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EVALUATING ENABLING LAWS FOR SPECIAL DISTRICTS

A CASE STUDY IN OKLAHOMA

UNITED STATES DEPARTMENT OF AGRICULTURE
ECONOMIC RESEARCH SERVICE

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SUMMARY AND CONCLUSIONS

State enabling laws for natural resource special districts prescribe the purposes for which districts may be created, outline their organizational framework, and authorize their financial and operating powers.

An outline was developed for evaluating enabling laws for such districts with regard to democratic processes, legal powers, intergovernmental planning and cooperation, project feasibility analysis, flexibility, and reviewing agencies.

This outline was applied to Oklahoma enabling laws for creating nine kinds of districts: Soil and water conservation, conservancy, master conservancy, water distribution, regional water distribution, county water improvement, rural water, irrigation, and drainage districts.

Evaluating the Oklahoma Statutes

Democratic processes.--Most Oklahoma enabling statutes specify the democratic processes in detail. Petitions, hearings, and election of officers are basic items and are all included in the statutes. Clearly specified procedures do not, however, necessarily mean that procedures are adequate. Eight of the nine types of districts have some financial powers for taxing, bonding, or levying special assessments, but only four require a referendum in addition to the approval of the hearing court or board at the time of organizing. There seems to be no relationship between the referendum requirement and the power to levy taxes. Whether such a relationship is essential cannot be stated definitely. Requirements are diverse, but there is no clear functional reason why they should be identical. The basic elements of the democratic process have been provided in most cases; whether or not the residents exercise their rights and responsibilities is another matter.

Legal powers.--Most of the special districts have a fairly broad scope of financial powers. Exceptions are regional water distribution and rural water districts which are authorized only to charge user fees as income sources. While this may or may not be adequate for individual situations, the questions to be asked regarding the limited flexibility of this situation are outside the scope of this paper.

Only two questions arise concerning the adequacy of other legal powers. Rural water districts do not have eminent domain powers, which could prove a limitation in getting easements to lay pipelines. The statutes also are vague regarding the power of drainage districts to buy and sell personal property and sue and be sued. However, the powers of county commissioners apparently may be used for transacting drainage district business.

Intergovernmental planning and cooperation.--Cooperation between districts is broadest for the conservancy district group and for soil and water conservation districts. Soil and water conservation districts have comprehensive powers for coordinating with the State, particularly with the State Soil and Water Conservation Committee. Some water districts can cooperate with municipalities for the purpose of supplying them with water. Two new sets of institutional relationships with districts were established by the State when the Water Conservation Storage Commission and the Governor's Advisory Commission were created to work with the districts. Almost all districts have some authority to cooperate with the Federal Government, and many of them are taking part in Federal programs. Some are able to receive Federal financing. There are no specific statements in the enabling legislation encouraging or requiring districts to participate in regional planning activities.

Project feasibility analysis.--The greatest amount of preorganization planning is required of soil and water conservation and conservancy districts, due to their relationships with State and Federal programs. Some boards or courts hearing organizing petitions have discretionary powers to alter the boundaries of proposed districts based on their review. The greatest amount of preorganization planning will be done in the future through the review and recommendations of the Governor's advisory committee, the State Agency Coordinating Commission.

Little is said in the statutes about the kinds of information to be included in the project feasibility analysis other than descriptions of the proposed projects.

Specific procedures are prescribed for conservancy, master conservancy, and county water improvement districts to follow in obtaining public approval of proposed plans.

Flexibility.--The soil and water conservation districts and conservancy and master conservancy districts have the broadest statements of purpose. Most others are limited in the scope of purposes for which they may be organized.

For all except, water distribution and drainage districts, the enabling legislation provides for adding territory to the original district either by annexing or creating subdistricts.

All districts except conservancy, water distribution and regional water distribution districts may be terminated through dissolution or merger by following specified procedures.

Reviewing agencies.--All districts, except water distribution, rural water, and drainage districts are required to make some form of annual or

quarterly report to another governmental unit. However, the value of these reports in the actual management process cannot be determined from statutory requirements alone. Soil and water conservation, conservancy, master conservancy, and irrigation districts are required to make additional special reports when special projects are being contemplated.

Governmental agencies receiving reports and cooperating closely with districts include the Water Resources Board, the State Soil and Water Conservation Board, and the U.S. Bureau of Reclamation.

Evaluating the Outline

The outline covers the basic, essential segments of enabling statutes in a flexible, yet inclusive, format that allows differentiation of special districts for differing purposes. It categorizes the enabling statutes according to generalized problem areas, such as intergovernmental cooperation and project feasibility analysis, which are stated in such a way that the laws for different kinds of districts can be reviewed simultaneously. This flexibility is essential in natural resource development where multiple-purpose uses, which frequently include conflicting uses, are continually stressed.

In its present form, the outline is useful for generalized review of enabling legislation by administrators and legislators. In fact, while this report was being prepared, the outline was used as a format for reviewing both Federal and State bills and was found to be a useful, workable tool for such purposes.

While it is not a refined analytical model, it does have potential for being further substratified and eventually quantified in mathematical terms. With more precise techniques, the relationships between what is authorized by statute and the subsequent performance of the districts can be more clearly defined. At present, they can only be inferred.

Some statutes concerning the creating of regional planning councils, etc., or the authorization of functions of State agencies that were not included in this report would have to be included in a more exhaustive analysis. Similarly, more cases on disputed statutory provisions would have to be included. The system can be modified to include both.

EVALUATING ENABLING LAWS FOR SPECIAL DISTRICTS:
A CASE STUDY IN OKLAHOMA

By Ivan Hanson 1/

NATURE OF THE STUDY

Increasingly heavy demands are being made on the natural resources of the United States. Growing suburban population centers intensify the need for domestic water supplies, sewer systems, road maintenance, fire and police protection, and all kinds of recreation activities. At the same time, rural people demand domestic and irrigation water, drainage canals, flood control projects, and recreation sites, while the perennial need for conservation remains.

Programs to meet these and other natural resource development needs are underway at all levels of government. This growth creates organizational problems for established governmental units. Problem areas frequently cross political boundaries, making intergovernmental coordination and cooperation necessary. Established governments may not have the personnel to handle added functions, and often are at maximum debt limits. Voters within an existing governmental unit hesitate to approve bond issues when only a small segment of the voters will benefit from the facilities to be installed.

Local organizations such as single-purpose special districts are often able to overcome these problems. They have the advantages of not having to conform to established political boundaries, and of being able to concentrate on dealing with a single problem situation, and to levy special taxes or assessments and obtain special services for that purpose.

Special Districts Defined

Governmental organizations distinct from units of civil government include special districts, authorities, interstate compacts, and a wide variety of governmental boards, commissions, and committees. This report deals with special districts whose purpose is to develop or manage natural resources.

These districts, like other governmental units, derive their power from State enabling laws; they are (1) organized entities with (2) governmental

1/ Research Agricultural Economist, Natural Resource Economics Division, Economic Research Service. Much of the basic legal research was done by David L. Gibson, Economics Assistant, Natural Resource Economics Division.

character and (3) substantial autonomy. Being an organized entity requires possession of some corporate powers such as perpetual succession and the right to sue and be sued, have a name, make contracts, and acquire and dispose of property. Governmental character is indicated when officers are popularly elected and records are open for public inspection, or when the power to tax exists. Substantial autonomy requires some independence in fiscal and administrative matters for budgeting, setting tax levels, collecting service fees, or incurring debt. 2/

While Oklahoma's natural resource special districts possess enough of the attributes described above to be considered independent governmental units, they perform fewer functions than traditional governmental units.

Authorities, like special districts, perform a limited number of functions; but they usually have less autonomy since much of the administrative control remains with the creating government. Some authorities, however, have considerable independence. The Census Bureau has judged some of them independent enough to be special districts and has included them in the special district tabulations.

Interstate compacts are formal agreements between two or more States with the Federal Government sometimes acting as a partner. The agreements must be approved by the legislatures of all the member States and by the United States Senate. Quite often, agencies of the participating governments are charged with administering the terms of the compact.

Boards, commissions, and committees are subordinate but integral parts of the existing governmental structure at all levels. They are directly responsible to some higher governmental authority and have no independent fiscal powers. Although they derive revenue from user fees and similar sources, any tax revenues are a part of the general tax levy and budgets of the parent government.

Purpose of the Study

The purpose of this report is to present an outline for evaluating the enabling laws that authorize special districts. The outline is applied to the Oklahoma enabling laws for the equal purposes of developing and testing the outline and evaluating the laws. Because the statutes were the primary focus, relevant cases have not been explored. Nothing stated in this report should be considered as legal authority--only the original statutes and cases can be the legal authority.

2/ For a complete discussion of these attributes see U.S. Bureau of the Census, Census of Governments: 1962, Vol. 1, Governmental Organization, U.S. Govt. Printing Off., 1963, p. 15 ff.

The report is a first step in developing a systematic procedure for analyzing the organizations that manage natural resources. While research has been done on costs and benefits, economic implications, and other aspects of natural resource programs, relatively little has been done to analyze the organizational structure. Recently, interest in the structure has been stimulated by the proliferation of these kinds of governmental units, and by the realization of how the organizational structure has affected the success of past and present resource programs.

Enabling statutes are the framework under which districts are organized. These statutes prescribe the purposes for which districts may be formed, outline the organizational framework, and authorize the exercise of financial and operating powers ordinarily reserved for some level of civil government.

The outline is intended to be of value to resource development planners and administrators in Oklahoma, and also to establish an approach for evaluating districts in other States. With this in mind, the outline is expressed in general terms and with broad perspective. Oklahoma was chosen for the study because a number of resource development activities have taken place there in the past decade or more, and because several related studies on other phases of resource development in the State are underway.

Methodology

The study is limited to enabling legislation broad enough in scope, geographically, to authorize formation of new organizations nearly anywhere in the State, provided they meet the requirements specified in the appropriate enabling law. All laws authorizing a specific organization in a particular locale are omitted.

This decision to exclude enabling legislation for localized districts is consistent with the distinction between general and special legislation used by economists. They consider as general any legislation which authorizes districts to be formed in any part of the State or in a wide region. Special legislation actually creates a specifically named district at a single location. 3/

The economists' definition is not identical with legal rulings of the Oklahoma Supreme Court. The Court has ruled that generality of a law is determined not by the territory over which it operates but by the way it affects equally all persons who come within its range. 4/ On this basis, it

3/ Stephen C. Smith and Morton W. Bittinger. Managing Artificial Recharge Through Public Districts. Paper No. 62-709, Amer. Soc. Agr. Engin., St. Joseph, Mich., Dec. 1962.

4/ Leatherock v. Lawter, 145 Okla. 715, 147 P. 324, 326 (1915).

ruled as general the Grand River Dam authority, which would have been considered special legislation according to the economists' definition.

In this report, the principles used by economists were followed because of the basic intent to analyze statutes which could be used again and again for creating new natural resource special districts.

The enabling laws for special resource districts from the Oklahoma statutes, as amended, were examined and summarized under the functional categories of administration, corporate powers, financial powers, supervision, intergovernmental cooperation, provisions for amending, and termination. This grouping shows the laws in several perspectives. Similar sections, such as administration, are grouped together for all kinds of districts. They are organized to answer questions such as: What are the taxing powers of these districts? Are districts responsible to any higher level of government? How can they cooperate with each other and with other levels of government in managing limited natural resources?

The outline for evaluating the statutes was adapted from critiques of special districts and governments by other writers. They have not been used before exclusively for reviewing enabling legislation.

The final portion of the manuscript reports the results of applying the outline to Oklahoma's statutes. It also includes the essence of discussions with several State agency administrators in Oklahoma who work with special districts for natural resource development and management.

OUTLINE FOR EVALUATING STATUTES

Reports consulted in preparing the outline for evaluating enabling laws include studies by the Advisory Commission on Intergovernmental Relations, a study of water management agencies in Texas by Frederic O. Sargent, and a study of Louisiana special districts by Emmett Asseff.

One of the reports of the Advisory Commission on Intergovernmental Relations prescribes as the general objective for governmental reorganization, that "local governments should serve the people effectively and efficiently, with active citizen participation and control, with an adequate and equitable revenue system, with a sufficient degree of local initiative and self-government for traditional or natural communities in the area, and with

provision for adaptation to growth and change." 5/ This statement suggests a number of criteria that may be used to effectively judge the adequacy of the governmental organization. These criteria are that local governments:

1. Should cover a broad enough geographic area to cope adequately with the forces that create the problems which the citizens expect them to handle.
2. Should be able to raise adequate revenues, and do it equitably.
3. Should be able to adjust boundaries.
4. Should be organized as general-purpose rather than single-purpose units.
5. Should be able to take advantage of the economies of scale.
6. Should be accessible to and controllable by the citizens.
7. Should provide opportunity for active citizen participation.
8. Should be politically feasible.

These criteria are consistent with and expand upon some principles developed by the commission in an earlier report on governmental structure. 6/ In that report, the commission recommends the use of special units of government such as authorities and special districts to supply special governmental services, with adequate safeguards to insure (1) adequate geographic coverage to prevent duplication of services and governmental fragmentation; (2) operation on democratic principles through proper representation in creating and governing the unit; and (3) adequate financial powers, subject to referendum, to carry out programs. In addition, areawide study commissions and planning bodies are recommended as ways of coordinating government services. States are encouraged to establish State-level agencies to study local government affairs and to develop programs of financial and technical assistance for local government projects such as water supply and sanitation systems.

5/ Advisory Commission on Intergovernmental Relations. Alternative Approaches to Governmental Reorganization in Metropolitan Areas--A Commission Report. Govt. Printing Off., June 1962, p. 11. The Commission is made up of 26 appointed officials including county officials, mayors, governors, State legislators, Federal cabinet members, and Federal legislators.

6/ Advisory Commission on Intergovernmental Relations. Governmental Structure, Organization, and Planning in Metropolitan Areas--Suggested Action by Local, State, and National Governments. 87th Cong., 1st Sess., U.S. Govt. Printing Off., July 1961.

Criteria more directly related to the economic aspects of resource development by governmental units have been suggested in other reports. Sargent, for example, in developing criteria applicable to agencies for managing water in Texas, has defined three areas: political, economic, and logical consistency. ^{7/} The political criteria cover democratic processes. Questions posed include: "(1) Does this agency represent the people in the area concerned? (2) Does this agency report to the people? (3) Does it hold public hearings for the purpose of determining the wishes (goals) of the people?" The economic criteria considered so important in planning, development, and financing of public programs include: "(1) Who benefits by this project or program? (2) Who pays for this project or program? (3) Do the benefits correspond with the payments?" Logical consistency is judged by answers to questions such as: "(1) Is this project designed to provide for all uses of the water for which there is a significant demand? (2) Does this plan promote the development of the whole economic region? (3) Is it logical?"

Writing on special districts in Louisiana, Asseff has stated some considerations to be weighed before establishing a special district: (1) What will be the resulting debt and tax burden from creating the district? (2) Is the size of the proposed district adequate in relation to the function to be performed and the local situation? (3) What is the value of this project in relation to alternative public service projects now and in the future? ^{8/}

In each of the studies cited, criteria were developed for judging the organization and administration of governmental units. The present report concentrates on enabling statutes. The question is whether or not the enabling statutes contain provisions that allow or encourage the creation of special districts that will successfully meet the organizational and administrative criteria discussed above. The outline is divided into six segments: (1) democratic processes, (2) legal powers, (3) intergovernmental planning and cooperation, (4) project feasibility analysis, (5) flexibility, and (6) reviewing agencies.

Democratic Processes

Because special districts have certain financial and police powers over the residents within their boundaries, the enabling statutes which confer these powers should make adequate provision for public participation in creating and carrying out policies of the districts. This includes voting-

^{7/} Frederic O. Sargent. Criteria for Appraisal of Planning Water Resource Development Agencies in Texas. Land Econ., v. 36, No. 1, Univ. Wis., Feb. 1960.

^{8/} Emmett Asseff. Special Districts in Louisiana. Bur. Govt. Res., La. State Univ., Baton Rouge, 1951.

taxpayer control through election of the governing body and referenda on the issues and policies. Enabling laws should specify organizational and administrative procedures for petitions, elections, hearings, appeals, and other standardized aspects of governmental administration. Boundaries of the districts should be drawn to include both those benefited and those disadvantaged by the operation of the districts so that both groups will be represented in management and policy decisions.

Legal Powers

Once created, the special district assumes responsibility for carrying out designated tasks--constructing and operating a water distribution system or digging and maintaining drainage ditches, for example. In order to carry out these tasks, the unit should be assured possession of adequate legal powers to accomplish its assigned tasks or approved objectives. Financial powers include levying taxes and special assessments, issuing bonds, charging user fees, accepting Federal financing, and selling land. Other legal powers include buying and selling land, buying and selling personal property, eminent domain, entering into contracts, and suing or being sued.

The ultimate test of adequacy, of course, is with the individual district and its unique financial situation. However, in general, the test is in the scope of powers authorized for the districts. Can districts raise funds from several sources? If they have only one or two sources, are they sufficiently stable? The districts must be assured of enough financial backing to undertake construction, operation, and management of its projects.

Intergovernmental Planning and Cooperation

In resource development, intergovernmental planning and cooperation are vital for making crucial decisions and meeting contemporary problems. Since special districts are frequently managers of natural resources, they should have authority to cooperate with other governmental units, including other special districts, counties, townships, cities, villages, States, and the Federal Government. Such cooperation could include planning activities, joint cost-sharing projects, and other activities which eliminate duplication of efforts, overlapping jurisdictions, and so forth. While the omission of planning provisions from the enabling statutes does not prevent districts from participating in such activities, districts do not have a clear mandate to participate actively. Furthermore, statutes would be simplified if such requirements appeared in the enabling laws rather than in other special statutes.

Project Feasibility Analysis

Successful resource development requires a great deal of research and planning. Such activities should take place at the State, regional, and local levels. Comprehensive State and regional plans and subsequent agreements provide a method for allocating resources when market forces are not adequate for this task. Districts should be encouraged to participate in the development of such plans and to integrate district policies with the plans. Within this broad framework, problems of individual districts should be fully researched before the unit is allowed to organize and acquire debts and other contractual obligations. Such investigations should include the economic, financial, and managerial feasibility of the proposed district. The research should be undertaken by qualified technicians and researchers. Reports showing the results of feasibility studies of the proposed district and the role of this district in broader State or regional plans should be presented with the organizing petitions to the hearing authority when the district is created.

Flexibility

The statutes should provide flexibility in three main areas. First, the statement which broadly outlines the functions the unit can perform should contain provisions broad enough to allow the unit to take on new functions and broaden the scope of its activities as the existing situation changes. Second, there should be amending procedures for expanding or modifying the geographic area to fit changing conditions. Third, there should be procedures for dissolving the district should the need for it cease to exist.

Reviewing Agencies

Some provision should be made for review of district activities by selected State agencies. While special districts, by definition, cannot have their decisions made by other levels of government, some reporting to a State agency combined with subsequent review and analysis could be beneficial. The consultations would provide data of use to both districts and the State for better governmental management and for resource planning. In addition to annual or other periodic reports, a special review before districts undertake new construction might be beneficial. Examples of such procedures already underway in some States include review of district taxing policies by the State Tax Commission, review and supervision of bond sales by the State Bonding Commission, and review of operations by the Water Resource Commission.

AUTHORIZED OKLAHOMA DISTRICTS AND THEIR PURPOSES

The Oklahoma enabling laws discussed here are those applying to (1) soil and water conservation districts; (2) conservancy districts; (3) master conservancy districts; (4) water distribution districts; (5) regional water distribution districts; (6) county water improvement districts; (7) rural water districts; (8) irrigation districts; and (9) drainage districts. Enabling laws for organizations such as the Pryor Creek Watershed Association and the Spring Creek Watershed Association have been omitted because of their geographic limitations.

Soil and Water Conservation Districts

The stated policy and purpose of soil and water conservation districts in Oklahoma is to provide for:

1. Conservation of the soil and soil resources of the State.
2. Control and prevention of soil erosion.
3. Prevention of floodwater and sediment damages.
4. Furthering the conservation, development, utilization and disposal of water, thereby preserving natural resources, controlling floods, preventing impairment of dams and reservoirs, preserving wildlife, protecting the tax base, protecting public lands, and protecting and promoting the health, safety, and general welfare of the people of the State. 9/

Conservancy Districts

Conservancy districts may be organized for any or all of the following purposes:

1. To prevent floods.
2. To regulate stream channels by changing, widening and deepening them.
3. To reclaim or fill wet and overflowed land.
4. To provide for irrigation where needed.
5. To regulate the flow of streams.

9/ Okla. Stat. Ann. tit. 2, § 802 (Supp. 1963).

6. To divert or eliminate in whole or in part watercourses or part of their flowage.

7. To develop and provide water for domestic, industrial, and agricultural requirements and for persons within the territory of the district. This may include also the construction, operation, and maintenance of storage, distribution, treatment, supply, and other works, and installation of improvements and facilities necessary or incidental thereto.

Conservancy districts may not construct, operate, or maintain distribution facilities within the limits of any municipal corporation. 10/

Master Conservancy Districts

Master conservancy districts may be created for any or all of the following purposes, in addition to the seven functions of conservancy districts:

1. To conduct preliminary surveys and to develop a plan for the comprehensive control, regulation and/or use of water from any designated stream, watercourse, or watercourse system and/or its basin.

2. To coordinate the operations, works, and facilities of two or more conservancy districts with each other and with improvements, works, and facilities of the master conservancy district.

3. To acquire, construct, and maintain improvements and facilities for the common benefit and/or use of constituent areas.

4. To provide a vehicle by which two or more municipal corporations and/or conservancy districts may pool their resources to effect any or all of the foregoing.

5. To enter into contracts with municipal corporations, persons, and public agencies for furnishing them with water, subject, however, to the provision that no district shall construct, operate or maintain distribution facilities within the limits of any municipal corporation. 11/

These five additional purposes give master conservancy districts considerably broader scope of action than conservancy districts, particularly in three major areas: comprehensive planning for water use in a basin;

10/ Okla. Stat. Ann. tit. 82, § 541 (Supp. 1963).

11/ Okla. Stat. Ann. tit. 82, § 541 (Supp. 1963).

coordination of conservancy district activities with the operations of the master conservancy district; and pooling of resources by two or more municipal corporations.

Water Supply Districts

Water distribution districts are authorized to provide and maintain water works for domestic use. 12/

Regional water distribution districts may conduct the following activities:

1. Appropriate water, acquire water storage facilities, and store such water in reservoirs.
2. Purify, treat, and process said water.
3. Furnish water to persons desiring it.
4. Transport and deliver water to persons served by the water district.

Regional water distribution districts are limited at present to a 12-county area in southeastern Oklahoma and to the stream systems of the Mountain Fork River, Glover Creek, Little River, Kiamichi River, Muddy Boggy Creek, and Clear Boggy Creek. 13/

County water improvement districts are authorized to establish, acquire, construct, and operate water distribution systems and to obtain, store, impound, supply, transport, and distribute water. 14/

Rural water districts are authorized, by enabling laws passed by the 1963 legislature, to develop and provide rural water supply and sewage disposal facilities for rural residents in the district and supply them with water. 15/

Irrigation Districts

Purposes for which irrigation districts may be organized are not as clearly stated as for other districts. No single statement of purpose is

12/ Okla. Stat. Ann. tit. 82, § 721 (1951). 13/ Okla. Stat. Ann. tit. 82, § 1252, 1253 (Supp. 1963). 14/ Okla. Stat. Ann. tit. 82, § 771 (Supp. 1963). 15/ Okla. Sess. Laws 1965, ch. 339, § 2.

contained in any section of the statutes. However, from an interpretation of the powers delegated to the boards of directors of irrigation districts, the purposes appear to be:

1. To construct the necessary dams, reservoirs, and works for the collection of water for the district and do any and every lawful act necessary to furnish sufficient irrigation water for landowners in the district. 16/
2. To provide for drainage of lands subirrigated by water use. 17/

Drainage Districts

Drainage districts are authorized by the Oklahoma Constitution, which provides for a system of levees, drains, ditches, and irrigation. 18/ However, procedures for creating drainage districts are specified by the Oklahoma State Drainage Act which applies to ditches, drains, watercourses, canals, levees, embankments, or any structures used for carrying surface or flood water, including subsoil drainage and the prevention of inundation. 19/ Drainage districts are not necessarily considered special districts under the census definition because they are county drains, and the county commissioners act as directors of the districts. However, they are included in this study because of the nature of their control over land and water resources. The districts are organized through established procedures culminating in a hearing by the board of commissioners. Costs are to be prorated to the benefited land according to the benefits received.

THE OUTLINE APPLIED TO OKLAHOMA LAWS

The application of the outline to Oklahoma enabling laws does not result in simple statements about the overall effectiveness of these laws. Summary judgments are outside the purpose of this paper. The criteria explained in the preceding chapter do make it possible, however, to describe the general strength and weakness of the organizations which are the foundations of resource development.

Democratic Processes

Steps required in forming special districts are detailed by the Oklahoma statutes authorizing each type of district. Details of the

16/ Okla. Stat. Ann. tit. 82, § 126 (1951). 17/ Okla. Stat. Ann. tit. 82, § 194 (1951). 18/ Okla. Const. art. 16, § 3. 19/ Okla. Stat. Ann. tit. 82, § 281 (1951).

organizing process that relate to democratic procedures include number of petition signers required, descriptive information incorporated in the petition, publication of hearing notices, name of the court or board hearing the petition, referenda requirements, provision for appeals from the decision of the hearing board, and criteria for the selection of district officers. Some of the basic details are summarized in table 1.

Petitions

The number of petition signers required varies from two or more landowners for rural water districts to 51 percent of the landowners for conservancy, master conservancy, and county water improvement districts. There is no absolute point at which the number of signers becomes adequate, although the requirement of large numbers of signers in the early stages of the project insures unified community support and assists the hearing board in deciding whether there is public support or demand for the proposed organization. On the other hand, requiring an unusually large number of signers may delay the start of a socially desirable project.

For all types of districts, the petition must include the name of the district; the purposes for which the district is formed; the necessity for the proposed work, based usually on health, safety, convenience, or welfare considerations; the geographical boundaries; often a map of the area showing the location of proposed structures, canals, dams, reservoirs, etc.; and a request to the appropriate court or board that the proposed district be created.

Public Notice

Public notice must be given for hearings to approve the petition. The times and places for publishing notices of hearings are well specified for all districts. Generally, the notice must be published in a widely circulating newspaper in the county where the petition is to be presented for a least 2 weeks prior to the hearing. Variations of this procedure include posting notices of the proposed formation of a district in public places or publishing notices at spaced intervals in local newspapers. The notice often is the entire petition, or it may simply state the time, place, and purpose of the hearing.

Hearings

Not all hearings are held by the same body. The State Soil and Water Conservation Board holds hearings for proposed soil and water conservation

Table 1.--Organization requirements of special districts in Oklahoma, 1963

| District | Petition signatures required | Hearing court or board | Election required | Votes required |
|----------------------------------|--|-----------------------------------|-------------------|---|
| Soil conservation----- | 25 landowners | State Soil Conservation Committee | Yes | Majority |
| Conservancy----- | 51% of landowners and owners of 51% of land area | District Court | No | Not applicable |
| Master conservancy----- | 51% of landowners and owners of 51% of land area | District Court | No | Not applicable |
| Water distribution----- | 50 or a majority of title-holders of land susceptible to service | County Commission | Yes | Majority of votes cast |
| Regional water distribution----- | 100 or more qualified land-owning voters in counties where reservoir is to be located | District Court | No | Not applicable |
| County water----- | Majority of titleholders of lands desiring to be included | County Commission | Yes | Majority of votes cast both outside and inside incorporated towns |
| Rural water----- | 2 or more adjacent land-owners | County Commission | No | Not applicable |
| Irrigation----- | 50 or a majority of title-holders of land susceptible to irrigation from a common source | County Commission | Yes | Majority of votes cast |
| Drainage----- | 5 or more county residents affected by the proposed district | County Commission | No | Not applicable |

districts. 20/ The district court holds hearings for conservancy, master conservancy, and regional water distribution districts. 21/ The county commissioners hold hearings for water distribution, county water improvement, rural water, irrigation, and drainage districts. 22/

In the organization of irrigation, regional water distribution, and drainage districts, special assistance is given before the hearing to help determine the feasibility of establishing the new district.

Hearings for irrigation districts are held by the county commission, but at least 4 weeks before the date set for the hearing a copy of the petition and all accompanying maps and papers are to be filed in the office of the Oklahoma Industrial Development and Park Department. 23/ The department examines the papers, sites, and facilities thought necessary and makes appropriate reports to the county commission for their reference while deciding whether or not to authorize the creation of the new districts. 24/

Similarly, the district court hearing the petition for establishing regional water distribution districts receives recommendations of the Oklahoma Water Resources Board. The statutes prescribe some points which must be included, but the board is not required to limit its discussion to these. Briefly they are:

1. Do proposed boundaries conflict with boundaries of any existing water district over which the board has supervisory jurisdiction?
2. Do statements and purposes in the petition as applied to the proposed area conform to the provisions of the enabling act?
3. Will the proposed district promote the general welfare and be conducive to the purposes of the act? 25/

County commissioners hearing the petition to establish a drainage district appoint three resident freeholders as viewers. The viewers, with the assistance of the surveyor, view the line and adjacent property of the proposed drain and report on whether the proposed drain is practicable and necessary, and of private or public benefit. If their report is favorable, they

20/ Okla. Stat. Ann. tit. 2, § 805 (A) (1951). 21/ Okla. Stat. Ann. tit. 82, § § 542, 1255 (Supp. 1963). 22/ Okla. Stat. Ann. tit. 82, § § 112, 304, 722, 774 (1951), § 1306 (Supp. 1963).

23/ The functions of the State Board of Irrigation were assumed by the Oklahoma Planning and Resources Board (Okla. Stat. Ann. tit. 82, § 532 (1951)) which, in turn, has been incorporated into the Oklahoma Industrial Development and Park Department (Okla. Sess. Laws 1965, ch. 398, § 2).

24/ Okla. Stat. Ann. tit. 82, § 112 (1951).

25/ Okla. Stat. Ann. tit. 82, § 1255 (Supp. 1963).

make recommendations as to the best route for the proposed drain, whether any portion of the drain should be bridged or covered, and whether the construction costs should be allotted to several interests or let by contract without allotment. 26/

Referenda

Referenda are required for formation of soil conservation, water distribution, county water improvement, and irrigation districts. Referenda are not required for districts created by the district court, which includes conservancy, master conservancy, and regional water distribution districts, or for drainage and rural water districts. There is no correlation between the requirements for an organizing referendum and the power to levy taxes. Of the five districts allowed to levy taxes, only two, county water improvement and irrigation districts, are required to hold organizing referenda. Conservancy, master conservancy, and drainage districts have taxing powers but do not hold referenda on the proposition to organize the district.

Appeals

Appeals to higher authorities from hearing decisions are stipulated only for the districts created by the district courts. Conservancy, master conservancy, and regional water distribution district statutes allow appeals within a specified number of days. Soil conservation district petitions not approved may be resubmitted after 6 months. 27/

No mention of appeals is made in the statutes authorizing districts to be created by county commissioners, thus leaving some uncertainty on this point. The statute regarding water distribution districts purports to give the county commissioners "exclusive jurisdiction to hear and determine all contests and objections to the creation of such district and all matters pertaining to the same." 28/ But it says nothing about the finality of their decisions. The statutes regarding rural water districts, irrigation districts, county water improvement districts, and drainage districts say nothing about appeals.

Court rulings on the matter are contradictory. The Oklahoma Supreme Court has said that every landholder in a proposed water improvement district has the right to appeal to the district court under the statute providing for appeals from county commissioners' actions. 29/ However, the court reached a

26/ Okla. Stat. Ann. tit. 82, § 302 (1951). 27/ Okla. Stat. Ann. tit. 2, § 805 (B) (6) (Supp. 1963). 28/ Okla. Stat. Ann. tit. 82, § 772 (1951). 29/ Price v. Water Dist. No. 8, Tulsa County, 147 Okla. 11, 293 P. 1092 (1930).

different conclusion in Prince, et. al. v. Wild Horse Drainage District No. 1, when an appeal from the county commissioners on a drainage district was not allowed. 30/ There also is the possibility of a suit to have certain actions of a district declared invalid if they are beyond or in excess of its jurisdiction. 31/

Election of Officers

Election of officers is well detailed by the statutes for all districts except rural water districts. For most districts the number of officers required, the election procedures, and the number of votes required are itemized, but for rural water districts the initial election requirements are:

Immediately following the...incorporation...the owners of land within any such district shall select from their number a board of directors...not to exceed nine...by majority vote of those owners of land present. 32/

The initial board of directors for many districts is appointed by the creating court or board, while for others, the procedures are more clearly specified by statute. Officers are elected for all districts except soil conservation, drainage, and county water improvement districts. The governing body of soil conservation districts comprises two members appointed by the State Soil Conservation Board and three members elected at meetings after being nominated by petitions. 33/ Drainage districts are administered by the regularly elected Board of County Commissioners. County water improvement district officers are appointed by the county commissioners but are subject to approval by 20 percent of the landowners.

Adequacy of Enabling Laws

Oklahoma enabling laws, in general, clearly specify democratic processes to be followed in organizing and administering special districts. While the selection of the initial slate of officers for rural water districts is not specified as distinctly as are similar processes for other districts, this is not an overly serious problem that cannot be worked out at the time of organization.

30/ Prince v. Wild Horse Drainage Dist. No. 1, 145 Okla. 159, 292 P. 42 (1930). 31/ Price v. Water Dist. No. 8, Tulsa County, 147 Okla. 11, 293 P. 1092 (1930). 32/ Okla. Stat. Ann. tit. 82, § 1307 (Supp. 1963). 33/ Okla. Stat. Ann. tit. 2, § 806 (1951).

Legal Powers

Adequate powers include financial and other legal authorizations necessary to successfully carry out the duties of the districts.

Financial Powers

No consistent pattern of financial powers is apparent, or perhaps, necessary, among the various districts. Conservancy and master conservancy districts have the broadest array of financial powers, while regional water distribution districts have only the power to issue bonds and charge user fees to pay them off (table 2).

Conservancy and master conservancy districts have the greatest number of sources of income. They may levy taxes, issue bonds, accept Federal financing, charge user fees, and receive income from land sales. This range of powers is necessary for multiple purpose districts which may engage in a variety of projects. Certain kinds of financing may be more suitable to some kinds of projects than others. A master conservancy district sponsoring watershed projects, for example, needs taxation powers for raising large amounts of funds. A regional water distribution district managing a damsite for recreation purposes may need only the authority to charge user fees.

Financial powers for the single-function districts supplying domestic water tend to concentrate on user fees, which is logical for the type of service performed. All except rural water districts may issue bonds, but they may accept Federal financing. Water distribution and county water improvement districts may levy taxes, a power not given to rural water and regional water distribution districts. The taxing power in addition to the user fees gives the former two classes a broader base of financial support.

Limitations on borrowing exist for all districts. For example, all districts allowed to issue bonds are restricted to a 6-percent interest rate on bonds sold. Soil conservation districts cannot "obligate the district beyond the appropriation currently made available to such district by law."^{34/}

Several specific limitations exist for borrowing by conservancy and master conservancy districts. The board of directors can issue notes or warrants for financing the preliminary work of a newly formed district, but it must have permission of the district court having jurisdiction. The total amount borrowed for this purpose cannot exceed 25 cents per acre of all lands in the project.^{35/} The court allows time between the application and the hearing for the owners of land on which a majority of the tax has been levied

^{34/} Okla. Stat. Ann. tit. 2, § 808 (B) (13) (1951).

^{35/} Okla. Stat. Ann. tit. 82, § 632 (Supp. 1963).

Table 2.--Financial powers available to special districts through State enabling laws, Oklahoma, 1963

| District | Levy taxes <u>1/</u> | Issue bonds | Accept Federal financing | Charge user fees | Sell land |
|----------------------------------|----------------------|-------------|--------------------------|------------------|-----------|
| Soil conservation----- | Yes | No | Yes | No | Yes |
| Conservancy----- | Yes | Yes | Yes | Yes | Yes |
| Master conservancy----- | Yes | Yes | Yes | Yes | Yes |
| Water distribution----- | Yes | Yes | No | Yes | No |
| Regional water distribution----- | No | Yes | No | Yes | No |
| County water improvement----- | Yes | Yes | No | Yes | No |
| Rural water----- | No | No | Yes | Yes | No |
| Irrigation----- | Yes | Yes | No | Yes | No |
| Drainage----- | Yes | Yes | No | No | No |

1/ Category includes all forms of taxation from general property taxes to special assessments. The form of taxation varies by type of district.

to file written protests. Similar court approval must be given on agreements to borrow funds from the U.S. Government or any of its agencies. The directors may pledge assessments levied but not collected as security for the loan. Directors may issue bonds equal to 90 percent of the assessments plus interest, but the bond issue must be approved at a special election by at least 60 percent of the voting "owners of property in said district assessed for the execution of the official plan." 36/

Water distribution districts have the power to issue bonds to finance improvements. The bond issue must be approved by a majority of the electors of the district at a special election immediately after the estimated costs of construction are prepared. 37/

The Board of County Commissioners has decision-making authority for the county water improvement districts and is empowered to issue bonds to finance the improvements without submitting the issue to a special election. 38/

Directors of irrigation districts must have bond issues approved by a majority of the voters in a special election. The statute further specifies the minimum proportion of the bond issue which must be repaid each year and further requires the directors to file an annual report with the State Board of Irrigation on the condition of the work of construction; its capacity, stability, and permanency; whether or not the plans formulated are being carried out; and whether or not funds are available to complete the proposed works. If the annual assessment does not prove adequate, the district may borrow additional funds not to exceed 50 cents per acre of land in the district. 39/

Some constitutional provisions apply to all districts. Districts cannot become indebted for an amount to exceed revenues for 1 year unless three-fifths of the voters approve. Debt can never exceed 5 percent of the value of taxable property in the district. 40/

Other Legal Powers

The corporate powers granted to the districts are summarized in table 3.

All districts have power to (1) carry out and maintain improvements, (2) buy and sell land, and (3) enter into contracts. All districts except drainage districts have power to buy and sell personal property, and sue and

36/ Okla. Stat. Ann. tit. 82, § § 636, 647 (Supp. 1963). 37/ Okla. Stat. Ann. tit. 82, § 741 (1951). 38/ Okla. Stat. Ann. tit. 82, § 821 (1951). 39/ Okla. Stat. Ann. tit. 82, § § 141, 193 (1951). 40/ Okla. Const. art. 10, § 26 (Supp. 1963).

Table 3.--Legal powers, other than financial, granted to special districts through State enabling laws, Oklahoma, 1963

| District | Buy and sell land | Buy and sell personal property | Enter into contracts | Sue and be sued | Eminent domain | Carry out and maintain improvements |
|-----------------------------|-------------------|--------------------------------|----------------------|-----------------|----------------|-------------------------------------|
| Soil and water conservation | Yes | Yes | Yes | Yes | Yes | Yes |
| Master conservancy | Yes | Yes | Yes | Yes | Yes | Yes |
| Conservancy | Yes | Yes | Yes | Yes | Yes | Yes |
| Water distribution | Yes | Yes | Yes | Yes | Yes | Yes |
| Regional water distribution | Yes | Yes | Yes | Yes | Yes | Yes |
| County water improvement | Yes | Yes | Yes | Yes | Yes | Yes |
| Rural water | Yes | Yes | Yes | Yes | No | Yes |
| Irrigation | Yes | Yes | Yes | Yes | Yes | Yes |
| Drainage | Yes | No | Yes | No | Yes | Yes |

be sued. 41/ All districts except rural water districts have the power of eminent domain.

Adequacy of Enabling Laws

Generally, the districts are well equipped with financial and other legal powers. Three instances of inadequacy may be (1) regional water distribution and rural water districts' authorization only to charge user fees; (2) rural water districts' lack of eminent domain powers, which may hamper acquisition of easements for pipelines; and (3) drainage districts' absence of the power to sue and be sued.

Intergovernmental Planning and Cooperation

Intergovernmental planning and cooperation may be between districts, with State agencies, or with Federal agencies.

Cooperation Between Districts

Cooperation between districts is encouraged by the soil and water conservation district enabling statutes. Two or more districts may cooperate in using all of their powers and spending locally earned funds, and may coordinate and assist conservancy districts, watershed associations, and other special purpose districts within the State in promoting the provisions of the Watershed Protection and Flood Prevention Act. 42/

Conservancy and master conservancy districts have the right and authority to enter into contracts and other arrangements with drainage, conservation, conservancy, or other improvement districts in Oklahoma or in other States for the purposes of cooperating or assisting in the construction, maintenance, use, and operation of the works or waters of the district. Conservancy and master conservancy districts may also enter into cooperative arrangements to:

41/ Although specific powers to sue and be sued are not mentioned in the statutes on drainage districts, they have been involved in litigation. County commissioners are the governing body of drainage districts and apparently have used their separate powers as commissioners when engaged in litigation on behalf of drainage districts. See Board of County Commissioners of Lincoln Co. v. Robertson, 35 Okla. 616, 130 P. 947 (1913); Prince v. Wild Horse Drainage Dist. No. 1, 145 Okla. 159, 292 P. 42 (1930); Barrett v. Board of Commissioners of Tulsa Co. 185 Okla. 111, 90 P. 2nd 442 (1939).

42/ Okla. Stat. Ann. tit. 2, § § 804 (D) (7), 813 (Supp. 1963).

(1) Make surveys, investigations, and reports.

(2) Purchase, lease, or otherwise acquire land or other property in adjoining States in order to secure outlets or other works in other States. 43/

Master conservancy districts are singled out with special powers "...to coordinate the operations, works and facilities of two or more Conservancy Districts with each other and with improvements, works, and facilities of the Master Conservancy District." 44/

The enabling statutes of the other special districts being considered do not provide for cooperation between districts. On the other hand, such cooperation is not prohibited.

Cooperation With the State and Its Agencies

Cooperation of soil and water conservation districts and conservancy districts with the State and its agencies is clearly encouraged.

Soil and water conservation districts are authorized to undertake surveys and investigations and develop comprehensive plans in cooperation with the State Soil and Water Conservation Board, the State government or its agencies, or the U.S. Government or its agencies. The State board has broad powers to assist the districts and to coordinate their activities. Agencies having jurisdiction over publicly-owned lands are instructed to cooperate fully with soil and water conservation districts. 45/

The State of Oklahoma is authorized by statute to assist conservancy districts in negotiating agreements with other States or with the United States. In fact, a stream that forms the border for more than 100 miles between Oklahoma and another State may not be organized into a conservancy district until the governments of both States have agreed on the equitable distribution of costs and benefits. 46/

County water improvement districts are authorized to enter into contracts with municipalities for the purchase of water from the municipalities. 47/

Another area for cooperation between the State and districts was created when the 1963 legislature established a Water Conservation Storage Commission

43/ Okla. Stat. Ann. tit. 82, § 576 (Supp. 1963). 44/ Okla. Stat. Ann. tit. 82, § 541 (c) (2) (Supp. 1963). 45/ Okla. Stat. Ann. tit. 2, § 814 (1951), § § 804 (D), 808 (B) (Supp. 1963). 46/ Okla. Stat. Ann. tit. 82, § 576 (Supp. 1963). 47/ Okla. Stat. Ann. tit. 82, § 825 (1951).

to encourage the conservation and storage of water in reservoirs. ^{48/} This commission is a body corporate and politic with power to acquire land and interests in land through purchase, gift, devise, or eminent domain. The members of the State Water Resources Board are the officers of the commission. The commission has the duty of reviewing any project or plan for collecting, storing, or retaining water by any dam, reservoir or other structure constructed by the United States, the State of Oklahoma, or any agency, department, subdivision, or instrumentality of either government. The commission determines if there are surplus waters at the site in excess of the present and future needs of water users of the contributing watershed. If such surplus water exists, and can be included and further developed for domestic, municipal, agricultural, industrial, and other purposes as part of the optimum development of the site, then the commission notifies the agency responsible for planning the site that the storage of such water shall be included in the specifications. The commission negotiates with the water-using group and the Federal Government for reimbursement to the Federal Government of the allocated cost of including the storage in the construction. The commission can, itself, contract with the Federal Government for surplus water storage provided this is allowed by Federal law. If this is not allowed by Federal law, the commission has the authority to issue investment certificates to cover the costs.

This commission is an example of State resource development coordination in a situation where a smaller unit of government is unable to achieve maximum development. It is set up in such a way that the State does not dominate the project, but provides financial assistance and water development planning of a larger scope than an individual unit is capable of handling.

Cooperation With Agencies of the Federal Government

Almost all districts have authority to cooperate with the Federal Government, with soil and water conservation districts having the most extensive authorization. Conservancy, master conservancy, regional water distribution, county water improvement, and irrigation districts have broad authority to cooperate with the Federal Government for construction purposes. Water distribution, rural water, and drainage districts have no statutory direction to cooperate with the Federal Government, although rural water districts may borrow Federal funds.

Soil and water conservation and conservancy districts are in a unique situation because they are inextricably involved in Federal programs such as conservation programs and watershed and river basin projects. These programs

^{48/} Okla. Stat. Ann. tit. 82, § 1351 (Supp. 1963).

require a great deal of intensive planning and coordination, involving perhaps the most extensive intergroup cooperation and review existing in this field. Both types of districts are specifically authorized to qualify as local organizations for Public Law 566 projects which are supervised by the Department of Agriculture. Conservancy and master conservancy districts cooperate with the Department of the Interior. They have broad powers for contracting and negotiating with any Federal or State agency and/or any other public entity in matters relating to water under the district's jurisdiction, except for the sale or use of water outside the State, which must have the approval of the State legislature. 49/

The soil and water conservation districts enabling act requires the districts to cooperate with a higher agency--the State Soil Conservation Board or other State agency--in making surveys and investigations, and also permits them to cooperate with the United States or any of its agencies in such ventures. 50/

Regional water distribution districts are authorized to cooperate with State agencies or with Federal agencies such as the Corps of Engineers, Bureau of Reclamation, and U.S. Department of Agriculture for construction purposes. 51/ County water improvement districts are also authorized to contract with Federal agencies for construction purposes. 52/ Rural water districts are authorized to borrow money from the Federal Government. 53/

Irrigation districts work in close cooperation with the U.S. Government. Provisions allow for close cooperation of the Secretary of the Interior in water rights transfers and certain financial transactions, and in some cases for his supervision of such operations. Districts contracting with the United States have power to acquire real or personal property through purchase, exchange, donation, or condemnation. Another section of the statutes grants the power of eminent domain to irrigation districts without reference to the U.S. Government. 54/

No specific authorization is made for cooperation of water distribution and drainage districts with the Federal Government.

Generally speaking, interdistrict and district-State cooperation are not extensive for districts other than soil and water conservation, conservancy, and master conservancy districts. The cooperation referred to by statute implies planning and coordination of activities. No specific mention is made

49/ Okla. Stat. Ann. tit. 2, § 813.1 (Supp. 1963), tit. 82, § 541.1 (Supp. 1963). 50/ Okla. Stat. Ann. tit. 2, § 808 (B) (1) (Supp. 1963). 51/ Okla. Stat. Ann. tit. 82, § 1258 (3) (Supp. 1963). 52/ Okla. Stat. Ann. tit. 82, § 771 (Supp. 1963). 53/ Okla. Stat. Ann. tit. 82, § 1309 (4) (Supp. 1963). 54/ Okla. Stat. Ann. tit. 82, § § 126, 129 (1951).

of cost-sharing arrangements or joint contracts, except for agreements between districts and the Federal Government.

Adequacy of Enabling Laws

No specific statements are included in the enabling legislation which encourage or require districts to participate in regional planning. Several are authorized to participate in cooperative projects with other districts or the State. Most are authorized to cooperate with the Federal Government on individual projects. Provision for cooperation with the State government was recently strengthened by formation of the Water Conservation Storage Commission and the Governor's Advisory Commission. Cooperation with other districts or governmental units is not barred in any instance.

Project Feasibility Analysis

Analysis of the planning and investigations functions of a proposed district has several dimensions: (1) The stage of organization at which the planning occurs; (2) the way the material is organized and the kind of questions answered concerning the feasibility of creating the district; and (3) provision for public approval of the plans.

Throughout this discussion of project feasibility analysis, soil and water conservation districts have been excluded because of their unique relationship with the State Soil and Water Conservation Board. The board has complete responsibility for accepting organizing petitions and creating the district and undertakes comprehensive planning and investigations of a scope completely beyond that of an individual district.

Preorganization Planning

Some planning prior to submitting petitions for organizational hearings is imperative so that the affected landowners and the hearing court or board can decide whether or not the district should be organized.

For most districts, the preorganization planning required is brief. The statutes frequently prescribe that certain maps indicating the boundaries of the proposed district and other descriptions of the lands involved and works of improvement proposed be presented to the board that hears the organizing petition. Assurances that the proposed work will be conducive to the public health, safety, convenience, or welfare are usually required by the statutes.

In a few cases, more detailed investigations must be undertaken. Drainage district plans, for example, are examined by a set of viewers appointed

by the county commissioners. They view the premises of the proposed drainage line and report whether the proposed improvement is practicable and necessary or of private or public utility and benefit. 55/

When a petition is filed for organizing a regional water distribution district, the Oklahoma Water Resources Board investigates to report (1) whether there are any conflicts with other water districts over which it has jurisdiction; (2) whether the intent of the petition conforms to the enabling law as applied to the area; and (3) whether the organization of the proposed water district would promote the general welfare and be conducive to the purposes of the act. 56/

The Oklahoma Water Resources Board also determines the availability of water supplies for proposed rural water districts. 57/

In two instances, enabling laws give special discretionary powers to the hearing board. For water distribution and irrigation districts, the hearing board may include territory not described in the initiating petition that would be benefited or exclude territory that would not be benefited but might be financially liable. 58/

In 1963, an innovation was made in the Oklahoma legislative and administrative structure which, although outside the range of enabling statutes for special districts, does affect the planning and resource allocation aspects of special districts. A Governor's advisory committee, the State Agency Coordinating Commission, was formed. This is an administrative attempt to get broad coordination of land and water resources development in the State by reviewing projects in the preliminary planning stages. Agencies represented on the commission are the Water Resources Board, Soil and Water Conservation Board, Department of Health, Department of Agriculture, Highway Commission, Wildlife Conservation Commission, and the State Parks Division of the Industrial Development and Park Department.

Post-Organization Planning

Organized districts must undertake more concrete post-organization investigations, however, even though the statutes do not state the minimum planning requirements.

Drainage district enabling statutes detail the duties of a second set of viewers and the county surveyor, who appraise the physical dimensions and

55/ Okla. Stat. Ann. tit. 82, § 302 (1951). 56/ Okla. Stat. Ann. tit. 82, § 1255 (Supp. 1963). 57/ Okla. Stat. Ann. tit. 82, § 1305 (Supp. 1963). 58/ Okla. Stat. Ann. tit. 82, § § 112, 722 (1951).

location of the drain and estimate the costs and apportion them to the land in proportion to anticipated benefits or damages. 59/

Conservancy and master conservancy district plans are reviewed by the court of jurisdiction that originally created the district. Landowners in the district may file objections to the plans prepared by the directors of the district. If the owners of a majority of the land object to the plan, the court may either refer the plan back to the board of directors for amendment or order the district dissolved. 60/

The plans of county water improvement districts may be held up pending public approval. After specifications have been prepared and the directors have passed a resolution to implement them, the resolution is published in a newspaper for 15 days so that any person liable for assessment can file a protest about the plans to the county commissioners. If protests are not filed or are judged insufficient, the directors may continue with their plan of action. However, no course of action is specified for instances where the protests are sustained by the county commissioners. 61/

Organization of Planning and Investigation Reports

A second important dimension in analyzing the planning and investigations functions is the way the material is organized and the kind of questions answered concerning the feasibility of creating the district.

Proposed plans could be coordinated with existing authorities, analyzed to provide some indication of costs and benefits or alternative forms of action, or submitted for public approval. For example, plans for regional water distribution districts and rural water districts must be submitted to a broader agency such as the Oklahoma Water Resources Board to note any conflicts with other agencies, districts, or other planned activities. Such an agency can also provide information that will be useful in the analysis which might not otherwise be available.

The cost-benefit data required by statute for conservancy and master conservancy districts is an example of one kind of analysis. The data accompanying the petitions of these districts for proposed projects are organized in an analytical framework rather than in descriptive narration.

In some cases, material is to be presented in ways that provide alternatives for courts, hearing boards, or the public to make decisions on whether

59/ Okla. Stat. Ann. tit. 82, § 306 (1951). 60/ Okla. Stat. Ann. tit. 82, § 545 (Supp. 1963). 61/ Okla. Stat. Ann. tit. 82, § 791 (1951).

a district should be created or rejected. Data are organized to answer such questions as: Are personnel and financial resources available to carry out the proposed project? What proportion of such resources are already committed for other purposes? What is the capability of the tax base in the area? What is the structure of the existing tax load? Drainage district statutes, for example, require a definitive statement about the existing tax load.

Public Approval of Plans

The third aspect of planning and investigations, public approval of the plans, is allied closely with the concept of democratic processes discussed earlier. In this context, however, public approval is related uniquely to the acceptability of a particular course of action rather than to the concept of the district in general. As discussed previously, conservancy, master conservancy, and county water improvement districts have provisions for particular forms of public approval of the plans. 62/

Districts receiving funds from the Federal Government undertake varying degrees of economic analyses required by the Federal agency administering the funds before grants are made. Standards are set by the Federal agencies and not by the enabling statutes of an individual State. For example, the responsible Federal agency reviews watershed projects which are sponsored by conservancy districts under Public Law 566. Master conservancy districts, similarly, are often organized to manage water supplies from Bureau of Reclamation projects. The organization and initial management activities are closely supervised by experienced Bureau of Reclamation personnel.

Adequacy of Enabling Laws

For the most part, only very brief preorganization investigations are required for establishing special districts unless they are part of broader State or Federal programs. More thorough post-organization planning is required for some districts which coordinate their plans with other districts or agencies, or submit them for public referendum as tests of their acceptability.

Flexibility

The criterion of flexibility as discussed here includes three basic elements: broad enabling functions, amending procedures, and provision for dissolution.

62/ See footnote 60, p. 28.

Broad Enabling Functions

One way of achieving flexibility is for the legislature to pass multi-function statutes. Soil and water conservation, conservancy, and master conservancy districts are formed under multifunction statutes which give the districts a fairly wide range of powers and responsibilities for managing the land and water resources under their jurisdiction.

Opportunities for multiple development of land and water resources exist for soil and water conservation, conservancy, and master conservancy districts. In addition to soil conservation, soil and water conservation districts are charged with "furthering the conservation, development, utilization and disposal of water and other similar features." The conservancy and master conservancy districts have similar powers relating to flood control and development of plans for comprehensive control, regulation, and use of water from streams or watercourses, as well as construction of the necessary improvements. 63/

These powers seem broad enough to cope with conservation, flood control, and water use problems under present day technology and demands. One water use problem not adequately covered is that of recreation as a multiple use of water. Recreational demands have intensified, and recreation as an alternative enterprise for farmers and others is being recognized. Although the enabling statutes do not specify recreation as a purpose for organizing a district, it is a water use which is being considered in watershed development projects. Problems are arising over public rights to ponds created, public access to developments, etc. These questions will have to be settled. One possibility may be for the enabling statutes to specify certain situations where the district will have control over such properties held in the public interest.

Most districts do not have such broad functions. Regional water distribution, water distribution, county water improvement, and rural water districts are mainly single-function organizations. In general, their functions are limited to acquiring, storing, treating, and distributing water for domestic use. Drainage laws apply to every watercourse, canal, etc., that carries surface or flood water, plus all bridges and other structures over such improvements. Irrigation districts may initiate and carry out comprehensive systems of irrigation and land reclamation. The details of what is meant by land reclamation are not specified in the statute. In some ways this portion of the statute could be construed as granting broad functions.

63/ Okla. Stat. Ann. tit. 2, § 808 (B) (3) (1964), tit. 82, § 541 (Supp. 1963).

Amending Procedures

The second important feature of flexibility is amending procedures for adding geographic territory. Frequently, new households or businesses request the district to provide them with facilities. Sometimes, changing technological situations may make it desirable or necessary for an existing district to expand its base of operations to achieve more efficient use of its resources.

Most enabling statutes provide some form of amending procedures for adding additional geographic territory to already organized districts.

For soil and water conservation districts, the procedure for annexing additional territory is the same as for initial formation. Also provided for are shifting territory from one district to another and dividing districts located in more than one county. 64/

Conservancy and master conservancy district laws contain perhaps the widest provisions for annexing territory. Two or more districts wishing to combine may do so through a petition by the board of directors of any one district followed by a district court hearing. The districts may then assume the name of one existing district or may form into subdistricts. An unusual feature of the statutes allows drainage districts to convert to or unite with conservancy districts. Other forms of districts organized for providing ditches, drains, levees, or sewers, or for cleaning drains and water courses, or removing drift may be absorbed into or become drainage districts or subdistricts.

Special provisions for annexing additional land to master conservancy districts permit landowners to petition the board of directors of a master conservancy district to be included in the district. If the proposal is approved by the board, the board holds a hearing and referendum for tax-paying landowners in the territory to be annexed. If the referendum passes by a majority vote, the board of directors must call an election for the entire master conservancy district to approve obligations outstanding, plus those voted but not yet incurred, and ad valorem taxes to be levied on the district as enlarged. 65/

Regional water distribution and rural water districts may annex territory under procedures nearly identical to those for the original formation. 66/

64/ Okla. Stat. Ann. tit. 2, § 805 (H) (1951). 65/ Okla. Stat. Ann. tit. 82, § 666 (1951), § § 663.1, 667 (Supp. 1963). 66/ Okla. Stat. Ann. tit. 82, § § 1263, 1312-14 (Supp. 1963).

Changes in county water improvement districts are effected through subdistricts. A petition is presented to the board of directors, which considers the proposal and reviews plans as in the original formation procedures. Subsequent costs are borne by the land in the subdistrict. 67/

A majority of the landowners of contiguous property adjacent to an existing irrigation district may petition the board of directors of the irrigation district to be annexed. The board of directors holds hearings and submits the proposal to an election in the district. If the district has a contract with the United States, the Secretary of the Interior must approve the change in boundaries. 68/

No provisions are specified for water distribution and drainage districts.

Dissolution Provisions

The third important provision of the flexibility criterion relates to provisions for dissolution or termination.

Special districts are frequently criticized because they cease to function actively but never officially dissolve corporate existence; however, enabling statutes may not provide the necessary legal procedures for terminating a district as an organized entity. For example, a contemporary problem is the rapid expansion of cities into rural territory, which turns irrigated farmland into housing developments. Obviously, the irrigation districts cease to function, but what happens to the indebtedness assigned to the land for the irrigation districts?

In Oklahoma, enabling statutes for all except water distribution and regional water distribution districts specify dissolution procedures.

Landowners in a soil conservation district may petition the State Soil Conservation Board which, after holding public meetings and hearings, may submit the issue to referendum by the landowners. The State board may determine the district to be administratively feasible and order it continued if a majority of the votes cast in the referendum favor continuation. If the district is dissolved, the State board assumes the contracts already in force until they expire, and acts with all authority originally accorded the district supervisors. Proceedings for dissolution cannot take place until the district has been in effect 5 years, and cannot be instituted oftener than at 5-year intervals. 69/

67/ Okla. Stat. Ann. tit. 82, § 831 (1951). 68/ Okla. Stat. Ann. tit. 82, § 212-223 (1951). 69/ Okla. Stat. Ann. tit. 2, § 815 (1951).

No specific authorization is made for dissolution of conservancy and master conservancy districts. However, in two instances the statutes specify certain financial measures in case the district is dissolved. One involves liens created by benefit assessment for bonds outstanding when the district is dissolved. The other allows directors of abandoned flood control projects to sell the lands and other property. 70/ Provision is made, on the other hand, for districts to merge as discussed above under "Amending Procedures."

Complete provision is made for terminating county water improvement districts. Applications to terminate may be initiated by the board of directors or five resident property owners in the district and filed with the district court, which then holds a hearing and approves or disapproves. No referendum is required. If obligations are outstanding, appointment of successor directors may be petitioned by the taxpayers, or a receiver may be appointed by the court to function in place of directors under a continuing proceeding until all obligations are paid. Any excess assets are turned over to school districts. 71/

Irrigation districts may be dissolved through petition to the board of directors, who call an election. Property, including canal franchises, may be sold to pay outstanding debts. In case not enough funds are raised in this manner, assessments continue until the obligations are paid. 72/

Proceedings to dissolve a drainage district which has achieved the purposes for which it was formed may be started by any owner whose lands are affected by the district. The proceedings are initiated through a suit in the district court, with the decision made by the district judge. A drainage district may also be terminated by conversion to a conservancy district. 73/ (See "Amending Procedures.")

The county commissioners have the power to dissolve rural water districts after hearing a petition signed by at least three-fourths of the landowners of the organized district. All debts must have been paid. 74/

Adequacy of Enabling Laws

Most types of districts are limited to a single function, which may hamper efforts for multiple-use development of natural resources. Enabling legislation nearly always prescribes procedures by which an original district can annex land or create subdistricts for new territories. Dissolution procedures are lacking for two types of districts.

70/ Okla. Stat. Ann. tit. 82, § 664 (1951), 631 (Supp. 1963). 71/ Okla. Stat. Ann. tit. 82, § § 856-856 (k) (1951). 72/ Okla. Stat. Ann. tit. 82, § 261 (1951). 73/ Okla. Stat. Ann. tit. 82, § § 446-447 (1951), § § 663.1-663.2 (Supp. 1963). 74/ Okla. Stat. Ann. tit. 82 § 1318 (Supp. 1963).

Reviewing Agencies

Critics of special districts maintain that many are not able, because of their small size, to take advantage of competent, skilled administrators usually available to large, better financed units of government. Because techniques for measuring the efficiency of governmental units have not been developed, it is impossible to substantiate the statement. However, having a staff of trained analysts in a State-level reviewing agency, for example, would make it possible to spot and correct difficult situations. More than that, a reviewing agency would provide a means of achieving some degree of coordination in the programs and policies of autonomous districts resulting in a better allocation of natural resources.

Two basic forms of reporting to a reviewing agency are possible--regular periodic reports of activities, and one-time reports based on special events. Oklahoma enabling acts provide examples of both.

Periodic Activity Reports

The State Soil Conservation Board files with the State Treasurer an annual audit of receipts and disbursements, together with the annual audits of all soil conservation districts. 75/

The major report required for conservancy and master conservancy districts is one on the districts' proceedings, receipts, and disbursements made annually by the board of directors to the "Court," presumed but not specified to be the district court. After the report is made, the court orders an audit by qualified public accountants. 76/

No reports are required of water distribution districts, but the records are open to any elector for inspection during business hours. 77/

Regional water distribution districts are required to report annually to the Oklahoma Water Resources Board. The report must include a statement of the total volume of water contracted for from reservoirs located within the district, plus any other information the Water Resources Board may require from time to time which will be helpful in assisting the district in developing industry to utilize the available water for beneficial use. 78/

75/ Okla. Stat. Ann. tit. 2, § 804 (c) (Supp. 1963). 76/ Okla. Stat. Ann. tit. 82, § 645 (1951). 77/ Okla. Stat. Ann. tit. 82, § 707 (1951). 78/ Okla. Stat. Ann. tit. 82, § 1264 (Supp. 1963).

The boards of directors of county water improvement districts are required to make quarterly reports to the county commissioner. However, the statutes do not specify what subject matter shall be included. 79/

Rural water districts have only to report to their users at an annual meeting. 80/

Periodic reports specified by statute for irrigation districts are (1) the annual report to the Industrial Development and Parks Department on the district's construction progress, completion of plans, and adequacy of funds; (2) monthly financial statements by the county treasurer, as custodian of district funds, to the district's board of directors; and (3) an annual public statement of finances by the board of directors. 81/

No reporting procedures are specified for drainage districts, which are under complete control of the county commissioners.

Special Reports

Some district proposals need approval from higher authority before they can be carried out. For example, plans for proposed construction in conservancy and master conservancy districts must be filed with the clerk of the district court and submitted to a public hearing. The purpose of this procedure is to allow objections to the plan to be filed, rather than for the court to rule on its merits.

A similar procedure is required for districts wanting to borrow money from the U.S. Government or any of its agencies. Applications must be made to the district court and a hearing held to allow objections by the owners of the land on which a majority of the assessment has been made. "...If the Court finds that such loan is necessary and in the best interests of the district, the Court shall approve the application." 82/

Directors of irrigation districts file cost estimates for proposed construction with the Planning and Resources Board (formerly State Board of Irrigation) for their approval before raising the necessary funds. 83/

79/ Okla. Stat. Ann. tit. 82, § 781 (1951). 80/ Okla. Stat. Ann. tit. 82, § 1315 (Supp. 1963). 81/ Okla. Stat. Ann. tit. 82, §§ 141, 192, 276.16 (1951). The annual report is now issued to the Industrial Development and Parks Department. Previously, the State Board of Irrigation and the Oklahoma Planning and Resources Board were the receiving agencies. (See footnote 23, p. 15.) 82/ Okla. Stat. Ann. tit. 82, § 565 (1951), § 647 (Supp. 1963). 83/ Okla. Stat. Ann. tit. 82, § 141 (1951).

Perhaps the widest range of supervision stems from the relationship between the State Soil Conservation Board and the individual districts, since they coordinate their comprehensive planning very closely. 84/

General Review of Supervision

Several State agencies were contacted to determine what reports, if any, they receive from the special districts. No instances of highly developed reporting systems were evident.

The Water Resources Board concentrates on the status of water rights, including the issuing of permits for using water. It comes into contact with the districts only when disputes arise between water users. It does not receive periodic reports, nor does it maintain direct constant supervision over district activities.

According to the Commissioner of Taxation for the State of Oklahoma, the Tax Commission has no connection with the taxing powers of special districts. Any governmental connection, he pointed out, would be at the county level where the responsibility lies for collecting taxes. The State has no supervisory control over county activities in this respect.

Similarly, the Oklahoma Department of Agriculture has no direct review of special district activities, and no supervisory responsibility. The Department is represented on the State Agency Coordinating Commission, and through this group action reviews planning activities of the districts.

Two groups, one State and one Federal, receive periodic reports from special districts. The State Soil and Water Conservation Board receives reports from soil and water conservation districts and their counterpart conservancy districts. The Federal Bureau of Reclamation receives reports from its contracting master conservancy districts. However, the supervisory nature of these two agencies extends far beyond the reports. The State Soil and Water Conservation Board and Bureau of Reclamation both are instrumental in planning, initiating, and organizing the districts as part of larger resource development programs. Following construction of facilities, the districts perform the operating and maintenance functions while keeping in constant touch with the State or Federal agency and utilizing its suggestions.

84/ Okla. Stat. Ann. tit. 2 § 808 (B) (8) (Supp. 1963).

Adequacy of Enabling Legislation

In general, some form of contact with State or Federal agencies for review purposes is required for all districts except water distribution, rural water, and drainage districts.

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