

Agenda Item: 12.

**MEMORANDUM**

**TO:** Board of Directors

**FROM:** Zach Nelson, Project Manager

**SUBJECT:** Review and Recommendation on the Lower Platte River Weed Management Program Amendment to the Interlocal Agreement

**DATE:** June 27, 2014

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Phragmites and other noxious and invasive vegetation in and along waterways tend to bond with winter ice formations and impede the natural breakup and discharge of ice flows, which can result in flooding. The Interlocal Cooperation Act Agreement for the Lower Platte River Phragmites Weed Management Program was signed in 2009 between the Lower Platte North NRD, Lower Platte South NRD, and PMRNRD to allow for the treatment of phragmites and other vegetation in the flood channels of the Lower Platte River, Elkhorn River, Shell Creek, and Salt Creek. Annually each NRD contributes \$20,000 to the program. The program offers a 50% cost share to landowners for the treatment of target vegetation on their property. Over the last five years, the program has worked to effectively treat hundreds of acres along the identified flood channels. Aerial surveys show that there are many tributaries that flow into the identified flood channels that have infestations of phragmites and other noxious and invasive vegetation. Program participants and County Weed Superintendents all agree that the program needs to proactively treat tributaries. Attached is an amended Interlocal Agreement to expand the 50% cost share to treat phragmites and other noxious and invasive vegetation in tributaries that flow into flood channels identified in the agreement.

**Staff recommends that the subcommittee recommend to the Board, that the General Manager be authorized to execute the Amended Interlocal Cooperation Agreement for the Lower Platte River Phragmites Management Program.**

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT  
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT  
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

**AMENDED INTERLOCAL COOPERATION ACT AGREEMENT  
LOWER PLATTE RIVER PHRAGMITES MANAGEMENT PROGRAM**

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**THIS AMENDED AGREEMENT ("THIS AMENDED AGREEMENT")** supercedes and replaces the **INTERLOCAL COOPERATION ACT AGREEMENT** that was executed on September 14, 2009, by the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT; executed on October 15, 2009, by the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT and executed on September 20, 2009, by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("**P-MRNRD**"), (referred collectively as "the **CONTRACTING NRDS**"); and,

**WHEREAS**, the flood channels of the lower Platte River, Elkhorn River, Shell Creek and Salt Creek (referred to collectively as "the **FLOOD CHANNELS**") in the COUNTIES of BUTLER, CASS, COLFAX, DODGE, DOUGLAS, LANCASTER, PLATTE, SARPY, SAUNDERS and SEWARD (referred to collectively as "the **AFFECTED COUNTIES**" and individually as an "**AFFECTED COUNTY**") have become infested by *Phragmites australis* (hereinafter referred to as "**PHRAGMITES**"), and other noxious and invasive vegetation (referred to collectively as the "**TARGET VEGETATION**"), that tends to bond with winter ice formations and impede the natural breakup and discharge of broken ice floes from the FLOOD CHANNELS, aggravating spring flooding; and,

**WHEREAS**, control of TARGET VEGETATION along the tributaries of the FLOOD CHANNELS in the AFFECTED COUNTIES ("the **TRIBUTARIES**") is necessary in order to prevent or reduce reinfestation of the FLOOD CHANNELS; and

**WHEREAS**, Neb. Rev. Stat. § 2-3229, authorizes natural resources districts to "develop and execute plans, facilities, works, and programs relating to \*\*\* (2) prevention of damages from flood water and sediment, (3) flood prevention and control, \*\*\* [and] (6) development, management, utilization, and conservation of ground water and surface water" \*\*\*; [and] 10) development and management of fish and wildlife habitat; and,

**WHEREAS**, Neb. Rev. Stat. § 2-3235, among other things, authorizes the CONTRACTING NRDS to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as their boards of directors may deem necessary; and,

**WHEREAS**, the CONTRACTING NRDS hereby determine that it will be to their general public benefit, with only an incidental special benefit, to institute a program (hereinafter referred to as "the **PROGRAM**") to assist the AFFECTED COUNTIES and their weed control authorities to carry out an intensive, efficient and economical program for control of the TARGET VEGETATION in the FLOOD CHANNELS and the TRIBUTARIES of the CONTRACTING NRDS; and,

**WHEREAS**, THIS AMENDED AGREEMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without any separate legal entity being created, to conduct the joint and cooperative undertaking contemplated herein, and, whenever possible, THIS AMENDED AGREEMENT shall be construed in conformity with such Act.

**NOW, THEREFORE**, in consideration of their mutual covenant hereinafter expressed, the CONTRACTING NRDS agree as follows:

**Program Plan:** The CONTRACTING NRDS do hereby adopt the following plan for administering the PROGRAM:

a) Aerial Survey: On or about the 1<sup>st</sup> day of July of each year during the term of THIS AMENDED AGREEMENT, the P-MRNRD shall retain one or more qualified contractors to perform an aerial survey of the TARGET VEGETATION in the AFFECTED COUNTIES ("the **AERIAL SURVEY**") The AERIAL SURVEY shall be performed during the month of July in such year and shall be designed to determine and plot on appropriate maps, using GPS technology, the areas of serious infestations of TARGET VEGETATION in the AFFECTED COUNTIES. Upon its receipt of the reports of the AERIAL SURVEY the P-MRNRD shall submit copies thereof to the CONTRACTING NRDS for their approvals, following which such reports shall be transmitted by the P-

MRNRD to the County Boards of the AFFECTED COUNTIES, along with notice of the amounts budgeted by the CONTRACTING NRDS for cost assistance for the PROGRAM.

b) County designation: Each year, after an AFFECTED COUNTY has received from the P-MRNRD the report of the AERIAL SURVEY showing infestations of TARGET VEGETATION in the FLOOD CHANNELS and TRIBUTARIES in such county, along with notification to such AFFECTED COUNTY of the amount budgeted by the CONTRACTING NRDS for cost subsidization for control of TARGET VEGETATION in such county, an AFFECTED COUNTY desiring PROGRAM assistance shall provide to the P-MRNRD a designation of the FLOOD CHANNELS and/or TRIBUTARIES within such AFFECTED COUNTY that the COUNTY determines should receive an AERIAL APPLICATION of herbicide.

c) Aerial Applicator: Upon receipt of such designations, and using written plans and specifications and other contract documents prepared by the P-MRNRD (collectively, the "**CONTRACT DOCUMENTS**"), the P-MRNRD shall advertise for sealed bids for a contractor (the "**PROGRAM APPLICATOR**") to provide helicopter application (the "**AERIAL APPLICATION**") of a designated EPA approved herbicide upon TARGET VEGETATION on lands in the FLOOD CHANNELS and TRIBUTARIES within the respective AFFECTED COUNTIES that CONTRACTING NRDS have approved for the AERIAL APPLICATION. The P-MRNRD shall open and tabulate such bids and determine the lowest responsive bid; and communicate such determination to the other CONTRACTING NRDS for their approvals, which shall not be unreasonably delayed or withheld. After receipt of such approvals, the P-MRNRD shall execute a contract with such lowest responsive bidder for performance of the AERIAL APPLICATIONS in accordance with the CONTRACT DOCUMENTS, and shall administer such contract to conclusion and final acceptance.

County repayment. Each year, on or before December 31, each AFFECTED COUNTY shall be billed for repayment to the P-MRNRD for AERIAL APPLICATIONS performed by the PROGRAM APPLICATOR in such AFFECTED COUNTY as follows, to-wit:

a) Subsidized repayment for Flood Channels: 50% of the cost to the CONTRACTING NRDS of the PROGRAM APPLICATOR'S services for those AERIAL APPLICATIONS performed on those FLOOD CHANNELS in such AFFECTED COUNTY where all of the following conditions exist: (1) such FLOOD CHANNELS had

been designated by the P-MRNRD on an AERIAL SURVEY as containing infestations of TARGET VEGETATION; (2) the owner of such lands in such FLOOD CHANNELS has executed a release in writing consenting to a voluntary AERIAL APPLICATION and (3) the owner of such lands in such FLOOD CHANNEL has subscribed to the PROGRAM and thereby agreed to pay one-half (50%) of the estimated direct costs to the CONTRACTING NRDS of such AERIAL APPLICATION; provided, however, such PROGRAM subsidy shall be applicable to lands shown on the AERIAL SURVEY only to the extent of the afore-described budget by the CONTRACTING NRDS for cost subsidization for such county.

b) Subsidized repayment for Tributaries: 50% of the cost to the CONTRACTING NRDS of the PROGRAM APPLICATOR'S services for those AERIAL APPLICATIONS performed on those TRIBUTARIES in such AFFECTED COUNTY where all of the following conditions exist: (1) such TRIBUTARIES had been designated by the P-MRNRD on an AERIAL SURVEY as containing infestations of TARGET VEGETATION; (2) the owner of such lands in such TRIBUTARIES has executed a release in writing consenting to a voluntary AERIAL APPLICATION and (3) the owner of such lands in such TRIBUTARIES has subscribed to the PROGRAM and thereby agreed to pay one-half (50%) of the estimated direct costs to the CONTRACTING NRDS of such AERIAL APPLICATION; provided, however, such PROGRAM subsidy shall be applicable to lands shown on the AERIAL SURVEY only to the extent of the afore-described budget by the CONTRACTING NRDS for cost subsidization for such county.

c) Non-subsidized payment: 100% of the fees of the PROGRAM APPLICATOR for AERIAL APPLICATIONS on other FLOOD CHANNEL or TRIBUTARY lands in such AFFECTED COUNTY.

**ROW RELEASES.** Each of the AFFECTED COUNTIES shall search the records of such county for the purpose of determining the ownership of the lands designated by such county for AERIAL APPLICATION and, using such ownership information and forms for releases approved by the CONTRACTING NRDS, such AFFECTED COUNTY shall obtain releases (the "**ROW RELEASES**") over rights-of-way necessary to authorize the AERIAL APPLICATIONS to be performed under THIS AMENDED AGREEMENT; and, in a timely manner, shall deliver such executed ROW RELEASES to the P-MRNRD.

**Contributions:** Contributions, fines, assessments, and other PROGRAM payments received by one of the AFFECTED COUNTIES from an owner of TARGET VEGETATION-infested FLOOD CHANNELS and/or TRIBUTARIES within such AFFECTED COUNTY, may be applied by such AFFECTED COUNTY towards such AFFECTED COUNTY'S cost repayments computed in accordance with THIS AMENDED AGREEMENT.

**Cost Sharing:** The CONTRACTING NRDS do hereby adopt the following plan for paying and reimbursing the costs of the PROGRAM:

a) The total actual costs incurred by the P-MRNRD and its contractors for preparation of PLANS AND SPECIFICATIONS for the PROJECT, for delineating the FLOOD CHANNELS and/or TRIBUTARIES infested with TARGET VEGETATION, for preparing forms for ROW RELEASES, for administering the PROGRAM CONTRACT, for compensating the AERIAL APPLICATOR, and such other actual and reasonable costs incurred by the P-MRNRD to advance the PROGRAM (collectively, the "**SHARED PROGRAM COSTS**"), shall be equally shared by the CONTRACTING NRDS and reimbursed to the P-MRNRD from a cash fund (the "**PHRAGMITES FUND**"), to be maintained by the P-MRNRD, and funded and expended in accordance with THIS AMENDED AGREEMENT.

b) On or before the first day of September of each year during the term of THIS AMENDED AGREEMENT the CONTRACTING NRDS shall make equal contributions to the PHRAGMITES FUND in the following amounts, to-wit:

Lower Platte North Natural Resources District,	\$20,000
Lower Platte South Natural Resources District,	\$20,000
Papio-Missouri River Natural Resources District,	\$20,000
Total	\$60,000

Provided, however, if at any time the uncommitted balance in the PHRAGMITES FUND is less than \$60,000, then, within 30 days after notice thereof from the P-MRNRD, the CONTRACTING NRDS each shall contribute to the PHRAGMITES FUND such equal amounts as may be required to restore the uncommitted balance in the PHRAGMITES FUND to \$60,000. As used in THIS AMENDED AGREEMENT, the term "actual costs" shall include but shall not be limited to insurance premiums, increases or surcharges, and other ordinary and reasonable costs and expenses,

which P-MRNRD is required to pay or assume as a result of duties undertaken by P-MRNRD pursuant to THIS AMENDED AGREEMENT.

**Indemnifications.** Each of the CONTRACTING NRDS agrees to indemnify and hold harmless the other CONTRACTING NRDS from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of THIS AMENDED AGREEMENT, or failure of an AFFECTED COUNTY in such NRD to obtain sufficient ROW RELEASES over land that such AFFECTED COUNTY designates for AERIAL APPLICATIONS.

**Effective Date of Agreement:** THIS AMENDED AGREEMENT shall become effective upon execution by all CONTRACTING NRDS.

**Duration of Agreement:** THIS AMENDED AGREEMENT shall have permanent duration, unless or until terminated by any of the CONTRACTING NRDS as provided herein.

**Termination.** Upon accomplishment of the aforesaid purposes of the PROJECT, THIS AMENDED AGREEMENT may be terminated by any of the CONTRACTING NRDS upon 90 days notice to the other CONTRACTING NRDS. Such termination shall not affect any rights of reimbursement under THIS AMENDED AGREEMENT for actions taken or responsibilities assumed by another of the CONTRACTING NRDS pursuant to THIS AMENDED AGREEMENT.

**Disposal of Property:** Upon termination of THIS AMENDED AGREEMENT, any marketable property remaining in the hands of any of the CONTRACTING NRDS, that was acquired by the application of shared funds contributed by the CONTRACTING NRDS, shall be sold at public sale and the proceeds thereof distributed to the CONTRACTING NRDS in the proportions provided by THIS AMENDED AGREEMENT for their contributions towards the SHARED PROGRAM COSTS.

**Administrator:** Except as may be otherwise provided herein, the General Manager of the P-MRNRD shall be the administrator of the PROGRAM, on behalf and subject to the direction of the Board of Directors of the P-MRNRD.

**IN WITNESS WHEREOF,**

THIS AMENDED AGREEMENT is executed by the Lower Platte North Natural Resources District on this \_\_\_\_ day of \_\_\_\_\_, 2014 pursuant to resolution duly adopted by its Board of Directors.

**LOWER PLATTE NORTH NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
General Manager

THIS AMENDED AGREEMENT is executed by the Lower Platte South Natural Resources District on this \_\_\_\_ day of \_\_\_\_\_, 2014 pursuant to resolution duly adopted by its Board of Directors.

**LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
General Manager

THIS AMENDED AGREEMENT is executed by the Papio-Missouri River Natural Resources District on this \_\_\_\_ day of \_\_\_\_\_, 2014 pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
General Manager