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CONFIDENTIAL MEMORANDUM

TO: Grant Stumbough
Manager, Natural Resources

FROM: Carrol S. Verosky 
Assistant Attorney General

SUBJECT: Wyoming Association of Conservation Districts Bylaws

DATE: April 15, 1998

We previously discussed the issues presented to your department by Bobbie Frank in a letter addressed to Ron Micheli dated December 12, 1997 (attached to this memo). Clearly, the answer here was that any perceived conflict between state statutes and the Constitution and By-Laws of the Wyoming Association of Conservation Districts, (hereafter referred to as WACD Bylaws), would be resolved in favor of the statutory language. We later discussed the specifics of a situation where a supervisor was delegating certain powers to an employee of the district, particularly a question involving the delegation of the supervisor's voting power.

The powers and duties of districts and supervisors are enumerated in W.S. §11-16-122. Specifically, W.S. §11-16-122(b) states: "A conservation district organized under this act and the supervisors thereof, in addition to other powers granted by this act, may: ... (iii) Delegate to their chairman, to one (1) or more supervisors or to one (1) or more agents or employees such delegable powers and duties as they deem proper..."

The question we then arrived at was whether voting is a delegable duty or power of a conservation district and supervisor thereof. This is where my thinking went a bit "off track". We first have to look at the type of entity the WACD is, and the statutes relevant to its operations.

Point 1. WACD a registered non-profit corporation.

WACD was registered as a Wyoming nonprofit corporation on May 6, 1970, and is currently in good standing. As a nonprofit corporation, the WACD is controlled by the Wyoming Nonprofit Corporation Act, W.S. §17-19-101, et.seq. W.S. §17-19-206(b) gives us guidance on the bylaws themselves: "The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." The use of the word "may" in the statute gives the WACD certain discretion in designing its bylaws, with due consideration to existing law and the articles of incorporation. "Generally, the verb 'may' when used in a statute makes the statute directory instead of mandatory." DF v. MLM and WS, 792 P.2d 1369, 1373 (Wyo. 1990); citing Mayor v. Board of Land Commissioners, 192 P.2d 403 (Wyo. 1948). The bylaws of the corporation can specify voting powers beyond the statutory requirements, which is what appears to have occurred in Section 15 of the WACD Bylaws. There is no apparent conflict with statutes or with the articles of incorporation in denoting elected supervisors as the voting members on the corporation committees.

It is important to understand that the members of the WACD are actually entities (i.e., conservation districts) rather than individuals. This is significant because there is a special provision for this type of nonprofit corporation where voting is concerned, under W.S. §17-19-727(f): "In the case where a member is an entity or where approval is required by a third party which is an entity, the corporation is entitled to accept the vote provided the individual who casts the vote for the entity presents the corporation with a written resolution or other written authorization to vote for the entity." In other words, the WACD can accept a vote not from a supervisor in certain situations where written authorization is obtained, but the WACD can only accept a vote from an elected supervisor on state standing committees, as specified in Section 15 of the WACD Bylaws.

Point 2. Proxy voting as an acceptable delegation of voting power.

W.S. §17-19-724(b) states as follows: "Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact... (g) Subject to W.S. §17-19-727 and any express limitation on the proxy's authority

Grant Stumbough
Page No. 3

appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment." The key then is that some formal writing has to be in place for this substitution of voting, and that formal writing has to come from the district itself. Here again, the limitation set forth in Section 15 is valid and must be taken into consideration with regard to committees.

Due to the sensitive nature of the issues contained in this memo, I have labeled it as confidential. Please feel free to contact me should you have further questions or concerns.