

Water Use Contract

Nebraska Platte-Republican Resources Area Conservation Reserve Enhancement Program

Note: The Nebraska Department of Natural Resources (NDNR) has developed this form for purposes of enabling eligible landowners to apply to participate in the Nebraska Platte-Republican Resources Area Conservation Reserve Enhancement Program (CREP or "the Program") which has been implemented pursuant to an Agreement between Nebraska and the U.S. Department of Agriculture, Commodity Credit Corporation (USDA). The NDNR is seeking to use the Program to encourage irrigators to reduce their use of surface water and ground water for purposes of irrigation. NDNR seeks to accomplish this goal by assisting in the process of signing up eligible land to the Program. The Program will require participant landowners to agree to forbear their use of ground water and surface water on the eligible land for the contract period. The unused water will either remain in the ground water aquifer, be stored in a reservoir, or increase stream flow for environmental and public recreational purposes. This NDNR form is to be used to obtain a binding commitment from landowners who apply for CREP to discontinue the use of, and help conserve irrigation water that had been applied to the irrigated cropland which is offered for enrollment into the program.

The Nebraska Department of Natural Resources (NDNR) is authorized to enter into this Water Use Contract (the "Agreement") pursuant to the provisions of Neb. Rev. Stat. § 61-206.

1. DEFINITIONS

- A. Conservation Plan of Operations: A written agreement between CREP participants and USDA which describes the conservation practices to be implemented, the timing of practice implementation, practice location, operation and maintenance of the practice during the contract period, and related natural resource management provisions.
- B. Contract Period: The Contract Period shall be the number of years as provided in Section 6C of this contract. The beginning date of the contract and ending date of the contract period shall be the same as the dates shown on the United States Department of Agriculture Nebraska Farm Service Agency's CREP CRP-1 form.
- C. Eligible Irrigated Land: The tract(s) of land specified in Section 3 of this Agreement: Eligible Irrigated Land must have either (a), a valid surface water appropriation appurtenant thereto and the acquiescence of any pertinent irrigation district, reclamation district, public power and irrigation district, mutual irrigation or canal company, or (b), registered water well(s) used to apply ground water thereto. Determinations of Eligible Irrigated Land based on these eligible surface water appropriations and registered ground water wells are within the sole discretion of NDNR.
- D. Landowner: The individual, partnership, limited liability company, corporation, association, or other entity in which Eligible Irrigated Land is held that (a) owns such land, (b) has entered into or applied to enter into a CREP contract with the USDA, and (c) has authority to agree that the amount of ground water and surface water conserved due to the enrollment of irrigated cropland into CREP will not be put to any use on any land under their control, or otherwise transferred, sold or exchanged, except as required pursuant to this Agreement.
- E. Attachment 1: A copy of the delineated aerial photograph obtained from the county FSA or GIS layouts locating the precise acreage to be enrolled as Eligible Irrigated Land, and specifically delineating any non-irrigated center-pivot acreage to be included. The aerial photograph shall be marked to show whether the lands to be included in the contract are irrigated from surface water only, ground water only, are irrigated with both ground water and surface water, or are non-irrigated cropland acres.
- F. De minimis Water Use: The use of a ground water well for watering range livestock, monitoring, observation, or any other nonconsumptive use approved by NDNR.
- G. Variance: Written permission from NDNR to use small amounts of ground water from a well subject to a Water Use Contract for purposes other than irrigation. The amount of water which may be used cannot exceed one acre foot per year (325,851 gallons per year). The limitation on the amount of water may be adjusted if there is a health issue that would affect public or private drinking water or for public safety reasons. The amount of de minimus ground water use allowed and the purpose for which the ground water may be used shall be specified on the variance. Failure to comply with the terms of the variance may result in cancellation of the Water Use Contract.
- H. Local Water Authority: An irrigation district, reclamation district, public power and irrigation district, mutual irrigation or canal company, or natural resources district that is the appropriator of record of a surface water appropriation in the NDNR records.
- I. Non-irrigated cropland acres. These must be non-irrigated center pivot corners where the pivot is included in a Water Use Contract under this program.

2. IDENTIFICATION INFORMATION *(To be completed by all Landowners/Applicants)*

A. Identification of Landowner(s): Enter the information below for each landowner of the Eligible Irrigated Land. Attach additional pages as necessary. All Landowners must sign and agree to be bound by the terms of this Agreement.

NAME OF LANDOWNER	MAILING ADDRESS (Include ZIP Code)	TELEPHONE NUMBER	EMAIL ADDRESS

B. Reports of Title and Consent

It is the responsibility of **all** landowners to submit with this contract a report of title issued by an attorney or a registered abstractor, on a form prescribed by the local natural resources district, reflecting: (a) the owner and legal description of the land included in the contract; and (b) the existence of all liens, evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land included in the contract and the name and address of each such lienholder, if any. If the report of title reflects the existence of any lien evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, written consent to participate in this program shall be obtained from each such lienholder and attached to this contract. The report of title and any applicable consents from lienholders shall be attached to the contract prior to submittal to the following entities, when applicable:

1. The local natural resources district. Contracts and attachments must be submitted to the local natural resources district for their approval when ground water is used for irrigation of the land.
2. Any Local Water Authority holding the appropriation that serves the land under contract. The Local Water Authority must approve the landowner's participation in the program.
3. The Department of Natural Resources. After obtaining all applicable consents, all contracts and reports of title and any applicable consents must be submitted to the Department.

C. Water Use Contractor:

ADDRESS OF WATER USE CONTRACTOR: Nebraska Department of Natural Resources (NDNR)
State Office Building
301 Centennial Mall South, 4th Floor
Lincoln, NE 68509-4676
Telephone No.: (402) 471-2363

3. ELIGIBLE IRRIGATED LAND INFORMATION

A. Property Description (to be completed by all Landowners/Applicants)

1. Landowner(s) are the owner(s) of property located at:

(a) TOWNSHIP	(b) RANGE	(c) SECTION

2. Is the entire tract identified above subject to this Agreement? Yes No If "NO" complete item 3 below:

3. Provide the number of acres subject to the agreement and the legal description of township, range, section, and ¼¼ which will be enrolled in CREP and established to long-term vegetative cover as part of this Agreement:

(a) Number of Eligible Irrigated cropland acres subject to the Agreement: ►					
(b) Legal description: ►	(1) Township	(2) Range	(3) Section	(4) ¼	(5) ¼

B. FSA Farm/Field/Acreage Identification Information

(To be completed by County USDA/FSA when the CREP offer (CRP-2C) is submitted)

1. Landowner(s) are the owner(s) of property located at:

1. FSA FARM NUMBER:		2. FSA ADMINISTRATIVE LOCATION (County):			3. FSA PHYSICAL LOCATION (County):		
4. TRACT NUMBER(S) ▶							
5. FIELD NUMBER(S) ▶							
<i>(List field numbers for each tract in the column below each tract)</i>							
6. TOTAL IRRIGATED CROPLAND ACRES ▶					7. TOTAL NON-IRRIGATED CROPLAND ACRES ▶		

IMPORTANT: *The County FSA Office must attach a copy of a delineated aerial photograph or GIS layouts locating the precise acreage to be enrolled as described in Item E of the definitions herein.*

4. SURFACE WATER APPROPRIATION INFORMATION AND LIMITATIONS

Instructions: This section does not need to be filled out by Landowners who irrigate with ground water only. All Landowners who irrigate with surface water must fill out Part A. Landowners whose surface water appropriation is held by a Local Water Authority must have Part B signed by the entity that holds the appropriation. Landowners who hold their surface water appropriation in their own name must sign Part C. Landowners who irrigate with both ground water and surface water must fill out the relevant Parts of Section 4 and Section 5.

A. To be completed by Landowners only if Eligible Irrigated Land Has Appurtenant Surface Water Appropriation(s)

List all valid surface water appropriations appurtenant to the Eligible Irrigated Land. *(Include only natural flow and storage use appropriations.)*

1.	ENTER APPROPRIATION NUMBERS:▶				
2.	Enter the number of surface water irrigated acres subject to this Agreement: ▶				

(If additional space is needed to provide information relating to more than one appropriation, please attach an additional sheet providing all information required by A (1) and (2) above, for each appropriation.)

1. Representation of validity of appropriations. Landowner(s) understand that the Conservation Reserve Enhancement Program (CREP) is available because of non-use of surface water only when there are valid water appropriations for the Eligible Irrigated Land. Landowner(s) represent(s) that each water appropriation listed above is a valid water appropriation. Landowner further represents that all subject surface water appropriation(s) appurtenant to the Eligible Irrigated Land are depicted on Attachment #1.
2. Landowner agrees to forego the use of the surface water appropriation(s) listed above for the Contract Period.
3. Landowner agrees that neither the Landowner nor any other individual or entity will make any use of, affect, transfer, sell, exchange, or otherwise apply surface water from the appropriation during the Contract Period for the Eligible Irrigated Land enrolled, except, if determined necessary by the USDA, during the first twelve months after the effective date of the CREP contract not more than four acre inches may be applied for the purpose of establishing a long-term vegetative conservation cover on the Eligible Irrigated Land, as outlined in an approved Conservation Plan of Operations.
4. Landowner will not apply water from any other surface water or ground water source to the Eligible Irrigated Land during the Contract Period.
5. Upon expiration or early termination of the CREP contract, the use of the surface water from the surface water appropriation(s) listed in Section 4 shall be restored to Landowner. The NDNR will give effect to the requirements of Neb. Rev. Stat. § 46-229.04(4)(g).
6. During the Contract Period, Landowner will not transfer the right to use water under any appropriation listed above to any other land, whether or not owned or otherwise under the control of Landowner.
7. If Landowner uses surface water held by a Local Water Authority, Landowner will continue to pay any applicable water delivery, power interference, and/or operation and maintenance charges, as referenced in Part B, below, during the Contract Period.
8. If there is a violation of the terms of this Agreement or the federal CREP agreement or if this Agreement or the federal CREP agreement is terminated, the Landowner(s) agrees to repay the NDNR the entire amount of any payments received from the NDNR including liquidated damages of 20 percent of all amounts paid under the contract.

B. To be completed by Local Water Authority only if the water appropriation for the Eligible Irrigated Land is held by an entity other than the Landowner

1. Written approval of Local Water Authority that holds the appropriation.
(NOTE: if the appropriator of record is an individual, skip this item. In such instance, Landowner agrees to be bound by Part C in addition to Part A of this Section 4.):

2. Written Approval and Certification of Local Water Authority:

The undersigned Local Water Authority agrees to maintain Landowner(s)' right(s) to use the applicable surface water appropriation as long as Landowner continues to pay any applicable water delivery, power interference, and/or operation and maintenance charges, and shall refrain from transferring such appropriation to any other land during the Contract Period or as a result of this Agreement or the agreement between the United States Department of Agriculture and the Landowner.

3. If the Local Water Authority does not own a storage use appropriation for the appurtenant land, the Local Water Authority and the Landowner agree to apply for, prior to the beginning date of the Contract Period, a temporary transfer of the subject surface water appropriations to an in-stream flow use pursuant to Neb. Rev. Stat. § 46-290(5). The Landowner understands that, in the event that a temporary transfer is not obtained, the Landowner will not be eligible to participate in CREP. Each undersigned understands that this Agreement is not effective until a valid temporary transfer has been obtained.

a) PRINT NAME OF LOCAL WATER AUTHORITY		b) NAME OF AUTHORIZED REPRESENTATIVE	
c) DATE		d) SIGNATURE OF AUTHORIZED REPRESENTATIVE	
e) PRINT NAME OF LANDOWNER	f) SIGNATURE OF LANDOWNER	g) DATE	

C. To be completed by all Landowners who hold the Surface Water Appropriation for the Eligible Irrigated Land Themselves

I agree to apply for, prior to the beginning date of the Contract Period, a temporary transfer of the subject surface water appropriations to an in-stream flow use pursuant to Neb. Rev. Stat. § 46-290(5). I understand that, in the event that a temporary transfer is not obtained, I will not be eligible to participate in CREP. I understand that this Agreement is not effective until a valid temporary transfer has been obtained.

1. PRINT NAME OF LANDOWNER	2. SIGNATURE	3. DATE

For additional Landowners, use another copy of this page and enter remaining names, signatures and dates.

B. Representations and Agreements by Landowner(s) Concerning Wells

1. Landowner represents that all registered water well(s) used to apply water to the Eligible Irrigation Land are depicted on Attachment #1.
2. Landowner agrees to forbear use of the registered water wells listed in Section 5 for the Contract Period for the purposes of irrigating the Eligible Irrigated Land.
3. Landowner agrees that neither the Landowner nor any other individual or entity will make any use of, affect, transfer, sell, exchange, or otherwise apply ground water from the registered water wells in the amount that was historically used on the Eligible Irrigated Land for any purpose during the Contract Period, and Landowner will help conserve all ground water subject to this Agreement, except, (1) if determined necessary by the USDA, during the first twelve months after the effective date of the CREP contract not more than four acre inches may be applied for the purpose of establishing a long-term vegetative conservation cover on the Eligible Irrigated Land, as outlined in an approved Conservation Plan of Operations, or (2) if the Landowner has received a variance from this provision from NDNR for a de minimis use.
4. Landowner will not apply water from any other source to the Eligible Irrigated Land during the Contract Period.
5. If Landowner is in a natural resources district with certified irrigated acres, Landowner will irrigate no more than the total number of certified irrigated acres Landowner holds less the number of acres enrolled in the CREP.
6. Upon expiration or early termination of the CREP contract, use of the ground water from the registered water wells listed in Section 5 shall be restored to Landowner, in accordance with all applicable rules and regulations in force at that time.
7. If there is a violation of the terms of this Agreement or the federal CREP agreement or if this Agreement or the federal CREP agreement is terminated, the Landowner(s) agrees to repay the NDNR the entire amount of any payments received from the NDNR including liquidated damages of 20 percent of all amounts paid under the contract.

C. To be completed by the Natural Resources District in which the ground water wells are located

1. The natural resources district certifies that the information contained in Section 5 is correct as indicated on the records of the natural resources district.
2. The natural resources district certifies that the ground water well(s) listed are legal wells in compliance with Neb. Rev. Stat. § 46-602, and all applicable rules of the natural resources district.
3. If the natural resources district has certified irrigated acres, the natural resource district certifies that the acres proposed for enrollment in CREP are certified irrigated acres with the exception of any dryland acres permitted under the terms of the Landowner's USDA CREP contract.

a) PRINT NAME OF NATURAL RESOURCES DISTRICT	b) NAME OF AUTHORIZED REPRESENTATIVE
c) DATE	d) SIGNATURE OF AUTHORIZED REPRESENTATIVE

6. **General Provisions** (Applicable to all Landowners)

- A. **Right of Entry:** Landowner(s) hereby grant the Nebraska Department of Natural Resources or its designee a right of entry onto the Eligible Irrigated Land for purposes of verifying Landowner(s)' compliance with the terms of this Agreement. Such entry shall not require prior notice to be provided to Landowner(s), and shall not be deemed trespass.
- B. **Access to Farm Service Agency Records:** Landowner(s) hereby grant(s) the Nebraska Department of Natural Resources or its designee permission to obtain copies of Farm Service Agency records pertaining to the Eligible Irrigated Land.
- C. **Duration of Agreement/Contract Period:** This Agreement shall last for the same duration as a CREP contract between the United States Department of Agriculture and the Landowner and shall be for a period of _____ years.
- D. **Termination Provision:** In the event Landowner(s)' CREP contract with the USDA is terminated before expiration, this Agreement shall be deemed terminated for cause.
- E. **Transfer of Land:** If a new owner purchases the Eligible Irrigated Land, and the new owner assumes the obligations of the USDA CREP contract, the new owner will be required to succeed to this Agreement. If the new owner refuses to succeed to this Agreement, the related USDA CREP contract will be terminated, and liquidated damages will be assessed against Landowner pursuant to the terms of the USDA CREP contract.
- F. **Payments:** Payments due to the Landowner in accordance with CREP shall be paid to the Landowner(s) according to applicable Federal statutes and regulations. The State of Nebraska is not responsible for any Federal monetary obligations as a result of the CREP, except as may be agreed to in the CREP agreement between Nebraska and the United States Department of Agriculture.
- G. **Enforcement of Water Appropriations:** The USDA, Commodity Credit Corporation, Farm Service Agency, is not responsible for and will not administer, enforce, oversee, or otherwise manage water appropriations, water usage or State, local or federal water use contracts and laws in any manner.
- H. **Nondiscrimination:** The NDNR prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact NDNR, at (402) 471-2363. To file a complaint of discrimination with the NDNR, write NDNR, P.O. Box 94676, Lincoln, NE 68509-4676 or call (402) 471-2363. The NDNR is an equal opportunity provider and employer.
- I. **Variances:** The NDNR may grant variances to Landowner(s) to allow the use of wells for de minimis purposes other than irrigation such as watering range livestock or domestic uses. The maximum amount of water for which a variance will be approved is 1 acre foot (325,851 gallons) per year. The limitation on amount of water may be adjusted if there is a health issue that would affect public or private drinking water or for public safety reasons. The landowner must apply for the variance on a form provided by NDNR.

7. Representation of Landowner(s) *(Applicable to all Landowners)*

The undersigned Landowner(s) declare that, to the best of their knowledge and belief, the information contained in this Agreement is true, correct and complete. If, after this Agreement is signed, any information is determined to be false, the Agreement may be modified or terminated. This Agreement only applies to the surface water appropriations and forbearance of use of registered water wells identified herein as specified herein for the Contract Period; it shall not be construed to overcome any claim that the surface water appropriations may otherwise be subject to cancellation for nonuse pursuant to Neb. Rev. Stat. § 46-229.02 during the period of time prior to the execution of this Agreement, or that the water wells are illegal water wells pursuant to Neb. Rev. Stat. §§ 46-602 and 46-706, during the period of time prior to the execution of this Agreement.

Signatures

In Witness Whereof, in consideration for being considered for participation in the Nebraska CREP, the Landowner(s) and the Nebraska Department of Natural Resources agree to be bound by the terms of this Agreement and execute this Agreement as of the date indicated below:

NAME OF LANDOWNER	SIGNATURE	DATE

For additional Landowners, type in space below for name, signature and date:

<u>FOR NDNR USE ONLY</u>	
APPROVED ACRES: If acres are not the same as shown on Attachment 1, the Department shall attach to the contract a map showing the approved acres:	
Acres Determined Eligible By The Department:	Ground Water _____
	Surface Water _____
	Commingled _____
	Total Acres _____

Nebraska Department of Natural Resources:

By:	Date:	Title:
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