

Reorganization of Water and Land Resource Agencies

of the

State of Nebraska

A PROPOSED DEPARTMENT

OF NATURAL RESOURCES

A Report to the Honorable Norbert T. Tiemann,

Governor of the State of Nebraska

January 10, 1969

Laramie, Wyoming

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January 10, 1969

The Honorable Norbert T. Tiemann
Governor, State of Nebraska
Lincoln, Nebraska

Re: Reorganization of Water and Land Resource
Related Agencies of the State of Nebraska--
A Proposed Department of Natural Resources

Dear Sir:

I have the honor to submit my report, as your consultant, containing my recommendations for the reorganization and consolidation of the water and land resource related agencies of the State of Nebraska.

I wish to express my appreciation for the courtesies and cooperation extended by the staff of your office and by the personnel of the state agencies. Nebraska is fortunate to have such people serving her.

It is my sincere hope that you will find the report useful and that it will be of aid to the leaders and the people of Nebraska in organizing for and achieving the goal of optimum development and conservation of the resources of the State of Nebraska--a state I have come to admire very much.

Respectfully submitted,

A handwritten signature in cursive script that reads "Frank J. Trelease".

Frank J. Trelease
Consultant

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I. INTRODUCTION AND SUMMARY

1. Procedures. The Nebraska statutes have been examined in depth and analyzed as to agency and government organizations, powers and funds, in relation to activities in water rights, water use in place, hydroelectric power, flood control, drainage, pollution control, weather control, land use and soil conservation, recreation and mineral regulation, and as to the functions of planning, investigation, research, data collection, regulation, coordination, consultation, education and promotion. The collateral effects of resource activities on other activities and agencies have been included, as well as the collateral effects on water and land use of other activities and agencies. Attention was directed to the formal and informal channels of communication between state agencies and between state and federal agencies. Department heads, staff members, and some water user representatives have been interviewed at some length in order to round out the picture and learn what is actually done under this statutory authority. Organization charts, rules, regulations, reports, minutes, samples of work and descriptions of activities have been studied. Undoubtedly a more thorough study could be made by a commission and staff with many months at its disposal, but I believe that my survey has given me a reasonably accurate picture and understanding of the administration of resource activities in Nebraska and a sound basis for recommendation of its reorganization at the top level.

2. Present Agencies. The resource related agencies of Nebraska show a quite typical historical development paralleled in many states. As felt needs arose, agencies were created to handle them, or new functions were assigned to existing agencies performing related or similar duties. Today a code department headed by a director, a code department headed by a board, five independent commissions, three boards or commissions housed within other agencies, and a division of the state university all perform important resource related duties. A myriad of local agencies and districts engage in public resource activities, controlled to some extent by these state agencies, to some extent by county boards and district courts and to some extent only by themselves.

A mere index of the statutes dealing with these organizations, functions, activities, funds and interrelationships fills 43 pages of notes, and extensive descriptive findings would expand this report into a small book. The following rough outline should be sufficient to indicate the major departments and their principal functions:

1. Department of Water Resources
(Code department headed by Director)

Regulation of appropriation and use of stream water.
Registration and some regulation of wells.
Supervision of plans for dams, irrigation works, hydro-
electric power facilities.
Surveys, stream measurements.
Elements of control over irrigation districts, public power
and irrigation districts, ground water districts, rural
water districts, reclamation districts.

2. Power Review Board
(3 members, Director of Water Resources as Secretary)

Regulation of service and rates of public power agencies
and cooperatives.

3. Department of Health
(Code department headed by 10 man board, which appoints
Director)

A. Water Pollution Control Council
(6 industry, 4 agency members, who appoint
Executive Secretary)

Comprehensive plans for pollution control
Standards for water quality
Permits for waste discharge
Regulatory orders for waste discharge
Administration of loans and grants

B. Bureau of Environmental Health

Investigation of public and private water supply
Advisory services
Staff for Water Pollution Control Council
Surveillance of streams, disposal plants
Elements of control over rural water districts,
sanitary and improvement districts, mosquito
abatement districts

4. Clean Waters Commission (inactive)
(5 man board, plus 5 nonvoting agency members)

Assistance to municipalities planning and financing disposal systems.

Financing arrangements (hampered by partial unconstitutionality)

Administration of loans and grants

5. Soil and Water Conservation Commission
(14 members, who appoint Executive Secretary)

Approve formation and boundaries of soil and water conservation districts

Assistance, coordination and elements of control of soil and water conservation districts, watershed conservancy districts, watershed districts, watershed planning boards, ground water districts

Flood plain management

Administration of state matching funds and flood control fund

Review of federal projects

State water plan

6. Game and Parks Commission
(7 members who appoint Secretary)

Establish and supervise state parks, recreation grounds, public shooting grounds, game refuges

Regulation of fishing and hunting

Regulation of boats and boating

Fish hatcheries, stream stocking, lake improvement

Plans and surveys for development and future activities

Enforcement of some pollution statutes

Studies of water quality affecting fish management

Administration of federal Land and Water Conservation Funds

7. Department of Agriculture
(Code department, Director)

Controls formation of Weather Control Districts

- A. Weather Control Commission
(8 members)

Licensing weather control activities

8. Conservation and Survey Division
(Department of University of Nebraska, Director
appointed by Regents)

Ground water, soil and geological surveys
Test drilling program
Consultation and advice re ground water and to
ground water districts

9. Board of Educational Lands and Funds
(5 members)

Sale and leasing of state lands
Irrigation and conservation of state lands
Investment of funds

10. Oil and Gas Conservation Commission
(3 members)

Regulation of drilling
Regulation of disposal of oil field wastes and preven-
tion of ground water contamination
Oil and gas well spacing
Unitization of oil and gas production

In addition, there are several other state agencies with close connections to resource activities. The Department of Agriculture's program of statistics gathering provides much data needed by the resources agencies. The Department of Roads' construction program affects water resource projects and these projects affect highway features such as location, culverts and bridges. The Department of Economic Development provides statistical inputs to the state water plan, administers funds for planning and development which can affect or include water resource plans, and, in the other direction, the activities of the Game and Parks Commission and the Water Pollution Control Council have effects on their plans for industrial development. The University of Nebraska's research program, particularly of the Colleges of Engineering and Agriculture, and its Agricultural Extension program have significant impact on Nebraska resources development.

3. Need for Coordination. This is not to say that all is confusion and conflict in the planning, regulation, construction and operation of resource activities in Nebraska. On the contrary, the cooperation

and coordination between agencies seems quite good and bridges and lines of communication have been built and are currently open and operating. A number of statutes specifically direct or exhort interagency coordination, exchange of information, joint approval, licensing or approval of one agency's activities by another and the giving of advice and consultation. Many representatives of one agency sit on advisory boards for another and there are a number of interlocking directorates where the executive heads of some agencies are members of the governing commission of another. There are many informal and ad hoc lines of communication and procedures which have evolved without specific statutory authorization or direction.

Yet the present operation is not entirely trouble free. Most of the agencies have a single or principle purpose, and policies and programs designed by different agencies to further different purposes may clash. No very serious conflicts have yet arisen and a number of minor differences have been settled. But open conflict as such is not the only problem--differences in direction, in pace of program, in timing of activities, in funding projects, can cause delays, frustration and disorder. Some of this has occurred. This evidence comes not so much from within the state departments as from the outside. Each of the state resource departments has many contacts with federal agencies, particularly the Department of the Interior, the Department of Agriculture, and the Corps of Engineers of the United States Army. Personnel of these agencies report quite good coordinated policy statements on federal projects at the initial or study stages, coming from the Soil and Water Conservation Commission with its broad membership and representative advisory committees. But in the stages of detailed planning for construction, where federal agencies become involved with individual departments, there is a tendency to interpret policies and plans to suit the departmental purpose, and coordinated action is not always forthcoming.

Furthermore the absence of current conflicts does not necessarily indicate an optimum form of organization. Much of the generally smooth operation is due to the good will of present personnel, which could disappear, and to the fortuitous circumstance that no really serious clash has yet occurred. Conflicts could easily arise, and there are no mechanisms for their resolution. New and increased demands can create future problems not easily solved under the present setup.

Finally, there are some dangers in "coordination" between administrators on an equal level. Each may feel his position is required by the law and policy for which he is responsible, and a compromise may require some relinquishment of his position. Yet such conflicts

should not be decided by horsetrading of the public interests or the relative bargaining strength of administrators. The conflict properly should be moved up to a higher level and be decided on the basis of broader policy overlying both agencies.

The Governor, under Nebraska Constitution Article IV, Section 6, must "take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered." Yet today he has some control over some resource agencies and literally none over others. The existing arrangements are not conducive to sound administration and program unification, and to the extent that these exist today it is in spite of, rather than because of, agency organization. There are few clear lines of authority, too few clear divisions of responsibility. There are duplications and divisions of functions, as well as illogical groupings of duties. There are possibilities of inefficiency and waste.

4. Recommendations. Therefore, to provide for the future more than to correct present evils, it is recommended, in broad outline, that a code department be created, designated the Department of Natural Resources, headed by a single Director responsible to the Governor in the manner of a cabinet member, guided by a broadly based Natural Resources Council, and supervising and coordinating the work of a Division of Water Use, a Division of Water Quality, a Division of Soil and Water Conservation, a Division of Game and Parks, a Division of State Lands, and a Division of Oil and Gas.

This is not to say that all of the present organization is to be junked. It is rather a drawing together, at the top, of what Nebraska presently has, keeping most of the intradepartmental operations and interdepartmental relations as they are, and preserving the excellent relations and effective leadership the state agencies now enjoy with local organizations and the people of Nebraska.

II. THE DEPARTMENT OF NATURAL RESOURCES

1. Office of the Director. The Director of Natural Resources should be appointed by the Governor subject to confirmation by the Legislature, pursuant to the general provisions of Chapter 81, Article 1, Nebraska Revised Statutes. He must be a person with engineering training and experience in administration. He should appoint the Superintendents of the Divisions and be responsible for their work, and for the coordination of the work among the Divisions. He should be responsible to the Governor for the operations of the entire Department and for its coordination in turn with other major units of the state executive department.

If the Director is to be more than a figurehead, he must have control over the finances and staff of the divisions. The formulation and administration of the State Water Plan should be a duty of the Director's central office rather than of one or several of the affected Divisions. Functions which affect or serve several Divisions, such as data collection and management, should be under his direct control. Publications and other forms of dissemination of information should be centered in his office.

2. Personnel and Budget. Each Division Superintendent should make recommendations to the Director for the financial needs of his Division, to be consolidated into a single budget for the Department. Ear-marked or special funds may have to be spent with a particular Division or for a particular purpose, but they should be accounted for to the Director and he should approve their expenditure.

The Director should be responsible for the hiring of some key personnel, and for general personnel policies common to all Divisions. Through his budgetary powers he should control the size of the divisional staffs and, where coordination or assignment of functions between Divisions or general efficiency of the Department requires it, he should control the form of organization of the Divisions.

3. Planning. The formulation of plans should be a function of the Director's office, not of a single Division or of each Division. The comprehensive State Water and Related Land Use Plan assigned to the Soil and Water Conservation Commission by Legislative Resolution No. 5, 1967 Session, should be reassigned up to the Director. The Natural Resources Council should advise the Director on the planning objectives, priorities and procedures, and on the Plan as presented.

Much of the personnel of the Soil and Water Conservation Commission now working on the State Water Plan should be transferred to the Office of the Director. However, much of the planning and program work of the present departments should continue to be handled within the Divisions. For instance, plans for stocking fish, surveys of land and areas suitable for parks, forests and refuges, currently undertaken by Game and Parks under Section 81-805, and the Department of Health's comprehensive program for pollution control under Section 71-3004, should continue to be the work of the new Divisions of Game and Parks and Water Quality, but should be coordinated with the State Water Plan as to objectives, priorities and timing, and be incorporated into the overall state plan. Each present agency necessarily has a program for future operations which is in itself a form of plan. All of these programs should be coordinated with each other and with the State Water Plan and incorporated

into the plan. Some personnel of Divisions other than Soil and Water Conservation might be moved up to the Director's planning office.

The Director would be responsible for coordinating the State Water Plan with the plans of other state agencies and with such state plans as may be developed. Goals, objectives, conclusions, priorities and timing of the State Water Plan should not be at odds with a state master plan for economic and social growth.

Investigations and research activities of present departments are numerous. They may bear on or affect a State Water Plan or the work of another agency or division. For the most part these are closely connected to departmental work and are conducted by technical and professional personnel of the agencies. These should be continued within the proposed Divisions, subject to overall control of the Director. Where useful to other Divisions or to the State Water Plan, the activities may be broadened and channels for disseminating the results should be established.

Research of some types, basic in nature, exploring future problems, or requiring independence from action programs or administration control, may not be a proper function of a state agency, or the agency may not have the staff or the time to perform it. The close links with the University of Nebraska should be retained so that it may know of the areas in which research is needed and can continue to serve the state where those needs coincide with its facilities and programs. The Director should have powers to contract for research, and provide funds for that purpose, with the University, other educational and governmental organizations and professional organizations and consultants.

4. Publications and Public Relations. Some of the present agencies have specific promotional and educational duties (e.g., Soil and Water Conservation Commission, Section 2-1507; Water Pollution Control Council, Sections 71-3004 and 71-3007). Others are engaged in these activities under authority regarded as incidental to or implied from general powers. Scientific, educational, or promotional literature and other forms of public relations activities materials should be channeled through the Director. A central publications office is therefore desirable.

5. Data Collection and Management. In the modern world, resources management requires a vast amount of fundamental information about the physical resource, the claims against it, the uses to which it is or will be put, and the economic and demographic setting of the management program. We are now more reluctant to move on the basis of educated guesses or suppositions. Computer storage and retrieval of data enables us to know, literally, much more than we were even capable of knowing a

few years ago. Yet we still do not know everything, there are great gaps in existing data and new requirements for new and different data spring up as we move forward. The collection, processing, evaluation, interpretation and dissemination of data as a continuing process, are among the most important ingredients of resource management.

The Nebraska statutes are replete with sections directing the different agencies to investigate certain matters, gather particular information, make studies and surveys, collect statistics and perform designated research. The agencies are doing much more, as a necessary part of performing their functions. A data management center is needed. It must be more than a "data bank" storing the information gathered by the agencies. All of this activity should be analyzed. The need for each type of data must be determined, along with its usefulness in the work of the Department as a whole and the suitability of the form in which it is presented. Gaps, overlaps and duplications must be detected. Foresight and imagination should provide for future needs and multipurpose uses. A total program for observing, collecting, recording, storing, retrieving, presenting and publishing data should be worked out and put into effect. Emphasis should be placed on resource data, and data available from sources outside the Department should not be duplicated, though much information from discrete sources such as counties and districts may have to be collected and coordinated. The nature and form of the product should make it usable for all functions of the Department--planning, research, regulation and operation. Data obtained from regulatory and operational functions and from short term investigations, research and project design should be incorporated into the system, but the program should emphasize continuous long term collection of basic data concerning the resources.

Planning, organizing and putting into operation such a system should be one of the first major tasks of the Director of Natural Resources. For a time the Divisions must continue to perform their functions as the agencies do now. The best operation of the system may be to continue the functions of collection and investigation within the Divisions, with modifications in the interest of efficiency, correlation and expansion. The work of the Divisions will thus provide inputs for the system. The needs of the Division will provide some of the directions for the system and will influence the collection of data from other sources and the form in which the data is processed and fed back to the Divisions. But the pervasive quality of basic data, the need for it to serve all aspects of the Department's operations, and the necessity of freeing it from the operation requirements of a single Division require the establishment of a Data Center in the office of the Director.

Insofar as such a program of data management involves only consolidating and expanding the work of those agencies which will become divisions of the Department, it presents a monumental but not insuperable task. Insofar as some data (for instance, much of the economic and demographic data used in resource planning) might come from other agencies or from a central state data bank, or some resource data might be referred to other agencies, the problems are those of compatibility and coordination. But one feature of the present organizational pattern presents a real problem.

The Conservation and Survey Division of the University of Nebraska has, since 1930, been the principle organization gathering basic data relating to ground water, in addition to its soil surveys and its basic work in geology. It holds the contract with the United States Geological Survey for cooperative ground water investigations. (The Department of Water Resources has the contract for stream measurements.)

There were undoubtedly sound historical reasons for originally allocating this function to the University, with its trained personnel and need for data for its own research program. Undoubtedly the Conservation and Survey Division has furnished a continuity and objectivity that has served the state well. The people have placed confidence in its data, knowing the source. These are factors that could be said to point toward a continuance of this program. Action agencies have been accused of slanting data, of ignoring much that does not specifically further an immediate function or plan or program, of being guided by crash programs, of changing directions with changes in administration, of failing to keep data after action is taken, of failing to keep up and give continuity to the data. However, many of these criticisms are based upon practices and attitudes of the past which have now changed. The State Water Plan itself, the multipurpose nature of the proposed Department of Natural Resources, the broad base of the proposed Natural Resources Council, all should militate against domination of data collection and management from the standpoint of a single purpose action agency, and should provide a thrust toward a broad, comprehensive and objective program of data collection and processing. Certainly this is the recommendation and expectation for resource data as a whole, and there seems to be little reason for setting ground water aside as a special case to be handled by an outside agency, insulated from state government by the university structure. (See Sec. 85-164.)

It is therefore recommended that the ground water data gathering function of the Conservation and Survey Division should be transferred to the Department of Natural Resources. It is not recommended that the Division as a whole should be removed from the University and placed

in the Department. Some of the most effective state geological surveys are university connected and the academic community is a proper place for the conduct of research, studies and investigations that advance knowledge generally and do not bear directly on governmental responsibilities. It is not recommended that the Conservation and Survey Division stop all water related activities. Its test drilling program, its geology related study of aquifers and the like should continue, but its investigations and research should complement and not duplicate the data gathering work of the Department.

This transfer should not harm the University in any way. These fact finding and gathering activities are hardly a university function in any case as they are not research in the usual sense and in most states they are performed by state personnel in resource agencies. The true research activities of the University dependent upon this data may proceed as before. The data will be equally available even if located in and originating from a state department. The University and the Conservation and Survey Division should benefit from relinquishing these activities and turning toward more academic studies and research.

6. Natural Resources Council. The Director of Natural Resources should be a strong executive with primary responsibility for the Department's operations and the execution of the laws. Yet he will need and should have the advice and backing of a widely representative citizens group. A Natural Resources Council should be appointed by the Governor, bringing together people of different areas, interests and skills, to assist the Director, provide him with a broad base for policy decisions and to some extent act as a check on one man rule.

The Council should not be so large as to be unwieldy or to cause the individual member to lose the sense of direct participation. A body of no more than twelve is recommended. I do not feel competent to make specific recommendations for the composition of a council that would best represent Nebraska. Different areas of the state with different problems should be represented. Farmers, ranchers, irrigators, sportsmen, educators, districts, municipalities, industries and perhaps others might be recognized. Certain professions and skills might be desirable. Yet there should be a strong "citizens" flavor creating confidence in the minds of the public, the legislature and the Governor, rather than an atmosphere of individual delegates fighting for special interests. Opportunities for log rolling and the formation of blocs should be minimized. Certainly the Council should be bi-partisan. Perhaps the best draftsmanship would be for the statutes to give general guides to the Governor for making his appointments, rather than setting up specific requirements for the positions.

The present Soil and Water Conservation Commission, which exercises many of the functions recommended for the proposed Council, has seven elected representatives (five district supervisors, one district director, and one member of the State Irrigation Association.) While this procedure may give a sense of participation to the associations which elect them, and while the Soil and Water Conservation Commission has an excellent record of unanimity and impartiality, these members cannot help but feel that they are present to further the interests of their group. The recommendation is that the Council should be more judicial than legislative, and therefore that the members should be appointed. Representatives pledged to a particular position should be advocates attempting to persuade, rather than voting members of the decision making body. There is a place for special interest representation on subsidiary advisory bodies as will be noted later.

If the Natural Resources Council is to realize its potential it must not be allowed to become a futile discussion group or a mere rubber stamp for the Director. It must be assigned important duties, some by statute, some by the Director, perhaps some by the Governor. It must not control matters of administration such as budget, personnel, supervision, enforcement, etc. These matters relating to operation and efficiency are functions belonging to the executive branch, the Director and the Governor. On the other hand, a decision from a broadly based and well respected body would be proper for certain matters of broad policy, and certain adjudicatory functions relating to conflicts or disputes or differences between state and citizen or citizen and citizen. Thus the statute might direct the Council to review and approve policy formulation, prescribe major directives for the State Water Plan, recommend directions and programs for the data center, give the Director and the Governor its recommendations for the "views of the state" on federal projects proposed for the state or basin, and recommend needed legislation. It might be given the final decision on matters such as inclusion of particular features within the state plan, whether a privately proposed project complies with or fits into the state plan, allocation of state funds to districts, settlement of district boundaries and standards of water quality. The Director should use it, and should find it useful, in certain situations in which he wishes an advisory opinion on conflicts of policy or administration between Divisions of the Department. The council should be empowered to set up sub-committees and permanent and ad hoc advisory boards with membership from the Council, the divisions, other state departments, the federal agencies, interest groups and the public. It should have a pool of experts and consultants upon which it might call. The statutes should not detail these matters since the Council should be free to experiment, change, and find the best combination and working arrangements.

As will be noted later, the existence of the Council and its subsidiary advisory bodies does not preclude the setting up of special purpose advisory boards for some of the Divisions or some of the activities of the Divisions.

III. THE DIVISION OF WATER USE

1. Department of Water Resources. The Division of Water Use should be primarily a regulatory agency, carrying out the functions of the present Department of Water Resources relating to the appropriation and use of water, adjudication of water rights, permits for appropriations, regulation of dams, regulation of irrigation and hydroelectric power, regulation of some aspects of ground water use, and other functions dealing with the diversion, abstraction and use of water and other quantitative aspects of water.

2. Local Districts. The statutes give to the present Director and Department of Water Resources many powers over local districts of many kinds: drainage districts, irrigation districts, ground water districts, reclamation districts, public power and irrigation districts and rural water districts. Primary control over the activities of these districts in the appropriation, diversion, damming and extraction of water supplies should remain with the Division of Water Use. The Department of Water Resources has control, to some extent, over the formation and plans of some of these districts, in others these controls are with the county boards or the district courts. Ideally, all of these functions should be centered in the Department of Natural Resources. Most of the activities of these districts relate directly to the quantitative aspects of water use and thus to the work of the Division of Water Use. On the other hand, their formation and activities may affect many other types of districts and the work of the Division of Soil and Water Conservation. The tasks of allocating these duties to the Division of Water Use and the Division of Soil and Water Conservation and of coordinating their work are left to the Director of Natural Resources.

3. Data Collection. The numerous functions of the present Water Resources Department (e.g., sections 46-212, 213-227-229.01-261-603-629-709) in the data collection field have been dealt with in the recommendations for a data center in the Office of the Director.

4. Weather Control. The modification of weather, still in the experimental or trial stage, is supervised by the Weather Control Commission, and administered by the Department of Agriculture. While activities such as increase of rainfall and hail suppression obviously

affect the farmer, they have little relation to the principle activities of the Department of Agriculture, which primarily deal with production, health, and sanitation in food, feed, plants, dairy operations and live-stock. If climate control and stream augmentation ever become realities, these functions will affect irrigation and other water supply activities, and this regulation properly should be the duty of the Division of Water Use.

Therefore, Sections 2-2401 et seq. should be amended to transfer the functions and duties of the Weather Control Commission to the Division of Water Use. The Commission, whose membership provides expertise and knowledge, should be retained as an advisory board to the Division on weather modification matters.

The formation of weather control districts under Sections 2-2428 et seq. should be supervised by the Division of Soil and Water Conservation as explained in the recommendations for that division, rather than by the Department of Agriculture.

5. Floodways. The delineation of floodways, the establishment of land use standards, the approval of land use regulations, permits for construction of obstructions and orders for their removal, under Sections 2-1506.01 to 2-1506.14 present a difficult problem. These matters are currently assigned to the Soil and Water Conservation Commission, whose activities, and the activities of the watershed districts and watershed conservation districts with which it works, have much to do with flood control and the necessity and desirability of floodways. Yet the Commission is (and the new Division of Soil and Water Conservation will be) a promotional and operating agency concerned primarily with physical projects. On the other hand, the Division of Water Use, while primarily concerned with allocation of water, has hydrologists on its staff whose training in the quantitative aspects of water includes flood frequency and control, and it is moreover a regulatory agency accustomed to quasi-judicial functions and possessing established administrative procedures for hearing and settling disputes. In balance, it is believed that these functions should be transferred to the Division of Water Use, which should work closely with the Division of Soil and Water Conservation in the initial establishment of floodways, since the flood control activities sponsored by that agency affect the size and occurrence of flood peril.

6. Future Ground Water Laws. If Nebraska were to adopt laws regulating the use of ground water to a greater degree, or regulating the conjunctive use of ground and stream water, these functions should be the responsibility of the Division of Water Use.

7. Power Review Board. This board is "established within the Department of Water Resources" by Section 70-1003, and the Director of the Department serves as its secretary. Its functions are comparable to a public service commission, except that it regulates public power agencies and cooperatives rather than private companies, as to service areas, generation facilities, transmission lines and rates. It does not directly deal with natural resources or their allocation or utilization. It is an independent regulatory commission, the Director of Water Resources does not control it, nor should the Director of the Department of Natural Resources. The connection with the Department of Water Use Resources is for housekeeping purposes only, and it can conveniently continue to be housed in the new Division of Water Use.

IV. THE DIVISION OF WATER QUALITY

1. Department of Health. Presently the principal pollution control activities in the State of Nebraska are carried out by the Division of Environmental Pollution Control within the Bureau of Environmental Health Services of the Department of Health, and the Water Pollution Control Council. The Department of Health is listed as a code department, but unlike the others, which are headed by directors, it is governed by a ten-member State Board of Health, appointed by the Governor with the consent of the Legislature. Seven of these come from the health sciences, one must be a civil engineer and two are lay citizens. The Board appoints a Director of Health who supervises four bureaus, including that of Environmental Health. The other three bureaus handle, respectively, particular problems of health and disease, standards for health care services, and supporting services such as vital statistics, laboratories and departmental personnel and fiscal matters. The other divisions of the Bureau of Environmental Health Services include Environmental Sanitation which deals primarily with food and institutional sanitation, Environmental Safety which handles injury control and occupational health, and Environmental Engineering which is concerned primarily with the purity of public and private water supplies.

2. The Water Pollution Control Council. This commission is composed of six members who represent the food processing industry, other industries, agriculture and municipalities, and four ex-officio members, heads of the executive organizations of Health, Game and Parks, Water Resources and Soil and Water Conservation. It has important duties of developing comprehensive programs for water pollution control, setting standards for water quality, administering and allocating loans and grants of state and federal funds.

The legal position of the Water Pollution Control Council is not clear. Although the statutes seem to give it direct authority over many activities regulating water pollution, it is set up "within the department [of health]" and the Department seems to treat it as one of its five advisory councils. For instance, the standards of stream water quality recently adopted by the council were not regarded as official until formally confirmed and issued by the Board of Health.

3. Reorganization. The control of water quality has many relations to water quantity and has an effect on or is affected by almost every other water related activity. Historically, the pollution control functions of every state were originally assigned to existing departments of health, because the main emphasis was on the securing of potable water supplies. Today the emphasis has broadened to include regulating quality for industry, livestock, game and fish, recreational and other purposes, and modern thinking is to place all of these activities in a department primarily concerned with water, not health. This is the proper solution for Nebraska. Both water and health are involved, but the ties to the former are today stronger.

Therefore the Department of Natural Resources should contain a Division of Water Quality. The Superintendent of the Division should exercise the functions of the present Executive Director of the Water Pollution Control Council and the Division should have transferred to it the functions of the Pollution Control Division of the Bureau of Environmental Health Services. This will involve several subsidiary problems of how the facilities and personnel of the Bureau of Environmental Health Services should be split. For instance, it may be economical to arrange an interdepartmental use of existing laboratories, or the collection of data by one department for the other. Here, since two code departments will be concerned, the Governor should be empowered to make such arrangement by executive order after consultation with those concerned.

The decisions of the Water Pollution Control Council have been well received and the Council enjoys the confidence of the people, since to a large extent the water users are regulating themselves. It should be continued in operation as an advisory board to the Division of Water Quality and to the Natural Resources Council, rather than to the Department of Health. It has representation and expertise from different groups than those to be represented on the Council. While general coordination of divisions and between departments is to be handled at the department level, the Superintendents who will represent the Divisions of Game and Parks, Water Use and Soil and Water Conservation on the advisory board, and the Director of Health, will have

sufficiently close ties with the work of the new Division of Water Quality to justify retaining them on the advisory board, and their presence is perhaps needed to prevent complete domination of that board by industry representatives.

The issuance of permits for the discharge of wastes into waters, approval of plans and specifications of disposal systems, and orders prohibiting discharges or requiring construction of disposal systems, are enforcement procedures, routine or technical matters which properly should be handled by the Superintendent and the division staff. In contested cases the Superintendent may request the advice of his Board.

4. Game and Parks. This department now enforces Sections 37-516 and 37-517 relating to pollution control, has a program of testing and analyzing the physical and chemical quality of water, and engages in some short term research on water quality as it affects management of game fish. The number of game wardens in the field gives it an effective police force for quality surveillance. Its programs are fairly well coordinated with those of the Division of Environmental Health and the Water Pollution Control Council, although the interest of the latter agencies in potable and industrial water supply are concentrated more in the eastern part of the state than in the western waters that most interest Game and Parks. The Secretary of the Game and Parks Commission serves on the Water Pollution Control Council.

For the most part this dispersion of water quality functions should continue. The actual legal enforcement of the statutes should be transferred to the Division of Water Quality but the use of wardens for investigating and reporting stream pollution should continue. The studies and research activities of Game and Parks are sufficiently technical and are so fish-oriented and related to other activities of that department that they should be continued there. The Director of Natural Resources should look for possible savings in data gathering and inspection and for possible improvements of the activities, programs and plans of the divisions.

5. Oil and Gas. The Oil and Gas Conservation Commission regulates the disposal of oil field wastes and guards against contamination of fresh water supplies from oil drilling activities. Coordination with the Water Pollution Control Council has been good. But certainly the new Division of Water Quality should set the standards and policies for such operations. The Director of Natural Resources, after consultation and investigation, should determine whether these activities should be transferred to the Division of Water Quality as a part of its overall water control activities, or left in the Division of Oil and Gas, to be regulated

along with other phases of the industry, whichever is the most efficient and convenient.

6. Clean Waters Commission. This agency, primarily set up to assist in financing and funding waste treatment facilities, has planning and advisory functions relating to municipal water pollution control facilities. Since the Nebraska court has curtailed its financial powers in the case of State v. Duxbury, 160 N.W. 2d 88 (June 21, 1968), its principal function is no longer being performed. It is recommended that the commission be abolished, its remaining functions transferred to the Division of Water Quality and that the statutes (§§ 71-4201 to 71-4233) be repealed.

7. Air Pollution. The Bureau of Environmental Health has conducted some surveys on air pollution, and there are indications that proposed regulatory legislation will be introduced in the next Legislature. Air pollution control is now in the stage that water pollution control was in a half century ago, and the major emphasis is on a healthful environment for man. Although regulatory techniques may be similar to those for water quality control, the ties to health seem stronger and the Department of Health should be assigned this function, if the legislation is adopted.

V. THE DIVISION OF SOIL AND WATER CONSERVATION

1. The Soil and Water Conservation Commission. This Commission has an almost unique position in state government. The emphasis that Nebraskans have placed on the local district as the chosen instrument of Water resources development, the interests and agencies represented on the Commission and its advisory bodies, the good public relations enjoyed with the people and the Legislature, have led to assigning to this body some functions normally given to an overall water resource agency, such as the formulation of policy statements on proposed federal developments and the preparation of a State Water Plan. The commission has served so well and has presented such a united front in the Plan and the policy statements that it was seriously considered recommending that it simply be upgraded into the central resource agency. But several other considerations prevailed. First is the need for executive responsibility in the agencies, discussed above. Second, broadening the responsibility of the Commission could very well destroy its effectiveness by spreading it too thin. Third, the Commission as presently constituted is not an ideal body for such responsibilities.

The last objection is probably more theoretical than real, at least at the moment, for the Commission has certainly acted in the past as a "citizens" group working for the best interests of the state. For the primary purposes of soil and water conservation, planning, promotion and organizing, the heavy representation from local districts (seven of fourteen) is probably right. For broader responsibilities of planning and policies, complaint has been made that the Commission is too oriented toward agriculture and that one man representing municipal and industrial uses does not give a proper balance in view of the increasing urban population and industrial growth of the state. The three ex officio members from the University of Nebraska must surely be uncomfortable at times in performing the unacademic functions of policy formulation, regulation and allocation of funds.

Therefore the Natural Resources Department, with its Council, has been recommended as above, and the transfer to it of the statewide planning and policy functions which cut across agency lines. It has also been recommended that the new Council take over some functions relating to districts--the allocation of state funds and the settlement of district boundaries. These can be unpopular decisions, tough to make, and a more disinterested body is better suited to make them.

However, something like the Commission should be retained as an advisory board to the Superintendent of Soil and Water Conservation, to whom should be transferred the remaining powers of the Commission. Petitions for approval of the organization of a district, consolidation of districts, adding territory, etc., the assistance, advice and coordination presently being carried out should be continued by the Superintendent. In splitting the department and moving the state water planning functions upstairs to the Office of the Director, care must be taken not to disturb the organization serving the soil and water conservation districts and the watershed conservancy districts.

A board advising on these matters should, as in the case of the Water Pollution Control Council, have representation from the regulated interests, who should have a voice in the decision making process though they need not actually make the decision. This board should also be heard by and make its recommendations to the Natural Resources Council on fund allocation and boundary settlements. Since its functions will revert to the primary concern of local districts, it should continue to have a large representation from them, and the elective process seems to have worked very satisfactorily. It might be extended to the municipal and industrial representatives. The advisory board need not be as large as the present Commission. Coordination with other divisions of the department will be handled by other means, so

there is no necessity for them to be represented. The University's representation might be cut to one. The number of soil and water conservation district supervisors seems large and might be cut down without damaging their representation.

2. Added Functions. Nebraska's emphasis on the local district as a means of water resource development and control has led to a proliferation of different types of districts, many with overlapping powers and functions. The earlier types may be organized simply by a vote of the people, some require a finding that they would be in the public interest by a county board or district court, others require a similar finding by the Department of Water Resources if their activities deal with beneficial use of water or the Soil and Water Conservation Commission if they deal more with flood control. Various agencies approve or give recommendations on plans of some, others go their way without any controls.

The local district gives area residents control over the type of development and protection they will receive and the price they will pay for it. But if the local districts are to be the instruments of state water resource policy they must be amenable to that policy. Their functions must cover all of a problem area, their plans and operations must be adequate to do the job, their activities must not adversely affect downstream people and must be coordinated with upstream areas.

At the very least, if the present multiplicity of single or several purpose districts is to be continued, their organization, boundaries, plans and activities should first receive the approval of the proposed Soil and Water Conservation Division. New activities, construction and programs of districts, cities and counties should require the approval of that agency. Such activities must be coordinated with those of other agencies and be consistent with the State Water Plan.

The proposal of the Soil and Water Conservation Commission for multi-purpose districts is badly needed, not only for simplification of organizations and elimination of overlapping jurisdictions, but also for effective water resource development. That proposal is here heartily endorsed.

VI. THE DIVISION OF GAME AND PARKS

While not every agency whose activities affect water or other resources should be placed within the proposed Department of Natural Resources, the activities of the Game and Parks Commission are so

closely tied to the work of the Department that their inclusion is recommended. Every one of its activities regarding fishing, boating, water skiing relates to water use. It has important water quality control functions. Most parks and recreation sites are located on a stream or lake. Forests and game preserves are related to land use and soil and water conservation. The recreation aspects of watershed districts, watershed conservancy districts and reclamation districts are handled by Game and Parks. Both the planning and programming functions of the Commission require close coordination with and inclusion in the State Water Plan, which actually is to be a "comprehensive water and related land plan". Its investigations and research may bear directly on the plan. In the other direction, the Game and Parks Commissions' activities are affected or controlled by actions of the Department of Water Resources, the Soil and Water Conservation Commission and the Department of Health. Its inclusion in the Department of Natural Resources should result in a distinct gain in interdepartmental relations and coordination. Some years ago one might have hesitated to recommend that a fish and game agency be subordinated within an organization dominated by more mundane interests, where it was likely to be relegated to a back seat, but this is not likely to happen in the light of today's tremendous interest in recreational activities.

The Game and Parks Commission, the members of which represent areas rather than interests or skills, has never been a strong department in the sense of controlling the technical activities of the staff. Nevertheless, it is recommended that it be retained as an advisory board on the establishment of parks and recreational facilities, and the regulation of fishing and hunting.

VII. THE DIVISION OF OIL AND GAS

The Oil and Gas Conservation Commission is an independent board with some routine police powers for the protection of the resource, the public and the industry, and with some quasi-judicial powers that directly affect the wealth of citizens. Its functions should be split.

The Division of Oil and Gas in the Department of Natural Resources should take over the functions of investigations, record keeping, regulation of routine operations and drilling permits set out in Sections 57-905 and 57-906. The pollution control functions of preventing contamination of ground water and regulation of oil field wastes possibly should be transferred to the Division of Water Quality, as noted above.

The Commissions' powers over spacing of wells and unitized production operation are not executive functions for the administration of state government. Decisions and regulations made by the Commission relating to these matters have judicial and legislative aspects affecting important private interests and touching on controversial areas. Therefore it seems desirable to retain the Commission with its expertise and independence to perform these functions (Sections 57-908 to 57-910.12). For convenience in budgetary and staff matters, it probably should be housed in the Division of Oil and Gas, like the Power Review Board in the Division of Water Use. The rule making powers detailed in Sections 57-911 to 57-913 should be split between the Commission and the Division or made applicable to both.

VIII. THE DIVISION OF STATE LANDS

The present Board of Educational Lands and Funds has many functions closely related to soil and water conservation and utilization. (Soil conservation, sections 72-218, 72-232; irrigation and drainage, sections 72-240.07, 72-313; parks, section 72-407). These, and its functions of disposition and leasing of state lands as a natural resource practically require its inclusion in the new department as a separate division.

This Division should take over the functions of the Board relating to valuation, sale, leasing, exchange and mineral and oil leasing. (Sections 72-101 to 72-109, 72-203 to 72-212, 72-213 to 72-226, 72-233 to 72-248, 72-253 to 72-267, 72-301 to 72-314, 72-501 to 72-504, 72-901 to 72-912.)

Functions and duties relating to the investment of funds should be transferred to the state treasurer.

IX. STATE-FEDERAL RELATIONS

There are many statutes empowering the state agencies to make contracts with the federal government and its agencies, to receive and administer federal funds and to cooperate generally. Many other contacts are made on an informal and routine basis. Both state and federal agency personnel report very good intergovernmental relations, exchanges of information and working arrangements. None of these relations need to be disturbed, except as changes in the state organization may require some adjustment.

Formal and initial contact should, of course, be between the Director of Natural Resources and the federal representative. All contracts and permanent arrangements should be subject to his approval. Day to day and routine contacts and joint work may be carried on at the operational level as before, with the appropriate division instead of the former agency, with the knowledge and approval of the Director, and subject to reassignment by him under his general powers.

Section 46-901 should be amended to provide that nominees for state representatives to future federal river basin commissions should be presented by the Natural Resources Council to the governor.

X. STATUTORY CHANGES

No attempt is made to draft a statute or series of statutes implementing these recommendations. Such a task would be complex and time consuming, might be unnecessary if these recommendations are not adopted, or the work might need substantial modification if they are adopted in part. Nevertheless, some indications of the problems involved are here given.

The general provisions setting up the Department of Natural Resources and the Council should appear in Chapter 81 of the Nebraska Statutes. Since the intent is to give the Director considerable flexibility and power, the statute should contain a section providing that he may, by order, assign to any division, to his office or to the Natural Resources Council, any function or duty assigned by statute or previous order to any other division or its predecessor department or commission.

A large number of statutes relating to the organization of present agencies should be repealed. Some relating to powers and duties should be amended. Some recommendations along these lines are contained in the body of the report. A large number can be left as is, under new sections providing, for example, that all references to the Director of Water Resources shall be deemed to refer to the Superintendent of Water Use, and that except as otherwise provided by the Director of Natural Resources all functions of the Department of Water Resources shall be performed by the Superintendent and the Division of Water Use under the direction of the Director of Natural Resources.

The subdivisions, structures and internal workings of the present agencies which will become divisions of the Department of Natural Resources have not been examined in detail and no recommendations

are made for whatever streamlining and reorganization might be accomplished. This is much too detailed a job and should be left to the Director of the Department of Natural Resources.

Intradepartmental coordination procedures and practices of the divisions are not indicated. Perhaps the superintendents of all divisions should sit as an executive committee and coordinating council, perhaps certain papers should be routinely routed through all or some of the others, perhaps one or more should be notified of particular types of action or cases pending in others. Some actions and decisions should be made within the division, some should go to the Director, with recommendations from one or more divisions. The personnel of one division may be used to perform functions of or for another or for the central office of the Department. These are matters that should not be fixed by the Legislature and should be left to the Director.

The shift of ground water data gathering from the Conservation and Survey Division to the Department of Natural Resources can be made by simply assigning the responsibility for such data to the Director. Since some aspects of ground water investigation and research may still be retained by the Conservation and Survey Division, the statutes should not be amended, but the reorganization of the Division should be left to the Regents as a matter of internal management of the University. But since the Division will no longer be the primary source of ground water information, references to it should be deleted from Section 46-615 relating to ground water districts and Section 46-604, relating to well registration.

The Department, the Council, each Division, the Power Review Board and the Oil and Gas Conservation Commission, and the formal advisory boards for the Division of Water Quality, Soil and Water Conservation and Game and Parks should have rule making powers subject to Chapter 84, Article 9, Nebraska Revised Statutes. Rules of the subsidiary organizations should be subject to the approval of the Director or be promulgated as rules of the Department.

Contested cases formerly heard by the present agencies should be heard by the division superintendents, under the rules of Chapter 84, Article 9. Representatives of one division should be allowed to appear in any contested case in another division, the outcome of which would affect its operations. Any person aggrieved should be permitted an appeal to the Director and to the courts, as now provided by law. Any decision of the Director of Water Resources affirming, reversing or modifying the Division of Water Use, arising under Section 46-209

relating to water rights, should be appealed directly to the Supreme Court as provided in Section 46-210.

XI. ORGANIZATION CHART

A chart is appended showing these recommendations in schematic form. It must be noted that this chart presents a power structure, not a systems analysis of the work of the department. Lines of authority flow downward. No external or internal lines of communication and coordination are indicated. A "flow chart" of internal workings and interrelations would differ for each function performed, and these are matters for the Director, not the Legislature.

