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*Legal Aspects
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Small Watershed
Program in Iowa*

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Agricultural Law Center

COLLEGE OF LAW
THE UNIVERSITY OF IOWA
IOWA CITY, IOWA

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TABLE OF CONTENTS

INTRODUCTION	1
General	1
Historical Aspects—Federal	1
General	1
Flood Control Act of 1936	4
Flood Control Act of 1944	4
General Developments 1950-1953	5
Hope-Aiken Watershed Protection and Flood Prevention Act, P.L. 566	7
1956 Amendments	7
1958 Amendments	8
Amendments, 1960-1962	9
Historical Aspects—Iowa	10
Soil Conservation Districts	10
Flood and Erosion Control Act	12
Soil Conservation and Flood Control Districts Act	12
Iowa Natural Resources Council	13
OPERATION OF THE SMALL WATERSHED PROGRAM IN IOWA	14
Development Phase	14
Application Phase	16
Planning Phase	17
Construction Phase	21
Operation Phase	21
Financing	22
Other Assistance	25
LOCAL SPONSORING ORGANIZATIONS	25
Powers Required by the Act	25
Powers Needed for Effective Operation of the Watershed	27
Power to carry out works of improvement	27
Power to operate and maintain works of improvement	27
Power to acquire and dispose of land	27
Power to cooperate with other agencies	27
Power to make contracts	28
Power to sue and be sued	28
Power of eminent domain	28
Power to levy taxes and assessments	28
Power to incur indebtedness	28
Power to regulate land use	28
Power to accept gifts and grants	29

Special Problems	29
Eminent Domain	29
Land Use Regulations	30
Long Range Financing	30
RECOMMENDATIONS AS TO UTILIZATION OF VARIOUS LOCAL SPONSORING ORGANIZATIONS	31
Soil Conservation Districts	31
Soil Conservation Subdistricts	32
Conservancy District	32
County Board of Supervisors	33
Drainage Districts	33
Waterworks Board of Trustees	34
Municipal Corporations	34
State Conservation Commission	34
County Conservation Board	35
Iowa Highway Commission	35
Other Possible Local Sponsoring Organizations	36
School Districts	36
Park Boards	36
Non-Profit Corporation	37
Table 1 Powers Actually Possessed by Possible Local Sponsor	38-39
Table 2 Present Status of Watershed Program in Iowa and U.S.	40
Watershed Map	41
Table 3 Watershed Status (June 30, 1965)	42-43
Cost Distribution Chart	44
BIBLIOGRAPHY	45

The first part of the report
 deals with the general
 situation of the country
 and the progress of
 the work done during
 the year. It is
 followed by a
 detailed account of
 the various projects
 which have been
 carried out. The
 report concludes
 with a summary
 of the results
 achieved and a
 list of the
 members of the
 committee.

The second part of the report
 deals with the financial
 position of the organization
 and the accounts for the
 year. It is followed by
 a list of the donors
 and the amount of their
 contributions.

The third part of the report
 deals with the work of the
 various committees and
 the progress of the
 various projects. It is
 followed by a list of the
 members of the committees
 and the amount of their
 contributions.

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 deals with the work of the
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 various projects. It is
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LEGAL ASPECTS OF THE SMALL WATERSHED PROGRAM IN IOWA

by

Charles Campbell*, N. William Hines**, and Marshall Harris***

INTRODUCTION

General

The Watershed Protection and Flood Prevention Act¹ P.L. 566, passed by the 83rd Congress in 1954, provides for a "partnership" among the federal government, state government, local communities, and individuals to deal with local water resource problems. The original purpose of the Act was to carry out works of improvement pertaining to soil and water conservation and flood prevention. However, the scope of the Act has been greatly expanded and now includes provisions dealing with nearly the total spectrum of water resource problems; for example, creation of new sources for municipal water supplies and development of recreational areas are now within the purview of the Act.

In view of the scope of the problems covered by the Act, and the importance of these problems to both rural and urban Iowans, Iowa attorneys and others who guide community decisions in these matters should have some awareness of the provisions of the Act and the ways in which it may be utilized. It is the purpose of this monograph to create such an awareness and in addition to provide sufficient detail concerning the operation of the Small Watershed Program to reasonably inform the interested reader.

Historical Aspects—Federal

General

The history of watershed management goes back as far as 1867 when a

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¹ Watershed Protection and Flood Prevention Act, 68 Stat. 666 (1954), as amended, 16 U.S.C. §§ 1001-1008 (1964). (Hereinafter referred to as "the Act" or "Public Law 566.")

A watershed is the total land area above a given point on a stream that contributes runoff to the flow of the stream at that point. SOIL CONSERVATION SOCIETY OF AMERICA, SOIL AND WATER CONSERVATION GLOSSARY, 36 (1952).

Commission appointed by the Wisconsin State Legislature indicated its awareness of the relation between watershed cover and the flow in the streams of the watershed.² Over the years various groups have displayed an increasing awareness of the significance of this relationship. The national forests are one area in which watershed management has received particular emphasis. In the 1897 appropriation for the Department of the Interior, Congress indicated that one of the purposes for which public forest reservations could be established was to secure "favorable conditions of water flows."³ Other Acts of the Congress strengthened this concept, but the Weeks Law of 1911 was the clearest adoption of the principle by its authorization of cooperation between the states "... for the protection of the watersheds of navigable streams. . . ."⁴

During the 1930's the problems of soil and water conservation were vividly brought to the attention of the public. Both state and federal laws were enacted to cope with the problem. One significant step in the area of soil conservation was the establishment of the Soil Conservation Service in 1935. The act establishing the Service declared it to be the policy of Congress to:

... provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors. . . .⁵

To carry out this broad assignment, the Department of Agriculture recommended the establishment of soil conservation districts as legal subdivisions of state government through which the Department could provide the technical assistance necessary to control the problems of erosion. In the words of Dr. W. Robert Parks, President of Iowa State University,

... the thought was that nationwide conservation could be accomplished more effectively, economically, and democratically, if local farmer government were brought into the conservation operation. . . .⁶

The use of the small local units of government gave added flexibility to the national program. The local farmers with their intimate knowledge of the local problems helped shape the broad national program to fit their specific local needs.

An additional factor in selection of the soil conservation district as the key unit in the program was the recognition of the need to secure the enthusiastic participation and cooperation of the local farmer. This was not the type of federal program which could be forced upon the farmer. This

² U.S. DEPARTMENT OF AGRICULTURE, *THE YEARBOOK OF AGRICULTURE* 161 (1955).

³ 30 Stat. 11, 35 (1897); *THE YEARBOOK OF AGRICULTURE*, 161 (1955).

⁴ 36 Stat. 961 (1911), 16 U.S.C. § 3563 (1964).

⁵ 49 Stat. 163 (1935), 16 U.S.C. § 590 (a) (1964).

⁶ PARKS, *SOIL CONSERVATION DISTRICTS IN ACTION* 4 (1952).

"voluntary" theme is a dominant one throughout the conservation area, and an understanding and appreciation of this theme is vital to an understanding of the operation of the small watershed program.

The Department of Agriculture recommended standard state soil conservation enabling acts to aid the states in establishing the necessary local units.⁷ All states have now adopted some form of soil conservation district law and Puerto Rico and the Virgin Islands also have districts.⁸ The functions, powers, and organizational structures vary considerably. It is to be emphasized that the soil conservation districts are subdivisions of the *state* government, over which federal government has no direct control.

Most states adopted some form of the "enabling act method" for establishing their soil conservation districts, leaving the actual formation of the districts to the local communities. For the most part, these districts conform to the boundaries of the county in which they are located.

Once organized, a soil conservation district starts to develop a program and may apply to the Soil Conservation Service for technical assistance.⁹ The Service responds by establishing a technical staff in the soil conservation district. This technical staff, known as a "work unit," normally includes: a work unit conservationist, a farm planner, and their aides. The Service divides each state into areas, with an Area Conservationist in charge of administration of the program in each area. The soil conservation program in each state is supervised by the State Conservationist. Soil surveyors, engineers, and other specialists are included on the area or state staff. All of the full-time employees of the Soil Conservation Service are career civil service employees of the federal government.

It is through the local work unit that the farmer receives technical assistance in solving his conservation problems. This aid may take several forms; for example, preparation of a basic farm plan development of soil and land capability map, information on types of conservation practices needed on each kind of soil, and related technical assistance necessary to carry out these plans and suggestions. Likewise, it is through the work unit that the local farmer receives his assistance and guidance in regard to the small watershed program.

It should be pointed out that no direct financial assistance is available from the Service for the construction of conservation improvements which

⁷ SCS, U.S. DEPARTMENT OF AGRICULTURE, A STANDARD STATE SOIL CONSERVATION DISTRICT LAW (1936).

⁸ "During their legislative sessions from 1955 through 1962, forty-three states enacted laws to further cooperation between State and local agencies and the Secretary of Agriculture in activities authorized by the Watershed Protection and Flood Prevention Act. . . ." SCS, U.S. DEPARTMENT OF AGRICULTURE, STATUS OF STATE LEGISLATION RELATING TO WATERSHED PROTECTION AND FLOOD PREVENTION ACT, *as amended*, 1 (1963).

⁹ 49 Stat. 163 (1935), 16 U.S.C. § 590(a) (1964).

they recommend. Assistance is received through the Agricultural Conservation Program (ACP), administered by the Agricultural Stabilization and Conservation Service.¹⁰ Through the ACP program, the farmer may receive financial assistance with the cost of most conservation improvements.

Flood Control Act of 1936

One of the most significant pieces of legislation pertaining to watersheds enacted during the 1930's was the Flood Control Act of 1936.¹¹ In this Act the federal government recognized for the first time its responsibility for flood control. Thus a new national policy in the area of soil and water conservation was initiated. The new program called for a split of responsibility between the Army Corps of Engineers and the Department of Agriculture. The Department of Agriculture was made responsible for upland treatment of the watershed and flood control through small structures. The Army Corps of Engineers was assigned responsibility for "main stem" activity.

This plan did not prove satisfactory and resulted in little recognizable gain in the area of watershed development. One reason for its failure was the unsympathetic support received from the Public Works Committees of the Congress in regard to program planning and appropriations. Also, the entire initiative for both planning and financing rested on the federal government.¹²

Flood Control Act of 1944

The Flood Control Act of 1944¹³ utilized the authority of the Flood Control Act of 1936 for the first time in relation to watershed development. The Act of 1944 authorized development of eleven watersheds.¹⁴ Included in the eleven were the following:

- (1) Los Angeles River Basin (California)
- (2) Santa Ynez River Watershed (California)
- (3) Trinity River Basin (Texas)
- (4) Little Tallahatchie River Watershed (Mississippi)
- (5) Yazoo River Watershed (Mississippi)
- (6) Coosa River Watershed (Georgia and Tennessee)
- (7) Little Sioux River Watershed (Iowa)
- (8) Potomac River Watershed (Virginia and West Virginia)

¹⁰ 7 C.F.R. § 701 (1965).

¹¹ 49 Stat. 1570 (1936), 33 U.S.C. §§ 701a, b (1964).

¹² Financial Problems of Local Watershed Organizations, Conference sponsored by Iowa Agricultural Law Center and Agricultural Research Service (Land and Water Section) U.S. Department of Agriculture, held at Iowa City, Iowa, Sept. 28-29, 1955.

¹³ 58 Stat. 887 (1944), 33 U.S.C. § 701-1 (1964).

¹⁴ 58 Stat. 905, 33 U.S.C. § 701f nt.

- (9) Buffalo Creek Watershed (New York)
- (10) Middle Colorado River Watershed (Texas)
- (11) Washita River Watershed (Oklahoma)

The authority for the Little Sioux River Watershed contained in this Act constituted the first significant watershed development in Iowa. The Act of 1944 was also significant in that it recognized the development of watersheds as a joint federal and state responsibility. It also recognized the need for "comprehensive and coordinated watershed development."

The period of 1935-1950 was the embryo stage in the development of the small watershed program. As indicated, the Soil Conservation Service was established; the federal government recognized that it had a responsibility for flood prevention; watershed development was given increasing recognition as the means for solving soil and water conservation problems; and Congress made the first significant appropriations for watershed development.

The experience gained with these initial projects, a much more favorable economic climate, and a change in the emphasis on various needs led to a significant change in attitudes toward watershed development following World War II. Emphasis shifted from single-purpose development of watersheds to multipurpose development, taking into consideration the total development of the watershed rather than just one aspect. Some attention was shifted from the river basin to the watershed as the area of primary interest. It was felt that the river basin plans served a useful purpose, but that they failed to meet the needs of the individual farmers. The idea of a joint local-state-federal responsibility in the area of watershed development was also further strengthened during this period.¹⁵

General Developments 1950-1953

Extensive hearings were held on the subject of watershed development in the early 1950's.¹⁶ In 1951 the House Agricultural Committee held hearings in the Midwest on the watershed problem. The conclusions of this Committee were as follows:

First, that our programs for soil and water conservation and for downstream river development and flood protection are closely interrelated and that there is a serious gap in our coordinated attack on this problem.

Second, that gap lies in our approach to the matter of upstream watersheds. The soil conservation and water conservation activities of the Department of Agriculture and the Department of the Interior do not reach far enough downstream and the flood-control activities of the Corps of Engineers do not reach far enough up-

¹⁵ U.S. DEPARTMENT OF AGRICULTURE, *THE YEARBOOK OF AGRICULTURE*, 163 (1955).

¹⁶ H.R. REP. NO. 1140, 83rd Cong., 2d Sess. 2 (1954). Hearings were conducted in regard to proposed agricultural program for the Missouri Basin, H. Doc. No. 373, 81st Cong. (1962).

stream to meet and form a unified program. In between, in the small branches and creeks which form the upstream watersheds, there is a hiatus of authority and a lack of purposeful activity that is to a large extent nullifying both the work being done on major rivers downstream and on agricultural and forest lands above.

Third, it is not necessary to wait until complete plans have been developed for full river valley development before this small watershed work is undertaken. In general, the work which needs to be done to prevent the rapid runoff of water through upstream creeks, branches, and gulleys, will be the same regardless of what the ultimate decision may be as to development of major streams farther down.

Fourth, since from 25 to 75 per cent of all flood damage occurs in these upstream areas, beyond the furthest benefits of the major downstream structures, the planning and installation of these upstream programs and projects should be a cooperative matter between the federal government, the states, local governmental agencies, municipalities, and private citizens and groups of citizens. Each should bear, insofar as possible, an equitable proportion of the cost based upon anticipated benefits.¹⁷

On the basis of these conclusions, a bill to establish a watershed program was drafted and introduced in 1952.¹⁸ Extensive hearings were held, and the bill seemed to receive favorable support from all concerned. However, in the final processes, opposition developed which prevented passage.

The bill was reintroduced in the 83rd Congress in 1953.¹⁹ Again, the bill received favorable endorsement from all interested groups, including President Eisenhower. The President urged passage of the watershed legislation, advocating a “. . . cooperative partnership of the states and local communities, private citizens, and the federal government. . . .” He indicated that the initiative should be on the local citizens:

It is important, too, for groups of farmers bonded together in local organizations, such as soil conservation districts and watershed associations, to take the initiative, with the technical advice and guidance of federal and state agencies in developing adequate plans for proper land use and resource improvement in watersheds throughout the nation.²⁰

Despite this support, the watershed bill failed enactment again.

However, a significant step was taken in 1953 when the 83rd Congress authorized five million dollars for sixty-two pilot watershed projects.²¹ Among these pilot projects were three Iowa watersheds: Mule Creek Watershed in Mills County, Honey Cheek Watershed in Lucas County, and Floyd River Tributaries in Plymouth and Sioux Counties.

¹⁷ H.R. REP. No. 1140, 83rd Cong., 2d Sess. 2-3 (1954).

¹⁸ H.R. 7868, 82nd Cong., 2d Sess. (1952).

¹⁹ H.R. 4877, 83rd Cong., 1st Sess. (1953).

²⁰ H.R. Doc. No. 221, 83rd Cong., 1st Sess., (1953).

²¹ 67 Stat. 205, 214 (1953), 16 U.S.C. § 571b nt.

In 1954 the small watershed bill was once again introduced,²² and with little opposition was enacted in substantially the same form as the 1953 bill.²³

Hope-Aiken Watershed Protection and Flood Prevention Act, P.L. 566

Consistent with the House Report cited earlier, P.L. 566 was designed to bridge the soil and water conservation gap existing between the Soil Conservation Service's work with the individual farmer on land treatment measures and the Corps of Engineers' large downstream dams.

The important features of the Act included the following:

- (1) It authorized cooperative effort by the federal government, state governments, individuals, and local communities to solve flood-prevention and water-management problems through the watershed approach.
- (2) It provided for cost-sharing on an equitable basis.
- (3) It provided for coordination of efforts in the area of watershed development.
- (4) It placed the initiative on the local residents and landowners to implement the program.
- (5) It provided for technical assistance by the U.S.D.A. in planning and putting the watershed program into effect.²⁴

1956 Amendments

Amendments to the Act in 1956 significantly broadened the scope of the program.²⁵ Of particular importance was the provision to "permit the inclusion in reservoirs constructed for flood and sediment detention, of a capacity for municipal and industrial water supplies as well as regulatory capacity for irrigation and other beneficial purposes. . . ."²⁶ Under the Act as originally passed, the Secretary of Agriculture was not authorized to include these features in a watershed plan.

The effects of the amendments were as follows:

- (1) Broadened the scope of the Act to permit inclusion of non-agricultural purposes such as municipal and industrial water supply and streamflow regulation.
- (2) Raised the limit on the total capacity of a single structure from 5,000

²² H.R. 6788, 83rd Cong., 2d Sess. (1954).

²³ 68 Stat. 666 (1954), *as amended*, 16 U.S.C. § 1001-07 (1964).

²⁴ These principles were further emphasized in the rules and regulations promulgated by President Dwight D. Eisenhower. See, Exec. Order No. 10584, 19 Fed. Reg. 8725 (1954).

²⁵ 70 Stat. 1088 (1956), 16 U.S.C. §§ 1001-07 (1964); 70 Stat. 580 (1956), 16 U.S.C. § 1005 (1964).

²⁶ 1956 U.S. CODE CONG. & AD. NEWS 4503.

- acre-feet capacity to 25,000 acre-feet. The flood detention capacity was still restricted to 5,000 acre-feet.
- (3) Required preparation of plans and estimates needed for adequate engineering evaluation.
 - (4) Required allocation of costs to the various purposes of the project.
 - (5) Provided for payment by the federal government of all contract and engineering flood prevention cost.²⁷
 - (6) Required local sponsoring organizations to bear a portion of the cost of irrigation, drainage, and other agricultural water management, the share to be determined equitably considering *direct identifiable benefits*.
 - (7) Required that any costs other than those for flood prevention, irrigation, drainage, and agricultural water management be paid by the local sponsoring organizations.
 - (8) Assigned the local sponsoring organization responsibility for obtaining engineering services. The local organization has an option whether to use private engineering services or those of the U.S.D.A. except that use of private services is mandatory where municipal and industrial water supplies are concerned. (In 1962 the use of private engineering was made optional in all cases; 76 Stat. 609.)
 - (9) Made the Act applicable to water users as well as land owners.
 - (10) Made available federal loans of up to five million dollars, repayable over a fifty-year period.
 - (11) Exempted from review by Congress and other federal agencies any project of less than \$250,000 total federal cost, and which has no single structure with a retention capacity of over 2,500 acre-feet. Those projects with structures with a capacity of 2,500 to 4,000 acre-feet must be approved by the Agricultural Committees of the House and Senate. Those projects with structures of over 4,000 acre-feet capacity must be approved by the Public Works Committees of the House and Senate.
 - (12) Eliminated the forty-five-day waiting period formerly allowed for Congressional review.
 - (13) Extended the provisions of the Act to Hawaii, Puerto Rico, and the Virgin Islands.

1958 Amendments

The two amendments enacted in 1958 provided for inclusion of fish and wildlife development in watershed plans. Specifically, the first amendment

²⁷ President Dwight D. Eisenhower objected to this provision. He felt that the partnership theme should be carried through into the financial aspects of the program, with local interests paying part of the costs in proportion to the benefits they would receive. 1956 U.S. CODE CONG. & AD. NEWS 4838.

authorized the Secretary of the Interior to make surveys in regard to fish and wildlife development in proposed watersheds, and to make recommendations to the Secretary of Agriculture.²⁸ The Secretary of Agriculture is directed to give full consideration to these recommendations. The second amendment authorized payment by the federal government of a portion of the costs allocable to fish and wildlife development and recreational development in a watershed program.²⁹

Before a portion of the cost of fish and wildlife or recreational development cost is chargeable to the federal government, there must be a significant benefit of a national or regional character accruing from such facility.³⁰ In regard to division of costs, Donald Williams, administrator of the Soil Conservation Service, has indicated the following guideline:

The division of costs between federal and non-federal entities should be equitably determined on the basis of the degree and character of the respective interests, and the ability to identify direct beneficiaries.

Where the project is primarily of a local character and where beneficiaries are readily identifiable, the Federal Government's contribution should be limited, with the non-Federal interests bearing a substantial portion of the construction costs of the project as well as the replacement, maintenance, and operation costs.³¹

Amendments, 1960-1962

The Act was amended in 1960 to prevent unnecessary delays because of appeals from condemnation actions.³² Under the Amendment, work can be commenced when an order of taking of possession is issued by a court. Previously, the local organization had to wait for a final adjudication, the condemnation award, and *actual* transfer of title. The Amendment allows the local sponsoring organization to assure the Secretary that they will acquire title in lieu of having actually acquired it.

The 1961 Amendment broadened the scope of possible local sponsoring organizations. The Amendment added to the potential sponsors ". . . any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary."³³

An Amendment in 1962 authorized the Secretary to include public recreational development in watershed projects where there was a demonstrated need.³⁴ It specifically added recreation as a purpose for cost-sharing. Also,

²⁸ 72 Stat. 563, 567 (1958), 16 U.S.C. § 1008 (1964).

²⁹ 72 Stat. 1605 (1958), 16 U.S.C. § 1004 (1964).

³⁰ S. REP. No. 1630, 85th Cong., 2d Sess. (1958).

³¹ Report of Presidential Advisory Committee on Water Resources Policy, 1958 U.S. CODE CONG. & AD. NEWS 4789.

³² 74 Stat. 254 (1960), 16 U.S.C. § 1004(1) (1964).

³³ 75 Stat. 408 (1961), 16 U.S.C. § 1002 (1964).

³⁴ 76 Stat. 605, 608 (1962), 16 U.S.C. § 1004 (1964).

The language of the amendment appears to be quite broad: ". . . [T]he Secretary

the Secretary was authorized to advance funds to local sponsoring organizations for the purchase of land in proposed watershed projects which are threatened with encroachment. It changed the criteria for federal cost-sharing (in other than flood prevention and municipal or industrial water supply developments) from a principle calling for consideration of the direct identifiable benefits, to one of considering the national needs, and the assistance authorized for similar purposes under other federal programs. This change was occasioned by the difficulty in differentiating between direct benefits and public recreation.

The Amendment also permitted deferment of payments for loans on municipal and industrial water supply developments which are undertaken to meet anticipated future needs. Recreational developments were limited by the Amendment to one such development for the first 75,000 acres of watershed area, two for watersheds of 75,000-150,000 acres in size, and three for those over 150,000 acres in size.

Historical Aspects—Iowa

Soil Conservation Districts

As indicated earlier, the Department of Agriculture formulated a model enabling act for soil conservation districts. Many states adopted the model act with little change. Iowa was one of the few states which departed considerably from the Department's model act in enacting the Soil Conservation District Act in 1939.³⁵ The departure was such that the Soil Conservation Service classified the Iowa Act as one under which the soil conservation districts would not:

. . . have sufficient authority to carry out a complete erosion control program. In addition to other defects, those laws contain one common defect, i.e., lack of authority in the districts to conduct a program providing adequately for enforcement of land use regulations. . . .³⁶

As a consequence of this alleged deficiency, the Soil Conservation Service originally denied equipment and planting materials to the Iowa soil conservation districts for a short period of time. The urgent need for maximum

shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is demonstrated in accordance with standards established by him, taking into account the anticipated man days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational developments . . ." However, the Service has construed the language narrowly, and permits recreational development only as a minor purpose in any watershed project.

³⁵ IOWA ACTS 1939 ch. 92, IOWA CODE §§ 467A.1-11 (1962).

³⁶ Memo from H. H. Bennett to Secretary of Agriculture, Dec. 1, 1938, pp. 3 & 4, cited in Parks, *Soil Conservation Districts in Action*, 27 (1952).

agricultural production during World War II forced the Service to relent, and since that time the Iowa districts have not been discriminated against, although they still do not have authority to regulate land use.

The Act which was passed by the 48th General Assembly in 1939 was a broad enabling act.³⁷ The districts could be created on petition of twenty-five landowners (but not less than 20 per cent of the landowners) from the district. The petition is filed with the State Soil Conservation Committee (hereinafter referred to as the Committee), which is the supervisory agency for all of the Iowa districts. The Committee holds hearings, and conducts a referendum which requires a favorable vote by 65 per cent of the *landowners* voting in the proposed district. The districts are governed by three commissioners elected for six-year terms by the landowners and farm operators of the district.³⁸ The districts receive administrative guidance from the Committee.

The Committee consists of six members and a chairman. Statutory members of the Committee are the Director of the State Agricultural Extension Service, and the Secretary of Agriculture or his designee. The Governor appoints five members, each of whom must be a bona fide farmer living on a farm. The U.S. Secretary of Agriculture appoints one person to serve in an advisory capacity, normally the State Conservationist, Soil Conservation Service.

In 1955, the 56th General Assembly enacted an Amendment to Chapter 467A.³⁹ The purpose of the Amendment was to authorize establishment of subdistricts within a soil conservation district or districts. The boundaries of the subdistrict would follow those of the watershed in which it is located, thus crossing county boundary lines where necessary. The subdistrict is governed by the commissioners of the soil conservation districts involved with the aid of three trustees appointed at large from the subdistrict. Financing was accomplished by an annual tax of not to exceed four mills on agricultural land.

The subdistrict law was amended in 1959 to add the power of eminent domain to those powers already possessed by the subdistricts.⁴⁰ The law was amended again in 1961 to give the subdistricts an alternative method of financing.⁴¹ This alternative method was a special benefit assessment, with the assessment levied in accordance with the benefits received.

³⁷ IOWA ACTS 1939 ch. 92, IOWA CODE §§ 467.1-467.11 (1962). At present, Iowa is completely blanketed with districts; ninety-eight counties having one each and Pottawattamie County having two.

³⁸ IOWA CODE § 467A.5-.6 (1962).

³⁹ IOWA ACTS 1955 ch. 225, IOWA CODE §§ 467A.2.,7.,13-20 (1962).

⁴⁰ IOWA ACTS 1959 ch. 317 §3, IOWA CODE § 467.21 (1962).

⁴¹ IOWA ACTS 1961 ch. 246, IOWA CODE §§ 267A.23-41 (1962).

Flood and Erosion Control Act

In 1947, the 52nd General Assembly enacted the Flood and Erosion Control Act.⁴² The primary purpose of this Act was to permit participation in the development of the Little Sioux River Watershed authorized under the Federal Flood Control Act of 1944. Section 467B.1 indicates the scope of the county board of supervisors' authority under the Act:

Whenever any county, soil conservation district, subdistrict of a soil conservation district, political subdivision of the state, or other local agency shall engage or participate in any project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal government, or any department or agency thereof, the counties in which said project shall be carried on shall have the jurisdiction, power, and authority through the board of supervisors to construct, operate, and maintain said project on lands under the control or jurisdiction of the county whenever dedicated to county use, or to furnish financial and other assistance in connection with said projects. Such flood, soil erosion control, and watershed improvement projects shall be presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

One significant aspect of this Act was the provision for a tax of one-quarter mill on all agricultural land within the county.⁴³ The funds so provided were restricted to maintenance of the structures after dedication to county use.⁴⁴

This portion of the Act was amended in 1963 to authorize the use of the quarter-mill levy to "acquire land or rights or interests therein by purchase or condemnation and for repair, alteration, maintenance and operation of the present and future works of improvement."⁴⁵ The money still cannot be used to meet construction costs.

It is to be noted that there is no relation between lands assessed (all agricultural lands in the county) and the benefits received by those lands. The improvement projects are presumed to be for the protection of the tax base of the entire county.

Soil Conservation and Flood Control Districts Act

In 1949, the 53rd General Assembly enacted the Soil Conservation and Flood Control Districts Act.⁴⁶ These districts are commonly known as "conservancy districts." The Act authorizes the county board of supervisors to establish districts having as their purpose soil conservation and the control of flood waters. The Act goes on to specify that these districts have power

⁴² IOWA ACTS 1947 ch. 102, IOWA CODE § 467B (1962).

⁴³ IOWA CODE § 467B.9 (1962).

⁴⁴ *Ibid.*

⁴⁵ IOWA ACTS 1963 ch. 284, IOWA CODE ANN. § 467B.9 (1964).

⁴⁶ IOWA ACTS 1949 ch. 204, IOWA CODE § 467C, §§ 455.9, .18, .47, .51, .56 (1962).

to "... combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects singly or in combination with another. . . ."47 A third provision provided that levee or drainage districts previously established could be combined with the new conservancy districts. The districts are made subject to Chapters 455-457 of the Code of Iowa, pertaining to drainage districts, and thus the provisions of those chapters spell out the mechanical procedures for organizing a conservancy district.

The approval of the districts is handled in a different manner from that used for drainage districts. They must be approved by any soil conservation district which is within the proposed district, by the State Conservation Commission, and by the Iowa Natural Resources Council.

Iowa Natural Resources Council

The Iowa Natural Resources Council was also established in 1949.⁴⁸ The Council was given responsibility for establishing "... a comprehensive state-wide program for the conservation, development and use of the water resources of the state. . . ."49 The Council is authorized to procure and obtain flood control works from and through or by cooperation with the United States, or any agency of the United States. This authority suggests possible conflict between the responsibilities of the State Soil Conservation Committee, the State Conservation Commission, and the Iowa Natural Resources Council. The overlap in duties becomes apparent from a reading of section 455A.36 of the Code:

All works of any nature for flood control in the state, which are hereafter established and constructed, shall be co-ordinated in design, construction and operation, according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. No person shall construct or install any works of any nature for flood control unless and until the proposed works and the plans and specifications therefor are approved by the council. . . . The provisions of this section shall apply to all drainage districts, soil conservation districts, projects undertaken by the state conservation commission, all public agencies including counties, cities, towns and all political subdivisions of the state and to all privately undertaken projects relating to or affecting flood control.⁵⁰

To date, no serious disputes have arisen between the Natural Resources Council and the other agencies. The Attorney General has indicated that any conflict between these agencies should be arbitrated under section 679.19 of the Iowa Code rather than taken to court.⁵¹ The concept of vest-

⁴⁷ IOWA CODE § 467C.3 (1962).

⁴⁸ IOWA ACTS 1949 ch. 203, IOWA CODE §§ 455A.1-.26; 469.1-.3, .9, .10, .15, .21-.24, .26, .29; 108.7; 109.15; 111.4, .18; 112.3, .7 (1962).

⁴⁹ IOWA CODE § 455A.17 (1962).

⁵⁰ IOWA ACTS 1949 ch. 203, IOWA CODE § 455A.36 (1962).

⁵¹ Ops. Att'y Gen., Nov. 5 (Iowa 1963).

ing final authority for planning and coordinating the water resource development of the state in the Natural Resources Council is clearly spelled out in section 455A.2, so it would appear that any conflict would likely be resolved in favor of the Council.

OPERATION OF THE SMALL WATERSHED PROGRAM IN IOWA

Development Phase

As indicated in the previous section, a heavy emphasis is placed on the voluntary aspect of the soil conservation program. This attitude carries over in full measure to the small watershed program. The entire responsibility for developing interest and getting the watershed organized rests with the local residents. Personnel from the Soil Conservation Service and from the Cooperative Extension Service stand ready to assist and provide information, but the real drive must come from the residents of the watershed and the surrounding area.

This interest and drive can be stimulated and marshaled by any one or a combination of several groups including the soil conservation district, the drainage district, the county board of supervisors, the county conservation board, the local chamber of commerce, or local conservation groups such as the Izaak Walton League. In many watersheds, the residents have formed an unofficial *ad hoc* watershed association. This is strictly an informal group which has no legal status. Its primary purpose is to publicize and develop interest in a watershed program for their watershed.⁵²

In this initial stage, much emphasis is placed on publicity. The operation of the program must be explained to all concerned. The objective is to obtain support from a broader group than just those who own land in the watershed. Particularly from the recreation standpoint, the support of the whole community is needed. The need for complete support from the residents of the watershed proper is not to be minimized, as any significant number of dissenters can block the project.

Once the Soil Conservation Service personnel in the Work Unit are persuaded that the people involved have a genuine interest in a watershed project and have adequate support, they will arrange for an informal visit by representatives of the State Conservationist's office. These representatives, normally the watershed planning party leader and soil conservation engineer, will advise whether they think the proposed project is feasible and whether it can meet the requirements of the Act.⁵³

If these representatives feel the watershed will meet the requirements

⁵² Interview with Lyall Mitchell, Area Conservationist, SCS, Fairfield, Iowa, Nov. 24, 1964.

⁵³ Interview with Richard Wilcox, Assistant State Conservationist, SCS, Des Moines, Iowa, Dec. 6, 1964.

of the Act, they so advise the local residents. The local residents must then select a *sponsoring* organization. The local sponsoring organization is a key element in the success of the watershed program. Under the Act, the local sponsoring organization is required to have certain powers, and meet certain requirements.⁵⁴ It will be legally responsible for such things as making the formal application, obtaining necessary land, easements and rights of way, letting contracts for construction, and operating and maintaining the structures after they are completed. Any number of local sponsoring organizations may co-sponsor a given watershed program.

An existing organization may meet the requirements of the Act, and no new organization will have to be formed. On the other hand, an existing organization may lack some of the powers necessary or desirable for a successful watershed, thus making it necessary to form a new organization or to combine several organizations as co-sponsors. The various types of powers needed, and the most desirable combination of organizations will be developed in later sections.

Among the groups authorized to act as local sponsoring organizations in Iowa are the following:

1. Soil Conservation District.⁵⁵
2. Soil Conservation Subdistrict.⁵⁶
3. County Board of Supervisors.⁵⁷
4. Conservancy District.⁵⁸
5. Drainage District.⁵⁹
6. Waterworks Board of Trustees.⁶⁰
7. Municipal Corporations.⁶¹
8. State Conservation Commission.⁶²
9. County Conservation Board.⁶³
10. State Highway Commission.⁶⁴

Local *supporting* groups may also be selected at this point. These groups assume no legal responsibility for the project. Their concurrence in the application merely indicates their "moral" support for the project. The range and depth of support from these groups is a good indication to the Soil

⁵⁴ 68 Stat. 666 (1954), 16 U.S.C. § 1004 (1964).

⁵⁵ IOWA CODE § 467A.7(4) (1962).

⁵⁶ IOWA CODE § 467A.13 (1962).

⁵⁷ Ops. Att'y Gen., July 15 (Iowa 1958), and February 28 (Iowa 1960).

⁵⁸ IOWA CODE ch. 467B, 467C.

⁵⁹ Ops. Att'y Gen., 99 (Iowa 1960).

⁶⁰ Ops. Att'y Gen., April 8 (Iowa 1964).

⁶¹ Ops. Att'y Gen., 99 (Iowa 1960).

⁶² IOWA CODE § 107.24 (1962).

⁶³ IOWA CODE § 111A.4 (2) (1962).

⁶⁴ SCS, U.S. DEPARTMENT OF AGRICULTURE, IOWA'S WATERSHED PROJECTS PROGRESS REPORT, Mill-Picayune Project (1964).

Conservation Service of the breadth of community participation present. Examples of local supporting organizations are:

1. Chamber of Commerce.
2. Conservation groups.
3. Recreation groups.
4. Church groups.
5. Other civic groups.

Application Phase

After selection of the local sponsoring and supporting groups, the formal application is submitted. The application includes:

1. Size and description of the watershed.
2. Description of the watershed problems to be remedied.
3. Extent of the damage.
4. Details of work needed.
5. Information on the local organizations involved.
6. Information on financing of the project.

The application is prepared by the local sponsoring organization, with the help of the local Work Unit. It is then submitted to the State Soil Conservation Committee for review and approval. The Committee uses the following criteria to decide whether the application will be approved:

1. Per cent of watershed land which is under cooperative agreement with the local district, and portion of the needed conservation practices which have been accomplished.
 - a. For watersheds of less than 10,000 acres, 50 per cent of the land area must be under basic farm plans with a major portion of the needed conservation practices applied.
 - b. For watersheds of 10,000 to 25,000 acres, 40 per cent of the land area must be under basic farm plans with a major portion of the needed conservation practices applied.
 - c. For watersheds of 25,000 acres or over, 30 per cent of the land area must be under basic farm plans with a major portion of the needed conservation practices applied.
 - d. When the overall requirement has not been met in (b) and (c), the Committee will consider subwatersheds of not less than 10 per cent of the total watershed if 60 per cent of the land in the subwatershed is under basic farm plans.
2. Leadership within the watershed. Factors include:
 - a. Frequency of board meetings.
 - b. Date organized.
 - c. Delegation of responsibility to board members.
 - d. Setting of annual goals.
 - e. Progress in use of existing facilities and programs.

- f. Extent of farmer understanding of watershed problems and solutions.
3. Extent of damage versus benefits.
4. Extent of cooperation among local groups.
5. Cost of land treatment measures to residents of the watershed. (In other words, the extent of the investment from the farmers' own pockets.)⁶⁵

To assist the Committee in reaching a decision, a Watershed Advisory Board has been established.⁶⁶ This is an informal local procedure used to speed up the processing of applications and to provide the Committee with first-hand knowledge of the watershed and its problems. Membership on the Board varies with the goals of the watershed under consideration. At a minimum, all state and federal agencies which may have an interest in that particular watershed application are represented. This Board uses the factors listed above in making their recommendation to the Committee. The recommendation is based in part on a visit to the watershed area by the Watershed Advisory Board.

If the application is approved by the Committee, it is sent to the State Conservationist. Since he will have been involved in the entire approval process conducted by the Committee, his approval is expected. It takes from three weeks to two months to secure approval from the Committee. The State Conservationist forwards the application to the Administrator of the Soil Conservation Service in Washington, D.C., as soon as he receives the Committee's formal approval. The Administrator acknowledges receipt of the application, and files it as a pending application.⁶⁷

Planning Phase

To assist the Service in its planning activities, the Committee recommends that certain projects be given priority. Once or twice each year the Service presents the Committee with the latest information on all watershed projects for which applications are pending. This information includes:

1. The estimated cost-benefit ratio, i.e., estimated economic potential.
2. The extent of the work accomplished by local residents, especially in the area of land treatment measures.
3. The urgency of the project. For example, the county or state may be planning some road improvements in the watershed area, and it is important that watershed plans be coordinated with those of the county or state.

⁶⁵ Iowa State Soil Conservation Committee, Statement of Factors to be Considered in Regard to Watershed Applications, (May 18, 1960). (An unpublished paper, copy on file in Agricultural Law Center, The University of Iowa, Iowa City, Iowa.)

⁶⁶ Interview with Richard Wilcox, Assistant State Conservationist, SCS, Des Moines, Iowa, Dec. 6, 1964.

⁶⁷ Interview with Richard Wilcox, Assistant State Conservationist, SCS, Des Moines, Iowa, April 13, 1965.

4. The projects which are most nearly ready for assistance. Based on this information, and the factors listed above, the Committee recommends to the Service a group of eight to ten watersheds on which planning should be commenced. The Service is given discretion to choose within this group to facilitate effective administration of their staff.

Preparation of the "work outline" for the development of the watershed work plan is the next step. The work outline is a general schedule of planning activities culminating in the watershed *work plan*. The work plan is the final, formal plan under which the watershed will be developed. In preparing the work outline, the federal time and cost input is estimated for each major phase of the surveys and inspections involved in development of the work plan. A schedule is established for all planning activities, and an estimate made of the time and sequence of these activities. Preliminary cost estimates are developed for the project. These include the federal cost, local cost, and the total cost.

The State Conservationist then submits a Preliminary Examination Report to the Administrator of the Soil Conservation Service in Washington, D.C., requesting that planning assistance be authorized. The report is the State Conservationist's over-all evaluation of the application and the watershed, and includes the watershed work outlines as an enclosure. The Administrator then removes the application from the pending file and reviews it along with the Preliminary Examination Report. If the Administrator authorizes planning assistance, the actual planning is started by the Watershed Planning Party in Des Moines.⁶⁸ This group is jointly financed by the State Soil Conservation Committee and the Soil Conservation Service.⁶⁹

The State Conservationist notifies all interested state and federal agencies of the intent to develop a watershed work plan, and asks for their participation and cooperation. These agencies, together with the Watershed Planning Party, set the work plan objectives. These objectives are the over-all goals of the project and are established in the following terms:

⁶⁸ The Watershed Planning Party is responsible for planning all watersheds in the state. The Party operates out of the office of the State Conservationist in Des Moines. The basic Party consists of:

1. Party leader,
2. Agricultural Economist,
3. Hydrologist,
4. Planning Engineer,
5. Soil Conservationist,
6. Geologists,
 - a. Engineering
 - b. Soils, and
7. Nucleus of a surveying party.

⁶⁹ The Iowa General Assembly appropriates approximately \$50,000 per year for the support of the Watershed Planning Party, IOWA ACTS 1963 ch. 23, IOWA CODE ANN. § 46.23 (1964).

1. Level of flood protection.
2. Extent of irrigation, drainage, and other water development.
3. Extent of recreation, fish, and wildlife development.
4. Extent of municipal and industrial water supply development.⁷⁰

The other federal and state agencies that may be concerned with a watershed project include:

1. U.S. Forest Service.
2. U.S. Farmers Home Administration.
3. U.S. Agricultural Stabilization and Conservation Service.
4. U.S. Fish and Wildlife Service.
5. U.S. Geological Survey.
6. U.S. Bureau of Reclamation.
7. U.S. Public Health Service.
8. U.S. Army Corps of Engineers.
9. Iowa State Conservation Commission.
10. Iowa State Highway Commission.
11. Iowa State Geological Survey.
12. Iowa Natural Resources Council.
13. Iowa State University.

The Watershed Planning Party makes detailed field studies with the assistance of the above organizations to determine the feasibility of the various works of improvement. They also determine whether estimated benefits will exceed the cost of the project.⁷¹ Then the local sponsoring organization, with the assistance of the Watershed Planning Party, studies the various combinations, and determines the most desirable plan.

Preparation of the work plan proper is the next step. The work plan is a very extensive document containing all of the information pertinent to the completion of the project. The work plan includes the following information:

1. Description of the watershed.
2. Description of the watershed problems.
3. Works of improvement to be installed.
4. Costs:
 - a. Local costs
 - b. P. L. 566 costs

⁷⁰ SOIL CONSERVATION SERVICE, Watershed Program under the Watershed Protection and Flood Prevention Act 5 (1963). (An unpublished paper, copy on file in Agricultural Law Center, The University of Iowa, Iowa City, Iowa).

⁷¹ In determining the cost-benefit ratio, the Party normally considers each work of improvement individually. There are some exceptions in cases where a group of improvements are all integral parts of the protection for a given area. The minimum ratio of benefits to cost which the Service will accept is 1.2 to 1.0. This allows for some increase in cost.

c. Other federal costs

d. Total costs.

5. Effect of the works of improvement.

6. Comparison of costs and benefits.

7. Plans for installation of works of improvement.

8. Financing information.

9. A plan for operation and maintenance after construction.

A draft plan is prepared first and includes the following information:

1. Extent of land and water resources protected, and measures to develop them.

2. Cost of the measures.

3. Benefits that will accrue.

4. Arrangements for sharing costs.

5. Arrangements for installation and maintenance.⁷²

This draft is reviewed in the Washington office of the Soil Conservation Service. After it is approved, the local sponsoring organizations, the Soil Conservation Service, and the various state and federal agencies interested in the project conduct an "informal field review." When the parties agree on the details of the project, the final work plan is drafted and signed.

The work plan is presented to the State Soil Conservation Committee for its review by the State Conservationist.⁷³ The State Conservationist has authority to grant final approval to the project if:

1. The federal government's share of construction costs is less than \$250,000.

2. The storage capacity of any one structure does not exceed 2,500 acre-feet.⁷⁴

If the work plan exceeds these limits, it must go through a more lengthy review.⁷⁵ After the Administrator of SCS has approved the plan, it is routed to the Departments of Army, Interior and Health, Education, and Welfare and other concerned federal agencies. They have thirty days to review it. The Soil Conservation Service Administrator then forwards it to the Bureau of the Budget through the Secretary of Agriculture. The Bureau of the Budget submits it to the appropriate committees of Congress. Most work plans are reviewed by the Agriculture and Forestry Committee of the Senate, and the Committee on Agriculture of the House of Representatives. If any single

⁷² SCS, U.S. DEPARTMENT OF AGRICULTURE, MULTIPLE PURPOSE WATERSHED PROJECTS UNDER P.L. 566, 4 (1963).

⁷³ If the Committee does not indicate its approval or disapproval within forty-five days, the Conservationist can proceed with the project.

⁷⁴ Even though the Conservationist is authorized to grant final approval in these cases, the work plan still receives a "technical review" in the Soil Conservation Service Technical Center in Lincoln, Neb., and in the Washington, D.C., office of the Service.

⁷⁵ 68 Stat. 666 (1954), 16 U.S.C. §§ 1002, 1005 (1964).

structure exceeds 4,000 acre-feet of total capacity, the work plan must receive approval of the House and Senate Public Works Committees.

Upon receipt of approval through one of the above methods, federal assistance for accelerated engineering and other technical assistance is authorized. This includes:

1. Technical assistance for land treatment.
2. Engineering assistance for surveys, designs, and specifications.
3. Engineering assistance for project agreements.⁷⁶

Construction Phase

When the work plan is finally approved, the actual construction of the project may start. The local sponsoring organization has the responsibility for obtaining the necessary land, water rights, easements, and rights-of-way. At the present time in Iowa, the practice is to obtain these items through voluntary grants made to the local sponsoring organization without cost.⁷⁷ Some of the local sponsoring organizations have the power of eminent domain and could conceivably obtain the land and rights through condemnation, but they have been very reluctant to use this power for reasons to be developed in a later section.

The local sponsoring organization has the responsibility for letting the contracts for construction and for administration of these contracts.⁷⁸ It may hire a contract administrator to handle this task if it so desires, but this cost must be borne by the local organization.⁷⁹ The Soil Conservation Service will provide engineering personnel to supervise and inspect the construction to see that it meets specifications.

It should be pointed out that the local sponsoring organization can hire an outside engineering firm to handle all phases of the engineering involved in the project if it so desires, and it will be reimbursed for its expenses under the Act. As a practical matter this is rarely done because of the expertise of the Soil Conservation Service personnel in this area.

The local sponsoring organization helps determine which structures will be constructed first. This decision usually depends on the size of the contract that will be involved, and the grouping of the structures involved.

Operation Phase

Included in the work plan are provisions for the operation and maintenance of the works of improvement after construction. This is strictly the re-

⁷⁶ Soil Conservation Service, *supra* note 70, at 7.

⁷⁷ Interview with Richard Wilcox, Assistant State Conservationist, SCS, Des Moines, Iowa, Dec. 6, 1964.

⁷⁸ 68 Stat. 666 (1954), 16 U.S.C. § 1005 (1964).

⁷⁹ Ops. Att'y Gen., May 5 (Iowa 1964).

sponsibility of the local sponsoring organization. The Soil Conservation Service is in fact specifically prohibited from carrying on these activities, except on federal lands.⁸⁰ The presentation of a satisfactory plan for the maintenance and operation of the completed structures is a condition precedent to approval of the work plan. This plan takes the form of a formal written agreement between the local sponsoring organization and the Service.

In practice, the maintenance responsibility falls on the commissioners of the soil conservation district, the trustees of the soil conservation subdistrict, or the county board of supervisors. The county board of supervisors can maintain structures only after they have been dedicated to county use. The powers necessary to carry out this portion of the work plan will be developed more fully in a later section.

One major problem faced in operating and maintaining the structures is the lack of adequate land use regulations. Following the general pattern for conservation programs, the local sponsoring organization relies on voluntary compliance with the agreements and the basic farm plans. If the residents of the watershed fail to carry out proper soil conservation measures, it is possible that the structures will fill up with silt very quickly and their usefulness will be reduced.

Financing

Speaking in general terms, the federal government will bear the entire contract and engineering costs of the installation of structures required for flood protection. For the other phases of the watershed development, the federal government may pay around 50 per cent on some items, and is prohibited from paying any portion of the costs on others.⁸¹

⁸⁰ 68 Stat. 666 (1954), 16 U.S.C. § 1005 (1964).

⁸¹ 68 Stat. 666 (1954), 16 U.S.C. § 1004 (1964).

Federal Costs:

- a. Technical assistance for planning and applying land treatment measures on non-federal land.
- b. A part of the costs, not to exceed the rate provided under other agricultural programs, for certain land treatment measures when specifically authorized by the SCS Administrator.
- c. Installation of land treatment measures on Federal land.
- d. All construction costs allocated to flood prevention.
- e. Engineering and other services allocated to:
 - (1) Flood prevention,
 - (2) Agricultural water management, and
 - (3) Public recreation or fish and wildlife management.
- f. Not more than 50 percent of the construction allocated to
 - (1) Agricultural water management, and
 - (2) Public recreation or fish and wildlife development.
- g. Not more than 50 percent of the engineering and other installation services re-

More specifically, the local sponsoring organization must:

1. Secure necessary land, easements, rights-of-way, and water rights. But if the project involves recreational or wildlife development, the federal government may pay up to 50 per cent of the cost allocated to these items.
2. Pay a proportionate share of the costs of installation applicable to agricultural phases, and recreational or wildlife development. This share is determined by the Secretary of Agriculture on a basis roughly equal to that used in other conservation programs such as ACP.
3. Pay all other installation costs, except those relating to flood control.
4. Arrange for payment of costs of operation and maintenance after construction.⁸²

quired for minimum basic facilities for public recreation or fish and wildlife development.

- h. Not more than 50 percent of land rights required for public recreation or fish and wildlife development.
 - i. Administering contracts on Federal land when awarded by a federal agency for works of improvement for flood prevention. SCS, U.S. DEPARTMENT OF AGRICULTURE, MULTIPLE PURPOSE WATERSHED PROJECTS UNDER P.L. 566, 8 (1963).⁸² 68 Stat. 666 (1954), 16 U.S.C. § 1004 (1964).
Non-Federal Costs, (i.e., non-P.L. 566 costs):
 - a. Installing land treatment measures on non-Federal land.
 - b. Acquiring all land rights except for public recreation or fish and wildlife development.
 - c. At least fifty percent of cost of acquiring land rights for public recreation or fish and wildlife development.
 - d. Acquiring water rights.
 - e. Administering contracts on non-Federal land.
 - f. All construction costs not allocated to
 - (1) Flood prevention,
 - (2) Agricultural water management, or
 - (3) Public recreation or fish and wildlife development.
 - g. At least 50 percent of construction allocated to
 - (1) Agricultural water management, and
 - (2) Public recreation or fish and wildlife development.
 - h. Engineering and other installation services not allocated to
 - (1) Flood prevention,
 - (2) Agricultural water management, and
 - (3) Public recreation or fish and wildlife development.
 - i. At least 50 percent of the engineering and other installation services required for minimum basic facilities for public recreation or for fish and wildlife development.
 - j. Operating and maintaining works of improvement on non-Federal land.
 - k. An equitable share of costs of operating and maintaining works of improvement on Federal land in consideration of the benefits that accrue to non-Federal land. SCS, U.S. DEPARTMENT OF AGRICULTURE, MULTIPLE PURPOSE WATERSHED PROJECTS UNDER P.L. 566, 7 (1963).

In two situations it is possible for the local sponsoring organization to obtain advances from the Secretary of Agriculture to help finance the project. Advances may be obtained when necessary to preserve future construction sites and for development of municipal or industrial water supplies for which a future need is shown.⁸³ In the latter case, the local sponsoring organization can get up to 30 per cent of the cost of any reservoir having as one of its purposes future municipal or industrial water supply development. The advances are made through the Farmers Home Administration and must be repaid within ten years with interest.

In addition, loans can be made by the Farmers Home Administration to assist the local sponsoring organization in meeting its share of the costs. The maximum amount of the loan for one project is five million dollars. The local sponsoring organization has a maximum of fifty years to repay the loan at a reduced interest rate.

Local sponsoring organizations in Iowa have several other methods of financing their share of the cost. Included in these methods are: the quarter-mill levy,⁸⁴ the four-mill levy,⁸⁵ the special benefit assessment,⁸⁶ and voluntary contributions.⁸⁷

The quarter-mill levy method is utilized most in Iowa. Under this procedure, the county board of supervisors may levy a tax of not to exceed one-quarter mill annually on all of the agricultural lands in the county. The attractiveness of this method is the relative ease with which it can be implemented. Basically, all that is required to put it into effect is a resolution by the county board of supervisors.

In contrast to this method, the four-mill levy on all agricultural lands within the soil conservation subdistrict provides a possibility of better financing, but it is much more difficult to obtain. The difficulty lies in the procedure for creating a subdistrict. A petition signed by 65 per cent of the landowners is required to start the procedure. Among the other requirements are provisions for notice to all landowners and a public hearing. A lengthy title search is often necessitated.

Under the special benefit assessment, the landowners are taxed in accordance with the benefits accruing to their land. The voluntary contribution method consists of outright gifts to the local sponsoring organization. This method is the one used to obtain easements, water rights, and so on. These methods will be discussed in more detail in a later section.

⁸³ 68 Stat. 666 (1954), 16 U.S.C. § 1006a (1964).

⁸⁴ IOWA CODE § 467B.9 (1962).

⁸⁵ IOWA CODE § 467A.20 (1962).

⁸⁶ IOWA CODE § 467A.23 (1962).

⁸⁷ IOWA CODE § 467A.7(5), (10) (1962).

Other Assistance

Other assistance available to the local sponsoring organization includes:

1. Educational assistance from the Cooperative Federal-State Extension Service.
2. Agricultural Conservation Program cost sharing.
3. Credit from the Farmers Home Administration.
4. Farm-forestry assistance under the Cooperative Forest Management Act.
5. Protection of forest areas from fire, insects, and diseases under cooperative programs authorized by the Clarke-McNary Act, Forest Pest Control Act, and White Pine Blister Rust Protection Act.
6. Assistance in recreation and fish and wildlife development from the Fish and Wildlife Service, the Bureau of Outdoor Recreation, and state recreation and fish and game agencies.
7. Technical, cost-sharing, and credit assistance from the U.S. Department of Agriculture authorized by the Agricultural Act of 1962 for income-producing recreation developments on rural land, the Cropland Retirement Program, Resource Conservation and Development projects, and the Rural Renewal Program.
8. Protection and treatment of federal land in the watershed by land-managing agencies.
9. Collection of basic data by research agencies.⁸⁸

LOCAL SPONSORING ORGANIZATIONS

Powers Required by the Act

The Watershed Protection and Flood Prevention Act specifically requires that local sponsoring organizations have the following powers:

1. To acquire land, easements, and rights-of-way needed for structures or other improvements on private land.⁸⁹
2. To construct improvements or let contracts for construction on private property.⁹⁰
3. To "obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands to be situated in the drainage area above each retention reservoir to be installed with Federal assistance."⁹¹

⁸⁸ SCS, U.S. DEPARTMENT OF AGRICULTURE, MULTIPLE PURPOSE WATERSHED PROJECTS UNDER P.L. 566, 11 (1963).

⁸⁹ 68 Stat. 666 (1954), 16 U.S.C. § 1004(1) (1964).

⁹⁰ 68 Stat. 666 (1954), 16 U.S.C. § 1005 (1964).

⁹¹ 68 Stat. 666 (1954), 16 U.S.C. § 1004(5) (1964).

4. To fully comply with state and local laws governing watershed improvements.⁹²
5. To assume proportionate share of costs of installing works of improvement where applicable.⁹³
6. To make satisfactory arrangements for operation and maintenance of works of improvement.⁹⁴
7. To "acquire or provide assurance that landowners or water users have acquired such water rights pursuant to state law, as may be needed in the installation and operation of the work improvement."⁹⁵

The plural of the word organization is used advisedly here, because the Act does not require that any one organization possess all of these powers. Two or more applicants will qualify if their combined authority under state law is sufficient to accomplish all of the works of improvement indicated in the application.⁹⁶ Likewise, the local sponsoring organization does not have to have all of these powers if the project can be accomplished without them. The organization needs only sufficient authority to carry out, maintain, and operate the works of improvement contemplated in the application.

Often the question at issue is whether the local sponsoring organization has sufficient legal power under state law. In addition to the soil conservation districts and subdistricts,⁹⁷ the following organizations possess sufficient legal power to act or assist as a local sponsoring organization:

1. County Boards of Supervisors.⁹⁸
2. Waterworks Boards of Trustees.⁹⁹
3. Municipal Corporations.¹⁰⁰
4. State Conservation Commission.¹⁰¹
5. County Conservation Board.¹⁰²
6. State Highway Commission.¹⁰³
7. Drainage Districts.¹⁰⁴

⁹² 68 Stat. 666 (1954), 16 U.S.C. § 1002 (2) (1964).

⁹³ 68 Stat. 666 (1954), 16 U.S.C. § 1004 (2) (1964).

⁹⁴ 68 Stat. 666 (1954), 16 U.S.C. § 1004 (3) (1964).

⁹⁵ 68 Stat. 666 (1954), 16 U.S.C. § 1004 (4) (1964).

⁹⁶ 68 Stat. 666 (1954), 16 U.S.C. § 1002 (2) (1964).

⁹⁷ IOWA CODE § 467A.7(4), (22) (1962).

⁹⁸ Ops. Att'y Gen., May 2 (Iowa 1963).

⁹⁹ Ops. Att'y Gen., April 8 (Iowa 1964).

¹⁰⁰ Ops. Att'y Gen., 99 (Iowa 1960).

¹⁰¹ IOWA CODE ANN. § 107.29 (Supp. 1964).

¹⁰² IOWA CODE ANN. § 111A.4(9) (Supp. 1964).

¹⁰³ SCS, U.S. DEPARTMENT OF AGRICULTURE, IOWA'S WATERSHED PROJECTS PROGRESS REPORT, MILL-PICAYUNE PROJECT (1960).

¹⁰⁴ Ops. Att'y Gen., 99 (Iowa 1959). By inference, at least, it would appear that conservancy districts would be similarly approved because their powers are identical to those of drainage districts.

8. School Districts.¹⁰⁵

It should be noted that this determination does not include the question of the financial ability of the prospective local sponsoring organization to carry out the necessary works of improvement. That question is considered one for administrative determination by the State Conservationist.

Powers Needed for Effective Operation of the Watershed

Power to carry out works of improvement

The Act specifically prohibits the Secretary of Agriculture from constructing or entering into any contract for the construction of any structure on non-federal land.¹⁰⁶ Thus, it would be impossible to carry out any watershed plan unless the local sponsoring organization has the power to construct the works of improvement or to let contracts for their construction. The phrase "carry out" is used here to emphasize the fact that not all works of improvement require construction in the normal sense of the word. For example, one would not think of the seeding of a grassed waterway as construction, yet this is considered a work of improvement.

Power to operate and maintain works of improvement

The Act specifically requires that the local sponsoring organization make satisfactory arrangements for the operation and maintenance of the works of improvement after completion.¹⁰⁷ As noted earlier, construction cannot be commenced until an agreement is reached with the Service in this respect. This does not mean that the local sponsoring organization has to have the power to actually perform the operation and maintenance. It is sufficient if the local sponsoring organization can arrange to have the work done.

Power to acquire and dispose of land

Inasmuch as the entire responsibility rests with the local sponsoring organization for obtaining necessary land, easements, water rights, and rights-of-way, this power is essential.

Power to cooperate with other agencies

Throughout the development of any watershed it is necessary for the local sponsoring organization to enter into numerous agreements with other agencies, and with individuals. Agreements are made with the Service concerning allocation of costs, preparation of the work plan, operation and

¹⁰⁵ Ops. Att'y Gen., April 8 (Iowa 1964).

¹⁰⁶ 68 Stat. 666 (1954), 16 U.S.C. § 1005 (1964).

¹⁰⁷ 68 Stat. 666 (1954), 16 U.S.C. § 1004(3) (1964).

maintenance, and in regard to many other matters. Also, agreements must be made with other local agencies and individuals in regard to financing.

Power to make contracts

This power is necessary to make the local sponsoring organization effective in regard to construction and other duties. The primary need for this power is with respect to construction, but it is also important in the area of finance and land acquisition and use.

Power to sue and be sued

Businessmen and contractors would be reluctant to deal with the local sponsoring organization if it was not capable of being sued. Likewise, the local sponsoring organization should certainly have authority to sue in its own name to enforce its contracts.

Power of eminent domain

The condemnation power is another important power. However, the power is not absolutely vital if the local sponsoring organization can acquire the necessary land, easements, etc., by purchase or gift. Clearly, the local sponsoring organization will be much more effective in acquiring the needed rights if it does possess this power. The threat of the exercise of this power can be quite persuasive in purchase negotiations.

Power to levy taxes and assessments

There are really three areas in which the local sponsoring organization needs this power. They include: initial organizational expenses, local share of construction costs, and costs of operation and maintenance. The power is most essential to the latter two areas. The taxing power can vary from a county-wide tax on all agricultural lands to one which just permits taxing of lands within the watershed. The power to levy assessments would normally take the form of a special benefit assessment whereby the cost to the individual landowner is directly related to the benefit which he receives.

Power to incur indebtedness

On projects involving high construction costs to the local sponsoring organizations, the power to incur long range indebtedness is vital. Some form of bonding authority works best. However, any form of long-term borrowing would fill the need. This permits the individual landowner to pay his share over a period of years.

Power to regulate land use

Although this power is not required in order to receive approval as a local

sponsoring organization, it is certainly desirable. Otherwise the life of the various works of improvement may be materially reduced, if not rendered totally ineffective. An example would be the farmer above the work of improvement who fails to plow on the contour in accordance with his basic farm plan. Unless the local sponsoring organization can force him to fulfill his agreement in regard to land use, the structure or work of improvement may be filled with silt in short order.

Power to accept gifts and grants

This power is necessary in order to permit the local sponsoring organization to receive assistance from the federal government as provided by the Act. Likewise, it must be able to accept grants from the state government. The power is most important in providing for organizational expenses and in obtaining needed property and water rights.

Special Problems

Eminent Domain

The biggest difficulty with the power of eminent domain is the pronounced reluctance of local sponsoring organizations which clearly possess the power to use it. This attitude is partially derived from the long history of the voluntary basis for the soil conservation movement. The prevailing attitude is that the local sponsoring organization would rather "wait out" a recalcitrant landowner than exercise the power of eminent domain.¹⁰⁸

A more practical reason for the reluctance to use this power is the fear that it will result in greatly increased costs for acquisition of rights-of-way and easements. Up to the present time in Iowa, these rights have always been given to the local sponsoring organization without reimbursement. It is feared that once eminent domain powers are used, more owners will hold out for compensation. This would directly increase the cost of the improvement to the sponsoring organization as the federal government does not pay any portion of the cost of land acquisition for most projects.

Another reason for the non-use of condemnation is related to the importance of assuring proper conservation practices in the watershed above each structure. If an easement is forced upon him by eminent domain, the upper landowner may be antagonized and uncooperative in carrying out conservation practices on the land above the structure. This is especially true where a body of water is impounded that is susceptible to siltation problems.

In 1959, the Iowa Legislature empowered soil conservation subdistricts to

¹⁰⁸ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, December 6, 1964.

condemn “. . . land or rights or interest therein.”¹⁰⁹ It would appear that this was a “round-about” way of giving the soil conservation district commissioners the power of eminent domain, over their objection. However, many officials felt that it was essential to the success of the watershed program for one of the customary local sponsoring organizations to have this power clearly spelled out, even though it would not be widely used. It was felt that the mere existence of the power would be very helpful in negotiating for property rights.¹¹⁰

A case in point is the Rocky Branch Watershed. Of a total of twenty-one planned structures, thirteen have been completed. The other eight are being held up by lack of easements from four land owners, yet the district commissioners will not exercise the power of eminent domain. The plan is to “wait out” the present owners, rather than exercise eminent domain powers against them.¹¹¹

Land Use Regulations

The suggested act for establishing soil conservation districts (promulgated by the U.S. Department of Agriculture) contained a provision for land use regulations. However, the desire to make the conservation program strictly voluntary apparently prevailed in Iowa, as this section was omitted from the Iowa act.

Little use has been made of the power to regulate land use in those states which did include this power in their acts. California and North Dakota are the principal users of the power. In those states, it has been used to prevent over-grazing of land, primarily by *absentee* landowners.

Currently the State Conservationist is seeking to strengthen the program in this area. Plans are now being made to include a land improvement schedule and other specific requirements in the Basic Farm Plan. If the schedule is not met, no structures will be built. Also, the suggested easement forms used by the Service are being re-drafted with a view to making them more effective in protecting the useful life of the improvement.¹¹²

Long-Range Financing

At the present time no low-cost, long term financial aid is being used in small watershed projects, although some federal long term loans are available under certain circumstances. The primary reason for this non-use is

¹⁰⁹ IOWA ACTS (1959) ch. 317 § 3, IOWA CODE § 467A.21 (1962).

¹¹⁰ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, Dec. 6, 1964.

¹¹¹ Interview with Lyall Mitchell, Area Conservationist, Soil Conservation Service, Fairfield, Iowa, Nov. 29, 1964.

¹¹² Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, Dec. 6, 1964.

the FHA requirement that the local sponsoring organization be unable to obtain regular commercial financing. Since most of the local sponsoring organizations would be able to obtain a commercial loan if desired, they do not qualify for the FHA type loan. The State FHA office has received some inquiries from the local sponsoring organizations, but none have submitted applications.¹¹³

The solution to the problem would seem to be some type of bonding program through the local sponsoring organization or some long-term assistance by the state government. The bond program could be set up in such a manner that the debt could be paid off through an annual tax. As a practical matter, however, the quarter-mill and four-mill levies would ordinarily not be sufficient for this purpose.

RECOMMENDATIONS AS TO UTILIZATION OF VARIOUS LOCAL SPONSORING ORGANIZATIONS

Soil Conservation Districts

The State Soil Conservation Committee takes the position that it is very desirable to include a soil conservation district as one of the local sponsoring organizations in each watershed project. This is a local preference and is not required by the Act.¹¹⁴ Because all areas of Iowa are currently included within a soil conservation district, this requirement presents no particular problem.

The major advantages to be gained through the use of the soil conservation district is that it broadens the base of support for the watershed project. The district commissioners already have a strong interest in conservation and will most likely be strong supporters of the watershed project. In addition, the corporate powers of the soil conservation districts are spelled out more clearly than are those of most other local sponsors.

The major difficulties with the soil conservation district as a local sponsoring organization are its lack of taxing power and its lack of the eminent domain power. Basically, the only way by which a soil conservation district can finance a watershed project is through gifts and grants, or through contributions from the landowners. One commentator feels that the soil conservation district does have the power of eminent domain under section 455A.31 of the Code of Iowa (1962).¹¹⁵ Since the soil conservation district

¹¹³ Interview at FHA office, Des Moines, Iowa, Dec. 6, 1964.

¹¹⁴ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, Dec. 6, 1964.

¹¹⁵ HOWARD, Introduction to a Watershed Program 24 (1958). (An unpublished paper, copy on file in Agricultural Law Center, College of Law, University of Iowa, Iowa City, Iowa.)

is a political subdivision of the state government, it would appear to meet the language of this section. However, the question has never been litigated, and there has been no occasion for an attorney general's opinion on the subject. It is the opinion of the Soil Conservation Service officials that soil conservation districts do not have this power.¹¹⁶

Soil Conservation Subdistricts

No application approved to date has included a soil conservation subdistrict as a local sponsor. It is not clear why this organization has not been used as a local sponsor. One explanation might be that owing to the difficult procedure required to create the subdistrict, they are usually not formed until after the watershed has been organized and approved. One major reason for including a subdistrict as a sponsor is to provide for maintenance of the works of improvement after their construction.

The petition to form a subdistrict must be signed by 65 per cent of the landowners in the subdistrict.¹¹⁷ Notice must be given ". . . to the owners of each tract of land, or lot, . . . each lienholder, or encumbrancer, . . . and to all other persons whom it may concern. . . ."¹¹⁸ This requirement will involve an extensive and expensive title search in most cases.

These difficulties must be weighed against the advantages of the subdistrict. The advantages being the power of eminent domain,¹¹⁹ the power to make special benefit assessments, and the power to levy a tax of not to exceed four mills on all agricultural lands within the subdistrict.¹²⁰ Powers such as these are very important to the success of a watershed.

Conservancy District

To date no P.L. 566 application in Iowa has named a conservancy district as a local sponsoring organization. This is undoubtedly attributable to the fact that only two such organizations exist in the state.¹²¹ The conservancy district has a broader range of functions than any of the other possible local sponsors, including soil conservation, drainage, and flood prevention.¹²² However, it does not possess any significant power not readily available through other local sponsoring organizations.

¹¹⁶ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, April 13, 1965.

¹¹⁷ IOWA CODE § 467A.14 (1962).

¹¹⁸ IOWA CODE § 467A.15 (1962).

¹¹⁹ IOWA CODE § 467A.21 (1962).

¹²⁰ IOWA CODE § 467A.20 (1962).

¹²¹ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, April 13, 1965.

¹²² IOWA CODE § 467C.3 (1962).

Should it be desirable to form a conservancy district for some reason, it should be noted that the organizational procedure is the same as that for creating a drainage district. Two methods are available for forming the district. The first is the "legal petition method."¹²³ This method is extremely expensive and time consuming. The second method is known as the "consent method."¹²⁴ This method is much easier to use and could be quite useful where there are a small number of landowners and all are in agreement with the proposed watershed project.

County Board of Supervisors

The county board of supervisors has been included as a sponsor in most of the watershed projects in Iowa. The extensive use of this organization is due in part to its power to levy a tax of one-quarter mill on all agricultural lands in the county. The county can use this money to acquire property rights and to maintain and operate works of improvement *after* dedication to county use.¹²⁵ Because of the equipment and manpower under its control, the board offers great advantages in carrying out maintenance agreements. The board's principal drawback is its lack of eminent domain power as it relates to watershed development.

The Service and the State Committee treat the applicable drainage districts and the county conservation board as co-sponsors if the county board of supervisors is named as a sponsor. This is because the supervisors are in effect the governing body of these organizations.¹²⁶

Under present law, the county board of supervisors should be included in all watershed projects. At a minimum, the board should be included where the watershed plan involves recreational areas within the county, county roads and bridges, and whenever any other county lands are affected.

Drainage Districts

The drainage districts lying within a watershed should be included specifically as a local sponsoring organization when drainage is a specified purpose of the watershed project. (Drainage may be the sole purpose of a watershed as it is in the Beaver Watershed in Webster County.) Where drainage is a purpose, at least a portion of the local costs for the project may come from drainage district warrants and bonds. This would appear to be a very desirable method of financing a portion of the watershed proj-

¹²³ IOWA CODE ch. 455 (1962).

¹²⁴ IOWA CODE § 455.152 (1962).

¹²⁵ IOWA CODE § 467B.1 (1962).

¹²⁶ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, April 13, 1965.

ect. In general, the drainage district should be included as a local sponsor whenever the purpose of the watershed will justify it.

As with the conservancy district, there are two types of drainage districts, legal¹²⁷ and mutual consent,¹²⁸ the organization taking the name of the method by which it is formed. The legal district is rather cumbersome to establish because it requires an extensive engineering report *prior* to its establishment. The mutual consent district is basically a voluntary organization requiring unanimous consent of the landowners involved. Contrary to the situation in regard to conservancy districts, in many watersheds, drainage districts may already be established, so the organizational difficulties are not important.

Waterworks Board of Trustees

Where it is possible to include development of a water supply (present or future) as a purpose of the watershed, consideration should be given to including the waterworks board of trustees as a local sponsoring organization. The waterworks board usually has a close familiarity with local conditions.

Use of a work of improvement as a water supply will probably limit some of the other uses for the improvement. For example, the variety of the recreational uses will likely be curtailed. In some cases this conflict may require a choice between one purpose or the other.

Municipal Corporations

Where the local water plant is operated by the city, instead of the waterworks board of trustees, the city should be included as a local sponsor. In addition, the municipal corporation should be included where recreational purposes are included in the watershed plan. This is especially true where there is no independent park board for the community. Another situation in which a municipal corporation should be included is where the watershed project will result in flood control benefits to the city. The major advantage offered by including a city or town as a sponsor is the expanded base of public support involved.

State Conservation Commission

The State Conservation Commission should be included as a local sponsor where the recreational benefits of the project will inure on a state-wide basis, or at least to an area wider than the local unit of government. This is also true where fish and wildlife development is included as a purpose of the project and the development will benefit a wide area of the state.

¹²⁷ IOWA CODE ch. 455 (1962).

¹²⁸ IOWA CODE § 455.152 (1962).

Inclusion of the State Conservation Commission permits planning of recreational projects on a state-wide basis with some degree of forethought. In this way, maximum utilization can be made of the state's resources. Likewise, when the benefits from a watershed would inure to residents of nearby states, the State Conservation Commission is the organization best equipped to co-ordinate the efforts of this state with those of other states.

County Conservation Board

When the benefits from recreation or wildlife development will accrue primarily within one county, that county's conservation board should be a local sponsor. Having close contact with the local people it can better assess the needs and desires of the residents.

The county conservation board should be specifically included as a local sponsor even though the county board of supervisors is also a sponsor where recreational or fish and wildlife development are involved. This gives the conservation and wildlife interests more direct and meaningful channels through which to express their view on the project.

One major advantage in the use of the county conservation board as a local sponsor is in handling the maintenance and operation of recreational and wildlife areas. The county board is better qualified from a technical standpoint to operate these areas than are other local sponsors.

Iowa Highway Commission

The Iowa Highway Commission has been a local sponsor on a limited basis in one watershed. This project is the Mill-Picayune Watershed, located in Crawford, Shelby, and Harrison counties. This watershed plan called for the use of a state highway culvert as one of the watershed structures.¹²⁹

Whenever a watershed includes a bridge or state highway which is subject to damages from flooding in the watershed, consideration should be given to requesting the Iowa Highway Commission to act as a local sponsor. Often it will be possible to replace a bridge which has been subjected to repeated flood damage with some watershed structure. The highway would then pass over the top of the structure, and would not be as subject to being washed out.

Combining of highways with works of improvement will quite likely expand the scope and flexibility of the watershed project without any signifi-

¹²⁹ Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, April 13, 1965.

cant increase in cost. In fact, there may even be a long-term savings to the Highway Commission in maintenance and replacement costs.

At the present time the Commission is hesitant to become involved in maintenance agreements for watershed structures built as attachments to existing road structures. The Highway Commission does maintain watershed structures built as part of highway construction.

Other Possible Local Sponsoring Organizations

School Districts

In 1955 the Iowa Legislature authorized the establishment of county conservation boards.¹³⁰ Contained in that chapter is an authorization for cooperation between the newly created boards and "[a]ny city, town, village, or school district. . ." for purposes of equipping, operating, and maintaining parks, playgrounds, and other recreational areas.¹³¹ This language would seem to authorize the participation of school districts in P.L. 566 projects which have as one of their purposes development of recreational areas. As of this date, no school district has been a local sponsoring organization and the Attorney General has not ruled directly on the question.

The main reason for including a school district as a local sponsor would be to broaden the base of support for the project and to provide additional sources of financing. Of course, the participation of the school district will be limited to the recreational phases of the project, and even then just the phases of the recreational development which would directly benefit the school district.¹³²

Park Boards

All cities with a population of over 30,000 must elect three park commissioners to administer their park system. Cities and towns with less than 30,000 may provide this arrangement by ordinance.¹³³ It could be argued that these boards might qualify as a local sponsor by derivation of their power from that granted to cities and towns under Chapter 111A, Code of Iowa.¹³⁴ Of course, they would be limited to the recreational aspects of the watershed development with a county conservation board. Here again, broadening the base of public support and additional financing are the reasons for having the park board as a local sponsor.

¹³⁰ IOWA ACTS 1955 ch. 12, IOWA CODE ch. 111A (1962).

¹³¹ IOWA CODE § 111A.7 (1962).

¹³² Interview with Richard Wilcox, Assistant State Conservationist, Soil Conservation Service, Des Moines, Iowa, April 13, 1965.

¹³³ IOWA CODE § 370.1 (1962).

¹³⁴ Cf. Ops. Att'y Gen., April 8 (Iowa 1964).

Non-Profit Corporation

The Act specifically authorizes non-profit organizations to act as local sponsoring organizations.¹³⁵ It is conceivable that the incorporation of the informal "watershed association" as a non-profit corporation and its inclusion as a local sponsor would be advantageous. One possible use for such an organization would be in the case where all other organizations have declined to sponsor the project. However, if the project totally lacks support from normal sponsoring organizations, its approval by the State Soil Conservation Committee or the State Conservationist would be doubtful.

¹³⁵ ". . . or similar organizations having such authority and not being operated for profit that may be approved by the Secretary." 75 STAT. 408 (1961), 16 U.S.C. § 1002 (1964).

APPENDIX

TABLE 1 Powers Actually Possessed* by Possible Local Sponsor

Functions	Soil Conser- vation Dis- trict 467A	Soil Conser- vation Sub- District 467A.13	Conservancy District 455-467C	County Board of Supervi- sors 467B 332
Soil conservation	Yes, 467A.2		Yes, 467C.1	Yes, 467B.1
Flood prevention	Yes, 467A.2	Yes 467A.13	Yes, 467C.1	Yes, 467B.1
Drainage			Yes, 467C.1	
Irrigation				
Other				
Powers				
Carry out works of improvement	Yes 467A.7(7)	Yes, through 467A.22 same power as Soil Conservation District	Yes, 455.201 but may be limited by 455.135 cf. 455.1	No 467B.1
Operate and maintain works of improvement	Yes 467A.7(7)	Yes, through 467A.22	Yes 455.135 & .201	Yes, limited 467B.1 455.201
Acquire and dispose of land	Yes 467A.7(5)	Yes, through 467A.22	Yes, limited 455.135 & .136 cf. 462.27 455.29, 455.170, 471.5	Yes 332.1
Cooperate with other agencies	Yes, 467A.4(4) (d), 467A.7(4)	Yes, through 467A.22	Yes 455.200-216 467B.1-3	Yes 467B.3
Make contracts	Yes 467A.7(9)	Yes, through 467A.22	Yes, 455.41	Yes 332.1
Sue and be sued	Yes 467A.7(9)	Yes, through 467A.22	No, not legal entity 219 Ia 793, 212 Ia 902 cf. 455.100 & .162 can sue but may not be sued 455.100	Yes 332.1
Exercise eminent domain power	No Cf. 455A.31	Yes, 467A.21 471.4(7)	Yes 462.27 for Bd. of Trustees Co. Bd. of Supervisors by implica- tion	Very limited 462.27
Levy taxes or assessments		Yes 467A.20 4 mill 467A.23 spe- cial benefit —.41	Yes, special benefit as- sessment 455.45	Yes, 467B.9 ¼ mill
Incur indebtedness		Yes, 467A.22 Bonds and warrants	Yes, 455.77 & .81, 128 Ia 442, 104 N.W. 454	
Regulate land use	Under 467A.7 (11) can re- quire and enforce land use regula- tions, but cf. 467A.7(13) 34 Iowa L. Rev. 166, 174	Same as Soil Conservation District through 467A.22	No, but cf. 455.159-.160 authorizing treble damages for damaging drainage im- provements	Yes, cf. 358
Power to accept gifts and grants	Yes, 467A.7(5) & (10)	Yes, through 467A.22		Yes 332.1
Authorized to be local sponsoring organization	467A.7(4)	467A.13- 467A.22	Yes, by im- plication through AGO 10-28-59 which approves Drainage Dis- trict as a local sponsor	Yes, see AGO 5-2-63

*References are to Iowa Code Sections, Iowa Cases
and Attorney General Opinions (A.G.O.)

TABLE 1—Continued

Drainage District	Water Works Board of Trustees	Municipal Corporation	State Conservation Commission	County Conservation Board	State Highway Commission
455	397-399	368 395-397	107, 108, 111	111A.1	307, 313-314
Yes, 455.1		Yes, 395.1		Yes, 11A.1	
	Yes 397.1	Yes	Yes		Yes
Yes, 455.201 but may be limited by 455.135 cf. 455.1	Limited to certain purposes 397.1	Yes 395.1 368.26	Limited by 112.1 to dams and spillways	Yes, 111A.4(4)	Yes 307.5(12)
Yes 455.135 & .201	Limited to certain purposes 397.1	Yes 395.1	For limited purposes 107.24(2)	Yes, 111A.4(4)	Yes
Yes, limited 455.135 cf. 462.27 455.29, .170 471.5	Limited to certain purposes 397.42	Yes 368.39, .2	Limited 107.24(2)	Yes, 111A.4(2)	Yes
Yes 455.200-216 467B.1-3		Yes 368.47	Yes 107.29	Yes 111A.7 111A.4(9)	Yes 467A.9
Yes 455.41	Limited 398.6, 397.9	Yes 368.2	Limited 111.76		Yes
No, because not legal entity 219 1a 793, 212 1a 902		Yes 368.2			
Yes 462.27 455.30-.32	Yes 397.8(1) 399.5	Yes 395.2 368.37	Limited 107.24 111.7	Yes 471.4(1)	Yes, 470.1
Yes, special benefit assessment 455-.45, .57	Yes 398.5 399.5	Yes, 395.11 & .31	License fees	Yes, 111A.6 & .4 (7) 1 mill for recreation purposes	
Yes, 455.77 & .81	Yes 397.35, .9 & .10 397.8(2)	Yes, 395.25		Yes 111A.6	
No, but cf. 455.159-.160 authorizing treble damages for damaging drainage improvements		Yes cf. 414.6	Yes, as to limited state property 111.3	Yes, in re County Conservation Board lands 111A.5	
AGO 10-28-59, 60 AGO 38 60 AGO99	AGO 4-8-64	Yes, 395.2, .26, .29 60 AGO 38	Yes, 111.11 107.29, .24	Yes, 111A.4 (2) & (5) 111A.4(9)	Yes, 307.6 & .7

TABLE 2

*Present Status of Watershed Program in Iowa and U.S.**

A. Watersheds requiring project action:		
	<i>Number</i>	<i>Acres</i>
U.S.	8,300	1,000,000,000
Iowa	201	34,889,090
B. Applications approved by State agency and submitted to the Secretary of Agriculture:		
U.S.	2,288	163,701,100
Iowa	63	1,283,100**
C. Authorized for planning by Soil Conservation Service:		
U.S.	1,100	75,405,800
Iowa	38	629,528
D. Approved for operations:		
U.S.	635	35,248,700
Iowa	28	376,365
E. Construction started:		
U.S.	436	25,280,000
Iowa	24	362,927
F. Construction completed:		
U.S.	111	2,762,700
Iowa	4	13,438

*As of June 1, 1965

**This figure is exclusive of three projects on which planning has terminated.

TABLE 3

Watershed Status (June 30, 1965)

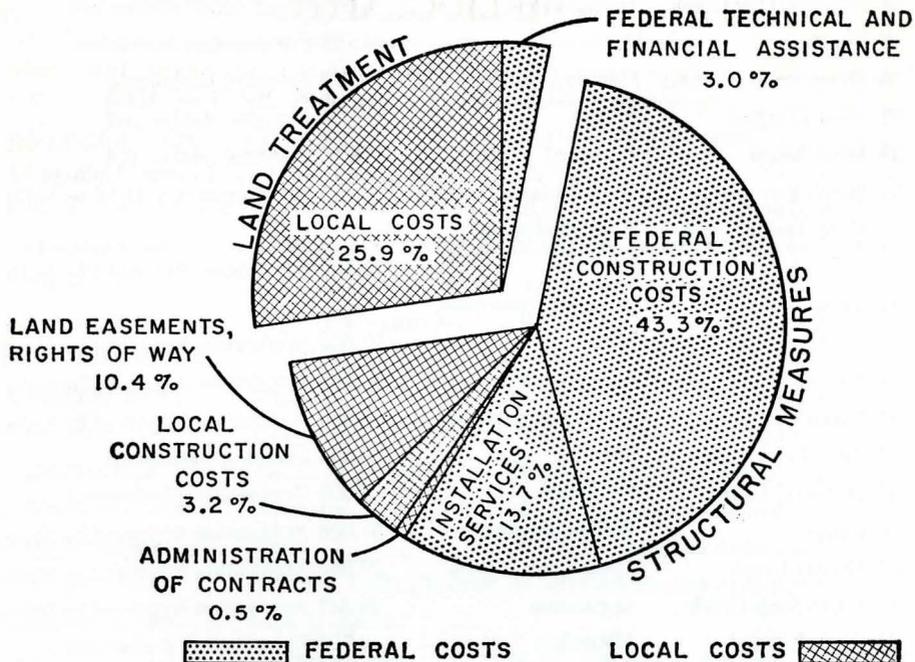
No. on Map	Name	Soil Conservation District Name	Acres	Status
1	Harmony Creek	Harrison	3,100	Completed
2	Chippewa Creek	Wapello	1,075	Planning Ceased
3	Simpson Creek	Fremont	2,393	Completed
4	Rocky Branch Creek	Jefferson	8,663	Construction Authorized
5	Crooked Creek	Cass, Audubon, Guthrie	22,656	Construction Authorized
6	Big Creek	Decatur	18,616	Planning Authorized
7	Indian Creek	West Pottawattamie	9,792	Construction Authorized
8	Combined as Mill-	Crawford, Harrison,		
9	Picayune Creek	Shelby	62,994	Construction Authorized
10	Big Park	Crawford	7,674	Construction Authorized
11	Davids Creek	Audubon, Guthrie	39,294	Construction Authorized
12	Blue Grass Creek	Audubon	16,100	Planning Authorized
13	Big Wyaconda	Davis	36,275	Construction Authorized
14	Badger Creek	Madison, Dallas, Warren	34,346	Construction Authorized
15	Turkey Creek	Cass, Guthrie, Audubon, Adair	86,121	Planning Authorized
16	Held	Plymouth	7,420	Construction Authorized
17	Hamburg	Fremont	2,365	Completed
18	Davis-Battle Creek	Monona	4,770	Construction Authorized
19	Troublesome Creek	Audubon, Cass, Guthrie	86,647	Application Approved by State
20	Three Mile Creek	Union, Adair	37,320	Planning Authorized
21	Pony Creek	Mills, West Pottawattamie	19,329	Construction Authorized
22	Ryan-Henschal Creek	West Pottawattamie	9,410	Construction Authorized
23	Pierce Creek No. 1	Page	3,812	Construction Authorized
24	Clayton	Clayton	806	Planning Ceased
25	Moulton	Appanoose	7,275	Construction Authorized
26	Hound Dog Creek	Fremont	5,580	Construction Completed
27	Bee-Jay	East Pottawattamie	16,920	Construction Authorized
28	Walters Creek	Adams	31,560	Construction Authorized
29	Yellow Springs Creek	Des Moines	16,840	Application Approved by State
30	Cox Creek	Clayton	17,792	Investigation Ceased

31 So. Hungerford No. 2	Plymouth	2,765 Construction Authorized
32 Gant Creek	Plymouth	8,448 Planning Authorized
33 Combined as Sten-		
34 nett-Red Oak Creek	Montgomery	9,547 Construction Authorized
35 Blockton	Taylor	18,720 Construction Authorized
36 Mosquito of Harrison	Harrison, Shelby	23,673 Planning Authorized
37 West Douglas	Adams	6,430 Planning Authorized
38 Dane Ridge	Crawford	17,869 Planning Authorized
39 Simon Run	West Pottawattamie	4,175 Application Approved by State
40 West Tarkio Creek	Page, Montgomery, Fremont	72,100 Application Approved by State
41 Twin Ponies	West Pottawattamie, Mills	21,640 Application Approved by State
42 Twelve Mile Creek	Adair, Union	49,663 Application Approved by State
43 North Pigeon	West Pottawattamie	4,440 Application Approved by State
44 Deer Creek	Worth	34,249 Planning Authorized
45 Diamond Lake	Poweshiek	2,600 Construction Authorized
46 Caleb	Wayne, Decatur	31,000 Application Approved by State
47 Cooper Creek	Appanoose, Wayne	37,550 Application Approved by State
48 South Soap Creek	Appanoose	24,347 Application Approved by State
49 English Bench	Allamakee	4,720 Construction Authorized
50 Waubonsie Creek	Mills, Fremont	26,732 Application Approved by State
51 English Creek	Marion, Lucas	50,367 Application Approved by State
52 Bacon Creek	Woodbury, Plymouth	14,982 Application Approved by State
53 Leutzinger-Lowe Run	Muscatine	4,337 Planning Authorized
54 West Sunnyside	Plymouth	5,712 Application Approved by State
55 Beaver	Webster	2,385 Construction Authorized
56 Carter Creek	Davis, Appanoose	24,480 Application Approved by State
57 Crow Creek	Jefferson	12,930 Application Approved by State
58 North Wyaconda	Davis, Van Buren	22,226 Application Approved by State
59 White Breast Creek	Clarke	56,896 Application Approved by State
60 Poland Branch	Decatur	2,603 Application Approved by State
61 Indian Creek	Van Buren	45,819 Application Approved by State
62*Pioneer	Lyon	4,634 Application Approved by State
63*Mill-Long Branch Creek	Page	37,043 Application Approved by State
	Total Acres	1,302,027
	Square Miles	2,034

*Not shown on map.

COST DISTRIBUTION - 569 PROJECTS (Watershed Program PL 566)

July 1, 1964



BIBLIOGRAPHY

1. *A Guide to a Step-by-Step Approach in Watershed Development*, Iowa State University-Cooperative Extension Service, Pamphlet 265, Feb. 1960.
2. Howard, *Introduction to a Watershed Program*, 1958. (An unpublished paper, copy of which is on file in the Agricultural Law Center, College of Law, The University of Iowa, Iowa City, Iowa.)
3. *Iowa Soil and Water Conservation Needs Inventory*, Iowa State University-Cooperative Extension Service, Ames, Iowa, Sept. 1963.
4. *Iowa's Watershed Projects*, Progress Report, Soil Conservation Service, Des Moines, Iowa, Sept. 1964.
5. *Multiple Purpose Watershed Projects*, Soil Conservation Service, Washington, D.C., Pamphlet PA-575, May 1963.
6. Parks, W. Robert, *Soil Conservation Districts in Action*, Iowa State College Press, Ames, Iowa, 1952.
7. *The Small Watershed Project*, Soil Conservation Service, Washington, D.C., Pamphlet PA-561, Feb. 1963.
8. *Soil and Water Conservation Glossary*, Soil Conservation Society of America, Des Moines, Iowa, 1952. (Reprinted from *Journal of Soil and Water Conservation*, Volume 7, Numbers 1, 2, and 3, 1952.)
9. *Watershed Loans*, Farmers' Home Administration, Washington, D.C., PA-406, Rev. Sept. 1963.
10. *Watershed Program under the Watershed Protection and Flood Prevention Act*, Soil Conservation Service, Washington, D.C., May 1963.
11. *Soil and Water Conservation Needs—A National Inventory*, Misc. Pub. No. 971, U.S. Department of Agriculture, Washington, D.C. (1965).
12. *Status of State Legislation Relating to the Watershed Protection and Flood Prevention Act*, U.S. Department of Agriculture, SCS-TP-142, May 1963.
13. *Watershed Program Evaluation, East Willow Creek, Minn.*, Economic Research Service, U.S. Department of Agriculture, ERS-231 (May 1965).

BIBLIOGRAPHY

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