

LR 314
INTERIM STUDY RESOLUTION REPORT

FUNDING FOR WATER MANAGEMENT

Sen. Chris Langemeier, Chairperson
Sen. Ken Schilz, Vice-Chairperson
Sen. Tom Carlson
Sen. Mark Christensen
Sen. Annette Dubas
Sen. Ken Haar
Sen. Beau McCoy
Sen. Jim Smith

DECEMBER, 2011

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Memorandum

To: Nebraska State Senators and LR 314 Participants
From: Sen. Chris Langemeier
Date: December, 2011
Subject: LR 314

LB 229

In April, 2011, the Legislature passed LB 229, a bill introduced by Sen. Deb Fischer to transfer funds from the Nebraska Environmental Trust to the Water Resources Cash Fund. The final bill, the result of a compromise between the interests, allows the Department of Natural Resources to apply for a \$9,900,000 grant from the Nebraska Environmental Trust to be paid out in three annual installments of \$3,300,000. The funds are to be used for aiding management actions to reduce consumptive uses of water, enhance streamflows, recharge ground water, or support wildlife habitat in fully or overappropriated river basins. The Department is authorized to apply for an additional three-year grant to begin in 2012-15 if the following criteria are met:

- The Natural Resources Committee creates and issues a report containing:
 - An outline of water management funding needs
 - An outline of statewide funding options to create a dedicated funding source, and
 - Recommended legislation by December 1st, 2012;
- The Department of Natural Resources submits a report to the Legislature showing “demonstrable evidence” that the projects funded by the trust grants have resulted in water conservation, enhancement, or restoration; and
- The Department of Natural Resources provides the Environmental Trust Board a report by July 1, 2014 showing:
 - The natural resources districts have met the 40% matching fund requirement for Water Resources Cash Fund projects
 - 10% or less of the matching fund requirement came from in-kind contributions, which do not include land or land rights
 - That all other projects funded by the Department of Natural Resources using Environmental Trust grants under this section were matched not less than 40% by other sources.

The Nebraska Environmental Trust is to award fifty priority points in the grant ranking process if the Legislature has authorized annual transfers of \$3.3 million for three years and if the application is consistent with the purposes of the Water Resources Cash Fund.

When this language was drafted the parties agreed that the Legislature's Natural Resources Committee should conduct an interim study as a step towards fulfilling the benchmark requiring that a report on water management funding needs and funding options be issued. This agreement was the reason LR 314 was introduced.

LR 314

My intention for the study was to gather as much water use and cost information as possible, which already exists, and put it together in one place and in a format that could be used to educate the committee and the Legislature on our water resources. My thought was that it would serve the Legislature well if we use this resolution as an opportunity to provide a "big picture" review of how we use and pay for water use in Nebraska, and what water challenges are coming for which we need to be prepared.

Our plan was to gather information on the overall funding needs for water management activities, including resources needed for research and technical data, modeling, and policy studies; examine state obligations related to water management under compacts or agreements and necessary funding to satisfy obligations; and identify all potential sources of funding. The committee obtained this data by asking some basic questions of the appropriate groups of people. For instance, we asked who uses water? What is water used for? How is water use paid for? How do we manage water? What do we need for future use and how much will it cost?

The committee formed a voluntary advisory panel and six technical working groups for this study. The technical working groups were comprised of experts, with various backgrounds and interests, who were asked to gather information on specific questions relating to water management and funding. The working groups, and the questions, were divided by subject matter. The advisory panel was asked to review and comment on the work of the working groups. A list of the members of each technical committee and the questions they were asked is shown on the attached public briefing agenda.

This research was provided to the senators this fall at a public briefing, during which technical working group members presented their research to the Natural Resources Committee. The briefing was open to, and well attended by, the public to keep it informed of our progress and to hear the dialogue between senators and the technical groups. Summaries of the information provided at the briefing, including handouts and power point presentations, are attached to this report.

Next Steps . . .

Though LR 314 has officially ended, this study necessarily continues through next year, as the report providing funding recommendations as required under LB 229 is due December 1, 2012.

The Natural Resources Committee will take what it learned at the briefing and this report and then work with the technical groups and advisory panel to determine the next steps towards a funding plan. This study provided the committee with an opportunity to understand the state's water management situation before making funding decisions.

The working groups have shown that they are ready to work and want to have an open and sincere discussion on how to address our water funding problems, and the committee understands that it is expected to provide guidance on funding policy. The next part of the study will be to make funding recommendations, now that we have the basic water information/facts on which to build policy. Study participants will be asked to comment on this research to ensure all perspectives are considered. We will then schedule meetings between the groups and the committee to brainstorm on water funding policy beginning in January or February. As we continue this discussion on water funding I want to assure you that your participation is important to the committee and that you will have an opportunity to weigh in as we continue this process.

I would like to comment on my sincere appreciation to the technical working groups, coordinators and legislative staffers for their time and labor on this study. Those involved in the study have done a great deal of work in a very short period of time. Your commitment to this issue benefits us all when my colleagues, as lawmakers, understand the details of our water situation before moving forward on significant funding policy.

Water Funding Discussions

Below is a list of ideas that have been proposed and discussed over the years to address the funding for water projects in Nebraska that are described in this report.

- 1983-84

A Study of Resources Development Financing for Nebraska, Nebraska Association of Resources Districts/Special Funding Alternatives Task Force ([copy of report attached](#))

This study was in response to the demand for water by a growing number of domestic, agricultural, industrial and hydroelectric users. It reviewed institutional and financial approaches to accommodate the state's water needs and demands.

The study looked at how our institutions are structured, a method for estimating financial need, and explained financing concepts, such as bonds, leasing, and joint ventures. It identified sources of capital: general state taxes, general local taxes, special assessments, user fees, recharge fees, lease revenues, and mulled other non-traditional sources, such as selling water to a market of high economy industries, water severance taxes, excise taxes on agricultural commodities and equipment, the lottery, tax increment financing, pledge or sale of state assets (if the state has any marketable assets). The study also mentioned "special sources" such as impact fees, systems development charges, in lieu of construction charges, latecomer fees, and equity assessment.

Finally, the study explained the need and desire for proper use and development of Nebraska's resources, which should be done by streamlining institutional and financial structures for improved planning, development, operation and capitalization of resources projects.

- 2007

State of Nebraska Water Management and Funding Needs Assessment and Report, Nebraska Water Policy Task Force ([draft white paper attached](#))

This document outlines recommendations of the Water Policy Task Force (WPTF) for water planning and a funding assessment process. The WPTF recommended that information on the state of the system and expected needs to meet statutory requirements, compacts, agreements and local supply needs be gathered to understand and facilitate discussion of water management alternatives and funding strategies. This detailed process was to be done in phases from mid-2007 through 2009, beginning with the Platte and Republican River Basins, and was to include an assessment, recommendations on water management and funding priorities, and action by the executive and

legislative branches to execute recommendations. While no specific recommendations were made for sustainable funding, the process was to focus on ensuring that detailed assessments be made of available funding, that priorities be identified and that cost/benefit analysis be completed.

- 2007

Water Management Funding Needs Assessment Process ([outline attached](#))

The process identified in this document was based on the Water Policy Task Force's white paper, but proposes a more simplified process to encourage water planning action. The need to develop priorities by analyzing the benefits and costs of management options was clearly a component of this concept. Rather than identifying new sources of funding, this process would have focused more on identifying research needs and best management options as part of the overall funding solution.¹

- 2010

Check-off Replacement

There have been continuing discussions about how to replace funding for the Water Resources Cash Fund that had been provided by a checkoff on the sales of corn and sorghum. The checkoff, that was to provide around \$7.5 million to the fund annually through 2019, was repealed by LB 689 in 2010.

In the course of the discussion, various parties have expressed interest in seeing a more broad-based source of funding to supplement the Water Resources Cash Fund and expanding the uses of the fund to include data gathering, research, modeling, water conservation and banking programs.

Suggestions for funding have included: flat fees on all uses; per acre taxes; occupation, sales and other taxes; General Fund; and repealing current tax exemptions.

- 2011

Workshop on Funding Water Development in Nebraska

In September, 2011, a small group of long-time water policy participants met to discuss Nebraska's water development funding needs. The group specifically identified annual funding needs and possible funding sources. Their report is attached [here](#).

¹ A useful supplement to the Water Policy Task Force documents was written by David Kracman with The Flatwater Group titled, "Funding Efforts in California." David was involved in water project funding strategies in California and provided the Task Force with a summary of the process, including what worked well, problems that came up, and how Nebraska could use this information in its planning efforts. [A copy of the paper is attached.](#)

LR 314 Public Briefing Agenda
October 7, 2011

1. Water Basics: Coordinator - Dave Sands (Executive Director, Nebraska Land Trust)

Stan Staab, Manager, Lower Elkhorn NRD
Mace Hack, Nebraska Director, The Nature Conservancy
Jim Bendfeldt, landowner and Central Platte NRD Board of Directors
John Turnbull, Manager, Upper Big Blue NRD
Mike Clements, Manager, Lower Republican NRD
Geoff Ruth, Nebraska Soybean Association
Jesse Bradley, Water Management Coordinator, Nebraska Department of Natural Resources

Staffers: Melissa Hilty (Sen. Schilz) and Dan Wiles (Sen. Christensen)

- a. Where does our water come from?
- b. How much do we have and how much do we use?
- c. What do we use it for?
- d. What does "beneficial uses" mean and are all of our uses beneficial?
- e. What uses are not considered beneficial according to law?
- f. Can we identify water usage by each of the following groups? Surface water users, groundwater users, agriculture, commercial/industry, municipalities, public power, recreation, conservation, rural, urban?
- g. In what ways does the federal government regulate our water?

5. Available research/data sources/studies: Coordinator -- Rachael Herpel (Water Education and Outreach, UNL School of Natural Resources, Water Center)

Mike Jess, Nebraska State Irrigation Association
Tim Anderson, Public Relations Manager, Central Nebraska Public Power & Irrigation District
Ron Cacek, Manager, North Platte NRD
Dennis Schueth, Manager, Upper Elkhorn NRD
Doug Hallum, Water Management Coordinator, Nebraska Department of Natural Resources
Scott Richert, Nebraska Soybean Association

Staffer: Tom Green (Sen. Haar)

Nebraska Department of Natural Resources (prepared by DNR)

- a. What types of data/science to the DNR use and how is it funded?
- b. What studies or research is the DNR conducting and for what purpose?
- c. How does the DNR determine that it is using the best available science?

Nebraska Natural Resources Districts

- d. What types of data/science do the NRDs use and how is it funded?
- e. For what purposes are the NRDs required to do research?

Other Entities

- f. What other entities conduct water research related to Nebraska and for what purposes?
- g. How are those projects run and how are they funded?
- h. Are all of these research projects shared between entities?
- i. What are the reasons water research might not be shared among parties, particularly the DNR and NRDs?
- j. How does the University of Nebraska assist the state with meeting its research obligations?

Other Issues

- k. What are the issues relating to the Missouri River Master Plan?

2. Existing funding resources: Coordinator -- Lee Orton (Executive Director, Nebraska State Irrigation Association)

Michael Allen, Flowserve Pump Division
Mark Brohman, Executive Director, Nebraska Environmental Trust
Marian Langan, Executive Director, Audubon Nebraska
Karen O'Connor, Senior Geologist, Olsson Associates
Butch Koehlmoos, Manager, Lower Loup NRD
Jasper Fanning, Manager, Upper Republican NRD

Staffer: Nanette Hessee (Sen. Carlson)

- a. How do each of the following groups pay for the water it uses? Surface water users, groundwater users, agriculture, commercial/industry, municipalities, public power, recreation, conservation, rural users, urban users?
- b. What are current NRD projects and how are they being paid for?
- c. What federal funding for water comes to Nebraska?
- d. What does the state pay for, and where does that money come from?
- e. What are Nebraska's taxes on water?
- f. What funding comes from local government?
- g. What funding does the Nebraska Environmental Trust provide?
- h. Are there other non-governmental entities that provide water funding?

3. Current use and associated costs: Coordinator -- Jay Rempe (Nebraska Farm Bureau)

James Meismer, Ag producer and Twin Platte NRD Board of Directors
Steve Moran, retired civil engineer
Scott Smathers, Executive Director, Nebraska Sportsmen's Foundation
Mike Murphy, Manager, Middle Niobrara NRD
Ron Bishop, Manager, Central Platte NRD
Jay Holmquist, General Manager, Nebraska Rural Electric Association

Staffer: Joselyn Luedtke (Sen. Dubas)

- a. What are the current water needs of surface water users, groundwater users, agriculture, commercial/industry, municipalities, public power, recreation, conservation, rural users, urban users? How do these current needs differ according to basin?
- b. What projects/efforts are NRDs making relative to the IMP process?
- c. What current water needs are not being met? How does a basin's location affect the needs?
- d. How does flooding affect the state and the status of our policies relating to water?
- e. Are there projects that have been slated to begin, but have not? Why not? Are there projects that have been stopped?
- f. What are the costs associated with unmet needs/delayed projects? Is financing the sole reason the need is not being met or the project not starting?
- g. What projects/uses are occurring that are in response to litigation? In response to compacts or other agreements?
- h. What are the costs associated with ensuring Nebraska is in compliance with compacts or agreements to which it belongs? What are the costs of not being in compliance?
- i. What has litigation cost the state? What about local government?
- j. With what projects is the DNR involved? Does the DNR partner with other entities on these projects?
- k. Describe the list of projects that are awaiting approval and/or funding. Why have other projects been given priority over these projects?
- l. For all of the projects that are not being done, describe in general the consequences, or who is being disadvantaged or harmed by the project not moving forward.

4. Future water needs and costs: Coordinator -- Tom Knutson (General Manager, Loup Basin Reclamation District)

David Kracman, Water Resources Planner, The Flatwater Group

Terry Julesgard, Manager, Lower Niobrara NRD
Dan Smith, Manager, Middle Republican NRD
Dale Wahlgren, farmer
Brian Barels, Water Resources Manager, Nebraska Public Power District
Mike Thompson, Permits & Registration Division, Nebraska Department of Natural Resources

Staffer: Rochelle Mallett (Sen. Fischer)

- a. What is the future time frame for which Nebraska needs to financially prepare? 10 years? 20 years? 50 years?
- b. How do we project what is going to be needed?
- c. What are the future needs/obligations of the following: agriculture, commercial/industry, municipalities, public power, recreation, conservation, rural Nebraska, urban Nebraska? The Platte River Recovery program?
- d. What are the costs associated with meeting those obligations?
- e. What are the costs associated with storm water issues in the eastern part of the state?
- f. What are the costs associated with EPA standards and mandates?
- g. What are the issues/costs associated with the Endangered Species Act?
- h. What are the consequences, financial or otherwise, of failing to meet these obligations?
- i. What mechanisms are in place to ensure these needs will be met?
- j. Are there special rural/urban/geographical issues with which we should be concerned?
- k. To what compacts or agreements is the state obligated to act? What are the requirements and time frames for compliance?

6. DNR and NRDs: Coordinator -- Kent Miller (Manager, Twin Platte NRD)

Dennis Strauch, General Manager, Pathfinder Irrigation District
Lyndon Vogt, Manager, Upper Niobrara-White NRD
Glenn Johnson, Manager, Lower Platte South NRD
Curt Friesen, farmer/Nebraska Corn Board
Larry Moore, farmer/Upper Big Blue NRD Board of Directors
Steve Gaul, Nebraska Department of Natural Resources

Staffer: Lisa Johns (Sen. Smith)

- a. What is each NRDs budget, funding mechanisms, levy authority, levy use, and project costs?
- b. Are the same tools/practices used in rural and urban NRDs? What is the difference in costs?
- c. When do the DNR and NRDs conduct research/data gathering/do analysis on the same topics for the same purposes?
- d. What are the differences in the methods/science used and costs?
- e. In what areas do the DNR and NRDs partner their resources?
- f. In what areas do they not partner resources?
- g. What is the role of irrigation districts in this dynamic?
- h. What are the costs associated with changes in basin appropriation status?