

AGREEMENT

BETWEEN

THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

AND

THE STATE OF MICHIGAN
CONCERNING THE IMPLEMENTATION OF A
CONSERVATION RESERVE ENHANCEMENT PROGRAM

The Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) and the State of Michigan (State) enter into the following Agreement to implement a Conservation Reserve Enhancement Program (CREP).

I. PURPOSE

The purpose of this Agreement is to reduce sediment, phosphorus, and nitrogen in the surface water supply of the Macatawa, River Raisin, and Saginaw Bay Watersheds (see map). These watersheds are considered the CREP area. The actions are taken to improve water quality; enhance habitat for fish and wildlife; and enhance nesting for upland birds, mammals, and waterfowl.

II. GENERAL PROVISIONS

The intended outcome of the State of Michigan CREP program is to implement practices within the CREP area to improve water quality.

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

- The reduction, from agriculture lands, of 784,000 tons of sediment and 784,000 pounds of phosphorous from entering the tributaries and main streams of the selected watersheds and to help reduce stream water heating to ambient levels.
- The reduction of 1,568,000 pounds of nitrogen entering the tributaries and main streams of the selected watersheds so as to reduce the nitrate levels exceeding the drinking water maximum.
- To provide conservation practices for landowners and/or producers to voluntarily meet the water quality requirements established under federal and Michigan water quality laws.
- To increase the benefits to public health through the improvement of the quality of public drinking water sources. Decreases in sediment and nutrient loadings

should reduce drinking water nitrate, pesticide, and trihalomethane concentrations.

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

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, 2002.

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 the State to enter into this Agreement is Article III, section 5, of the Michigan Constitution.

In this Agreement, obligations of the State are limited to powers and authorities of the Governor of the State of Michigan.

IV. PROGRAM ELEMENTS

USDA, CCC, and the State agree that:

A. The CREP will consist of a special continuous sign-up CRP component and a State incentive program. The CREP will seek to enroll no more than 80,000 acres under this Agreement and that land shall only be eligible to the degree that enrolling the land would be consistent with the purpose and objectives set out in Sections I and II.

B. The eligible practices for the CREP will be:

- CP1 Establish Permanent Introduced Grasses/Legumes
- CP2 Establish Permanent Native Grasses
- CP5A Field Windbreaks
- CP21 Filter Strips
- CP22 Riparian Buffer Strip
- CP23 Wetland Restoration
- Approved Water sediment control practice

All practices shall meet the criteria in the CRP statutes, CRP regulations, this Agreement, Farm Service Agency Handbook 2-CRP, and the Natural Resources Conservation Service Field Office Technical Guide.

C. Acres eligible for enrollment must meet the following criteria:

1. Entirely located within the Michigan CREP area.
2. Must be either CP1, CP2, CP5A, CP21, CP22, CP23 practices or an approved Water Sediment Control Practice that meets the practice requirements of Farm Service Agency Handbook 2-CRP and Natural Resource Conservation Service Field Office Technical Guide.
3. For CP1 and CP2 practices, must be installed on land with a weighted minimum average Erodability Index (wind or water) of 8 or greater and be located within 1,000 feet of a permanent river, stream, or lake.
4. The cumulative total acreage enrolled under this Agreement for practices CP1 and CP2 will not exceed 20,000 acres.
5. For the purposes of those listed practices which involve a body of water, drainage ditches shall be considered "a body of water," provided that such drainage ditches meet the minimum size requirements as defined in the Michigan's Farm Service Agency amendment to 2-CRP Handbook.
6. Practices CP21 and CP22 for the purposes of this Agreement must, when installed, have an average minimum width of 50 feet with a maximum average width not to exceed 150 feet except where the Natural Resource Conservation Service Field Office Technical Guide requires a width in excess of 150 feet to address the water quality concern.
7. For the CP5A practice, each installation must have a minimum of two rows of trees and one row of shrubs.
8. The proposed Water Sediment Control Practice shall be designed according to Natural Resource Conservation Service Field Office Technical Guide and Farm Service Agency 2-CRP requirements and must be designed in a manner to trap and store sediment from inflowing waters.

D. The term for CRP contracts enrolled pursuant to this Agreement must be a minimum of 14 years but may not exceed a maximum of 15 years.

E. Eligible landowners and/or producers will not be denied the opportunity to offer eligible acreage for enrollment during general or other continuous CRP enrollment periods.

- F. The State will administer a voluntary easement program that will not detrimentally affect the CRP contracts. The State will solely be responsible for all easement requirements such as securing, monitoring, and enforcing such easements. The purpose of such easements is to maintain the long-term conservation benefits associated with land enrolled under this Agreement.
- G. The State will be solely responsible for the monitoring and evaluation of environmental impacts associated with the program objectives.
- H. 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.
- I. The Deputy Administrator for Farm Programs, Farm Service Agency, is the delegated authority to carry out this Agreement and, with the Governor of the State of Michigan or his/her 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 by and between the parties.
- J. No lands may be enrolled under this program until the USDA - Deputy Administrator for Farm Programs, in consultation with USDA - Natural Resource Conservation Service, concurs with a detailed Michigan Amendment to 2-CRP.

V. FEDERAL COMMITMENTS

USDA and CCC agree with respect to this Agreement to:

- A. Determine landowner and/or producer eligibility for participation in the CRP consistent with the regulations at 7 CFR Part 1410 and administer those CRP contracts that are executed.
- B. Consistent with the CRP regulations, pay up to 50 percent of the eligible reimbursable costs of CRP conservation practices. Cost-share reimbursements to participants from all sources shall not exceed 100 percent of the participant's out-of-pocket expenses.
- C. On a continuous basis through December 31, 2002, enroll land that meets the eligibility criteria set forth in the CRP regulations at 7 CFR Part 1410 and this Agreement.
- D. Subject to the availability of funds, make annual rental payments otherwise applicable to the land under the CRP contract. The annual rental rate is comprised of a base rental rate, annual incentive payment (Section E), and annual maintenance rate (Section F). The base rental rate is the weighted average soil rental rate for the 3 predominate soils on the land offered for enrollment. The soil rental rates are the

county posted rental rates for the CRP program. No other incentive rates or payments shall be included in the calculation of the annual rental payment. However, the one-time payment referred in Section V., G. is permitted.

- E.** Subject to the availability of funds, make an incentive payment in the amount of 40 percent of the base rental rate.
- F.** Subject to the availability of funds, as part of the annual rental payment, make such a maintenance payment, which would otherwise apply under the CRP. This payment is not in addition to any other offered maintenance payment, but is instead the only maintenance payment to be made to eligible participants under the contract.
- G.** Subject to the availability of funds, and only for CP21, CP22, and CP5A, provide a one-time payment equal to 150 dollars per acre for a 15-year contract and 140 dollars per acre for a contract more than or equal to 14 years but less than 15 years. These funds will not require State matching funds.
- H.** Subject to availability of funds, provide a one-time incentive payment equal to 40% of the total eligible cost of practice installation according to the 2-CRP Handbook. These funds will not require State matching funds.
- I.** Work cooperatively with the State and landowners and/or producers in the development and review of conservation plans for land accepted for enrollment in the CRP under the CREP.
- J.** Conduct required status reviews to ensure compliance with the CRP contract.
- K.** In cooperation with the State, provide information to landowners and/or producers concerning the CREP and technical assistance for implementing the Michigan CREP.
- L.** Permit successors-in-interest to enroll under the Michigan CREP in the same manner as allowed for other CRP contracts.
- M.** Administer contracts for lands approved under the CREP.
- N.** Share appropriate data, in accord with procedures and restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, and other applicable laws, with the State to facilitate State monitoring efforts.

VI. STATE COMMITMENTS

The State for this Agreement will:

- A.** Contribute not less than 20 percent of the overall annual program costs.
- B.** Be responsible for:
 - (1) making its own direct cost-share payments to approved participants of the actual reimbursable costs for conservation practices established under this Agreement, in the amount that, when combined with the federal cost share, shall equal 100 percent of the eligible cost of the practice. The amount of reimbursement to a participant from all sources may not exceed 100 percent of the cost of the practice;
 - (2) paying all State's costs associated with its annual monitoring program;
 - (3) the State rental payment. The State rental payment will be in the amount of 10 percent of the base rental rate as stated in Section V., item D, of this Agreement; and
 - (4) paying all easement costs, which may include operational, maintenance, and monitoring costs associated with the voluntary easement, as stated in Section IV., F. of this Agreement.
- C.** Administer a separate program for land that it is not eligible for CREP. This State Program will assist landowners and/or producers to control livestock access to riparian areas. This State Program will assist in meeting the goals and objectives of this Agreement. Funds used in this separate program shall count for the State match for this Agreement.
- D.** Seek applicants willing to offer eligible and appropriate land for enrollment in the CREP.
- E.** Facilitate technical assistance from the local conservation districts and other cooperators to develop conservation plans, in cooperation with the Natural Resource Conservation Service, for applicants offering to enroll eligible acreage in the CREP.
- F.** Implement a broad campaign for continuous public information and education regarding the CREP.
- G.** Attempt to ensure that the CREP program is coordinated with other agricultural, environmental, and natural resource conservation programs at the state and federal level.
- H.** Within 120 days of the end of each federal fiscal year, provide a report to Farm Service Agency summarizing the status of enrollments under this CREP and progress on fulfilling the other commitments of this Agreement. The annual report to Farm Service Agency shall include: level of program participation; the results of the annual State monitoring program to determine the environmental impacts of this

Agreement; a summary of non-federal CREP program expenditures; and, recommendations to improve the program.

- I. Within 120 days of the end of the federal fiscal year, 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 120 days by paying the shortfall to CCC, or by providing some other mutually agreed upon remedy. To compare federal and non-federal costs in equivalent and present-day terms, the parties will calculate the present discount value of all payments to be made using an 8 percent discount rate. Overall costs and the State's contribution toward the overall cost are derived by calculating the present discount value of payments.
- J. Temporarily release participants from any contractual restriction on crop production during the CRP contract period if such release is determined necessary by the Secretary U.S. Department of Agriculture in order to address a national emergency.

VII. MISCELLANEOUS PROVISIONS

- A. Funding commitments by USDA and the State of Michigan are subject to the availability of funds. In the event either party is subject to funding limitation, that party will notify the other party expeditiously, and appropriate modifications may be made to this Agreement or the Agreement may be terminated. If either party cannot fulfill its financial obligations under this Agreement, the other party may immediately cease accepting new contracts.
- B. All CRP contracts under the State of Michigan CREP shall be subject to the limitations set forth in the regulations at 7 CFR Part 1410 including, but not limited to, such matters as economic use, transferability, violations, contract modifications, and per-person payment limits.
- C. Neither the State of Michigan nor USDA shall assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.
- D. CREP contracts entered into under the State of Michigan CREP may not be assigned or transferred without approval of the landowners and/or producers, except to the extent allowed by CCC pursuant to the CRP regulations.
- E. Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement, their successors in office, or their designees.

- F. The State and USDA agree that each party will be responsible for its own acts and/or omissions and results thereof to the extent authorized by law and shall not be responsible for the acts and/or omissions of any others and the results thereof.
- G. The books, records, documents, and accounting procedures and practices of the USDA and the State relevant to this Agreement shall be subject to examination for audit by the appropriate federal and/or state authority except as otherwise provided in law.
- H. This Agreement shall remain in force and effect until terminated by USDA, CCC, or the State. Either party upon written notice may terminate this Agreement in 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 the State.
- I. The parties expressly recognize and agree that for all purposes this Agreement, and the rights created thereby, does not pledge the "full faith and credit," the "credit," or the taxing power of the State, and does not create "state indebtedness" or "borrowing" as prohibited by Const 1963, art 9, §§12,14,15 and 18. The parties expressly recognize and agree that any rental payments or other expenditures assumed by the State pursuant to this Agreement are subject solely to annual appropriation by the legislature of the State and that commitment of future funds is contingent upon annual legislative appropriation.

FOR U.S. DEPARTMENT OF AGRICULTURE:

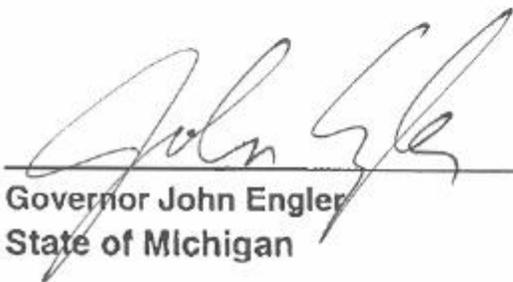


Honorable Dan Gillickman
Secretary
U.S. Department of Agriculture and
Chairman of the Board
Commodity Credit Corporation

July 14, 2000

Date

FOR THE STATE OF MICHIGAN:



Governor John Engler
State of Michigan

9/13/00

Date

