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WATER RESOURCES
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AGREEMENT

BETWEEN

**THE UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION**

AND

THE STATE OF COLORADO

**CONCERNING THE IMPLEMENTATION OF A
CONSERVATION RESERVE ENHANCEMENT PROGRAM**

TO BE KNOWN AS THE COLORADO RIO GRANDE CREP

This Memorandum of Agreement (Agreement) is entered into between the United States Department of Agriculture (USDA), Commodity Credit Corporation (CCC) and the State of Colorado (State), acting through the Department of Natural Resources and the Division of Water Resources, to implement a Conservation Reserve Enhancement Program (CREP) to improve water quantity and quality, enhance habitat for wildlife populations, reduce irrigation water consumptive use, and reduce agricultural chemical and sediment runoff within the Rio Grande Basin in Colorado.

I. PURPOSE

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and the State, certain irrigated cropland acreage in the project area to be enrolled in Colorado's Rio Grande CREP project area (Figure 1).

II. GENERAL PROVISIONS

The goals of the Colorado Rio Grande CREP are to enroll up to 40,000 eligible acres of irrigated cropland into CRP in portions of Alamosa, Rio Grande, and Saguache counties to significantly decrease the amount of water consumption and reduce the quantity of agricultural chemicals and sediment that would otherwise enter the waters of the State from irrigated agricultural lands. The reduction of water use and of non-point source contaminants, through the establishment of permanent vegetative covers, will also reduce erosion, enhance terrestrial and aquatic wildlife habitat and conserve energy.

The specific goals of this Agreement are to achieve, to the extent practical when fully enrolled, the following:

- A. Reduce soil erosion from approximately 681,252 tons to approximately 149,487 tons per year on all acres enrolled in CREP, a total reduction of approximately 531,765 tons per year;
- B. Establish up to 40,000 acres of habitat for numerous wildlife species, including several aquatic and wetland dependant-species that are declining due to habitat loss and degradation;
- C. Reduce annual fertilizer and pesticide application from enrolled acres by approximately 3,650 tons per year from 2007 levels;
- D. Establish up to 40,000 acres of native vegetation throughout the project area;
- E. Restore and enhance up to 750 acres of degraded temporary and permanent wetlands;
- F. Reduce the irrigation water use for agricultural purposes of the confined and unconfined aquifer within the targeted watershed by approximately 60,060 acre-feet of ground water per year, equal to an almost twelve percent (12%) water savings within the project area and an approximately five percent (5%) water savings throughout the entire Rio Grande basin in Colorado;
- G. Increase streamflows in streams associated with the watershed within the project area;
- H. Reduce energy consumption from an average sized (125 acre) pivot from approximately 47,000 kilo-watt hour (kW-hr) per year to less than 14,000 k-W per year for the first three years during cover establishment on all pivots enrolled in the CREP. Subsequent years' energy consumption will be reduced to zero for all pivots enrolled in the CREP. Total energy savings for 300 pivots over the 15 year term of the CREP contracts will approach two hundred million k-W hours; and
- I. Reduce the percentage of groundwater test wells containing nitrogen (NO₃) levels above EPA standards.

III. AUTHORITY

The CCC has the authority under the 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.

The State has the authority under the Colorado Revised Statutes, specifically sections 37-80-102(1) (j) and (k), to enter into and perform all its activities contemplated by this Agreement.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be promulgated by USDA/CCC or the State, or any other governmental entity participating in the Colorado Rio Grande CREP. This Agreement is intended to aid in the administration of the Conservation Reserve Program (CRP). Other authorities may also apply.

IV. PROGRAM ELEMENTS

In determining CCC's share of the cost of practice establishment, CCC will use the appropriate CRP regulations and the Farm Service Agency's (FSA's) National CRP Directives. All approved conservation plans must be consistent with applicable CRP statutes, regulations, and specifications, and must be in accordance with USDA policies for similar enrollments and this Agreement.

- A. The Colorado Rio Grande CREP consists of a continuous sign-up USDA CRP component and a State Incentive Program for the lease or purchase of water rights and retirement of irrigation water use by landowners for all irrigated cropland enrolled into the program;
- B. Eligible practices for the Colorado Rio Grande CREP are:
 1. CP2 (Establishment of Permanent Native Grasses and Forbs);
 2. CP4D (Permanent Wildlife Habitat, Noneasement);
 3. CP9 (Shallow Water Areas for Wildlife);
 4. CP23 (Wetland Restoration, Floodplain); and
 5. CP23A (Wetland Restoration, Non-Floodplain)
- C. For the Colorado Rio Grande CREP, cropland and practice enrollment goals are as follows:
 1. CP2 and CP4D – up to 37,000 acres; and
 2. CP9, CP23, and CP23A – up to 3,000 acres
- D. The CRP contracts for acres enrolled in the Colorado Rio Grande CREP will be for a period of 14 to 15 years;

- E. Eligible landowners in the project area will also continue to be permitted to offer other eligible acreage for enrollment during general or other continuous CRP enrollment periods;
- F. The 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, CRP regulations will be controlling;
- G. No lands may be enrolled under this program until the USDA's CREP Program Manager approves a detailed FSA State supplement to the National CRP directives that will provide a thorough description of this program and applicable practices, and until completion of the appropriate level of environmental analysis required by the National Environmental Policy Act of 1969, as amended, and related Statutes, Executive Orders and Departmental Regulations, and in accordance with 7 CFR part 799;
- H. Irrigated cropland requirements for land to be eligible for enrollment under this program, as determined by the Deputy Administrator, FSA, are as follows:
 - 1. Irrigated cropland must meet all CRP cropland eligibility requirements as established in National CRP Directives and must have been irrigated with ground water or surface water at a rate of not less than ½ acre foot per acre for the four out of six year period established for CRP's general crop history eligibility, as published in National CRP directives;
 - 2. Irrigated cropland must have been either (1) irrigated with not less than ½ acre foot per acre for the planting of an irrigated crop within 24 months prior to submission of an offer, or (2) enrolled in a voluntary lease program or voluntary fallowing program within 24 months prior to being offered for enrollment, as determined by the Deputy Administrator of Farm Programs, FSA in consultation with local water authorities;
 - 3. Irrigated cropland must be either (1) physically and legally capable of being irrigated in a normal manner when offered for enrollment, or (2) enrolled in a voluntary water lease program or voluntary fallowing program when offered for enrollment, as determined by the Deputy Administrator for Farm Programs, FSA in consultation with local water authorities;

4. Irrigated cropland must be associated with water rights that are in good standing and must be owned or controlled by the cropland owner. If the irrigated cropland and water rights are controlled by more than one person or entity, each person or entity must agree to the contract terms. The water used to irrigate cropland must have been used lawfully and within the terms and conditions of the water right, permit, or decree. Land from which the water rights for irrigation have been sold or legally transferred for use on a different parcel of land are not eligible for enrollment under the program, even if the water right is leased back to the landowner or operator;
5. Irrigated cropland will only be eligible for this CREP when producers submit a completed and signed State certification agreement, "Rio Grande Water Conservation District-Subdistrict No. 1 Water Activity Enterprise," (Water Use Agreement) which certifies that the producer will cease applying irrigation water on all irrigated cropland acres accepted for enrollment into this CREP upon the beginning of the CRP contract period unless otherwise allowed by CCC. In addition, after CREP contracts are entered into, those participants who had irrigated enrolled cropland with groundwater, and who voluntarily also select the permanent water retirement option, must also submit to the Colorado State Engineer/Division of Water Resources a "Request to Cancel a Well Permit" for the well permit for all irrigated cropland enrolled;
6. The execution of the legal water right retirement or legal reduction in permitted acres will become effective upon State approval of the application. The required water reductions must be commensurate with the goals of this CREP Agreement and at a minimum, equal to the water amount normally used to irrigate the enrolled acres;
7. All irrigated cropland associated with one or more wells or surface water sources must be offered for CREP combined as a single manageable unit to facilitate water rights/use management. Partial field or partial farm enrollments that would require pro-rated well or pro-rated surface water use reductions are not eligible; and
8. All non-irrigated land, including all non-irrigated center-pivot corner land, is ineligible for enrollment in this

program. All the offered acreage must be completely located in the Project Area for an offer to be eligible.

- I. Participants may be permitted to apply irrigation water, not to exceed 1.5 acre feet per acre total, to the enrolled cropland during the first three years of a CRP contract under this program; this may occur only if/when necessary to establish vegetative conservation cover as outlined in an approved conservation plan and determined necessary by the Natural Resources Conservation Service (NRCS) or their Technical Service Providers (TSP's). The total amount of irrigation water applied for cover establishment may not exceed a total of 1.5 acre feet per acre and must be applied during the first 36 months of a CRP contract. Otherwise, no irrigation water may be applied to the land under enrollment at any time during the term of the CRP contract except as further agreed to by CCC and the State.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Cost share with all participants for 50 percent of the eligible reimbursable costs for establishment of approved conservation practices (the total of all cost-share payments, from any sources, must not exceed 100 percent of the participant's out-of-pocket expenses for the establishment of the approved conservation practices);
- B. Under this CREP, make annual rental payments based on the posted county irrigated rental rates for each eligible enrolled irrigated acre in which the Rio Grande Water Conservation District-Subdistrict No. 1 Water Activity Enterprise Agreement has been secured with the participant. The per-acre maximum irrigated rental rate will be equal to the sum of the most current weighted-average posted irrigated cropland rental rates per acre for the enrolled land;
- C. Make a one-time signing incentive payment (SIP) and practice incentive payment (PIP) for practices, consistent with FSA National CRP Directives. These incentive payments will be in addition to those provided elsewhere in this paragraph. These payments are considered rental payments for payment limitation purposes;
- D. Administer contracts for lands approved under CREP;
- E. Develop conservation plans in accordance with National FSA CRP Directives;

- F. Conduct annual compliance reviews according to National FSA CRP Directives;
- G. Provide information to landowners concerning the CREP and technical assistance for the CREP in general; and
- H. Permit successors-in-interest to enroll under CREP in the same manner allowed by for other CRP contracts.

VI. STATE COMMITMENTS

The State of Colorado, through the Colorado Department of Natural Resources via the Rio Grande Water Conservation District-Subdistrict No. 1 Water Activity Enterprise, agrees to contribute not less than 20 percent of the overall costs of the CREP, through payments to program participants provided through the State Incentive Program, new funding for the CREP project, or in-kind contributions, as agreed to by the CCC, including:

- A. Direct annual payments (please refer to Figure 2 for Focus and Non-Focus Areas):
 - 1. To participants who enroll in the 15 year water rights retirement, to be paid over the life of the CRP contract:
 - Non-Focus Area Annual Water Retirement Payment
 - \$22.00/acre/year for 15 years
 - Focus Area Annual Water Retirement Payment
 - \$33.00/acre/year for 15 years
 - Focus Area Annual Rental Payment Incentive
 - \$10.00/acre/year for 15 years
 - 2. To participants who voluntarily permanently retire the water rights associated with the irrigated parcel, to be paid over the life of the CRP contract:
 - Non- Focus Area Annual Water Retirement
 - \$44.00/acre/year for 15 years
 - Focus Area Annual Water Retirement
 - \$66.00/acre/year for 15 years
 - Focus Area Annual Rental Payment Incentive
 - \$10.00/acre/year for 15 years
- B. One-time State Incentive Payment:
 - 1. To participants who enroll in the 15 year water rights retirement:

- Focus Area One-Time Incentive Payment
 - \$100.00/ acre
- Focus Area One Time Cover Establishment Cost Share
 - 50 percent of the eligible reimbursable costs for establishment of approved conservation practices not to exceed \$100.00/ acre. The total of all cost-share payments, from all sources, must not exceed 100 percent of the participant's out-of-pocket expenses;

2. To participants who voluntary permanently retire the water rights associated with the irrigated parcel.

- Focus Area and Non-Focus Area Permanent Water Retirement Incentive
 - \$200.00 per acre
- Focus Area One Time Incentive Payment
 - \$100.00 per acre
- Focus Area One Time Cover Establishment Cost Share
 - 50 percent of the eligible reimbursable costs for establishment of approved conservation practices not to exceed \$100.00/ acre. The total of all cost-share payments, from all sources, must not exceed 100 percent of the participant's out-of-pocket expenses.

C. All costs associated with an annual monitoring and evaluation program;

D. Technical assistance in assisting producers in the development of a conservation plan;

E. Consultation with NRCS or TSP to provide technical assistance to producers with the following:

1. Installation of shallow water areas for wildlife (CP9); wetland restoration, Floodplain (CP23); and wetland restoration, non-floodplain (CP23A);
2. Conservation planning assistance for the entire farm to participating agricultural landowners on a voluntary basis; and
3. Facilitation of technical assistance from the local Soil and Water Conservation Districts and other cooperators to develop

conservation plans, in cooperation with NRCS for agricultural landowners offering to enroll eligible acreage in the CREP.

- F. Provide staffing for a CREP administrative coordinator to facilitate and oversee program implementation, promotional activities, technical assistance, and to conduct and report to the National CREP Program manager an annual monitoring and evaluation report;
- G. Establish an Enhancement Program Steering Committee, which may include representatives from the State Technical Committee, Rio Grande Water Conservation District-Subdistrict No. 1, Colorado Division of Water Resources, Colorado Department of Agriculture, Colorado Division of Wildlife, Colorado Water Conservation Board, agricultural groups, conservation groups, and local governments. This group will serve as advisory to the State's implementation of the CREP;
- H. Seek agricultural landowners willing to offer eligible and appropriate land for enrollment in the CREP;
- I. Implement a broad campaign for continuous public information and education regarding the CREP;
- J. Ensure that the CREP is coordinated with other agricultural and natural resource conservation programs at the State and federal level;
- K. Within 90 days of receipt from the CCC of a report outlining annual federal CREP expenditures, submit information to CCC summarizing its annual CREP expenditures. In the event that the State has not obligated 20 percent of the overall costs for a relevant federal fiscal year, the State may be required by CCC to fulfill its obligation within 90 days, or to provide some other mutually agreed-upon remedy;
- L. In any case in which the CCC secures a CRP contract with an agricultural producer at an irrigated rental rate, ensure:
 - 1. For participants that select the permanent water retirement option, ensure the permanent retirement of the quantity of water that has been applied to that land for agricultural irrigation purposes;
 - 2. For participants that select the 15 year water retirement option, ensure the 15 year retirement of the quantity of water that has been applied to that land for irrigation purposes;

3. Management of the water under Water Use Agreements to ensure water savings conservation;
 4. Non-use, except as provided under the Water Use Agreement, of any surface or groundwater which, prior to enrollment in the CRP under this Agreement, had been used to irrigate the enrolled land, except as permitted under the terms of this Agreement. Among other assurances as may be necessary and appropriate, the Colorado Agreement will require that the participant and/or State does not use, affect, transfer, sell, exchange, or otherwise apply the surface or ground water conserved by land enrollment in this program except as agreed to by USDA; and
 5. Take all reasonable steps to enforce the requirements of agreements between the State/ Rio Grande Water Conservation District-Subdistrict No. 1 and participants to ensure that optimal water conservation and all other project goals are achieved.
- M. Seek the approval of this CREP Agreement by, and cooperation from, such independent boards, commissions, or other bodies within the State as may be necessary or appropriate to maximize the accomplishment of the objectives of this Agreement for each CRP offer, and notify the CCC of the results of the requests for such approval within a six month period beginning from the time of the CREP offer of eligible cropland. (A "CREP offer" is a signed CRP-1 and CRP-2C form submitted by a producer to the FSA County Office).
- N. Temporarily release participants from any contractual or easement restriction on crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture or the State of Colorado in order to address a State or national emergency.

VII. MISCELLANEOUS PROVISIONS

- A. All financial commitments of the USDA/CCC, the State, and/or the Rio Grande Water Conservation District-Subdistrict No. 1 are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 calendar days and any necessary modifications will be made to this Agreement;

- B. All CRP contracts under this CREP will 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. Water Use Agreements and other agreements between owners or operators and the State and/or the Rio Grande Water Conservation District- Subdistrict No. 1 may impose additional conditions not in conflict with those under the CRP regulations, but only as approved by the USDA;
- C. Neither the State nor the CCC will assign or transfer any rights or obligations under this CREP Agreement without the prior written approval of the other party. USDA and CCC will not acquire, obtain, manage, direct or control any water or water rights related to this agreement;
- D. The State and the CCC agree that each party will be solely responsible for its own acts and results to the extent authorized by law and will not be responsible for the acts of any others and the results thereof;
- E. The CREP Agreement will remain in force and effect until terminated by USDA, CCC or Colorado. This Agreement may be terminated by either party upon written sixty (60) days notice. 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 and/or the Rio Grande Water Conservation District- Subdistrict No.1;
- F. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's successor or designee, is delegated authority to carry out this Agreement and, with the Governor of Colorado, or the Governor's successor or designee, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at CFR Part 1410. The provisions of this Agreement may only be modified by written Agreement between the parties;
- G. USDA, CCC, and FSA will not be party to, or responsible for any Water Use Agreements, other water rights contracts, water use enforcement activity, water savings compliance or monitoring efforts, or any other State or local water laws or ordinances;
- H. Acreage will be enrolled in CRP contracts under this Agreement until legal authority to enter into new contracts expires or when the 40,000 acre project limit is reached, whichever comes first; and

- I. Colorado and the USDA agree to protect any shared data under this CREP in strict accordance with the procedures and restrictions established by or under any and all laws, including the Freedom of Information Act and federal privacy laws, as well as Section 1619 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, section 1619), Section 2004 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, section 2004), and other applicable laws, with the State to facilitate State monitoring efforts according to the provisions in the Memorandum Of Understanding between the Colorado State FSA Office and the State of Colorado CREP Cooperators.

IT IS SO AGREED:

**FOR THE U.S. DEPARTMENT OF AGRICULTURE AND THE
COMMODITY CREDIT CORPORATION:**



Date DEC 06 2012

Tom Vilsack
Secretary
U.S. Department of Agriculture
Chairman of the Board
Commodity Credit Corporation

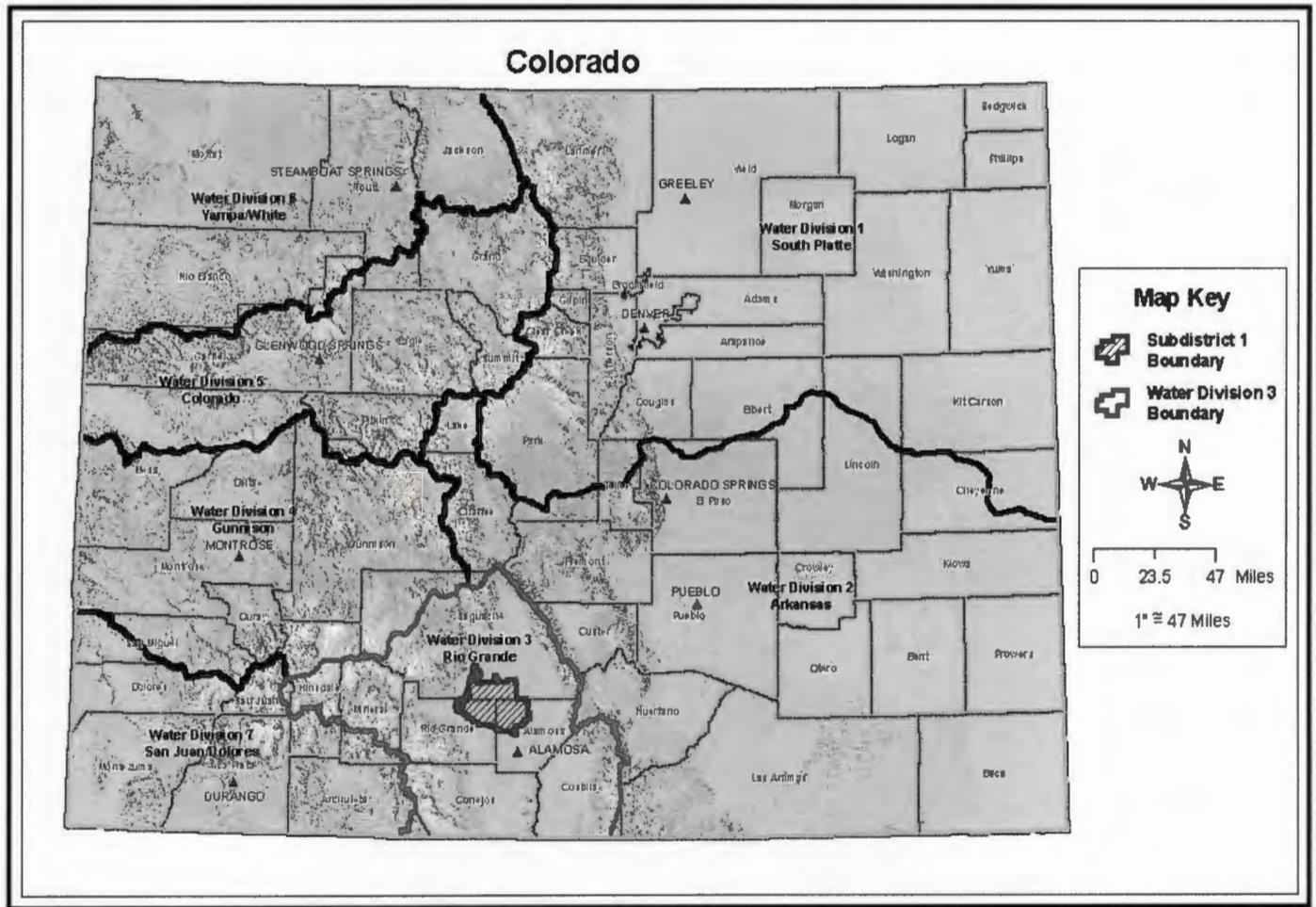
FOR THE STATE OF COLORADO:



Date _____

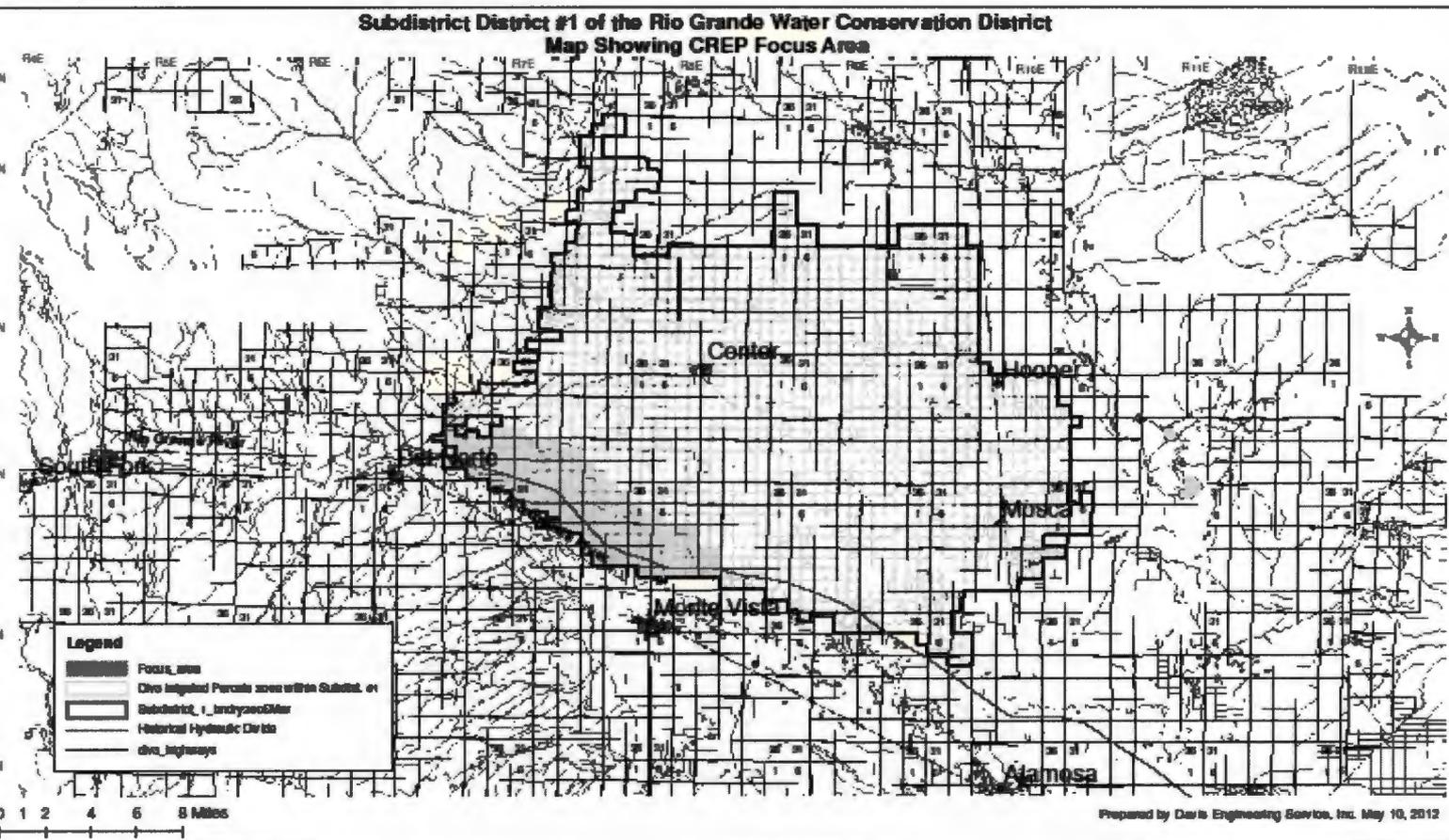
John W. Hickenlooper
Governor
State of Colorado

Figure 1 CREP Project Area



State of Colorado – Division of Water Resources
Location Map – Colorado Rio Grande CREP Area

Figure 2 CREP Focus Area



CREP Agreement Signature Witnesses

_____ **Date** _____ **Date**

_____ **Date** _____ **Date**

_____ **Date** _____ **Date**

_____ **Date** _____ **Date**

