

## MEMORANDUM

TO: Programs Projects and Operations Subcommittee  
FROM: John Winkler, General Manager  
SUBJECT: Review and Recommendation on District Policy 17.45 Private/Public  
Dike Repair Assistance Program  
DATE: March 4, 2021

The historic flood of 2019 caused catastrophic damage to public and private infrastructure and property across a large swath of the State of Nebraska. Within the Papio Missouri River NRD District boundaries most if not all the “public” (owned and operated by a public entity) infrastructure has been repaired to pre-flood condition.

However, as of today a significant amount of “private” infrastructure (levees) has not been repaired or replaced. These “private” levee systems are of various age and condition and could include one to several private ownership interests. Furthermore, before these levees were damaged by the flood of 2019, they did provide a level of flood protection for decades to public roads, bridges, homes, and other public and private infrastructure.

Currently, there exists no local, state, or federal law or regulation compelling a landowner to make these necessary repairs, nor does there exist any cost share programs to assist these private levee owners in making needed repairs. NRD management has made numerous inquiries to counties, the Nebraska Department of Natural Resources and the legislature to attempt to formulate a plan to identify private levee ownership, levee condition/status and to formulate a multi-jurisdictional funding plan to assist in making vital repairs to these private levee systems. Thus far we have been unsuccessful in formulating this partnership as it appears these entities do not have the resources or desire to address the issue; simply we are on our own.

Therefore, the District is proposing Policy 17.45 (see attached) which would allow the District to partner with private levee owners, within the boundaries of the Papio NRD, in making the necessary repairs to their levee systems in order to return them to pre-2019 flood condition. The District has identified a few priority private levees, owned by interested landowners, that provided protection to public infrastructure before the flood of 2019 and whose repair would be in the public's best interest.

**Management recommends that the Subcommittee recommend to the Board of Directors that the proposed District Policy 17.45 Private/Public Dike Repair Assistance Program be adopted and incorporated to the District Policy Manual.**

**17.45 District Programs – Private/Public Levee Repair Assistance Program.** The Private/Public Levee Repair Assistance Program is an authorized program of the District to provide technical and financial assistance on eligible projects where a flood control dike or levee has failed, and the protected area is in imminent danger of flooding.

A. Criteria for Assistance:

1. Eligible Persons and Projects

- a. Public or private landowners who have exhausted or have insufficient funds or other resources available to provide adequate relief from the applicable hazards. Other governmental resources (e.g., Natural Resources Conservation Service, Corps of Engineers, Federal Emergency Management Agency) shall be investigated and shown to be unavailable or not expedient enough to prevent flooding before the NRD will consider providing financial assistance.
- b. More than one landowner must be affected by the levee or dike failure. In addition, at least one public facility, such as a road, must be potentially affected by a possible levee or dike failure.
- c. The dike or levee must, in the opinion of Management, be in danger of not providing pre-failure flood protection during the next major flood event.
- d. The dike or levee must be along the Platte, Elkhorn or Missouri Rivers.
- e. The repair of the failure must complete the levee or dike system and should include all failure locations (if more than one exists) within the system if identifiable, feasible and required by the NRD Board of Directors.

2. Eligible Measures

- a. Measures to re-establish the pre-failure height and level of flood protection, such as installing suitable fill material in the failed dike or levee area.
- b. Measures to stabilize the riverside toe of the dike against riverbank erosion, such as installing jetties or bank protection.
- c. Measures to repair or stabilize dike erosion and/or slough areas, such as installing fill material, riprap, filter cloth, sandbags, or the like.
- d. A measure must reduce threats to life or property which could result from a flood.
- e. All measures must be technically sound and be limited to what existed before the watershed was impaired.

- f. Elevating the profile of a dike is not eligible under this program.
- g. Measures to be used must be the most cost-efficient ones which will provide timely, adequate and safe relief from the flooding hazard.

B. Cost-Sharing:

1. NRD will provide (90%) of actual contracted construction costs to a maximum “not to exceed” amount of \$200,000 per project. Cooperator’s “in-house” expenses are not eligible. Cooperators are responsible for obtaining any needed land rights and they are not a cost-share item.
2. Cost-share funds will be committed according to the date of application. However, if two or more applications are being considered at one time, preference shall be given to those projects that may directly affect NRD facilities or other public infrastructure such as roads, bridges, utilities etc.
3. Cost-share funds will not be released until the project is complete according to plans and certified as such by NRD staff.
4. The NRD Board of Directors will have the authority to approve applications for cost-sharing up to the allowable limits.
5. The Cooperator will be liable for any additional cost above the dollar amount approved by the Board.
6. Work must be complete within six months after the NRD approval date. Extensions may be granted if just reason can be demonstrated.

C. Limitations:

1. NRD reserves the right to approve or reject plans.
2. Cooperator must hold and save the Papio-Missouri River NRD free from damages or claims due to the construction, operation and maintenance of the project, except where such damages are due to the fault or negligence of the Papio-Missouri River NRD.
3. NRD reserves the right to terminate the cost-share agreement in whole or part if the NRD determines that the Cooperator failed to comply with the program requirements.
4. Cooperator must give the NRD the right to enter, at reasonable times and in a reasonable manner, upon lands which Cooperator owns or controls, for access to the project for the purpose of inspection.
5. Project facilities (cost-share work) must be maintained for a period of 10 years after they are completed. If it is not properly maintained, according to the NRD, the cost-

share funds must be returned to the NRD and the Cooperator will not be eligible for future cost-sharing programs.

6. The Cooperator must sign an operation and maintenance agreement which incorporates these requirements prior to the initiation of construction.
7. Reasonable changes can be made in the field; however, Management approval is necessary if the approved project cost-share provided by the District is to be increased. In no event will the maximum funding limitation of \$200,000 per project be exceeded.
8. All applicable permits (e.g., Corps of Engineers Section 404) must be acquired by the Cooperator prior to starting repairs.

D. Requesting Reimbursement: Upon completion of construction, it will be necessary for the Cooperator to request reimbursement from the NRD. This can be done by providing the following:

1. A letter from the Cooperator that the work was completed according to the approved plan.
2. A breakdown of the work items, unit costs, total project costs and the reimbursement being requested.
3. Copies of all billings from all contractors or suppliers for all work items.

[March 11, 2021]