# A History of Nebraska's Natural Resources Districts

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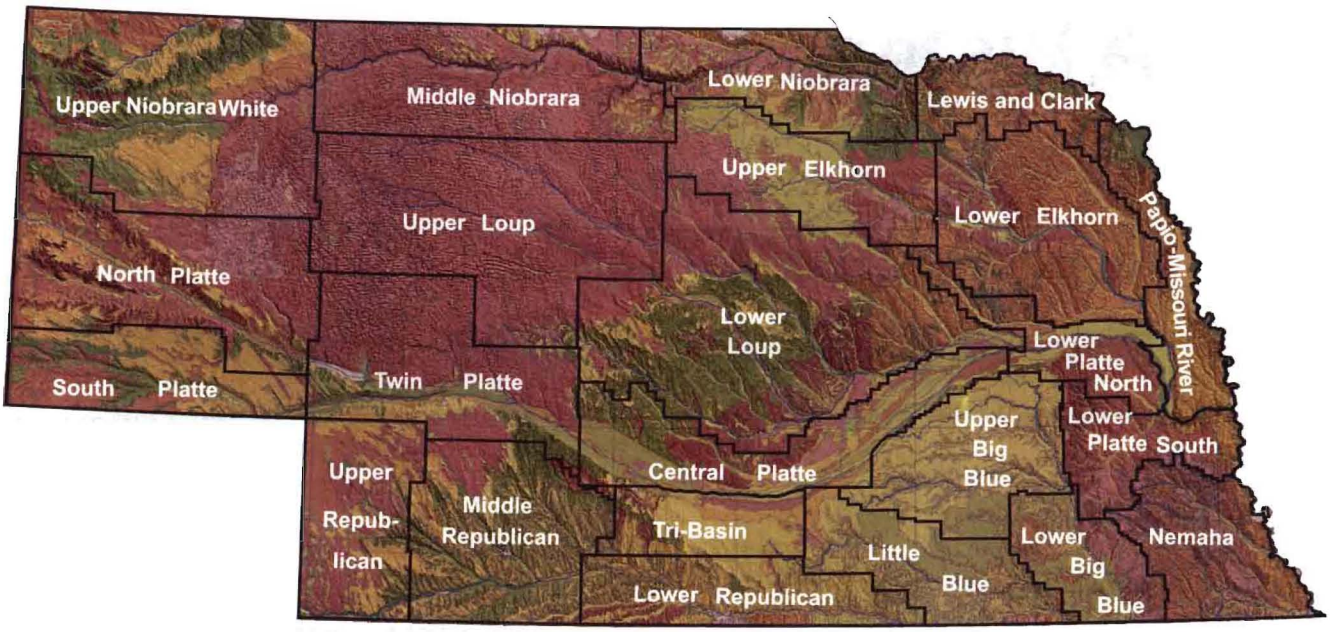



# Nebraska's 23 Natural Resources Districts

*as of January 5, 1989*

# Introduction

With the complexity of society ever increasing, the function of government in providing the framework from which a healthy and productive society may grow continually becomes a more intricate labyrinth of "give and take." Just as small groups of local people rely on state and federal government to carry on affairs beyond the scope of their ability or jurisdiction, so too must the larger governmental units rely on an effective local subdivision of government for implementation of its programs. But, without proper geographical organization of local governmental subdivision, the merits of many programs are lost.

In Nebraska a problem of this sort became evident when large water projects, the impact of which spread beyond long established county lines and randomly selected boundaries, made determination of proper sponsorship virtually impossible. A profusion of special purpose districts had been developed in an attempt to solve local water-related problems as they arose. But the puzzle of overlapping authorities and responsibilities (and even boundaries) provided confusion at best. Legislators often found themselves in a bewildering situation as the question of project sponsorship turned from one of "whom" to "which one."

In 1969 the 80th Unicameral resolved the problem with the passage of **L.B. #1357** creating natural resources districts (NRDs). The boundaries of these new subdivisions of state government were established primarily in accordance with Nebraska's naturally delineated river basins on the premise that natural boundaries would provide a better opportunity for dealing with resource-related problems than would boundaries established because of other considerations. **As delineated, the boundaries provided for 24 natural resources districts; and on July 1, 1972, some 154 special purpose districts previously established in the state to solve special problems were merged into and became part of the new multi-purpose districts.** See next page for special purpose groups.

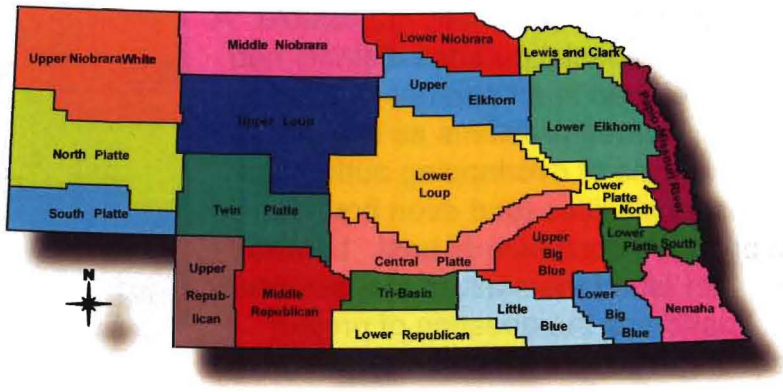
Some of the advantages of natural resources districts are readily apparent. Program implementation related to land and water resources now lends itself, in most situations, to natural resources districts. Problems common to individuals and communities within a basin can be more easily dealt with. Local funding of projects has become less troublesome because of the greater tax base of these larger governmental units. Elected boards of directors form the governing bodies of each NRD.

With the history of NRDs still young, however, full potential of the natural resources districts concept has not yet been realized. While NRDs were originally envisioned for water development projects, it is being discovered that districts are effective vehicles for introducing, implementing and coordinating a number of different programs. Water quality planning, waste disposal, recycling, land use planning, education and information are only a few of the

areas being explored for future NRD involvement. Only time will prove the ability or inability of these districts to cope with these and many other resource-related issues.

It was once said that reorganizing and restructuring Nebraska's conservation district system into NRDs would take a revolution. It did not. Even now, some observers feel that natural resources districts would not work in other states despite their success in Nebraska. Even though each state varies considerably in its resources, agriculture, industrial development, population, geography and many other features, use of the natural resources district organization plan may provide a starting point for the solution to many states' resources development problems. It is hoped that this paper will prove to be of value to other states and to all others interested in learning of the trials and tribulations encountered in the formulation of the NRD concept, the conversion of that concept to a reality and the early attempts at implementation of that reality to provide for an efficient, viable entity of local government.

**Update:** As of January 5, 1989 the Middle Missouri Tribs and Papio Natural Resources Districts merged into one NRD, the Papio-Missouri River NRD. This action represents the first significant change in NRD boundaries since 1972. The merger grew out of the conclusion that the Middle Missouri Tribs NRD did not have adequate financial resources to deal with the resource needs of the area.




## Evolution of the NRD Concept

Enactment of the natural resources district concept was not an overnight operation; rather, in an indirect manner it had been coming about over a period of many, many years. **In 1939, an Interim Legislative Council Study Committee studied the problem of multiplicity of special purpose districts and found that at that time there were 172 special purpose water districts in the State of Nebraska.** During the period from 1895, when the first irrigation district was created, to 1967, there were 13 different types of special purpose resource-related organizations created by the State Legislature. These included: Irrigation Districts in 1895; Drainage Districts in 1905; Soil Conservation Districts in 1937 (Changed to Soil and Water Conservation Districts in the late 1950's); Watershed Districts in 1959; Rural Water Districts in 1967; as well as Watershed Planning Boards; Advisory Watershed Improvement Boards; Reclamation Districts; Mosquito Abatement Districts; Public Power and Irrigation Districts; Sanitary Improvement Districts; and Sanitary Drainage Districts. In fact, a total of 500 resource-related special purpose districts covered the state by the late 1960's.

In more recent years, much of the legislation relating to conservation districts had been leading to the gradual assumption of more and more responsibilities and authorities by these districts. As an example, between 1957 and 1969, the following changes occurred: (1) In 1957 the Watershed Conservancy District Act was enacted to provide a local entity of government with authority to sponsor flood control projects; (2) in the late 1950's the name of soil conservation districts was changed to include the words "and water. . .;" (3) Soil and Water Conservation Districts were authorized to receive county financial assistance and did in

fact receive both county and state financial assistance; (4) authorities of these districts were broadened to include recreation, fish and wildlife, and water quality; (5) the election of SWCD supervisors was to be held during the state's general election instead of special elections; and (6) a general leadership role of local district officials and the State Soil and Water Conservation Commission began to emerge in the broad field of natural resources development.

Because of the piecemeal fashion in which special purpose districts were created, a situation of overlapping authorities and duplicate responsibilities became increasingly evident. As a result of this two-fold problem, the subject of reorganizing and restructuring local units of government became the subject of heavy conversation in the 1960's.

## The Plan for a New Concept

In 1964 the District Outlook Committee of the National Association of Soil and Water Conservation Districts studied the problems associated with such a multiplicity of local resource-related organizations. The Committee recognized that a strong local unit of government was needed - one that could more comprehensively tackle resource problems. They further recognized that special purpose districts would continue to form because of the limited authorities granted past resource organizations - particularly soil and water conservation districts. Although they analyzed the situation adequately, their recommendations were less than adequate and quite ambiguous. They concluded that soil and water conservation districts should be strengthened with no guidance as disarray of special purpose districts and their coordination problems.

It was during 1966 that much of the groundwork was laid for eventual reorganization efforts in Nebraska. Recommendations for reorganization legislation were made to the Legislative Council Study Committee on Water and to the Board of Directors of the Nebraska Association of Soil and Water Conservation Districts. As an outgrowth of these recommendations, and after much thought and deliberation, Resolution #18 was presented to the delegates of the 26th Annual Conference of the Nebraska Association of Soil and Water Conservation Districts at Kearney, Nebraska in September of 1966. This resolution called for legislation to be considered to reorganize Soil and Water Conservation Districts along hydrologic units rather than county lines and that such newly formed districts be of sufficient size to facilitate economy of operation and effectiveness of purpose. It also called for districts to be granted the necessary tools to carry out and sponsor comprehensive programs of land and water development, and that such districts be governed by locally elected representatives, both rural and urban, to assure local control.

This resolution was passed, but not without considerable debate and reservation on the part of some of the delegates.

During the period immediately following this conference, there was a great deal of correspondence emanating both from the office of the Nebraska Soil and Water Conservation Commission and from officials of the Nebraska Association of Soil and Water Conservation Districts. The purpose of this effort by both of these groups was to keep the local people informed on developing plans for reorganization.

Meetings were held with state and federal officials at which time proposed legislation was discussed. Preliminary boundaries were drawn for various numbers of districts throughout the state, and comments were requested from many different agency personnel.

A series of area meetings throughout the state was called late in 1966 during which reorganization was discussed at great lengths. Needless to say, the subject did not meet with favor with all of the local people, nor with all agency personnel.

Early in 1967, the Commission staff visited many of the local districts where the primary topic of conversation was reorganization. Commission staff members were well aware that many of the supervisors were only cautiously receptive to the idea of reorganization at this point, even though they felt something was needed to strengthen the district system.

Correspondence and meetings with local, state and federal officials continued on to the time of the State Association's annual conference on September 17, 18, and 19, 1967 in Lincoln. At that conference, Resolution No. 2 was introduced. Resolution No. 2 stated that the State Association, in cooperation with the Nebraska Soil and Water Conservation Commission and other state and local agencies, would make every effort to complete Studies regarding reorganization and restructuring of the conservancy district system. It further stated that the president appoint a committee to report at the next annual meeting in order that legislative action might be taken during the 1969 session of the Nebraska Legislature. This resolution was passed unanimously. Yet it was evident that SWCD supervisors and watershed directors were not yet ready to accept the entire concept of reorganization at the local level even though they were agreeable to studying the problem.

Governor Norbert Tiemann, in an address to the 1967 State Conference, also came out in favor of reorganization by calling for *"a functional realignment of local water agencies in Nebraska."*

During the following few months, Commission staff members felt more reassured as local districts became more willing to sit down and discuss possible reorganization.

The State Association, at their annual summer board meeting at Long Pine, Nebraska, again thoroughly discussed the subject and was assured support by most of the local, state and federal agencies represented. A series of preconference meetings was called by the Association for the main purpose of education about the concept of multi-purpose districts.

Many sessions with state and federal officials were also held during the summer of 1968 in an effort to supply as much information as possible to all those seeking it.

The State Association held their 1968 annual conference in North Platte, a session which undoubtedly will be recorded as one of the most historic meetings ever held dealing with resource development. Warren Fairchild, Executive Secretary of the Nebraska Soil and Water Conservation Commission, Warren Patefield, President of the State Association, and Phil Glick, Legal Counsel for the U. S. Water Resources Council, were scheduled as Conference speakers. All three strongly advocated reorganization efforts and urged the delegates to carefully consider the merits.

After a fiery business session during which Resolution No. 25 was introduced, the resolution was finally passed with a recorded vote of 57 for and 42 against. The resolution called for legislation to be enacted to reorganize and consolidate soil and water conservation districts, watershed conservancy districts, watershed planning boards, and watershed districts along hydrologic lines where possible, and other special purpose soil and water resource districts be encouraged to join in such reorganization. It was obvious at this point that there was bitter opposition building against the reorganization of local resource districts.

Numerous meetings were held, slide presentations and visual materials prepared, and many pieces of correspondence written in the few months following passage of Resolution No. 25.

Early in 1969 the booklet, "Modernization of Local Resource District Legislation" was prepared by the Commission staff in the form of a "Special Recommendation" of the State Water Plan. After approval by the Technical Advisory Board and Special Representative Committees of the Commission, it was given final approval by the Commission in March of 1969.

Also during March 1969, natural resources legislation calling for reorganization was drafted. After revision and amendment, the legislation was introduced into the 8lst Legislature on April 1, 1969, by Senators Maurice A. Kremer of Aurora, C. F. Moulton of Omaha, George Syas of Omaha, and Herb Nore of Genoa, and came to be known as **L.B. #1357**.

Copies of the bill as well as the publication "Modernization of Local Resources District Legislation" were distributed to all local supervisors and directors during a series of statewide area meetings called by the Association early in April. Many pieces of correspondence emanated from the office of the State Commission to the local people in an effort to keep them informed about the legislation and its progress. The Commission staff spent considerable time meeting with local boards for this purpose. All amendments made to the bill were forwarded to the local boards for their review and comments.

A public hearing before the Legislature's Agriculture and Recreation Committee was held on May 1, 1969. A large number of persons were in attendance to testify at the two and one-half hour hearing with thirty-one persons appearing in favor and sixteen in opposition. Even with this, it was becoming more and more evident that the opposition to the legislation was becoming more organized and more inclusive.

Members of certain SWCD's and watershed boards in southeast Nebraska organized themselves into a group known as the "Non-Paid Association of Soil and Water Conservation Districts" to actively oppose the legislation. They hired a professional lobbyist to act for them in the Legislature and also printed brochures containing their views on the proposed legislation. What effect this opposition really had on the Legislature will never be fully known. At the least, it stimulated many senators to examine the bill more thoroughly than otherwise might have been the case.

The reorganization bill remained with the Legislature late into the session and Senators looked forward to the September State Association Convention as an indication of statewide support or opposition.

On September 14-16, 1969, the State Association held its annual conference in South Sioux City, Nebraska. During this conference, Resolution No. 20 was introduced by several southeastern Nebraska SWCDs and watershed boards. Basically, the resolution called for opposition to the compulsory reorganization of 154 special purpose districts into natural resources districts as set forth in L.B. #1357. The resolution was defeated. In spite of this opposition, this state conference was termed a very successful meeting and the discussions, resolutions adopted, and other business transacted ended in considerably strengthening local support for the bill.

Two days following the convention on September 18, 1969, at 4:40 p.m., L.B. #1357 was passed by the Nebraska Legislature by a vote of 29 for, 9 against and 11 not voting.

Thus, the wheels were then set in motion for the Commission to carry out its responsibility for complying with the provisions of the new law.

# Operation After Adoption of L.B. #1357

Even though extensive discussion and many meetings had been held prior to the passage of L.B. #1357, the year following was also a critical period. It is unfortunate that a complete record of all the public meetings was not kept so that a more accurate picture of the trials, tribulations, problems and eventual solutions could be reconstructed, but it did not seem important at the time. It could be considered a conservative estimate that at least 200 such meetings were held during that interim period with local boards and various local civic groups, including area and statewide meetings.

Immediately after passage of the law, the Commission assigned two staff members to work full time on the implementation of these new districts. All other staff members spent as much time as was possible assisting these people. As adopted in 1969, L.B. #1357 called for Natural Resources Districts to commence operation on January 1, 1972. This permitted the 1971 Legislature to reassess the legislation and to pass upon Commission determinations such as the appropriate number of districts and their boundaries. The law at this point specified that the number of districts should be between 25 and 50.

Shortly after adoption of L.B. #1357, a Task Force was brought together to work out district boundary lines. This Task Force was composed of persons from various groups and agencies - local, state and federal - all of whom had a great deal of knowledge of the State of Nebraska. Besides representatives of the Commission, other agencies working on this Task Force were the Soil Conservation Service, Bureau of Reclamation, Corps of Engineers, Department of Water Resources, UNL - Conservation and Survey Division, Game and Parks Commission, Department of Health, and Cooperative Extension Service. Also called in from time to time were representatives of the State Tax Commissioner, Department of Economic Development, State Office of Planning and Programming, and the Secretary of State's office.

Meeting for all-day sessions on ten different days, their assignment was to delineate boundaries for the districts by dividing the state into common resource problem areas. Their first recommendation to the Commission was a map outlining boundaries for 28 districts. This proposal was presented to the Commission at a special meeting on January 5, 1970. On January 15, 1970, the Commission accepted the boundary delineations as submitted by the Task Force and asked for submission of the proposed boundaries to the local people at a series of statewide meetings to be held later the same month. After those meetings, the Commission would review the boundaries in light of the local recommendations.

From January 19 to January 29, 1970, eight area meetings were held across Nebraska during which boundaries were discussed. Many local problems kept surfacing such as those surrounding the area of Adams County and the three county area of the Central Nebraska Public Power and Irrigation District. The problem which had to be resolved was whether or not Adams County should be in the Tri-County area to the west from which most of their groundwater originates, or in the Little Blue area to the east into which most of the surface water from Adams County drains. (The problem was eventually compromised apparently to the satisfaction of all sides.)

Beginning the latter part of February, continuing through March and into early April of 1970, meetings were held in each of the proposed 28 natural resources districts. With only a few exceptions, these meetings were well attended and helpful to the Commission staff in obtaining local attitudes and ideas about boundary lines.

Following these meetings, and using the recommendations received from the local people, the Task Force prepared new boundary proposals and a map outlining 33 districts. The Task Force was again called into session and met for two days. A combined staff and Task Force report was presented to the Commission for their review on April 23, 1970. The Commission reviewed each of the boundary proposals at great length. It was evident that problems over some areas were still not yet resolved. Further comments were requested with a Commission determination scheduled for April 30, 1970.

At the Commission meeting on April 30, people representing many areas of the state were present to comment on and suggest changes in the boundary proposals to date. Following this meeting, the map outlining the 33 districts, as presented to the Commission on April 23 by the staff and as modified as a result of the suggestions made at the meeting on April 30, was printed for distribution. These were to be the boundary delineations to be presented at 18 public hearings to be held across the state during June of 1970.

Meanwhile, more intensive opposition was generating against the entire natural resources district concept. During March of 1970 a group calling themselves "Nebraskans for Nebraska Soil and Water, Inc.," an outgrowth of the "Non-Paid Association of Soil and Water Conservation Districts," was formed. Their chief objective was the repeal of L.B. #1357. Even though most of the opposition did originate in Southeast Nebraska, there was scattered opposition from various areas throughout the state. It is interesting to note that opposition to the formation of the soil conservation districts in the late 1930's came from this same southeast area of the state. More about this opposition group and the effect it had on the formation of NRDs will be discussed later.

During June and July of 1970, 18 separate public hearings were held at strategic points across Nebraska. These hearings dealt only with the number of districts and their boundaries and testimony was received only on these subjects. They were called by and conducted by the Commission according to its Rules and Regulations. The final hearing was held in Lincoln on July 31, 1970. Each hearing was taped and later transcribed so that all testimony was available to the Commission members for study before final boundary determinations were made. Since the law called for the boundary determinations to be made by September 1, 1970, the Commission's program committee met in a two-day session on August 5 and 6, 1970. Pressures were great, particularly those involving Adams County and the dispute over whether it should go with the district to the east or the west as previously discussed. Further discussion was held at a Commission meeting on August 7, 1970, but final determination was not made until August 20.

In an effort to satisfy all concerned, the Commission chose to make Adams County a district by itself. Because of the earlier merger of two districts in the Elkhorn Basin, the number of districts remained at 33. This boundary arrangement was given final approval by the Commission on August 20, 1970.

## Legislative Council Recommendations

Early in August the Legislative Council Interim Study Committee on Water and Land Resources began a series of 33 hearings across the state - one in each of the 33 proposed NRDs - to further examine public opinion about NRDs. As a result of these hearings, a number of legislative changes for L.B. #1357 were recommended to the 1971 session of the Legislature.

The Committee in its report to the Legislature reported, "While this has been a very controversial measure, the Committee is strongly of the opinion that there is enough merit to a concept of natural resources districts that L.B. #1357 should be retained. . . ." The Committee did, however, recommend several amendments, including: **(1)** Reducing the number of NRDs from 33 to 20; **(2)** That the initial boards of directors of NRDs include directors of Groundwater Conservation Districts; **(3)** The election of permanent boards should be moved up to 1972 with it being mandatory rather than permissive as initially provided, and that subdistricts be established for election purposes. The elected board should also take office January 1, 1973 with staggered four year terms. The member at-large and the member from each subdistrict receiving the highest vote should serve terms of four years and the next highest for an initial term of two years; **(4)** NRDs should be restricted to a maximum tax levy of one mill instead of the suggested two mills unless a higher rate was approved by the voters of the district; **(5)** The authority to issue general obligation bonds should be eliminated; **(6)** Each NRD and SWCD should be required to prepare no later than August 1, 1975 a long-range six-year plan for its operations with an annual updating and a one-year certain plan. Failure to comply with this planning requirement should result in the withholding of any state funds from the non-complying NRD; **(7)** NRDs should be made subject to the Nebraska Uniform Budget Act of 1969, L.B. #1433, with a change in fiscal year for NRDs from July 1 to August 1; **(8)** The per diem for the NRD board members should be limited to $15.00 and the members of the initial boards to receive no mileage or expense reimbursement; **(9)** All reference to mosquito abatement districts should be eliminated from L.B. #1357; **(10)** Soil and Water Conservation Districts should be retained rather than mandatorily merged into NRDs. They should be encouraged to merge with NRDs, but should be prohibited from merging with each other. The suggestion that these recommendations be drafted into legislation was soon to be carried out.

Because of the upcoming legislation, the Commission scheduled a series of 16 meetings across the state during the period of January 11-27, 1971. The meetings were designed to advise the local people of the effect of the proposed legislation, and to obtain their comments for assistance in developing testimony on the forthcoming bills.

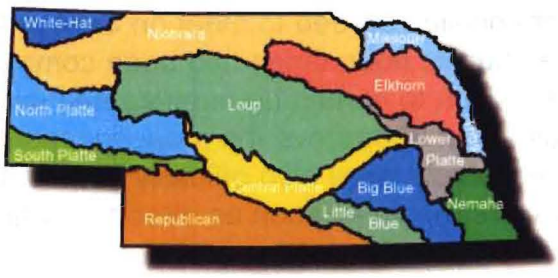
## Eight Amendments to L.B. #1357

On January 29, 1971, a packet of eight bills was introduced by Senator Jules Burbach of Crofton incorporating the recommendations of the Legislative Committee. Those bills, numbered consecutively **L.B. #537 through L.B. #544** inclusively, each dealt with one specific portion of the NRD Act. All of the bills were given public hearing and extensive debate by the Legislature's Committee on Agriculture and Recreation during the 1971 session.

One of the key proposals in that package of bills introduced in 1971 was the retention of soil and water conservation districts as separate entities of government, thereby taking them out of the mandatory consolidation phase originally proposed by the legislation and provided for in **L.B. #1357**. Although that proposal was specifically included in only one of the eight bills introduced, it had a total effect upon all of the bills because it was integrally involved with and was mentioned in each of the others. A note of this fact will be important in later discussion of the action taken on several of those bills in the Second Session of the 82nd Legislature during 1972.

Because of the volume of legislation introduced during the 1971 session of the Legislature and because of the controversial nature of some of these bills, the Committee and the full body of the Legislature did not have adequate time to sufficiently discuss and debate all of the issues contained within this package of bills. Thus, as an alternative to last minute haphazard amendment, the Legislature indefinitely postponed one of the eight bills, **L.B. #439**, and amended and adopted two others originally introduced in that session, **L.B. #538 and L.B. 544**. The other five bills, **L.B. #537, #540, #541, #542, and #543** were forwarded to the Agriculture and Recreation Committee for further evaluation during the interim period between sessions. Because of their importance to the evolution of the NRD concept, a summary of the bills acted upon during the 1971 session of the Legislature is necessary.

As originally introduced, L.B. #537, and the remainder of the bill providing for a change in the fiscal year was indefinitely postponed.



**Nebraska's Major River Basins**

L.B. #538 as originally introduced was designed to abolish the boundaries for the 33 NRDs as established by the Commission on August 20, 1970. It proposed the establishment of 20 entirely different districts solely by the Legislature itself. After extensive amendment, L.B. #538 was passed in the following form: It directed that the state be redivided into NRDs by the Commission; that these delineations be completed by October 1, 1971; and that the criteria be as follows: ". . .establish boundaries which provide effective coordination, planning, development and general management of areas which have related resources problems. Such areas shall be determined according to the hydrologic patterns. The reorganized river basins of the state shall be utilized in determining and establishing the boundaries for natural resources districts and where necessary for more efficient development and general management, two or more districts shall be created within a basin. . . ." The bill went on to direct the Commission to delineate between 16 and 28 NRDs and abolished the 33 districts previously delineated by the Commission in 1970.

**L.B. #544** as originally introduced was intended to prohibit the combining of two or more NRDs, to prohibit the dividing of one district into two or more, and to also prohibit the Commission from initiating action for a change in boundaries or for a merger of other special purpose districts. In final amended form, L.B. #544 directed only that mandatory merger not take place until July 1, 1972. This moved the date for NRDs to commence operation back six months from the previous January 1, 1972 deadline to allow the Legislature more time to evaluate the NRD concept before it became operative.

# Operations During Amendment of L.B. #1357

It was late in the 1971 Legislative session when L.B. #544, moving the implementation date back from January I, 1972 to July 1, 1972, was passed. As explained above, the Legislature felt this would give them one more opportunity (the 1972 session) to review the new districts, their boundaries, and make any alterations in the law itself they deemed necessary.

The Commission and its staff were now assigned the responsibility of drawing up new boundaries on modified river basin lines before the end of September 1971.

The wheels were again put into motion and the staff developed new boundary lines after reviewing all the testimony received at previous hearings and meetings. At a special meeting of the Commission on September 7, 1971, members reviewed proposals of the staff combined with those drawn by the Nebraska Association of Soil and Water Conservation Districts. As is evidenced by the minutes of that meeting, extensive discussion took place. There were several local delegations present to again request changes for their particular districts. Hydrologic lines were followed as closely as possible in most instances and a map delineating the boundaries for 24 natural resources districts was tentatively developed. The Commission agreed to meet on September 14 after the actual legal descriptions outlining the specific boundaries had been completed. Again on September 14, there was still some opposition to certain boundaries and minor changes were made. Later that afternoon, action was taken to approve the proposal establishing 24 natural resources districts as submitted. The districts were also officially named by the Commission in a manner indicating their relative river basin location as directed by law.

Now that the boundaries were hopefully settled, attention was given to the actual implementation and all the details that needed to be taken care of before such a merger could be realized. One of the first tasks completed was the preparation of a handbook for NRD directors, giving special guidance to the interim and initial boards.

During December of 1971, the Commission conducted a series of meetings - one in each of the 24 natural resources districts. The morning sessions were devoted to informational discussions about natural resources district organization, to which the new NRD directors, state senators, members of the press, Soil Conservation Service local representatives, and all other interested agency personnel and interested individuals were invited. The afternoon sessions were devoted to the discussion of the Framework Study of the Nebraska State Water Plan, with invitations to all of the same persons attending the morning sessions, in addition to all other persons interested in resource development in Nebraska.

At these meetings, the future NRD directors were encouraged to meet and form interim boards. Board authorities at this point in time were very limited. Any action the interim boards took, including the location for their office headquarters was unofficial. Thus, it was necessary that a complete and accurate set of minutes be kept and the actions ratified after July 1, 1972.

## The Five Remaining Burbach Amendments

Planning for implementation was further hampered by the fact that five of the eight legislative bills introduced in 1971 had not yet been acted upon. In addition, the overall effect upon the natural resources district legislation had not been adequately considered during the initial preparation of those five bills and it was apparent that a number of clarifying and correcting amendments needed to be adopted for each of those bills early in the 1972 Session. Fortunately, corrective amendments to **L.B. #537, #540, #541, #542 and #543** were introduced by Senator Burbach on January 10, 1972, and the bills were acted upon as explained below.

**L.B. #537** as originally introduced called for the preparation of a comprehensive long-range six-year plan to be updated annually along with a one-year certain plan to be prepared no later than August 1, 1975. This was to be one not only by NRDs, but by SWCDs as well. The bill also stated that failure of any district to comply with this requirement would result in withholding of any state funds that would otherwise be allocated to that district. This bill was passed essentially unchanged with the additional requirement taken from L.B. #539 that NRDs were to comply with the Uniform Budget Act.

**L.B. #541** as originally introduced directed SWCDs to comply with the same rules as NRDs regarding investment of excess funds. This bill as amended and passed authorized SWCDs to invest excess funds, or make loans to other SWCDs. It also stated that districts could make soil and water conservation machinery, equipment and services available to landowners as long as they were not in competition with private business or industry. Both of these bills were passed at a time when it was assumed that SWCDs would not be a part of the mandatory merger.

Because of the extensive nature of the proposed amendments to L.B. #542 and #543, it was decided that these should be printed in the Legislative Journal and acted upon the following day.

**L.B. #542** proposed to change the name of the Soil and Water Conservation Commission to the Board of Natural Resources by January 1973. It would also change Commission membership to a 20-member board with each member representing one of the 20 NRDs as originally prepared in L.B. #538 the previous year. L.B. #542 as amended and passed changed the name of the Nebraska Soil and Water Conservation Commission to the Nebraska Natural Resources Commission, and stated that effective January 1, 1973, the Commission would consist of fourteen members as follows: The Director of the Conservation and Survey Division of the University of Nebraska, the Dean of the College of Agriculture of the University of Nebraska, the Director of the State Agricultural Extension Service, the Director of the Department of Water Resources, four members to be appointed by the Governor (one to represent pump irrigation interests, one to represent the Chambers of Commerce, one to represent municipal and industrial water users, and one to represent gravity irrigation interests), one district director from the state at-large and one district director or former district director from each of five areas of the state. Commencing the third Thursday after the first Tuesday in January 1975, the Legislature directed that the Nebraska Natural Resources Commission was to consist of 15 members, as follows: **One NRD director each from twelve of the state's thirteen naturally delineated river basins (The White River-**

**Hat Creek Basin was combined with the Niobrara Basin due to its size and similar problems.), and three members to be appointed by the Governor and confirmed by the Legislature - one representing municipal users of water, one representing surface water irrigators, and one representing groundwater irrigators.** The Commission was also directed to establish a technical advisory committee to assist in the performance of its duties - this to consist of representatives from thirteen university, state and federal agencies. This bill also directed the Commission to encourage SWCDs to merge into NRDs, but did not require their mandatory merger.

**L.B. #543** was probably the most extensive bill passed of the eight Burbach bills, especially after the lengthy amendments it received. It was originally intended to abolish the authority of an SWCD to sell fertilizer, seeds and seedlings; it would have restricted their ability to make machinery and other equipment available to landowners; it would have left SWCDs as separate entities with the ability to merge later if they so desired; it would have and as passed did abolish all reference in L.B. #1357 to natural resources divisions of public power and irrigation districts; it also removed the Commission's authority to establish job qualifications for district employees; it added directors of groundwater conservation districts to the initial boards of directors of resources districts; it provided that natural resources districts were to be mandatorily subdivided instead of permissively as they were directed under the existing law; it would have moved the election of the permanent board of directors of natural resources districts up to 1972 from 1974; it required that soil and water conservation districts and groundwater conservation districts appoint one of their members as liaison advisor to the natural resources districts; and it provided that there would be no expenses for the members of the initial board for the first year and that per diem for subsequent years would be reduced from the originally proposed $25 to $15.

The original draft of L.B. #543 would also have struck soil and water conservation districts from the list of districts that were to be mandatorily merged, but failed to include them in the list of districts having the option to merge pursuant to what is now section 2-3201, 1973 Supplement. Senator Burbach's amendments, which corrected this mechanical error as well as many others, were adopted on January 11, 1972. No discussion developed at the time on the issue of voluntary versus mandatory merger. On the same morning, Senator Kremer offered five amendments. The effect of these amendments was to reinstate "Soil and Water Conservation Districts" in the list of districts to be mandatorily merged. Contrary to the Burbach amendments, extensive debate constituting eleven pages of the floor debates on L.B. #543 was heard at this time regarding the mandatory merger of soil and water conservation districts. A great deal of confusion developed as the topic of mandatory merger of SWCDs bounced around the chamber. At the conclusion, the Kremer amendments were adopted and SWCDs were to be mandatorily merged into NRDs. Because of the last-minute amendment, however, many inconsistencies were created by the different treatment of SWCDs in the other bills adopted. In fact, portions of L.B. #543 still referred to SWCDs as though they were to remain separate entities of government. Notwithstanding these technical inconsistencies, legislative intent to mandatorily merge SWCDs was clear and all language suggesting the contrary was removed by Legislative Bills #335 and #337 in the 1973 Session of the Legislature.

Many other changes were also accomplished with passage of L.B. #543.

As adopted, it provided that the Legislature would have the power until January 1975 to change NRD boundaries, after which time the Commission would assume this authority.

This bill also included a section pertaining to the appointment of urban directors to the NRD boards and eliminated the section previously authorizing operation of solid waste disposal facilities. Additional provisions included within L.B. #543 specified criteria for establishing election nomination subdistricts, now required; directed the establishment of each NRD of an executive committee to be composed of not more than 21 members; and required NRDs being within the same river basin to meet at least twice annually for coordination of their activities. **L.B. #540**, the last of the Burbach bills, was originally introduced to restrict the taxing authority of NRDs to one mill unless a higher rate was approved by the voters of the district. The bill also was intended to eliminate the authority of NRDs to issue general obligation bonds. The bill was adopted essentially unchanged from its original form.

## Preparation for the Merger

Interim boards were formed in all but the Nemaha NRD in Southeast Nebraska. Attempts to organize such a board encountered resistance from local supervisors and directors. The Commission attempted to give those interim boards as much assistance as possible and staff members were available for attendance at meetings whenever requested.

Some of the things the early boards had to consider were as follows as discussed in a memo from the Commission's Executive Secretary to the local boards late in 1971):

**(1) Office Location.** The law requires that each NRD maintain an office and that the minutes, records, books, etc. of the district be open to the public at reasonable business hours.

**(2) District Functions.** Knowledge of all ongoing functions of each district that will be merged into an NRD.

**(3) Equipment.** Estimate of how much equipment will be needed to carry on these functions and how much of this equipment will be assumed on July 1, 1972 from merging districts.

**(4) Assumption of Assets, Liabilities and Obligations.** Number of deeds, titles, etc. needing to be transferred. Need of a local attorney to assist in these transfers if an NRD divides any of the existing districts. Procedures to use to set values on assets, etc. Need for a local appraiser.

**(5) Number of Directors and Subdistricts.** Determination of the number of directors (5-21) and subdistricts for each NRD if the election date is moved ahead by the Legislature to 1972. The possibility of subdividing (2-10 areas). (NOTE: The election date for NRD directors was not changed and remained at 1974. A section dealing with the election and the manner in which districts were subdivided will appear later on.)

**(6) Personnel.** The number of staff necessary to begin operations. Consider retention of the clerical and technical assistance now provided to SCS. If any SWCDs were divided by an NRD, and retention of assistance was desired, an agreement had to be worked out with the neighboring NRD for retention of this assistance.

**(7) Memorandums of Understanding.** If an NRD wished to continue cooperation with theSCS, a new Memorandum of Understanding needed to be drafted.

**(8) New Programs.** If there were any new programs which the NRD would like to initiate early in its period of operation, these should be considered.

**(9) Appointment of Executive Committees.**

**(10) Budgeting.** Budgeting to allow levy of taxes for the fiscal year beginning July 1, 1972.

**(11 )Funding early operation.** As initial tax funds weren't received until December 1972, consideration of the need for extra money for the first five months of operation was necessary. Discussion of sources of funds were also conducted, such as from county flood control funds, borrowing, etc.

Early in January of 1972, each of the affected organizations were asked to submit a report reflecting the true status of their assets, liabilities, functions, agreements, contracts, etc. along with an estimate of the values as of June 30, 1972. A form for this purpose was supplied so that a uniform set of reports could be supplied to the interim boards for their use. Where affected districts were split by an NRD boundary, accurate apportionment percentage figures had to be made so that properly apportioned assets and liabilities could be determined between NRDs.

Later (but before June 30, 1972), the Commission contracted for an appraiser and a uniform appraisal was made across the state on all equipment and real estate owned by the affected districts. Copies of these appraisals were then made available to the respective NRDs for their use.

During March and April of 1972, a uniform bookkeeping system was developed by the Commission staff in cooperation with the State Auditor and other individuals. They also worked with the State Auditor on budget forms so that the information required would coincide with the accounting system. The Commission staff then held a series of meetings across the state to explain the new system to NRD staffs. Later, each NRD was visited several times to see that the system was being correctly implemented.

## Rules and Regulations for NRDs

Commission staff also assisted the new NRDs with many details necessary to comply with State and Federal laws. Rules and regulations for the first boards were drawn up and adopted by the Commission in accordance with its authority to promulgate such rules for the initial boards. Included were:

1. Transferring Social Security records from name of old districts to new.
2. Cancellation of Federal and State withholding identification numbers and making application for new ones.
3. Assisting in completion of State sales and income tax forms.
4. Application for nursery dealers' certificate.
5. Completion of first budget forms.
6. Application for gas tax permit.
7. Transfer of registration, license plates and titles of all motor vehicles and trailers.
8. Preparing and filing affidavits on real estate and land rights transfers.
9. Providing sample forms for:
   a. Transfer affidavit on water rights,
   b. Timekeeping forms,
   c. Expense form for directors and employees,
   d. Sales tax exemption form, and
   e. Resale certificate.
10. Assisting in seeing that districts each had proper liability and workmen's compensation insurance until some plan could be worked out on a statewide basis.

A checklist was provided to all the chairmen of the NRD interim boards to assist them in seeing that many of the above details were carried out. Many reports had to be completed by the affected districts and accounts in their names cancelled before NRDs became effective on July 1, 1972. Bank accounts, certificates of deposit, bonds and other securities all needed to be transferred to the respective NRD accounts.

A meeting of all NRD directors was called by the Commission on May 2, 1972 at Kearney, Nebraska. The purpose of this meeting was to discuss the necessary activities and responsibilities of the boards. The meeting proved very successful and provided those in attendance with a number of ideas and suggestions which they could utilize in their own districts. Twenty of the twenty-four NRDs had representatives at this meeting.

One of the provisions of L.B. #543 passed by the 1972 Legislature provided for urban appointees to the interim NRD boards to assist in operating the affairs of the district until the first election in 1974. In addition to the directors of all the merged districts and the groundwater conservation districts, the following urban representation was made to each board". . .one representative from each city of the second class within the district, one representative from each city of the first class within the district for each five thousand inhabitants, to the nearest five thousand, and seven representatives from each city of the primary class within the district, such representatives to be designated by the mayor with the approval of the city council, with the mayor and members of the council being eligible for such designation, except when the natural resources district includes a city of the metropolitan class, ten representatives of urban interests were to be designated by the county board of the county in which such city is located."Notices were sent to all municipalities in the state urging them to make their appointments quickly so that these new directors could be notified of the first official meeting.

The Commission was required by law to convene the first official meeting of each board. These twenty-four meetings were called for the month of June 1972. A Commission member officially presided at each of these meetings. During these meetings the interim board chairman reported on the tentative commitments made by the interim board. His report included actions taken on the following items:

1. The executive committee;
2. The headquarters or office location;
3. The budget procedure;
4. Intangible assets; bank accounts, savings, time certificates, etc.;
5. Tangible assets; machinery, materials, real estate, etc.;
6. Insurance coverage, both liability and property and workmen's compensation;
7. The need for and the availability of surety bonds;
8. Employees and employment;
9. Provisions made for notifying debtors, creditors and business contacts about the new NRD;
10. Application for permit numbers and account numbers;
11. Meeting notices, minutes, reports, forms, etc.;
12. Functions and requirements of affected districts to be completed by the NRD after July 1, 1972;
13. The standard bookkeeping system; and
14. The first official meeting.

This initial board of directors was required to select an executive committee which would have authority over all matters unless specifically limited at the time of its establishment. The number could not be more than twenty-one and members were selected by a majority vote of the board. An amendment did specify that the executive committee would establish the subdistricts for election purposes. (The election procedure will be discussed later in this paper.) This is one responsibility the full board could not retain, unless the full board constituted twenty-one or fewer members and it was decided that all members should constitute the executive committee. It was no longer a requirement that every affected organization be represented on the executive committee. The law did state, however, that there must be a municipal representative on the executive committee unless there were no city representatives on the board. In establishing the Executive Committee, due regard had to be given to the extent that works of improvement were located in rural areas, the extent to which population and taxable values were located in urban areas and the wishes of the people.

## Leading Up to a Lawsuit

As was discussed earlier, a group called "Nebraskans for Nebraska Soil and Water, Inc." was formed in March of 1970 after opposition for the Natural Resources District Concept was expressed by many individuals across the state.

There was a great deal of money spent, not only for lobbying purposes, but for the support of this opposition group (over $42,000 was reportedly pledged). Most of these funds could be traced to the treasuries of local watershed conservancy districts and soil and water conservation districts almost entirely from southeast Nebraska. Since most of this money was originally collected as taxes from within those districts, this was a very questionable expenditure and one which was never really resolved. The State Attorney General ruled that these were illegal expenditures and the proper approach for recovery of these funds would be a taxpayer's suit brought by some taxpayer living in a district where such contributions had been made. No such lawsuit was ever filed.

The Commission itself had no legal authority to recover any of these funds. However, the Commissions's Executive Secretary was directed to write letters to each of the directors of those districts illegally contributing funds advising them of the illegality of such expenditures. At the same time, several soil and water conservation districts were known to be giving away some of their assets to avoid transfer to the NRDs. Again, the Commission authorized the Executive Secretary to advise the districts that this was not legal and that they should be receiving fair market value for any assets given up.

An official resolution by the Commission was adopted on March 29, 1972, and transmitted to each district encouraging the recovery of these funds by the participating districts. It is believed that some of these funds were recovered although the amount remains unknown.

## The lawsuit Against NRDs

On June 6, 1972, only 25 days before the NRDs were to become operative, the long anticipated lawsuit challenging the constitutionality of the natural resources district law was filed in Lancaster County District Court.

The NRD law was attacked on numerous constitutional grounds in a fourteen page petition, starting with the Legislature's adoption of the original law in 1969 and subsequent amendments in later sessions. The lawsuit asked the court for a restraining order and temporary injunction to halt the State from merging 154 special purpose districts into 24 natural resources districts on July 1, 1972. Upon a final hearing on the merits of the lawsuit, the petition asked a declaratory judgment enjoining the State from merging special purpose districts into NRDs. The suit contended that the NRD law violated the Nebraska Constitution on several points, including:

**(1)** Members of a restructured State Soil and Water Conservation Commission, which would govern NRDs, were appointed, violating citizens' voting franchise;
**(2)** This Commission was vested with legislative, executive and judicial powers;
**(3)** Various legislative bills comprising the NRD law each contained more than one subject and the titles of the bills did not clearly express the contents;
**(4)** The NRD laws contained procedures that constitute and provide for the taking of private property without due process of law and the taking of private property for works of public improvement without just compensation; and
**(5 )**Taken as a whole, NRD laws were so indefinite, ambiguous and incomprehensible as to be incapable of enforcement or performance by the citizens, electors and taxpayers of the state. They also felt that the NRD law violated the one-man, one-vote principle and that NRD directors were arbitrarily chosen or selected.

The lawsuit was filed on behalf of the Richardson County Soil and Water Conservation District and two are landowners (who were also directors of watershed conservancy districts).

## Outcome of the Lawsuit

On June 24, 1972, Lancaster County District Court Judge William Hastings took the request for a temporary injunction to block the formation of the 24 NRDs under advisement. On June 29, he refused to grant such an injunction. However, Judge Hastings did temporarily enjoin the NRDs from transferring, liquidating, depleting or co-mingling any of the assets of the 154 special purpose districts being merged into NRDs, except as was necessary to continue the present level of operations and pay current obligations and liabilities on contracts.

**For all practical purposes, the first natural resources districts ever to be created in the United States went into full operation on July 1, 1972.** The injunction merely prohibited the use of any assets of the 154 merging districts in any geographical area other than within the original boundaries of each individual special purpose district. An exception to the rule was the authority to use available funds for administration purposes, such as paying salaries. What the injunction did do was to create the necessity for a very cumbersome bookkeeping system. A separate set of ledgers had to be maintained for each of the merged districts as well as a master ledger. For some NRDs this meant having as many as 28 separate ledgers and was most frustrating and time consuming. **Names of several other organizations also changed at this time. The Nebraska Soil and Water Conservation Commission then became known as the Nebraska Natural Resources Commission, and the Nebraska Association of Soil and Water Conservation Districts became the Nebraska Association of Resources Districts, both changes reflecting the newly restructured and reorganized system.**

It was not until July of 1973 that the District Court issued a final order that the NRD law was for the most part constitutional. The only feature held unconstitutional by the court was that relating to the four ex officio members of the Commission. The State Attorney General indicated he would want to appeal this ruling because of its effect on many other state commissions and boards, as well as the Natural Resources Commission. At this point, the plaintiffs indicated they would file a notice of appeal to the State Supreme Court - which they did on July 26, 1973.

On April 18, 1974, the State Supreme Court upheld the constitutionality of Nebraska's Natural Resources District System. The Supreme Court did, however, agree with the lower court that three ex officio members on the Commission (University employees) were unconstitutionally appointed, but the fourth member, the Director of the Department of Water Resources, was constitutionally serving. The plaintiffs filed for a rehearing, but this was denied by the Court during July 1974. As a result of this decision, the Governor was given the authority to make appointments to fill the three vacancies on the Commission.

At last the long battle of the constitutionality of natural resources districts was settled. Even though it had apparently not hindered the progress of most NRDs, it did brighten the picture and left essentially no major stumbling blocks in the road for future progress and growth of natural resources districts.

## The First Election of NRD Boards

Election of the first permanent NRD boards of directors soon became the major topic of concern. By January 1, 1974, the NRDs had submitted their recommendations for the number of directors desired by their district to the Natural Resources Commission. The number of directors could range from 5 to 21. This decision was made after all interested persons in each district were given an opportunity to be heard at a public meeting.

The next step in the election procedure was to adopt subdistrict boundaries. As outlined in the Commission's Rules and Regulations, the following items were to be submitted by each NRD for approval of their subdistrict delineations:

(1) The subdivision map or a separate map showing the location of projects named or described on a separate tabulation;
(2) A separate tabulation of population and valuations of subdistricts and cities;
(3) Evidence of the determination of the wishes of the people;
(4) A map showing the subdistrict in detail;
(5) A separate compilation of legal descriptions, one for each subdistrict, by number;
(6) A narrative explaining the steps taken in arriving at the subdistrict arrangement;
(7) A numbering arrangement appearing on the map and utilized to identify legal descriptions.

These recommendations were all reviewed by the Commission and initial approval was given to all but one. That proposal was returned to the NRD for revision and was subsequently approved. After final approval on June 6, 1974, the Secretary of State was provided with the proper maps and legal descriptions of every subdistrict with each NRD.

Any registered elector could then become a candidate by filing, with the Commission, a nominating petition signed by 25 registered electors from the area to be represented. In the meantime, the Secretary of State held two separate sessions with County Clerks and Election Commissioners throughout the entire state at which this first election of NRD directors was discussed in detail. In order to make the first election go as smoothly as possible, the Commission provided packets of information to everyone directly involved with the election procedures. At the second session held on April 22, the County Clerks and Election Commissioners were provided with sufficient copies of nominating petitions, instructions for circulation of the petitions, and copies of maps of each subdistrict within that particular county to take care of all potential candidates within their region. The same information was also provided to each NRD as well as being available from the Commission.

The deadline for filing nomination petitions with the Commission was 5:00 p.m., August 9, 1974. Following that date the Commission certified and forwarded the slate of candidates for directors for every district in Nebraska to the Secretary of State, who in turn prepared sample ballots for the County Clerks or Election Commissioners involved. The necessary and usual election procedures were then followed as outlined in the Nebraska Statutes.

The State's general election was held on November 5, 1974 with the new directors taking office on January 9, 1975. The effect of the election was to reduce the number of directors for the 24 NRDs from 1,058 to 370.

The November election had 561 candidates for the 370 board positions across the state. Yet, there were 21 positions in 10 NRDs for which no candidates filed. These positions were later filled by appointment of the new boards after they were operative.

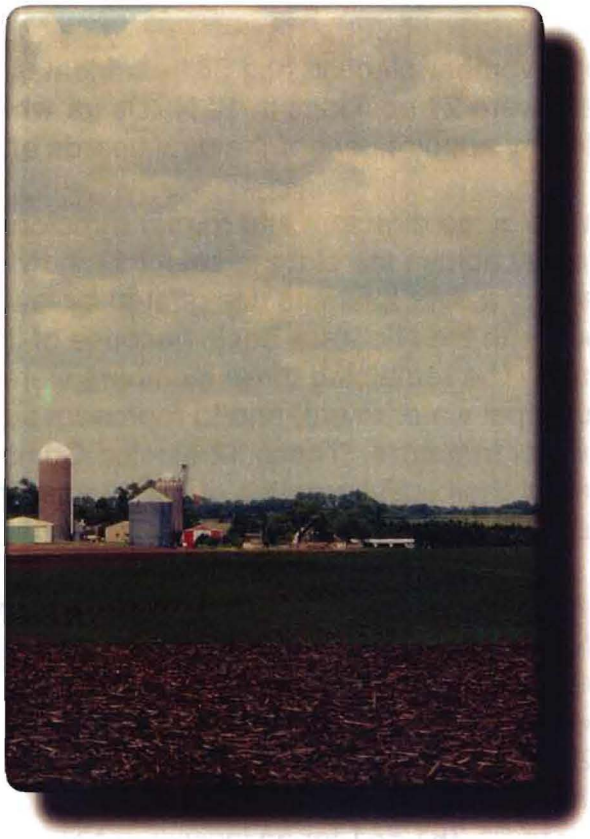
Newly elected directors and former directors gathered on January 16, 1975 in basin caucuses all across the state to select 12 individuals to become Commission members, each representing a river basin as designated by law. (The White River-Hat Creek Basin was combined with the Niobrara Basin because of its small size, population and similar resource problems.) The remaining three members were appointed by the Governor: One to represent municipal water users, one to represent surface water irrigators and one to represent groundwater irrigators. These 12 elected Commission members took office on January 23, 1975 and at their initial meeting on that same day determined among themselves which six members would serve two-year terms and which six would serve four-year terms.

From earlier discussion, recollection will be made that a one mill levy could be collected by the NRDs. In most instances this has been sufficient to carry out their programs, but how long this will be true is becoming a pressing question. As projects have become more complex, the costs have risen. Mill levies during FY 74-75 ranged from .275 to 1.00 with from $14,482.67 to $527,763.00 in revenue coming into individual NRDs for their operation as a result of this tax, or a total of $4,525.470 across the state. Operating requirements range from $105,500 to $1,381,661 for an individual NRD, or a total of $14,028,208 across the state.

Just as the topography and climate of Nebraska varies greatly from one end of the state to the other, likewise the programs of the NRDs also vary greatly. In the short time that NRDs have been in existence, their programs and projects have grown, as have the number of staff employed by them. At the present time, all of the NRDs have offices open to the public five days a week and all have managers. Numbers of staff range from three or four to over twenty.

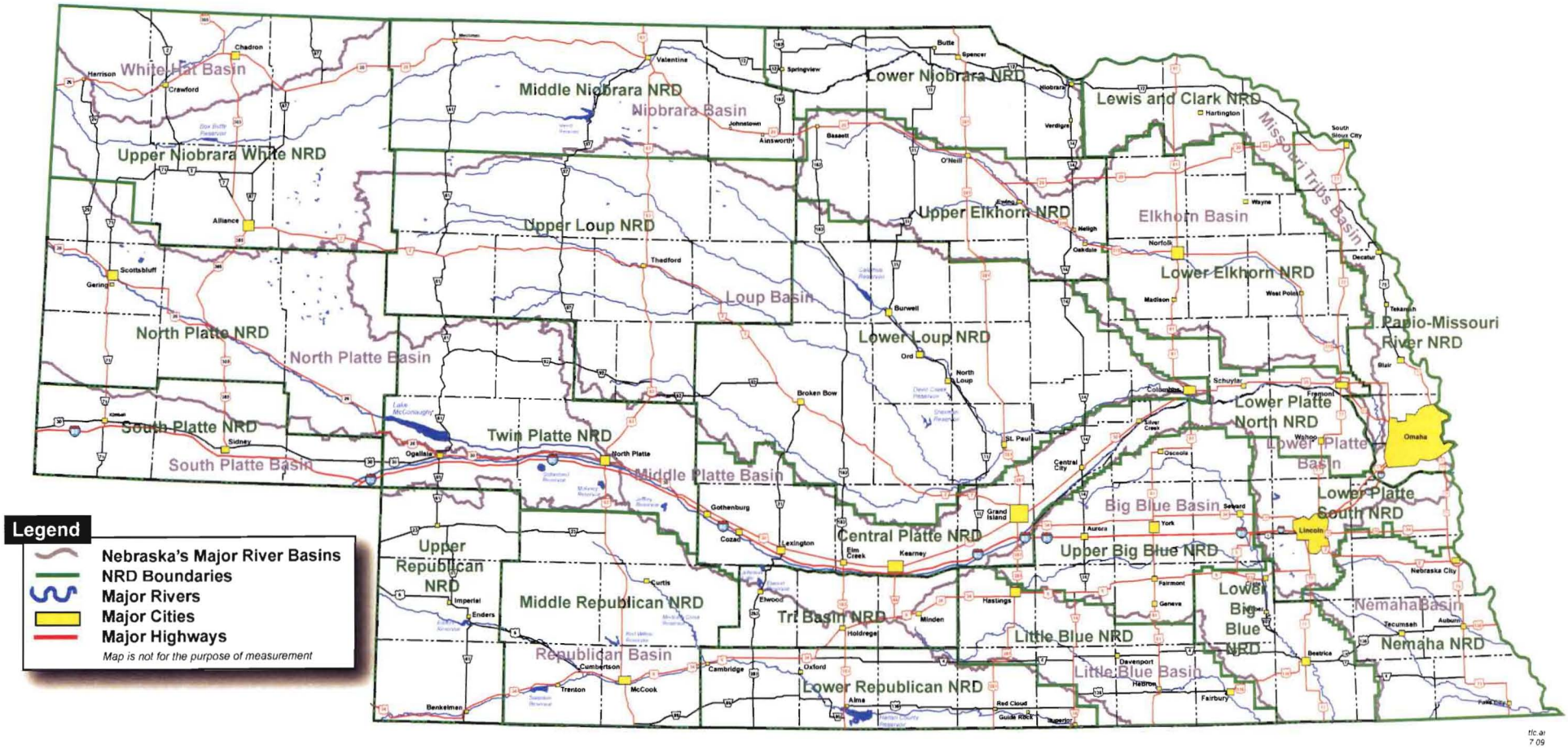
Many of the programs and projects inherited from the old districts are being carried on by the NRDs, but at the same time many new and more complex problems are now being faced. Some of these programs include: Grass seeding, range management, tree planting, rodent control, watershed projects, drainage problems, bank stabilization projects, groundwater problems, studies of floodwater runoff, groundwater recharge, flood plain management, clearing and snagging, educational programs, soil stewardship, awards programs, water quality studies, land treatment practices, erosion control, recreation development, fish and wildlife, soil surveys, channel improvement, cost sharing on county road structures and land treatment practices, irrigation management and development, demonstration farms, feedlot pollution control, rural water supplies, and cooperative city planning of parks and open space. Some NRDs are even talking about land use regulations and recycling. The potential for future resource programs sponsorship and leadership by NRDs is limited only by money and time.

The creation of a functional mechanism from a theory - an idea in the back of someone's mind - is a challenge par excellence. Many organizations and individuals spent untold numbers of hours in the formation of natural resources districts in Nebraska, not only before the law was passed, but in the succeeding weeks, months and years after its adoption in 1969. It has not been the intention to omit their contributions, because they, too, have played vital roles in the creation, passage, implementation and success of the natural resources district system. It was the hope and dream of many individuals and groups that some day Nebraska would have a functional vehicle at the local level with not only the authority, but also the ability to achieve the coordination and comprehensive management of the state's land and water resources. This dream has now become a reality . . . The Natural Resources District Concept.



# Nebraska's Natural Resources Districts and River Basins

July 2009

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