

## ***MEMORANDUM***

August 27, 2007

TO: South Platte Task Force

FROM: Anne Castle, Bill Caile

RE: CREP and EQIP Programs

---

This memorandum provides an overview of the CRP, CREP, and EQIP programs and their potential applicability and utility for well users in the South Platte River basin.

### **I. Conservation Resource Program (CRP)**

#### **A. CRP Facts:**

- Administered by USDA, Farm Services Agency (FSA).
- Money paid directly to landowner. Land owners receive annual rental payments and cost-share assistance.
- Intended to encourage agricultural producers to help safeguard environmentally sensitive land by planting long-term, resource-conserving covers.
- Pays annual rental payments that are based on the dry land rental value of the land.
- Land must be taken out of agriculture completely (no dry land farming).
- \$50,000 annual CRP contract limit per producer, regardless of acreage.
- Typically a 10-15 year contract for producers, based on growing season and time needed to implement defined conservation practices such as wildlife habitat and grassland covers.

#### **B. CRP Eligibility Requirements Include:**

- Crop land must have been planted for 4 out of 6 years between 1996 and 2001. [These years may be updated with passage of 2007 Farm Bill]
- Current owner must have owned land for at least last 12 months, unless land was inherited, foreclosed, or the owner can demonstrate circumstances sufficient to indicate that land was not purchased for purposes of putting it into CRP.
- CRP acreage is “capped” or limited to 25% of cropland acreage per county in order to avoid adverse economic consequences within the county.

#### **C. CRP Considerations for South Platte Basin:**

**Holland & Hart LLP Attorneys at Law**

Phone (303) 295-8000 Fax (303) 295-8261 [www.hollandhart.com](http://www.hollandhart.com)

555 17th Street Suite 3200 Denver, Colorado 80202-3979 Mailing Address P.O. Box 8749 Denver, Colorado 80201-8749

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Salt Lake City Santa Fe Washington, D.C.



- Program is currently available, but see cap and financial issues below.
- Current dry land rental prices are approximately \$28-40/acre (with \$50,000 CRP annual “ceiling”).
- At these rates, CRP is not an economically feasible or attractive remedy for many vegetable growers in the South Platte River basin.
- With current rise in corn prices, not particularly attractive for corn growers, either.
- CRP “Cap”: **Morgan and Weld counties are currently CRP capped; Logan County is near limit.**
- Cap may be waived by FSA under certain circumstances.

## II. Conservation Resource Enhancement Program (CREP)

### A. CREP Facts:

- State/federal partnership; offshoot of CRP.
- Flexible, within legal constraints, and can be adapted to meet local conditions.
- Originates with a proposal from a state agency to address specific conservation objectives in a defined geographic area.
- Requires 20% matching non-federal funds (state, water conservancy district, in-kind).
- Land must be taken out of agriculture completely (no dry land farming).
- Rental payments may be paid at higher, “irrigated land” rental prices.
- Other types of financial incentives in addition to rental payments may be provided
- Typically aimed at wildlife and water quality objectives, but in recent years used to address **water quantity** objectives (i.e., Nebraska’s drought-motivated CREP program on Platte River; Republican River CREP – see below).

### B. CREP Eligibility Requirements Include:

- Generally same as for CRP.
- CRP acreage “cap” applies.
- To qualify for “irrigated land” rental prices, land must typically be physically and legally capable of being irrigated.

### C. Republican River CREP:

- Funding: 80% Federal/20% State. State match is primarily from Republican River Water Conservancy District (\$11 million total) and in-kind services. District assesses \$5.50 per irrigated acre and \$4.40 per acre foot for municipal, commercial and industrial diversions.
- Division of Water Resources added a full-time water commissioner to assist with CREP contract enforcement.



- Stated Project Goal: retire 30,000 acres from agriculture, and reduce agricultural water consumption by 35,000 acre feet.
- **Water retirement is forever**; retirement from agriculture is for a 14 or 15 year contract term, after which dry-land cropping is allowed.
- **To be eligible, acreage must be legally and physically capable of irrigation and have been irrigated within the last year.**
- Incentive payments vary depending upon proximity to Republican and Arikaree Rivers
  - Existing CREP - \$1,890/acre to \$2,615/acre
  - Proposed new CREP - \$1,950/acre to \$2,175/acre
  - Total paid over 15 years

D. Process and Considerations for Implementation of a CREP Program in the South Platte River Basin:

- Begin by identifying the geographic area of concern.
- Identify resource objectives (increase water quantity by removing lands from irrigation).
- Identify source of 20% matching non-federal funds (see below).
- Proposal created with state, federal, local partners, for instance: Central Colorado Water Conservancy District; Northern Colorado WCD; Lower South Platte WCD; Division of Wildlife, Colorado Water Conservation Board.
- Perform Environmental Assessment, with public participation..
- **Morgan and Weld counties are currently at 25% cap; Logan County is close to limit. Removal of cap must be addressed as part of any proposal.**
- **Land formerly irrigated by wells currently curtailed is not “legally” capable of being irrigated and, therefore, not eligible.**
  - Affects, for example, Central WAS wells and Orphan Wells of Wiggins
  - Central GMS wells should be eligible
- Prepare draft Agreement.
- Negotiate and develop terms with input from USDA/FSA (see above).
- Approximate time to implementation: one year (based on Republican River experience).

E. Sources of 20% Matching Funds

- Conservancy District assessments – water use fees, mill levy, acreage fees – spreads burden to all water users.
- Mill levy would require affirmative vote of those affected.
- Water use fee may not require vote. Republican River WCD imposed per acre fee without vote, but had authorization to impose a “use fee” and “service charges” in its enabling legislation. Legislative authorization may be advisable.

- If state funds used, Republican River and Rio Grande will almost certainly want proportionate share.

### III. Environmental Quality Incentive Program (EQIP)

#### A. EQIP Facts:

- Administered by Natural Resources Conservation Service (NRCS) through Ground and Surface Water Conservation Program.
- Promotes agricultural production and environmental quality as compatible goals.
- Farm land is removed from irrigation; dry-land cropping is allowed.
- Greater flexibility than CREP: allows for three year, five year, or perpetual contracts.
- Three and five year contracts allow for resumption of irrigation upon completion of contract term.
- Land is only required to be removed from irrigation; dry land cropping still allowed.

#### B. Republican River EQIP:

- Acres must have been irrigated 2 out of the last 5 years.
- Republican River WCD portion of funding comes from per acre assessment described in Republican River CREP above.
- Payments vary depending upon proximity to Republican and Arikaree Rivers.
  - Permanent dry up - \$740/acre to \$1,310/acre
  - Total paid over 5 years

#### C. EQIP Considerations in South Platte Basin:

- **Program currently unavailable in Morgan and Weld counties.**
- Contract payments considerably less than CRP or CREP
- EQIP application process is seen as arduous and complicated.

### IV. Legislative Modifications Being Considered In 2007 Farm Bill

- Acres enrolled in a CREP (as opposed to CRP) do not count toward county cap.
- Remove requirement for replanting alfalfa.
- Allow water conservation districts like Central to be applicant for EQIP grant, then distribute money to individual producers, with less red tape.
- Address applicability to curtailed wells? This may not be acceptable to USDA/FSA; removes risk-based incentive to participate in program.