

MEMORANDUM

To: Programs, Projects and Operations Subcommittee
From: Amanda Grint, Assistant General Manager
Date: December 6, 2023
Re: Papillion Creek Watershed Agreement with Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) developed a PL-566 Work Plan for 52 grade stabilization structures in the Papio Watershed in 1967. The District became local sponsor for the Project and currently operates and maintains the 28 structures built prior to federal termination of PL-566 program funding in the late 1990s. Several sites have been deleted or rehabilitated over the years through supplemental agreements to the Work Plan.

In 2018, the District worked with State NRCS staff to secure 100% federal funding through the Watershed Flood Protection Operations Program (WFPO) to update the NRCS Work Plan for the Papio Watershed. The update would assess the remaining seven structures, look at alternatives, provide conceptual design and complete an environmental assessment of each site. The sites are shown on the attached map. One site (WP1) has the purpose of flood control, and the remaining six sites have the purpose of grade stabilization.

The Work Plan update is complete and ready for the final public notice. The environmental assessment demonstrates the proposed projects have been found to be of No Significant Impact (FONZI). With the plan update and environmental assessment complete, the District needs to enter into an agreement with NRCS, Papillion Creek Watershed Supplemental Watershed Agreement No. 9, to outline the remaining project costs and responsibilities. This agreement officially updates the Work Plan of 1967 and allows the District to move forward with federal funding to complete the listed projects. The plan update, environmental assessment and agreement will be placed on public notice for 30 days.

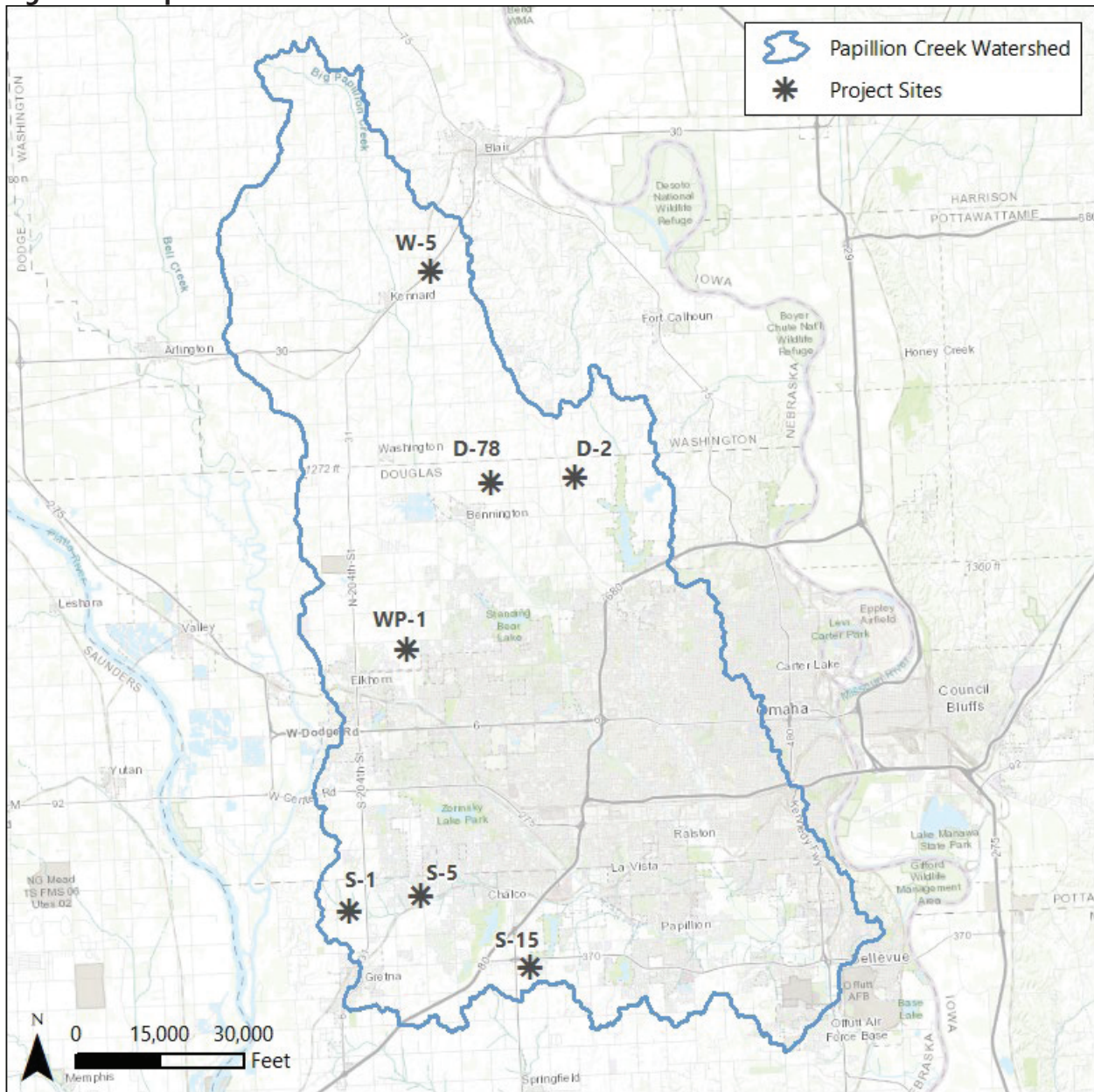
Staff recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Papillion Creek Watershed Supplemental Watershed Agreement No. 9 with NRCS subject to changes deemed necessary by the General Manager and Legal Counsel.

1.0 PURPOSE AND NEED FOR ACTION

1.1 Introduction

The intent of this document is to identify and evaluate alternatives at locations previously identified in the 1966 Work Plan under guidelines outlined in the NRCS Title 390 – National Watershed Program Manual (NWPM), 4th edition (NRCS, 2015) and to satisfy National Environmental Policy Act (NEPA) and Principles, Requirements, and Guidelines for Water and Land Related Resources Implementation Studies (PR&G) requirements. Locations analyzed in this Supplemental Plan-EA are shown in Figure 1-1 below.

Figure 1-1. Papillion Creek Watershed



Papillion Creek Watershed Supplemental Watershed Agreement No. 9

**Between the
Papio-Missouri River Natural Resources District
(Referred to herein as Sponsor)
State of Nebraska
and the
Natural Resources Conservation Service,
United States Department of Agriculture
(Referred to herein as NRCS)**

Whereas, the watershed plan for Papillion Creek Watershed, State of Nebraska, executed by the sponsor named therein and NRCS, became effective on the twenty-second day of March, 1967; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the eighteenth day of November, 1969, to remove the Papio Watershed Board as the contracting agency and to provide that contracting be entered into on an ad hoc basis with the local governing body as contracting officer for those improvements within its boundaries; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the twelfth day of March, 1970, to provide that the Soil Conservation Service administer all construction contracts; and

Whereas, a supplemental agreement for said watershed executed by the Sponsor named therein and NRCS became effective on the first day of October, 1971, to provide assistance and funds as needed to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – Public Law 91-646 (34 Stat. 1894); and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the twenty-third day of January, 1973, to name the Papio Natural Resources District as Sponsor; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the twelfth day of November, 1991, to move Grade Stabilization Structure W-42 approximately 400-feet upstream onto the road; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the sixth day of April, 1995, to delete grade stabilization structures D-15, D-23, D-49, D-50, D-65, S-9, S-15, S-16, and W-20 from the plan; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the tenth day of June, 2005, to rehabilitate grade stabilization structures S-27, S-31, and S-32; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and NRCS became effective on the fifteenth day of July, 2008, to rehabilitate grade stabilization structure W-3 to current NRCS high hazard class requirements and extend its life for 90 years; and

Whereas, in order to carry out the watershed plan for said watershed, it has become necessary to modify said watershed agreement; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 to 1008, 1010, and 1012), has been assigned by the Secretary of Agriculture to NRCS; and

Whereas, a Supplemental Watershed Plan which modifies the watershed plan dated March 22nd, 1967 for said watershed has been developed through the cooperative efforts of the Sponsors and the NRCS;

Now, therefore, the Secretary of Agriculture, through the NRCS and the sponsors hereby agree upon the following modifications of the terms, conditions, and stipulations of said watershed agreement as supplemented;

- (1) Flood risk reduction, sediment reduction, and improved safety are hereby added as project purposes.
- (2) Grade stabilization structure S-15 is hereby reintroduced to the plan.
- (3) Grade stabilization structure D-31 (herein referred to as WP-1) is hereby modified to provide flood damage reduction.
- (4) Grade stabilization S-1 is hereby modified to provide sediment reduction.
- (5) Modifications to the design of W-5, D-78, D-2, S-15, and S-5 grade stabilization structures.
- (6) Paragraph numbered 2 is modified to read as follows: The term of this agreement is for the installation period and evaluated life of the project (102 years) and does not commit NRCS to assistance of any kind beyond the end of the evaluated life.
- (7) Paragraph numbered 3 is modified to read as follows: The sponsors will acquire such real property as will be needed in connection with the works of improvement. The amounts and percentages of the real property acquisition costs to be borne by the sponsors and NRCS are as shown in the cost-share table in section 8 hereof.
- (8) Paragraph numbered 5 is modified to read as follows: The following table will be used to show cost-share percentages and amounts for watershed project plan implementation.

Project Costs	PL 83-566 Funds		Other Funds		Total
	Dollars	Percent	Dollars	Percent	Dollars
Construction ¹	8,727,900	51%	8,401,700	49%	17,129,600
Engineering ^{2,3}	3,875,100	91%	378,600	9%	4,253,700
Real Property Rights ⁴	0	0%	5,394,000	100%	5,394,000
Project Administration	354,300	31%	793,900	69%	1,148,200
Total Project	12,957,300	46%	14,968,200	54%	27,925,500

¹Includes mitigation

²Includes construction observation

³Includes permit acquisition

⁴Includes cost of legal fees and land appraisals

- (9) Paragraph numbered 6 is modified to read as follows: The costs shown in this plan are preliminary estimates. Final costs to be borne by the parties hereto will be the actual costs incurred in the installation of works of improvement.
- (10) Paragraph numbered 9 is modified to read as follows:

Floodplain Management. Before construction of any project for flood prevention, the sponsors must agree to participate in and comply with applicable Federal floodplain management and flood insurance programs. For plans approved as of the date of this revised manual the sponsor is required to have development controls in place below low and significant hazard dams prior to NRCS or the sponsor entering into a construction contract.

- (11) Paragraph numbered 14 is modified to read as follows:

Operation and Maintenance (O&M). The sponsors will be responsible for the operation, maintenance, and any needed replacement of the works of improvement by actually performing the work or arranging for such work, in accordance with an O&M agreement. An O&M agreement will be entered into before Federal funds are obligated and will continue for the project life (100 years). Although the sponsors' responsibility to the Federal Government for O&M ends when the O&M agreement expires upon completion of the evaluated life of measures covered by the agreement, the sponsors acknowledge that continued liabilities and responsibilities associated with works of improvement may exist beyond the evaluated life.

(12) Paragraph numbered 15 is modified to read as follows:

Emergency Action Plan. Prior to construction, the sponsors must prepare an emergency action plan (EAP) for each dam or similar structure where failure may cause loss of life or as required by state and local regulations. The EAP must meet the minimum content specified in NRCS Title 180, National Operation and Maintenance Manual (NOMM), Part 500, Subpart F, Section 500.52, and meet applicable State agency dam safety requirements. The NRCS will determine that an EAP is prepared prior to the execution of fund obligating documents for construction of the structure. EAPs must be reviewed and updated by the sponsors annually.

(13) Paragraph numbered 16 is modified to read as follows:

Nondiscrimination Provisions.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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(14) Paragraphs numbered 15, 16, and 17 are hereby added as follows:

(15) **Land Treatment Agreements.** The sponsors will ensure that 50 percent of the land upstream of any retention reservoir site is adequately protected before construction of the dam. The sponsors will provide assistance to landowners and operators to ensure the installation of the land treatment measures shown in the watershed project plan. The sponsors will encourage landowners and operators to continue to operate and maintain the land treatment measures after the long-term contracts expire, for the protection and improvement of the watershed.

