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Water Current

Water Center

University of Nebraska

September 1991

Water Leadership in Nebraska: Vacuum or Variety?

*By Robert D. Kuzelka,
Associate Professor, UNL
and Bradley C. Rundquist,
Editorial Assistant, CSD*

Leadership in setting Nebraska's water policy has always been vague, often allusive and frequently absent. As if to affirm this truth, the Water Management Board was laid to rest during the first session of this year's 92nd Nebraska Legislature.

With the board's elimination, clear loopholes arise in the state's water policy. The most obvious of which is that the state now has no mechanism for funding projects with a total cost of \$10 million or more.

The board's elimination also means there are no longer state goals for water resources use, resulting in the nullification of the reference in the instream flow law to consistency with the goals. Eliminated as well are the Water Management Fund, which was set up to assist in financing major water projects; and the Nebraska Water Project Bonding Act, an act allowing the board to issue revenue bonds for water impoundments and related facilities.

Justification for Elimination

So why eliminate a board seemingly responsible for many things, not the least of which was leadership on state water policy?

"It didn't do anything," said State Sen. Howard Lamb of Anselmo. "It's not that they weren't given anything to do, it's just that they didn't do anything."

J. Michael Jess, director of the Nebraska Department of Water Resources, agreed, "The board never did a lot and its elimination probably won't affect future water management decisions a great deal. It could've made a large and useful impact on water management."

But Dayle Williamson, director of the Natural Resources Commission and

Water Management Board chair, said, "I would strongly counter statements that the board didn't do anything. It's just that we really did not have a major project to deal with until early 1990.

"The board stayed within the parameters established by law," he added, "and, unfortunately, many of the board's critics either failed or refused to understand the areas of responsibility given to the board."

Water Independence Congress

Former Gov. Robert Kerrey's Water Independence Congress in 1983 recommended that officials from various state agencies be brought together in a Water Management Board to provide technical, political and economic advice to the governor.

The Water Independence Congress, formed on July 12, 1983, consisted of 40 Nebraskans selected to represent every geographic area of the state and diverse economic, professional, political and philosophical backgrounds. The Congress was to develop a set of principles and specific recommendations upon which the future water policy of the state could be based. Gov. Kerrey further requested that the Congress seek to


develop a new political consensus on water policy.

The Congress stated that the Water Management Board was to make recommendations concerning allocations of water for major projects in the state. It was to provide the governor with additional input about water issues and more directed authority to shape state water policy. The board was also intended to have authority to force compromise between competing water interests to help reduce major water project litigation.

The majority of legislators ultimately accepted the idea and, LB 1106, introduced by State Sen. Loran Schmit for Gov. Kerrey in 1984, was passed 30 to 14 in February 1985. With the vote, the board was created.

Five-Member Board

The board had five members—the directors of the Natural Resources Commission, the Game and Parks Commission, and the University of Nebraska-Lincoln Conservation and Survey Division and two gubernatorial appointees. Since the Natural Resources

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News to Use

Here are some dates to put on calendars:

Sept. 14: Annual Fall Nebraska Water Conference Council breakfast, 7:30 a.m., business meeting, 8:30 a.m. East Campus Union, room to be posted.

Sept. 15, 16, and 17: Nebraska Association of Resources Districts annual conference. Ramada Inn, Kearney.

Oct. 9, 10, and 11: 36th Annual Midwest Groundwater Conference, Indianapolis, Ind., Hilton at the Circle. For more information, call Indiana Department of Natural Resources, Indianapolis, (317) 232-4175.

Oct. 15: Annual Nebraska Groundwater Foundation Fall Symposium, Lincoln Hilton, 8:30 a.m., to 3:30 p.m.

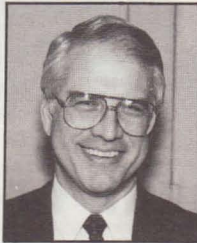
From the Director

Water Sciences Education Advancing at UNL

In past issues I have talked briefly about groundwater education primarily through children's festivals, water riches materials and other single-day events targeting junior high or grade school children.

These are outstanding programs and I want them to expand and continue. However, in this issue of *Water Current*, I want to focus on higher education.

At a recent meeting of UCOWR



Bob C. Volk

(Universities Council on Water Resources), the former governor of New Mexico, Gary Carruthers, challenged the Council to not be content with the status quo in education and to begin doing a better job of educating and teaching college students—undergraduate and graduate—about water sciences. His spirited speech moved me to comment on what we are doing at UNL in the area of water sciences education and about a new degree program in Environmental Studies.

We have created a new major in Natural Resources which is designed to educate students in basic and applied sciences that are related to water resources. The goal is to educate individuals to gather and synthesize information from several disciplines, to formulate ecologically and economically rational alternatives, and to effectively implement various water-based programs.

The program is designed to meet the needs of students who intend to pursue careers in agencies that form or implement policy at all levels of government in public and private organizations that manage water and land resources, in private consulting companies that offer water management services and in a broad range of non-profit institutions that are interested in water resources. The Natural Resources-Water Science major is administered through the Biological Systems Engineering Department with an advisory committee composed of faculty from many disciplines. We are pleased with student response.


There has been a Masters' Degree program in Water Resources Planning and Management available for a number of years which gives students an opportunity for an intra-university

perspective in the water resources planning and management area. This program is administered from the Water Center.

A recently approved Environmental Studies major also provides undergraduate students a unique interdisciplinary curriculum with a variety of academic opportunities in environmental studies. The program of study emphasizes: the fundamentals of environmental and social sciences; state, regional, national and global issues, and opportunities and challenges for solutions to environmental problems.

From the educational opportunities mentioned above, I think we will be providing an outstanding chance for University of Nebraska students interested in water resources who want to obtain an education that will provide them focus in an area of interest in the water sciences, yet flexibility in course work to give them a broad perspective of the environment. Please contact me if you have questions or know of students that need more information.

To add emphasis to our role in water education, the University of Nebraska Water Forum this year will sponsor an all-day program on water-related education at the University of Nebraska. We have invited representatives from all campuses to discuss water education and ways to improve our educational opportunities in the university system. Faculty will be invited to participate in the Forum October 1.

(Water Leadership page 1) 

Commission Director is also a gubernatorial appointee, the governor, in effect, had "three votes" on a five-member board.


After the act became effective in 1985, the board's first major responsibility was to adopt a list of goals for water resources use in the state. The goals were provided by the Natural Resources Commission, as specified in LB 1106. They were to guide the Water Management Board in choosing its course of action when deciding on approval of major water project applications.

The first assignment given to the board didn't come until 1987, Williamson said. At that time, the board was asked to conduct a study concerning the feasibility and effects of transferring water within and out of Nebraska. The resulting report was, "Water and Water Rights Transfer Study."

"We found the board to be a very effective tool in doing that study," he said. "And, when the report was presented to the legislators, many said it was an outstanding piece of work."

Draft legislation was included in the study's recommendations and introduced during the first session of the 91st Nebraska Legislature. The proposed legislation was never enacted, however.

The Prairie Bend project was the only major water project the Water Management Board was asked to consider. The idea behind the Prairie Bend project, which came before the board in Feb. 1990, is to divert water from the Platte River to recharge groundwater, to improve water quality in western Hall and eastern Buffalo

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The Framework Study: A 20-Year Retrospective

J. David Aiken

UNL Water and Ag Law Specialist

In May 1971, the Nebraska Soil and Water Conservation Commission (now the Natural Resources Commission) presented to the Unicameral the *Report on the Framework Study*. The *Framework Study* was officially adopted by the Unicameral in 1972 as Nebraska's state plan for water resources development and management.

The *Framework Study* is most commonly remembered as identifying where irrigation, flood control, and watershed protection projects should be located. While this is an important feature, the *Framework Study's* 26 recommendations were broader, dealing with irrigation projects; soil and water conservation; protected river protection; fish, wildlife and recreation; interbasin transfers; and groundwater. While an evaluation of each recommendation is beyond the scope of this article, some important *Framework Study* recommendations are reviewed as well as their implementation.

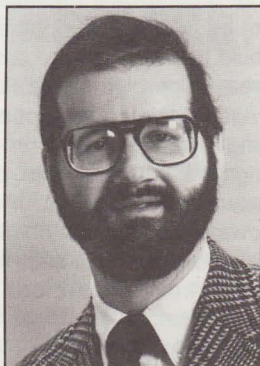
Federal irrigation projects. In 1971 approximately 1.1 million acres were irrigated with surface water, essentially the same number of acres irrigated with surface water today. The *Framework Study* recommended construction of several federal Bureau of Reclamation projects, the largest of which were the Mid-States project (in the Central Platte region), the O'Neill project, the North Loup project, and the Little Blue project. The North Loup project is nearing completion. However, the other projects have either died or are doubtful.

Enactment of the Federal Endangered Species Act in 1973 and related federal environmental laws have been a major factor slowing development of new irrigation projects, along with federal budget concerns. The endangered species act prohibits federal projects from harming endangered species or their critical habitat, such as the central Platte whooping crane habitat.

The *Mid-States project* died when voters disapproved continuing the project in 1975. The *Mid-States project* was resurrected in the *Prairie Bend project*, which has also encountered difficulty. *Prairie Bend* water rights were dismissed by the Nebraska Department of Water Resources (DWR) in 1990 because of project changes. The DWR dismissal has been appealed to the Nebraska Supreme Court, and the project's future is in doubt.

The *Little Blue project* made major

changes in Nebraska water law, but the project itself has died. In 1980 the Nebraska Supreme Court ruled for the first time that interbasin water transfers, such as proposed by the *Little Blue project*, were legal. That decision set off a mad scramble by water developers to divert Platte river water into the Republican and Blue river basins. However, only one transbasin diversion project—the *Landmark Project*—is still alive.



J. David Aiken

In 1982 the Nebraska Supreme Court ruled that the *Little Blue* and other irrigation projects were subject to state endangered species statutes. This meant that water project sponsors had to consult with the Nebraska Game and Parks Commission (GPC) to determine whether proposed projects would jeopardize endangered species. After this decision the DWR ruled that the *Little Blue project* would *not* harm endangered species habitat despite a GPC finding that it *would*.

On appeal the Nebraska Supreme Court in 1988 side-stepped the endangered species jeopardy issue. The court ruled instead that the project had ended when the original project sponsor improperly assigned project water rights to another entity. Whether the DWR can over rule a GPC endangered species jeopardy determination remains to be seen.

The *O'Neill/Norden Dam project* on the Niobrara river has had perhaps the stormiest history of any Nebraska water project. The *O'Neill project* was opposed by some land owners as well as state and national environmental groups. Project opponents delayed the project in 1977 when a federal court ruled the Bureau of Reclamation's environmental impact statement was inadequate.

While the Bureau revised the impact statement, project opponents persuaded Congress to remove the *Norden Dam* from the irrigation project, converting it from an irrigation dam project to a non-structural ground-water-recharge project. In 1991 Congress included much of the Niobrara river in the federal wild and scenic river system, precluding impoundments in the protected reach of the river.

Federal and state environmental legislation has thwarted the development of new major irrigation projects. It remains to be seen whether irrigation project sponsors can develop environmentally acceptable proposals, or whether projects will continue to suffer court room defeats.

☞ (see page 5)

Nebraska and Its Water

Back on June 9, 1971, just after the Nebraska Framework Study had been completed, the Lincoln Evening Journal and the Nebraska State Journal printed an editorial. The writer had high hopes for this study to solve water-related dilemmas for the state.

"Nebraska now has the broad outline of a plan for making the most advantageous use of its water. This is the initial phase of a 'state water plan.'

"Identified as 'the framework study,' it sets out the broad parameters of policy and procedure to be followed by the state if it really wants to make full use of its water. This study is accomplished with an exceptional degree of objectivity, viewing the welfare of the entire state as the ultimate criterion; and it is done in a

remarkably clear and readable manner.

"While the framework study does not attempt to spell out the precise courses of action required for optimum use of Nebraska's water, its explanation of the circumstances lead to several inescapable conclusions.

"... Water that, left unused, will be appropriated by other states downstream and lost to Nebraska forever.

"... Some of the state's river basins, as well as other isolated areas, need more water to meet present needs.

"This framework study is as important to Nebraska's future as anything that has come along in a great while. It deserves the careful and open-minded attention of concerned persons all over the state."

counties and to enhance habitat for endangered species and waterfowl.

Even though the board technically has until Sept. 6 before it is eliminated, Williamson said it will not complete its assessment of the Prairie Bend project. He said the project will be investigated by the Bureau of Reclamation, the Central Platte Natural Resources District and the Natural Resources Commission.

FERC Relicensing Dispute

Also in 1990, Gov. Kay Orr asked the board to help with negotiations on the Federal Energy Regulatory Commission (FERC) Kingsley Dam relicensing dispute. At the time, Orr said she wanted to find a settlement rather than allow

FERC or the courts to set relicensing conditions.

The board has not maintained a high profile dealing with the issue, Williamson said, since the emphasis has been on getting the parties to settle their differences through mediation. The board did, however, select a mediator in August 1990 to help with the negotiations. Most of those interviewed said they felt that with the board's elimination, the work on the relicensing issue would and could be delegated to other state agencies.

Six Years of Disagreement

Six years after its creation, the board was officially eliminated by the Legislature, on a 40 to 0 vote. J. David

Aiken, UNL water law specialist and professor of agricultural economics, said, "The argument that the board didn't do anything and therefore had to go is false. It wasn't their (the board member's) fault. The legislation was set up in such a way that the board couldn't deal with pending projects, and most of the problems to come up dealt with pending projects.


Also, project sponsors who had applied for a water right could decide whether or not they wanted to go before the Water Management Board, and they decided not to.

"I argued that if legislators weren't happy with the way the board was operating then the board's authority should be expanded so it could deal with other projects," he said.

Williamson agreed, "I think many of the senators wanted us to do what we couldn't legally do."

But there apparently was some disagreement about what was legal. Some board members and others who were on the Water Independence Congress felt the board could take on more issues while others, including the Natural Resources Commission staff for the board, felt it could not.

LB 1106 called on the board to

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Sheffield Receives Recognition for 20 Irrigation Tours

When the two-bus loads of the 1991 Nebraska Irrigation Tour stopped for dinner and overnight at Silver Creek, Colo., in July, a dinner highlight was recognition of Les Sheffield, University of Nebraska Extension farm management specialist.

Sheffield, tour coordinator and planner for 20 years, received a plaque honoring his service. (Picture at right).

The plaque read:

"In appreciation to Les Sheffield for organizing and leading 20 Nebraska irrigation tours which have greatly enhanced the understanding and appreciation of water management."

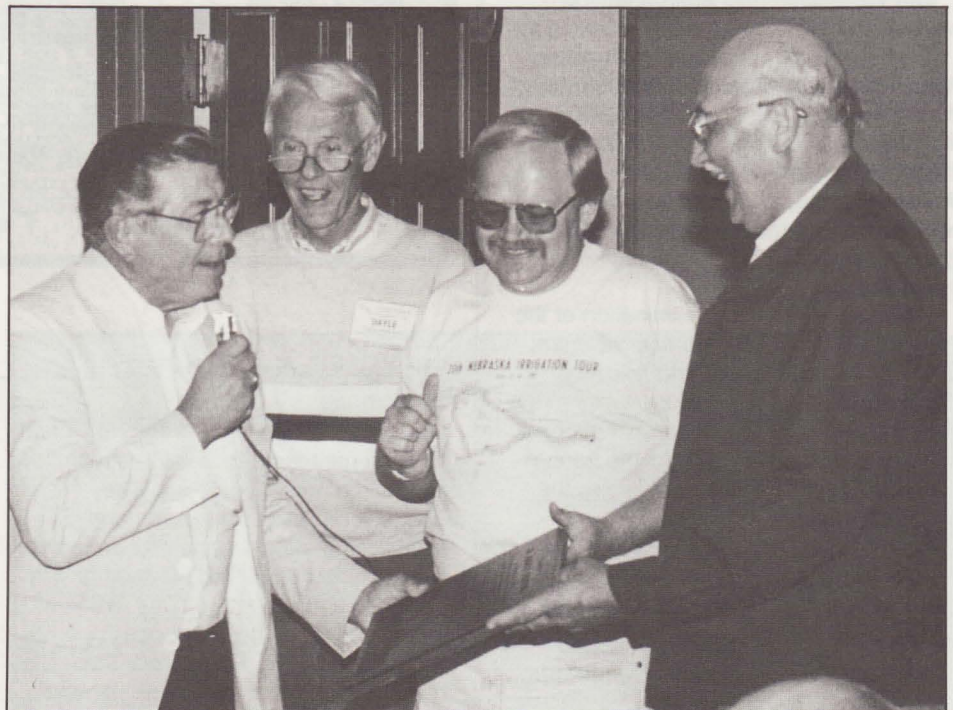
Sheffield responded: "This is a total surprise. Helping to plan and conduct these 20 irrigation tours has been a labor of love. We hope people will continue to take advantage of this educational forum."

Other stops on this 20th irrigation tour included:

- *UNL West Central Research and Extension Center at North Platte;
- *Lake McConaughy and Kingsley Dam and hydro plant;
- *Lake Minatare and Lake Alice;
- *UNL Panhandle Research and Extension Center at Scottsbluff;
- *Tri-State Diversion Dam, Farmers Irrigation District, Scottsbluff;
- *Interstate canal Diversion Dam in Wyoming;
- *Guernsey Dam and Reservoir near Guernsey, Wyo.;
- *Glendo Dam and Reservoir in Wyoming;
- *Alcova Dam and Reservoir and Pathfinder Dam and Reservoir;

- *Seminoe Dam and Reservoir;
- *Lake Granby Pumping Plant; and
- *Rocky Mountain National Park.

Dayle E. Williamson, Nebraska Natural Resources Commission, was tour chairman. Tours are sponsored by the Nebraska Water Conference Council, the University of Nebraska Water Center, and the UNL Institute of Agriculture and Natural Resources.



Presenting a plaque (left to right) is Frank Dragoun, immediate past chair of the Nebraska Water Conference Council (NWCC); Dayle Williamson 1991 Nebraska Irrigation Tour chair; Tom Knutsen, NWCC chair; and plaque recipient, Les Sheffield, secretary of the NWCC.

Sheffield was honored for his role in organizing and leading 20 Nebraska irrigation tours co-sponsored by the Institute of Agriculture and Natural Resources, the NWCC, and the Water Center.

evaluate proposed major water projects (those costing more than \$10 million) for state approval and for possible state financial assistance. It gave the board the power to use funding as a lever to resolve conflicts regarding proposed major water projects. As a practical matter, new major projects would have a difficult time obtaining any state or federal assistance without the board's approval.

The board also had authority to make the state determination whether proposed major water projects under its review violated the Nebraska Endangered Species Act. The board had no authority regarding existing water projects, new projects costing less than \$10 million or water conflicts not involving a proposed major water project.

Sponsor for Creation and Elimination

Sen. Schmit sponsored LB 1106, which set up the board, as well as LB 772, which eliminated it.

Testifying before the Natural Resources Committee in February, Schmit said the board should be abolished because no substantial amounts of money have been appropriated to it and it serves no useful purpose. Schmit could not be reached for further comment.

But Williamson said appropriations weren't the problem.

"The \$500,000 we started with was taken away when the state needed the funds and we were left with \$20,000 in interest. But we didn't ever ask for funds because we didn't need to, we didn't have any projects to consider. And, when we needed the money to do the water transfer study (\$50,000), the legislature gave it to us."

Aiken said he felt the elimination of the board may have reflected some Central Nebraska Public Power and Irrigation District (CNPPID) frustration.

"In my opinion, this is political payback since the state didn't pick up the banner of Tri-County (CNPPID) and ignore the environmentalists in the FERC relicensing. It's ironic too, since the Water Management Board was working harder than anyone else to resolve the relicensing conflict."

Unclear Future in Water Leadership

Aiken said he hopes that in time legislators will realize that they made a mistake and will come up with a substitute.

"There is definitely a need for one," he said, "unless people like to see these

things always played out in courtroom."

Williamson said he thought the Legislature will be forced to turn to some other means to look at water issues. Some of the work of the Water Management Board will have to be delegated to the Natural Resources Commission and other agencies, he said.

Lamb said he felt that other agencies, such as the Nebraska Natural Resources Commission, the University of Nebraska-Lincoln Conservation and Survey Division and the Nebraska Department of Water Resources, can easily take over the board's duties.

"I don't see that the elimination of the board will have any significant affect on water management decisions because, as I said, they didn't do anything

anyway," Lamb said.

Jess said he thought the state should work to devise a plan for its future water management goals, something he said the Water Management Board was supposed to do but failed. (In 1985, the board did adopt a list of water use goals, provided by the Natural Resources Commission).

Vince Dreeszen, who served on the board as director of CSD and is now a professor emeritus at UNL, said the state will have to take a hard look at what it wants to do with water management in the future. He said there's no real water leadership in the state right now.


Aiken said, "Water leadership in Nebraska is a vacuum and whoever wants to take over can just step in."



Drawn by Dee Ebbeka for the Water Current

Instream flows. In 1971 Nebraska had no legal means for protecting streamflow for environmental purposes. The *Framework Study* did recommend establishing a state system of protected river reaches, similar to the federal wild and scenic river system. This recommendation has not been implemented. The *Framework Study* also recommended that "adequate minimum flows" be reserved in critical stream reaches. Legislation authorizing instream appropriations for fish, wildlife and recreation was enacted in 1984, and the first instream appropriation was granted to the GPC in 1989.

However, instream flows remain highly controversial. The Norden Dam was defeated largely because of environmental concerns, as was the original Mid-States project. The Platte River Whooping Crane Trust was established when the Grayrocks power project was delayed by a 1977 court decision on endangered species. The quantity of water from Lake McConaughy to be allocated to endangered species protection is a major issue in the current federal relicensing proceedings. Instream flows were also a major concern in the

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recent EPA veto of the Two Forks project in Colorado, and may be a significant issue in the current litigation between Nebraska and Wyoming over the North Platte river.

Environmental groups have learned that although they may not be able to protect environmental values through state water law, they can win environmental victories in courts. A major policy issue will be whether instream flow disputes will be resolved by some method other than litigation. The state's first attempt to do so, with the 1984 establishment of the Water Management Board, was aborted when the Board was legislatively terminated in 1991. **(See story on page 1.)**

Groundwater depletion. In 1971 over two million acres were irrigated with groundwater, compared with over six million acres today. Groundwater depletion was occurring in the Blue and Little Blue River basins, in Holt county, and in Box Butte county. The *Framework Study* recommended further study of groundwater issues.

Groundwater development exploded in the 1970s, when groundwater depletion became an important political and

resource management concern. In 1975 the Nebraska Ground Water Management Act was adopted. The act authorizes natural resources districts (NRDs) to request DWR designation of groundwater control areas. Three control areas have been designated. Irrigation withdrawals are metered and regulated in one control area, and are likely to be similarly controlled in the remaining control areas.

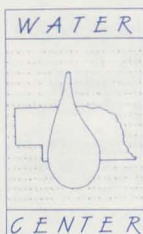
Some observers, including the author, believe that groundwater management should not be a local option, and that the DWR should be authorized to designate control areas in problem areas that a federal irrigation project will not be forthcoming to rescue them from declining groundwater supplies, or from groundwater regulations.

Groundwater quality. In 1971 the major water quality concern was stream sedimentation from soil erosion. This remains an important issue, but has been eclipsed by groundwater quality concerns. Most Nebraskans rely on groundwater for their drinking water, and concerns regarding groundwater contamination from agrichemical use top the political agenda. Erosion control

legislation was adopted in 1986, while groundwater quality protection statutes were enacted in 1984 and 1986.

Regulation of agrichemicals to protect groundwater quality remains controversial, with Nebraska the only state not implementing federal pesticide regulations. Unless Nebraska meets federal regulations soon, pesticides contaminating groundwater will not be available for use here.

Summary. *The Framework Study is an invaluable reference. The report was thoughtfully prepared. However the political universe has changed dramatically since 1971, something the Framework Study could not have anticipated. Current water policy priorities are the protection of groundwater quality and instream flows, not reservoir construction. The Framework Study helps us realize how dramatically water policy concerns have changed in the last 20 years. One wonders if the change over the next 20 years will be as dramatic.*



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