

AMENDMENT # 3 TO THE AGREEMENT

**BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION**

AND

**THE STATE OF NEBRASKA
CONCERNING THE
NEBRASKA PLATTE-REPUBLICAN RESOURCES AREA CREP**

The purposes of this amendment to the agreement between the United States Department of Agriculture and the Commodity Credit Corporation, and the State of Nebraska regarding the Nebraska Platte-Republican Resources Area Conservation Reserve Enhancement Program are: (1) to expand the project area; (2) to provide for optional voluntary easements to permanently retire water use; and, (3) to make other agreement changes.

I. PURPOSE is amended to read:

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and Nebraska, certain acreage in the targeted watersheds to be enrolled in the Nebraska Platte-Republican Resources Area CREP shown in Amended Figure 1.

IV. PROGRAM ELEMENTS is amended to read:

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

- A. The CRP contracts for acres enrolled in this CREP must be for a period of 10 to 15 years.

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DEPARTMENT OF
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- B. Eligible producers in the CREP project area may also continue to offer other eligible acreage for enrollment during CRP's general and continuous enrollment periods.
- C. 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.
- D. No lands may be enrolled under this program until both the USDA's CREP Program Manager approves a detailed Nebraska amendment to the National CRP directives which provides a thorough description of this program and its applicable practices, and the appropriate level of environmental analysis has been completed as required by the National Environmental Policy Act of 1969 as amended, related Statutes, Executive Orders, Departmental Regulations, and in accordance with 7 CFR Part 799.
- E. Eligible practices for this CREP are:
- CP2- Establishment of Permanent Native Grasses
 - CP4D- Permanent Wildlife Habitat
 - CP12-Wildlife Food Plot
 - CP21- Filter Strips
 - CP22- Riparian Buffer
 - CP23 -Wetland Restoration
 - CP23A -Wetland Restoration, Non-Floodplain
 - CP25- Rare and Declining Habitat
- F. Irrigation requirements for land to be eligible to be enrolled under this program, as determined by the Deputy Administrator, Farm Programs, are as follows:
- Irrigated cropland must have been irrigated at the rate of not less than $\frac{1}{2}$ acre-foot per acre for four years out of the same six year period established for CRP crop history eligibility in National CRP directives.

- Irrigated cropland must be physically and legally capable of being irrigated in a normal manner when offered for enrollment. Land from which the water rights for irrigation have been sold or legally transferred are not eligible for enrollment under the program, even if water is leased back to the landowner from local water authorities.
 - A Nebraska State Water Use Contract is entered into between the landowner and the State of Nebraska covering the irrigated cropland acres.
- G. For non-irrigated (dryland) cropland to be eligible to be enrolled under this program, the land must be a center-pivot corner enrolled with the adjacent irrigated center-pivot cropland area.
- H. For the Nebraska CREP, cropland and practices enrollment goals are as follows:
- CP2, CP4D, CP12, and CP25-up to 85,000 acres
 - CP21 and CP22- up to 10,000 acres
 - CP23 and CP23A- up to 5,000 acres
- I. For the Platte River Basin Area, above Lake McConaughy (See Figure 1), there will be a 5,000 acre limit on land served jointly by a groundwater well(s) and surface water allocation(s) or on land served by a surface water allocation(s) only. This 5,000 acre limit does not include land served solely by a groundwater well(s).
- J. Participants may be allowed to apply not more than 1/3 acre foot of irrigation water to enrolled land during the first 12 months of a CREP contract, but only if/when necessary to establish the vegetative conservation cover as outlined in an approved conservation plan, as determined by CCC. Otherwise, no irrigation water may be applied to the land at any time during the term of the CREP contract except as further agreed to by CCC.

V. FEDERAL COMMITMENTS is amended to read:

USDA and CCC agree to:

- A. Provide cost-share payments to 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, may not exceed 100 percent of the producer's out-of-pocket expenses.
- B. Make a one-time Practice Incentive Payment (PIP) for practices, consistent with the National CRP directives. The PIP is considered part of the annual rental payment for payment limitation purposes.
- C. Make all other CRP land and producer eligibility determinations according to National CRP directives.
- D. Under this CREP, make annual rental payments based on irrigated rental rates for each eligible enrolled irrigated acre in which a State Water Use Contract has already been secured. The per-acre, maximum irrigated rental rate in all cases will be equal to the sum of:
 - (1) The most current weighted-average, posted irrigated cropland rental rate for the enrolled land in the relevant county; and
 - (2) A maintenance incentive payment in an amount according to the National CRP directives; this payment will be considered a rental payment for payment limitation purposes.
- E. Make annual rental payments based on dryland cropland rental rates for each eligible enrolled dryland cropland acre. The per-acre, maximum dryland cropland rate of payments in all cases is equal to the sum of:
 - (1) Posted dryland CRP soil rental rate based on the 3 predominant soils on the eligible dryland acreage offered, according to National CRP directives procedure, i.e., the base soil rental rate; and

- (2) A maintenance incentive payment in an amount according to National CRP directives; this payment will be considered a rental payment for payment limitation purposes.
- F. Make a one-time Signing Incentive Payment (SIP) for practices in accordance with the National CRP directives. The SIP is considered part of the annual rental payment for payment limitation purposes.
- G. Administer CRP contracts for land enrolled under the CREP.
- H. Conduct compliance reviews according to the National CRP Directives to ensure compliance with the CRP contract.
- I. Provide information to producers, regarding Nebraska's CREP, for technical assistance for the CREP program in general.
- J. Divide all payments between landlords and tenants and permit successors-in-interest to existing contracts to participate under CREP in the same manner as allowed for under any other CRP contract, as provided in National CRP directives.

VI. STATE COMMITMENTS, items C and L are amended to read:

- C. Establish an Enhancement Program Steering Committee, which will include, but not be limited to, representatives from the State Technical Committee, Farm Service Agency, Nebraska Department of Natural Resources, Nebraska Game and Parks Commission, Nebraska Department of Agriculture, Nebraska Department of Environmental Quality, and the Natural Resource Conservation Service. This group will advise the Nebraska Governor's office on the implementation of the CREP.
- L. For all cropland enrolled under a CREP contract at irrigated rental rates, the State will enter into, and administer, a separate State Water Use Contract with each participant, or successor thereto, which will require:

- Discontinuation of the use of the water which had been applied to the enrolled irrigated cropland.
- Management of the water under contract to ensure water savings conservation.
- Non-use, except as provided below, of any surface or well water which, prior to enrollment in the CRP under this Agreement, had been used to irrigate the enrolled land, except as allowed for under the terms of this Agreement. Among other assurances as may be necessary or appropriate, the State Water Use Contract will require that the participant does not use, affect, transfer, sell, exchange or otherwise apply the surface or well water during the CRP contract period, except as agreed to by USDA except as provided in Section VII below. The State will also require that the participant does not allow other individuals or entities to use, affect, transfer, sell, exchange or otherwise apply the surface or well water from the appropriation during the CRP contract period, except as agreed to by USDA.

VII. MISCELLANEOUS PROVISIONS, items G, H, and I are added to read:

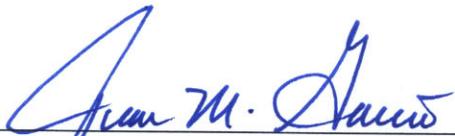
- G. The State may enter into a supplemental amendment of the Water Use Contract with the Landowner(s), as described in section VI.L, to allow:
- (1) For an additional voluntary easement that permanently retires the water use on the lands included under the CREP contract, provided all of the following conditions are met:
 - (a) the permanent retirement takes effect at the end of the individual CREP contract;
 - (b) there is no transfer of the surface water appropriations or ground water use by the landowner or any other entity—the appropriation or use is permanently retired and is not used as an offset for any new or expanded use;

- (c) the uses or appropriations retired are ground water uses and/or surface water appropriations owned by individual persons (surface water appropriations held in the names of irrigation districts, public power and irrigation districts, or mutual canal or irrigation companies are not subject to such amendments); and
 - (d) the Landowner agrees to continue to adhere to all other terms of the Water Use Contract until the contract period of the Water Use Contract has ended and to fully participate and adhere to the requirements of CREP until the CREP contract has ended; and/or
 - (2) For the transfer of the consumptive use portion of a surface water appropriation associated with the Water Use Contract to an instream augmentation appropriation, as long as the water is protected from other users as allowed under the State's laws so that the water included under the State Water Use Contract can be protected by the State from diversions by other users as allowed by State law.
- H. The State may enter into a variance with the Landowner to allow the use of a well included under a Water Use Contract for a de minimis purpose such as stock water, or domestic or uses other than irrigation for good cause shown. The maximum amount of water which will be approved under a variance is one acre-foot (325,851 gallons) per year per contract. Except, that this limitation on the amount of water allowed under the variance may be adjusted upward only if there is a health issue that would affect public or private drinking water or for public safety reasons, as determined by State or local water authorities.
- I. Nebraska and the USDA agree to share appropriate data in strict accordance with the procedures, restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, including 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 of enrollment information, overall costs of the project, and items listed under paragraph VI.M, according to the provisions in the Memorandum Of Understanding between the Nebraska State FSA Office and the State of Nebraska CREP Cooperators.

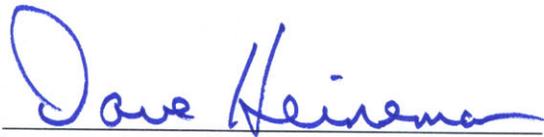
IT IS SO AGREED:

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE
COMMODITY CREDIT COPORATION

BY: 
Juan M. Garcia
Acting Deputy Administrator for Farm Programs
Farm Service Agency
Deputy Vice President
Commodity Credit Corporation

9/6/2011
Date

FOR THE STATE OF NEBRASKA

BY: 
Dave Heineman, Governor

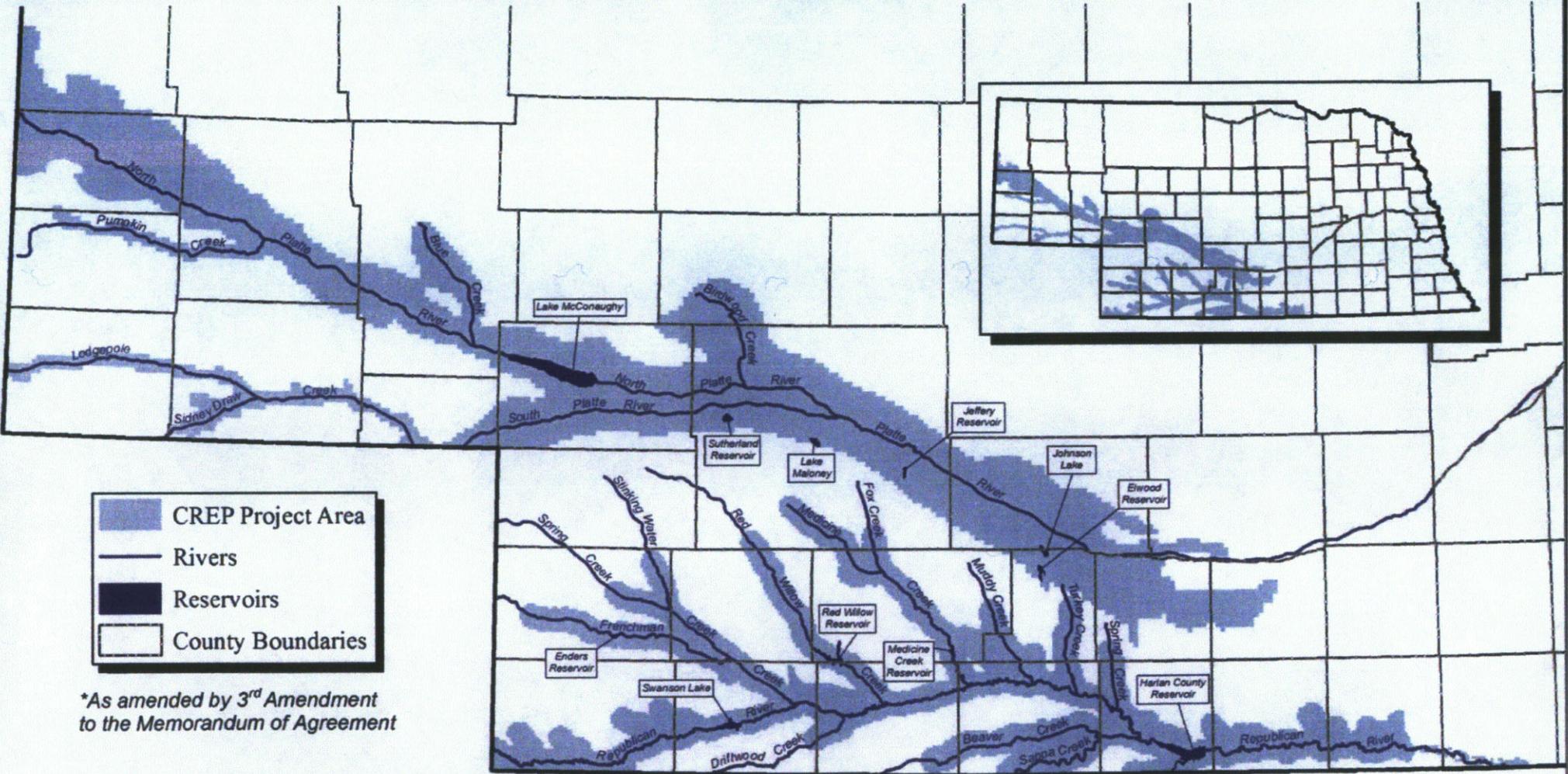
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Date



Mapping Section

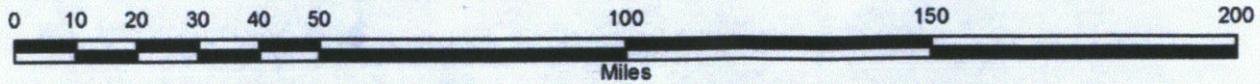
Figure 1*

Nebraska Platte-Republican Resources Area



- CREP Project Area
- Rivers
- Reservoirs
- County Boundaries

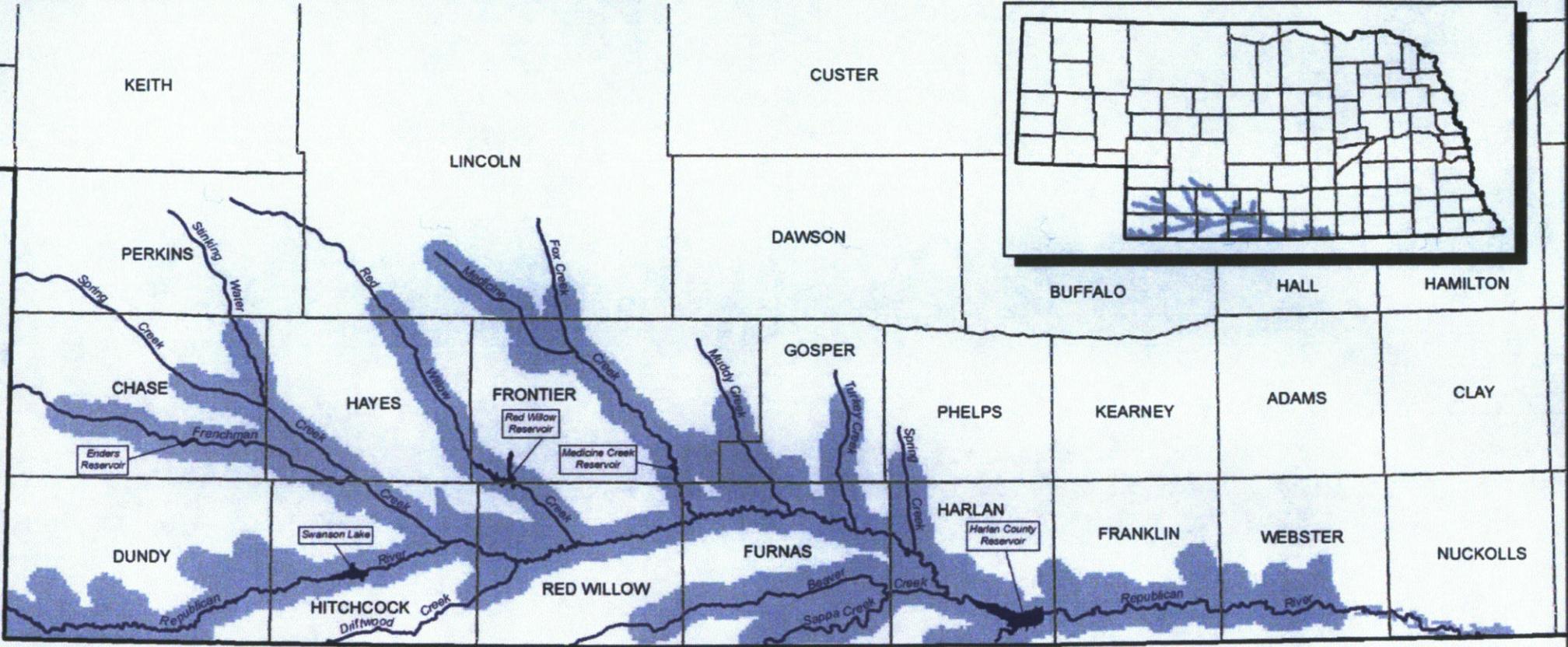
**As amended by 3rd Amendment to the Memorandum of Agreement*





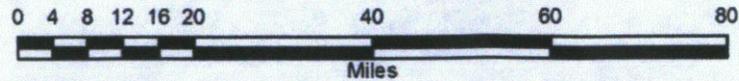
Mapping Section

Figure 1* Republican Resources Area



- CREP Project Area
- Rivers
- Reservoirs
- County Boundaries

**As amended by 3rd Amendment
to the Memorandum of Agreement*



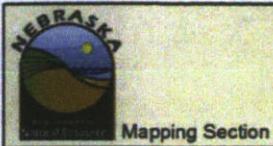
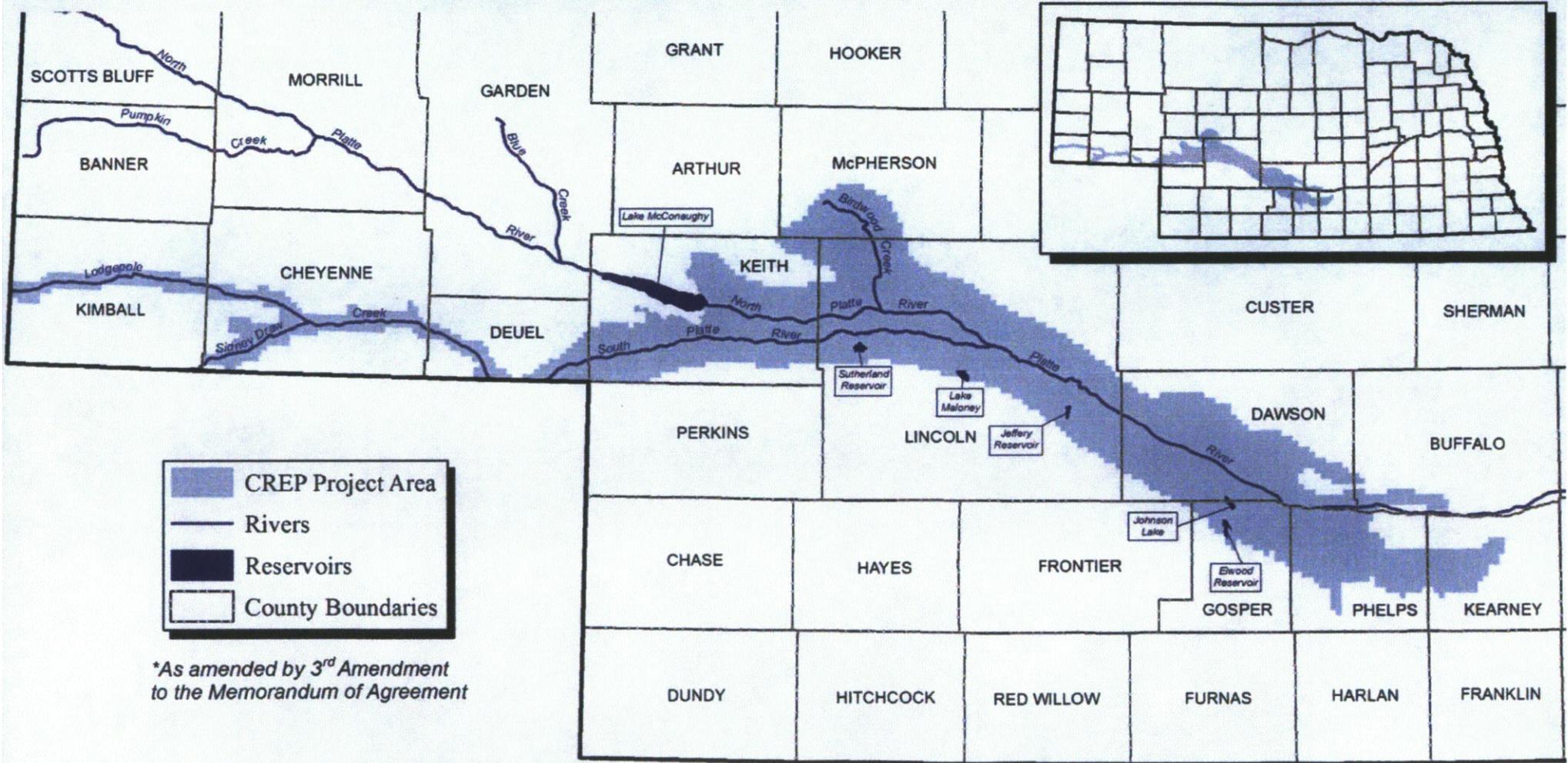
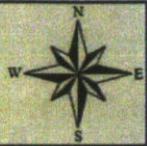
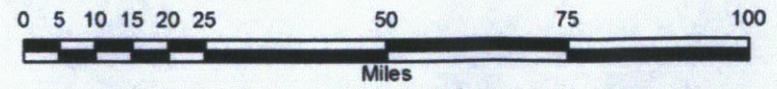


Figure 1* Nebraska Lower Platte Resources Area



**As amended by 3rd Amendment to the Memorandum of Agreement*

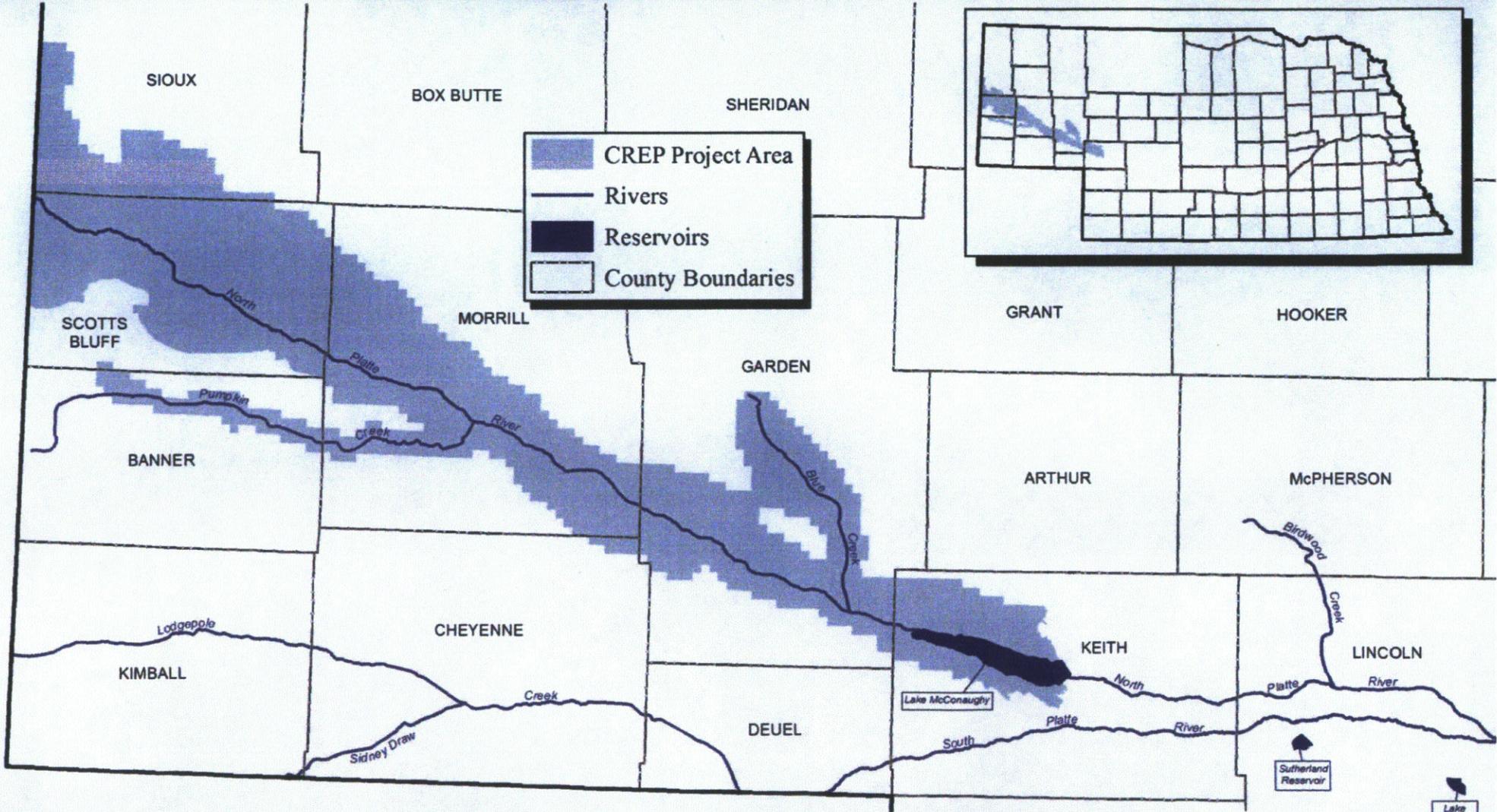
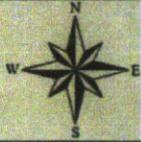




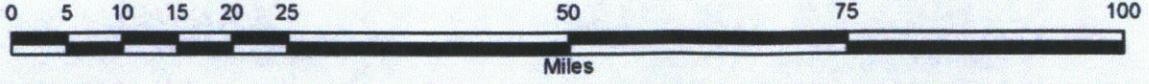
Mapping Section

Figure 1*

Nebraska Upper Platte Resources Area



*As amended by 3rd Amendment to the Memorandum of Agreement

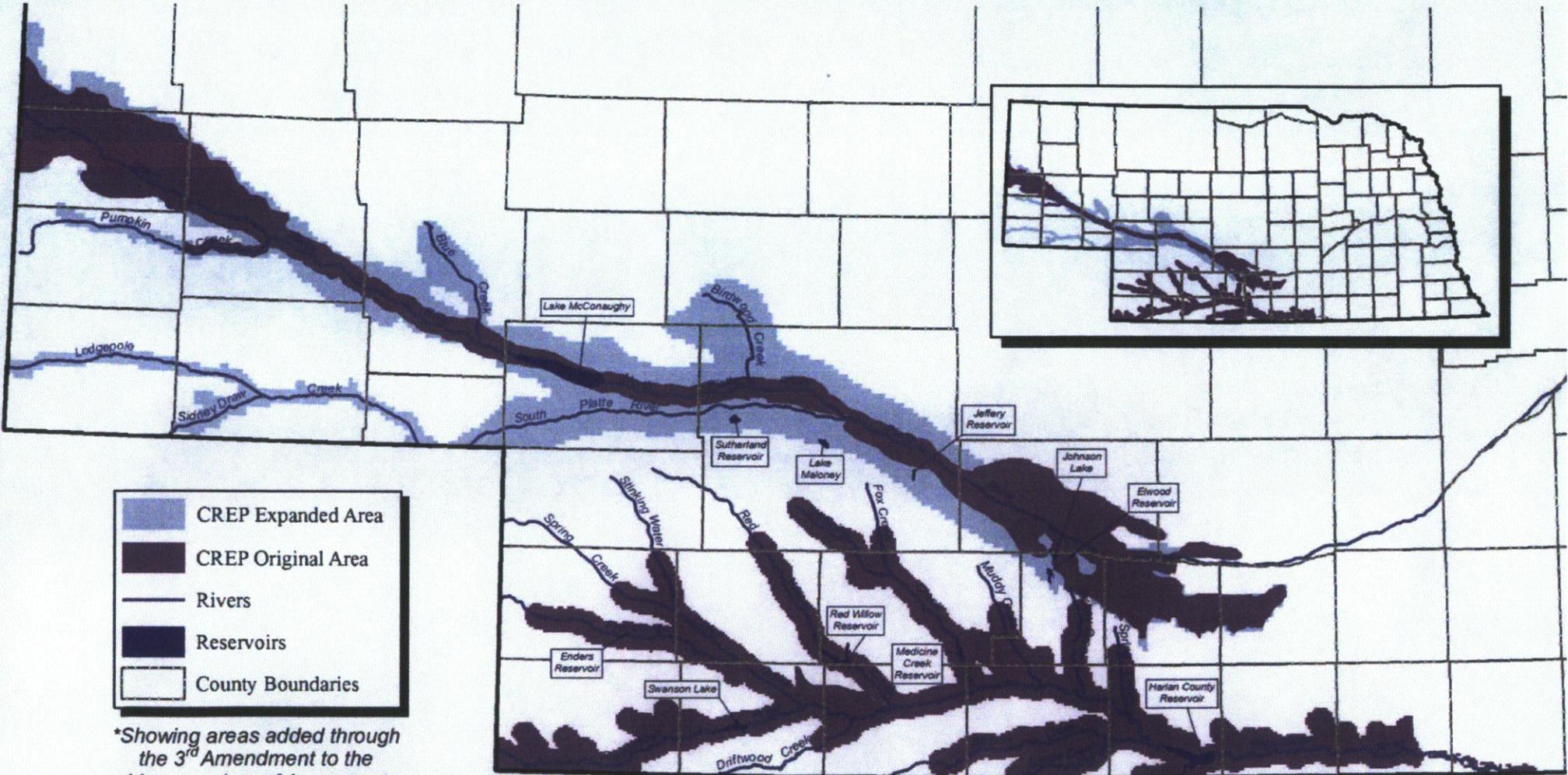
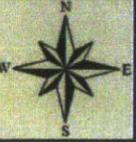




Mapping Section

Figure 1*

Nebraska Platte-Republican Resources Area



- CREP Expanded Area
- CREP Original Area
- Rivers
- Reservoirs
- County Boundaries

**Showing areas added through the 3rd Amendment to the Memorandum of Agreement*

