



1 **TO:** GOVERNANCE COMMITTEE  
2 **FROM:** EXECUTIVE DIRECTOR'S OFFICE  
3 **SUBJECT:** CNPPID ELWOOD RESERVOIR RECHARGE AGREEMENT AMENDMENT  
4 **DATE:** OCTOBER 29, 2018

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7 Elwood Reservoir is a 37,800 acre-feet (AF) reservoir located in Gosper County, Nebraska, just  
8 north of the village of Elwood, Nebraska. The reservoir was constructed in 1976 and is owned  
9 and operated by the Central Nebraska Public Power and Irrigation District (CNPPID) to augment  
10 irrigation supplies on the E-65 canal. The reservoir has historically been filled in the spring and  
11 fall and released water for irrigation from May through September. The reservoir is unlined and  
12 has a high seepage rate. Due to the reservoir's high seepage rate, the Program has entered into a  
13 series of Water Service Agreements (WSAs) with CNPPID to divert excess flows into the  
14 Elwood Reservoir for intentional groundwater recharge beginning in 2015. In 2017, the Program  
15 executed a longer three-year agreement that expires at the end of 2019. The 2017 agreement  
16 limited the amount of water billed to the Program to 8,000 AF. That agreement was subsequently  
17 amended to increase the volume cap to 12,000 AF. CNPPID recently notified the EDO that more  
18 than the 12,000 AF cap would be available in 2018. This, in combination with recent Elwood  
19 scoring analyses, led the EDO and CNPPID to develop a Second Amendment to the 2017  
20 Agreement.

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22 CNPPID estimates a future maximum diversion cap of 30,000 AF for groundwater recharge in  
23 Elwood reservoir based on assumed future operations of the reservoir<sup>1</sup>. The Elwood WSA  
24 dictates that all water pumped into Elwood Reservoir will be divided into a 50% share to the  
25 Program and 50% share to Tri-Basin NRD and/or the State of Nebraska. Accordingly, the  
26 Program will typically have the ability to purchase less than 15,000 AF annually. However, the  
27 Program can purchase more if Tri-Basin/State decide to waive their 50% share for any reason.

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29 The attached Amendment 2 to the 2017 WSA modifies the Agreement to increase the maximum  
30 amount of water that can be billed to the Program from 12,000 AF to 30,000 AF. It is unlikely  
31 that the Program will ever have the opportunity to acquire a full 30,000 AF but increasing the  
32 cap will provide the Program with the flexibility to purchase additional water should Tri-  
33 Basin/State decide to waive their share and prevent the need to amend the agreement in the  
34 future to accommodate incrementally higher diversion caps.

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<sup>1</sup> Email communication with Cory Steinke on 5/18/2018

**AMENDMENT NO. 2 TO THE  
WATER SERVICE AGREEMENT-  
GROUNDWATER RECHARGE FROM EXCESS FLOWS BETWEEN  
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,  
NEBRASKA COMMUNITY FOUNDATION  
AND  
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

THIS AMENDMENT NO. 2 made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **The Central Nebraska Public Power and Irrigation District**, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, hereinafter referred to as "Central" and the **Nebraska Community Foundation (representing all signatories to the Platte River Recovery Implementation Program)**, a Nebraska non-profit corporation, with its principal office located at 8100 South 15<sup>th</sup> Street, Suite A, Lincoln, Nebraska 68512, hereinafter referred to as "Foundation," and the **Platte River Recovery Implementation Program**, with its principal office located at 4111 4th Avenue, Suite 6, Kearney, Nebraska 68845, hereinafter referred to as "Platte Program," (jointly referred to as "Parties" and individually as "Party."

WITNESSETH:

WHEREAS, Central is the owner of the Elwood Reservoir as shown on Exhibit A; and

WHEREAS, in October, 2018 Central filed for an order from the Nebraska Department of Natural Resources (hereinafter "DNR") granting a "Temporary Permit to Appropriate Water for Groundwater Recharge on the E65 Canal, Elwood Reservoir, and Cottonwood WPA" (hereinafter "Appropriation"); and

WHEREAS, the Foundation and the Platte Program desire for Central to provide groundwater recharge in Elwood Reservoir for purposes of enhancing Platte River stream flows; and

WHEREAS, on October 20, 2017 the Parties entered into a Water Service Agreement for Groundwater Recharge from Excess Flows using Elwood Reservoir (hereinafter "Agreement");

WHEREAS, on January 8, 2018 the Parties entered into an Amendment No. 1 to the Agreement to amend the terms and provisions of the Agreement by increasing the Total Amount Diverted from 8,000 acre feet to 12,000 acre feet.

WHEREAS, the Parties mutually desire to amend the terms and provisions of the Agreement by increasing the Total Amount Diverted from 12,000 acre feet to 30,000 acre feet.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained and the terms and conditions hereinafter set forth, it is hereby covenanted and agreed:

1. Section 1(a) of the Original Agreement is hereby amended to read as follows:

During the term of this Agreement, Central will provide the Platte Program and Tri-Basin/State with groundwater recharge via seepage through the E65 Canal and Elwood Reservoir for the purposes described above. That part of the Total Amount Diverted that is pumped into Elwood Reservoir shall be divided into a 50% share to the Platte Program and a 50% share to Tri-Basin/State. The remainder of the Total Amount Diverted that is released into the E65 Canal shall be credited to Tri-Basin/State.

The water billed to the Platte Program shall not exceed 30,000 acre feet unless agreed to by the Platte Program in writing. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume located at milepost (MP) 2.8 (including water diverted and not available for recharge because of evaporation). The portion of the Total Amount Diverted that is delivered to Elwood Reservoir will be estimated using pump performance curves developed by Central and/or annubar measurements, with all remaining diversions passing the MP 2.8 flume considered diversions for the E65 Canal. The Total Amount Diverted will be adjusted, as appropriate, by subtracting any deliveries or releases made by Central from the E65 Canal, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season. The non-irrigation season will begin when Central stops releasing water into sections of the E65 Canal for irrigation and end when Central begins releasing water into sections of the E65 Canal for irrigation, as determined by Central.

2. In the event any terms and provisions of this Amendment are construed to conflict with the terms and provisions of the Original Agreement, the terms and provisions of this Amendment shall prevail. In all other respect, except as herein amended, the terms and provisions of the Original Agreement shall remain in full force and effect. This Amendment shall have the same force and effect as if incorporated in the Original Agreement, and shall take precedence thereover.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 on the date first stated above.

NEBRASKA COMMUNITY FOUNDATION,

By \_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships

PLATTE RIVER RECOVERY IMPLEMENTATION  
PROGRAM – Office of the Executive Director

By \_\_\_\_\_  
Jason Farnsworth  
Executive Director

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

By \_\_\_\_\_  
Don D. Kraus  
General Manager