

Legislation Supporting IWRM in Nebraska: Bringing Together Prior Appropriation and Correlative Water Rights

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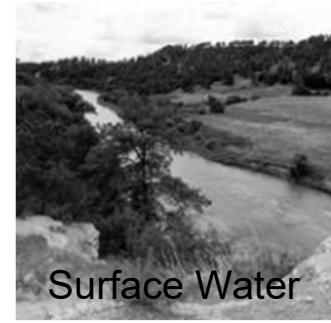




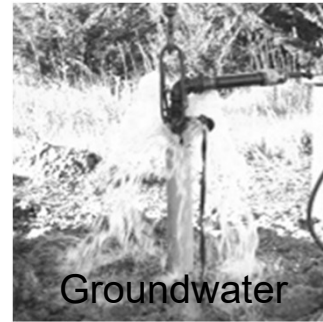
Providing the sound science and support for managing Nebraska's most precious resource



Water Planning and Integrated Management



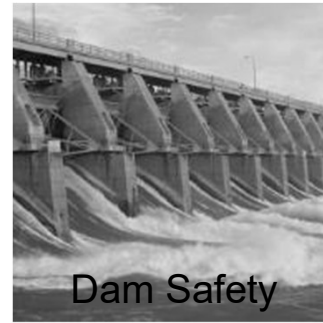
Surface Water



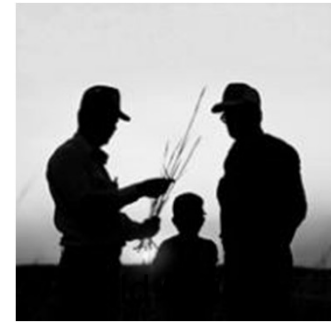
Groundwater



Floodplain Management



Dam Safety





Providing the sound science and support for managing Nebraska's most precious resource



Nebraska IWRM in Action

➤ Session 5

- Innovative Groundwater Recharge Projects

➤ Session 7 / PANEL

- The Role of IWRM in Creation, Governance, Success of the Platte River Recovery Implementation Program

➤ Session 11

- Decision Support Systems and Optimization

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- Republic River Compact: Past, Present, and Future

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- Education, Outreach & Public Participation Endeavors

➤ Session 14 / PANEL

- Funding Solutions to Support IWRM

➤ Session 18

- Stories of IWRM Transition

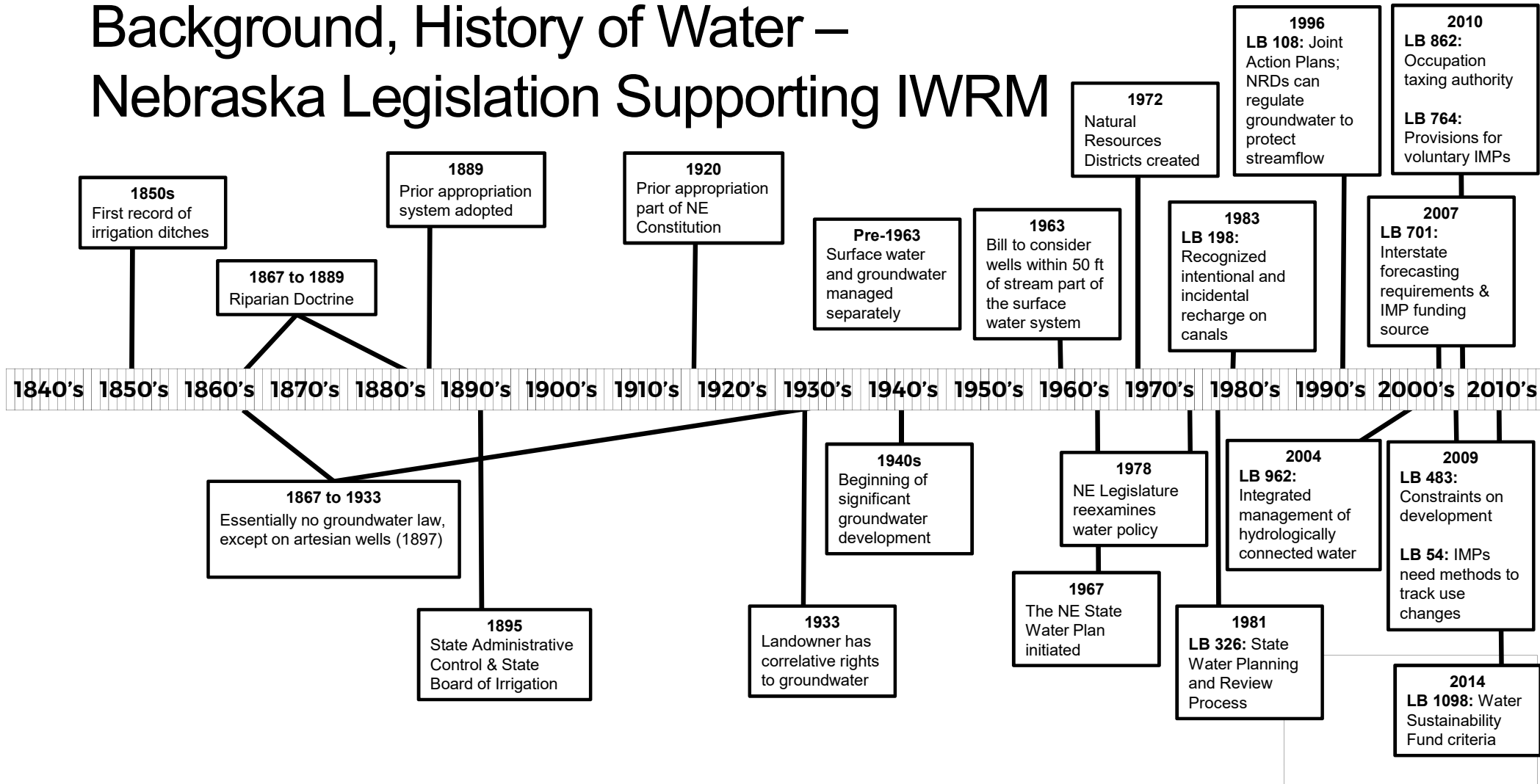


Overview

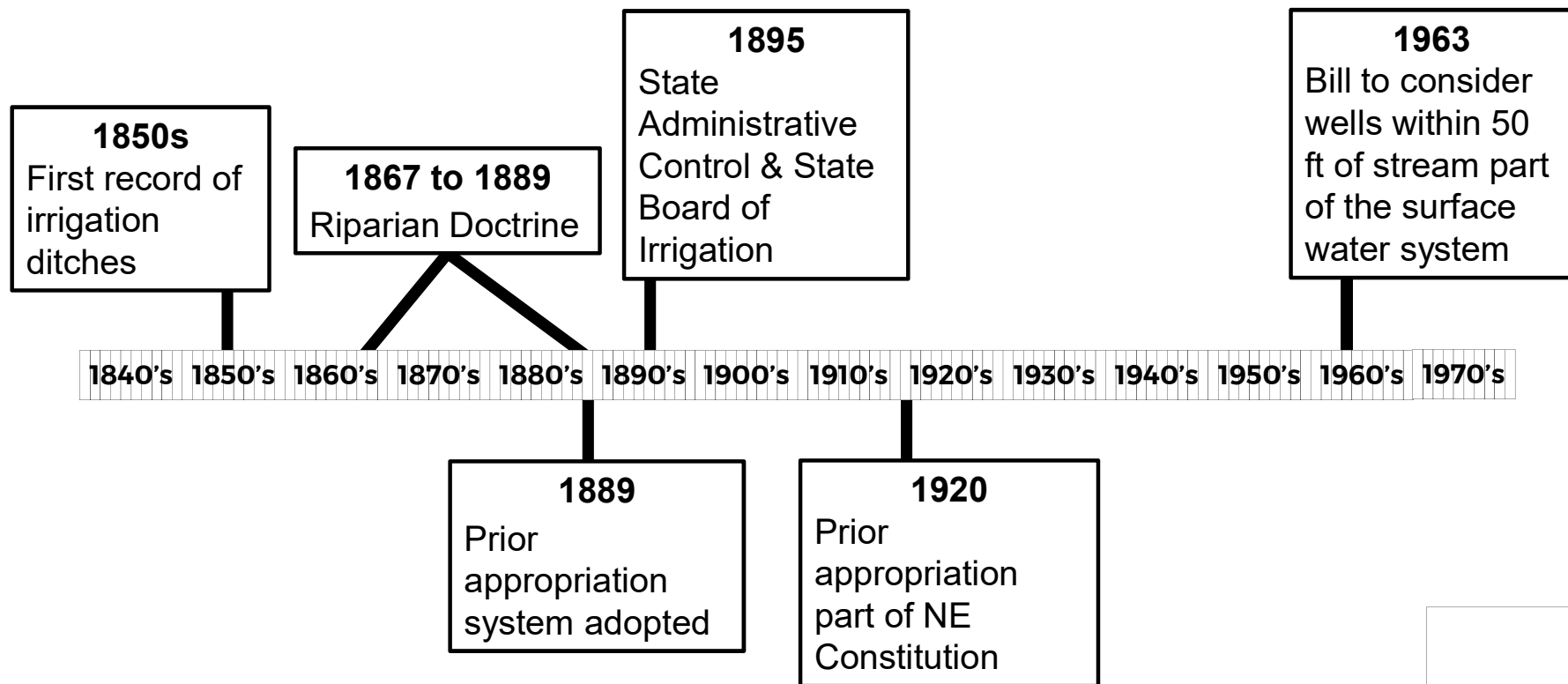
- Background – Describing the Challenge
 - Nebraska Water History
- Keys to Success – Legislative Toolbox
 - Clear Boundaries
 - Local Needs
 - Nested Tiers
 - Dispute Resolution
 - Funding
 - Monitoring
 - Stakeholder Participation (Trust and Communication)
- Concluding Thoughts



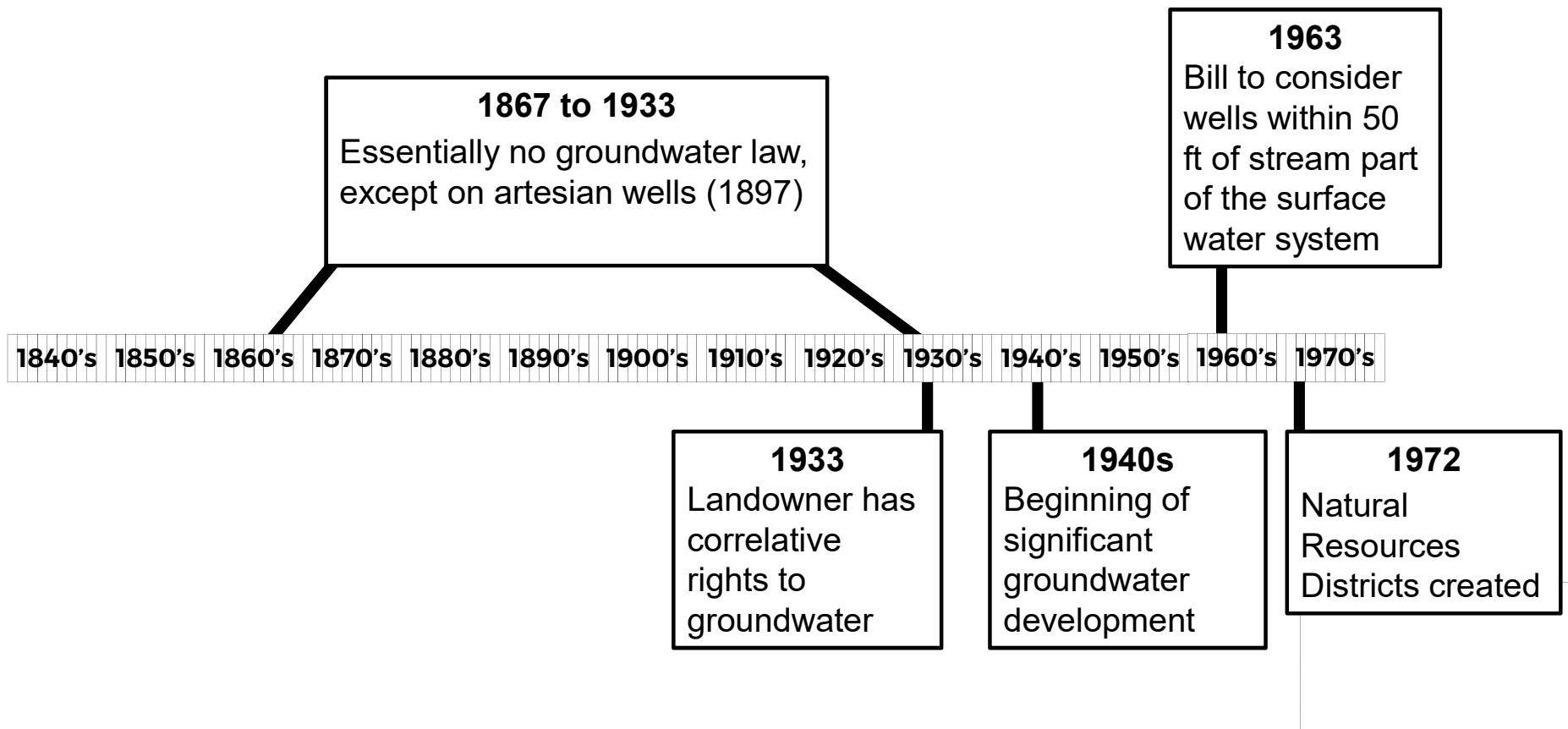
Background, History of Water – Nebraska Legislation Supporting IWRM



Background, History of Water – Nebraska Legislation Supporting SURFACE WATER



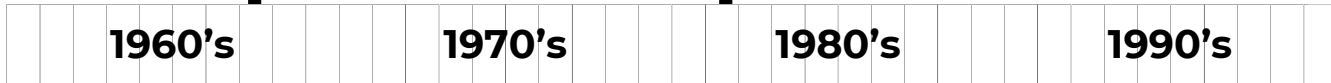
Background, History of Water – Nebraska Legislation Supporting GROUNDWATER



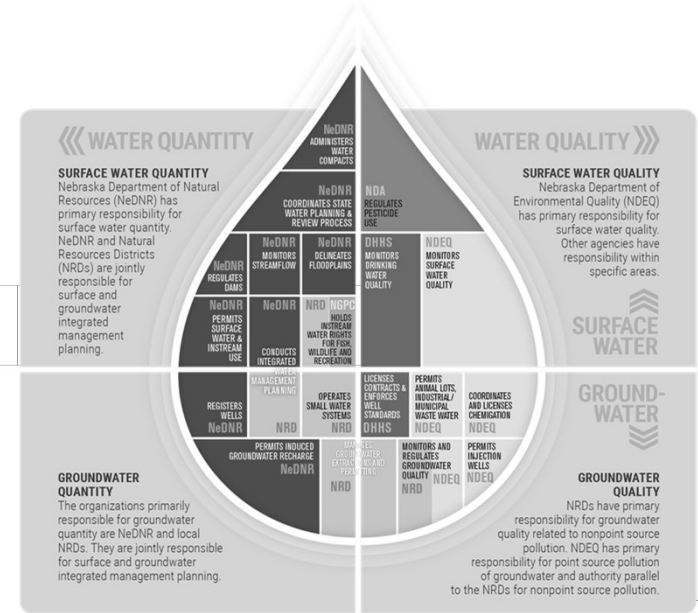
Background, History of Water – Nebraska Legislation Supporting WATER PLANNING

1967
The NE State
Water Plan initiated

1981
**LB 326: State Water
Planning and Review
Process**



1978
NE Legislature
reexamines water
policy



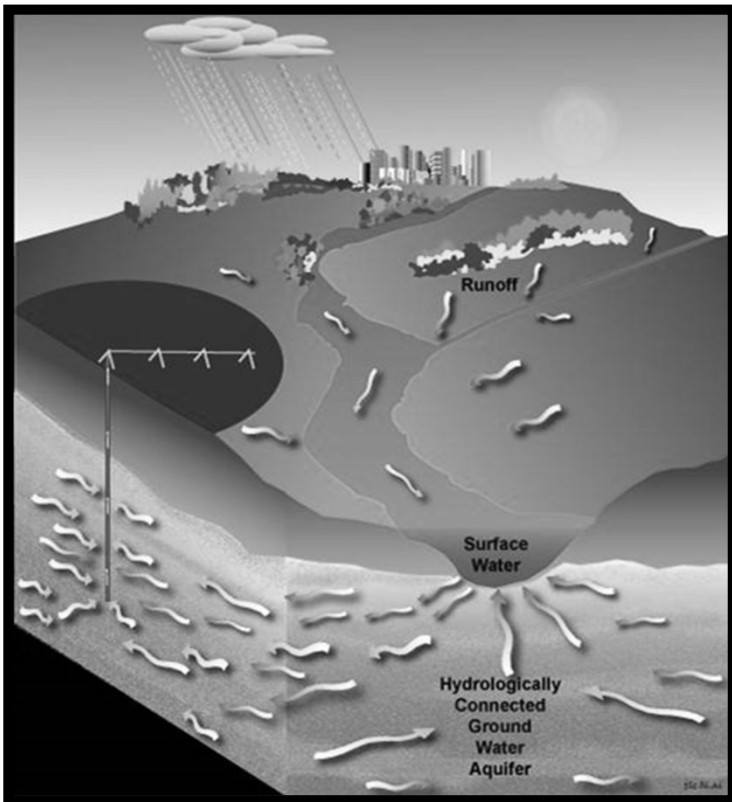
Background, History of Water – NE Water Policy Task Force

- Created in 2002 by the Nebraska Legislature
 - Consensus-based decision-making process
 - Evaluate law governing integrated water management
 - Inter- and intra- state lawsuits

- Developed LB962 (2004)
 - Recognized hydrologic connection of surface and groundwater
 - Established joint planning process (IMPs)
 - Goal to sustain a balance between water use and water supply



Background – Surface Water and Ground Water Authorities



Surface Water

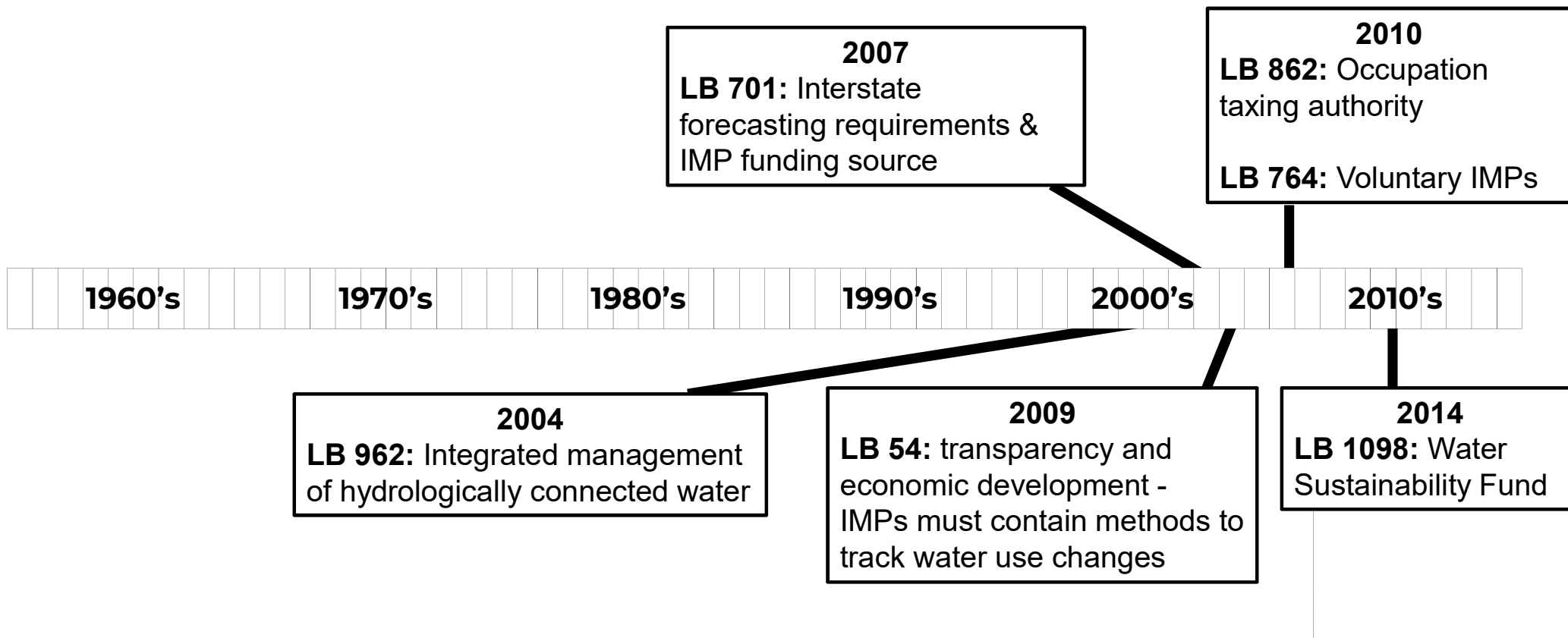
- Regulated by NeDNR
- Prior appropriations
- First in time is first in right



Groundwater

- Regulated by NRDs
- Correlative rights
- Share and share alike

Background, History of Water – Nebraska Legislation Supporting IWRM



Keys to Success – Legislative Toolbox

Elinor Ostrom's Principles for Managing a Commons

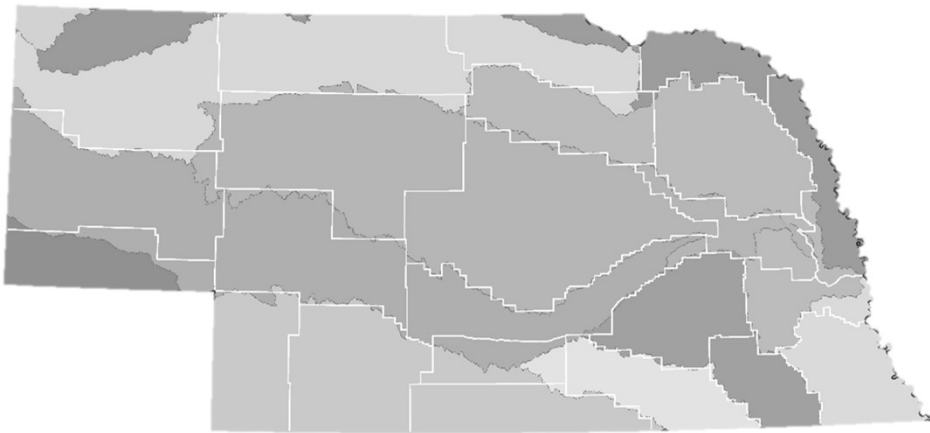
1. Clear boundaries
2. Rules match local needs and conditions
3. Affected user participate in rule making
4. Local rules respected by outside authorities
5. Member system to monitor
6. Graduated sanctions for violators
7. Accessible dispute resolution
8. Nested tiers of governing responsibility
9. Effective communication & trust

Nebraska Water Planning

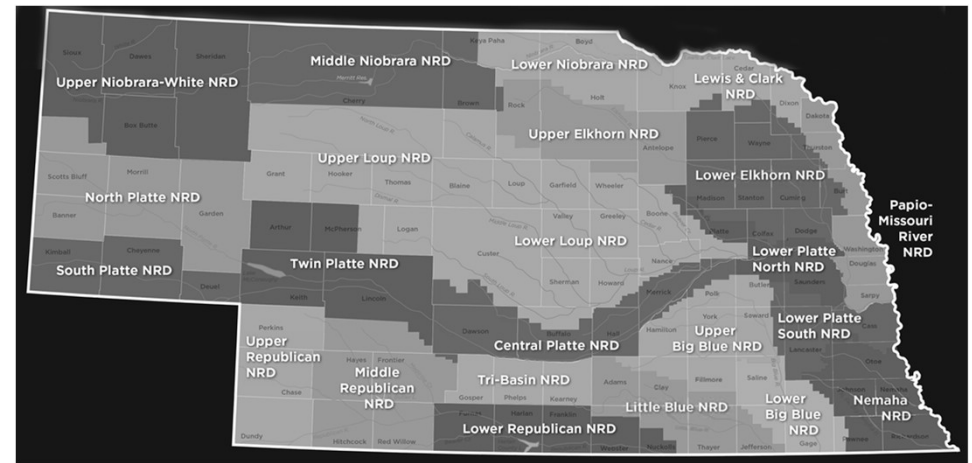
- Clear boundaries (1)
- Decentralized water management (2,4)
- Stakeholders (2,3)
- Monitoring (5)
- Dispute resolution process (7)
- Nested tiers (8)
- Trust and communication (9)

Keys to Success – Boundaries – Resource Area

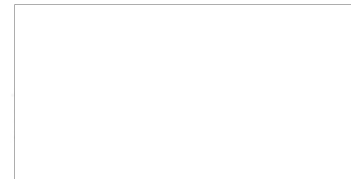
46-715(2)(b) a map clearly delineating the geographic area subject to the integrated management plan



Surface Water Administrative Areas



Natural Resources Districts



Keys To Success – Boundaries – Authorized Users

➤ Certification of Use

○ Surface Water Permits

Basin	SW Irrigation Permits	Irrigated Acres	Other Permits	Other Use Majority
Republican FA	429	107,900	215	storage
Upper Niobrara FA	454	58,500	176	storage
Upper Platte OA	464	434,000	185	storage

○ Certified Groundwater Acres

Basin	Total Irrigation Wells	Irrigated Acres	Other Wells	Other Use Majority
Republican FA	9,800	1,021,500	5,500	Domestic, monitoring, livestock
Upper Niobrara FA	1,500	179,400	6,800	Injection, monitoring, recovery, livestock
Upper Platte OA	11,500	1,068,300	13,000	Domestic, monitoring, livestock

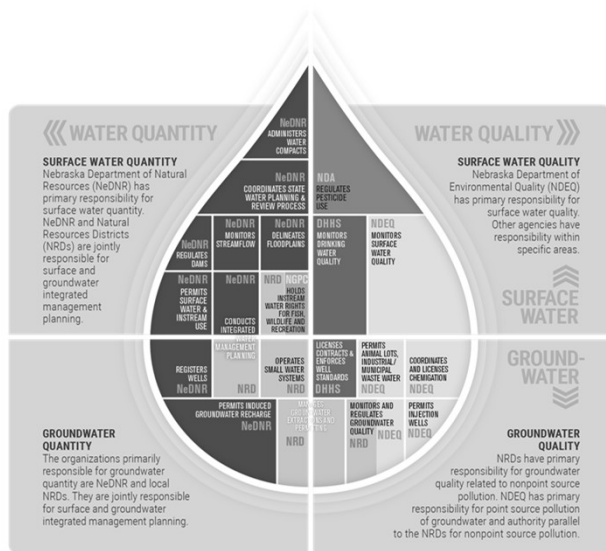
Keys to Success – Decentralized, Local Needs and Conditions

46-715(2): IMPs must contain one surface water control and one groundwater control

Required plans in water-challenged areas → directs efforts where its most needed
 NeDNR can designate areas fully appropriated through its “Annual Evaluation of Availability of Hydrologically Connected Water Supplies”

Voluntary plans in other areas → proactive water management

Areas that have not designated fully or overappropriated are participating in voluntary IMPs



Keys to Success – Nested Tiers

➤ IMPs must keep the State in compliance with Interstate Agreements, Compacts, Decrees (46-715(4)(b))

➤ Basin-wide Plans: Joint development, adoption and implementation – multiple NRDs and NeDNR

➤ IMPs: Joint development – Plans require joint development, adoption and implementation between state-level surface water managers (NeDNR) and one local groundwater manager (NRD)

Keys to Success – Dispute Resolution

Dispute resolution procedures – Basin-Wide Plans

➤ Upper Platte Basin

- Any water user can initiate
- Investigate hydrologic impact
- Basin-wide issue:
 - Conduct an investigation
 - Revise plan
- Portion of the basin:
 - Work with the affected users
 - Develop solutions

➤ Republican Basin

- Any water user can initiate
- Evaluate conflict and potential solutions
 - Weigh hydrologic, economic, and environmental impacts
- Address conflicts
- Modify plan



Keys to Success – Funding Opportunities

➤ Required Areas - Nebraska's Water Resources Cash Fund

- Fully and overappropriated areas
- For projects to:
 - Reduce consumptive use
 - Enhance streamflow
 - Enhance groundwater recharge

➤ Voluntary Areas – Nebraska's Water Sustainability Fund

- Eligible to NRDs with IMPs
 - Created strong incentive for voluntary IMPs

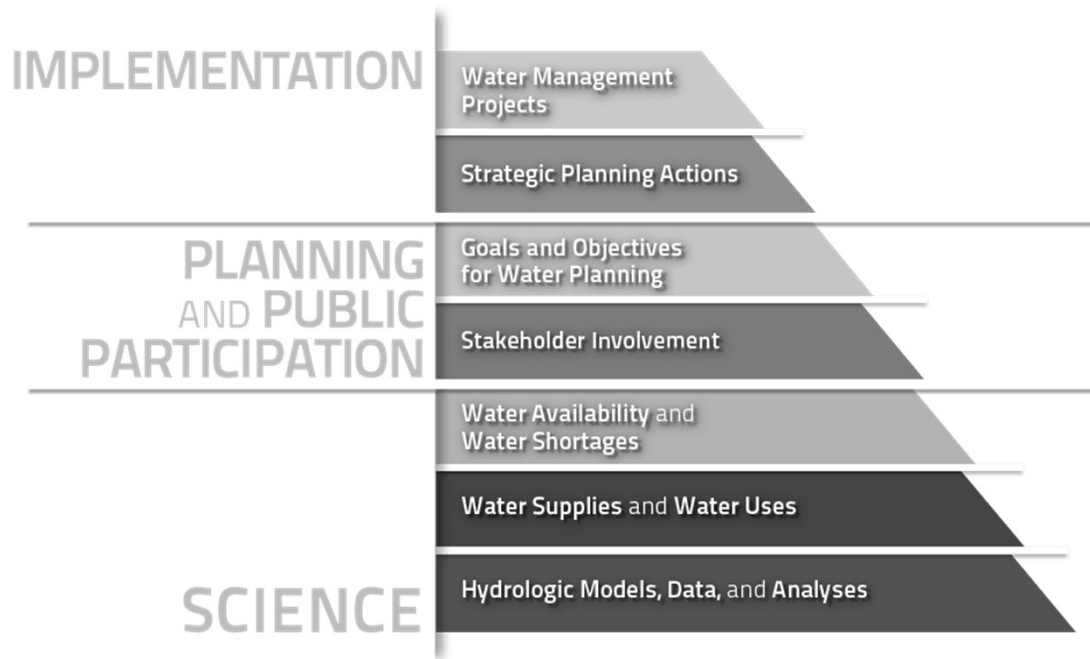
➤ Local Funding – Groundwater Management and Protection Act

- NRDs can:
 - Levy taxes
 - Issue bonds or collect occupation tax (if they have an IMP)
- Data collection and analysis tools
- Partner with NRDs for plan development and implementation



Keys to Success – Monitoring and Process

- 46-715(2)(e) a plan to gather and evaluate data, information, and methodologies [to implement, increase understanding] and test the validity of the conclusions and information [of the plan]



Keys to Success – Stakeholders

46-715(5)(b) & 46-755(5)(c) [IMP shall be developed after consultation and collaboration with stakeholders]. If agreement is reached by all parties..., the [NeDNR and NRDs] shall adopt the [plan]. & 46-717(2) [NeDNR and NRDs] shall consult with [stakeholders].

- Component of IMP and basin-wide plans
- Stakeholders help formulate, evaluate and recommend goals, objectives, and action items
- Stakeholders provide local insight, local concerns, and opportunities



Keys to Success – Stakeholders

Statute specifies key interest groups as stakeholders:

- Irrigation districts
- Reclamation districts
- Public power districts
- Mutual irrigation or canal companies
- Municipalities

NeDNR and NRDs can also choose to include others:

- NGOs
- Other water users
- Groundwater users
- Range livestock owners
- NE Game and Parks



Keys to Success – Stakeholders

- Stakeholders have improved relations among water users through effectively management communication

- Prior to IWRM statutes:
 - Conflicts between surface water and ground water users did not have a clear legislative method for resolution and therefore lawsuits were the only option

- After IWRM statutes:
 - Stakeholder processes in plan development, ongoing monitoring, reporting, and annual meeting processes contained within the IMPs allow for more accessible and lower cost dispute resolution. Stakeholders work together, learn, and help shape water plans to reduce or eliminate conflict over time



Concluding Thoughts

- Challenge: separate regulatory systems for surface and groundwater

- Legislative Toolbox
 - Boundaries
 - Local Needs and Conditions
 - Nested Tiers
 - Dispute Resolution
 - Funding
 - Monitoring
 - Stakeholder Participation

- Trust and Communication – be impeccable with your word

Article in the May 2019 AWRA Water
Resources IMPACT magazine



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THANK YOU

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