

# Memorandum

TO: Programs, Project and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Papio Creek Watershed PL566 Structure W-3  
Rehabilitation Project Agreement

DATE: March 30, 2009

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In 2001, the USDA - Natural Resources Conservation Service (NRCS) initiated a dam rehabilitation assistance program to address the needs of aging dams throughout the United States, in particular those dams built through their Public Law (PL) 566 Program. The PL 566 Program has been designing/building dams for about 65 years.

The District owns/operates 83 dams, 50 of which were built via the PL 566 program. The District's PL 566 dams were built in the period from 1962 to 1997. Papio Creek Structure #W-3 was built in 1983 by the District. Attached is a location map. In March 2005, the District initiated dam rehabilitation with NRCS on Papio Creek Watershed Structure #W-3 via execution of Memorandum of Understanding for rehabilitation assistance.

The NRCS has completed draft plans for the proposed rehabilitation project. The existing dam is to be upgraded to a high hazard dam with new concrete principal spillway.

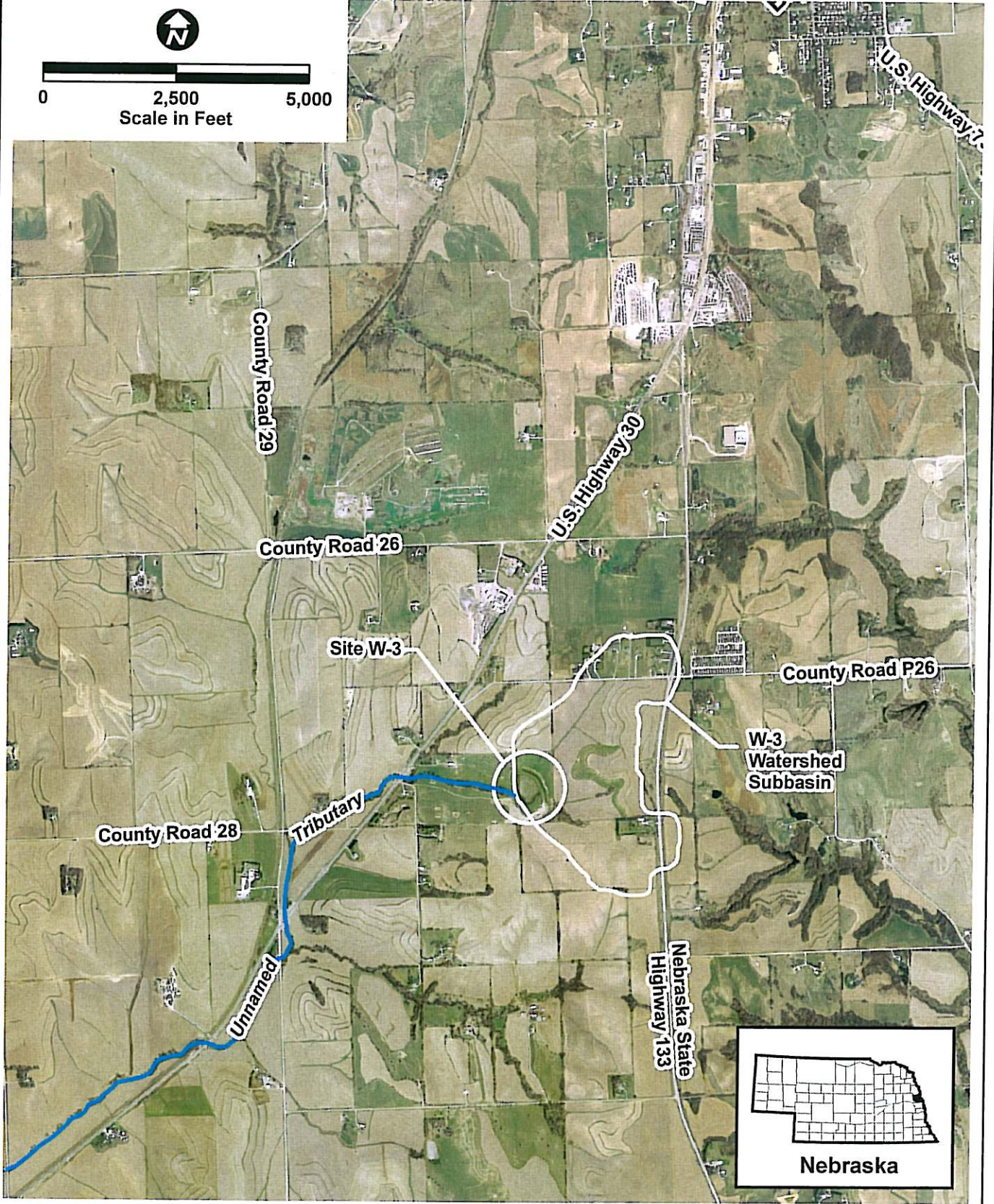
Enclosed is the Papio Creek Watershed Structure W-3 Project Agreement for your review. This agreement provides for rehabilitation (with cost share and estimated costs for referenced dam). This agreement is subject to NRCS and NRD funding. NRCS funding is to come from Economic Stimulus Act. Note attached ARRA Action Plan schedule. This project was selected by NRCS for Stimulus Funding as a result of early construction start potential.

<b>Works of Improvement</b>	<b>Sponsors (NRD)</b>	<b>NRCS</b>	<b>Estimate Project Costs</b>
#W-3	\$471,154.00 (2)	\$875,000.00	\$1,346,154.00 (1)
	(35%)	(65%)	(100%)

1. Estimated Project Costs do not include NRCS Engineering and Project Administration costs. NRCS pays for 100% of planning and engineering costs.
2. Sponsor (NRD) is required to secure land rights for this structure and this cost is credited towards sponsor's 35%.

**It is Management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Papio Creek Watershed Structure #W-3 Project Agreement with NRCS for rehabilitation of PL 566 Grade Stabilization Structure Papio Creek Structure #W-3, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

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Source: Aerial Photography, Metropolitan Area Planning Agency, flown by Horizons Inc. in April 2004.



**Papillion Creek Watershed  
Site W-3  
Project Location Map**

DATE

Sept 2005

FIGURE

1





## Fact Sheet

April 2009

# Papio Watershed Dam Improvement Project in Washington County

### Introduction

A flood control structure in eastern Nebraska in Washington County is scheduled for improvement.

Funded through the American Recovery and Reinvestment Act of 2009, this project is part of the Obama Administration's plans to modernize the nation's infrastructure, jump-start the economy, and create jobs. NRCS is using Recovery Act dollars to update aging flood control structures, protect and maintain water supplies, improve water quality, reduce soil erosion, enhance fish and wildlife habitat, and restore wetlands. NRCS acquires easements and restores floodplains to safeguard lives and property in areas along streams and rivers that have experienced flooding.



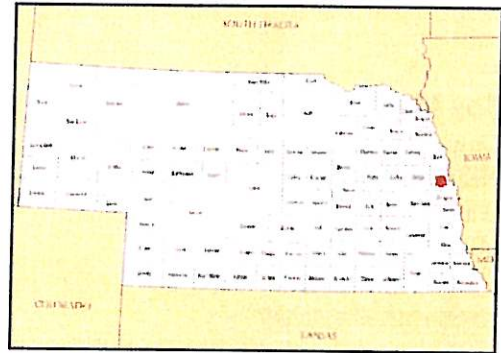
The drainage area protected by the flood control structure is shown outlined in red on the aerial map above. It encompasses over 270 acres.

### Project Description

- **Location:** Nebraska Congressional District 1.
- **Size:** Controls drainage from 276 acres.
- **Start Date:** Construction to begin August 2009.

### Partners

- Papio-Missouri River Natural Resources District.



The project site is located in eastern Nebraska in Washington County.

### Benefits

Through the restoration project the dam height will be raised to provide protection to a home, two county roads, and US Highway 30, a major commuter route in the area. The flood control structure captures flood water, thereby protecting downstream property. The structure was built in 1983. Without raising this structure, it may have resulted in possible flooding and disruption of community service. The structure also acts as a trap for sediment and attached chemicals thus improving the water quality downstream.



The restoration project will protect a major highway that is the main route for commuters near Blair, Neb. A home will also be protected from future flood events. Sediment is captured by the watershed structure, helping to improve water quality.

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## **Papio Watershed Dam Improvement Project in Washington County**

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### **Economic Opportunities**

Construction should begin in August 2009 and be completed in a year. This work should extend the life of the dam for an additional 90 years. It should add about 10 jobs to the local area.

### **For More Information**

Doug Christensen  
Nebraska NRCS Assistant State Conservationist for  
Water Resources  
(402) 437-4049  
[douglas.christensen@ne.usda.gov](mailto:douglas.christensen@ne.usda.gov)  
[www.ne.nrcs.usda.gov](http://www.ne.nrcs.usda.gov)



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Agreement Number: \_\_\_\_\_  
State: Nebraska  
Watershed: Papio W-3

PROJECT AGREEMENT

BETWEEN THE

Papio-Missouri River Natural Resource District

AND THE

UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

RELATIVE TO: Rehabilitation in the Papio-Missouri Watershed, Site W-3 in Washington County, Nebraska.

THIS AGREEMENT, made on \_\_\_\_\_, by and between the Papio Missouri River Natural Resource District, called the Sponsor and the Contracting Local Organization; and the Natural Resources Conservation Service, United States Department of Agriculture, called the NRCS.

AUTHORITY: Watershed Rehabilitation Program, 16 U.S.C. 1012 (CFDA 10.916); Recovery Act 2009; 3 U.S.C. 1111; Reorganization Plan No. 2 of 1970; Executive Order 11541; the Chief Financial Officers Act of 1990 (P.L. 101-576); the Office of Federal Procurement Policy Act (41 U.S.C. Chap. 7); and the Federal Funding Accountability and Transparency Act of 1006 (P.L. 109-282).

WITNESSETH THAT:

WHEREAS, under the provisions of the Watershed Protection and Flood Prevention Act, the Sponsors and the NRCS agreed to a plan for the above watershed, which provides for installation of certain works of improvement; and

WHEREAS, Site W-3 of the Papio-Missouri Watershed needs to be rehabilitated to prevent the loss of life from catastrophic dam failure and flooding as well as to continue benefits of reduced flood damages; and

WHEREAS, the parties named above have a mutual interest in maintaining the benefits associated with the Papio-Missouri Watershed, and in developing methods for the rehabilitation of watershed infrastructure.

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsors, and the NRCS do hereby agree as follows:

- A. It is agreed that the following-described work (rehabilitation construction including land acquisition, easements, contracting, construction and vegetating) is to be completed at an estimated cost of **\$ 1,346,154.00**:

Rehabilitation of Site W-3 Papio-Missouri Watershed, as described in the Papio-Missouri Watershed Plan and Environmental Assessment, dated February 2009.

B. The Sponsors and Contracting Local Organization will:

1. Provide a portion (no less than 35%) of the costs of implementing the Rehabilitation Plan as described in Section A. This share is estimated to be **\$ 471,154.00.**
2. Accept financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the works of improvement described in Section A.
3. Designate an individual to serve as the Sponsor's liaison for this agreement.

Name: Marlin Petermann

Papio Missouri River Natural Resource District  
Address: 8901 S. 154<sup>th</sup> Street, Omaha NE 68138-3621

Phone: (402) 444-6222

4. Appoint a Contracting Officer and an authorized representative who shall have authority to act for the Contracting Officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the State Administrative Officer.
5. Provide certification that real property rights have been obtained for installation of watershed protection measures prior to advertising. Certification will be provided on Form NRCS-ADS-78, "Assurances Relating to Real Property Acquisition".
6. Be responsible for all administrative expenses necessary to arrange for and carry out the works of improvement described in Section A. These administrative matters include but shall not be limited to facilities, clerical expenses, and legal counsel, including the fees of such attorney or attorneys deemed necessary by the NRCS to resolve any legal matters.
7. Issue an invitation for bids, which is to contain the NRCS requirements including Form SCS-AS-43, drawings and specifications or equivalent, and Contracting Local Organization requirements when concurred in by the State Administrative Officer.
8. Receive, protect, and open bids. Determine the lowest qualified bidder, and with written concurrence of the State Administrative Officer, make award.
9. Secure written concurrence of the State Administrative Officer before approving the contractor's proposed workweek and time of day during which work will be performed, and before approving any changes in the approved workweek and time of day during which work will be performed.
10. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
11. Secure concurrence of the Government Representative before approving the construction schedule.

12. Secure the written concurrence of the State Administrative Officer before approving performance and payment bonds.
13. Secure written concurrence of the State Administrative Officer before approving subcontractors.
14. Secure the written concurrence of the State Administrative Officer before issuing the notice to proceed.
15. Secure written concurrence of the State Administrative Officer before approving a waiver or an adaptation of any of the safety provisions.
16. Secure written concurrence of the State Administrative Officer before giving consent for the contractor to (a) assign the contract in whole or in part or (b) assign any monies due or to become due under the contract.
17. Secure written concurrence of the State Administrative Officer before waiving the requirements for any material certification.
18. Secure concurrence of the State Administrative Officer before modifying the contract and the NRCS concurrence before issuing suspend and resume work orders; modify the contract and issue suspend and resume work orders when recommended by the NRCS.
19. Pay the contractor as provided in the contract. Request reimbursement from the NRCS for the agency's share of the costs of the initiative, not to exceed **\$875,000.00**. However, under no condition can the NRCS' share exceed 65% of the total costs of implementing the Rehabilitation Plan, or exceed 100% of construction costs, as described in Section A. Reimbursement shall be through the use of properly completed Form SF-270, Request for Advance or Reimbursement, which shall be submitted to the NRCS, State Administrative Officer, 100 Centennial Mall North, Room 152, Lincoln, Nebraska 68508-3866. The Form SF-270 must be certified by the Government Representative with the following statement signed and dated in the "This space for agency use" area located at the bottom of the form: "I certify that, to the best of my knowledge, this bill has not been previously submitted and that program accomplishments will meet planned activities under this agreement. I have examined and certify that this request is correct for payment." Request for reimbursement shall be no more often than every 30 days for the period this agreement is in force.
20. Request advance assistance funds from the NRCS pursuant to this agreement, as needed, to accomplish work items up to a maximum of a 30-day period. Advances shall be made to satisfy immediate disbursement needs on a monthly basis. Advances shall be requested through the use of properly completed Form SF-270, Request for Advance or Reimbursement, which shall be submitted to the NRCS, State Administrative Officer, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508-3866, Form SF-270 must be certified by the Responsible Official with the following statement signed and dated in the "This space for agency use" area located at the bottom of the form: "I certify that, to the best of my knowledge, this bill has not previously submitted and that program accomplishments will meet planned activities under this agreement. I have examined and certify that this request is correct for payment."



21. Comply with the provisions of the Debt Collection Act of 1996, as amended, 31 U.S.C. which requires federal agencies to convert from check payments to Electronic Fund Transfers (EFT). The Sponsor will contact the Miscellaneous Payment section of the USDA – National Finance Center (NFC) to request an EFT enrollment package. The telephone number is (800) 421-0323. The package will include a nine-digit Vendor Identification Number (VIN) and information to be completed by the financial institution of choice. The VIN must be included on all payment requests. Once completed, the enrollment package must be returned to the NFC. If a EFT number has already been set up by the sponsor no further act is needed.
22. Dispose of all claims resulting from the contract; secure prior written concurrence of the State Administrative Officer if the NRCS funds are involved.
23. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract awarded under this agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Contracting Local Organization, including any legal expenses. The Contracting Local Organization will advise, consult with, and obtain prior written concurrence of the NRCS on any such matters in which the NRCS could have financial interest.
24. Hold and save the NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Contracting Local Organization under this agreement or resulting from the work provided for in this agreement.
25. Secure written concurrence of the State Administrative Officer before terminating the contractor's right to proceed under the contract and declaring the contractor in default, and take such actions when requested to do so by the State Administrative Officer.
26. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of the NRCS, assign and transfer to the NRCS any or all claims, demands, and causes of action of every kind whatsoever which the Contracting Local Organization has against the contractor or his or her sureties.
27. Arrange for and conduct final inspection of completed works of improvement with the NRCS to determine whether all work has been performed in accordance with contractual requirements. Secure written concurrence of the State Administrative Officer before notifying the contractor of the acceptance of the job.
28. Upon completion and acceptance of all work, when provided by the terms of the contract, obtain a written release from the contractor of all claims against the Contracting Local Organization arising by virtue of the contract, other than claims in stated amounts as may be specifically accepted by the contractor.
29. Upon acceptance of the work from the contractor(s), assume responsibility for Operation and Maintenance (O&M), as per the O&M agreement, which upon its completion will be made part of this agreement.

30. Comply with Davis-Bacon and Service Contract Act contracts actions using Recovery Act funds as reference in Federal Acquisition Regulations (FAR) 52.222-6 – Davis-Bacon Act.
31. Retain all records dealing with the award and administration of the contract for three (3) years from the date of the Contracting Local Organization's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the three-year period, the records are to be retained until the litigation or the end of the three-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.
32. Comply with requirements and certifications of Federal Executive Order 11246, which is hereby made a part of this agreement by reference.
33. Comply with recipient reporting requirements set forth in Section 1512 of the Act.
34. Comply with Buy American Act using Recovery Act funds as reference in Federal Acquisition Regulations (FAR) 52.200.
35. Comply with Office of Management and Budget Circular A-133, June 24, 1997. This circular is also known as the Single Audit Act. This law requires state and local governments that receive \$500,000 or more in federal assistance funds to have a single audit made for that year. Conservation districts have been determined to be bodies of local government and must comply with the requirements of OMB Circular No. A-133.

C. The NRCS will:

1. Provide a portion of the costs of implementing the Rehabilitation Plan as described in Section A. This cost to the NRCS is estimated at **\$875,000.00**. However, under no condition can the NRCS' share exceed 65% of the total costs of implementing the Rehabilitation Plan, or exceed 100% of construction costs, as described in Section A.
2. Reimburse the Contracting Local Organization for the NRCS' share of the costs of the initiative upon the receipt and approval of properly completed, certified and documented Form SF-270, Request for Advance or Reimbursement, withholding the amount of damages sustained by the NRCS as provided for in this agreement.
3. Provide authorized assistance such as estimates of contract costs, length of contract period, results of tests and studies as available, construction inspection, site investigations, design and layout, and drawings and specifications.
4. Consult with the Contracting Local Organization in preparing the invitation for bids and awarding and administering the contract.
5. Provide the services of a Government Representative or Contracting Officers Technical Representative.
6. Provide the services of Government Inspectors, as required.
7. Designate the following individual to serve as the NRCS' liaison for this agreement:

Name: Stacy Modelski ( Engineering Staff)

NRCS- State Office-100 Centennial Mall North, Room 152  
Address: Lincoln, Nebraska 68508-3866

Phone: (402) 437-4041

D. It is mutually agreed that:

1. The State Administrative Officer may make adjustments in the estimated cost to the NRCS set forth in Section C.1 for constructing the works of improvement. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment is to change the cost sharing assistance to be provided by the NRCS as set forth in sub-section E.1. nor reduce funds below the amount required to carry out the NRCS' share of the contract.
2. The contract for constructing the work described in Section A. will not be awarded to the Sponsors, the Contracting Local Organization, or to any firm in which any Sponsor or Contracting Local Organization official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms.
3. Additional funds including interest properly allocable as construction costs as determined by the NRCS, required as a result of a decision of the Contracting Officer or a court judgment in favor of the contractor, will be provided in the same ratio as construction funds are contributed under the terms of this agreement. The NRCS will not be obligated to contribute funds under any agreement or commitment made by the Contracting Local Organization without prior concurrence of the NRCS.
4. The furnishing of financial and other assistance by the NRCS is contingent on the availability of funds appropriated by the Congress from which payment may be made and shall not obligate the NRCS upon failure of the Congress to appropriate funds.
5. The terms and conditions of this agreement are subject to modification by amendment duly executed by all parties, provided such modification is executed during the period this agreement is valid and remains in force.
6. In the event of default, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Contracting Local Organization and the NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
7. The NRCS may terminate this agreement in whole or in part if it is determined by the NRCS that the Sponsors or the Contracting Local Organization have failed to comply with any of the conditions of this agreement. The NRCS shall promptly notify the Sponsors and Contracting Local Organization in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by the NRCS under this termination shall be in accordance with the legal rights and liabilities of the NRCS, the Contracting Local Organization, and the Sponsors.

8. This agreement may be terminated at any time by mutual agreement of all parties providing 30 days advance written notice to the other parties.
9. This agreement may be temporarily suspended by the NRCS if the NRCS determines that corrective action by the Contracting Local Organization or the Sponsors is needed to meet the provision of this agreement. Further, the NRCS may suspend this agreement when it is evident that a termination is pending.
10. The NRCS, at its sole discretion, may refuse to cost share should the Contracting Local Organization, in administering the contract, elect to proceed without obtaining concurrence as set out in Section D. of this agreement.
11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.
12. The furnishing of the administrative and technical services by the NRCS as set out in Section E. is contingent upon the continuing availability of appropriations by the Congress from which payment may be made and shall not obligate the NRCS if the Congress fails to so appropriate.
13. The program or activities conducted under this agreement shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990. They shall be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, Subparts A & B), which provide that no person in the United States shall, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, marital or family status, or sexual orientation, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

This agreement is approved and hereby duly executed:

Papio Missouri River Natural Resource District

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This action authorized at an official meeting of:

Papio Missouri River Natural Resource District

\_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

at \_\_\_\_\_

State of Nebraska.

USDA, Natural Resource Conservation Service

By \_\_\_\_\_

Title: Stephen K. Chick, State Conservationist

Date: \_\_\_\_\_

## ATTACHMENT A - SPECIAL PROVISIONS

The cooperator agrees to comply with the following special provisions which are hereby attached to this agreement.

### I. Drug-Free Workplace.

By signing this agreement, the cooperator is providing the certification set out below. If it is later determined that the cooperator knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFS 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of sub-recipients or subcontractors in covered workplaces).

Certification:

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

- (1) The danger of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph 9a) that, as a condition of employment under the grant, the employee will --

- (1) Abide by the terms of the statement; and
- (2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(e) Notifying NRCS in writing, within ten calendar days after receiving notice under paragraph 9(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The cooperator may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

## **II. Certification Regarding Lobbying (7 CFR 3018) (Applicable if agreement exceeds \$100,000)**

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the cooperator, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The cooperator shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **III. Certification Regarding Debarment, Suspension, and Other Responsibility matters - Primary Covered Transactions. (7 CFR 3017)**

(1) The cooperator certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary cooperator is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

**IV. Clean Air and Water Certification (Applicable if agreement exceeds \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)**

The cooperator signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is \_\_\_\_\_, is not \_\_\_\_\_, listed on the Environmental Protection Agency List of Violating Facilities.

(b) To promptly notify the State or Regional Conservationist prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he/she proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(c) To include substantially this certification, including this subparagraph (c), in every nonexempt sub-agreement.

**Clean Air and Water Clause**

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The cooperator agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. sq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by NRCS.

(2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.



(4) To insert the substance of the provisions of this clause in any nonexempt sub-agreement, including this subparagraph A. (4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a sponsor, to be utilized in the performance of an agreement or sub-agreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collated in one geographical area.

#### **V. Assurances and Compliance**

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017, 3018, 3019, and 3052 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

#### **VI. Examination of Records**

Give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

## Cleveland, Martin

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**From:** Cleveland, Martin  
**Sent:** Tuesday, March 24, 2009 8:30 AM  
**To:** Cleveland, Martin  
**Subject:** FW: W-3  
**Attachments:** Nebraska ARRA Action Plan.xls

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**From:** Christensen, Douglas - Lincoln, NE [mailto:Doug.Christensen@ne.usda.gov]  
**Sent:** Tuesday, March 24, 2009 8:16 AM  
**To:** Cleveland, Martin  
**Subject:** RE: W-3

Martin,  
In order to get W-3 selected, we had a May 15 date for construction to begin. We knew that was ambitious but we had to compete nationally. Hope the attached plan documents that starting date and the urgency of the federal government to get ground broken. As far as the 120 day rule, our NHQ did say in a teleconference that they wanted much of the funds obligated by June and the sooner the better.  
Doug

# Nebraska - ARRA Action Plan

Objective

Last Updated as of 3/15/09

**Key deliverables/milestones**

Watershed Operations

1. Fact Sheets for each project
2. Funds obligated
3. Construction Completed

Rehabilitation

1. Fact Sheets for each project
2. Funds obligated
3. Construction Completed

Floodplain Easements

1. Easements Selected
2. Easements Acquired
3. Restoration plans Completed (development of the plans)
4. Restoration Complete

Task/Activity	Output	Start	End	Who	Comments	
<b>A. Planning</b>						
1	Watershed Rehabilitation ---Papio W-3---Overview	Submit Action plan to RAC	2/26/09	3/15/09	STC	Completed
2		Submit Plan to NHQ for signature	2/26/09	3/1/09	ASTC WR	
3		Plan is Signed/ Create Fact Sheet	3/1/09	3/1/09	Pub. Affairs	
4		Complete Design	3/15/09	4/30/09	State Engineer	
5		Obligate FA	4/30/09	5/15/09	ASTC WR	
1	Watershed Operations---Blackwood Creek---Overview	Finish Construction	5/15/09	9/1/10	Sponsor	
		NEPA EA	3/25/09	8/15/09	Env. Coord.	
		Complete Design	3/15/09	9/15/09	State Engineer	
		Obligate FA	9/15/09	10/15/09	ASTC WR	
		Finish Construction	5/15/10	9/1/10	Sponsor	
1	Floodplain Easements---Overview	Determine eligibility	3/9/09	3/27/09	ASTC Prog.	
		Make funding selections	3/27/09	4/3/09	ASTC Prog.	
		Provide option agreement	4/3/09	5/4/09	ASTC Prog.	
		Complete easement acquisition	5/4/09	12/3/09	ASTC Prog.	
		Complete restoration plan	12/3/09	12/30/09	ASTC Prog.	
		Obligate funds	12/30/09	9/30/10	ASTC Prog.	
<b>B. Implementation</b>						
<b>Communications</b>						
1	Watershed Rehabilitation ---Papio W-3	Distribute Fact Sheet	3/1/09	4/15/09	Pub. Affairs	
2		Review PA with Sponsors	4/30/09	5/15/09	ASTC WR	
3		Monitor PA with Sponsors	5/15/09	9/1/10	ASTC WR	
1	Watershed Operations---Blackwood Creek	Distribute Fact Sheet	3/1/09	4/15/09	Pub. Affairs	
		Review PA with Sponsors	9/15/09	10/15/09	ASTC WR	
		Monitor PA with Sponsors	10/15/09	9/1/10	ASTC WR	
1	Floodplain Easements (Will complete if any applications accepted)					
<b>Financial Management</b>						
1	Watershed Rehabilitation ---Papio W-3	Develop Project Agreement	4/30/09	5/15/09	ASTC WR	
2		Monitor PA and review billing	5/15/09	9/1/10	Financial Officer	
3		Deobligate any unused funds	8/15/10	9/1/10	Financial Officer	
1	Watershed Operations---Blackwood Creek	Develop Project Agreement	9/15/09	10/15/09	ASTC WR	
		Monitor PA and review billing	10/15/09	9/1/10	Financial Officer	
		Deobligate any unused funds	8/15/10	9/1/10	Financial Officer	
1	Floodplain Easements (Will complete if any applications accepted)					
<b>Technical Assistance</b>						
1	Watershed Rehabilitation ---Papio W-3	Complete Design	3/15/09	4/30/09	State Engineer	
1	Watershed Operations---Blackwood Creek	NEPA EA	3/25/09	8/15/09	Env. Coord.	
		Complete Design	3/15/09	9/15/09	State Engineer	
1	Floodplain Easements (Will complete if any applications accepted)					
<b>Partners</b>						
1	Watershed Rehabilitation ---Papio W-3 (Papio-Missouri NRD)	Review PA with Sponsors	4/30/09	5/15/09	ASTC WR	
2		Monitor PA with Sponsors	5/15/09	9/1/10	ASTC WR	
3		Review billing	5/15/09	9/1/10	Financial Officer	
1	Watershed Operations---Blackwood Creek	Review PA with Sponsors	9/15/09	10/15/09	ASTC WR	
		Monitor PA with Sponsors	10/15/09	9/1/10	ASTC WR	
		Review billing	10/15/09	9/1/10	Financial Officer	
1	Floodplain Easements (Will complete if any applications accepted)					
<b>C. Quality Control and Progress Monitoring</b>						
1	Watershed Rehabilitation ---Papio W-3	Submit design to Ft. Worth for review	4/15/09	4/30/09	State Engineer	
2		Monitor PA with Sponsors	5/15/09	9/1/10	ASTC WR	
3		Monitor PA and review billing	5/15/09	9/1/10	Financial Officer	
1	Watershed Operations---Blackwood Creek	Submit NEPA EA for review	8/15/09	9/1/09	Env. Coord.	
		Submit design to Ft. Worth for review	9/15/09	10/1/09	State Engineer	
		Monitor PA with Sponsors	5/15/09	9/1/10	ASTC WR	
		Monitor PA and review billing	5/15/09	9/1/10	Financial Officer	
1	Floodplain Easements (Will complete if any applications accepted)					

United States Department of Agriculture



Natural Resources Conservation Service  
P.O. Box 2890  
Washington, D.C. 20013

MAR 09 2009  
SUBJECT: PDM – Public Law 83-566 – Authorization of Federal Assistance  
Papio Creek W-3, Watershed Rehabilitation

TO: Stephen K. Chick  
State Conservationist, NRCS  
Lincoln, Nebraska

File Code: 390-11-15

This memorandum is to authorize Federal assistance in the installation of works of improvement, under the authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566), for the rehabilitation of Site W-3 of the Papillion Creek Watershed. Assistance should be in accordance with the terms, conditions, and stipulations included in Supplemental Subwatershed Work Plan Agreement Number 8 for the Papio Creek Watershed, as funds appropriated for this purpose are made available.

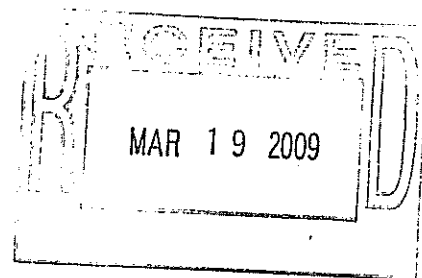
Please take the actions called for in the National Watershed Manual (NWSM), Section 505.16(a). Also, update the project information in POINTS, as well as your operations budget estimate and future obligations requests, as required by the NWSM, Section 507.31.

Copies of letters to your congressional delegation informing them of this authorization are attached. Please contact each member of your congressional delegations within 30 days with details on this project and funding status of the works of improvement. We suggest that you provide the local sponsors with the appropriate information regarding project status and projected annual funding needs.

A handwritten signature in cursive script that reads "Dave White".

Dave White  
Acting Chief

Attachments



cc: (w/o attachments)

Jim Nussle, Director, Office of Management and Budget, Washington, D.C.  
Diane E. Gelburd, Acting Regional Assistant Chief, Central, NRCS, Washington, D.C.  
Thomas W. Christensen, Deputy Chief for Programs, NRCS, Washington, D.C.  
Gus Jordan, Acting Director, Conservation Planning and Technical Assistance Division,  
NRCS, Washington, D.C.

MAR 17 2009

## Cleveland, Martin

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**From:** Barnes, Verlon - Omaha, NE [Verlon.Barnes@ne.usda.gov]  
**Sent:** Friday, March 20, 2009 11:35 AM  
**To:** Winkler, John; Petermann, Marlin; Cleveland, Martin  
**Cc:** Leinen, Chuck - Omaha, NE; Christensen, Douglas - Lincoln, NE  
**Subject:** W-3 Project Approved for Funding

John, Marlin, and Martin,

Good News!

I received word this morning that the W-3 Project has been approved for technical and financial assistance funding through the American Recovery and Reinvestment Act (ARRA).

I do also want to alert you to some of the expectations/requirements that are also coming along with this funding. From what I see so far, I don't believe that these expectations/requirements will be too difficult to address. Probably the key thing is that they are wanting to see these projects get accomplished as quickly as possible.

We have been instructed to "promptly and efficiently utilize ARRA funds to create jobs, stimulate economic growth, and provide environmental benefits in an accountable and transparent manner."

There are indications that special clauses/statements will be required for contracts and agreements to be funded through ARRA, but we haven't received the specific instructions.

Two-page color Fact Sheets are expected for all funded projects. The facts sheets are to contain photographs, maps, bullets, and narrative, including any specific and pertinent benefits (e.g. homes/business protected). I believe that NRCS will be responsible for the Fact Sheets. Nebraska NRCS Public Affairs Specialist Pat McGrane is already trying to plan to get some aerial photos.

We look forward to working with you on this project to get it accomplished.

Verlon Barnes, DC, Omaha