

## USDA/FSA undermines trust in Government Conservation and Climate Action programs.

9/20/2023

### Summary

The USDA announced on August 24, 2023, it is forcing early termination or material modification of hundreds of long-term high-priority conservation contracts in WA State effective September 30, 2023. They claim the information the FSA has been using for ~20 years was wrong. Most impacted projects involve salmon habitat enhancement in Whatcom County. Landowners who lose all or part of their program payments will be faced with the loss of their rental income and significant unfunded costs to return their land to other revenue producing activities. USDA has said their decision is non-appealable and any amended (reduced) contracts offered by the USDA must be accepted no later than September 29, 2023 (in a few days) otherwise, all future rental payments will cease.

### Overview

Since 1998 WA State has been working with farmers across the state (particularly in Whatcom County) to build trust in programs designed to improve our natural environment. On August 24, 2023, the US Dept. of Agriculture/Farm Service Agency (USDA) shocked landowners when they announced they intended to unilaterally modify or terminate hundreds of Conservation Reserve Enhancement Program (CREP) contracts due to administrative errors made by the USDA. CREP is the most successful and widely used conservation program in U.S. history. In WA it is a crucial part in the protection and restoration of water quality and especially salmon habitat. (Detail on CREP included below.)

The USDA has not alleged any fault, fraud or misrepresentation by impacted landowners. The contracts range in age from 1 to 15 years and had all been approved via a multi-level government process. While it remains unclear exactly what errors the USDA believes apply to individual projects, an example mentioned is the official stream map data used by the government was wrong (data supposed to be reviewed annually). Contracts on stream segments that have been seen supporting fish are now deemed ineligible simply because they are not officially recognized on the USDA stream map. A FOIA request for more detail was filed with the USDA on August 29<sup>th</sup> but is deemed “complex” and thus is unlikely to be fulfilled until after the USDA’s September 29th deadline.

Some landowners will have the acreage eligible to receive payments reduced, some will be offered a chance to transfer to a different program (that pays significantly less) and some will be terminated outright. All notified were told they would be impacted. As of the date above it is unknown how many landowners have received new proposals for their property, but the USDA requires all landowners to accept or reject new USDA offers by September 29, 2023. (See letter)<sup>1</sup> The USDA intends to renege on its contractual commitment to rent land they asked landowners to plant high density habitat and leave landowners to fund the cost (\$1,000 to \$5,000+ per acre) to reestablish the land for agriculture.

The result will be a reversal of significant critical habitat protections and financial hardship for many. Notwithstanding any promises by the USDA to ensure the problem does not happen again, if the USDA walks away from their contractual obligations because of a mistake they made, it will permanently damage the trust the USDA, WA State, the Whatcom Conservation District and Whatcom County have spent years building with landowners and set back cooperative conservation efforts by a generation.

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<sup>1</sup> USDA CREP Termination letter 2023-08-24.PDF (attached below)

## Options

1. This crisis is completely avoidable, this very problem and the USDA's authority to grant participants relief from errors caused by the USDA is authorized by Congress in Title 7 CFR 718.303<sup>2</sup> & 718.305<sup>3</sup>. USDA errors must have affected participants before (else the law would not be there) and no doubt the USDA will make similar errors in the future. Yet no explanation has been provided why the USDA is unwilling to exercise its discretion under CFR 718 in this situation. It's hard to believe the USDA has never granted other participants in other states relief. Are participants in WA being treated equally to all such prior cases?
2. This problem has been going on for years, yet the USDA is giving participants a few days to respond. While the USDA is honoring this year's rent (single payment each October) they are supplying no explanation for the September 29<sup>th</sup> deadline. It appears to simply be driven by a desire to include revised CREP contract amounts in the next farm bill. It is unclear why the original budget numbers cannot be submitted, with a notation that they may be reduced before October 2024 (such "budget lapse" commonly occurs in government).

The Secretary of Agriculture, (and likely also a Federal Judge) has the authority to extend the September 29, 2023, deadline, which appears to be artificial and unnecessary. Participants and state agencies should have at least 12 months to evaluate the impact and options, contest the new project delineations if necessary and be provided time and information on how to appeal.

3. Contract cancelations caused by the stream maps being out of date, should be resolved by immediately updating the stream maps where the science supports it.
4. The state legislature should have the opportunity to address any remaining funding shortfalls for habitat the state wants to protect (but the USDA does not value) in the next legislative session.

## **Additional background material**

### Overview of CREP

The WA State Conservation Reserve Enhancement Program (CREP) is a collaboration between the state, local and federal governments, tribes and private entities, to boost conservation in the most environmentally sensitive areas of WA State. The USDA website states:

*The Conservation Reserve Enhancement Program (CREP) is a part of the [Conservation Reserve Program \(CRP\)](#), the country's largest private-land conservation program. Administered by the [Farm Service Agency \(FSA\)](#), CREP leverages federal and non-federal funds to target specific State, regional, or nationally significant conservation concerns. In exchange for removing environmentally sensitive land from production and establishing permanent resource conserving plant species, farmers and ranchers are paid an annual rental rate along with other federal and non-federal incentives as specified in each CREP agreement. Participation is voluntary, and the contract period is typically 10-15 years.*<sup>4 5</sup>

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<sup>2</sup> [www.ecfr.gov/current/title-7/section-718.303](http://www.ecfr.gov/current/title-7/section-718.303)

<sup>3</sup> [www.ecfr.gov/current/title-7/section-718.305](http://www.ecfr.gov/current/title-7/section-718.305)

<sup>4</sup> [www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-enhancement/index](http://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-enhancement/index)

<sup>5</sup> [www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Conservation/PDF/fsa\\_crep\\_factsheet\\_22.pdf](http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Conservation/PDF/fsa_crep_factsheet_22.pdf)

Habitat recreation requires commitment and trust by the landowner. CREP typically entails hand planting 400-500 trees and shrubs per acre, each with a stake and plastic cone protector at a cost of more than \$3,000 per acre. Participants can renew the contract once for a maximum combined term of 30 years. At which point the landowner is likely thinking of what legacy they want to leave behind and what is now a forest, has become a good candidate for permanent protection. Early termination of all or part of the contract while the owner still needs income means reconversion back to farmland is likely the best/only economic option. The cost to remove the CREP plants is comparable to the planting expense and increases over time until the trees mature to a harvestable age (40+/- years).

#### USDA's actions appear to be a violation of the Statute of Limitations

Both the Federal statute of limitations (41 U.S.C. §7103(a)(4)(A))<sup>6</sup> and WA state (RCW 4.16.040)<sup>7</sup> for actions related to contracts is limited to six years, with the only exception being for fraud. None of these contracts are alleged to be fraudulent, many of these contracts were signed more than 6 years ago.

Yet the USDA claims it has unilateral authority to cancel any contract they deem ineligible at any time, it is understood they are using two prior cases to support this. However, the fact pattern in both cases is very different to the hundreds of contracts the USDA now wants to unilaterally terminate or modify.

- a) The first precedent for denial is believed to be USDA's National Appeals Division Case No. 2023W000017 in which Judge Pyrz denied the appellant's request that the USDA reenroll their (Whatcom County) property after their first contract expired because it was found to be on an ineligible stream segment. The USDA appears to believe the judge's decision not to renew a contract (for which the statute of limitations had not yet started) also grants them the authority to cancel existing contracts on stream segments they now deem ineligible after the six-year statute of limitations has expired.
- b) The second precedent is believed to be an unidentified case whereby the USDA was able to cancel a contract where a participant used USDA funds intended to plant trees on parcel "A" to actually plant trees on parcel "B" but it was not discovered for many years. If correct, this sounds like this contract was clearly fraudulent, yet the USDA appears to be using it as a precedent to unilaterally cancel any contract older than the six-year statute of limitations.

#### The USDA appears to have breached its agreement with the State of WA

In Section V of the 1998 agreement between the USDA and the State of WA (attached below) the USDA committed to:

*"B. **Make** an annual rental payment for each eligible enrolled acre." [Emphasis added]*

and

*"G. **Conduct annual compliance reviews** according to Farm Service Agency Handbook 2-CRP to ensure compliance with the CRP contract." [Emphasis added]*

*It is reasonable to assume for 25 years landowners have been induced to enter into CREP contracts believing that annual compliance reviews of eligibility were being conducted as required by the contract between the USDA and WA State.*

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<sup>6</sup> <https://uscode.house.gov/view.xhtml?path=/prelim@title41/subtitle3/chapter71&edition=prelim>

<sup>7</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=4.16.326>

The USDA misleadingly claims they have no choice but to modify or terminate.

In the letter sent by the USDA to Producers it states the USDA **must** terminate or modify contracts the USDA now believes contain errors (again, these were caused by one or more branches of the government and not by the participant).

*“Upon the discovery that practices in current contracts did not meet the practice specifications of the Washington CREP agreement and FSA CRP directives, FSA determined that it **must** terminate the contracts with erroneously enrolled practices and/or make contract modifications to correct the practice(s) to comply with the specifications required by program requirements and policy.”*  
[Emphasis added]

While section 571 of the manual (2-CREP) that governs CREP management at the state and county level does say a County Committee (COC) must terminate a contract if it was “*approved based on erroneous eligibility*” it does not bind the federal Director of the USDA to do so <sup>8</sup>

#### *571 Terminations*

##### *A Policy for Terminating All Land Under CRP-1*

*COC **must** terminate all land under CRP-1 before its expiration date, if any of the following are met:*

...

- *CRP-1 was approved based on erroneous eligibility determinations according to paragraph 638*  
[Emphasis added]

As the following three examples show, the requirement to terminate or modify contracts “*approved based on erroneous eligibility*” is an internal rule that only applies at the state management authority level, and not within either the USDA’s federal rules or the Code of Federal Regulations.

**The federal office of the USDA has authority over their state offices and the legal discretion to continue making all payments notwithstanding the contract may be alleged to have been “*approved based on erroneous eligibility*”.**

#### Example one

The federally issued CREP contract appendix that forms part of the contract between the landowner (Producer) and the USDA section 15.(A) states the USDA **may** terminate the contract.

#### *“15. EFFECTIVE DATE AND CHANGES TO CONTRACT*

*A. The CRP contract is effective when, as determined by CCC, it has been signed by the participants and an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the CRP contract may not be revoked or revised unless by mutual agreement between the parties. If, after the effective date of this contract, CCC determines that the offered acreage was erroneously enrolled or otherwise ineligible for enrollment, CCC **may** terminate the contract.”* [Emphasis added]

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<sup>8</sup> [www.fsa.usda.gov/Internet/FSA\\_File/2-cp\\_r16\\_a26.pdf](http://www.fsa.usda.gov/Internet/FSA_File/2-cp_r16_a26.pdf)

### Example two

The Code of Federal regulations Title 7 - Agriculture, Part 1410 Conservation Reserve Program subsection § 1410.32 (e) (1) also says the states the USDA **may** terminate the contract.

*“§ 1410.32 CRP contract.<sup>9</sup>*

*...*

*(e) For the termination of CRP contracts:*

*(1) CRP contracts **may** be terminated in whole or in part by CCC before the end of the contract period if:*

*...*

*(vi) The CRP contract was approved based on erroneous eligibility determinations; or”*

[Emphasis added]

### Example three

The use of erroneous information by the USDA on landowners contracting with the USDA has obviously been enough of a problem in the past that it has received special attention by the US Congress and been directly addressed by legislation intended to relieve participants who acted in good faith from absorbing the burden of USDA’s errors. Specifically, the Code of Federal Regulations § 12.11 provides an easy path to authorize equitable relief due to errors on the part of the USDA:

*§ 12.11 Action based upon advice or action of USDA.*

*The provisions of [part 718 of this Title](#), as amended, relating to performance based upon the action or advice of a County Committee (COC) or State FSA Committee shall be applicable to the provisions of this part. In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good-faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency **may** make such benefits available to the extent that similar relief would be allowed under [7 CFR part 718](#).” [Emphasis added]<sup>10</sup>*

Specifically:

*“§ 718.303 Reliance on incorrect actions or information.*

*(a) Notwithstanding any other law, if an action or inaction by a participant is based upon good faith reliance on the action or advice of an authorized representative of an FSA county or State committee, and that action or inaction results in the participant's noncompliance with the requirements of a covered program that is to the detriment of the participant, **then that action or inaction still **may** be approved by the Deputy Administrator as meeting the requirements of the covered program, and benefits may be extended or payments made in as specified in [§ 718.305](#).**”<sup>11</sup> [Emphasis added]*

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<sup>9</sup> [www.ecfr.gov/current/title-7/section-1410.32](http://www.ecfr.gov/current/title-7/section-1410.32)

<sup>10</sup> [www.ecfr.gov/current/title-7/subtitle-A/part-12/subpart-A/section-12.11](http://www.ecfr.gov/current/title-7/subtitle-A/part-12/subpart-A/section-12.11)

<sup>11</sup> [www.ecfr.gov/current/title-7/section-718.303](http://www.ecfr.gov/current/title-7/section-718.303)

(b) *This section applies only to a participant who:*

- (1) Relied in good faith upon the action of, or information provided by, an FSA county or State committee or an authorized representative of such committee regarding a covered program;*
- (2) Acted, or failed to act, as a result of the FSA action or information; and*
- (3) Was determined to be not in compliance with the requirements of that covered program.*

§ 718.305 *Forms of relief.*<sup>12</sup>

*“(a) The Administrator of FSA, Executive Vice President of CCC, or their designee, may authorize a participant in a covered program to:*

- (1) Retain loans, payments, or other benefits received under the covered program;*
  - (2) Continue to receive loans, payments, and other benefits under the covered program;*
  - (3) Continue to participate, in whole or in part, under any contract executed under the covered program;*
  - (4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and*
  - (5) Receive such other equitable relief as determined to be appropriate.*
- (b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.*  
[Emphasis added]

**Research by: Rud Browne**

Former two-term elected member of the Whatcom County Council; impacted CREP contract holder; lifelong conservationist; and business owner.

[Rud@Ryanna.com](mailto:Rud@Ryanna.com)

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<sup>12</sup> [www.ecfr.gov/current/title-7/section-718.305](https://www.ecfr.gov/current/title-7/section-718.305)



Food  
Production  
And  
Conservation

Farm  
Service  
Agency

Washington State Farm Service Agency  
11707 E Sprague Ave Suite 303  
Spokane Valley, WA 99206

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August 24, 2023

Dear Producer,

You are receiving this letter as you have a contract with the Farm Service Agency (FSA) under the Washington Conservation Reserve Enhancement Program (WA CREP).

A recent review was conducted by FSA of WA CREP Conservation Reserve Program (CRP) contracts within Whatcom County. Results of the review led to the discovery that several WA CREP practices from 2008 to the present were enrolled under erroneous land eligibility. Further, the design and review process of certain conservation plans for certain contracts did not meet the practice specifications of the Washington CREP agreement between FSA and Washington State, and FSA national CRP directives.

This letter is to inform you that because of the irregularities described above, FSA will need to modify or terminate your contract, and that there are options available to you as a result. FSA needs a response on your preferred option by September 29, 2023. As a CRP participant under the WA CREP, you will receive your full fiscal year 2023 annual rental payment, unless reductions are otherwise applicable to your contract. All contract modifications and/or terminations will be processed immediately after the end of the current federal fiscal year (September 30, 2023).

The Washington CREP agreement provides the following land eligibility criteria, by conservation practice (CP):

- **CP22, Riparian Buffer**

The CP22 practice is eligible on land adjacent to water bodies that provide, or have the potential to provide, important habitat for salmonids. The eligible water bodies (streams) are identified on a stream map which is available at FSA County Offices.

**Note:** *Eligible water bodies are 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.*

*Updates to eligible streams used for CREP, based on criteria outlined in Section IV.A. of the CREP agreement 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 for the CP22 practice.*

- **CP23, Wetland Restoration**  
**CP23A, Wetland Restoration, Non-Floodplain**  
**CP30, Marginal Pastureland Wetland Buffer**  
 CP23, CP23A, and CP30 practices are only eligible for wetlands hydrologically connected to CP22 Riparian Buffer designated streams.
- **CP22, Riparian Buffer Hedgerow**  
 The CP22 hedgerow practice is eligible on land adjacent to a CP22 Riparian Buffer designated stream with a bank full-width of less than 15 feet or along small (less than 15' bank full-width) tributaries within 10 stream miles of a CP22 Riparian Buffer designated stream.
- **CP21, Filter Strip**  
 The CP21 practice is eligible in a Water Resource Inventory Area (WRIA) that contains CP22 Riparian Buffer designated streams, but not along salmonid habitat designated streams.

Upon the discovery that practices in current contracts did not meet the practice specifications of the Washington CREP agreement and FSA CRP directives, FSA determined that it must terminate the contracts with erroneously enrolled practices and/or make contract modifications to correct the practice(s) to comply with the specifications required by program requirements and policy. As an impacted CRP participant, you are being notified of the need to modify or terminate your contract. We have worked diligently to find a solution that will have the least impact on you as a producer.

Although your contract may be modified or terminated, we have been given authorization from FSA's National Office to grant all impacted producers three options to provide the greatest flexibility in managing the ineligible land/practices. These options are provided to ensure equitable treatment of all CREP participants.

Regardless of which option is selected, impacted participants will receive their full fiscal year 2023 annual rental payment, unless reductions are otherwise applicable to the contract. All contract modifications/terminations will be processed immediately after the end of the current fiscal year (September 30, 2023).

Washington FSA has been authorized to provide you with the following options:

1. Partial or full contract termination of contracts for which practices do not meet land or practice eligibility criteria. Allow participants to offer land for an eligible Continuous Signup practice such as regular continuous CRP, Highly Erodible Land Initiative (HELI), or State Acres for Wildlife Enhancement (SAFE), if all other eligibility criteria are met.
  - No refunds or liquidated damages will be assessed to the participants on the erroneously enrolled contracts.
  - Participants will have new 10–15-year contracts.
  - Participants will have more continuous CRP practice options than the limited practices offered through CREP.
2. Terminate CRP contracts for practices that do not meet land eligibility criteria and cannot be enrolled/changed to a Continuous CRP Signup practice. Allow the producer to offer cropland acres under the next available General CRP Signup.



- FSA's Deputy Administrator of Farm Programs (DAFP) is providing a land eligibility waiver to ensure acreage terminated is eligible to be offered in the next available General CRP Signup, if such acreage is otherwise eligible.
  - No refunds or liquidated damages will be assessed to the producers on the erroneously enrolled contracts.
  - Participants will have new 10-15 years contracts.
  - Participants will be allowed to enroll whole fields when the current contract is not eligible for any other continuous CRP practice.
3. Terminate CRP contracts for practices that do not meet land eligibility criteria.
- No refunds or liquidated damages will be assessed to the participants on the erroneously enrolled contracts that are terminated.
  - Participants are free to pursue enrollment with other agencies and partners in any program for which they may qualify.

For offers submitted under continuous signup under the terms of the memorandum issued to Washington State FSA, the FSA County Executive Director or FSA County Committee are authorized to approve CRP-1's through close of business, September 29, 2023. The participant must obtain an approved conservation plan from the Natural Resources Conservation Service (NRCS), ensure all environmental consultations are complete, and signatures are obtained on all required documents. The effective date of the new CRP-1 will be October 1, 2023.

Additionally, FSA is working with our partner agencies and technical service providers to determine whether there are other program opportunities available to those affected. As opportunities are discovered, they will be shared with producers.

Program oversight and quality controls are critical for identifying problems and assessing progress related to erroneous eligibility enrolments and ensuring the integrity of the programs we administer. FSA is taking actions to ensure that this type of eligibility problem does not arise again within the State of Washington. If you have further questions about one of your WA CREP contracts, we encourage you to contact your local FSA office to discuss at 360-592-6115. You can also contact the FSA District Director for your area, the program specialist within our state office or you can contact me directly at the state office at 509-323-3003.

Respectfully,



Jon C. Wyss  
Washington State FSA Executive Director

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

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**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.

**CREP—Agreement Between USDA and the State of Washington, Including Amendment 1, 2 and 3**

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:

**CREP – Agreement Between USDA and the State of Washington, Including Amendment 1 and 2**

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 WRIAs 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.

**CREP -- Agreement Between USDA and the State of Washington, Including Amendment 1 and 2**

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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