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DRAFT REPORT

AN ANALYSIS OF THE FEASIBILITY OF PROMOTING WATER
CONSERVANCY DISTRICTS AS A MEANS OF
PREPARING AND IMPLEMENTING
BASINWIDE WATER RESOURCE
MANAGEMENT PLANS

JUNE 20, 1980

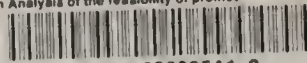
PREPARED FOR:

MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
WATER PLANNING BUREAU

BY: LISA ANDERSON
PLANNING AND LAND
USE CONSULTANT

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SEP 21 1994

INTRODUCTION

The Department of Resources and Conservation, Water Planning Bureau, has considered it timely to evaluate the positive and negative aspects of the use of Water Conservancy Districts for planning, implementation, and management of the State's Water resources.

At first blush, the Water Conservancy District (WCD) (not to be confused with Soil and Conservation Districts) would seem to be a very attractive mechanism for accomplishing basinwide water management. It is a multi-purpose district, with a wide range of powers, including self-perpetuation through the ability to assess taxes on real property. However, the Water Conservancy District Act passed the Montana Legislature in 1969 and although several attempts have been made to establish WCD's, not one has come to fruition. To date, Montana is without an experimental basis for measuring the benefits of such a jurisdiction within the confines of her unique political, social and environmental forum. It must be borne in mind at the outset that because WCD's have not become a part of Montana's political interplay, that the success and workability of WCD's in other states, where circumstances and goals appear similar, have been the basis upon which the assumptions in this report were made. Wherever possible, these assumptions will be set forth so that the report may maintain its applicability if circumstances should change.

Though it may seem unfortunate that we have no WCD's in the state for study purposes, we do on the other hand, have years of documented experience, both beneficial and impractical, from a number

of other states. We have also the advantage of being able to accommodate new legislation, such as MEPA, and new regulations, such as the State Water Quality Standards, into the procedural workings of WCD's.

Also in need of mention at the outset is the examination of the use of WCD's to aid in the accomplishment of a State Water Plan; an expansion of the purpose for which districts were originally intended. The scope of this report includes an analysis of the usefulness of WCD's both as they were originally intended--administrative jurisdictions with special project orientation--and as an entity that could generate grassroots support and input for the State Water Plan. Since laws, attitudes and economics have evolved in the eleven years since the Act was passed, the report will attempt to describe its findings in the context of today's realities and provide relevant updates where useful.

In the absence of a State Water Plan, there exists some question as to the relationship of both the studies requisite to the establishment of a district and studies to determine feasibility of a project, and the Plan itself. The opportunity is offered at this point to determine what that relationship should be. Studies could ostensibly span the spectrum of being on-going supplemental inventories of resources, water quality, water needs, and local support for projects, to sophisticated documents which essentially are the State Water Plan in combination. The hazards of initiating Water Conservancy Districts or some alternative thereto, in the absence of a Plan are manifold. The lack of guidance provided by overall State goals could promote competitive objectives amongst districts, a shortfall in meeting comprehensive objectives, and an ignorance of existing regulations

already affecting water use which dictate policy within their intent sections, e.g. State Water Quality Standards. Just as importance must be awarded to individual basinwide concerns, so must some coordinated overview exist so that the State's increasing needs for energy development, urban growth, irrigation, stabilization of in-stream flows, and maintenance of water quality are balanced.

Although it is beyond the scope of this report to offer recommendations on the conduct of the State Water Plan, the following discussion should at least provide alternative approaches for the accomplishment of its initial stages.

INTENT

According to early Water Resources Board files, an idea was germinating in the minds of those who were involved in water resource planning, an idea born out of the realization that water, even in a state that enjoys a relative abundance, was to become an ever-increasingly precious commodity. States that had far less in the way of water resources had long since established beneficial rights, passed legislation to enable special districts to conduct regional water projects, and had captured the majority of their free flowing waters for uses within their state boundaries.

By 1963, Montana's Water Conservation Board (to become the State Water Resources Board in 1967) had evaluated the various laws passed by other states that would suit the purpose of protecting the state's waters against future out-of-state claims. It appeared that many states had chosen to implement some form of multi-purpose resource district to consecrate their overall water rights. These districts were usually labelled "water conservancy districts".

A concept intrinsic to the conservancy district was that the benefits of water development projects often extended beyond the immediate limits of a project area. For instance, when Farmer Smith reaped a high crop yield due to an irrigation improvement, he in turn would distribute the increased income to the local municipalities by buying the goods offered. Indirect benefits from an irrigation project, or other type of water project are said to be from two to three times the direct benefits. ¹ The assumption, then, is that the beneficial impacts will accrue to all inhabitants within an economic sphere of influence, and that all those benefiting should have the opportunity

¹ Conservancy Districts. A Report to the Fortieth Legislative Assembly, Montana Legislative Council, November 1966.

to pay taxes toward the financing of water resources development.

The districts were empowered to finance their operations through a general tax revenue as opposed to the more restrictive mechanism, special assessments, that other special purpose districts were limited to. Soil and Water Conservation districts were the exceptions. ²

The 1965 legislature was the first to receive a proposal for Montana's own brand of water conservancy district. The premises upon which the legislation were based were included in a 1966 Legislative Council Report,^{II} which stated that:

"1. Montana can insure adequate future supplies of water only by establishing rights to that water through beneficial use.

"2. Because of extensive downstream development, it is urgent that Montana establish rights to water as quickly as possible.

"3. There has been little state and local development of water resources during the past ten years in Montana. A major reason for this lack of development appears to be that the single purpose projects (irrigation, drainage, flood control, and the like) do not permit adequate financing.

"4. One promising means of encouraging water development appears to be the authorization of multi-purpose resource development districts."

Although there was a general consensus on the lofty purpose of the bill, there was enough opposition to its wording, and even more, to its enabling of another set of political taxing jurisdictions, to delay its passage until 1969. After two unsuccessful attempts, S.B. 67, the Water Conservancy District Act, was passed.

2. ("The Garrison Diversion Conservancy District," unpublished speech, n.d.,p.7.)

WATER CONSERVANCY DISTRICTS - A DESCRIPTION.

At the time that S.B. 67 was passed, Montana already carried enabling legislation on its books for a myriad of special purpose resource districts, e.g. for irrigation, flood control, drainage, and county water districts. The Water Conservancy District (WCD) was distinguishable from these in that it was multi-purpose in nature and was viewed as a supplementary jurisdiction to single-purpose districts, politically, financially and technically. The soil and water conservation districts (SWCD's) most closely resembled the WCD both in its legal powers and function. However, SWCD's were established primarily to take advantage of Soil Conservation Service programs and had not displayed a primary function in the area of overall water management.

The purpose of the Conservancy Act was to

- prevent and control floods, erosion, sedimentation
- provide for regulation of streamflows and lake levels
- improve drainage and reclaim wet or inundated lands
- promote recreation; conserve and develop water resources and related lands, and forest, fish and wildlife resources
- provide benefits such as irrigation, recreation, fish and wildlife
- provide water for industrial, domestic, municipal and livestock use.

The administrative entity provided to carry out the Act was the WCD. Once created, the WCD was a political subdivision which could cover one or more counties having a taxable valuation of over

\$100,000. The district was to be run by a Board of Directors who authorized to borrow money, incur indebtedness, issue bonds, acquire water and water rights, undertake, construct, maintain and operate project works, set and collect rates, fees and other charges for services, facilities or water furnished by the district, exercise the right of eminent domain, and enter into agreements with State and Federal Agencies.

Since 1969, there have been amendments made to the law regarding the formation of districts. Where these are significant they will be discussed in subsequent sections. Essentially, the Department of Natural Resources and Conservation is required to conduct a preliminary survey to determine the feasibility of the proposed district. This can be initiated at the behest of the Department itself or in response to receiving a petition from 10% of registered voters residing within the boundaries of the proposed district.

Next, the Department may hold a hearing of its own volition, or shall hold a hearing at the request of an applicant within 61 days from such a request.

After a hearing, application may be made for a detailed feasibility study which concludes whether or not the district is feasible. The district, if formed, appears to be responsible for reimbursement of the costs of preliminary and feasibility studies to the Department.

A petition signed by owners of at least 51% of the land outside the limits of a municipality and the lessor of 51% or 100 of the electors within the municipality is then submitted to the District Court requesting organization of the district.

The court then holds a hearing on the petition and if it grants

the prayer of the petition then it shall: determine which lands are benefitted and exclude those not benefitted; fix the time and place for an election; and decree the district organized if 51% of eligible electors vote, with a majority voting in favor of the petition.

Copies of the election results are then filed in the same manner as Articles of Incorporation.

Once the district is formed, the District Court appoints the Directors to the Board from the electors of the district.

Attempts to Establish WCD's In Montana

By the summer of 1970, three requests for preliminary surveys to establish districts had been received by the Water Resources Board. No overt public relations campaign was conducted by the Board to promote the idea of WCD's. (Senator Gordon McGowan, telephone conversation 6/80). Rather, when a given community expressed interest in accomplishing a water project and members of the Board were asked to attend, the subject of WCD's was introduced as a means of financing the project works. In this manner, the seed for the North-Central Conservancy District was planted.

In January of 1970, seven counties: Toole; Choteau; Liberty; Hill; Blaine; Phillips; and Valley agreed to jointly request a preliminary survey. Agricultural extension personnel were instrumental in answering local questions, acting as a liaison between the County Commissioners and the Board and generally in promoting WCD's. The Board scheduled local meetings in the ensuing months in all the Hi-Line county seats. News releases and informational letters were

sent to all interested or affected agencies. By April of 1970, Glacier and Pondera counties passed resolutions to be included in the district.

Meanwhile, the firm of Henningson, Durham and Richardson (HDR) of Omaha, Nebraska, was retained to prepare the preliminary survey. Major interest was expressed concerning the development of water projects on the Tiber, Milk and Marias rivers. Judging by attendance records, there was great interest in the concept, both for and against.

During the month of July, progress reports were given at public meetings across the Hi-Line. Extensive press coverage apparently aided in boosting attendance. These meetings continued until HDR completed its preliminary survey in February of 1971. No formal request for a feasibility study was ever received, apparently due to developments elsewhere in the State, which had by then occurred.

In March of 1970, the McCone and Garfield County Commissioners requested the presence of Water Resources Board Director, Doug Smith, at meetings regarding the use of water from Ft. Peck reservoir for irrigation and municipal water supplies. As a result of those meetings, the McCone County Soil and Water Conservation District Supervisors requested a preliminary survey for what was to become known as the proposed East-Central Conservancy District. Ultimately, the four counties of Garfield, McCone, Richland and Dawson became the project area for study by the firm of TAP, Inc., of Bozeman.

Extensive interest was maintained throughout the preparation of the preliminary survey and meetings where sentiments were aired both for and against the WCD concept progressed.

By March of 1971, it had become evident that a six month time

limit allowed for the preparation of preliminary studies was not practicable. Although TAP's work had not been completed, a request for a feasibility study was presented on behalf of the East-Central District. The Water Resources Board introduced legislation to extend the time period allowed for preparation of necessary studies to one year and submitted an emergency appropriation bill for funding of a preliminary study on the proposed Upper Missouri Headwaters Conservancy District, and feasibility studies on the North and East-Central Districts.

The Legislature adjourned in May of 1971 without resolving the appropriations issue and remained recessed until June 7. After much delay, the legislature denied the funding allocation. It balked at the cost and length of the studies and certain members expressed open disapproval at the use of State Water Planning monies to finance the preliminary studies.

With no funds forthcoming from the legislature, federal funds were applied for from the office of Water Resources Research to complete a feasibility study for the East-Central District. Those funds were also denied on the basis of the lack of project orientation for the study.

Letters of interest from McCone County Soils Supervisor are dated as late as December of 1972, but no funds are found. In reaction to the lack of further funds, the Legislative Council prepared an amendment to the Act which would require that the costs of preliminary and feasibility studies be borne by a district, if formed. The 1973 legislature adopted a bill sponsored by Senator Gordon McGowan to accomplish the above, but no district followed through on their requests. This may be some indication that electors were not

receptive to the idea of absorbing planning study costs, but is probably more indicative of an (understandable) lack of sustained interest.

THE EXPERIENCES OF OTHER STATES.

The obvious question at this point in the discussion could be posed as follows: "Other states seem to have successfully implemented WCD's, so why hasn't Montana?" A natural extension of that question would be, "What are the intrinsic differences between Montana and other states?"

The logical first step would be to contrast the enabling legislation of ours and other states to try and ascertain some obvious failing under our law. However, considerable attention was lavished on the legislative aspects of conservancy districts when the Act was drafted. There is more information in DNRC files concerning the comparison of various states regarding this matter than any other topic discussed in this report. In addition, when examining Montana's law, it appears similar enough to other state's laws that it certainly cannot wholly account for the lack of WCD success. Therefore, the law does not appear to be the major responsible factor for the absence of WCD's.

The conclusion drawn by this author was that a political attitude must have existed and/or still exists, that is not favorable towards WCD formation. This is talked about at length in the Political Aspects section.

If political attitudes were/are the major roadblock to WCD's in Montana, are they worth changing to implement WCD's? In other words, just how successful have districts been in other states with similar social environments? In order to answer that question, a set of criteria was drawn up for basis of comparison.

It seemed that in order to judge the likely success of WCD's, a state that resembled ours most closely in land area, population,

population density, regional affiliation, and ratio of urban to rural population, needed to be isolated. The availability of state water, date of enabling legislation, the intent of the legislation, and reported success of districts were four other factors considered.

The State of South Dakota emerged as that most closely resembling ours as per the above criteria. However, Colorado appears to be the most sophisticated in its use of districts and comparatively the most pleased with WCD accomplishments. Thence, interviews were conducted with District managers and/or state department representatives in both states, in addition to research of available data. Here's how land area and populations compared for states that appeared the most likely condidates for comparison based on other criteria above:

TABLE 1.*

<u>State</u>	<u>Sq. Mi.</u>	<u>Pop.</u>	<u>Pop.Den.</u>	<u>%Urban -Rural</u>
South Dakota	75,955	665,507	8.8/sq.mi.	44.0 - 55.4
Montana	145,587	694,409	5.5	55.0 - 45.0
Nebraska	76,483	1,483,493	19.4	65.0 - 35.0
Colorado	103,766	2,207,259	21.3	78.0 - 22.0
North Dakota	69,280	617,761	8.9	44.3 - 55.7

* SOURCE: 1970 Census

South Dakota

South Dakota passed a water conservancy bill in 1959, the latest of any state with the exception of Wyoming (1959) and Montana (1969). Thus, whereas other states had passed legislation as early as 1914 (Ohio), thereby warding off the proliferation of other special districts, South Dakota could potentially be confronting similar problems to ours in the area of special district entrenchment and

political rivalry. Additionally, South Dakota has consistently refused to obligate its state government in the financing of water projects. ³

Relatively speaking, South Dakota, like Montana, is a water-abundant state while Colorado and Nebraska are not. Therefore, the use of surface water is of primary concern while in Colorado, ground water development is the primary activity conducted by districts. (Larry Simpson, telephone conversation 6/80). Regarding location and topography, South Dakota is a North-Western plains state with elevations and land area closely resembling eastern Montana. Five major river basins, including the Missouri, are contained within the state. Based on these similarities, South Dakota was more closely examined.

The ability to participate in federally funded programs, and to involve indirect beneficiaries in the sponsorship of projects, were two prime motivations for the establishment of WCD's. The law established a state-wide South Dakota Conservancy District as an Agency of state government to . . ."reserve within the district for present or future beneficial users, all waters within the boundaries of the state, and particularly water impounded on the Missouri River . . ." ⁴

Taxing powers were vested in the locally established and locally controlled conservancy sub-districts rather than the state, in an effort to motivate local involvement in the development of water resources.

South Dakota requires a 60 percent majority of votes to be cast in an election favoring creation of a district. The law was so specified on the theory that unless a substantial majority was favorably

³ Conservancy Type Organizations In The Missouri River Basin: South Dakota, J.W. Grimes, n.d., unpublished paper.

⁴ South Dakota statutes, Section 46-17-1 (4)

inclined, the broad powers enjoyed to the board should not be granted. This led many professional observers to predict that no sub-districts would be created, however two were created in 1960, following enactment of the law in 1959, and six now exist. In the first four elections, favorable votes averaged about 85 percent, but a few small towns and two counties failed the necessary percentage and were not included, due to opposition to further tax levies. Formation of a recent district has been more controversial particularly in an election where a county wished to join an existing district for the use of waters from a mainstem diversion of the Missouri. The election failed primarily over the issue of the taking of rights-of-way for the canals.

Information about sub-districts was originally disseminated by extension service personnel who held public meetings across the state. A state district staff member assisted in the process. The main catalyst for initiation, though, was water project studies prepared by BUREC.

The districts range in size from the 15½ county Oahe to the 3 1/2 county Fort Randall district. The advantage of smaller districts is that a consensus of issues is more easily reached. However, budgets are so small that project works are limited. The larger districts generally have the reverse set of problems. (Delvin Brose, telephone conversation 6/80).

Sub-district directors are elected with established percentages for representation between urban and rural residents. Monthly meetings are held where citizens can express themselves. Staffing is generally limited to one manager and a secretary except in the Oahe district where staff includes a coordinator, four employees and an attorney. Primary activities include the sponsorship of BUREC

projects, supplemental funding of irrigation district projects, and financing of groundwater reconnaissance projects.

Although there is no formal state water plan, inventories are being conducted and computerized to form a dynamic data base. A priority list of water projects is being formulated. The legislature as well as individual boards, have established water policy and essentially the combination of the three is viewed as a presently acceptable plan.

Criticisms

Finances have been a primary limitation of sub-districts in accomplishing project works. Tax levies are limited to 1/10 of a mill for administrative purposes and 1 mill for other functions. Inclusion of larger municipalities can substantially boost district revenues in that the tax base is so greatly increased, but where this has not occurred, districts are hamstrung. The state cannot bond or construct project works within a sub-district, but can only conduct project works through legislative appropriations in undistricted counties. Thus, a small number of electors can stop a project within a district even if it can be demonstrated to be of overall benefit to the state. So far, the state has not taken the initiative in sponsoring an undistricted project.

The greatest criticism was that very little was being accomplished by districts from the standpoint of coordinated long-range goals. There is very little sense of direction in terms of planning and there are so many special interest groups with political interests to protect that water resource jurisdictions in the state were judged to be "a mess". (Bob Newfeld, telephone conversations 6/80).

Colorado

Colorado exemplifies the success story of water conservancy districts. Unfortunately, its success may be owed to a number of factors which simply are not present in Montana.

Colorado passed a WCD act in 1937. It was viewed as an instrument to develop water projects which, because of their size and scope could only have their original cost financed by the federal government. Irrigation districts proved to be inadequate to develop and finance large scale water projects. Colorado, a water poor state, developed vast irrigation systems in order to establish prior appropriations. This resulted in a greater irrigated area than the basic water supply could support annually: a stimulus to the construction of large transmountain water diversion projects, such as the Colorado-Big Thompson Project in northeastern Colorado. Thus, large districts with healthy tax bases, and federal assistance were necessary to construct and finance same. WCD's became that central local authority.

In 1937, the Colorado River Conservation District was created by legislative fiat, rather than under the Act, because counties affected preferred certain modifications to the law which were unique to the Basin. This occurred again in 1941, when the Legislature established the Southwestern Water Conservation District for conservation of the waters of the San Juan and Delores Rivers. So, the impetus for both establishing WCD's and for strong legislative action, appears to have grown out of the scarcity of the resource. This probably also engendered a more unified sentiment amongst the populace regarding the acceptance of taxation for conservation purposes.

Overall, WCD's are felt to be highly successful. Most were formed over 20 years ago while only 10 or so are younger than 5 years.

There are nearly forty WCD's in Colorado, some within the boundaries of larger districts for purposes of the management of special projects. The Colorado River Basin WCD contains 400,000 people and is deemed the most successful. Other more rural districts are not as highly regarded due to both the paucity finances and projects conducted. Some rural districts have been promoted by attorneys who then reap the administrative benefits once the district is established and who accomplish virtually nothing.

Larry Simpson, Chief Engineer of the Northern Colorado Conservancy District, felt that Colorado's success was owed to the credibility that has been established over time by districts; to the great amount of cooperation amongst districts and state and federal personnel; and to the slowdown in the proliferation of other special purpose districts by the prior establishment of WCD's.

Interestingly enough, the entire State of Colorado is also zoned. There are regional Councils of Government who conduct land use planning, although a state water plan appears to be a ways into the future. No feasibility studies are required to establish districts.

The only criticism levelled by Mr. Simpson regarding WCD's is that they should be boundary exclusive in order to avoid jurisdictional problems: in other words, districts should not be allowed to be formed within other districts.

The primary activity conducted by districts is groundwater development. But in addition, districts sponsor irrigation management service, weather modification programs, accounting of water supplies, continual updating of water allotment contracts, administration of financial matters, frequent coordination with BUREC, and coordination with state and federal jurisdictions and other districts.

Conclusion

South Dakota, a state which much more closely resembles ours in many respects, is not experiencing a high degree of success with WCD's apparently due to a lack of funds and cooperation amongst jurisdictions. Granted, their mill levy limitation is 1 1/10 mills while ours is 5 mills. However, given a comparison of population densities, even a five mill limitation would not nearly generate the tax revenues enjoyed by the more urban districts in Colorado.

Indeed, Colorado can be proud of its accomplishments, however one of its districts includes the equivalent of half the population of our state. In the rural areas of the state where populations are more sparse, it does not boast the kind of district success as in older, well-established heavily populated districts.

FUNDING/FINANCING ASPECTS

Water Conservancy District finance is fairly straightforward and universal from state to state. The districts are fiscally independent in that they may determine their budget without review by other governments and may fix service charges, issue debt, and set tax rates within the specified limitations of the law.

Section 16. (1) and (2) set mill levy limitations and purposes for which taxes will be used. They read "(1) to the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to Section 14, subsection (17) will not be sufficient to meet the district's anticipated obligation for annual operation, maintenance, and replacement or depreciation of works, or for payment of interest and principal on bonded indebtedness, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1) the directors may annually make an assessment of up to three (3) mills on all taxable real property in the district to pay interest and principal on bonded indebtedness."

A major problem that arose, as mentioned earlier in this report, was that of providing funds for preliminary and feasibility studies prior to the formation of districts.

Preliminary studies prepared for the North-Central and East-Central districts were paid for out of State Water Plan and Engineering Operation budgets. (1971 memo). The justification was that the

studies provided information essential not only to the state plan, but also data needed for the development of new projects, especially if they were to be located within a WCD. However, by the time that \$182,000 had been spent from the general fund, the legislators were no longer willing to appropriate more money, and thus House Bill 40 was passed in 1973 providing that the costs of the studies were to be borne by members of the Water Conservancy district, if formed.

Attempts were made in 1972 to finance the studies through the office of Water Resources Research, the Economic Development Association of Eastern Montana, 701(b) funds from the Department of Housing and Urban Development and EPA. All were unsuccessful.

In terms of funding general planning studies under the current law, though there is nothing that specifically prohibits it, by general interpretation it appears as if planning would have to be related to project works in order to be reimbursable by the districts.

As for on-going operations, an intrinsic problem to the sale of rural water bonds is that historically, their retirement has not been very expedient, thus they sometimes do not merit a good bond rating. This in turn, increases the price of the bonds in order that debt service costs may be covered, and hence diminishes the likelihood of bond sales. (R.A.Rohling, telephone conversation 6/80). This has apparently been fairly common in North and South Dakota. In Colorado, districts containing large municipalities have had fairly successful bond issues however, the sale of bonds has not been common up until the last ten years. (It is assumed that this was due to the previously heavy reliance on federal funding programs.) In rural areas, bonding experience has not been as successful. This is partially viewed as a problem of poor fiscal management by Boards

within rural districts. (Larry Simpson, telephone conversation 6/80)

A final problem that has been recognized regards elections costs. Repayment for elections is provided for within the law if a district is formed. If it is not formed, the cost would have to be borne fully by the affected county(ies). Costs could include special election booths, ballots, research for qualifying electors and determining the boundaries of the district, among others. There is also some question as to whether the county would be fully obligated to pay if the elections failed.

Conclusions

It is the opinion of this author that some form of feasibility study to determine the beneficiality of forming a district is necessary to ensure that administrative and project costs can be borne locally, that local support is sufficient, and that boundaries are properly drawn. Whereas feasibility studies for project specific purposes are automatically paid for through assessments for construction works, and are the precursor to an immediate product, preliminary and feasibility studies for formation of districts need only be paid back if a district is formed. Otherwise the state is still left holding the bill for an unassured product as they were prior to 1973.

The problems of bonding could be mitigated, at least in part, by including criteria within the preliminary studies that examined bonding capabilities of a district based on taxable valuations, the projects desired within the district, and boundary adjustments to evaluate the effects of excluding/including certain lands. (Much in the way that cost/benefit analyses are conducted for urban annexation studies.)

The election costs could be cut by holding district formation elections at the same time as general or other special elections. This would at least minimize costs to counties if elections failed.

Recommendations

1. The scope of preliminary studies should be clearly defined and scaled to require minimum information to determine district feasibility. In-depth resource inventories do not seem necessary at the P.S. stage, but rather whether a district could be financially autonomous and self-supportive given its intended project goals.

2. A revolving fund should be set up for preliminary studies out of the Renewable Resources Development Act or another appropriate fund, which districts could be reimbursed, if formed.

3. Wherever possible, studies should be performed in-house in order to reduce costs, especially since the state might ultimately absorb these costs.

4. Feasibility studies appear to be an expanded version of preliminary studies, the major difference being that costs estimates, anticipated project works, and boundaries must be described in firmer detail. Because this additional step involves more time and money for a relatively small amount of additional information (if the preliminary study is well done) it is recommended that the requirements of a preliminary study be modified and that feasibility studies be eliminated. The preliminary studies could go through an initial feasibility phase and a second phase only if formation were determined to be beneficial.

5. By including wording in the law that allowed district spending for planning purposes, detailed resource inventories could

be provided after districts were formed. Funding could be tapped from a variety of sources including SCS, ASCS, BUREC and State to augment tax levies for this purpose.

LEGAL ASPECTS

The purpose of this section is to scrutinize and evaluate the strengths and weaknesses of the Montana Water Conservancy District Act, both in terms of the purposes for which it was originally intended and for its applicability and workability as a planning jurisdiction in the 1980 legal and political context.

Prior to drafting this discussion, the author discussed aspects of the law with DNRC legal staff. As such, many of the following ideas were modified or improved upon by them. In particular, a report prepared by Bob Lane, Evaluation of a Conservancy Districts for Operation of the Daley Ditch Water Project, December, 1979, was most helpful. Many of the report's salient points have been adapted for use here, as it contained a critical analysis of the Act from a legal standpoint.

The law was examined for any limitations which might be imposed upon districts as planning jurisdictions. First of all, formation of districts is required to be conducted in conformance with a State Water Plan. It appears that as long as formation is consistent with other regulations, it is not illegal, particularly because the State plan will not have the force of law.

There is no specific limitation on the use of districts for planning purposes, however aside from the preparation of studies conducted in the course of project works, there is not specific mention of district planning functions.

As mentioned previously, there are potential problems with elections, both from the standpoint of repayment for election costs and concerning the qualification of elections. There is no provision

for reimbursing counties for elections if districts are not formed. In addition, the criteria for becoming an eligible elector are that he/she must be, "taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county, and school district taxes." These freeholder provisos may be unconstitutional, particularly if the districts are utilized as planning entities, and as such conduct work efforts which do not tie benefits directly to pieces of property. A legal opinion is currently being prepared on this question by DNRC staff.

Obtaining a majority approval of those voting and meeting the requirement that 51% of the qualified voters must cast ballots is, in combination, a difficult task. No other state law examined has referendum requirements as stringent as ours. A 60% majority is more relaxed on comparison, in that it at least does not invoke a double mandatory percentage as does the Montana law.

The law provides that the district board of directors shall have broad powers in conduct of district business and financial matters. In fact, the only approval they must seek is that of bond issue elections wherein 40% of the voters must approve bonds by a 60% majority. Yet the directors are appointed by the district court rather than elected. At first glance, this would appear to offer a gross lack of accountability amongst a group holding such powers. According to a legislative council report, "the appointment of directors by the court allows representation of the various interests, which might contribute to the costs of the district, in proportion to the financial contribution of each. Interests which can be represented on the board include domestic water supply, fish and

game, flood control, industry, irrigation, livestock water supply, municipal water supply, pollution abatement and recreation."⁵

Although this statement may imply a justification for appointment v.s. election of directors, it is certainly not an airtight case, nor is it reflected in the law.

Obviously, the political orientation of the directors would determine the type and priority of projects to be built, particularly with the breadth of powers and extent of autonomy which they enjoy. Therefore, the choice of directors might need more specific criteria, an electoral process, or an urban/rural representative split.

Formation of WCD's might require the preparation of a PER (Preliminary Environmental Review) to determine if an EIS would be necessary. Since the purpose of preliminary studies is specifically intended to prevent any adverse impacts, an EIS might not be required. In any case, both an EIS and a preliminary study would have to contain similar information, so one would probably be interchangeable with the other, given minor amendments in format. Preparation of an EIS would certainly reduce the cost of later reports in this manner.

Conclusions

The law, as it now stands, provides some serious impediments to the expedient establishment of districts. Therefore, if it is to be implemented the following recommended changes should be made to increase its workability.

5. Conservancy Districts, Montana Legislative Council, Report No. 21, Nov. 1966, pg. 28.

Recommendations

1. In order to specifically authorize districts to conduct comprehensive resource inventories or plans, changes in wording should be added in the Organization and Procedure Section. In addition, authorization should be granted to allow expenditure of funds for planning purposes out of the 2 mill general levy. (An example of similar wording authorizing planning is contained in Section 76-15-402 of the Soil and Water Conservation Act.)

2. The burden of referenda costs are borne by the DNRC in the case of Soil and Water Conservation districts. That law was also amended in 1977 to allow all registered voters the right to vote rather than restricting voting privileges to "qualified electors" or landowners. This was in reaction to a Supreme Court ruling that the freeholder provision was unconstitutional. The WCD Act should be amended in these two areas.

3. Altering the stiff election requirements would be accomplished partially by changing the qualified elector status - - more people would be allowed to vote. Deleting the requirement that 51% of electors must cast ballots and substituting a 60% majority retains a high enough percentage to demonstrate local support but removes a cumbersome demand.

4. As for the appointment of directors, the interests to be represented on the boards ought to be made mandatory within the law. Representation ought not to be tied to financial contributions for the simple reason that certain interests such as fish and wildlife can contribute little monetarily but rely intimately upon the quality of water resources.

POLITICAL ASPECTS

Montanans, and rural Montanans in particular, have a legacy of frontier values, of fierce pride in their individual rights, and a strong desire for self-government. While these attitudes engender adamant protectionism for the state as a whole, this protectionism usually is not embodied in the act of planning. In fact, from this author's own experience as well as others' interviewed during this report, one could safely state that planning is generally looked upon with skepticism at best, and/or violently opposed in some cases. Reaction to additional land use regulation generally falls into the second category. The exceptions to the widespread negativism towards planning occur 1) when populations get dense enough, or resources scarce enough to cause infringement upon individual rights, or 2) when a plan can be viewed as a means to an end, e.g. a plan is a prerequisite to Federal funding for a sewer system.

Rather than letting the above thoughts be a discouragement, though, they should instead be viewed as a framework within which to work. The challenge of preparing a state water plan has already been handed down by the legislature. The chore of illuminating the benefits of such a plan, of tapping the values of self-reliance and protectionism to accomplish the plan, and to generate grass roots support for it, appear to be the direction in which the Water Planning Bureau is interested in heading.

One area where there has been a history established for WCD's in Montana, is within the political arena. Opposition to the original legislation was couched primarily in charges of ambiguity of wording in the law. This appeared in reality to be a cover for an overall distaste for another layer of government (Roy Huffman, telephone interview 6/80). Obviously, the benefits of the legislation outweighed the drawbacks in a majority of the legislators' minds given the law's passage in 1969.

The next political test came in the form of public acceptance. A concerted public relations effort was not handed down from Helena, but instead, when an area expressed interest in pursuing a water project, members of the (at that time) Water Resources Board and others, including agricultural extension personnel, would attend local meetings and explain the benefits of a conservancy district. In this manner, the proposed East-Central, North-Central and Upper Missouri Conservancy Districts were conceived. However, between 1969 and 1973 participants in a District were not required to tax themselves for planning studies; preliminary studies that were readily requested and completed were paid for through legislative appropriations. With this in mind, the acceptance of preliminary studies for formation of the Districts and for project works was for the most part favorable.

However, there were exceptions to the general favorable attitude, both locationally, and in regards to certain aspects of a district. The people of Havre emerged as the most concentrated group opposing formation of the North-Central district. Their reasons for opposition

were represented, though less vocally, elsewhere in the state, and are probably still a good indication of the aspects of the law that would generate opposition to districts in general and planning in particular today.

Criticisms were leveled against the preliminary studies regarding a lack of specific project proposals. Questions from people attending local meetings indicated that they expected guidance for projects that would help them in the immediate future. The tax levy of 5 mills was questioned at all meetings; people expressed that they were not willing to pay additional taxes unless concrete benefits, e.g. construction of projects, were shown. A general misunderstanding, or perhaps a lack of interest in the multi-purpose nature of WCD's pervaded at the meetings. Discussion usually centered around two groups, those having dryland v.s. those having irrigated cropping techniques, and the fact that those aspiring to the former technique were not particularly interested in converting to, or paying for, projects that would primarily benefit the latter group.

Water Board personnel recognized an acute need to conduct well prepared educational discussion regarding these issues and to generate grass roots support at the meetings if district elections were to be successful. However, elections were never to be held. The political climate, and eventual impasse reached, are accurately described in the following excerpts from the Montana Water Resources Board Newsletter, Summer, 1970. It began with, "Montana's new water conservancy legislation has found wider interest than anticipated. Sponsors of the legislation, basing their judgement on similar experience in North Dakota, had guessed it would be at least five years before the state faced a conservancy district formation request.

At last count there were three such requests, covering 19 of Montana's 56 counties, a total of 56,859 square miles." The newsletter then went on to describe the ongoing efforts within the proposed districts and then presented the funding difficulties which eventually led to the demise of further efforts to establish districts.

"The problem [in funding] arose because the 1969 legislature, which passed the Water Conservancy Act, required the Montana Resources Board to conduct preliminary and secondary feasibility studies into conservancy district formation when requested. It did not, however, provide funds for these time consuming and costly studies, anticipating little such activity until later legislative sessions.

"Activity came almost immediately, however, and the Water Resources Board proceeded with payment for the first two feasibility studies out of funds already appropriated for contractual services. Those funds are exhausted and no monies are now available for the third study." The 1973 amendment to the law, providing payback schedules to the legislature for preliminary and feasibility studies if a district was formed, belatedly took care of this funding aspect. However, by this time, formation activities had come to a grinding halt.

In an effort to ascertain how these past actions regarding districts would reflect on present attitudes, how amendments to the enabling legislation of other districts could make them more viable planning entities than they were in 1969, and how the concept of a WCD would be accepted today, a series of interviews was conducted with those who promoted the original legislation, with current administrators of districts both in and out of the state, and with public and private sector planners. Please bear in mind that the inquiries made to each person interviewed included the idea of utilizing a WCD

as a potential planning mechanism as well as for the original purpose for which it was intended. First off, there was a general consensus amongst those interviewed that the danger now exists for WCD's to be looked upon unfavorably, as merely another layer of government. Particularly with the recent support in other states for tax reforms, an essentially administrative jurisdiction having additional taxing authority would be hard pressed to offer enough advantages to attain ratification by the electorate. A contradiction that comes to mind is that there was support in 1969-71 and the situation was similar then - - - or was it?

Many successful WCD's in other states were established long before a proliferation of other special purpose districts. Montana was one of the last states to consider such legislation. Since 1969 the number of special districts has grown, as has the popularity of streamlining government and bureaucracy; witness Carter's administrative reorganization. Therefore, we may be living in an age where an extension of the governmental arm is probably less popular.

Since 1969, there was a reaction, if not somewhat predictable, on the part of other single and multi-purpose districts to expand their own powers and functions. There were those who believed that the number of steps required to initiate a WCD is excessively cumbersome and expensive. They therefore went to work to amend their own enabling laws to provide acceptable alternatives to WCD's. These included soil and water conservation districts and county sewer and water districts. (See Alternatives Section). Henceforth, there are now administrative alternatives to WCD's that did not exist in 1969.

As for the political realities of cooperation between jurisdictions, we have good and bad examples of that both within and out

of our state. As evidenced by the original attempts to institute districts, the east-central showed evidence of general solidarity while the north-central portrayed a good deal of disharmony amongst its participants. The comment was made by the Secretary to the Water Resources Board and Chief Engineer to the Water Resources Board and Conservation Department, Bob Newfeld, that in South Dakota there are so many districts with a high degree of political jealousy that very little gets done in the way of overall water management, though small projects are accomplished. Conversely, there are examples in Montana of a number of soil and water conservation districts that have been able to coordinate goals and form special project areas, e.g. Triangle Saline Seep project. There are other examples where political infighting would not allow the transcendence of county lines. Therefore, to be making a sweeping generalization as to the anticipated level of cooperation that a WCD could expect from existing jurisdictions would be premature. It would probably be highly dependent on the personalities involved, the degree to which coordination would enhance the aims of existing districts, and the local support (e.g. power) that could be generated by a WCD.

As for the recent attempts at water planning within the State, one can only say that they have not been graciously received. Some fifteen-plus jurisdictions were involved in the Flathead Basin 208 water quality planning process; an effort that was fraught with accusations of "creeping regionalism", to which some area residents are violently opposed; a continuing lack of understanding of the program; and a breakdown in cooperation between jurisdictions that resulted in some of them withdrawing from participation.

Finally, soil and water conservation districts, who are by law

mandated to plan for resource conservation, have not exhibited an aggressive, coordinated program for achieving that end. More than likely, this is another indication of the general attitude towards planning, as these districts are locally controlled, though it is also incident to the low staffing levels of most districts.

Conclusions

From a purely political standpoint, the use of WCD's as a means of accomplishing basin-wide water management plans does not appear to be the best jurisdictional alternative. In a state where rural densities do not create a high tax base, where the greatest water use is agriculturally oriented, and where rural values do not generally support planning except for pragmatic purposes, the effort required to promote and initiate water conservancy districts would probably not be warranted.

Recommendation

Use one or more alternatives; preferably districts for which there is existing enabling legislation that can be improved upon.

ALTERNATIVES

There are four types of natural resource districts presently in effect in Montana, both of single and multi-purpose in nature: county sewer and water districts, drainage districts, soil and water conservation districts, and irrigation districts. Largely because of the recognition that conservation of natural resources could be handled on a composite basis, multi-purpose districts came into being in many states generally around the 1950's and 60's. In agreement with that contention, only multi-purpose districts are considered in-depth here. In the water resources field, there are generally three types of multi-purpose districts: those where the district is engaged in several different single-purpose enterprises, such as public utility districts, sanitary districts and rural water districts; those that exist for a single purpose with many facets, as exemplified by flood control districts, and river conservancy districts; and a newer group that have multi-purpose aims and projects for a regional set of goals and objectives.

For purposes of examining alternatives to WCD's which could best answer the needs of basin-wide water management, this section has addressed itself almost exclusively to the third group. It has drawn on types of districts that exist both within Montana and in other states, that with minor to major adjustments to our laws, could potentially enhance or replace WCD's.

Districts most suited to multi-purpose functions, and therefore addressed here, are:

Natural Resource Districts, Nebraska

County Water and/or Sewer Districts, Montana

Soil and Water Conservation Districts, Montana

Nebraska's Natural Resource Districts

A Natural Resource District (NRD) by far the most all-encompassing multi-purpose district examined by this report. In the interest of reducing the number of existing special purpose districts in Nebraska (some 500 by the mid-1960's), and in curtailing the proliferation of additional districts, members of the Soil and Water Conservation Commission and the Association of Soil and Water Conservation Districts conducted a study which culminated in the successful legislation authorizing NRD's in 1969. The number of districts, including water conservancy districts, was increasing each year with no designated entity having coordination authority or basin-wide planning responsibilities.

Within the declaration of intent, the legislature set forth that the most economical and efficient means of accelerating natural resource management, conservation and protection was through the consolidation of soil and water conservation districts, watershed conservancy districts, and advisory boards, and through the encouragement of rural water districts, ground water conservation districts, drainage districts, reclamation districts, and irrigation districts to cooperate with or merge with NRD's wherever appropriate. The Legislature established boundaries for the districts which conformed to the boundaries of the major river basins. Functions of an NRD include projects and planning for flood control and comprehensive water conservation, soil conservation, wildlife enhancement, recreation, groundwater monitoring, environmental assessment, tree planting programs, plant cover incentive programs, and informational/educational workshops within the educational system and with individual landowners.

Advantages

1.) NRD's reduce the number of governmental entities dealing with essentially the same, or interrelated problems. This aspect increases public accessibility particularly if a multi-dimensional problem must be addressed. 2.) NRD's may have greater political acceptability in that they reduce layers of bureaucracy and consolidate taxation entities. 3.) The financial structure is very similar to WCD's except that, in the case of Nebraska, tax levies have been limited to 1 mill and the authority to issue general obligation bonds has been eliminated.

Disadvantages

1.) The law was passed in 1969 and NRD's are still considered to be within their infant stages. In order to institute similar jurisdictions, Montana could take a similar time period; some ten years. 2.) Nebraska has a much greater population density than Montana. (19.4:5.5.) Therefore, density pressures make for political acceptance and potential tax generation is far greater.

Conclusions

The concept of natural resource districts certainly seems attractive in terms of its regional (basinwide) approach to inter-related resource problems. In addition, the consolidation of districts solves the proliferation problem outlined in the previous section on Soil and Water Conservation Districts. However, it would

seem more practical at this point to amend an existing law to accomplish the same end rather than to attempt another legislative package for yet another type of resource conservation district, particularly when WCD's have not even been established yet.

Recommendations

Investigate the political feasibility of enlarging the powers of the WCD Act, or Soil and Water Conservation District Act, to accommodate soil conservation practices, groundwater management and overall basinwide water planning. In addition, consolidate WCD's and Soil and Water Conservation Districts to produce not only a basis from which to start, but an enhancement of existing staff capabilities. Retain the general obligation bonding capability and an increased mill tax levy, justified by the consolidation (reduction in overall levy) and the State's overall tax base.

County Water Districts

A county water (and/or sewer) district is again a multi-purpose district created and maintained in much the same manner as a WCD. Many of the powers of water districts were expanded and refined in 1967, partially to provide an alternative by those in opposition to WCD's. (Ole Ueland personal interview, 6/80).

These districts may:

"(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district; such purposes to include but not be limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes;

(2) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, effect the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or benefit to any land situated therein;

(3) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(4) commence, maintain, and defend actions and proceedings to prevent any interference with the aforesaid waters or rights as may endanger the inhabitants or lands of the district;

(5) lease of and from any person, firm, or public or private corporation with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain the same;

(6) sell water or the use thereof for household or domestic use or other similar purposes and, whenever there is a surplus of water, sell or otherwise dispose of the same to municipalities or towns or to consumers located within or without the boundaries of the district."

Boards of directors are elected except from municipalities within the district: these are appointed, one for each municipality, by the respective mayor. The directors may borrow money, set fees, incur

indebtedness, issue bonds, and cause taxes to be levied with only such limitation as is required to retire the bond. Lands directly benefitting are taxed proportionately.

Districts are established by a petition/election process and may include all or portions of one or more counties. Districts may consolidate at any time upon petition to the board(s) of directors, signed by 10% of registered voters within each district.

Advantages

1.) These districts are less complicated to establish the WCD's and offer clauses for cooperation and consolidation, should county districts have joint interests in a project or projects.

2.) There is no tax levy limitation per se for payback of project costs.

3.) The districts appear to be structurally well suited to the management of specific project works such as the Daley Ditch or other state projects for which benefitting landowners are not contributing a fair share.

Disadvantages

1.) The districts do not appear to be of basin-wide planning orientation, nor do they seem particularly oriented towards conservation of soil and other natural resources.

2.) Because they are not of basin-wide scope, they do not solve the problem of proliferation of special districts.

3.) Powers and intent sections for water districts are not as broad as the WCD or SCWD laws, nor have they established widespread credibility as active grassroots resource management jurisdictions.

Therefore, in this respect, SWCD's appear to have an advantage.

Conclusions

Water districts certainly offer a viable mechanism for project specific purposes such as management of a lake or multi-purpose water project. For such purposes, they are far easier to establish than a WCD.

SOIL AND WATER CONSERVATION DISTRICTS

Soil and Water Conservation Districts are provided for in MCA Title 76-Chapter 15. Interestingly enough, the law could have wide-ranging effects on water management planning. The primary intent of the law appears to be the promotion of improved agricultural land use practices to, in turn, enhance natural resource conservation. Under Title 76-15-102 Declaration of Policy, the law reads, "it is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect the health, safety, and general welfare of the people of this state."

The districts were originally created to take advantage of the federal programs administered by the Soil Conservation Service, USDA. They can be established, after a successful petition and referendum, by the State Soil Conservation Committee. A Board of Supervisors, partially elected and partially appointed, provides the governing authority, and this body in turn is granted extensive powers including the levying of up to 1½ mills maximum regular assessments and up to 3 mills for special project assessments. Districts are also given the authority to prepare planning studies, implement those plans through land use ordinances, operate, maintain and manage project works, and establish a Board of Adjustment for the granting of variances.

The law contains a section allowing for the immediate co-operation amongst districts with literally no mandatory procedural requirements. Thus, if SCWD's wish to coordinate on a multi-county basis, they may do so without the formation of a special project area. (Section 76-15-318).

Ten districts exercised this option, to administer a \$241,000 State RRD grant to accomplish the Triangle Saline Seep Project. They bypassed the six to eight month project area procedure, forming a cooperative venture rather than a "district" in the strict sense of the word. Administrative problems, such as cooperatively licensing cars and owning property, were solved through cooperative agreements. The disadvantage of conducting an endeavor in this manner may lie in its informality: if one or two districts disagree and withdraw from participation the project might have grant review problems.

Legally speaking, SWCD's appear to be well-suited to a wide variety of administrative, planning, and management functions. They can cooperate with and administer funds from, state and federal entities. In the case of cooperation with a municipality on a project, they need only sign cooperative agreements. Flexibility in financial administration is exhibited on two counts which could affect basin-wide water management. If a SWCD carries bonded indebtedness but wishes to participate in a special project area with other SWCD's, then it need only establish separate accounting procedures. (Gary Spaeth, personal communication 6/80). Additionally, there is no specific limitation on the overlapping of special project areas, so the potential for increased tax contributions from benefitting properties exists.

However, the income generated by tax levies has not sufficiently supported district functions in some areas. In some cases, this is due to the 1½ mill levy limitation for administrative purposes combined with high workloads. Sometimes it is attributed to a reluctance to levy to the limit for reasons of political unpopularity. In the case where larger municipalities could contribute substantially to the financial character of a district, their inclusion is not encouraged because this would promulgate municipal representation on the district board, potentially changing a traditional agricultural orientation.

On projects such as the Daley Ditch where relatively large sums of money are necessary to maintain a single project, an SCWD would be hard put to maintain its current activities and support such a project with its current mill levy limitation. Although districts are empowered to charge for district services, they are not specifically allowed to set and charge fees for water projects.

Some discussion has arisen over the liability of district supervisors and other personnel. The fear of lawsuit has apparently reduced the supervisors' effectiveness when faced with controversial decisions. DNRC legal staff is of the opinion that the supervisors and other personnel are afforded the same protection from liability as any other public employee: they are provided the protective services of the county attorney, with back up from the Attorney General's office. Compensation for supervisors not currently accepting remuneration does not appear to be an issue - they are still protected. And as long as district supervisors refrain from making controversial decisions, their chances of being sued remain remote.

In consonance with this thought is the aspect of district credibility. SCWD's are fairly popular jurisdictions, enjoying widespread acceptance. Their likability may not be attributable entirely to their virtue, however, but rather to their avoidance of controversy. Unfortunately, this traditional conservatism has been a major criticism of districts. The fact that they are viewed as single interest entities, ensconced in agricultural values to the potential detriment of competing values is their major flaw when considering them for basinwide planning and management purposes.

In spite of this criticism, districts do conduct watershed and water quality planning activities. They participate to a greater or lesser extent in Level B river basin studies and federally funded flood hazard analyses. In speaking with the SCWD personnel and district supervisors, there is an interest in participating in further state water planning activities. The major roadblock to that participation lies in staffing and funding: district staff are currently working to their maximum abilities.

The Montana Association of Conservation Districts has recognized this funding constriction. In reaction they are going to investigate tax alternatives to increase district finances.

Advantages

1. Depending on whether a strict interpretation is applied to the intent of the soil and water conservation district law, one could stretch its applicability to a wide range of water projects, including enhancement of natural wildlife values, water quality and instream flow.

2. The law already provides reimbursement to districts for planning purposes, and grants the power to pass ordinances, thus when combined with the power to operate and maintain project works, a district could ultimately prepare and implement basinwide water resource management plans right now.

3. The procedure for establishing a soil and water conservation district requires far fewer steps and only a simple majority of the voters. The law has also already been amended to include all eligible voters within a proposed district boundary, consistent with Federal law requiring such on multi-purpose districts.

4. Although many soil and water conservation districts have generally been set up consistent with county boundaries, the law provides for cooperation amongst districts through the establishment of cooperative agreements, and "project areas" wherein special works may have interdistrict benefits.

5. Soil and Water Conservation Districts have the authority to implement the Streambed Preservation Act and locate and construct off-stream storage sites.

6. Districts are currently carrying out individual water quality plans and participating in watershed planning activities.

7. The State Association has memoranda of agreements with DNR; Department of Interior, BUREC, & BLM; Corps of Engineers; SCS; ASCS

and others. In addition, their Advisory Council meets quarterly and has representatives from Fish, Wildlife and Parks, Soil Conservation Service, University Agricultural Extension Service, the Commissioner of Agriculture and other elected and appointed officials from the districts, grazing districts, and the public. This could provide a forum for obtaining the cooperation of diversified water interests, particularly if a member of the Water Resources Bureau could obtain voting status.

8. The SCWD's and the Water Planning Bureau need citizen input for their respective state planning activities. SWCD's are existing locally controlled organizations with established credibility. For expediency's sake, they currently provide the best alternative for organization of public input.

Disadvantages

1. The law repeatedly emphasizes the importance of farm and grazing land, agricultural practices, and water conservation for the purposes of preventing soil erosion. In fact, though the contents of land use regulations read fairly liberally in terms of impact areas, the ballots for a referendum to pass a land use ordinance must read, " For approval of proposed ordinance No.____, prescribing land use regulations for conservation of soil and prevention of erosion."

As a consequence of the language relating to agricultural practices, the purpose for which the districts were originally established, (Soil Conservation Service Projects) the orientation of districts to agricultural concerns, both due to their staffing by Soil Conservation Service technicians and their Boards, which are comprised primarily of farmers and ranchers, soil and water conservation districts have emerged as the bastions of agricultural

interests. In order for them to successfully represent a wider range of (political) water interests, such as industry, municipal and wildlife conservation, the language intent of the law would have to be amended, the purposes for which districts were established would have to be expanded, the procedure for electing Boards of Directors would probably have to be altered, and last but certainly not least, the political orientation of the districts would have to be modified. In a time when polarity is developing over water rights between competing users, such a political alteration could be extremely difficult.

2. Districts can now levy up to a maximum of $\frac{1}{2}$ mill less than Conservancy Districts would be allowed to levy. ($4\frac{1}{2}$ as opposed to 5 mills.) They have also been empowered to plan for water conservation. Yet the majority of projects carried out by soil and water conservation districts are small; one to four farm irrigation projects (Ole Ueland, pers. comm. 6/27.) Thus, the thrust of the districts is not towards long-range planning efforts.

3. Districts were originally intended to address basinwide soil and water conservation problems but were later reapportioned, generally to conform to county boundaries. Although the law provides for cooperation amongst districts, and close coordination with DNRC as a facilitator of projects having interdistrict interest, they are primarily aligned with countywide concerns and have close working relationships with the County Commissioners. An exception to this, on a specific project basis, is the Triangle Saline Seep project involving ten cooperating districts. However, attempts at basinwide management planning have not been made.

Conclusions

In comparison to soil and water conservation districts, the establishment of a WCD appears cumbersome. If both types of multi-purpose districts were established, they could certainly compliment one another's interests, particularly through combined mill levies, and in light of impending reductions of Revenue Sharing and other Federal funding sources.

However, it is probably not anyone's intention to add another layer of bureaucracy which in turn promulgates confusion and duplication of effort. The existence of both types of districts could 1) cause confusion on the part of the public due to the similarity in names, 2) appear to be double taxation for the same project 3) in some cases be a duplication of jurisdictional function 4) potentially instigate political jealousies, 5) tax property owners for the administrative costs of two separate districts.

Recommendations

1.) Initiate close coordination with SCWD's, beginning with an update of the cooperative agreement between the Conservation District Administration and the Water Planning Bureau. Within this agreement, make explicit compatible interests and goals and seek to clarify the role that individual CD's could play in accomplishing the State Water plan and State Soil and Water Conservation plan.

2.) Participate and lend support for the MACD Study of tax generation alternatives for districts to allow for increases in staff.

3.) Participate in the interview process for hiring of CD staff planners. Although this may not be politically popular with local districts, some quality control needs to be exercised

to generate an expanded, multiple use orientation of CD staff.

4.) Amend both the language in the SCWD Act to include more emphasis on water planning activities, and the financial powers sections so that districts are specifically allowed to set and charge fees for the sale and use of water.

5.) Subsequent to the tax generation study, amend the law to increase the limitation on district mill levies to strengthen districts financial base.

6.) Include a Water Planning Bureau advisory member on the SCWD council to aid in continued coordination of activities.

7.) In Western Montana, where population is more concentrated, and municipalities often participate in CD's, multiple interest orientation is more prevalent on CD boards. (Terry Wheeler, 6/80). Amend the law to mandate that where municipalities are not participants in a district, and thus do not currently have representation on a CD board, that an advisory member shall be elected to the board from the municipality. Although mandatory inclusion of municipalities might not be popular initially, both from the standpoint of increased taxes within towns, and from the standpoint of agricultural interest advocates it could accomplish two constructive ends. Firstly, a wider range of interests would automatically be represented on the boards. This is important to the preparation of any state resource planning efforts in that they should represent all points of view, not just agricultural-related interests. Secondly, the tax base for districts would be increased substantially without raising tax levies. Thus, the rural areas would not have to absorb the total financial burden for increased CD activities.

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