State technical Committee, FSA, Nebraska Department of Natural Resources, Nebraska Game and Parks Commission, Nebraska Department of Agriculture, NRCS, agriculture and conservation groups and local governments. This group will advise the Nebraska Governor's office on the implementation of this CREP.

D. 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.

E. Seek applicants willing to offer eligible and appropriate land for enrollment in the CREP.

F. Facilitate the provision of technical assistance from local conservation districts in promoting the CREP.

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

H. Work to ensure coordination with other agricultural conservation programs of State and federal agencies.

I. Within 90 days after the end of each federal fiscal year, the Nebraska Department of Natural Resources 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 program expenditures; and, recommendations to improve the program.

- J. Within 90 days after the end of the federal fiscal year, Nebraska 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 to provide some other mutually agreed-upon remedy.
- K. 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.
- L. For all cropland enrolled under a CREP contract at irrigated rental rates, the State shall enter into, and administer, a separate State Water Use Contract with each participant, or successor thereto, which shall require:

Discontinuation of the use of the water which had been applied to the enrolled irrigated cropland.

Management of the water under contract to ensure water savings conservation.

Non-use, except as provided below, 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 State Water Use Contract will require that the participant 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. The State shall also require that the participant does not allow other individuals or entities to use, affect, transfer, sell, exchange or otherwise apply the surface or well water from the appropriation during the CRP contract period, except as agreed to by USDA.

- M. Take all reasonable steps to ensure use of the water savings achieved under the contracts in L. shall be used for environmental and public recreational purposes in a stream, river, aquifer, or reservoir except with respect to water savings under this CREP that would otherwise be retained in a reservoir for environmental and recreational purposes when the water levels exceed the applicable trigger point for the reservoir, as defined by the State of Nebraska and agreed to by the CCC, and the irrigation district. The trigger points listed

for the six reservoirs listed in Figure 5 attached, represent a level of water that the State has determined will provide substantial environmental benefits, including fishery benefits, water quality benefits, and benefits for recreation, and which is consistent with other reservoir operational requirements. The trigger points, expressed in acre feet of water at target water elevations, shall not in any instance for any of the six reservoirs be less in amounts of water than the amounts set out in Figure 5. The list of reservoirs with trigger point will not be changed unless otherwise agreed to by CCC. Nothing in this Agreement, however, authorizes any water use not otherwise authorized by law or the applicable authorities, or which is otherwise not permitted.

- N. Take all reasonable steps to enforce the requirements of the State Water Use Contracts.
- O. Seek the approval of this agreement by such independent boards or bodies within the State as may be necessary or appropriate to maximize objectives of this agreement.

## VII. MISCELLANEOUS PROVISIONS

- A. All commitments by USDA and Nebraska 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 may 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 the CRP contract, 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.
- C. 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.
- D. The State and the 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.
- E. This Agreement shall remain in force and effect until terminated by USDA, CCC or Nebraska. This Agreement may be terminated by either party upon written notice. Such termination will not alter responsibilities regarding

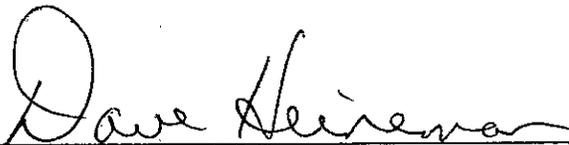
existing contractual obligations under the CREP between participants and USDA or CCC, or between participants and Nebraska.

- F. 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 Nebraska, 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.

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

  
\_\_\_\_\_  
Floyd D. Gaubler  
Deputy Under Secretary  
Farm and Foreign Agriculture Services

3-19-05  
Date

  
\_\_\_\_\_  
Dave Heineman  
State of Nebraska

3-19-05  
Date

Appendix A  
List of In-kind Match Available from Organizations

The following list indicates the projected level of state and local in-kind services that will be designated toward matching project costs.

Entity	Project Annual Match
Bostwick Irrigation District	\$494,473
Central Platte Natural Resources District	\$345,460
Middle Republican Natural Resources District	\$151,116
Nebraska Department of Agriculture	\$13,500
Nebraska Department of Natural Resources	\$887,000
Nebraska Game and Parks Commission	\$130,000
Nebraska Public Power District	\$143,120
North Platte Natural Resources District	\$100,000
Pathfinder Irrigation District	\$190,500
Tri-Basin Natural Resources District	\$217,250
Twin Platte Natural Resources District	\$32,000
Upper Republican Natural Resources District	\$100,000
Lower Republican Natural Resources District	\$366,000
<b>Total:</b>	<b>\$3,170,419</b>

Figure 1

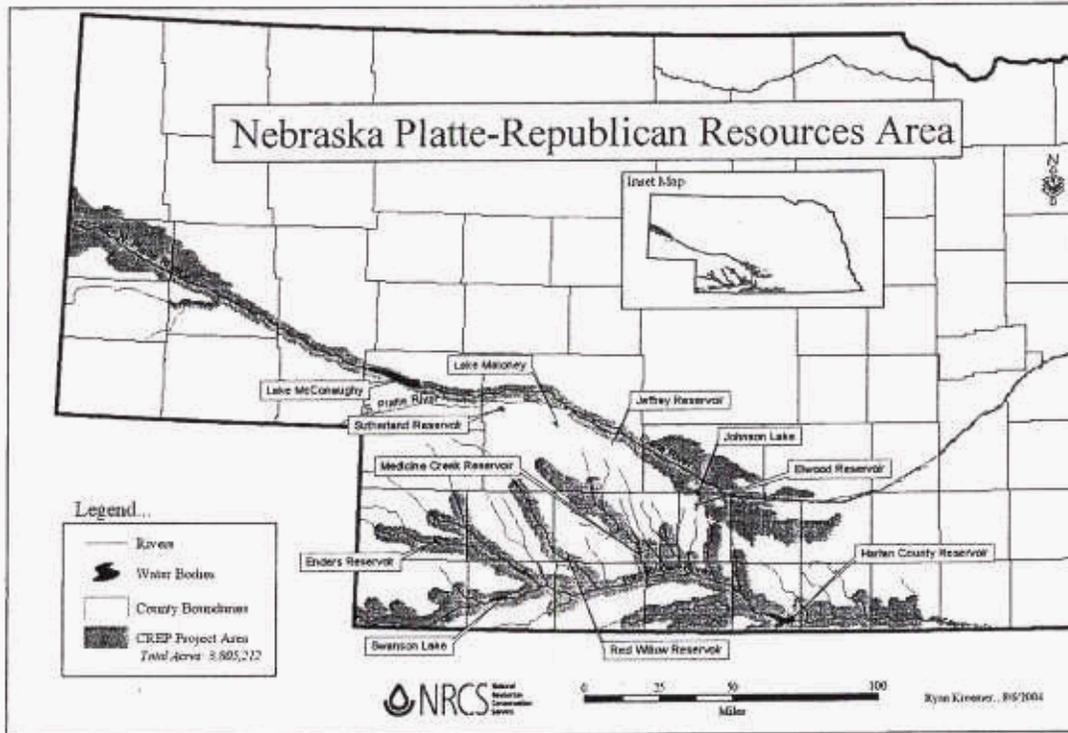


Figure 2

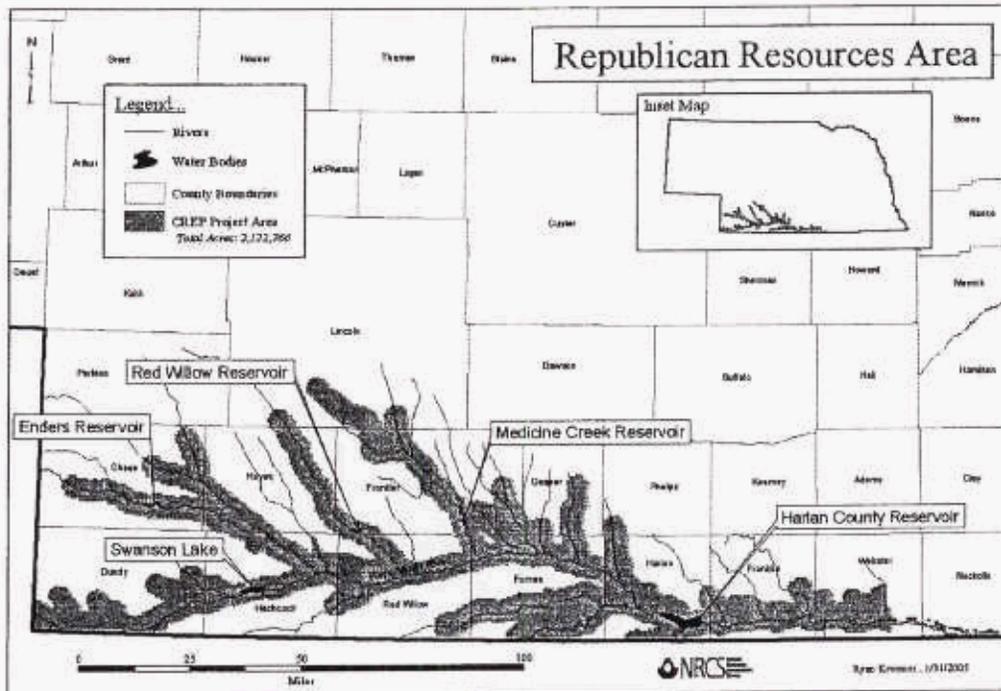


Figure 3

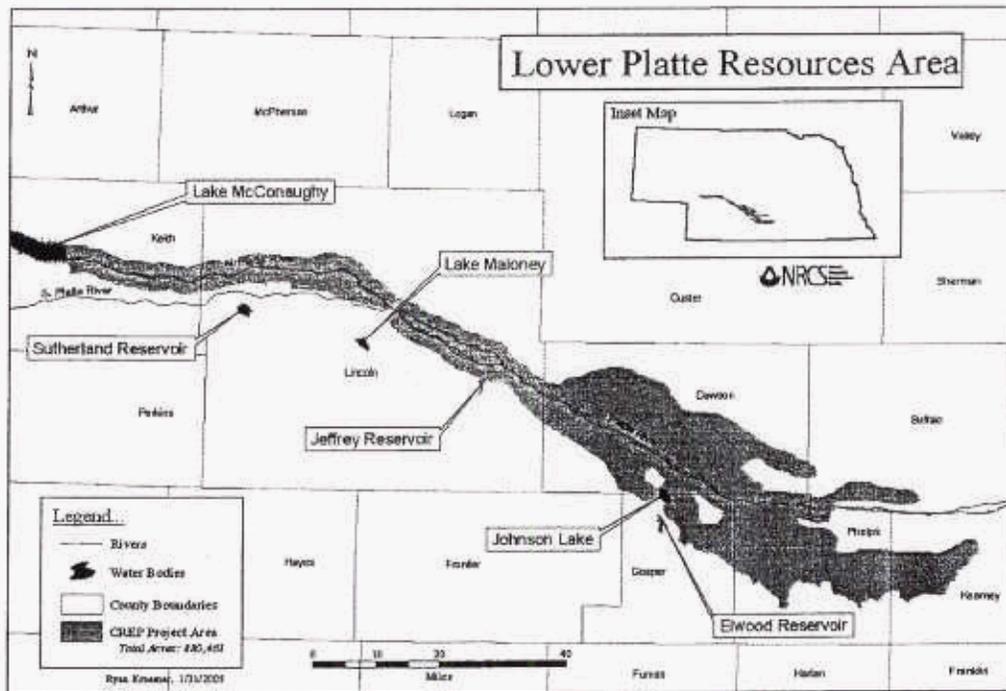


Figure 4

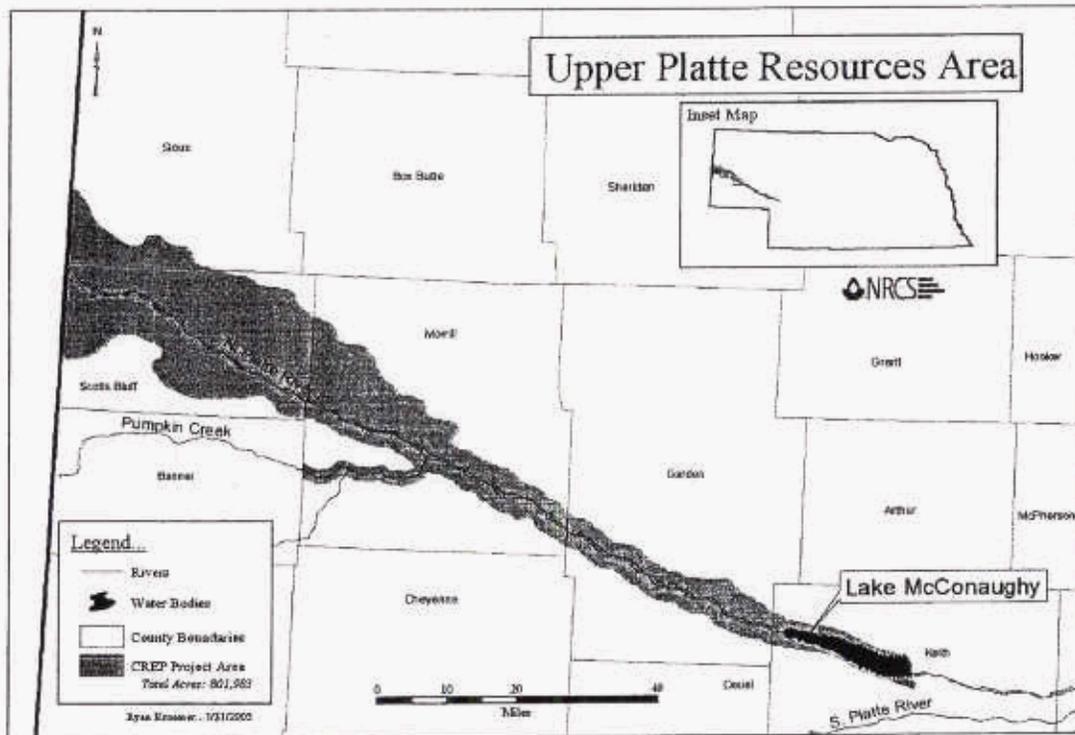


Figure 5

**Trigger Levels for Reservoirs in the Platte-Republican CREP**

State of Nebraska, provides the following target levels for purposes of CREP for each reservoir in the Republican River drainage and Lake McConaughy. The target elevation represents a level of water that will provide substantial environmental benefits, including fishery benefits, water quality benefits, and benefits for recreation, and which is consistent with other reservoir operational requirements.

Table 1.

Reservoir	Target Elevation	Acre-feet of Storage at Elevation
Enders Reservoir	3,089.4	14,000
Harlan Reservoir	1,927	118,099
Lake McConaughy	3,218	650,000
Medicine Creek Reservoir	2,355	19,631
Red Willow Reservoir	2,570	19,901
Swanson Reservoir	2,735	45,211

On March 19, 2005, the undersigned witnessed the signing of the Nebraska  
Platte-Republican Resources Area Conservation Reserve Enhancement Program  
Agreement between the State of Nebraska and the U.S. Department of Agriculture.

Tom Orleans 3/19/05  
Date

Paul Patton 3/19/05  
Date

Alan E. [unclear] 3/19/05  
Date

Margaret [unclear] 3/19/05  
Date

Steph [unclear] 3/19/05  
Date

Milton Rogers 3/19/05  
Date

Doyle Haag 3/19/05  
Date

Wendell [unclear] 3/19/05  
Date

[unclear] 3/19/05  
Date

[unclear] 3/19/05  
Date

Don [unclear] 3-19-05  
Date

[unclear] 3/19/05  
Date

Jason [unclear] 3-19-05  
Date

Ray D. [unclear] 3-19-05  
Date