

# 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 NDNR is authorized to enter into this Water Use Contract (the “Agreement”) pursuant to the provisions of Neb. Rev. Stat. § 61-206 (Cum. Supp. 2004).

### 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 participants’ 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 duration of the CREP contract as provided in Section 6C of this contract.
- 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.
- 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 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.

**2 EXAMPLE:** 75% OF THE AVERAGE ANNUAL ALLOCATION REMAINING

**Total Allocation – Total Allocation by Year = Allocation Remaining**

**Allocation Remaining \* 75% = Remaining Allocation to be eligible for CREP**

**Remaining Allocation to be eligible for CREP – Total Allocation = Total Current Allowable Use**

For a three year allocation

Yr. 1 - 13 inches (39"-13" = 26" remaining in 2<sup>nd</sup> Year) (26" \* 75% = 19.5") (39"-19.5" = 19.5" in Year 1)  
Yr. 2 - 26 inches (39"-26" = 13" remaining in 3<sup>rd</sup> Year) (13" \* 75% = 9.75") (39"- 9.75" = 29.25" in Year 2)  
Yr. 3 - 39 inches

Allows for

**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.**

1 NAME OF LANDOWNER	2 MAILING ADDRESS (Include ZIP Code)	3 TELEPHONE NUMBER	4 EMAIL ADDRESS

**B Water Use Contractor:**

<p>1 ADDRESS OF WATER USE CONTRACTOR</p> <p>Nebraska Department of Natural Resources (NDNR)                  State Office Building                  301 Centennial Mall South, 4<sup>th</sup> Floor                  Lincoln, NE 68509-4676</p> <p>(402) 471-2363 <i>(Telephone)</i>                  crep@dnr.state.ne.us <i>(email)</i></p>	<p>2 AGREEMENT NUMBER <i>(assigned by NDNR)</i></p>
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**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 If **less than the entire tract** identified above will be subject to the Agreement, provide the number of acres subject to the agreement and the legal description of township, range, section, and 1/4 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) 1/4	(5) 1/4

**IMPORTANT:** *The landowner(s)/applicant must include either 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 as Attachment 1.*

**B FSA Farm/Field/Acreage Identification Information (To be completed by County USDA/FSA when the CREP offer (CRP-2C) is submitted)**

1 CRP OFFER NUMBER		2 CRP CONTRACT NUMBER			3 FSA FARM NUMBER		
4 FSA ADMINISTRATIVE LOCATION (County)				5 FSA PHYSICAL LOCATION (County)			
6 TRACT NUMBER(S)▶							
7 FIELD NUMBER(S) (List field numbers for each tract in the column below each Tract)							
<b>8 TOTAL IRRIGATED CROPLAND ACRES▶</b>					<b>9 TOTAL NON-IRRIGATED CROPLAND ACRES▶</b>		

**IMPORTANT:** The County FSA Office will attach a copy of a delineated aerial photograph or GIS layouts locating the precise acreage to be enrolled, also specifically delineate any non-irrigated center-pivot acreage to be included. **NOTE:** Imagery derived from the 1999 USGS Digital Orthophoto Quarter Quadrangle or the Compressed Orthophoto Quarter Quadrangle will be utilized by NDNR to cross check the location of the Eligible Irrigated Land.

**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 an irrigation district, reclamation district or similar entity 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 rights.)*

1. ENTER APPROPRIATION NUMBERS▶:				
2. Enter the Number of surface water irrigated acres subject to this Agreement <i>(this number should equal and cannot exceed the number of acres designated on the CRP-1 contract with the USDA):</i>				

*(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.)*

3. Representation of validity of rights. 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 rights for the Eligible Irrigated Land. Landowner(s) represent(s) that each water right listed above is a valid water right. Landowner further represents that all subject surface water appropriation(s) appurtenant to the Eligible Irrigated Land are depicted on Attachment #1.

4. Landowner agrees to forego the use of the surface water appropriation(s) listed above for the Contract Period.

5. 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.

6. Landowner will not apply water from any other surface water or ground water source to the Eligible Irrigated Land during the Contract Period.
7. 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).
8. 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.
9. If Landowner has surface water rights 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.

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

1. Acquiescence of irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company 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. **Certification of Local Water Authority:** *The undersigned district/company 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.*

a) PRINT NAME OF DISTRICT/COMPANY	b) NAME OF AUTHORIZED REPRESENTATIVE
c) DATE	d) SIGNATURE OF AUTHORIZED REPRESENTATIVE

**C To be completed by all Landowners who hold the Surface Water Right 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 rights 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 NAME OF LANDOWNER	2 SIGNATURE	3 DATE

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

**THIS SPACE TO BE USED BY NDNR FOR VERIFICATION**

Surface Water Appropriation: \_\_\_\_\_  
 Acres: \_\_\_\_\_

**5 Registered Water Well Information And Limitations** *(To be completed by Applicant only if Eligible Irrigated Land Receives Ground Water from a Registered Well)*

**A Registered Water Wells – List all registered water wells used to apply water to the Eligible Irrigated Land.**

WELL	1 NDNR REGISTRATION NUMBER	2 NRD PERMIT NUMBER (if applicable)	3 DATE CONSTRUCTED	4 NUMBER OF GALLONS PER MINUTE PUMPED BY THIS WELL	5 NUMBER OF ACRES IRRIGATED BY THIS WELL **
1					
2					
3					

LOCATION OF ACRES IRRIGATED BY WELL(S)

WELL	5 1/4	6 1/4	7 TOWNSHIP	8 RANGE	9 SECTION
1					
2					
3					

**NATURAL RESOURCE DISTRICT ALLOCATION** *(To be completed only for wells in NRDs with allocation requirements.)*

WELL	10 AMOUNT OF ALLOCATION FOR FULL ALLOCATION PERIOD	11 ALLOCATION PERIOD	12 AMOUNT OF ALLOCATION REMAINING FOR CURRENT ALLOCATION PERIOD***
1			
2			
3			

\*\* NUMBER OF ACRES IRRIGATED SHOULD EQUAL AND CANNOT EXCEED THE NUMBER OF ACRES DESIGNATED ON THE CRP-1 CONTRACT WITH USDA, nor can it exceed the number of certified acres for that well in a natural resource district that certifies acres.

\*\*\*ONLY ACRES THAT HAVE 75% OF THE AVERAGE ANNUAL ALLOCATION REMAINING WILL BE ELIGIBLE TO PARTICIPATE. THE AVERAGE ANNUAL ALLOCATION IS DETERMINED BY DIVIDING THE AMOUNT OF THE ALLOCATION FOR THE FULL ALLOCATION PERIOD BY THE NUMBER OF YEARS IN THE ALLOCATION PERIOD.

If you need to provide information relating to another registered water well, please attach an additional sheet providing all information required by 5 A, 1-12 above for each well.

**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 Irrigated 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.

**C To be completed by the Natural Resources District in which the ground water well(s) 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 groundwater 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 Resource 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 the Nebraska Department of Natural Resources or its designee the right 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 with the effective dates as follows:

**Begin on:**

**Terminate on:**

**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 Rights.** The USDA, Commodity Credit Corporation, Farm Service Agency, is not responsible for and will not administer, enforce, oversee, or otherwise manage water rights, 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, audiotope, etc.) should contact Gayle Starr, NDNR, at (402) 471-3933. To file a complaint of discrimination with the NDNR, write Gayle Starr, NDNR, P.O. Box 94676, Lincoln, NE 68509-4676 or call (402) 471-3933. The NDNR is an equal opportunity provider and employer.

**I Variances.** The NDNR may grant variances to landowners to allow the use of wells for de minimus 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 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 water rights as 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.

