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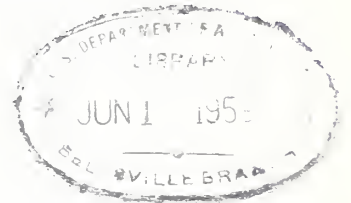
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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Research Service

LOCAL RESOURCE PROTECTION AND DEVELOPMENT DISTRICTS

Statutory Functions and Powers as Related to the Watershed
Protection and Flood Prevention Act

By Robert C. Otte 1/



SUMMARY

The Office of the General Counsel of the Department of Agriculture during 1955 and 1956 conducted a survey to determine what districts are enabled under State laws to cooperate with the Secretary of Agriculture for purposes of Public Law 566 (83d Cong.) and what are the relevant authorized functions and powers of these local districts for protection and development of land and water resources.

Analysis of the survey data, in the light of needed local authority and powers, points to the following conclusions (at the end of 1956):

1. Soil conservation districts in two-thirds of the States have basic legal authority to carry out Public Law 566 projects of limited scope. Lack of adequate legal power to raise revenue and absence of the power of eminent domain, however, will tend in practice to limit soil conservation districts to the carrying out of projects that require only a small local financial contribution and for which sites can be acquired without condemnation.
2. Soil conservation districts in only two States (and in these cases making use of subdistricts) have the financial and condemnation powers necessary to carry out projects requiring a large local financial contribution or having site acquisition problems. In neither of these States, however, does the district have power to borrow or issue bonds; but in one the subdistrict has such powers.
3. A much higher proportion of flood control, multiple-purpose, drainage, and irrigation districts have the powers necessary

1/ Agricultural Economist, Farm Economics Research Division, Agricultural Research Service, U. S. Department of Agriculture.

for projects of larger scope. These districts, however, do not have the facilities for planning and obtaining agreements for carrying out needed land-treatment measures.

4. All this points to cosponsorship or multiple sponsorship as the general practice on projects of larger scope, and such arrangements are likely to present serious problems in coordination and in allocation and acceptance of responsibilities. Controversy over who is to be "chairman of the board" may often so complicate the decision-making process as to stymie good projects.
5. Possible lines of solution to the local organization problem include:
 - a. Creation of a coordinating or "umbrella" agency (State or regional) to strengthen cosponsorship.
 - b. Expansion of the functions and powers of soil conservation districts.
 - c. Soil conservation subdistricts having expanded powers and functions.
 - d. Multiple-purpose districts of the watershed and conservancy type.
 - e. "Tailormade" districts created individually by special acts of State legislatures.
 - f. A State agency having the appropriate powers to function as "local" sponsor.

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INTRODUCTION

The Watershed Protection and Flood Prevention Act (Public Law 566), which was approved in August 1954, authorized the Secretary of Agriculture to assist "local organizations" (including States) in preparing and carrying out plans for works of improvement for flood prevention (including structural and land-treatment measures) and for agricultural phases of the utilization and disposal of water. The act provided that the State or local agency must have "authority under State law to carry out, maintain and operate the works of improvement."

A primary need in the administration of the program, therefore, was to determine whether a "local organization" applying for assistance possessed the required authority under State law. In order to provide a necessary part of the basis for such determinations, the Office of the General Counsel of the United States Department of Agriculture, at the request of the Soil Conservation Service, surveyed the statutes of all the States and summarized the provisions of selected laws concerning the various types of districts authorized to perform functions contemplated under Public Law 566. A summary was prepared for each State and processed copies were issued separately by the Soil Conservation Service during 1955 and 1956.

The present document is a brief summary of the 48 State summaries. Its purpose is to provide an informational overview of the types, functions, and powers of "land and water resource" districts possible under general enabling acts of the States. The overview and analysis also provide some of the basic information necessary for evaluating the strengths and weaknesses of these districts as potential collaborators in a local-State-Federal watershed program.

SCOPE AND LIMITATIONS OF BASIC SUMMARIES

The summaries prepared by the Office of the General Counsel follow a list of topics relevant to Public Law 566 and include only those provisions of the State statutes that are directly related to these topics. The items covered are: Title of the act, purpose of the act, type of local organization, supervision by a State agency, method of creation of the organization, governing body, and the powers of the organization. The general powers covered are: Authority to make contracts, to sue and be sued, to acquire and dispose of lands, to exercise eminent domain, to make investigations and surveys, to carry out works of improvement, to operate and maintain works of improvement, and to cooperate with other agencies. The financial powers include: Authority to levy taxes and/or special benefit assessments, issue bonds, borrow money, receive income from property, and receive money from renting equipment.

The survey by the Office of the General Counsel covered general enabling legislation for districts that potentially could cooperate with the Secretary of Agriculture under Public Law 566 (before the 1956 amendment). No special legislative acts creating individual districts were included; nor were the authorities of counties and municipalities covered, except that six laws relating to counties were included because of their special significance. Some irrigation and flood-control district acts were omitted because apparently they were designed to create districts to cooperate only with the Secretary of Interior or the Secretary of the Army.

For purposes of the present document, the survey by the Office of the General Counsel was supplemented by inclusion of legislation passed after the survey was completed, through the 1956 sessions. A summary of selected items from the supplemented survey (relating only to the authority and powers of the various types of districts) is presented in table 1.

It should be emphasized here that the functions included do not cover all possibilities under Public Law 566 as amended. The Office of the General Counsel selected those functions that would be important under Public Law 566 before that law was amended in 1956. Some districts may engage in functions that are not listed but which may be important under the Act as amended (for example, furnishing water for municipal purposes). Now that the act encompasses municipal and industrial water supplies, water districts in many States may qualify as cosponsors.

TYPES AND FUNCTIONS OF DISTRICTS AND AGENCIES

Most of the statute law included in the survey relates to the following categories of districts: Soil conservation (46); multiple-purpose, including conservancy and watershed (39); flood control (12); drainage (55); and irrigation (14). These types are covered in 166 enabling acts, as amended (table 1). In addition, the survey included acts relating to State agencies (9), soil conservation subdistricts (5), counties (9), an erosion-control district, a drainage subdistrict, and a river-regulating district.

Soil Conservation Districts

Soil conservation district enabling acts of all States, except Connecticut and Arizona, were summarized. (In Connecticut, practically all authority is vested in the Commissioner of Agriculture; and Arizona's legislature in 1954 amended the enabling act to eliminate the authority of districts to carry out preventive and control measures and to build and improve structures.) The Soil Conservation Service accepts applications for assistance under Public Law 566 from soil conservation districts, as sole applicants in many instances, either on the basis of express statutory authorization for the districts to carry out, operate, and maintain works of improvement or on the basis of opinions of State attorneys general that the districts are qualified local organizations for purposes of Public Law 566. Since Public Law 566 was passed, 15 States have amended their enabling acts to broaden in various ways the functional authority of soil conservation districts. One of these, Kentucky, gave broad authorization to subdistricts but left the basic district enabling act unchanged. Altogether, 13 State enabling acts now expressly authorize flood prevention, 16 authorize drainage, and 22 authorize irrigation.

Table 1. - Summary of functions and powers of districts authorized in selected enabling acts of the States, by type of district, as of December 31, 1956

Type of district authorized in enabling act	Number of enabling acts that-																			
	Expressly authorize-	Give general powers to-					Give financial powers to-													
Number of enabling acts	Soil conservation	Flood prevention	Drainage	Irrigation	Acquire and dispose of land	Exercise eminent domain	Make contracts	Sue and be sued	Make investigations and surveys	Carry out works of improvement	Operate and maintain works of improvement	Cooperate with other agencies	Levy taxes	Levy special benefit assessments	Receive income from property	Receive income from renting equipment	Receive money from State	Borrow	Issue bonds	
Soil conservation 1/	46	46	13	16	22	41	3	45	44	2/45	45	44	45	1	2	23	38	39	3	2
Multiple-purpose	39	5	23	3/22	29	4/38	35	39	5/38	37	39	39	34	29	31	19	1	7	26	32
Flood-control	12	1	12	0	0	6/12	12	11	9	12	12	12	7	8	9	1	1	4	1	8
Drainage	55	0	9	55	0	7/51	8/47	55	9/47	52	55	55	10/20	42	53	1	4	9	27	50
Irrigation	14	0	0	2	14	11/14	14	14	12	14	14	14	12/9	10	13	4	0	1	7	13
All types	166	52	57	95	65	156	111	164	150	160	165	164	115	90	108	48	44	60	64	105

1/ Does not include soil conservation subdistricts. See text, pp. 6, 10.

2/ 8 by implication.

3/ In 4 cases, drainage must be incidental to irrigation.

4/ 3 have limited or no authority to dispose of lands.

5/ 1 has no specific authority to be sued.

6/ 6 have no specific authority for disposal.

7/ 14 have no specific authority for disposal.

8/ 1 limited to rights-of-way.

9/ 2 have no specific authority to be sued.

10/ 2 limited.

11/ 1 not specifically authorized to dispose of lands.

12/ 1 limited.

Soil Conservation Subdistricts

Five States - Virginia, Kentucky, Illinois, Iowa, and California - have passed legislation providing for the creation of soil conservation subdistricts. All give subdistricts authority to engage in works for flood prevention. California also included drainage. Kentucky granted power of eminent domain. (Illinois gave condemnation power to the district but not the subdistrict.) California authorized the levying of special benefit assessments, and the other 4 States permit the levying of taxes. Virginia and Kentucky authorized their subdistricts to both borrow and issue bonds. California subdistricts may issue warrants. The other two States granted no power to use credit. These subdistricts are designed to be used in connection with the soil conservation districts; and, in effect, the powers granted to the subdistricts are additions to the powers of the districts.

Colorado law has a provision which, in its operation, is similar to the subdistrict device. Soil conservation districts may levy taxes or assessments on real property in a portion of the district for the installation, maintenance, and operation of flood prevention and watershed improvement measures. This requires a favorable vote of qualified voters within the portion affected.

Other Special Districts

Among the major functions expressly authorized in 39 "multiple-purpose" district enabling acts are irrigation (29 acts), drainage (22), flood control (23), and soil conservation (5). Only one flood-control district act, of the 12 summarized, authorized soil conservation. Just 9 of 55 drainage district acts authorized flood control also; and only 2 of 14 irrigation district enabling acts included express authorization for drainage.

Of the 166 enabling acts of all types, 52 authorized soil conservation functions, 57 flood prevention, 95 drainage, and 65 irrigation. Substantially "comprehensive" authority for multiple-purpose districts for soil and water protection and development functions was found in only two cases. These were watershed districts in Tennessee and Minnesota.

State Agencies

Although the survey by the Office of the General Counsel was directed to local districts, some State agencies were included incidentally. Eight of these - in Connecticut, Vermont, Massachusetts, Ohio, Illinois, North Dakota, Utah, and Louisiana - are authorized to carry out, operate, and maintain works of improvement contemplated under (unamended) Public

Law 566. All except those in Ohio and Utah are specifically authorized to engage in flood-prevention works. Ohio's Division of Water may construct and maintain reservoirs, dams, storage basins, and other improvements, and may cooperate with the United States in matters pertaining to water resources of the State. The Utah Water and Power Board may carry out works of improvement for the development of water resources, including irrigation, drainage, and agricultural water management. The North Dakota Water Conservation Commission and the Louisiana Department of Public Works may also engage in irrigation and drainage activities, and the Illinois Department of Public Works and Buildings may engage in drainage.

In addition, the Water Conservation Board of Montana has broad powers in the water-resources-development field. In the past, it has been concerned primarily with irrigation; but probably it can also carry out, operate, and maintain works of improvement for flood prevention and drainage.

Not all State agencies authorized to engage in such works were covered in the survey, nor were the powers of the included agencies fully explored by the Office of the General Counsel. State agencies differ in nature from local districts, and the laws affecting them are not adapted to the same topical briefing. Practically all these agencies are dependent for funds upon appropriations by the State legislatures. The Commissioner of Agriculture of Connecticut may "require contributions from landowners."

Counties and Municipalities

An important limitation of this survey as a measure of the adequacy of any State's laws for programs under Public Law 566 is the fact that it did not include the powers of counties, townships, cities, and villages to participate in such programs. It did include some powers of counties in five States. In New York, counties may engage in flood-control work and in Ohio and Utah in flood-control and drainage work. Parishes in Louisiana have broad powers in the field of drainage and related activities. Washington law provides for the establishment of improvement districts for drainage, in which the county commissioners exercise practically all the powers for the district.

Since the passage of Public Law 566, three States have granted counties additional powers. Maryland empowered Worcester County to undertake works of improvement under Public Law 566. Nebraska gave counties

authority to appropriate funds for flood-control programs. In Wisconsin, counties and townships were authorized to assist financially in watershed development; cities and villages already had that power. 2/

POWERS OF DISTRICTS

A distinction essential for clarity in this context must be made between (a) a district's general authority to function in a given field (soil conservation or flood prevention or other) and (b) the powers that a district is legally permitted to exercise within an authorized functional field. The powers are tools available for operating, and the potential effectiveness of a district is likely to depend in large part upon the "power tools" available for doing its authorized job.

Brief mention has already been made of powers of soil conservation subdistricts, several State agencies, and counties in several States. It remains to examine some of the key powers of districts that may be created under State enabling acts (table 1).

With few exceptions, the enabling acts for all types of districts expressly or by clear implication grant powers to make contracts, to sue and be sued, to acquire and dispose of land, to make investigations and surveys, and to carry out, operate, and maintain works of improvement. An express or clearly implied power to cooperate with other agencies is given in virtually all the soil conservation and multiple-purpose district acts. The acts relating to flood-control, drainage, and irrigation districts make explicit or definitely implied grants of this power in a much smaller proportion of instances. This lack might often prove to be more apparent than real, however, if a reasonably liberal interpretation of the enabling acts were made.

Considerably more significant is the situation with respect to the power of eminent domain. All but a few of the enabling acts, other than those for soil conservation districts, provide for district exercise of this power. In contrast, only 3 of the 46 enabling acts for soil conservation districts allow the eminent domain power to these districts. The absence of this power indicates an important weakness of the soil conservation district. Without the power of eminent domain, a district is unlikely by itself to prove a most effective local agency for carrying out a sizable project that requires land acquisition by means other than acceptance of donations or genuinely voluntary sale.

2/ Sandals, Kirk M., and Adams, L. M., Progress in State Legislation Relating to the Watershed Protection and Flood Prevention Act, As Amended. U. S. Dept. Agr., Soil Conservation Serv., SCS-TP-126, revised Jan. 1957, p. 3.

Even more significant weaknesses of the soil conservation district are revealed in a tabulation of financial powers. Only 1 of 46 State enabling acts allows a district to levy ad valorem property taxes, and only 2 permit the levy of special benefit assessments. (Subdistricts may levy taxes in 4 States and special assessments in one State.) Similarly, only 3 States permit borrowing, and only 2 allow the issuance of bonds. (Subdistricts may borrow and issue bonds in 2 States and may issue warrants in one State.)

On the other hand, three-fourths of all the other special district enabling acts provide ad valorem tax powers; and 90 percent of them allow special benefit assessments. A little more than half of these acts permit borrowing by the districts, and almost 90 percent allow issuance of bonds.

ALTERNATIVES FOR LOCAL ORGANIZATION

While many States have conservancy or watershed districts which have the powers necessary for the more complex projects, these districts have neither the facilities nor the personnel needed to plan and obtain agreements to carry out the required land-treatment measures. The soil conservation districts, which are set up to work out such agreements, lack essential financial and other powers. A number of ways to meet this difficulty and to deal with related problems are being tried in several States and are under consideration in others.

Strengthening Cosponsorship

Public Law 566 states that any State, political subdivision thereof, soil or water conservation district, flood-prevention or control district, or combination thereof, having authority under State law to carry out, operate, and maintain the works of improvement, meets the definition of a local organization. Cosponsorship is the only alternative when no one agency has all the powers and abilities necessary to carry out a project. However, cosponsorship typically creates or intensifies problems of coordination, and lack of agreement among units of the "local organization" may result in a stalemate. If a decision requires the concurrence of two agencies and one dissents, the result may be no decision.

A possibility for strengthening cosponsorship would be the creation of an "umbrella" or coordinating agency. Iowa and Texas have used informal local steering committees to perform this function. To be effective in complex projects involving diverse and conflicting interests, however, the coordinating agency would have to be granted some authority over the cosponsors. This might be more feasible in the case of special districts

than if counties, cities, and other local units of government were involved as sponsors.

Another difficulty of cosponsorship occurs when cosponsors are not responsible to the same superior agency; for example, when a soil conservation district is affiliated with a State soil conservation committee and a watershed or conservancy district is responsible to a State water board or to a court. An umbrella agency at the local level probably could do little to aid coordination at the State level.

Expansion of Functions and Powers of Soil Conservation Districts

Soil conservation districts could be given the necessary powers and be authorized to engage in additional functions. A number of States have amended their soil conservation district acts to authorize districts to engage in prevention of flood water and sediment damages and furthering agricultural phases of the conservation, development, utilization, and disposal of water. (Two States did not limit the authorization to "agricultural phases.") In the 2 years since the passage of Public Law 566, however, only a few States have increased the powers of soil conservation districts.

Soil conservation districts were originally created to work with farmers on a voluntary basis, and they are still primarily concerned with programs for the control and prevention of soil erosion. State enabling legislation was designed for this purpose. To give soil conservation districts taxing and condemnation powers is not necessary for this function and may not be politically feasible. An alternative would be to enable a soil conservation district, by referendum, to vote itself (perhaps with extraordinary majority) additional functions and powers to engage in Public Law 566 projects. If a watershed area lies in more than one district, however, there might still be problems of coordination similar to those of cosponsorship.

Soil Conservation Subdistricts

Five States have passed legislation enabling the creation of subdistricts. In effect, these subdistricts expand the powers of soil conservation districts for a limited area within districts. In California, Illinois, Iowa, and Virginia, the supervisors of the main district become the governing body of the subdistrict. In Kentucky, a separate board of directors is elected. In Virginia, the district supervisors may appoint three trustees who are owners of land in the subdistrict and may delegate powers to them. Illinois, Iowa, Virginia, and Kentucky provide that their subdistricts may include parts of more than one district. California's law

makes no such provision, and apparently the subdistrict is limited to lands included in one district. In Virginia, Iowa, and Illinois, if the subdistrict includes areas in more than one district, the supervisors of all districts involved become the governing body of the subdistrict. In Colorado, the district supervisors remain the governing body for that portion of the district which votes itself taxes and/or special assessments to finance works of improvement.

Subdistricts would appear to have considerable merit if given sufficient powers and authorized functions. With the same or overlapping membership on governing bodies, there would be fewer problems of coordination. The same would be true at the State level, for both the district and subdistrict would be assisted and given consultation and advice by the same State agency.

Multiple-Purpose Districts

A multiple-purpose district with a broad range of authorized functions and legal powers (and without seriously objectionable administrative features) appears to be well suited for a complex watershed project involving the construction, operation, and maintenance of large structures. Unless such a district were made responsible for working out plans and obtaining agreements for the required land-treatment measures, the soil conservation districts could continue to shoulder these responsibilities. This type of cosponsorship would have fewer problems of coordination than one in which responsibilities for acquisition of sites, financing, and construction, operation, and maintenance of large structures are divided among several local units.

Districts Created by Special Acts of Legislatures

Individual districts may be created by special acts of State legislatures. The 1955 Texas Legislature created three such districts. The procedure has the advantage of making possible the designing of a district for a particular set of needs. This alternative would appear to be best adapted to large, multiple-purpose projects with special problems that cannot readily be resolved under general enabling legislation.

State Agencies

Another alternative is to authorize and empower a State agency to function as either sole sponsor or cosponsor of a "local" project. Such arrangements exist in several States and appear to hold considerable promise, especially when provision is made for State financial participation. The need for an effective local organization, however, is

typically not met just by having a State agency as sponsor or cosponsor of a project. Adequate representation of distinctively local interests and the assumption by direct beneficiaries of appropriate responsibilities for decision-making and cost-sharing will usually require participation by an effective unit of local government.

The proper role of State agencies in a cooperative intergovernmental program for water development and land protection cannot be defined once and for all. One current emphasis is on State technical and financial aid for local projects, to supplement Federal assistance. Another is on the State function of coordination among projects, in line with a State water plan, to achieve orderly and optimum development and protection of a State's resources. When a State recognizes the high importance of its interproject planning and coordinating functions, it should seek to meet these responsibilities without creating unnecessary obstacles and unreasonable requirements for local projects.

