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# **LR 168**

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**Interim study of the purposes, uses, and utility of  
the Riparian Vegetation Management Program**

**Staff Report to the Agriculture Committee**

**December 31, 2025**



# **LR 168**

## **Examine Purposes, Uses, and Utility of the Riparian Vegetation Management State Aid Program**

### **Staff Report to the Agriculture Committee**

#### **Agriculture Committee Members**

Senator Barry DeKay, Chair

Senator Teresa Ibach, Vice Chair

Senator Ben Hansen

Senator Rick Holdcroft

Senator Kathleen Kauth

Senator Dan McKeon

Senator Jane Raybould

Senator Jared Storm

Report prepared by Rick Leonard, Agriculture Committee Research Analyst

#### **LEGISLATIVE RESOLUTION 168**      Introduced by Senator Teresa Ibach

The purpose of this resolution is to propose an interim study of the purposes, uses, and utility of the Noxious Weed and Invasive Plant Species Assistance Fund and associated grants awarded pursuant to the Noxious Weed Control Act. The study shall include a review of the history and accomplishments of riparian vegetation management projects funded in whole or in part through grants awarded under the act. This history shall include:

- (1) A listing of recipients of grant awards;
- (2) An overview of management objectives of projects awarded grants under the program;
- (3) An overview of cooperating and participating state, federal, and local governmental entities or private entities providing cost-share funds, in-kind contributions, or other contributions;
- (4) An overview of landowner participation; and
- (5) A review of the role of the Riparian Vegetation Management Task Force.

The study shall identify and prioritize riparian vegetation management projects. Such identification and prioritization may include, along with other relevant considerations, the value and urgency of vegetation management projects to: Maintain Nebraska's compliance with obligations on compact streams and the Platte River Recovery Implementation Program; maintain stream conveyance for the efficient movement of water and to minimize consumptive losses; address riparian vegetation congestion in streambeds as a factor contributing to the frequency and severity of incidents of flooding; and mitigate degradation of wildlife habitats. The study shall also identify potential funding sources for riparian vegetation management projects.



# Contents

	Page #
Background: Noxious Weed Control Act and Riparian Program . .	1
Noxious Weed Control Act . . . . .	1
Weed Management Areas . . . . .	2
Noxious Weed and Invasive Species Assistance Fund . . . .	3
LB 701: Riparian Vegetation Management Initiative . . . . .	4
Riparian Vegetation Management Task Force . . . . .	4
Riparian Grant Program . . . . .	5
Table (Legislative and Funding History) . . . . .	6
Overview of Projects . . . . .	8
Riparian Vegetation Management Grant Recipients . . . . .	8
Cooperator Funding . . . . .	8
Landowner Participation . . . . .	9
State Interest and Responsibility . . . . .	10

Appendix items

Summary of Funding Sources for NDA Riparian Program Grant Awards



# **Background: Noxious Weed Control Act and the Riparian Vegetation Management Initiative**

LR 168 is introduced in part to review the history and accomplishments of the Riparian Vegetation Management program administered by the Department of Agriculture. Since the riparian program is embedded within the Noxious Weed Control Act, this section reviews relevant portions of that act as well as key amendments to the act that created the riparian vegetation management initiative, including its associated state aid program. This section will also summarize the grant program's funding history.

## **Noxious Weed Control Act**

The Noxious Weed Control Act (§2-945.01 through §2-968) declares a duty of landowners and managers to manage noxious weeds occurring on their property to avoid spread to nearby properties. The primary function of the Act is to establish a regulatory infrastructure to enforce this landowner responsibility. Under the Act, each county is to establish a weed control authority, either as a separate entity or as a function assumed by the county board, and to employ a weed supervisor. As authorized and as frequently occurs in practice, the county weed supervisor may be a shared position serving more than one county.

County weed control authorities are endowed under the Act with certain authorities to compel landowner compliance with the duty to control noxious weeds. The Act allows control authorities to give notice to private and public landowners and to order abatement, and to further seek imposition of civil fine for failure to address occurrences of noxious weeds. Control authorities may also exercise a right of entry on private lands to carry out control activities when the landowner has failed or refused to take control measures and obtain reimbursement for control costs, including by means of special tax assessment levied against the property if necessary.

The Noxious Weed Control Act assigns duties to the Department of Agriculture to assist, coordinate and oversee county noxious weed control programs. Briefly, the Department of Agriculture carries out the following core responsibilities:

- Designates noxious weeds and appropriate control measures
- Monitors county noxious weed authority implementation of the act and intervenes when counties fail to adequately carry out program
- Convenes a Noxious Weed Control Advisory Committee to advise the Department in implementation of the Act
- Provides educational training and technical assistance in weed control
- Conducts annual surveys of noxious weed infestation levels
- Disseminate information and conduct public education campaigns
- Perform control activities on public lands

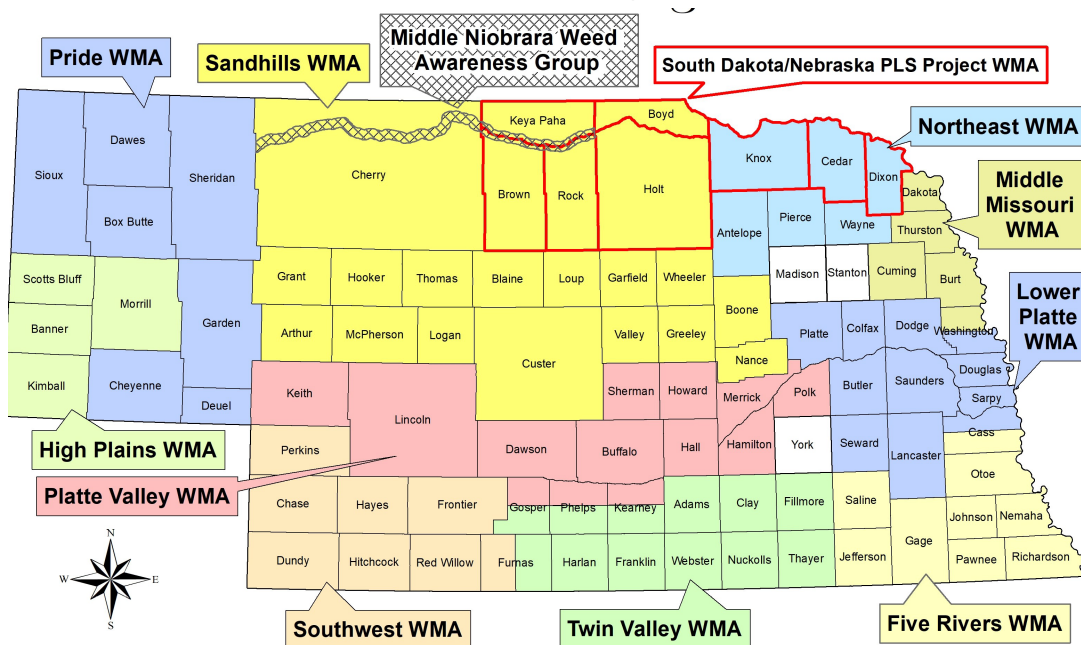
Although the regulatory backup is available to help assure active local efforts in noxious weed control, an important element of the program remains one of providing training and technical

assistance to, and consultation with, local control authorities, weed control organizations and both public and private land managers. There has been an increasing utilization of other non-regulatory approaches that are discussed below.

### Weed Management Areas:

Since 1998, county weed control authorities have organized themselves into regional groupings referred to as Weed Management Areas (WMA's) forming partnerships with public and private land managers, wildlife agencies and other state, federal and local entities with resource management interests and responsibilities. Occasionally, the boundaries of a WMA may overlap state lines. There are currently 12 WMA's active in all but a handful of areas in the State.

### Nebraska Weed Management Areas



As private associations, WMA's themselves are not endowed with regulatory authority and may not compel membership in the organization or the cooperation of private landowners. WMA's rely primarily on educational engagement of the public and the voluntary cooperation of landowners for access to infested areas, although WMA projects may be assisted through regulatory actions of participating local weed control authorities. WMA's are not precluded from having full time, professional staffing, but in practice are rarely employing entities. Typically WMAs administrative functions and physical activities are carried out with labor and staffing contributed by participating entities and individuals, and with contracted service providers.

Weed Management Areas have emerged as a key infrastructure for coordinating response to invasive vegetation problems that manifest over large areas. The WMA organization provides a



unique structure for sharing of expertise and manpower, and for marshalling internal and external resources for collaborative weed control projects. Although mapping, planning, and education are key components of WMA activities, WMA's are most active in organizing eradication projects to address high-priority weed infestations and vegetation management problems. Historically, the catalyst for forming a WMA may have been to carry out a specific species control or vegetative management project, WMA's that have formed in Nebraska have been durable entities existing more or less perpetually to coordinate response to regional noxious and invasive vegetation management issues as they occur now and into the future.

#### Noxious Weed and Invasive Plant Species Assistance Fund (LB869):

The Department of Agriculture has long encouraged and facilitated the formation of weed management areas. With the enactment of LB 869 in 2004, the Legislature enhanced resources and authorities available to the Department to stimulate the formation of weed management areas and to provide direct state aid assistance for projects led by WMAs and other weed control entities. A key element of the bill was the creation of the Noxious Weed and Invasive Plant Species Assistance Fund (§§2-958.01 – 2-958.02) and authorized expenditure of the fund in the form of targeted state aid.

Specifically, the program authorizes the director to solicit and receive applications by local control authorities and weed management entities for assistance and, in consultation with the advisory committee created under section 2-965.01, award grants for the following eligible purposes:

- (a) To conduct applied research to solve locally significant weed management problems;
- (b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;
- (c) To encourage the formation of weed management entities;
- (d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;
- (e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;
- (f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director
- (g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and
- (h) To conduct educational activities.

The Legislature has aided WMA-led eradication projects in other ways within the regulatory program as well:

- LB 869 also inserted new authority for temporary emergency noxious weed designations.

Under this authority, the Director may designate a plant as noxious for a period of 18 months. After this 18-month period, the noxious designation remains only if the plant meets criteria, and the Director follows protocols, for permanent designation.

- In 2006, the Legislature expanded statewide an authority that had been previously limited to control authorities within a metropolitan county for right of entry to lands where infestations occur without the prerequisite of individual notice that is required under §2-955 of the Act. This authority, introduced as LB 1081, is confined to be available only if the control authority has published general notice of an eradication project for at least four consecutive weeks prior to its commencement. Additionally, landowners are not subject to actions for non-compliance with weed laws discovered upon such entry unless the landowner is first served individual notice.

The combination of these authorities is intended to assist the planning and execution of largescale and intensive eradication projects organized by WMA's and other weed management entities. An emergency declaration brings the target plant or plants within the regulatory umbrella of the Act, including imposing a duty of landowners to control. The right of entry provides a backstop to help encourage the voluntary participation of blocks of landowners to avoid less effective results if eradication had to be delayed or skipped on segments of the target control area while the normal regulatory mechanisms to compel cooperation or to gain entry could be completed. In practice, however, there has been little need to invoke these authorities as WMA projects have enjoyed a large measure of public and landowner cooperation. Nonetheless, the statutory changes do present advantages to landowners for cooperating with WMA projects. They offer an attractive option to landowners for meeting their duty to control target species on their property for which they might otherwise be subject to regulatory compliance, often at no cost or a fraction of the cost the landowner would incur if forced to pay for control measures on their own.

## **Riparian Vegetation Management Initiative (LB701 – 2007)**

As part of a comprehensive water management legislation enacted in 2007, inspired in large part by litigation by the state of Kansas alleging Nebraska's violation of streamflow delivery obligations to the Kansas border under the Republican River Compact, the Legislature assigned new tasks to the Department of Agriculture and to the WMA infrastructure now in place. With the creation of the riparian state aid program under LB 701, the Legislature linked the noxious weed program and vegetation management as an element of water management.

### **Riparian Vegetation Management Task Force**

In addition to the grant program, LB 701 simultaneously launched a study and planning effort to better understand the impacts of invasive plants and other congestive vegetation on stream flow and conveyance and to arrive at recommended policies and activities to mitigate a growing invasion of exotic plants. Sections 1 & 2 of LB 701 created the Riparian Vegetation Management Task Force for that purpose charged the following duties:

- Develop and prioritize vegetation management goals and objectives;
- Analyze the cost-effectiveness of available vegetation treatment; and
- Develop plans and policies to achieve such goals and objectives.

The Task Force submitted interim reports to the Governor and the Legislature in 2008 and 2009 and the Department of Agriculture submitted a final report on behalf of the Task Force in September, 2015.

LB 701 originally terminated the Riparian Vegetation Management Task Force on July 1, 2009 but twice extended the sunset of the task force eventually to July 1, 2015. In 2016, the Legislature reestablished the Task Force without a sunset date with enactment of LB 1038. Membership on the task force includes:

- Surface water project representatives for each fully appropriated or over appropriated river basins
- Surface water project representative for non fully or over appropriated river basins
- Representatives from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska
- Three representatives nominated by Nebraska Association of Resource Districts
- Two representatives nominated by the Nebraska Weed Control Association
- One riparian landowner from each congressional district
- One representative of the Nebraska Environmental Trust
- Members of the Legislature who serve as nonvoting members

The legislation directs that the Task Force in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. The Task Force also advises the Director of Agriculture on the disbursement of riparian vegetation management grants.

### Riparian Vegetation Grant Program:

Sections 3 & 4 of LB 701 created new authority for the Department of Agriculture to receive applications and award grant funding to projects addressing invasive and congestive vegetation within the stream channel and immediately adjacent riparian zones of streams designated as fully and over appropriated. LB 701 assigned initial preference to eligible projects located on streams that are subject to interstate compact.

This authority is statutorily assigned as a distinct subcategory of the of the Noxious Weed and Invasive Species Assistance Fund and is located at §2-958.02(4). Eligible projects are those that have as their primary objective improving conveyance of stream flow in natural streams, i.e. clearing of obstructing vegetation in the channel and adjacent overflow areas. However, it was anticipated that such projects may have other benefits, including reducing consumptive losses to invasive vegetation colonizing streambeds and adjacent riparian areas, reducing the propensity for lowland flooding, improving water quality and improving fishery and riparian habitats. Initially,

grants were available only to weed management entities, local weed control authorities, and NRDs whose territory includes one or more fully appropriated or over appropriated river basins.

LB 701 stated legislative intent to appropriate \$2 million annually for the state aid component of the riparian vegetation management program. For each of FY's 2007-08 and 2008-09, LB 701A appropriated \$2 million general funds. In the following biennium, the \$2 million annual funding target was achieved by directing the Department of Agriculture to apply for grant funding through the Nebraska Environmental Trust and a federal program. While the act has continuously retained an intent to appropriate a target level of funding annually, and the riparian vegetation management effort had no defined endpoint, it was anticipated that after initial clearing of invasive and congestive vegetation, the effort could potentially scale back to a maintenance level.

After the first four years, the Legislature's commitment of funding has varied, seldom matching the funding intent of the Act. The following table provides a funding history for the fund and summary of revisions relating to authorized use of state aid provided through the fund from the program's inception through the current budget biennium.

### **Riparian Vegetation Management Grant Program Legislative and Funding History**

The Noxious Weed & Invasive Plant Species Assistance Fund was created by enactment of LB 869 in 2004 (codified at §2-958.02) to fund grant assistance to local weed control authorities and other weed control entities to address special noxious weed problems, to timely address introductions of new invasive species, and for research and demonstration of innovations in weed control.

- In 2007, the Legislature enacted LB 701 which created the Riparian Vegetation Management Task Force to study noxious and invasive weed problems unique to riparian areas. As part of this initiative, the grant fund under §2-958.02 was simultaneously amended to insert new subsection (4) creating a subcategory of grants exclusively for projects that address invasive riparian vegetation issues. The funding was limited to projects on fully appropriated streams with priority given to streams that were subject to interstate compact (i.e. Republican River). LB 701 inserted legislative intent to appropriate \$2 million annually for riparian vegetation projects. \$2 million general funds in each of FY 2007-08 and FY2008-09 were appropriated via LB 701A
- In 2009, the Legislature amended §2-958.02 to direct the Department of Agriculture to apply for grants from the Nebraska Environmental Trust and a federal grant program to fund the riparian vegetation grant program. While the legislative intent to appropriate \$2 million annually remained, it was intended that the grant funding would at least temporarily replace general funds. For FYs 2009-10 and FY 2010-11, the grant program was fully funded with acquired grant funding. No state general funds were appropriated.
- In FY 2011-12 through FY 2015-16, the \$2 million appropriations intent remained, but the budget bills only partially restored general fund appropriation to:
  - \$275,000 during FY's 2011-12 & FY2012-13
  - \$373,918 for FY's 2013-14 & 2014-15.
  - \$420,000 for FY2015-16
- In 2016, LB 1038 reauthorized the Riparian Vegetation Management Task Force and revised the grant program to remove the requirement that funding was available only in designated fully

appropriated streams but kept that priority was to be given for projects on compact streams. The riparian specific provision of the Noxious Weed and Invasive Species Assistance grant authorization located at §2-958.02(4) did initially expire in 2013, although grant funding for riparian vegetation management purposes continued under the broader grant authority in that section. LB 1038 removed the sunset on the riparian specific grant provisions. LB 1038 also reestablished the legislative appropriation intent at \$1 million annually. LB 1038A appropriated an additional \$1 million general funds for each of FYs 2016-17 & 2017-18.

- In FY's 2016-17 through FY2020-21, the \$1 million intent remained. The budget bills actually appropriated the following amounts:
  - \$420,000 for FY2016-17, (plus \$1 million general fund from LB1038A for a total of \$1,420,000)
  - \$475,000 For FY2017-18 (plus \$1 million general fund from LB1038A for a total of \$1,475,000)
  - \$475,000 for FY2018-19.
  - \$456,000 for FYs 2019-20 & FY2020-21
- During the 2022 session, LB 805 expanded the areas in which grant funding could be applied to include tributary streams and additional areas within the floodplain to allow work to prevent seed sources from recolonizing the main stream. LB 805 also increased legislative intent to appropriate \$3 million annually. The accompanying A-bill, LB 805A, initially appropriated an additional \$2 million general funds (\$706,000 was already included in the state mainline budget) each year of the current biennium (FY2022-23 and FY2023-24) but was amended to instead utilize \$2 million federal ARPA funds each year of the biennium. \$2 million of ARPA funds were utilized FY2022-23. It was later determined that ARPA funds could not be used. The funding remaining for FY2023-24 was \$706,000 general funds included in the mainline budget bill.
- LB 218 advanced by the Ag Committee would have increased the legislative intent to appropriate to \$6 million annually. For FY2024-25, the mainline budget continued baseline funding of \$706,000. LB 218A proposed additional appropriations of \$3,000,000 General Funds for FY2024-25 & \$5,294,000 general funds for FY2025-26. LB 218 and LB 218A were not enacted leaving only the \$706,000 baseline general fund appropriation from the mainline budget in place for each year of the current biennium. .

The Department awarded \$706,000 grant award the first year, but in June, 2024 announced it would not award grant funding during the 2<sup>nd</sup> year. The withholding was related to efforts to free general funds government wide for property tax relief. During the special session, the Governor's property tax and related budget proposals included elimination of the 2<sup>nd</sup> year general fund appropriation for the riparian vegetation program. The governor's recommendation was not included in any legislation enacted during the special session.

- For FY25-26 and FY26-27, the Governor's budget recommendations proposed eliminating funding earmarked for the riparian vegetation program as one of many government-wide spending reductions to reconcile an anticipated general fund shortfall. The final enacted budget for FY's 25-26 and 26-27 reduced the general fund appropriation intended for riparian vegetation program grants by half, from the previous \$706,000 / yr to \$353,000 / yr. For FY25-26, the Department advertised for applications and awarded the funding available to three project applications. \$353,000 remains budgeted for grant awards for FY 26-27 but the Department's budget request proposes to not expend any funds for this purpose.

# Overview of Riparian Vegetation Management Projects

LR 168 directs the Agriculture Committee to compile information regarding riparian vegetation management state aid funded activities that have occurred under the riparian initiative. Specifically, the resolution requests that the following be included:

- (1) *A listing of recipients of grant awards;*
- (2) *An overview of management objectives of projects awarded grants under the program;*
- (3) *An overview of cooperating and participating state, federal, and local governmental entities or private entities providing cost-share funds*
- (4) *An overview of landowner participation;*

## Riparian Vegetation Management Grant Recipients and Management Objectives

The Riparian Vegetation Management Task Force publishes an annual report which is accessible at the Department of Agriculture's website pages devoted to the riparian program [<https://nda.nebraska.gov/rvmtf>]. The task force reports list applicants for funding, the amount requested and the amount awarded. For each applicant, the task force provides a description of the project objective and general information about how resources gathered for the project were to be expended.

This report only summarizes information following the reauthorization of both the Riparian Vegetation Management Task Force and the associated grant program which were initially terminated in 2013 but reauthorized by LB 1038 enacted in 2016. Records of grant awards and project details prior to that time are difficult to recover. Additionally, the riparian program initially focused efforts primarily on initial streambed clearing projects with utility in meeting the state's Republican River Compact obligations, to habitat restoration in the central Platte to implement agreements for the relicensing of Kingsley Dam, and to augment water availability and delivery in fully and over appropriated streams. The riparian program since its reauthorization has adopted a more statewide focus. Although projects continue in waterways that were of immediate concern when the program was first enacted, efforts in many areas have advanced into maintenance phases.

Since FY 2016/17, there have been 47 projects awarded funding. Grant awards were made in each fiscal year excluding FY 2024/25. All but five of the applicants have been weed management areas including coalitions of 2 or more weed management areas. Two recipients were Natural Resource Districts and three were Resource Conservation and Development Councils. A number of weed management areas have been recipients over multiple years reflecting that the riparian vegetation management programs they organize are multi-year and ongoing.

## Cooperator Funding

Included in the appendix documents to this report is a staff prepared document, "Summary of Funding Sources for NDA Riparian Grant Awards (FYs 2016/17 through 2025/26)". The document includes a spreadsheet table listing of all funding sources for riparian vegetation management projects that have been supported in whole or in part through state aid assistance provided through

the riparian grant program. Only those applications that were awarded funding from FY 2016/17 through the current FY2025/26 grant cycles as itemized in annual reports of the Riparian Vegetation Management Task Force are included. The table organizes these projects by fiscal year and then by the applicant/sponsor, typically a weed management area.

For each project, the table includes a column for the actual amount awarded. Information inserted in all other columns, including committed funding from other cooperating entities in addition to NDA grant funding, is taken from the copies of applications provided by the Department of Agriculture when available and in some cases from information provided by applicants from their records. The table includes a column for the total anticipated cost of the project as indicated by the application and also includes a column for the percentage of funding for the anticipated cost of the project to be supported by NDA grant funds. For the six shaded rows, information was not available to determine a total projected cost from the application or other records. In those cases, a percentage of the total cost anticipated to be funded with NDA grant funds at the time of the application was not calculated and is omitted, although known monetary contributions from other funding partners may be shown.

The table includes two "Total" rows. The top total row is a sum of all the columns in the table excluding the "Total Project Cost" column. For the "NDA Grants as % of total cost" row, the columns "Total Project Cost", "NDA Grant Requested" and "NDA grant as a % of total cost" columns, excludes information from the 6 projects for which the total project cost was not able to be determined.

For the 41 projects for which it was possible to calculate the riparian grant contribution to the total project cost, NDA grants requested averaged 61.8% of the anticipated project cost and ranged from 15.5% to 100% of projected project costs. Total NDA grant requests of \$9.45 million were to be matched with \$5.94 million contributed by other funding partners. The leading source of cooperator funding other than the NDA grant program was the Nebraska Environmental Trust which contributed \$2.05 million for 16 separate projects during the period. The next leading source of external funding is the Platte River Recovery Implementation Program [<https://platteriverprogram.org/about/program-details>] which has contributed \$1.7 million. Over \$860 thousand has been contributed by natural resource districts. Other notable funding supplementing NDA grant funds have been contributed by WMA's, the Corps of Engineers, and the Nebraska Game and Parks Commission. In some cases, NDA grant funds are instrumental in leveraging other grant sources which may require or give preference to applications that provide matching funds.

The data contained in the table only shows actual monetary contributions from third party entities applicants for NDA riparian grants documented as committed to the project. The table excludes the value of in-kind contributions that may have been contributed. It would not be uncommon for project partners to donate the use of equipment and staff time which are not reimbursed by the project sponsors from NDA grant funds or any other funding source but that reduce the overall cost of the project.

### Landowner Participation

LR 168 asks the Committee to examine the extent to which landowner assessments have underwritten the costs of projects for which NDA grant funding was obtained. The Summary of

Funding Sources table does include a column for landowner cost share. Nine of the sponsors of riparian projects receiving NDA grants reported that the project would be partially funded through assessments charged to the landowners. These projects in total anticipated collecting just under \$100,000 dollars in cost share assessments. This represents only a relatively miniscule contribution to the total anticipated costs of projects receiving NDA grant funds.

Apart from contributing through cost share assessments landowners have participated in other ways, including providing equipment and locations on their property to dispose of vegetation such as trees removed from the nearby streambed and adjacent riparian areas. Long term control of invasive vegetation and optimizing the benefits for habitat restoration sometimes involves landowner permission for reseeding and other efforts in cleared areas to restore native vegetation. Once initial clearing of infestations is completed, landowners may assume greater responsibility for addressing isolated recurrences. Thus, the success of systemic programs of riparian vegetation management relies heavily on the cooperation of private landowners.

### State Interest and Responsibility

As discussed early in this report, control of noxious weeds is a landowner responsibility assigned by the Noxious Weed Act. During debate on legislation related to the riparian program, the question is sometimes raised whether activities utilizing public funds to treat or remove vegetation from private properties bordering on streams is in effect a subsidy of private landowners.

There are a number of rationales for the public sector, including the state of Nebraska, to have a role in riparian vegetation management, even when public investments in management activities occurs on private property. Some of the more prominent arguments include:

- State obligations of interstate compacts and agreements – Much of the impetus for concentrated efforts at riparian vegetation management are to meet the responsibilities of the state under compact agreements such as the Republican River Compact and the Platte River Recovery Implementation Program. Riparian vegetation management to maintain and improve the capacity of streams to convey water efficiently and to avoid consumptive losses to invasive and congestive vegetation are closely related to state obligations under interstate agreements. Additionally, riparian vegetation management plays an increasingly useful role in helping the state carry out its responsibility in managing fully and over appropriated streams.
- Gary vs. Nebraska Department of Natural Resources -

As part of a package of water management tools to address litigation by the state of Kansas alleging Nebraska to be in violation of streamflow delivery obligations under the Republican River Compact, LB 701 included provisions that authorized NRD's in the Republican River valley to issue bonds to fund river flow augmentation projects. The legislation further authorized NRD's to levy a special property tax to back the bonds. The proceeds of the bonds could be used for various purposes, including to purchase ground and surface water rights, incentives to retire irrigated acres, and for vegetation management to mitigate impaired conveyance and to reduce nonbeneficial consumptive losses due to invasive and congestive vegetation.



This provision of LB 701 was challenged as being in conflict with Article VIII, Sect 1A of the Nebraska Constitution which prohibits the levy of a property tax for state purposes. In *Gary v. Nebraska Dept. of Natural Resources*, 277 Neb. 149 (2009), the Nebraska Supreme court found in favor of plaintiffs (taxpayers of the NRD districts objecting to the property tax levy authorized by LB 701), reasoning that the objectives of the bond and levy authority were primarily for meeting the state's responsibilities under the Compact and in effect levied a property tax for a state purpose.

It is acknowledged that there is an intermingling of state, local and even private purposes for conducting riparian vegetation management projects. Garey does not preclude local governments and individual landowners from bearing costs of riparian vegetation management. However, Garey does suggest that where such programs are heavily integral to achieving state water management responsibilities and policies, and perhaps other state interests such as wildlife management, there is a constraint on the authority of the state to exclusively assign the costs of such programs to local taxpayers and private landowners.

- Riparian vegetation issues are often an externality of water development –

Water control and impoundment for irrigation, flood control, recreation and agricultural and urban withdrawals have greatly altered streamflow characteristics. Water management infrastructure is facilitated through direct state investments and state water policies. Changes in streamflow characteristics, such as altered flood regimes and reduced low flows, negatively impact native riparian vegetation by causing water stress and reducing the disturbance needed for their regeneration, while favoring invasive species that are better adapted. Reduced flood frequency and magnitude, for example, leads to channel narrowing and island stabilization, contributing to a decline in species that depend on periodic flooding for recruitment, allowing drought-tolerant and often invasive species to colonize new areas. Thus, it is somewhat unfair to attribute the occurrence of nuisance riparian vegetation to landowner negligence when its widespread occurrence is largely a consequence of upstream impoundments and diversions.

- There goals of riparian vegetation management would be difficult to achieve through regulatory mechanisms alone -

While a handful of species of invasive vegetation that colonize streambeds and riparian zones are designated noxious weeds, many of the projects involve removal of invasive plants, trees and other woody vegetation, and other congestive vegetation that are not designated noxious and thus do not trigger the landowner obligation of the Noxious Weed Act. Furthermore, the duties assigned to landowners by the Noxious Weed Act have historically been tied to the purpose of controlling species that impair agricultural productivity. Agricultural landowners have both an economic self interest in controlling such species and typically have the means of treating infestations where they occur on their property. Riparian vegetation of concern often occurs in locations that have little value for agriculture, that are harder to reach and may require specialized equipment and additional labor to address, where ownership is often difficult to determine, and their removal is related

to purposes of water resource management and habitat restoration whose benefits accrue to the broader public.

Additionally, the success of riparian vegetation management programs is greatly facilitated by organized operations occurring over large areas. It is much more cost effective and achieves more optimal results to line up contractors to treat, for example, a twenty mile stretch of streams and adjacent riparian areas than the cost of treating each ownership parcel individually. The costs underwritten through the state aid program and additional funding contributed by cooperating entities greatly encourages willing landowner cooperation to enable planning and execution of riparian projects. It would be far more cumbersome and require more intrusive government actions to try to achieve the results needed through the regulatory process of compelling landowner actions one-by-one.