

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Appropriations Committee March 20, 2019  
Agency 29  
Rough Draft

**STINNER:** We'll now open a hearing on Agency 29, Department of Natural Resources. Welcome.

**JEFF FASSETT:** Thank you, Mr. Chairman.

**STINNER:** Thanks for being patient.

**JEFF FASSETT:** It's okay I'm assuming you're saving the best for last. Good afternoon, Chairman Stinner, members of the committee. I'm Jeff Fassett, J-e-f-f F-a-s-s-e-t-t. I am the Director of the Department of Natural Resources. Thanks for the opportunity to come today to speak briefly about FY '20 and FY '21 budgets and the transfer bills that affect my agency. I certainly join my fellow agency heads in wanting to express my full support for the Governor's budget and for the Appropriations Committee preliminary recommendations. I will highlight one exception to that very briefly in my comments today, but believe that we're sort of on target for where we need to land. I'm going to take on just a few issues with you today. I know it's been a long afternoon, but I want to highlight a few of the more interesting and more complicated issues within our budget. Overall, I need to comment only because it's good news from your standpoint. Certainly our total overall agency requests from the General Fund is actually got a decrease of over \$3 million a year included in the budget that's in front of you. That is a direct result of a government program that started in 1974, a state aid program to help with the water resource development across the state of Nebraska. That program was scheduled to close and it is closing, so programs do come to an end, believe it or not. So our program through [INAUDIBLE] there is no new requests for dollars, the dollars that had routinely been in our budget for many, many years have come to an end. We seek only, and your recommendation recognizes our need for the reappropriation of the remaining dollars that are in that fund so we can complete the projects that have been previously authorized. Let me talk first about our agency operations. Our Program 334 is called the Water Soil and Water Conservation, contains the basic operating funds for the Department of Natural Resources. The Governor's recommended budget to you had an increase of only 1.82 percent between '20 over '19, and a total of 3.21 percent for FY '21 when compared to the baseline of '19. This is after us taking our share of the significant cuts over the last couple of bienniums to deal with the shortage in the General Fund in the past. That includes the increases both in general cash and our federal funds for some of our programs for the day-to-day operating

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expenses of the agency. That increase is primarily and directly really related to the salary and benefit changes that are included in the budgets across all of state government for this biennium. There are no new programs being presented in our budget for this new biennium. Within Program 334, we have what's called the Water Resources Cash Fund. This is a critical source of funding for my agency that supports a wide variety of water management activities all across what's termed the fully and over appropriated river basins in our state. There are a number of budget recommendations I want to touch on very briefly associated with this Water Resources Cash Fund. First is that there's language included in the transfers bill in LB298 in addition to the budget bill of LB294 that allows us to seek and receive potentially a grant from the Nebraska Environmental Trust for an additional three-year period. Since 2012, the agency has been given authority from the Legislature to seek grants which go-- which, if successful in front of the Environmental Trust, transfers those dollars into the Water Resources Cash Fund which is then matched by a 50-- on a 50/50 basis with General Fund dollars that's appropriated also into the Water Resources Cash Fund. That grant funding has been very successful with the department. And while it has caused some stress and pain from the Environmental Trust standpoint, it has provided valuable resources to us to accomplish the goals that are explicitly outlined in legislation for the Water Resources Cash Fund. It really helps us address the full range of water management challenges in these fully and over appropriated areas of our state. The new granting cycle will remain at the same dollar levels at \$3.3 million per year for the additional period. And again, as I said, that is matched on a 50/50 basis for General Fund dollars which are also in your preliminary recommendations. This transfer and the language that you'll have before you in this bill will synchronize at once both the General Fund and the matching dollars that come from the trust on the same schedules. They have been out of sync due to the history of the legislation that's occurred over a number of years. The transfer bills, sort of, sorts that out and gets both the General Fund commitment and the dollars coming from the trust on the same biennial schedule. Additionally, one more unique thing this year that we've not seen before that's associated with the Water Resources Cash Fund is it provides the authority for the department to expend funds that we have received that came from a settlement between the state of Nebraska and the state of Colorado over legal matters associated with the Republican River Compact. Over a year ago, the two states negotiated the conclusion of a disagreement over Colorado's overuse of their

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share of the Republican River which resulted in a shortage of water to water users in the state of Nebraska. This has now been rectified on a permanent going forward basis with a new project in the [INAUDIBLE] in Colorado that now keeps them in complete compliance with their obligations to the state. But there was a period of almost 10 years where Colorado was out of compliance and shorted us waters which they did acknowledge and resulted in a financial settlement. That deal was executed by the governors of the two states. The dollars have been received, and based on authority provided last session in 2018 under LB945, those dollars, a total of \$4 million, has been deposited into the Water Resources Cash Fund, which is what the directions were last session. Those dollars sit there, and what we are seeking in our budgets this year is a unique \$4 million appropriation to give us the authority to make use of those dollars in the coming years. Those dollars, according to the commitments that we made through Governor Ricketts and myself, are to be targeted specifically to assist with water projects dealing with surface water rights in the Republican River Basin. The dollars are going to go to projects that help the folks-- or the projects, if you will, that really suffered the consequences of Colorado not meeting its obligations to the state of Nebraska. That was a very important factor when the ultimate deal was struck. Those projects will provide some efficiency in the water operations of those projects, and we look forward to sort of taking advantage of this new source of dollars that came from the state of Colorado to leverage that with other funds, both with-- by the local irrigation companies and districts, as well as federal resources that might be available, and other dollars that might be available. So we're hoping to be able to actually leverage that \$4 million award that came to us from the settlement into a much bigger set of projects in the Republican River Basin. All across Program 334, we've got some really important sub programs that you'll see and you've already recognized in your preliminary recommendations-- preliminary recommendations that do reappropriate dollars that are in our funds. We have some balances, the kinds of water projects that we tackle take many years to develop, to engineer, to construct, and so the reappropriation authority has been very important and we appreciate the committee's efforts to recognize that the projects that we're working on do span multiple years. And to get the best results for that, we need to be able to hang onto the dollars and continue to work on them. One item I was going to mention was there was a sort of a bit of a surprise recommendation of a \$20,000 reduction. My understanding is the discussions, perhaps, from your discussions of the preliminary

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Agency 29  
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recommendations that this was associated with a modification recommendation that we had highlighted that included equipment and a variety of-- a variety of activities including vehicle replacements. Vehicles are very important to our agency. They-- we have a number of field offices; we have a lot of people here based in Lincoln that routinely travel extensive miles to remote areas, facing very difficult conditions. If you look at the records of the Department of Natural Resources, we traveled nearly a half a million miles a year in the vehicles that some we own, some we rent from the transportation bureau. But we do a lot of field work when dealing with the water management all across this state, including inspecting dams, all the stream flow monitoring activities, a lot of our field office staff have been caught up, of course, in the activities of the flooding event-- the horrible flooding events that the state is experiencing right now. Well, so that we understand while that is a modest request, it was one that we presented sincerely and felt that we had an identified need and we would appreciate if that recommendation-- recommended reduction could be restored. Let me talk then finally on just to highlight a couple of the major state aid funding sources that flow through the Department of Natural Resources. My agency actually works very closely with the Natural Resources Commission, a 27-member body that is made up from representatives all across the state of Nebraska, that manage seven different state aid programs that are associated with the department. Most of those are sort of-- a bit on autopilot. They are-- have both combination of cash and General Funds associated with them. But let me highlight the two that-- that come to mind. First, I did, again, want to discuss the fact that our Nebraska Water Resources Development Fund that was established, again, back in the mid-70s has discontinued. That program is coming to close. There is a 100 percent reduction in the General Fund appropriations of about \$3 million a year that we have received for a great number of years. Since 1974, that program has invested over \$122 million into a wide variety of water resources projects all across the state. That program in general has been replaced by the Water Sustainability Fund program that the Natural Resources Commission now manages. We have about three or four projects that are in the final completion stage. And so, as I mentioned earlier, your recommendation to allow for the reappropriation of the remaining dollars is very important to us so we can finish those projects out, but we are seeking no new dollars at this point for that fund. The other big fund, of course, as I just mentioned, is Program 313. This is the Water Sustainability Fund that was created by the Legislature in 2014. That is the state's major

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long-term funding tool that's administered by the Department of Natural Resources and the Natural Resources Commission that states a broad set-- that supports a broad set of state water management and development goals. This funding source has been used for a wide variety of activities since 2014, including supporting the Omaha combined sewer overflow program, significant water recharge projects where we're using surplus surface water to recharge our groundwater aquifers. Its money has gone to municipal water supply projects for both quantity and quality considerations. The money has gone to flood control projects, much of which is under stress this past week, and for the development of some very intriguing development of engineering tools modeling and other technologies that's being deployed in the agricultural areas of our state, very importantly to help agricultural users make better water use efficiency and timing decisions. Soil moisture probes, other techniques of monitoring exactly what the consumptive use demands are in the water-short areas of our state have come from the Water Sustainability Fund. That is a program in this budget with the Governor's support and your early preliminary recommendation that shifts this back to the full \$11 million per year authority that was authorized back in 2014. That program has been used recently to help with some budget shortfalls. We're very pleased to have the Governor's support in recommending it to you, and your support in your preliminary recommendations to push that back up to the full level. There is no doubt that the consequences that we've experienced this week we will likely see a new raft of applications coming to the Water Sustainability Fund this coming July for projects that have suffered the consequences of the recent flooding. So we're very pleased to highlight those two complicated projects. I will close with that, and again support the Governor's request and your preliminary recommendations with my one exception noted. And I'll be happy to stop there, Mr. Chairman, and take any questions you may have.

**STINNER:** Thank you. Senator Erdman.

**ERDMAN:** Thank you, Senator Stinner. Thank you for coming. You ask sincerely that we restore that. Would it make a difference if I told you we were very sincere when we took the \$20,000? Would that help?

**JEFF FASSETT:** Long as you were sincere, Senator.

**ERDMAN:** OK. The question I do have though is, Colorado was out of-- out of alignment with us for 10 years. Is that correct?

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**JEFF FASSETT:** It was the period between when we achieved a major settlement back in 2003 and when the Colorado actually developed their own augmentation project to bring them into compliance.

**ERDMAN:** So, one would think if they were out of compliance for 10 years, the settlement would be significantly more than \$4 million. Why was it so small?

**JEFF FASSETT:** Well, the \$4 million, Senator, was-- was the result of negotiations. The number started higher from Nebraska's standpoint. We tried to look back at the consequences of the amounts of water that had-- we had been shorted and how that water would have been used, things of that nature. We worked with-- closely with the Frenchman-Cambridge Irrigation District to help get some supporting data for what sort of damages and long-term effects that those losses may have had to help us bolster that number. In round numbers, Colorado is required, sort of, on average to produce about 10,000 acre-foot a year. That's what we're routinely getting now through their augmentation project. So it really was a negotiation-- arm's length negotiations among the state representatives between the two states. And there was no physical way for them-- we actually asked for the water instead of money. And there was no way for them to give us all of that water back in a manner that was usable. And so that's what turned the negotiations into a financial compensation.

**ERDMAN:** In my opinion, that is a pittance of what they should have paid. I mean, if you-- you have a feel for how much those irrigators are paying annually out there to meet the qualifications of the water compacts, and \$4 million is insignificant in what they're paying. And so the \$4 million is going to be used in what way to give back to those producers who suffered the loss from not having the water? How are you going to do that?

**JEFF FASSETT:** We're going to do that by working cooperatively with those users up and down the basin; the surface water users now we're talking about--

**ERDMAN:** Correct.

**JEFF FASSETT:** --across the basin. They are already working on proposals for the kinds of investments they'd like to make to make efficiency improvements within their irrigation systems. We like those kinds of investments, Senator, because those kind of investments can

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Agency 29  
Rough Draft

give us a lasting benefit. Right now, the Republican River, like lots of our state, is-- is in a pretty positive water supply situation right now, but we know the next drought is literally could be in 2020, believe it or not, so. So those are the kind of investments we want to make directly cooperation. And we again, like I mentioned, we really hope to sort of leverage these dollars and be able to get a lot more than \$4 million actually invested on the ground.

**ERDMAN:** With the value of water what it costs them out there, it looks to me like it should have been \$4 million a year for 10 years. That-- that \$4 million, when I heard that number I thought that-- that's got to be for one year and then I found out it was a total.

**JEFF FASSETT:** It was the total.

**ERDMAN:** That is insignificant.

**JEFF FASSETT:** One of the other activities-- we looked at a variety of alternative ways of determining whether that was fair or not. One of them, quite honestly, was a strategy of litigation. Had we not settled with Colorado, we could have sued Colorado to seek damages. And I consulted closely with the Attorney General's Office based on the very extensive history and experience that we had with the entire Republican set of litigations, interstate litigation. It's just simply a complex long-term issue. The assessment was, we may have gotten more going to court, but it would have cost us millions to have accomplished that. Taking the \$4 million without the fight seemed like a good decision.

**STINNER:** Here's one of the deals that you need to weigh that against. We settled with Kansas for \$5.5 million. That was a big deal too. They were asking for three, four, five hundred million. So that-- that's an example of how they do this. I think it probably cost us in attorney fees \$5 million to litigate it, so. But the water projects that you're talking about, the surface water users, could you give us an example, because we were really stuck on the \$4 million and what it was specifically used for, and many times you say, well, they're for water projects. OK. Tell me what that looks like. So.

**JEFF FASSETT:** Well, I think--

**STINNER:** In my area, I know what it looks like, but I know the rest of the group here does not.

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Appropriations Committee March 20, 2019  
Agency 29  
Rough Draft

**JEFF FASSETT:** Fair question, Mr. Chairman, and there is a gentleman here in the room I think you're going to hear some testimony from that is going to be one of-- one of the applicants for that dollar. We've-- we've seen just in the last few years there's been a number of requests made to the water sustainability fund itself that have been funded by our natural resources commissions, specifically in the Republican River Basin, both to the Frenchman-Cambridge Irrigation District, as well as the Nebraska Bostwick District. And one of the big efficiency changes and operational efficiency changes that is being funded are automated gate systems: head gates, turnouts, control facilities, all the way through these very, very long canal systems that has greatly enhanced the operator's ability to manage limited water supplies all the way through systems that traverse many, many miles. Very hard to operate a 30-mile long-- 30-mile long canal system when you get a Friday afternoon rain shower and you're starting to dump water because canals are overflowing. We're seeing some very positive effects from investing in some automated systems that allow that water to be captured and managed much more carefully. That's certainly been one category of the kinds of projects that the irrigators are bringing to us. And we would expect this \$4 million to go towards those kinds of projects. We-- because those are the kind of projects that when the drought hits, when we don't have a lot of water, that can really make a difference in those dry years, in my opinion.

**STINNER:** Thank you. Additional questions? Seeing none, thank you.

**JEFF FASSETT:** Thank you, Mr. Chairman.

**BRAD EDGERTON:** Good afternoon.

**STINNER:** Good afternoon.

**BRAD EDGERTON:** Chairman Stinner and members of the Appropriations Committee, my name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I am the general manager for Frenchman-Cambridge Irrigation District, and I just wanted to give you a little more background. I didn't realize that Director Fassett was going to do such a good job on this subject, but I passed out a map of our-- our division in the Republican River Basin. We are a federal project built by the Bureau of Reclamation. We have contracts with the Bureau of Reclamation for repayment. And those payments will go on until 2060. So they've been extended out there for some time. We have three reservoirs that we're contracted to get water



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Agency 29

Rough Draft

from: Trenton, Red Willow, and Medicine Creek. Trenton is the one I wanted to highlight today because Colorado's use above that reservoir would have ended up in that reservoir and been used mostly by our water users under that canal. There's about 17,000 acres under that-- under that canal. It's a long canal, nearly 60 miles long. And so, we are looking at doing some automation on this canal, like they said. But if you look at the table that I-- that I handed out. I highlighted-- this is Colorado's compliance or noncompliance from the 2003 settlement up until present day. And in 2003, '04, '05, '06, '07, and '08, I highlighted those years. Those are years when we did not operate the Meeker Driftwood Canal because we didn't have enough water in our reservoirs. And if you go clear to the right in-- in the column, that-- those-- those numbers in red is-- are the number of acre-feet that Colorado was exceeding their compact allocation. So, in years when we were off and couldn't irrigate, they enjoyed the water that should have been coming to Nebraska. And then I also highlighted '13 and '14, in those two years the Bureau of Reclamation received closing notices and were required to bypass flow through those reservoirs for compact compliance. So we did not-- we-- we operated, but it was-- we delivered like less than two inches of water those years. In the last couple of decades, we've only been allocating 8 inches of water or less to our patrons just because of the short water supply in the Republican River Basin. So, when we can make investments in our-- our facilities that become more efficient, that's-- that's real water that we can see and then we can make available to our-- our patrons and help them produce a crop on-- on such a small amount of water. Bottom line is, you know, we're-- we're trying to conserve the water in the reservoir, keep it in the reservoir, and have more carryover the following year. So we've been real successful at getting WaterSMART grants from the Bureau of Reclamation. We've also got two water sustainability grants from the state of Nebraska, and we're-- we've invested-- total project cost last-- since 2011 has been \$4.8 million. And we've just applied for another WaterSMART grant for the Meeker Canal system. It's a \$4 million project to automate about two-thirds of that canal. And I'm-- I sent out a request to Jeff for-- for-- for-- matching funds, the federal government grant caps out at \$1.5 million and so I've asked for some-- some money from the state to help us with that endeavor, so. With that I'd be more happy to answer any of your questions. And I appreciate the opportunity to come and testify today.

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Appropriations Committee March 20, 2019  
Agency 29  
Rough Draft

**STINNER:** Questions? Are you going to be the person that's going to oversee request or you sit on a board that oversees each specific request for [INAUDIBLE]?

**BRAD EDGERTON:** Frenchman-Cambridge Irrigation District, we operate with a board of directors and I'm-- I am the manager.

**STINNER:** Right.

**BRAD EDGERTON:** So I'm the one that basically makes sure everything's running smoothly and I'm, you know, the one they call when it's not so.

**STINNER:** But you'll be making requests for projects?

**BRAD EDGERTON:** Yes.

**STINNER:** OK.

**BRAD EDGERTON:** Yes. It's done by a board of directors really, but yeah.

**STINNER:** Well, thank you. Seeing no one else, any questions? Seeing none, thank you.

**BRAD EDGERTON:** Thank you.

**STINNER:** Any additional proponents? Any opponents? Seeing none, anybody neutral? Seeing none, that concludes our hearing on Agency 29. I do have, excuse me, one letter of support by Scott Merritt, Nebraska Water Resource Association. That concludes our hearing on Agency 29. That concludes our hearings for the day.