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August 23, 2004

John Etchepare, Director  
Wyoming Department of Agriculture  
2219 Carey Avenue  
Cheyenne, WY 82002

Re: Watershed Improvement Districts

Dear Director Etchepare:

We have received your inquiry on watershed improvement districts questioning the differences between the principal act creating such district and the Special District Election Act of 1994.

Specifically, you have asked:

QUESTION ONE: Must the results of the election for formation of a Watershed Improvement District be posted publicly?

Short answer: No. See discussion below.

QUESTION TWO: What is the difference between the "referendum" referred to in the watershed improvement district statutes and the "election" referred to in the Special District Elections Act?

Short answer: See discussion below.

QUESTION THREE: Is it required that the person signing the petition for formation of a WID identify themselves as a legal representative of the landowner if so designated? Does the representative need to provide a written authorization upon signing the petition?

mailed to South Big Horn, Sheridan & Popo Agri CD's.

Short answer: Yes, to both questions. See discussion below.

QUESTION FOUR: May the formation ballot for a watershed district also include a slate of candidates for the board of director positions?

Short answer: No. See discussion below.

QUESTION FIVE: What is a party's appellate process for an adverse decision by a watershed improvement district on a petition to withdraw from the district?

Short answer: See discussion below.

### **BACKGROUND**

The formation of a Watershed Improvement District (WID) follows very specific statutory requirements, which are different from the general provisions contained in the Special District Elections Act of 1994 (SDEA) for the formation of a special district.

First, a WID is a subset of a conservation district. WYO. STAT. § 41-8-103. To create a WID, a petition is filed with the board of supervisors of the conservation district. WYO. STAT. § 41-8-105. The board of supervisors is the governing body of the soil and water conservation district in which the WID lies. WYO. STAT. § 41-8-101(b). The petition must comply with the provisions of the SDEA. WYO. STAT. § 22-19-101 *et seq.* Once the petition is properly filed, the board of supervisors acts upon the petition, in accordance with the provisions in WYO. STAT. § 22-29-109, by examining the petition and holding a hearing to determine whether there is a need "in the interest of the public health, safety and welfare for such a district. . . ." WYO. STAT. § 41-8-107. Up to this point, the statutory requirements to form a WID are similar to the general requirements to form a special district.

If the board finds a need for the establishment of such a district, then it next considers the question as to whether the operation of a WID is administratively practicable and feasible:

After the board of supervisors has made and recorded a determination that there is a need, in the interest of the public health, safety and welfare, for the creation of the proposed watershed improvement district, it shall consider the question whether the operation of a district

within the proposed boundaries with the powers conferred upon the district in this act is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, by mail ballot or at the next election date authorized under W.S. 22-21-103 which is at least sixty (60) days after entry of the finding that there is need for the organization of a district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district. Notice of the referendum shall be given by the board of supervisors as provided in the Special District Elections Act of 1994.

WYO. STAT. § 41-8-108 (emphasis added).

As set out in WYO. STAT. § 41-8-108, the determination as to whether the district is administratively practicable and feasible is accomplished in two steps. First, following the board's determination that there is a need for the district, the board places the question as to whether a WID should be created before the voters in the form of a referendum. WYO. STAT. § 41-8-108. This referendum process is different from the process for forming districts as found in the SDEA laws. Under the SDEA, the election process actually forms the district, including the initial board of directors. WYO. STAT. §§ 22-29-109 and 111. Under the WID statutes, the voters are only asked to approve by referendum the decision of the board of supervisors that there is a need for the WID.

Second, following the referendum vote, the results are delivered to the board of supervisors. The board then determines whether such a district is administratively practicable and feasible, using the results of the referendum to assist it. The only guidance given by the statutes for making this determination is the caveat that "the board of supervisors shall not have authority to determine that the operation of the watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, which affirmative votes represent a majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district." WYO. STAT. § 41-8-110. The statutes appear to allow the board the discretion to deny the creation of the district even if the voters favored creation of the district.

Within 30 days following the determination by the board to create the watershed improvement district, the board conducts an election for the board of directors. WYO. STAT. § 41-8-112.

**QUESTION ONE: Must the results of the election for formation of a Watershed Improvement District be posted publicly?**

The watershed improvement district statutes require that the results of the referendum must be certified to the board by the polling superintendent. Following certification of the results, the board then determines whether the operation of the district is "administratively practicable and feasible." WYO. STAT. § 41-8-110. As stated above, the referendum election does not actually "form" the WID, unlike the formation laws related to special districts as found in the Special District Elections Act of 1994.

In cases where the principal act, in this case the watershed improvement district laws, specifies the procedures to follow when forming a WID, the SDEA is not applicable. WYO. STAT. § 22-29-103. Thus, for watershed improvement districts, the WID is not formed until the board of supervisors determines "that the operation of the watershed improvement district is administratively practicable and feasible [and declares] the watershed improvement district to be created; . . ." See also, Rural Health Care Districts, WYO. STAT. § 35-2-701, *et seq.* (formed according to the SDEA); Fire Protection Districts, WYO. STAT. § 35-9-201, *et seq.* (formed upon election); Hospital Districts, WYO. STAT. § 35-2-401, *et seq.* (formed according to the SDEA); Conservation Districts, WYO. STAT. § 11-16-101, *et seq.* (formed upon a petition and referendum process similar to WIDs); Water and Sewer Districts, WYO. STAT. § 41-10-101, *et seq.* (formed essentially pursuant to the SDEA); Flood Control Districts, WYO. STAT. § 41-3-801, *et seq.* (formed according to the SDEA); Improvement and Service Districts, WYO. STAT. § 18-12-101, *et seq.* (mostly governed by the SDEA); and Resort Districts, WYO. STAT. § 18-16-101, *et seq.* (mostly governed by the SDEA).

Regarding the results of the referendum, the watershed improvement statutes are clear as to whom the results must be delivered: to the board of supervisors of the conservation district. There are no other requirements to publicly post the results. In addition, the SDEA does not address the posting of election results within its Act. Only in the Conservation District statutes can there be found a requirement of some type of public announcement of the results of the referendum election. (WYO. STAT. § 11-16-112 states, in pertinent part, "After making public the result of the referendum . . .")

The referendum results, however, are not considered to be confidential information. As with all other public records information, the results are presumed to be public and may be shared accordingly.

**QUESTION TWO: What is the difference between the "referendum" referred to in the Watershed Improvement District Law and the "election" referred to in the Special District Elections Act?**

In general, a "referendum" is defined as "[t]he process of referring a state legislative act, a state constitutional amendment, or an important public issue to the people for final approval by popular vote." BLACK'S LAW DICTIONARY 1285 (7th ed. 1999). An "election" is defined as "[t]he process of selecting a person to occupy a position or office, usu. a public office." BLACK'S LAW DICTIONARY 536 (7th ed. 1999).

Under the watershed improvement statutes, a referendum is a prerequisite to the establishment of a WID and results of the referendum are used to assist the board of supervisors of the conservation district in determining whether the operation of the district is "administratively practicable and feasible." WYO. STAT. § 41-8-108. The referendum, therefore, is simply a vote of the people to either approve or disapprove the determination of the board of supervisors that there is a need for a WID.

**QUESTION THREE: Is it required that the person signing the petition for formation of a WID identify themselves as a legal representative of the landowner if so designated? Does the representative need to provide a written authorization upon signing the petition?**

Under WYO. STAT. § 41-8-105, a petition to establish a WID must be filed with the board of supervisors of the conservation district and "shall comply with the requirements of WYO. STAT. § 22-29-105," which discusses the number of signatures required for a petition and the contents of formation of a petition. The principal act, however, is silent regarding the requirements for signing a petition. Under the Special District Elections Act, which applies to WIDs, the Act "specifies requirements pertaining to elections...where the principal act is silent or unclear." WYO. STAT. § 22-29-103.

Therefore, we look to the SDEA requirements in order to determine who is authorized to sign a petition to establish a WID. Pursuant to WYO. STAT. § 22-29-106, if the signer is a legal representative of the owner, a written authorization to sign as a legal representative must accompany the representative's signature.

**QUESTION FOUR: May the formation ballot for a watershed district also include a slate of candidates for the board of director positions?**

As stated above, the WID is not formed like other special districts, and, therefore, "formation" does not follow the Special District Elections Act. Under the

WID laws, when voting upon the referendum, the voters are only approving or disapproving the determination of the board of supervisors as to whether there is a need for the WID. The voters are not actually voting to "form" the WID. The board relies upon the results of the referendum to guide them in the determination as to whether the creation of a WID is administratively practicable and feasible. WYO. STAT. § 41-8-108.

Thus, not until the board determines that such a district is administratively practicable and feasible will it be created and it is only after the district is created that the board of directors may be elected. WYO. STAT. § 41-8-112(a) ("Within thirty (30) days after a watershed improvement district is created, the board of supervisors shall conduct an election to be held for the election of a board of directors of the watershed improvement district." (emphasis added)). The statutes are very specific and do not allow for the election of directors at the same time the voters are voting on whether the district should be created. In this situation, where the principal act statutes are specific, they govern over the Special Election District Act statutes, even when they conflict with the Special Election District Act statutes. WYO. STAT. § 22-29-103.

Therefore, allowing the voters to vote on a slate of directors is not permissible under the watershed improvement district statutes.

**QUESTION FIVE: What is a party's appellate process for an adverse decision by a watershed improvement district on a petition to withdraw from the district?**

After a WID has been formed, the statutes provide a means by which a property owner whose land had been included in the district may petition the board of directors for withdrawal. The statutes require that such land "has not been, is not, and cannot be benefitted by its inclusion in the watershed improvement district . . ." WYO. STAT. § 41-8-111. A hearing must be held within 30 days after the petition is received, and if the board concludes that the land has not, is not, or will not be benefitted by inclusion in the district, the board will allow the land to be withdrawn. Proper certification of the withdrawal must be filed with the Secretary of State and the State Conservation Commission. WYO. STAT. § 41-8-111(b).

However, no specific procedures are provided in the event the board does not allow the withdrawal of the land. We hesitate to offer any opinion to landowners as to what appellate rights they hold in such event because such remedies are not provided by statute and are better left to be resolved on a case by case basis. We will note, however, that judicial review of an agency action is

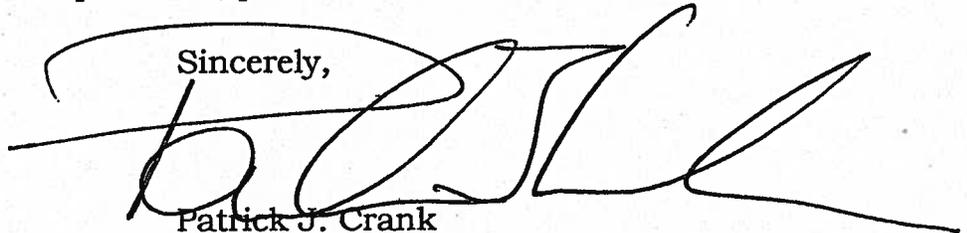
authorized by WYO. STAT. § 16-3-114(a) only for those persons "aggrieved or adversely affected in fact" by the challenged action.

An aggrieved or adversely affected person is one who has a legally recognizable interest in that which will be affected by the action. *Hoke v. Moyer*, 865 P.2d 624, 628 (Wyo.1993). A potential litigant must show injury or potential injury by "alleg[ing] a perceptible, rather than a speculative, harm resulting from the agency action." *Foster's, Inc. v. City of Laramie*, 718 P.2d 868, 872 (Wyo.1986). "The interest which will sustain a right to appeal must generally be substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient." *L Slash X Cattle Company, Inc. v. Texaco, Inc.*, 623 P.2d 764, 769 (Wyo. 1981) (quoting 4 AM.JUR.2d Appeal and Error § 180).

*Jolley v. State Loan and Investment Bd.*, 38 P.3d 1073, 1076-1077 (Wyo. 2002), quoting, *Roe v. Board of County Comm'ers, Campbell County*, 997 P.2d 1021, 1023 (Wyo.2000).

If you have any further questions, please do not hesitate to ask.

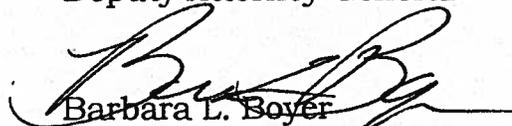
Sincerely,



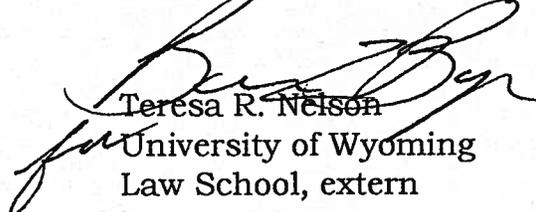
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