A

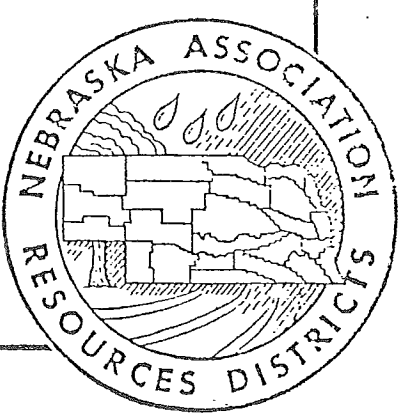
STUDY

OF

RESOURCES DEVELOPMENT FINANCING

FOR

NEBRASKA



Prepared

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with guidance from a

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August, 1983

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INTRODUCTION

Nebraska as part of Major Stephan Long's Great American Desert--hard to believe today. Many historians and climatology experts would suggest that Long's trek across the Plains came during a prolonged drought cycle thus accounting for his adverse impression. And Nebraska's cyclical climate yet today exposes the land and the population living on it to such drought conditions but our technology and our prioneer stubbornness have given us the means to coexist with such conditions.

Today's Nebraska is a major contributor to the agricultural economy of the nation. Irrigated agriculture is the backbone of that system with something in excess of 8 million acres of land under irrigation in the State.

The state's population relies upon a domestic water supply which generally has been of good quality and in adequate quantity to supply any needs. Nearly all of the domestic supply is provided from found water sources immediately beneath the lands served or near enough to be readily available.

Much of Nebraska's electrical energy needs are met with hydroelectric power generated with water moving across the plains within the Missouri River Basin. And now, possible thermal energy sources are being investigated as well as numerous water uses for fossil energy development.

Government and traditional governmental authorities have been a significant part of all technological resources development of Nebraska for its modern society and their demands. Development of the resources of the State to accommodate these demands and to avoid the adverse impacts of climatic cycles has used government investment as well as the tremendous undirected private investment made by many thousands of the citizens.

Today, Nebraska like other states faces the serious questions about how this region can continue to prosper and exist by conserving and properly utilizing their land and water resources.

Much of the water resources development in the region has been dependent upon capital intensive government sponsored or owned facilities. Much future development also appears to be dependent upon some government sponsored investments to assure success, but other options may exist.

A national dilemma appears imminent with water facilities supplying domestic, agricultural, manufacturing (industrial) and hydroelectric needs wearing out faster than they are currently being repaired or replaced.

Much is being written today about this crumbling American "infrastructure". Symposiums, seminars, workshops and independent publications appear regularly on so-called creative financing techniques to deal with the dilemma of infrastructure decay. Government's across America in recent years, desperate for financing sources to deal with project needs have utilized numerous financing techniques designed generally to entice conservative public finance investors to obligate their investment funds. High interest rate times and volatile rates have created the need for these techniques.

After a review of many of these papers and publications from proceedings discussing these subjects one can only conclude that no new, innovative financing approaches really exist. A multiplicity of variations of old traditional techniques along with some changes to allow for higher yields to investors is really all that has been accomplished.

Nebraska, a state with less development history than many other areas of this country has not yet found itself caught in the serious public works decay dilemma. It is instead continuing to primarily look at initial investments in public works development. Expansion and growth of cities geographically is still the major question facing public works developers in this state. Provision of public works services to people in rural communities across Nebraska is a new and growing dilemma. Protection from flooding through structural development or managed storm run-off is a

dilemma. Enhancement and stabilization of Nebraska's agricultural industries through irrigation management and water supply for the growing of crops and feeding of livestock is a question.

New, nontraditional demands for water may well also place added burdens upon existing systems for which they were not designed. These include recreation, fish and wildlife and esthetics demanding instream or base flows.

All of this myriad of demand for water use will require new facilities demanding major investment needs. Maintenance of the dependable agriculture production capacity of this state depends upon new water sources being developed to supplement anticipated water supply declines and avoid a return to dry land agriculture at least in those predicted areas. Maintenance and enhancement of domestic supply facilities must be planned for more sophisticated demands of an increasing population. Not only can we expect traditional urban and suburban demand but growth in demand for higher quality and greater quantity supplies in rural regions can be expected as well.

Economic stability for a region primarily dependent upon agriculture apparently also contemplates some increasing levels of industrialization as well and that can be expected to increase industrial water demands.

Just how Nebraska can hope to finance a water resources system capable of serving this tremendous demand remains unanswered to now -- yet it is a question which must be answered today, or it is an issue of crisis proportions tomorrow.

During the last two decades the Federal role in financing local public works has steadily increased. According to proceedings of the American Public Works Association, since 1957 when the Federal government funded only 10 percent of state and local public works investments that amount has increased to over 40 percent in the late 1970's.[1] Since that time, however, federal commitments have reduced significantly. The federal spigot is being turned off. At the same time state and

local fiscal capacity has diminished because of declining property values and reduced sales and incomes upon which taxes have generally been based and because of government spending limitation activity.

It is left to us now to assess our needs and through some priority setting process, be it formal and well structured or be it based strictly on public support and willingness to fiscally commit oneself, continue to develop the public resources facilities and private resources projects that Nebraskans deem necessary to serve their needs and protect their interests.

This publication will review institutional and financial approaches which may assist Nebraska in the future to accommodate its needs for resources project development. It will also review sources of capital which may be obligable to resources project development and from which users or beneficiaries such capital may be raised. It will review possible private development incentives or disincentives. Nebraska's infrastructure is still sound. Let it continue to be so. From among those institutional, financial and capital source opportunities and the private impactors legislative and administrative ideas can be developed.

It is our hope that future resources development decisions can thereby be made more straight forward and deliberate for all the people and not so easily controlled by a few deliberately holding back the financing tools.

CHAPTER 1

INSTITUTIONAL STRUCTURAL ARRANGEMENTS

Throughout its historical development, Nebraska, like most states, established local or regional units of government and granted them authorities to best serve all the perceived resources project needs of the citizens. That structural system is not unlike the systems established by many other states to best serve their unique interests.

As can also be seen in this chapter, some states have also developed a state level structure to varying degrees for the purposes of resources project efforts.

Local Government Structure

Nebraska since territorial days has established counties and authorized the creation of villages and cities of various classifications. It has also created or authorized creation of a myriad of special government units to deal with other very special natural resources programs. In fact, by the 1960's the State not only had 93 counties and 552 incorporated municipal units, but had in excess of 500 special natural resources governments. Nebraska today has the dubious privilege of containing almost five percent of this nation's governments while containing less than one percent of the nation's population.[2] With that in mind, the Legislature in 1969 began to reduce the numbers of units in the resources business by creating natural resources districts.[3]

Current actual local institutional structures in Nebraska include the types and numbers of local governmental units enumerated on the next page.

NEBRASKA LOCAL GOVERNMENTS WITH RESOURCES AUTHORITY- 1983

	Rural Water Districts	Groundwater Conservation Districts	Drainage Districts	Sanitary Drainage Districts	Sanitary and Improvement Districts	Irrigation Districts	Reclamation Districts	Public Power and Irrigation Districts	Natural Resources Districts	Counties	2nd Class Cities and Villages	Cities 1st Class	Cities Primary Class	Cities Metro Class	Metro Util. Dist.
Statutory Provisions	46-1001	46-614	31-301	31-501	31-701	46-101	46-501	70-301	2-3201	23-101	17-101	16-101	15-101	14-101	14-1101
Number of Districts	16	4	130*	1*	212*	44	5	5	24	93	104/417	29	1	1	1
Flood Control			X	X				X	X	X	X	X	X	X	
Erosion Control									X	X					
Channel Recertification			X	X					X						
Drainage			X	X	X	X	X		X	X					
Recreation					X		X		X	X	X	X	X	X	
Water Supply	X				X	X	X	X	X		X	X	X	X	X
Irrigation						X	X	X	X						
Pollution Control									X		X	X	X	X	X
Groundwater Regulation		X							X						
Wildlife Preservation									X						
Land Use Regulation									X	X	X	X	X	X	
Develop Comprehensive Plan for Soil and Water Resources									X						
Flood Plain Zoning										X	X	X	X	X	
Demonstration Project									X						
Hydroelectric Power						X	X	X			X	X	X	X	

These local governments may be reviewed in greater detail in Appendix A of the report which is a summary of current resources program authorities.

Unique local structures for resource projects are not evident in other states although financing authorities discussed in Chaper 2 make structures elsewhere significantly different. Parenthetically, natural resources districts appear to be among the few different concepts which exist anywhere today.

State Government Structure

The tradition of resources project sponsorship or financing activity at the State government level is less clear, although the development and authorization to agencies seems to have followed a pattern similar to the local efforts.

The State of Nebraska's resources agencies have historical developments similar to experiences in many other states. Through the years new agencies, departments or commissions were established or new functions assigned as specific needs were realized. Thus, today the State's water resources are affected by the actions of one code department headed by a director, one code department headed by a board, one code department headed by both a director and a council, two independent commissions and four divisions of the University of Nebraska Institute of Ag and Natural Resources. In addition to these nine entities the Department of Economic Development and the Policy Research Office may in the future have significant roles in this State's water and land resource development and use. Furthermore, the program of statistics gathered by the Department of Agriculture provides data used by other resources agencies; and the Department of Roads' construction programs affect water resources projects while resource projects in turn affect highway features.

However, for purposes of this study, only three agencies play a direct role in current resources project financing or

sponsorship. They include the Natural Resources Commission, the Game and Parks Commission, and the Department of Environmental Control. For a detailed review of these agencies, see Appendix A.

Although consolidation or reorganization of these various state agencies has been proposed in Nebraska[4] no true modification of the State's resources authorities has occurred.

Most State governments and their agencies have become involved institutionally to varying degrees in actual project efforts. California probably has set the pace in most project activity among the states having been involved in the actual project planning and design, financing, construction, ownership and operation of resources projects.

State governments can act as project sponsors for any or all stages of resources project development or assist other sponsors in those efforts by authority retained directly in the legislative branch of the state or assigned to existing or new agencies, boards, commissions or to separate authoritites.

Examples of other State Resource Development Institutions

Montana: A Water Resources Division of the State Department of Resources and Conservation operates several reservoirs and irrigation projects owned by the State. These projects were financed by the State. Also, in the State a renewable resources development program provides loans and grants to public agencies for resources projects development. The program is financed with revenue bonds backed by the state coal severance tax.

Wyoming: Resources projects are funded by a Water Development Account generated by portions of the coal severance tax and the oil and gas severance tax. Projects are selected by a water conference group consisting of the representatives of fourteen state agencies and submitted by them to the Legislature for approval.

California: This State has a number of local public agencies and programs to finance, construct, and operate resources projects. The Department of Water Resources is the state agency delegated with authority for coordination. Through the agency the State provided direct financial assistance to projects, operation of projects, and loans and grants for local development.

The State itself constructed and operates the California Water Project. Water from that project is sold to thirty-one local water agencies. Part of funds to construct the project came from the State's tidelands oil and gas revenues.

Texas: the Department of Water Resources administers a water development fund authorized constitutionally 25 years ago. The fund provides loans to local governments for resources development projects by purchasing the local entities bonds issued 1/2 percent higher than the bonds issued by the Stae. The interest ceiling is at 6% currently preventing further issue of bonds. The State may issue up to $600 million in bonds, however, as full faith and credit obligations thus allowing the most favorable interest rates.

Washington: The State has been authorized by referendum to issue up to $125 million in bonds to finance grants for a portion of the cost of water supply systems. In addition, loans are available at 6% interest to cover the entire cost of engineering feasibility studies.

New Jersey: In 1982 the State passed a $350 million referendum to finance and construct water supply systems in the State. A State Water Supply Authority, created by the vote in an '81 legislative act, is empowered to design, initiate, acquire, construct, maintain, repair, and operate all state owned water supply facilities.

Maine: The State has a bond bank established with powers to issue bonds and notes in its names and to purchase with proceeds therefrom the bonds and notes of local project sponsors. Security for the bank's debt includes (1) the full faith and credit of the local sponsor or its revenue generated from the project; (2) a required reserve fund; and (3) a commitment by Maine to meet deficiencies in the reserve fund with state appropriations.

North Carolina: The State Local Government Commission acts to guarantee repayment of all interest and principal of local sponsor obligations. The program lowers interest rates of locally issued bonds, thereby increasing marketability. The Commission approves all local general obligation and revenue bonds, does all preliminary work in preparation for sale and sell the bonds.

A special case -- wastewater treatment assistance: It appears that most states provide special arrangements for wastewater treatment activity with technical assistance in planning, developing, and operating such facilities. Twenty-seven states give grants to help local sponsors finance their share of the costs on work funded by the Federal Construction Grants Program. Thriteen states also have loan programs to further assist.

Other Structural Systems

Interlocal Coordination Organization: In 1963 Nebraska adopted the Interlocal Cooperation Act to "permit governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."[5]

Under this Act, any state agency and any local entity with resources project authority as well as the United States Government may exercise their statutory powers jointly together to carry out a project of mutual benefit. Any such activity may be administered by one of the cooperating entities or by several by mutual agreement or by some other separate administrative organization precisely defined and organized for that purpose.

Powers and authorities of the participating entitites may be delegated to the interlocal entity to carry out as well.

Structural Privatization: Institutionally some resources projects traditionally perceived as public sector responsibilities could be transferred or returned to the private sector for all or part of the planning, design, development and oeprating as well as ownership. This structure is very close to the concept of leasing discussed further on page 22 of this publication except for complete private control or control with limited public regulation as is true in the electric utilities industries in most jurisdictions.

Private operations can frequently bring efficiences not experienced in public ownership and can more quickly introduce new technologies, make economic alterations and eliminate unneeded service. The ability of private enterprise to provide better, less costly services will vary among specific resources purpose areas and their ability to produce profits for continued private incentives will depend on tax advantages on depreciation, investment credits, interest exclusions and capital generating capacities.

CHAPTER 2

ESTIMATING FINANCIAL NEEDS

An early question from anyone involved in a discussion of resources project financing is always "how much is needed?" Such a question is probably impossible to accurately respond to unless one already clearly understands the mechanism or institutional structure to be used to develop all the potential projects and then can also determine which among them are the ones to be completed. To state with authority that a given amount is needed is probably therefore impossible.

One can show long lists of potential projects and preliminary estimates of cost for most. And, such a listing probably at least serves the purpose of showing the magnitude of need which is being considered by potential sponsors. Some of the proposals can currently be funded, some probably cannot be given current authorities. That limitation has not been imposed here. The list is not intended to be inclusive of all currently proposed projects but only an example of some projects to serve someone's perceived needs.

Potential Resources Projects

FLOOD CONTROL:

Missouri Tribs Basin	
Antelope Creek	$ 440,000
Lower Platte Basin	
Rawhide	4,100,000
Central Butler	540,000
Bone Creek	1,300,000
Wahoo Creek	4,000,000
Skull Creek	5,000,000
Loseke/Taylor	3,300,000
Clear Creek 7-A	465,000
Cottonwood 22-A	371,000
Cottonwood 7-A	460,000
Lost Creek	40,000
LPNNRD Road Structures	800,000
Bellwood Channels	91,000
Niobrara Basin	
White River Critical Area Treatment	3,000,000
Beaver Creek Critical Area Treatment	500,000
Big Blue Basin	
Swan Creek	5,181,800
Wolf-Wildcat	2,615,200
Soap Creek	1,000,000
South Turkey Creek	4,900,000
Middle Platte Basin	
Sutherland Watershed	1,200,000
Ogallala Watershed	4,500,000
North Platte Local Flood Protection	8,737,000
Republican Basin	
Blackwood	2,283,850
Medicine Creek	1,720,575
Fish Canyon Watershed	209,513
Elkhorn Basin	
Osmond	1,721,000
Dodge	979,000
Scribner	1,489,000
TOTAL	$60,943,938

Potential Resources Projects (cont.)

IRRIGATION:	
Missouri Tribs Basin	
Crofton Unit	85,000,000 to 198,000,000
Niobrara Basin	
Butte-Naper	6,800,000
Beaver Creek	300,000
Middle Platte Basin	
South Divide Canal Diversion	(not available)
TOTAL	92,100,000 to 205,100,000
RECHARGE:	
Niobrara Basin	
Box Butte	900,000
TOTAL	900,000
DOMESTIC WATER:	
RURAL	
Niobrara Basin	
West Knox	2,690,300
Boyd #2	1,900,000
Boyd #2 expansion	475,000
Missouri Tribs	
Cedar-Dixon	1,335,600
Papio	954,000
Nemaha Basin	
Johnson-Gage	763,200
Nemaha-Richardson	1,526,400
Nemaha RWD #1	212,000
Little Blue Basin	
Little Blue NRD	572,400
Big Blue Basin	
Lower Blue	576,000
Upper Blue	2,671,400

Potential Resources Projects (cont.)

DOMESTIC WATER: (cont.)

RURAL (cont.)

Republican Basin	
Upper Republican	1,144,800
Middle Platte Basin	
Central Platte	4,770,000
Lower Platte Basin	
Lower Platte	2,289,600
Lancaster County	1,908,000
Cass County #2	3,796,000
TOTAL	$27,584,700

MUNICIPAL:

Modernization of 457 existing systems (taken from Pg 7-1, Policy Issue Study on Municipal Water Needs, State Water Planning & Review Process, NRD)	36,000,000
Rehabilitation of 54 existing systems (to raise systems to current standard selected at random - does not include expenses of restoring streets, curbing or landscaping not new land costs)	6,978,050
Lincoln metropolitan water plans	43,537,100

SANITARY SEWER (waste water treatment): 366,000,000

(Year 2000 needs based upon 1982 cost figures) (includes secondary treatment; advanced secondary; advanced treatment; infiltration and inflow; replacement and/or rehabilitation; new collector systems, new interceptor sewers and combined sewer overflows) Taken from 1982 Needs Survey, and EPA publication 430-9-82-009.

Most importantly, it must be recognized that projects like the examples here listed are being considered by a wide range of local entities. Authority to design, build and own such projects in the public interest generally exist--while the means to finance them may be burdensome or may not exist at all. The purpose of the ensuing chapters is to array alternative means which may provide those financing tools and allow preferred projects from these lists or elsewhere to be realized throughout the years ahead.

CHAPTER 3

INFRASTRUCTURE FINANCING CONCEPTS

Although it is indeed important to develop an institutional structure or combination thereof which can carry out resources projects such a structure is helpless to accomplish its task without one or more financing authorities by which it may most efficiently and economically complete its constituent plans.

Indeed, many studies have translated today's "infrastructure" dilemma into a lack of funding capability and not an absence of institution structures.

Although Nebraska may need institutional modification it may also need additional financing options. This chapter reviews a number of such concepts under each resources project stage, ie: planning, developmental and long-term ownership. Some of these funding concepts are currently used in Nebraska, some are not. Some even are totally untried in resources project development anywhere.

Planning and Design Financing

Planning and design of resources projects is the first and sometimes the only cost of any proposal. Whereas numerous projects are suggested as possibilities, only a few survive the preliminary, intermediate and final planning stages to move forward and need interim and long term financing.

Investigation of potential projects and the planning for those which service that stage are usually paid for from current financial resources or earmarked reserves of the potential sponsor or sponsors. Some project planning efforts are carried out in behalf of sponsors by superior governmental agencies which may or may not act as co-sponsors of the proposed project. These entities

generally use current or reserved financial resources as well. For a general discussion of current programs in this area see Appendix A.

In Nebraska the State Water Planning & Review Process provides for such authority but no funding has yet been provided to implement.[6] In some states grants or loans are made available at superior levels of government for local entities to carry out project planning which may otherwise be beyond their current fiscal capacity.[7] Such assistance, when made as loans could require ultimate repayment or forgiveness depending upon the outcome of the proposed project and the loan entities ability to repay.

Generally it appears that superior governmental assistance authorities providing for grants incorporate planning costs into the total project costs being assisted after implementation and ultimate construction of the proposed project. This is true in Nebraska.[8] It could be realistic however to also provide planning loans prior thereto and to convert these to part of a long term loan or a grant when the project is completed or to provide authority for loan forgiveness if the project is never constructed.

Another source of limited early planning funds has apparently been gifts or donations made by interested private organizations or citizens to a potential sponsor or an organized non-profit association organized to support a proposed project, ie: Prairie Bend or Catherland project planning efforts. Unless substantial private financing is possible from some major potential private beneficiary this private source generally seems limited for optimum and detailed planning efforts.

Interim Implementation Financing

Although long term financing is perhaps the most critical aspect of resources project financing perceived by the public it is every bit as critical to assure that interim financing is available

during development, final design and construction of the project and prior to its capability to handle debt service payments.

A project sponsor may determine that is in its interest to issue its long term financing package immediately investing the proceeds thereof until needed to pay costs during development, final design and construction. Certain legal limitations as well as current interest rates and long term interest rate expectations must necessarily weigh heavily upon that decision.

Some interim implementation financing may be able to be carried out from cash reserves of the sponsor or from current revenue capabilities although this source is likely soon depleted in development of any project which requires special long term financing at all.

The use of loans or grants from a superior governmental source may also be used for interim needs assuming the program from which provided is authorized and capable of supplying interim in addition to long term assistance. Such authority does exist within Nebraska's Resources Development Fund.[9]

There are also several methods of short term financing which may be utilized by a sponsor throughout the implementation stages when it appears most advantageous to do so. These include tax exempt notes such as tax anticipation notes, grant and loan anticipation notes, bond anticipation notes, revenue anticipation notes, tax exempt commercial papers and warrants issued for anywhere from a few months to several years. These authorities do not now universally exist in the authorities of potential sponsors within Nebraska. See generally Appendix A for existing authorities.

Use of such notes has seen erratic but steady growth in volume in recent years, generally because of higher than usual prevailing rates of interest which government project sponsors have been required to pay for bonds. Sponsors would rather not become

committed to high interest rates on long term issues when they believe interest rates in the next few years may come down thereby reducing the ultimate cost of the long term debt.

Long Term Financing

Whether discussing replacement of a region's public works infrastructure or the development of new facilities the big issue ultimately settles upon how to pay the final bill. No matter what developmental approach is used dollars are still necessary. Those dollars must come from some source during the design, development and completion of the proposed project or program as was reviewed earlier in this chapter, but long term financing may ultimately be required to serve the project repayment capacity.

Small scale public sponsored projects or those which have been carried out over long periods of time may have been able to rely upon current capital availability without borrowing against the future. Some limited private resources development has undoubtedly also occurred on that basis.

There are also some project efforts which may best be developed with use of loans or grants from a superior governmental source, thereby eliminating need for a local entity to use other long-term methods. However, the superior entity may still require some long-term means of accessing capital for making loans or grants.

There seems little doubt that the "build now - pay later" concept must be used at some level for major infrastructure development and replacement financing needs. Unless Nebraska, its local governments and its citizens can find new large revenue sources yet untaped the "pay as you go" method is probably impractical for most major work. This section will review the several option areas available for long-term financing of resources projects.

Bond Financing Methods: The concept of bond financing is the one basic means most widely used by government for long term financing of capital construction and development. It is a public borrowing method whereby money is obtained to pay for an improvement and repaid in the future. It is somewhat analogous to the home loan mortgage method of financing housing.

State and local tax exempt bonds are generally referred to as "municipal bonds". They are defined as "exempt issues" because the interest earned by the holders of such bonds is not subject to Federal income tax and perhaps also state or local income tax. Because of this tax exempt status, state and local governments are able to borrow at lower interest rates than might generally apply to taxable bonds. As a consequence, municipal bonds are generally marketed to individuals or institutional investors needing non-taxable income. Although traditional municipal bonds have long term fixed maturities and fixed rates of interest they need not conform strictly to those standards.

A large and sophisticated municipal bond market does indeed exist to serve the non-taxable income needs. However, the majority of all new municipal bond issues are in reality small or intermediate size loans to local entities. The bonds securing such loans never enter the traditional national bond market at all. Generally the local leaders negotiate the needs directly with a local lender for terms and interest rates and issue their bonds to match those provisions. The bonds themselves will probably never be resold or leave the community where issued since they were tailored to fit the needs of a particular customer of the lender. Only occasionally will the lender sell off some bonds in order to purchase new local issues while remaining within its tax exempt holdings requirments governed by federal or state lending laws and regulations.

Such local bonds with very special purposes and terms have by there nature limited liquidity and marketability and constitute a

very special market separate and distinct from the traditional national markets used by larger issues.

Four general categories of municipal bonds will be reviewed here: (1) general obligation bonds; (2) revenue bonds; (3) moral obligation bonds; and, (4) industrial development bonds, which resemble municipal bonds in many respects.

General Obligation Bonds: Such bonds are backed by the full faith and credit of the issuing government. This means the issuing entity has promised to use any and all of its financial resources, including any ability to levy and collect taxes, to retire the debt evidenced by the bond if any revenues or funds normally committed for project debt servicing were not sufficient. The general revenues of the issuer are committed to the debt. This commitment maximizes the security of the bonds and reduces the interest rate to the lowest level obtainable by that particular issuing entity.

Although this bond type is the best from an interest cost standpoint it is interesting to note that in the twenty years since 1960 the issuance of such bonds has declined relative to revenue bonds from over 70% to under 40% of the total new issues from the municiapl bond market.[10] General obligation bonds are also usually more restricted by statutory debt limitations and almost always require voter approval.

Revenue Bonds: A second category is revenue bonds which differ from general obligation bonds because they are issued without the full faith or credit of the issuing governmental entity but instead are to be retired solely by revenues specifically generated by the project constructed or from some specific revenue source. The general revenues of the issuer not having been pledged eliminates any direct burden upon the taxpayers of the issuer.

If a project developed with revenue bonds fails to produce actual revenues sufficient to pay the principal and interest on the bonds no secondary sources are pledged for such repayment. Therefore, interest rates for revenue bonds will be higher than for general obligation bonds because of the greater amount of risk involved and the lower level of security backing for the bonds.

On the other hand revenue bonds are often not subject to the same statutory debt limitations as are general obligation bonds and therefore may be the most convenient means for financing a capital project that benefits the area governed by the issuer. Nebraska's only state bonding authority for resources work is classified as a revenue bond authority.[11]

Moral Obligation Bonds: A moral obligation bond falls somewhere between a general obligation and a revenue bond. Such a bond initially pledges only project revenues or limited earmarked funds to repayment of the debt but further provides through the issuer or through another entity, such as the state, a moral pledge of payment in the event the issuer is unable to make a timely debt service payment itself from the primary source.

Generally, a moral obligation bond is not restrained by voter approval requirements like a general obligation bond nor does it have an absolute commitment of the full faith and credit of the issuer or the state.

It should be noted that since the early 1970's some hybrid bonds have emerged in which debt servicing charges are payable primarily from pledged revenues or from limited or special tax sources, but for which the issuer also pledges its full faith and credit if primary source revenues fall short. Most bond analysts group such bonds with general obligation issues, and not in the moral obligation bond category.

Industrial Development Bonds (including pollution control bonds): Industrial Development Bonds (IDB) are really in general private or corporate bonds disguised to resemble municipal revenue bonds. They differ from the traditional municipal bond in that they do not have any direct backing of any governmental authority or an ultimate guarantee from the government. They are instead

backed solely by the corporation or some other private entity and as such are actually private credit instruments.

IDB's are nominally structured as municipal bonds to qualify for issuance under the Internal Revenue Code as a tax exempt issue. However, aside from meeting certain federal tax requirements, it is the intent of the issuing governmental entity, the private entity and the tax officials that the bonds be private credit instruments.

Because they may qualify as tax exempt instruments they offer significant interest cost savings to the private user of the proceeds. They may also offer some advantages on depreciation of the project facilities acquired.

Such bonds can be structured as municipal leases, installment sales or direct loans with the general form being determined by authorizing state laws.

Two general types of industrial development bonds are provided for by the Internal Revenue Code. The first group is unlimited in size of issue although use of proceeds is restricted but includes wharfs and docks, air and water pollution facilities, and sewage and solid waste disposal. A second group is limited in size but unrestricted so far as use of proceeds are concerned. Size limitations rules need not be outlined here but notation that the maximum any one private entity may utilize is $10 million.

Governmental Leasing:[12] Leasing is a concept by which one entity public or private may transfer a given resources project to another entity either public or private for a period of time in exchange for the payment of a specified amount. It may be a reasonable alternative to the more traditional bond financing approach.

Two of the more common lease arrangements in use today for government leases include (1) a straight operating lease and, (2) a lease purchase agreement.

The straight operating lease is simple to structure for both parties. Terms and fees are usually negotiable when the government is the leasee since the assets are being acquired from a vendor who is expected to recover a fair market value for the leased asset. The asset is leased for the time that the government desires and reverts to the lessor at the termination of the lease. Typically, these have been for short-term use, such as during an emergency or when a program is temporary and ownership is not desirable and therefore may not serve resource development needs.

A lease purchase arrangement on the other hand has the important characteristic of equity accumulation. Vendors and lease-financing companies are especially interested in lease purchase arrangements because the interest portion of the lease is tax-exempt under federal regulations. This fact should make the cost of leasing less for governments than for private businesses.

When assets are financed in this manner, they are essentially being purchased on an installment basis. Ownership is often acquired for as little as $1 at the termination of the lease. Regardless of the amount needed to acquire ownership it is usually much less than the true value of the asset, with the lessor having received an adequate return on its investment through rentals and tax benefits over the term of the lease.

The most important legal consideration for a government acting as lessee is the "fiscal-funding clause" in lease-purchase agreements. This clause makes the lease a one-year contract with automatic renewal, unless the government notifies the lessor that funds are not available for a renewal period. The effect of this clause is significant for two reasons: (1) the lease probably does not apply to the debt ceiling, consequently voter approval is not normally required, and (2) the risk of cancellation increases the lease interest rate.

As a lessee, the government gains substantial financial benefits. Aside from leasing the only methods of acquiring assets are from current operating revenues, intergovernmental grants or through sale of bond issues. Current trends in tax-limitation legislation, double-digit inflation, uncertain aid programs, difficulty in passing bond referenda, and demands for spending that generally exceed revenues frequently make the outright purchase options unrealistic or unreliable. Consequently, many people view leasing as the wave of the future. However, this technique should not be abused, or governments are likely to find additional legal constraints placed on their leasing options in the future.

Properly structured, a lease-purchase contract can be more efficient and less expensive than the traditional bond issue for two reasons: practicality and economic feasibility.

The practicality of the lease-purchase contract is demonstrated in a number of ways, such as (1) elimination of the expense and delay caused by a bond referendum; (2) the capacity it has for use by small governments which have limited access to the capital markets and (3) its ability to finance relatively small capital needs that are too large to be funded from current revenues yet too small to ever by considered for bond financing.

Leasing can be more economically feasible than bond issues. Since a lease typically has few indirect costs if any. However, a bond issue normally has referendum costs, legal fees, printing costs, rating costs, fiscal advisory fees and accounting fees, all in addition to the interest costs. A comparison of total costs for "lease vs. bond" may show leasing to be less expensive especially for smaller items.

Joint Venture - Limited Partnership Method: Joint ventures have become popular in a wide range of business investment areas as a means of raising capital for a new enterprise or effort while passing on the profits to the capital sources along with the tax

advantages of such efforts as a part of the investment incentives. Such a method although apparently yet untried in water resources development could conceivably be used as a means of resources project financing, but only if the private investors could realize profits through tax shelters or project revenues.

Under this approach shares in a proposed project for resources development could be sold by the primary project developer. Shares could be transferred to cash investors as well as contributors of land rights and other non-governmental lenders with each share holder thereby acquiring a portion of the limited partnership and entitling it to any realized profits or losses for tax purposes. It must be noted here however that federal securities requirements place strict limitations on who may in fact participate in such joint ventures and that many logical participants may not legally qualify.

The key is to assure that project revenues are adequate to return an investment satisfactory to entice legally qualified investors. Any apparent future failure of that to occur would require government grants to offset the shortfall prior to initial investment solicitations. If a debt service subsidy were provided by public funds from some source then private investors could potentially be attracted to eventual ownership of a project which could provide handsome profits upon debt retirement.

CHAPTER 4

SOURCES OF CAPITAL FOR RESOURCES PROJECTS

No matter what institutional structure is utilized, and no matter what funding mechanism is employed to generate the immediate project development capital, ultimately the direct users or the beneficiaries of the work must have paid in cash or must repay any financed expenditures within the requirements of the financing instrument utilized. It will be of utmost importance to the success of any project effort to identify any and all users and beneficiaries, measure their ability to pay for their share of the project and implement a means by which they may most equitably be charged for that share. The broadest possible array of users and beneficiaries is the best means of minimizing each individual's costs for a project.

The sources of capital ultimately relied upon can be grouped into traditional (currently in use in Nebraska) and non-traditional (not currently used in Nebraska) categories and into general and special revenue areas.

Traditional General Sources

General taxes (State): The State of Nebraska raises its general fund revenue primarily from a sales and income tax base. It is currently estimated that a one percent sales tax rate would generate approximately $100 million and that a one percent of federal taxes income tax rate would generate $21 million annually.[13] In addition, the State supports a small part of its general fund needs from taxes on paramutual horse racing, cigarettes, alcohol, bingo, and other special taxes. Note that some taxes collected from these and other special sources such as

motor fuels are earmarked revenues not deposited in the general fund.

The State no longer collects a property tax having eliminated that source constitutionally in 1965.

Realistically, for the state general fund to be a capital source, increases of the rates currently required for all ongoing state obligations would be necessary. Ideally, dedication or earmarking of a part of the total annually received or of a special dollar amount would be best.

General taxes (Local): Local government in Nebraska is supported primarily by an ad valorem property tax on all real estate and by a very limited amount of personal property tax. Some municipal governments also rely upon a city sales tax on sales within their corporate limits. Although not uniform across all taxing units, the property tax levied upon the average taxpayer is approximately $401 per annum.[14] Generally, it is believed that the property tax obligations currently in place cannot be increased significantly although some geographic or political areas and some governmental projects might get tax increase support.

Limitations on tax levies statutorily vary by local unit and project authority as outlined in Appendix A and a levy increase limit is universally applied under the Nebraska Budget Limitations Act.[15]

Traditional Special Sources

Special Assessments: This category includes charges levied by an entity for projects which may in some way be providing measurable benefits to the user or beneficiary for which the charge may be justified. It is a widely accepted means of collecting revenues for streets, storm sewers, and flood control levy

protection and may also be acceptable for other resources related projects as well.

Although strict statutory provisions usually govern the methods of establishing special assessment structures, often no limits upon use exist other than beneficiary support and ability to fiscally handle assessment levels.

User Fees: This category can include water sales and delivery revenues, power sales revenues, sewer use revenues, and recreational facility user revenues. This category has seen extensive use in domestic water needs projects, storm sewer development projects, and for energy delivery. It has also recently been developed for recreation facilities in the state.

Recharge Fees: This is a special fee which may be charged for benefits received for water placed into storage in an underground aquifer. A recharge tax has been authorized under reclamation laws in Nebraska for years; however, as an ad valorem assessment, it does not necessarily have any direct relationship to benefits received. The 1983 Legislature authorized fees to be charged to all identifiable direct beneficiaries of existing water distribution projects and new water distribution projects whether or not those beneficiaries are users of recharged water. Existing project recipients are protected by maximum charge limits.[16] These newly identifiable beneficiaries which may be charged a fee are now an additional class of people who may be asked and can help to repay financing commitments.

Lease Revenues: Some resources project facilities may be capable of being operated and maintained by private enterprise. Should that be possible, a least to the private sector provides a possible revenue source in lease payments back. Such a revenue source has

been used as a pledge source to assure bond repayment on other types of facilities and could be applied here as well.

Non-Traditional General Sources

Any discussion of resources project development needs in the past has looked at new general revenue sources over which to spread the debt service obligations while not being forced to compete with other public needs for currently available revenues. Even looking at most new or non-traditional sources is of questionable value since many other public needs constituencies are looking as well at similar concepts. Nevertheless, some of these sources in no order of priority are as follows:

State Sale of Water to High Economic Use: Nebraska was stunned in 1981 when South Dakota announced the sale of water it deemed to be surplus to Energy Transportation Systems, Inc. from the Oahe Reservoir on the Missouri River. Such a sale has been estimated to provide South Dakota with up to $1.5 billion over 50 years as well as a pipeline large enough to serve a domestic water need in a number of West River communities for which South Dakota had been exploring means of financing construction. Why then cannot Nebraska consider similar action? Indeed, it can.

A remaining supply of Missouri River water could perhaps serve as a source but likewise, the water in storage beneath the Sandhills area of the State could perhaps be prudently withdrawn and marketed to intra- or interstate domestic or industrial users with the financial ability to pay sums as large or larger than the amount received by South Dakota.

Recent coal development within the states west of Nebraska and the potential for shale oil development may be creating further demand for slurry pipeline transportation or gasification both of which would require tremendous supplies of water by high economy

industries. Likewise, domestic needs of the large population base along the eastern slope of the Rocky Mountains may eventually require Denver metropolitan water agencies and others to look east for potable water supplies.

Either of these potential water markets could provide large sums of capital to the State of Nebraska which could be reinvested in the state's own water resources development needs.

Water severance taxes: Nebraska currently has a small severance tax on oil and gas production and new plans for a tax on uranium severance. These sources are dedicated directly back to aid the industry from which collected.

The concept of a severance tax on water withdrawal has been discussed frequently. Such a tax is really an ad valorem tax on value of the water resource removed. Traditional severance taxes are applied where their cost is initially born at the withdrawer's level although this charge is usually thereafter passed on to the consumer of the ultimate product. Parenthetically, this may not be able to be accomplished with water.[17]

Excise taxes on grain, livestock, irrigation equipment, and grain alcohol:

Excise taxes are currently applied to tobacco, alcohol and motor fuels in Nebraska. It has been suggested that similar taxes be imposed upon products used in developing resources or on the products of resources development or exploitation. Such taxes would be imposed upon the theoretical beneficiaries of resources project activity in general although direct relationships may not always exist.[18]

Many of those ultimately absorbing the cost of the excise because of reduced prices for their products would be the same people classified as users or beneficiaries in any much more straight forward revenue raising process.

Lottery: Some fourteen communities now operate lotteries locally as a means of generating revenue which must be used for "community betterment".[19] Although moral arguments against legalization of games of chance have generally been persuasive, the use of a lottery, the proceeds of which are specifically earmarked for resources development as a community betterment activity, avoid many equity arguments. The participant voluntarily participates in the process by purchasing a chance to win an amount of money generated by similar purchases at given odds. Estimates indicate that at least $20 million could be expected to be generated for dedicated purposes from a lottery similar to that proposed originally in the 1983 Legislature.[20]

Tax increment receipts: A particular type of general obligation bond has been used extensively in financing urban renewal projects; that being a tax increment bond. Pledged to repayment of such a bond is all tax receipts generated at existing levy rates from the increase in the assessed property values resulting from the project. Those receipts would if not dedicated to bond retirement either lower the tax rate in general or grant a windfall tax receipt to existing taxing authorities.

Pledge Of or Sale Of State Assets: California sold offshore oil and gas rights to fund its California Water Project. The sale or pledging of certain state assets might be another source of funds available for resources project efforts in Nebraska. It is likely, however, for Nebraska that such a plan would meet with much opposition since no apparent marketable assets exist which do not already have a committed purpose and a strong support constituency. Assets such as school lands could be considered in this category. Those lands could be pledged as security or turned into investment capital by sale to the general public as has already occurred to a limited extent.

The assets and business value of the state's public power industry might also have a net market value of substantial worth and if privitized could provide substantial resources investment capital.

Non-Traditional Special Sources

Some of these sources may be used on a limited basis in Nebraska but are not widely recognized approaches.

Impact Fees: This system of fees forces participation in the cost of a project at the beginning of development rather than through long term repayment from an enhanced tax base and improved employment tax receipts. Economic growth interests must be identified and assessed a fee commensurate with the expected economic effect of the specific project and are thereby paying in advance for growth to occur.

Systems Development Charge: These charges are directly associated with specific improvements to facilities but are also levied on new developments after improvements have been constructed. They are frequently used in utilities expansion of improvement projects. The intent is to enable an entity to achieve excess capacity improvements in advance of growth but place the cost for such improvements on those properties which later develop taking advantage of the excess capacity which was provided.

In-lieu of Construction Charges: These charges are used when more than one type of project would resolve a problem, one privately financed, the other publicly financed. If it is determined that the public facility is appropriate then the private interests which would otherwise have been required to carry out their project are assessed a charge commensurate with the costs they could reasonably

have been expected to incur. This concept is often used in new developments.

Latecomer Fees: Such fees are used in developing areas to compensate a private or public developer for oversizing a facility in anticipation of growth. The fees are later paid by those who develop within the area and credited to the original developer to compensate it for the initial investment.

Equity Assessment: This system is used to balance the cost of use as between two supply sources for water delivery, ie: groundwater pumped vs. surface water delivered by canal. It is designed to eliminate any economic advantage as between two such sources and to eliminate the users' economic argument for supply source selection. Although the concept is used generally as a part of a regulatory schedule of conjunctive use management, it is likewise a source of revenue which may be committed to augmentation project costs.

COST ALLOCATIONS & POTENTIAL CAPITAL SOURCES BY USE PURPOSE

USE PURPOSE	USERS	BENEFICIARIES (non-direct Users)	CAPITAL COST REPAYMENT SOURCES
Domestic	(1) all city dwellers w/community supply (2) all rural residential rural delivered supply (3) government-health & safety services (4) government-proprietary (5) business & industry w/community supply	(1) general public (2) government (improved tax base)	(1) state general taxes; (2) local general tax (3) user fees; (4) severance taxes; (5) specia assessments; (6) privitization; (7) donations; (8) lease revenues; (9) impact fees; (10) development charges; (ol) latecomers fees; (12) (federal taxes); (13) new state general revenues
Industrial	(1) industrial (manufacturing) (2) mineral/oil/gas developers (3) electrical generating (non-hydro) - public (4) slurry transportation industry	(1) general public (jobs & economics) (2) government	(1) private industrial investment; (2) private investment - (private water company); (3) general taxes; (4) user fees - industrial user; (5) special assessments - industrial user; (6) water severance tax; (7) lease revenues; (7) impact fees; (8) development charges; (9) latecomer fees; (10) new state general revenues
Irrigation	(1) direct allocation divertors	(1) recharge - pumpers (2) recharge - subirrigation (3) recharge - non-user (land value protection) (4) irrigation equipment industry & services (5) General agribusiness firms (6) General public (a) "cheap food" policy (b) artificial ag protection (c) commodity availability (d) economic spin-off (7) government (stable or increased tax receipts)	(1) state general taxes; (2) user fees; (3) exc (grain, livestock, equipment); (4) special asse ments; (5) water severance fees; (6) tax increm (7) local general taxes; (8) private landowners investment; (9) private investment capital; (10 donations; (11) (federal taxes); (12) recharge fees; (13) equity assessments; (14) lease reven (15) new state general revenues; (16) (federal taxes)
Flood Control	(1) flora & fauna (non-human)	(1) flood plain landowners & tenants) (2) general public (health & welfare) (3) business & industry (4) government (reduces flood services & maintains or enhance property values)	(1) state general taxes; (2) local general taxes (3) special assessments; (4) donations; (5) tax increments; (6) new state general revenues; (7) (federal taxes)
Sanitary Drainage (sewers)	(1) all city dwellers w/community sewers (2) all rural residents w/central sewer system (3) business & industry served by community system (4) government - proprietary functions	(1) general public	(1) state general taxes; (2) federal taxes; (3) local general taxes; (4) user fees; (5) special assessments; (6) private investment capital; (7) donations; (8) lease revenues; (9) impact fe (10) development charges; (11) latecomer fees; (12) new state general revenues
Drainage (agricultural)	(1) landowners with excess overland water-natural or man-created	(1) some neighboring lands (2) general public sometimes (assumes need for more land capacity & reduced health or safety hazards (3) government (stable or increased tax revenues)	(1) local taxes (limited); (2) special assessmen (3) private investment capital; (4) donations

COST ALLOCATIONS & CAPITAL SOURCES BY USE PURPOSE (cont.) - Page 2

USE PURPOSE	USERS	BENEFICIARIES (non-direct Users)	CAPITAL COST REPAYMENT SOURCES
Drainage (urban) (stormwater control)	(1) city landowners w/stormwater problems	(1) general public (health and safety) (2) government	(1) local general taxes; (2) special assessments; (3) state general taxes; (4) user fees; (5) impact fees; (6) development charges; (7) latecomer fees; (8) new state general revenues
Base Flow Needs	(1) (non-human) - flora & fauna (2) stream dischargers (a) sanitary sewers operators (b) industry (c) some agricultural operators (3) some livestock industry	(1) some downstream divertors (water quality) (2) general public - aesthetics enthusiasts (3) subirrigation recharge users	(1) state general taxes; (2) local general taxes; (3) discharger user fees; (4) special assessments; (5) donations; (6) new state general revenue; (7) federal taxes
Hydro-electric	(1) public power industry	(1) electric consumers (2) general public	(1) sale of electricity; (2) private investment capital; (3) state general taxes; (4) (federal taxes)
Groundwater Recharge	(1) groundwater pumpers (2) subirrigators (3) domestic users (less than 100 gpm)	(1) rural domestic users (greater than 100 gpm) (2) domestic users & suppliers (water quality (3) general public (a) "cheap food" policy (b) ag protection (c) community availability (d) economic spinoff (e) wildlife, waterfowl-wetland protection (f) recreation, fish, wildlife, waterfowl-base flow enhancement	(1) state general taxes; (2) local general taxes; (3) special assessments; (4) user fess; (5) recharge fees; (6) tax increments; (7) new state general revenues; (8) (federal taxes)
Recreation, Fish and Wildlife	(1) campers and picnickers (2) fisherman, hunters, sportsmen (3) boaters (powered or wind driven flat water) (4) swimmers (5) bird watchers	(1) fishing, hunting, boating & camping equipment industry (2) recreation related shore businesses (3) some neighboring landowners (property value enhancement per unit) (4) aesthetics enthusiasts (5) government (enhanced tax base)	(1) state general taxes; (2) local general taxes; (3) excise taxes (user equipment); (4) user fees (park permits, boat licenses, trailer licenses); (5) private investment capital (facilities privately owned); (6) donations; (7) new state general revenues; (8) federal taxes

CHAPTER 5

MANAGING PRIVATE DEVELOPMENT

Much of Nebraska's resources development has been from private investment in agricultural uses. Indeed, the primary use of water in the State is for irrigation of agricultural lands accounting for significant amounts of the consumptively used quantities; and much of that use is from privately developed supplies. Therefore, at least a study of agricultural resources development financing structures is incomplete if it fails to review such privately financed development and the means by which such future development may be affected by public policy for the greatest good of the State just as the publicly financed efforts are intended.

Nebraska has not tended toward managing such development investments by mandatory restriction until the last decade. Although surface water laws and more recently groundwater laws have had some impact upon private development decisions, the limitations imposed have had little impact upon the basic development which has occurred in the past.

It is not intended here to review those laws or regulations historical or recent but instead to review more direct potential means of impacting the financing of private development activity. Mandated restrictions on development although the most direct means of impact are not here discussed.

Responsible private irrigation development upon a sound resources foundation should be a goal of any public plan to voluntarily manage the resources base. It may be accomplished by economically encouraging development in some circumstances and discouraging such development in other circumstances. From a legal point of view such discrimination if equally applied can probably sustain attack. Development actions categorized by land capability

classifications or water resources avilability and condition seem to be two potential classifiers.

Development Incentives

Low Interest Capital: Nebraska has for several years utilized the concept of industrial development bond authorities to publicly encourage the private ownership of homes by Nebraskans.[21] They have more recently attempted to also encourage economic activity in the industrial and agricultural enterprises.[22]

Each of these new municipal corporations have been organized to issue tax exempt industrial development bonds and from the proceeds make reduced interest loans to stimulate growth activity in their respective areas of interest.

More recently, the Eighty-eighth Legislature of Nebraska (1983) enacted LB 626 consolidating the Nebraska Mortgage Finance Fund, the Nebraska Agricultural Development Corporation and the Nebraska Development Finance Fund into a new Nebraska Investment Finance Authority with the purpose of economic stimulation through "creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the...Act and the resulting reduction of needless public expenditures, expansion of the tax base,...and increase of tax revenues...."[23]

The availability of private investment capital at lower than current commercial rates of interest on development of certain private resources projects might very well encourage planned activity in line with the best long-term interests of the State. In fact all borrowing by owners or operators of land could be subsidized for those developing preferred practices. As the Nebraska Conservation Corporation has been granted authority to accept funds from any sources to further reduce the already lower

interest rates in areas designated as critical needs areas such authority could also be extended to preferred developers.[24]

Grants: Nebraska and other states have laws providing for cost-share assistance or grants to private owners and operators of land for application of soil and water conservation practices.[25] Nebraska's grant program has been carried out under a law which declared it to be the public policy of Nebraska "to properly conserve and utilize the water and realted land resources of the state, to better utilize surface waters, to encourage groundwater recharge to protect the state's dwindling groundwater supply and reduce soil erosion and sediment damages...on privately owned land and that this will produce long-term benefits for the general public." Similar programs for grants are available from some natural resources districts also under their authority to aid owners and occupiers of land.[26]

Such authorities could also be expanded and more adequately funded to provide landowners and operators with financial aid when developing a resource deemed of public benefit to the state or local area.

Development Deterrents

In addition to encouraging certain types of development, some precedent exists for discouraging non-preferred development. Resources developement decisions are not always made in the best interest of the resources base itself, and in fact short of mandatory restriction on development, depending upon who is developing and for what economic purpose, no financial disincentive can prevent resources abuse completely. However, if volunteerism is the basis of management, then impacting voluntary choice is the limit of control available.

Cross Compliance: This concept has been bantered about in resources conservation circles for some years and appeared as an additional option to the Resources Conservation Act reports of USDA to Congress in 1981.[27] Such a program could likewise apply to resources development activity.

The approach involves requiring that development of resources with adverse impact potential eliminate eligibility for participating in specific publicly supporty economic benefit programs which otherwise may be available to the violating landowner or operator.

This program has been discussed most recently in conjunction with development of marginal lands in Colorado.[28] It would be difficult to accomplish much under this approach at state and local levels given the small penalty resulting from currently inadequate state and local programs from which one might be precluded.

Taxes on Undesirable Development: A substantial portion of the large scale land conversions in the west during the last decade has been carried out by land development speculators and in that case incentive or disincentive programs designed to influence producers have little impact upon the development decision. Instead, many conservationists contend that forgiveness of federal income taxes is the key to those development decisions. Other states have recognized such developmental motivations and passed or considered tax laws designed to offset any federal tax gains with state and local taxes.[29]

In any scenario involving speculative development for resale to investors the following key implications exist:

Capital gains exemption - Income from price appreciation on land sold after being held for at least one year is 60% exempt from taxation, under capital gains rules. The benefit of this exemption is significantly enhanced when certain costs of acquiring or

improving the land are 100% deductible. Profit is understated since certain costs are completely deducted, while only 40% of the capital gain is counted as gross income. For irrigation development, 100% deductible costs include interest, property taxes, water depletion and in some cases, land leveling costs.

Soil and water conservation expenditures - Land leveling of Sandhills for pivot irrigation qualifies as a 100% deductible conservation expense, but it is recaptured if the land is held less than 10 years. This is a factor where developers hold and farm the land they own. It could also be a factor where developers delay the land leveling and/or have it billed to the purchaser of the developed land, who could decut it as a conservation expense and not face recapture if he holds it for at least ten years. Although such benefits do not accrue directly to the developer, they increase the value of the land to potential purchasers and the price they'll pay for developed land.

The water depletion allowance - This allows landowners to take an annual deduction for loss of land value due to declining groundwater tables and could similarly add to the price which investors will pay a developer for land with limited underground water. It would also make it more attractive for landowners to develop their own land with limited water supplies.

Investment tax credit (ITC) and accelerated capital cost recovery on irrigation equipment The ITC directly returns 10% of the cost of equipment in tax savings. Accelerated cost recovery allows equipment owners to defer taxation by deducting the cost of assets faster than they actually depreciate. These benefits are claimed by the first user of the equipment, which may be the developer or someone purchasing land from the developer.

Based upon these factors a state income tax would be possible to recover the tax subsidies resulting from marginal land

development. Based upon soil classifications the state could levy a tax equal to selected federal tax benefits.

For example, the state could levy a tax equal to the amount of the investment credit claimed on irrigation equipment placed on certain classes of land. On land developed and later sold, the state could levy a special tax equal to tax savings from the capital gains exemption on the property. (Capital gains exemption X the marginal tax bracket of the developer.) The state could do likewise with soil and water conservation deductions. Setting up a recapture system for fast depreciation would be more complex, but possible. Some states which base their income tax on federal returns now reduce all depreciation deductions by a fixed percentage, to prevent revenue losses to the state as a result of the accelerated capital cost recovery provisions in the 1981 Federal tax law. Along similar lines, Nebraska could levy a tax equal to 10% of the actual tax savings from depreciation deductions (cost of the irrigation equipment X marginal bracket X 10%). Nebraska might also chose to recapture all water depletion allowance tax savings.

EDITOR'S NOTE:

Continuation of Private Development

It can be expected that under any scenario explored private water development activity will continue to be significant in Nebraska. The extent to which Nebraskans wish to enhance or detract from certain types of that development remains unexplored in public policy. Chapter Five must stand or fall on its own merits in this Report. Until some goals for the State are developed directly involving government in private decision making, position taking is beyond the purview of the Report.

CHAPTER 6

FUTURE
NEBRASKA RESOURCES DEVELOPMENT FINANCING

Where there is a will, there is a way. The citizens of Nebraska apparently believe in a managed course of proper use and development of their resources. Surveys conducted in the last several years indicate an understanding and strong support for such action.[30] It could be concluded from those findings that the state itself should encourage proper development by improving and streamlining the state's institutional and financial framework to facilitate the initiation, planning, development, operation and capitalization of our public works infrastructure.

Many authorities fall short of the provisions necessary to effectively carry out a resources project; many others serve as impediments to accomplishment rather than useful tools. A system of laws must instead be fashioned to make project reality easier to obtain but still preserve the deliberateness of development decisions.

Many if not all public resources projects both rural and urban will probably continue to be built under sponsorship of government at the local level. Traditionally, this has been the case in Nebraska except for the few major irrigation projects developed in the State since the 1902 Reclamation Act introduced federal water project development. This development, however, accounts for only a small part of the developed irrigation in the state today. Practically speaking, local sponsorship and local financial commitment probably go further toward proving sound economics than any other test of feasibility.

It also appears that most resources project activities serving domestic needs have rather clearly defined local sponsors

already while most other resources needs are far less categorized. It is also fair to assume that defined project sponsorship territories are best left intact unless modification can enhance and improve current delivery means.

The State itself has never truly made a commitment to resources project activity although its financial inputs into wastewater treatment operation in the last decade and its limited water development efforts, most recently with the Development Fund and the Soil and Water Conservation Fund, are positive moves.

The private sector will undoubtedly still be expected to carry out the majority of agricultural and industrial development programs but those efforts may need to be more prudent than in the past and more cognizant of the general public good.

Any development plans can also expect far less support from the federal level than experienced during the last twenty years. It is already clear that Congress intends to limit the types of wastewater treatment projects eligible for federal assistance having reduced anticipated federal spending from $90 billion to $25 billion while retaining treatment requirements and penalties. That will shift significant costs to state and local government.

The continued discussions about federal cost sharing on the projects which have had access to non-reimbursable funds and the upfront nature of all cost-share discussions promises as well a need for significantly greater state or local contributions in the future. Indeed, the only new federal starts in the last several years have been on upfront supported project activities.

What then could Nebraska, its local resources governments, its cities and counties as well as the people themselves do to maintain and enhance the State's resources future?

MORE PARTICULARLY, WHAT INSTITUTIONAL ARRANGEMENTS EXIST NOW OR MUST BE ESTABLISHED OR MODIFIED TO FACILITATE FUTURE RESOURCES AT THE STATE LEVEL?

The State of Nebraska should not generally enter the project ownership field but must consider clarifying and increasing its role in resources project development. Project development must generally be left to local or regional sponsors to assure that local project support does indeed exist. Local institutional structure and funding tools will be discussed later in this chapter.

Although major modification or new State institutional arrangements could be implemented, it seems unnecessary to do so with the existing agency structure already in place.

In 1981, the Legislature adopted the concept of a "State water planning and review process" and recommitted itself to the ongoing water planning programs of the Natural Resources Commission (NRC).[31] The NRC had actually begun State water planning at legislative direction in 1967.

Likewise, existing funding from the State level, however meager, is primarily the responsibility of the NRC with the Small Watershed Flood Control Fund, the Resources Development Fund and the Soil & Water Conservation Fund each directed by that agency. However, the Department of Environmental Control administers the State financial participation in waste water treatment programs in the State and the Game and Parks Commission handles some State funds which are committed to resources project recreation development.

The State must develop a system in partnership with local government sponsors to maintain and enhance the resources of the State. To accomplish that could mean modification and strengthening of the existing State structure to truly participate in a broad range of resources project activity.

The Natural Resources Commission structure could be most easily remolded and broadened in scope to accomplish that task, although the multi-agency approach which currently exists is not in itself a problem. In a system of either one or several administering agencies all State financial assistance to any

resources project could be administered and the Commission's existing planning role could be continued, modified or enhanced. The general policy reviews now underway by the Commission must be finished and perhaps from time to time supplemented. Thereafter, the primary role of the planning function must be to fund and administer specific project planning of State interests and review, coordinate and prioritize other resources planning efforts, including any projects for which State aid or credit is requested.

MORE PARTICULARLY, WHAT INSTITUTIONAL ARRANGEMENTS EXIST NOW OR MUST BE ESTABLISHED OR MODIFIED TO FACILITATE FUTURE RESOURCES AT THE LOCAL LEVEL?

The local institutional structure for resources development in the State is critical to any successful project efforts. Local sponsorship contemplates strong local institutions being in place to initiate and carry out any project using tools then available or capable of being integrated with relative ease when needed. Statutory authorities to assure the availability of these tools must be adopted where needed.

Traditionally urban domestic demands for water and sanitation have had clear and distinct institutional arrangements embodied in municipal law of villages, cities and utility districts. For that reason only minor improvements in that category are needed to better serve expressed desires.

Most recently rural community domestic needs have developed the necessary institutional structures through rural water districts and now natural resources districts are required to serve that demand. Although sanitation operations have yet to develop similar public structures the availability of sanitary district authorities has served the concentrations of need in that area and the expansion of demand into other geographic regions is not yet occurring. Perhaps it never will.

The areas of flood control generally and urban storm water runoff are somewhat less clear although probably no additional legislative authority is necessary. A myriad of current authority

exists for this purpose with cities, counties and natural resources districts all having certain powers. However, no distinct line of responsibility exists in much of the State for initiation, development or management of flood control facilities and the overlap of authority leaves gaps where agreed division of responsibility has not occurred.

Some clarification of primary responsibility would be helpful in a few governmental regions. Formal or informal intergovernmental coordination would generally resolve these vaguenesses establishing clear partnerships and distinct lines of responsibility. Those areas without agreement now would do well to learn about the working cooperation between agencies in other areas.

The general area of recreation, fish and wildlife and base flow needs is an area where local leadership has been undeveloped as a separate interest element. These needs have traditionally been served coincidentally with other development activity or have been unaddressed and statutory development authority exists on that basis. Water resources developments include those areas as functional authorities of the State as well as villages, cities, counties, natural resources districts and some other special purpose districts. In that respect, park facilities have been developed by the State and by local communities but the regional park potential remains to be realized. Natural resources districts are deemed by most to be the logical sponsors of such regional facilities but lack the institutional authorities to manage and operate such public access areas and also lack funding to support such efforts. Legislation and perhaps clear delegation of that role is appropriate and must be adopted.

Preservation and instream projects likewise have no separate local institutional support base but should be considered for such structuring if public interest factions wish to devleop this purpose for resources activity. Parenthetically, those public interest factions have often chosen to oppose other work rather than propose positive steps. State beneficial use laws

may need to be clarified to resolve the statutory absence of project support.

Unlike other development purposes irrigation efforts seem to lack the existence of any sponsoring entity legally or practically capable of initiating, planning, developing and operating an irrigation project from inception to completion and operation.

Institutional structures exist or may be established to serve this area but inherent problems, especially if projects are to be initiated by local sponsors with little or no reliance upon federal project development prevail.

Traditionally irrigation districts or variations of them have sponsored federally supported irrigation development in Nebraska. Such entities seem to be the only institutional structures with all the necessary contracting authorities required by the federal government before doing business. Those authorities need to satisfy each of the following elements:

1. That the local organization encompass the area to benefit from the project regardless of whether the participants within the boundaries are voluntary or involuntary.

2. That the organization have specific authority to contract with the United States pursuant to the requirements of Federal statutes for construction, operation, and maintenance of special improvement works and for the repayment of their associated costs.

3. That the organization have the authority to undertake as a general obligation the cost of the project as contracted.

4. That the organization have firm and specific taxing authority to support the obligations which it undertakes with the United States.

5. The organization have the authority to internally alter its charges imposed on direct beneficiaries in relation to their ability to pay without affecting the organization's general obligation.

Irrigation districts, however, are formed in the later planning stages of most projects, and ultimately conform to delivery areas of the proposed project. They are best designed to operate, maintain and financially support a completed project and if organized prior to actual development are somewhat cumbersome in project organization, planning, design and initial development.

Reclamation districts are a second institutional structure available in Nebraska to deal with irrigation development. No reclamation district alone has successfully sponsored a federal irrigation project apparently by lacking one or more of the necessary contracting elements outlined earlier.

Reclamation districts have generally been formed during early planning and development stages to support local and federal design and implementation activities.

Both irrigation and reclamation districts are special units of government formed to serve a single development purpose. Their viewpoints are narrow, limited only to irrigation development in the immediate area. They come into existence once a specific project is conceived and requires local institutional support.

The elements of project conception and pre-feasibility investigations of non-federal efforts seem generally beyond these two structures.

One other local institutional structure, however, exists which is authorized to serve irrigation purposes--the natural resources district. Unlike the other two, a natural reosurces district exists all the time and may thus become initiator of a project idea and carry out pre-feasibility planning. However, beyond that preliminary stage, it is the general concensus that natural resources districts currently do not possess the requisite authorities for project development. Much of that limitation

is related to financial capability discussed later in this chapter. Some limitations are, however, institutional in nature.

To eliminate the institutional impediments the clear delegation of responsibility between natural resources districts, reclamation districts and irrigation districts must be stated and the authorities to establish special reclamation and irrigation districts and to transition planning and development functions between the three types of entities must be simplified.

Or, natural resources districts could be granted authority within designated "improvement project areas" to establish reclamation and irrigation divisions of the natural resources district with all the requisite authorities of their reclamation or irrigation district counterparts thus availing project sponsors within that division of all powers and authorities necessary for further development of an irrigation plan.

Any such division should include all lands impacted by the proposed project including any dams, reservoirs, supply canals or channels, delivery areas, recharge areas or mitigation areas. The administration of any such division should be assigned to an elected board from the geographic area with oversite from the natural resources district governing board and any appropriate State governing board assisting financially. Multipurpose natural resources district oversite can provide a broadened viewpoint important to other resource users as well as planning, development and operations continuity.

WHAT CAN THE STATE DO NOW TO FINANCIALLY ENCOURAGE NEEDED RESOURCES DEVELOPMENT?

The State must commit itself to a significant increase in funding for resources project efforts. Current total development financing from the State is about $10 million and must be increased to $20 million annually now to begin encouraging local sponsors to develop plans and apply for assistance on many potential small to intermediate size projects of a wide variety, including, but not limited to, domestic water supply, sanitary and storm

sewers, flood control, recreation, recharge, irrigation, or base flow maintenance. Further increases would need to be planned for when developments justify them.

Local sponsors of State preferred large scale projects with costs perhaps in excess of $20 million could also begin the planning process with State financial or technical planning input and an assurance that if local financial support is provided the State would consider special appropriations for its participation in the project at some predetermined level below which funding assistance could not drop. A portion of the new appropriation levels could be reserved for such efforts.

Such a financial commitment from the State at this time would require only annual appropriations and not any long-term financing with bonds or other measures. Future needs may require State long-term financing which will be discussed in the next section.

Although current needs for appropriations would compete with other State needs, the amounts are not so demanding as to be impossible levels from current revenue sources.

However, some consideration of new revenue sources for general fund inputs to resources development is still in order. Serious consideration should be given to the dedication of a State lottery if established for resources development. Such a lottery if committed to resources development could be administered by a division of the Natural Resources Commission or by a new municipal corporation established legislatively for the sole purpose of administering the lottery and depositing proceeds into the Development Fund.

The sale of some reasonable yields of water from the rivers, streams or aquifers of the State could also be considered as a potential revenue source and should, if done, be administered and approved by the Natural Resources Commission with the consent of the Legislature.

WHAT FINANCING TOOLS EXIST NOW OR MUST BE ESTABLISHED OR MODIFIED TO FACILITATE FUTURE RESOURCES DEVELOPMENT AT THE STATE LEVEL?

Small to intermediate size project activities can generally be expected to be the dominant need in resources development activity in the State. Most, if not all, such efforts will require infusion of State capital investment at levels within current funding capacities. But, in a very few potential projects the State interest will be such that current funding capability will be inadequate. Some means of long term financing and debt servicing will then be necessary. In those cases, several authorities must be added to existing State laws and modification made to the State Constitution which, when in place, would be utilized to assist in implementing projects sponsored by local or regional governments. Any new revenues generated must be managed by some primary agency handling the basic resources development programs. Such State involvement should be provided in the form of loans, grants or local financing guarantees each of which would play a significant part in resources project success.

The first tool has already been designed to help a portion of the resources project picture and to provide assistance from the State in the form of loans to local sponsors. Only projects which provide for water retention and impoundment structures may be funded under the newest Constitutional provisions of Article XIII, Section 1 and only then by revenue bonds. Parenthetically, that project purpose could, but need not be, broadened to include other resources project facilities. Repayment of such bonds is to occur from revenues generated by the project or from local sources other than state general funds. Additional funds can, however, be generated by the State sale of revenue bonds and thus supplement existing cash Resources Development Funds. Loans from bond proceeds could be made and revenue from facility operation and other local sources could be committed to repay those loans to the State for bond retirement.

A second tool must be designed and created which would further enhance resources project implementation potentials. That tool entails the amending of the State Constitution and the passage of statutory implementation provisions for the authority to either issue State general obligation bonds for project financing or guarantee the local issue of bonds for all or some part of certain resources projects thus placing the full faith and credit of the State behind those local issues.

Proceeds from such state issued bonds would ideally be available for all water related projects including waste treatment facilities, domestic supply and distribution facilities, flood protection, agricultural water developments or environemental enforcements. Proceeds of bonds would be loaned or granted to local sponsors for needed development funds. Loans would be made at applied interest rate levels or at subsidized levels with State funds supporting the differential. Grants would also be made for non-revenue producing aspects of project developments or to fund legitimate State interests in project activities.

The alternative tool would allow the State to guarantee all or some portions of the necessary local bond financing with State promise to repay if the local sponsors default on their local bond issue. Practically speaking, such a guarantee would be expected to have a similar interest impact to the debt obligation as a State direct obligation would carry.

Each tool described would operate efficiently around local or regional project operation and ownership and each would assure that State oversite would be tied to large local development through State financial aid programs.

The existence of all three tools is optimum but to see successful large scale development realized with local and State financing requires at a minimum the second or third discussed tool.

WHAT FINANCING TOOLS EXIST NOW OR MUST BE ESTABLISHED OR MODIFIED TO FACILITATE FUTURE RESOURCES DEVELOPMENT AT THE LOCAL LEVEL?

The concepts outlined to now in this chapter contemplate local or regional government sponsorship of resources projects. That approach, to reiterate, assures local support as a key element to any successful project. By the same token, it also assumes and must have in existence a multiplicity of interim and long term financing options like those outlined in Chapter 3 and access to as many capital sources as practical and outlined in Chapter 4. It also contemplates and must have in existence a significantly broader view of beneficial uses available for water resources activity. With each new beneficial use comes a user group either specific or general to which may be charged some measureable benefits for debt servicing.

Review of the local government section of the Appendix to this Report will clearly show the lack of any uniform authorities for long term financing; the absence of many such authorities in part or in total within certain local sponsorship entities; the absence of adequate capital sources and the general taxing limitations; and, the complexity of some financing authorities which impede their use or restrict application because of incompatibility with fluctuating real economic conditions.

Furthermore, review of general water laws will demonstrate the lack of many real uses for the resources base being defined as beneficial uses, thus limiting identification of some potential users groups.

An entire treatise could be written detailing specific changes which could be suggested for updating, streamlining and improving local financing authorities. For the purposes here, however, only a few basic principles need be outlined under which the modifications and additions must be developed. They are:

1. As many of the capital source options and interim and long term financing options as are practically usable must be authorized to every potential project sponsor.

2. All long term financing authorities must be uniform--from sponsor to sponsor, at least in the resources project field.

3. Those uniform authorities must be as simply stated as possible to avoid market economics from precluding issuance of instruments of debt if public support wishes to proceed. Simplicity also assures easy understanding for public review processes.

4. All local general debt must receive popular electoral support before issue while all special debt should receive support from the beneficiaries themselves.

5. Any debt instruments created must be in accordance with some standard form and at least those guaranteed by the State must be specifically approved by the primary State agency responsible as well as the Legislature and Governor.

6. All actions to approve long term financing must automatically include approval of attached proposals to retire the debt created, including levy of taxes or other revenues necessary.

7. All potential users groups, both general and specific must be made accessible to project sponsors for commitment to debt servicing to the extent benefited.

Some project activities already are covered by the authorities necessary; those need not be modified unless simplication and State oversite seem beneficial and appropriate. Such areas will be evident from current development activity. Some project

activities need significant modification and supplement. Those too will be evident from the lack of activity.

If local sponsorship is to continue to be the rule as it has traditionally been, changes must be made in this area first. Without maximum authority at this level other authorities at the State level serve little purpose and even if enhanced as recommended may not be utilized to the extent needed.

Conclusion

These many and diverse constitutional, legislative and administrative actions, some of which must be taken and some of which should be considered at least provide a sound foundation upon which to build Nebraska's resources future.

Any long-range financing program has three elements: 1) Institutions at each government level to carry out the tasks; 2) Long-term sources of financing; and 3) Sources of repayment capital. The immediate needs in Nebraska are to increase current state funding commitments, but all three basic elements must now begin being assembled into a comprehensive financing program.

What must be done and what will be done is perhaps two separate ideas. But, if this State is to manage its resources for the future economic and environmental well-being of the people many suggestions similar to those here must be implemented.

The choices are still ours to make. Will they be made?

Footnotes

1. National Water Symposium Proceedings, p. 11 (1983) American Public Works Assn.
2. Nebraska Blue Book (1980-81) Neb. Legislative Council, U.S. Census (1983)
3. For a history of the NRD development, see Jenkins, Natural Resources Commission.
4. See Trelease, Reorganization of Water and Land Resources Agencies of the State of Nebraska, a Proposed Department of Natural Resources, (1-10-69).
5. Section 23-2201 Neb. Rev. Stat. (1943).
6. Section 2-3282 Rev. Stat. Supp. (Neb., 1982).
7. Rev. Code Wash. Annotated Title 90, Sec. 54 & 150 (1979) California Water Code Sections 12811, 12883, 12884.
8. NRC Development Fund Rules, Section 2-3265 Rev. Stat. Supp. (Neb., 1982).
9. NRD Development Fund Rules, Ibid.
10. Lamb & Rappaport, Muni Bond - The Comprehensive Review of Tax-Exempt Securities and Public Finance (1980).
11. Art. XIII, Sec. 1, Nebr. Const.
12. Excerpts taken from a publication by the Government Finance Research Center entitled "Government Leasing Techniques." (date unknown).
13. Figures obtained from Research Division, Neb. Dept. of Revenue, June 7, 1983.
14. Figures obtained from Research Division, Neb. Dept. of Revenue, June 7, 1983. Data used was 1980 property taxes and population figures.
15. Section 77-3412 et seq., Neb. Rev. Stat. (1943).
16. L.B. 198, Sec. 12 & 13 (1983 Legislature).
17. For a discussion of severance taxes economics, see Viessman, "Financing Options for Projects and Programs Identified in the Platte River Basin Level B Study, Neb. Water Res. Inst. UNL, (February, 1975).
18. For a general discussion of excise tax economics, see Viessman, "Financing Options for Projects and Programs Identified in the Platte River Basin Level B Study, Neb. Water Res. Inst. UNL, (February, 1975).
19. Art. III, Sec. 24, Neb. Const.
20. Unicameral Update, Vol VI, No 16, April 21, 1983.

21. Section 76-1601 et seq. Neb. Rev. Stat. (1943).

22. See Section 2-4101 et seq. Neb. Rev. Stat. (1943) for the Neb. Agricultural Development Corp.; Section 2-4201 et seq. Neb. Rev. Stat. (1943) for the Neb. Conservation Corp.; and Neb. Rev. Stat. (1943) for the Neb. Development Finance Fund.

23. L.B. 626, Section 4(d) (1983 Legislature).

24. See Section 2-4225 Neb. Rev. Stat. (1943).

25. See Section 2-1575 et seq. Neb. Rev. Stat. (1943).

26. See Section 2-3235 Neb. Rev. Stat. (1943).

27. Resources Conservation Act, Environmental Impact Statement, U.S.D.A. (1982), p. 6-41.

28. Armstrong bill, H.R. 1011, the "Sodbuster" bill.

29. See Vermont Land Use - Values Taxation Act of 1978.

30. See Survey on public opinion conducted in 1980-1982 by Selection Research, Inc. for the NARD, NRC, and SCS. (Available at NARD, NRC, SCS offices).

31. Neb. Rev. Stat. (1943).