

# **LB 229 REPORT**

December 1, 2012

Submitted by the Natural Resources Committee of the Nebraska Legislature

Sen. Chris Langemeier, Chairman

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Submit a report electronically to the Clerk of the Legislature and Governor by December 1, 2012 setting forth:

- An outline and priority listing of water management and funding needs in Nebraska, including instream flows, residential, agricultural, recreational, and municipal needs, interstate obligations, water quality issues, and natural habitats preservation;
- An outline of statewide funding options which create a dedicated, sustainable funding source to meet the needs set forth in the report, and
- Recommendations for legislation.

## **1. Background – LB 229 History and Agreement**

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 compromise between the interests, allowed 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 were to be used in 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 was also authorized to apply for an additional three-year grant if the criteria listed in the statute are met. The criteria include (1) a Natural Resources Committee report containing an outline of water management funding needs, an outline of statewide funding options to create a dedicated funding source, and legislation recommendations; (2) a Department of Natural Resources report showing "demonstrable evidence" that the projects funded by the trust grants have resulted in water conservation, enhancement, or restoration; and (3) a Department of Natural Resources report to the Environmental Trust Board showing that the 40 percent matching fund requirement has been met by the natural resources districts and at least 40 percent of a project's funds were matched from other sources, and that 10 percent or less of matching funds came from in-kind contributions.

The Nebraska Environmental Trust was to award 50 priority points in the grant ranking process if the Legislature authorized annual transfers of \$3.3 million for three years and if the application was consistent with the purposes of the Water Resources Cash Fund.

The agreement on the language in LB 229 was made after all parties agreed that the Natural Resources Committee 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. LR 314 was introduced as a result.

## 2. **LR 314 Study and Report**

A link to the interim study report is:

[http://nebraskalegislature.gov/pdf/reports/committee/natural/lr314\\_report.pdf](http://nebraskalegislature.gov/pdf/reports/committee/natural/lr314_report.pdf)

The Natural Resources Committee's intention for the interim study resolution was to gather as much water use and cost information as possible 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. Sen. Langemeier viewed the 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 the state will face in the future.

The committee formed six technical working groups for the study, comprised of voluntary experts with various backgrounds and interests who were asked to gather information on specific questions related to water management and funding. These working groups gathered 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 research was provided to the committee last fall at a public briefing, during which technical working group members made presentations to the senators. A transcript of the briefing can be found [HERE](#).

### **3. 81-15,175 (4) Neb. Rev. Stat.**

(4) It is the intent of the Legislature that the Department of Natural Resources apply for an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2014-15 and such application shall be awarded 50 priority points in the ranking process as set forth in subdivision (2)(h) of this section if the following criteria are met:

- (a) The Natural Resources Committee of the Legislature has examined options for water funding and has submitted a report electronically to the Clerk of the Legislature and the Governor by December 1, 2012, setting forth:
  - (i) An outline and priority listing of water management and funding needs in Nebraska, including instream flows, residential, agricultural, recreational, and municipal needs, interstate obligations, water quality issues, and natural habitats preservation;
  - (ii) An outline of statewide funding options which create a dedicated sustainable funding source to meet the needs set forth in the report; and
  - (iii) Recommendations for legislation;
  
- (b) The projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section have resulted in enhanced streamflows, reduced consumptive uses of water, recharged ground water, supported wildlife habitat, or otherwise contributed towards conserving, enhancing, and restoring Nebraska's ground water and surface water resources. On or before July 1, 2014, the department shall submit electronically a report to the Natural Resources Committee of the Legislature providing demonstrable evidence of the benefits accrued from such projects and activities; and
  
- (c) In addition to the grant reporting requirements of the trust, on or before July 1, 2014, the department provides to the board a report which includes documentation that:
  - (i) Expenditures from the Water Resources Cash Fund made to natural resources districts have met the matching fund requirements provided in subdivision (5)(a) of section 61-218;
  - (ii) Ten percent or less of the matching fund requirements has been provided by in-kind contributions for expenses incurred for projects enumerated in the grant application. In-kind contributions shall not include land or land rights; and
  - (iii) All other projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section were matched not less than 40 percent of the project or activity cost by other funding sources.

#### 4. Legislature's Duties Under Statute

*(a) The Natural Resources Committee of the Legislature has examined options for water funding and has submitted a report electronically to the Clerk of the Legislature and the Governor by December 1, 2012, setting forth:*

- (i) An outline and priority listing of water management and funding needs in Nebraska, including instream flows, residential, agricultural, recreational, and municipal needs, interstate obligations, water quality issues, and natural habitats preservation;*

A broad outline and overview of water management and funding needs can be found in the final report on LR 314, which lists the priorities of the major water interests in the state. In the report are the responses of state water users who were also asked for their projected costs based on needs, both long-term (in general, more than 10 years) and short-term (up to 10 years).<sup>1</sup> The Natural Resources Committee believes that while the LR 314 study provides a good overview of needs, a more detailed study and basin-by-basin analysis are warranted to better identify specific funding needs. Such a process would include gathering more detailed information on the current state of water management needs, statutory requirements, compacts and agreements, and local water supply and infrastructure needs.

Additionally, the Natural Resources Committee has agreed that before a specific priority listing of water management and funding needs can be established, it is necessary to create a set of criteria to be used to identify and determine which projects or management activities would best capitalize the state's water resources. To establish the criteria, the committee supports the idea of identifying statewide water management goals that represent the state's policy of using our water supply more effectively for beneficial purposes by increasing quality and reducing non-beneficial consumptive use.

Committee members have acknowledged that the creation of a priority listing of water management and funding needs that would lead to achieving such water management goals would require a collaborative effort of experts in each of the water interests listed in 81-15,175(4) to develop a fair and balanced system to identify priorities. The committee's recommendations towards this end are listed in the last section of this report.

Finally, the state is obligated under current compacts and agreements to meet certain criteria related to water management. As the LR 314 report indicates, not only must the actual costs of projects be considered, but the costs associated with failure to complete a project or meeting an obligation as well. For example, the state has already experienced considerable legal costs related to noncompliance with the Republican River Compact. Aside from the cost of lawsuits, federal licenses

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<sup>1</sup> For example, the LR 314 study reported that municipalities projected costs for long-term clean water at \$427 million and waste water at \$717 million; Irrigation districts projected \$10-25 million in the short term, \$75-200 million in the long term. See the LR 314 report, Group 4 for more information from other water users and their projected costs.

could be lost, the federal government could impose additional requirements, there would be unrealized benefits of finished projects, and obviously, there is a risk of potentially significant fines.

The committee suggests that legislation be drafted to facilitate the combining of interests, the identification of criteria, the creation of a system of prioritization depending on value to the state using that criteria, and the implementation of an analytical process using the system of prioritization to identify and determine specific projects and management activities within the basins that would assist the state in meeting its water management goals.

(ii) *An outline of statewide funding options which create a dedicated, sustainable funding source to meet the needs set forth in the report; and*

The LR 314 report contains a list of statewide funding options that have been seriously considered in past years.

- 1983-84

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

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 here](#))

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 here](#))

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.

- 2010

*Checkoff 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](#).

- 2012

*Draft Outline for LB 229 Report*

A group of longtime water policy experts in Nebraska worked independently to develop a plan for the Natural Resources Committee's statutory obligation to issue a funding options report under LB 229. This group has proposed that the Legislature provide \$50 million a year by dedicating a percentage of a new or existing state sales tax to provide 75 percent of the funds and implementing a user fee on the consumptive use of water, including commercial and municipal interests, to provide 25 percent of the funds. The group estimates that ¼ of 1 percent of the sales tax in 2010-11 would have generated \$62.399 million. The draft outline is [here](#).

*(iii) Recommendations for legislation;*

- The committee recommends that legislation be drafted to accomplish these goals: identify and fund projects and water management activities to achieve the goals of water sustainability, increase water use productivity, and otherwise maximize the beneficial use of Nebraska's water resources for the benefit of its citizens. The legislation should acknowledge that current state funding for the protection and management of water is minimal and does not reflect the importance of water to the state.
  - \* The legislation should include intent language stating that the Legislature recognizes that the stated goals can be achieved by investing in research and data gathering, further integrating the management of Nebraska's water supplies, improving our aging and antiquated infrastructure, building new infrastructure, promoting coordination and collaboration among all water users, and securing a stable source of funds.
  
- The committee recommends that legislation be drafted to provide for a dedicated funding source for water projects with a target of at least \$50 million annually. A potential source should be identified. The committee supports consideration of a dedicated percentage of the state sales tax to provide the funds.<sup>2</sup> The committee recommends that the implementation date for collection into this fund be set in the future, after the entity that will administer the fund has been created and has fulfilled duties set out in statute that must be done before making decisions on funds.
  
- The committee recommends that legislation be drafted to establish a water funding review body, comprised of representatives with knowledge and experience necessary in order to (1) identify statewide management goals; (2) undertake further study and analysis to identify a priority listing of water management and funding needs that would lead to achieving identified water management goals; and (3) administer the new water fund.
  - \* The committee recommends that existing, statutorily-created water advisory and funding bodies be examined for (1) guidance on how the Legislature has previously constructed representative bodies that reflect executive, legislative, and academic and research institutional input or representation; and (2) the possibility of reconstructing an existing body to save time and resources that would need to be spent on creating a new water funding review body.
  
- The committee recommends that legislation be drafted that authorizes and directs the water funding review body to: (1) select a director, develop a budget for administration and to implement its program responsibilities; (2) determine an implementation schedule and establish when actual funding from the dedicated revenue source can and should begin; (3) determine what should be done with existing water funding programs (for example, whether they should be merged or eliminated) and what should be done with existing water advisory and funding bodies; and (4) produce and return a report to the Legislature containing recommended annual funding needs.