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G93-1187 Financing Natural Resources Programs in Nebraska

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Financing Natural Resources Programs in Nebraska*

This NebGuide describes the regulatory agencies of Nebraska's natural resources including their responsibilities and services. Issues in natural resources programs are discussed.

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In Nebraska's system of state and local government, primary responsibility for protecting and preserving natural resources is assigned to the Nebraska Natural Resources Commission (NRC), the Nebraska Department of Water Resources (DWR) and 23 Natural Resources Districts (NRDs). Both NRC and DWR are state agencies, while NRDs are political subdivisions (local units of government). The activities of each have expanded over time as the public's interest in protecting natural resources has grown more intense.

NRC Programmatic Overview

Originally organized as a three-person Soil Conservation Committee in 1937, the NRC assumed its present name in 1972. In the beginning, the major objective of the Soil Conservation Committee was to reduce soil erosion. Now, however, the range of activities is much broader, with maintenance and enhancement of both the quality and quantity of the state's soil and water resources within the Commission's charge.

An occasionally confusing fact about NRC is that the title "Natural Resources Commission" is the official name for both the state government agency and the 16-member body that makes some of the agency decisions. Each of the state's 12 major river basins is represented by at least one of the 16 members, with two members coming from the Missouri tributaries basin, which includes the Omaha area. Three other members are appointed by the governor, with one representing surface water irrigators,

another groundwater irrigators, and the third, municipal water users. The director is the executive officer of the agency and is appointed by the governor. Commission members advise the director about a range of activities, adopt agency rules and regulations, and make many of the decisions relating to the state aid funds administered by the agency.

In recent years, more than 70 percent of NRC expenditures have been for state aid to individuals and local governments, principally the NRDs. The primary source of funds is the state General Fund. Major program areas are as follows:

Soil and Water Conservation Fund. The largest, although not the oldest, of the NRC programs is the Soil and Water Conservation Fund. In a typical year, about 40 percent of the Commission's appropriations are for this program. Its purpose is to reimburse private landowners for a portion of their costs for the installation of on-farm and on-ranch conservation structures (e.g., terraces, waterways and reuse pits). Much of the administration of these funds is provided by the local NRDs. Landowners must pay 25 percent or more of the cost of the conservation activity. This fund dates back to 1977.

Resources Development Fund. This program is available to assist with the cost of natural resources projects large enough to be sponsored by political subdivisions or state agencies. Established in 1974, it may be used for a variety of conservation-related programs including groundwater recharge, flood prevention, water supply, fish and wildlife habitat, and outdoor recreation as well as other water and land conservation purposes. The most frequent uses of funds in this program have been for multi-purpose reservoirs and flood control structures. Recently, about 25 percent of the NRC's annual budget has been for this program.

Assistance from the Resources Development Fund may be in the form of a grant, loan or a combination of the two. Grants may be offered when the project will not generate revenue but is of general public benefit. Loans are made if the completed project will generate revenue or if the project benefits are local in nature. Grants may be made for up to 75 percent of the local sponsor's project costs; loans up to 90 percent of the costs.

Small Watersheds Flood Control Fund. This program, established in 1963, provides financial assistance to local units of government, usually NRDs, to purchase land rights for flood control and other conservation projects. The planning and construction of the projects themselves are often federally funded.

A "purchase" may involve buying easements and rights-of-way or the land itself. If the land is purchased, it is resold when the project is completed, with the proceeds being returned to the fund for future use. State or local agencies may buy the land when it goes up for resale if it will be used for a public purpose such as outdoor recreation. Cash funds (from the sale of property) have provided most of the support for this program in recent years.

Soil Survey Fund. The NRC has contracted with the Conservation and Survey Division of the University of Nebraska-Lincoln to provide administrative support for a modern soil survey of the entire state. The U.S. Soil Conservation Service is involved as are several other agencies of state government and the NRDs. This program was initiated in 1976. The updating envisioned then should be completed in the next few years, but there appears to be support for even more detailed surveys in the future.

Floodplain Management. While the NRC's involvement in the construction of flood control structures is limited to planning and financing and does not include project sponsorship, the NRC is the lead state agency for nonstructural flood damage abatement, i.e., delineation of floodplains and technical

assistance with floodplain management. Minimum standards for state and local floodplain programs have been adopted and, when appropriate, the NRC helps cities and counties implement and enforce these programs. The Commission also is the state liaison to the National Flood Insurance Program and the Community Assistance Program.

Natural Resources Data Bank. The Commission maintains and updates a natural resources data bank that is available at nominal cost to those in both the public and private sectors. Such data are essential to the NRC in its own planning activities. Examples include soil survey data, climatic information, groundwater levels and water quality data.

Water Planning and Review. A broad-based program known as the Nebraska State Water Planning and Review Process provides technical and policy information to help Nebraska policymakers make better management decisions with respect to natural resources. Among the issues studied and reported on by NRC staff in recent years are those addressing groundwater reservoir management, instream flows, municipal water needs and a geohydrology study of the Nebraska Sandhills. Basic planning activities have been extended to the development of a Nebraska Soil and Water Conservation Strategy. The strategy assesses both where we are with respect to soil and water resources in the state and goals and recommendations for the future. Perhaps most importantly, an action plan has been developed to help implement the recommendations.

NRC Funding

Appropriations for the NRC in fiscal year 1992-93 (hereafter FY 1993) totalled about \$8.4 million, up from \$5.9 million five years earlier. However, during this period, state operations expenditures increased only from \$2.0 million to \$2.3 million. The remainder of the increase was for state aid programs administered by NRC. Specifically, state aid reached \$6.1 million in 1993, up from \$3.9 million in FY 1988 (fiscal year 1987-88). About half of the state aid increase went to the Soil and Water Conservation Fund, with much of the remainder going to the Resources Development Fund.

NRC expenditures are funded mostly by the state General Fund. In FY 1993, for example, about 92 percent of the Commission's funding came from this source. The remainder came from cash funds, mostly land sales in the Small Watersheds Flood Control Program. A small amount of federal aid is channeled through the Soil Survey Fund and other miscellaneous activities of the Commission.

DWR Programmatic Overview

The Nebraska Department of Water Resources was established in 1957. However, some functions of this agency trace back as far as the formation of the state Board of Irrigation in the late 1800s.

The department has been given broad responsibilities relating to administration and enforcement of state water laws, particularly those relating to water *quantity*. Current specific responsibilities include administration of surface water laws; registration of ground water wells; administration of certain ground water permits; dam safety; and stream gaging. DWR also is responsible for the negotiation and administration of water compacts and the administration of court decrees with surrounding states. The common thread of these activities is that they are intended to contribute to the lawful and efficient use of Nebraska's water resources.

Surface Water Laws. The department generally has jurisdiction over all matters relating to surface water in the state, including allocation of the available supply for irrigation, power and other purposes during times of water shortages, and adjudication of established water rights. Permits are issued for the

withdrawal of water from reservoirs and streams, including withdrawals for consumptive and storage purposes. DWR administers and regulates the use of surface water under what is known as "the doctrine of prior appropriation" or "first in time is first in right."

DWR may grant new water rights for new water projects and cancel unused water rights. It approves transfers within Nebraska. In addition, petitions for the formation of public power districts, public irrigation districts and reclamation districts must have the department's approval before such districts can become operative.

The department functions somewhat like a state district court with regard to surface water disputes within the state. Determination of older water rights is critical. Appeals of DWR decisions are made directly to the Nebraska Supreme Court or Court of Appeals.

DWR's responsibilities are somewhat different on matters relating to interstate compacts and the U.S. Supreme Court decree for the North Platte River. While the department represents the state, less authority is vested in the department than in intrastate surface water disputes. Adjudication generally is through the federal system, beginning with the federal district court.

Registration of Groundwater Wells. The DWR is responsible for registering all wells except for test holes and dewatering wells used for 90 days or less. (Dewatering wells are sometimes used to remove excess groundwater for road construction and other similar projects.) This includes, but is not limited to, wells used for domestic, irrigation, municipal, industrial and geothermal purposes.

Groundwater Permits. Permits are required from the department prior to registration when the spacing of irrigation, municipal and industrial wells would be closer to each other than the distance specified by statute. Permits also are issued for public water suppliers (e.g., municipalities) to develop and maintain groundwater supplies which are then transported into areas being serviced; for large-capacity industrial users (those that withdraw at least 150 acre-feet of groundwater annually); and for development of geothermal groundwater use. In the case of groundwater control areas and groundwater management areas, well permits must first be authorized by the local natural resources district (NRD). Only then can the well be properly registered by DWR.

The director of the DWR reviews the groundwater management plan of each NRD. If the NRD wishes to form a groundwater control area, the director reviews the proposed regulations relating to the groundwater control area and ultimately is responsible for making the control area designation. At present, Nebraska has three groundwater control areas, the purpose of which is to minimize or eliminate falling groundwater tables.

Stream Gaging. Both independently and in cooperation with the U.S. Geological Survey, DWR accumulates and analyzes data on stream flow, canal and pump diversion, and reservoir storage. Data logs are kept on a continuous or partial-year basis at nearly 300 different gaging stations in the state. In addition, stream flows are measured at regular intervals at approximately 1,200 other locations throughout the state. These basic surface water records provide the essential foundation for many different aspects of water resources development and management. Such data are used by governmental agencies at all levels and the private sector.

Dam Safety. The department approves plans for dams and inspects them for safety. Legal authority is granted to the department to require the dam's owners to make needed repairs. Some small dams are exempted.

Interstate Compacts and Court Decrees. Two lawsuits brought by the state of Nebraska are pending. Their purpose is to protect existing water supplies, principally from the North Platte River. The first, *Nebraska v. Wyoming*, is an action filed in the U.S. Supreme Court in 1986 that seeks to enforce and clarify the Court's 1945 decree. In 1993, the Court ruled substantially in favor of Nebraska in this suit. The other, *Jess v. West*, relates to the construction of the Deer Creek Dam and Reservoir in Wyoming. The state argues that the dam and reservoir should not have been authorized by certain federal agencies on environmental grounds. The activities of DWR relative to these suits include data gathering, legal work, contracted work with consultants and related support services.

In addition to these judicial proceedings, the director of DWR also serves as a member of the multi-state Missouri River Basin Association. Its purpose is to discuss and resolve issues relating to the Missouri River.

DWR Funding

The Nebraska Department of Water Resources is funded almost entirely through the General Fund. In fiscal year 1993-94, the department was appropriated \$3.7 million by the Nebraska Legislature, all of which will come from the General Fund except for \$10,000 in cash funds (fees). All funds appropriated to DWR go for agency operations; no state aid is channeled through the department.

From FY 1988 to FY 1993, DWR expenditures increased from \$1.5 million to \$3.8 million. However, much of the increase was due to litigation expenses related to the dispute with Wyoming over the North Platte River. These expenses were budgeted at \$1.8 million for FY 1993.

Two items relative to litigation costs are noteworthy. First, prior to FY 1992, these expenses were budgeted through the office of the Attorney General. Moreover, these expenses are expected to fall in the future with just under \$1 million appropriated for FY 1995. Thus, total appropriations for the department will fall to \$3 million for the same year.

NRDs Programmatic Overview

Nebraska's Natural Resources Districts became operational in 1972. The 23 NRDs--originally 24, before a 1989 merger--blanket the state with comprehensive natural resources programs that address flood control, water quality and soil erosion problems, as well as wildlife habitat and recreational opportunities. They replaced more than 150 Soil and Water Conservation Districts, Watershed Districts and other single-mission agencies which had been in place prior to 1972.

NRDs may be thought of as local units of governments, although on average their geographic size is equal to about four counties. NRD boundaries are irregular, typically following the rough outline of river basins. Directors are elected by voters within the district and serve 4-year terms. NRDs have authority to levy a local property tax to fund their programs. However, they cooperate with a variety of state and federal agencies as well as city and county governments in the delivery of programs.

Water Conservation Programs. NRDs have responsibilities with both surface water and groundwater that extend to quality and quantity problems. One of the most important is the development of a Groundwater Management Plan for each NRD. After preparing a Groundwater Management Plan, a Groundwater Management Area may be designated for all or part of a NRD. This gives the NRD authority to impose any of several regulations directed to protecting groundwater, including scheduling and limiting groundwater use, controlling well spacing, and requiring testing for pollutants. Educational programs relating to proper irrigation practices may also be offered. For purposes of funding these

activities, an additional tax may be levied in a Groundwater Management Area. (NRDs also have responsibility for groundwater control area administration when such areas have been approved by the Department of Water Resources and special protection area administration when such areas have been designated by the Department of Environmental Control.)

Since 1987, NRDs have been required to provide local administration for the Nebraska Chemigation Act. Its purpose is to prevent fertilizers and agricultural chemicals that are applied during irrigation from accidentally flowing back into the well itself.

Alone or in cooperation with other agencies of government, NRDs build and operate flood control structures. A significant program for a number of NRDs is the PL 566--Watershed Program, which is administered in conjunction with the U.S. Soil Conservation Service. Under this program, a watershed plan with multiple flood control structures may be developed.

In areas where water supplies for domestic purposes are inadequate in quantity or quality, NRDs organize and administer rural water systems. The NRD also may monitor the quality of water in rural domestic wells and inform users of potential hazards.

Soil Conservation Programs. NRDs administer state and local funds for installing soil conservation structures including terraces, waterways and dams. Many NRDs also conduct educational programs directed at explaining the need for such structures.

In 1986, the Nebraska Legislature adopted the Erosion and Sediment Control Act. As a result, NRDs have developed local management plans to address soil erosion and sediment problems. Under this law, anyone damaged by sediment from an adjacent field with excessive erosion may file a formal complaint for relief.

Wildlife Habitat Programs. Cooperatively with the Nebraska Game and Parks Commission, many NRDs have developed programs for improving wildlife habitat. Landowners who plant grasses, trees and shrubs may qualify for an annual per-acre payment through a 75% Game Commission-25% NRD Habitat Matching Fund. NRDs also distribute large numbers of trees for planting on a cost-share basis.

Recreation Programs. Protecting and conserving natural resources often can be linked to improved public recreation opportunities. That is why enhanced recreation facilities and programs were expressly identified as one of the objectives when the Nebraska Legislature authorized NRDs.

NRDs Funding

Total budgeted expenditures for the 23 NRDs exceeded \$40 million in FY 1993. Most (over 95 percent) were "general fund" expenditures. Four NRDs--the Central Platte, Little Blue, Upper Big Blue and Upper Republican--had separate budgets for groundwater control or management areas.

Among the NRDs, FY 1993 general fund expenditures ranged from less than \$300,000 to more than \$11 million. Thirteen NRDs had budgets of less than \$1 million. Cost-sharing for soil and water conservation, flood control and stream stabilization, and water quality enhancement were the largest program areas in most NRDs.

The Papio-Missouri River NRD, which includes the city of Omaha, had the highest budgeted expenditures in FY 1993, followed by the Lower Platte South NRD, including Lincoln. These NRDs have much larger populations and tax bases than others in the state. As a result, program diversity also

tends to be greater.

Property tax levies accounted for about \$18 million of NRD operating budgets in FY 1993. The maximum tax rate per \$100 of property valuation is 4.5 cents. However, no NRD's tax rate was at the maximum in 1993; most ranged between two and three cents. Up to an additional 1.8 cents may be levied in groundwater control or management areas.

Like cities and counties, NRDs receive some state aid for general use; in FY 1993, it totaled \$700,000. Some NRDs also received state and federal aid for specific programs. For example, the Environmental Protection Agency has provided funds to study pollution in lakes and the Bureau of Reclamation has cooperated on certain watershed projects. Total federal funds received in FY 1993: approximately \$1.4 million.

Finally, NRDs receive funds from a variety of local sources other than property tax levies. Agricultural producers pay fees for chemigation and other types of NRD-issued permits. Some NRDs also rent equipment to plant grass or trees and some provide these services directly. Sometimes the NRD also receives funds from another unit of local government (county or municipality) for jointly sponsored projects such as road-dams. For FY 1993, revenue sources other than local property taxes accounted for nearly 60 percent of the total budgeted statewide by NRDs.

Issues in Financing Natural Resources Programs

Most Nebraskans have become increasingly sensitive to the necessity of protecting our natural resources during the past two decades. The attention given to water quality issues is perhaps the best example of how citizens' concerns have evolved. Twenty years ago, water quality was almost an afterthought compared to flood prevention and soil conservation as a natural resources issue. Today, however, the many public agencies, private organizations and individuals addressing water quality problems attest to its importance to the public. Whether it's water quality or another natural resources issue, there appears to be little likelihood of turning back: Protecting natural resources will continue to be a high priority in Nebraska for ecological and economic reasons.

Beyond this general expectation, a number of specific natural resources issues, many of which directly involve the NRC, DWR and/or the NRDs, must be addressed:

1. Is the present organizational arrangement of state and local agencies with responsibilities in the natural resources appropriate? Stated differently, could public services be delivered more effectively or efficiently under a different organizational arrangement? In addition to the NRC, DWR and the NRDs, the Department of Environmental Quality, the Department of Agriculture, the Department of Health, and the Game and Parks Commission all have responsibilities in one or more areas relating to natural resources.
2. Should the relationship between surface water and groundwater be recognized specifically in state law? If so, how would it change the administrative and management responsibilities of DWR?
3. Is the relative amount of public funding provided for natural resources conservation appropriate compared to other uses of public funds?
4. Is the relative amount of public funding provided for natural resources conservation appropriate compared to what should be provided by the private sector? Will the private sector respond if less funding and/or regulation comes from the public sector?
5. Should equal population election subdistricts be mandated for all NRDs? At present, less than one-half of the NRDs elect directors from equal population subdistricts. The remainder allow directors to be nominated from subdistricts with varying populations. In those districts, the rural

subdistricts typically have fewer people but encompass larger geographic areas than urban subdistricts. Since the actual election of all directors in these districts is "at large," i.e., by all NRD electors, all directors in these NRDs represent all electors.

6. Should NRD expenditures on outdoor recreation projects and programs be capped, thus leaving more funds for more traditional programs, such as soil conservation and flood control?

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