

# Frequently Asked Questions

## Question

Who is the filing officer? Is it someone from the county elections office or someone from the District?

## Answer

*The filing officer shall be the CD staff person in charge of the election or other individual selected by the CD.*

## Question

What are the requirements for printing the ballots? Can they be printed in the CD office on printer or copier, or do they need to go to a professional printer? Do they require special paper?

## Answer

Ballots can be printed on regular paper at the County Clerk's office. Some sample ballots with the word "SAMPLE" across the ballot on a colored paper (we suggest pink) need to be printed. In the bottom right hand corner, the ballot must have a box that states "Official Ballot" to include the date and initial the original ballot so they cannot be photocopied. For a mail ballot, the County Clerk will provide the envelopes to mail the ballots.

## Question

Where is the polling place supposed to be? Does it have to be at the county elections office or can it be held in the CD offices?

## Answer

*It will be easier for all concerned to use the CD office as the polling place.*

## Question

Who makes up the canvassing board and what are their responsibilities?

## Answer

*The canvassing board is a three member counting group including the polling superintendent and two other polling officers. The canvassing board (which should consist of three Board members) certifies the results of the election and signs the abstract. If possible, they should not be concerned with the outcome of the election.*

## Question

What types of costs are associated with the election?

## Answer

*The only costs associated with the election would be the cost of the ballots, postage for mailing the ballots and publishing the notices and sample ballots in the paper.*

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AUG 23 2004

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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?

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 a 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

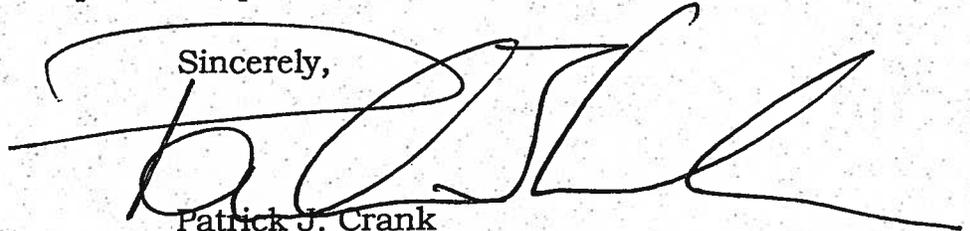
authorized by WYO. STAT. § 16-3-114(a) only for those persons "aggrieved or adversely affected in fact" by the challenged action.

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.

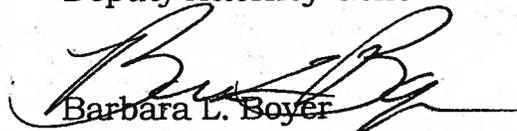
Sincerely,



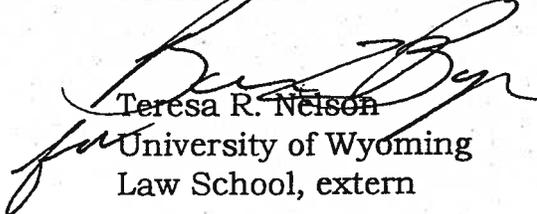
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University of Wyoming  
Law School, extern



THE STATE

OF WYOMING

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GOVERNOR

In reply refer to:

## Attorney General

CHEYENNE, WYOMING 82002  
PHONE 307 777-7841

STEVEN F. FREUDENTHAL  
ATTORNEY GENERAL

November 4, 1981

NOV 06 1981

Mr. John Niland, Chairman  
State Conservation Commission  
2219 Carey Avenue  
Cheyenne, Wyoming 82002

RE: Limitation on Water Development Project Loans

Dear Mr. Niland:

You have asked whether the Farm Loan Board (the Board) can limit the amount of money to be loaned to an established water shed improvement district. It is our opinion that the maximum which can be loaned to a water shed improvement district is \$150,000.00.

While this limitation cannot be directly ascertained from the statutes or rules of the Farm Loan Board, it reflects a sound policy of the Board, to require adequate security for loans made from the permanent funds of the State of Wyoming.

The Board is authorized pursuant to W.S. 11-34-101 to 11-34-102 to make loans which will aid in the construction of water development projects. One aspect of the loan program relates to loans for small water development projects. The Board can lend up to \$150,000.00 to an "individual" who qualifies for such a loan. W.S. 11-34-101 and Rules and Regulations of the Wyoming Farm Loan Board, Chapter V, Water Development Loans, Section 10. Individual is defined in the Rules to include:

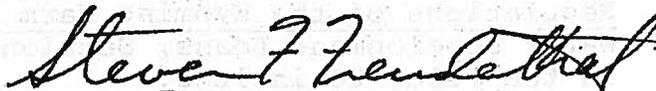
Any person, corporation, joint venture, association, partnership or any group, family, or association of persons or other legal entities engaged in the business of agriculture or a single farming or ranching operation in this state.  
Section 2,a.

A water shed improvement district fits the definition of "individual" within the meaning of the Rules and Regulations. A mortgage on the borrower's realty is taken as security for a small water development loan. W.S. 11-34-302(b); Rules & Regulations, Section 7,a.

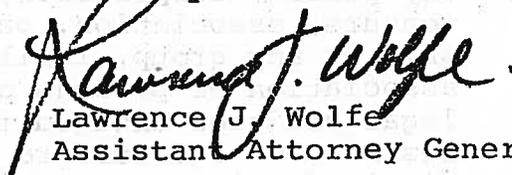
The Board is further authorized to make loans greater than \$150,000.00 for large water development projects. Rules and Regulations, Section 2,f. These large loans cannot be made to "individuals". W.S. 11-34-301 provides that "[N]o single loan to an individual under a small water development project shall exceed One Hundred, Fifty Thousand Dollars (\$150,000.00)." The statutes do not define "small water project", but the Board has consistently interpreted this phrase to mean that no loans in excess of \$150,000.00 will be made to an individual. Therefore, in order to qualify for a large water development loan, an entity, such as a court-approved district, must be formed. The rationale for this approach is that the Board can "require such security it deems advisable." W.S. 11-34-302(b). The funds that the Board lends are permanent trust funds of the State of Wyoming, and the Board has a trust obligation to ensure that these funds are adequately secured and repaid. The Board policy to limit loans to individuals to \$150,000.00, which is based on controlling statutes and rules, reflects a concern that large loans be properly secured. Obviously, court-approved water districts have the ability to assess benefits to their members which provides a greater degree of security.

In conclusion, the Farm Loan Board cannot by law lend more than \$150,000.00 to "individuals". A water shed district fits the Board's definition of "individual". Therefore, unless the water shed district formed a court approved district with the power to assess benefits, the Farm Loan Board would limit any loan request to \$150,000.00.

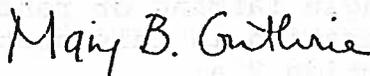
Sincerely,



Steven F. Freudenthal  
Attorney General



Lawrence J. Wolfe  
Assistant Attorney General



Mary B. Guthrie  
Senior Assistant  
Attorney General

**This letter of advice shall not be considered a formal Attorney General opinion and shall not be copied, reprinted or disseminated as such.**

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December 18, 2003

Jim Schwartz, Deputy Director  
Wyoming Department of Agriculture  
2219 Carey Avenue  
Cheyenne, WY 82002

Re: Watershed Improvement Districts

Dear Jim:

Your letter of November 10, 2003 posed four separate questions. Those questions and my answers follow:

**Question #1:** It is understood that partnerships, corporations, etc., are entitled to only one vote (a written authorization for a legal representative must be filed) and that co-owners or spouses are each entitled to a vote. However, when co-owners or spouses are completing a ballot, do both enter the number of acres owned? In the case that husband and wife own 3 acres, if both enter 3 acres as the number of acres owned on the ballot, it becomes six acres (if both vote the same way) or 0 acres (if they vote differently). This same scenario comes into play when the 19 year old child who lives at home or a lessee who can vote as a qualified elector. What instructions should we provide and how should the ballot be crafted to ensure that we are following state law?

Mr. Jim Schwartz  
December 18, 2003  
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**Answer:** Pursuant to Wyo. Stat. §§ 41-8-101 through 41-8-126 watershed improvement districts are formed as subdistricts of conservation districts and when formed constitute a governmental subdivision of the state and body corporate and politic. The process begins with a petition filed with the board of supervisors of the conservation district in which the proposed watershed improvement district is located. The board of supervisors then holds a hearing to determine if there is a need for the proposed watershed improvement district in the interest of the public health, safety and welfare. If the board finds such a need, it must then determine whether the operation of the district is administratively practicable and feasible. The board of supervisors holds a referendum to assist it in making that determination. "All qualified electors of the district and owners of land lying within the boundaries of the proposed district,...shall be eligible to vote in the referendum..." Wyo. Stat. § 41-8-109(b). However, the authority of the board of supervisors to make the necessary determination that the operation of the watershed improvement district is administratively practicable and feasible is limited to those situations where "[A]t 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.

Land ownership within the boundaries of the proposed watershed improvement district must be determined prior to the referendum. The ownership and acreage held within the proposed district by each owner (co-owners and spouses are considered one owner for these purposes) can be ascertained from the county assessor. The names of those voting, as listed on the poll book, can be compared to the ownership records following the voting in order to determine the acreage voted. In making such a determination the vote of any, or all co-owners of property would represent the entire acreage. Using your example of husband and wife owning three acres and having a 19 year old child living at home, if either husband or wife or both vote, the three acres has been included. The child votes as a qualified elector, but has no connection to the acres. The same applies to a lessee who is a qualified elector, but not a landowner.

Mr. Jim Schwartz  
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**Question #2.** It is our understanding that we can hold the Board of Directors elections on the same ballot (mail ballot) as the formation election because it would be within the 30 days required by Watershed Improvement District law. Is that correct?

**Answer:** No. Wyo. Stat. § 41-8-112(a) provides "[W]ithin 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). Since the time begins to run after the watershed improvement district is created and such a district cannot be created until after the referendum (formation election), a separate election is required.

**Question #3.** How far does the "Power of Attorney" go for legal representatives wishing to serve on the Board of Directors? Can a legal representative of a landowner with a Power of Attorney serve on the Board of Directors?

**Answer:** No, unless he personally has an ownership interest in property within the watershed improvement district. Wyo. Stat. § 41-8-112(c) provides "...No person shall be eligible to be a director of a watershed improvement district who is not an owner of land within the watershed improvement district in which he seeks election,..." I assumed and Grant Stumbough has verified that the "Power of Attorney" referred to in your question is the same as a "Written authorization" referred to in Wyo. Stat. § 41-8-101(f). The "written authorization" is an affidavit which sets forth the general legal description of property owned, the address for the property, the names of all owners and a statement the person signing is the only person having authority to act on behalf of the owner(s). Such a document would not confer the ownership interest required for eligibility as a director, nor would a power of attorney.

**Question #4.** Can a landowner within the Watershed Improvement District pay a one-time, up-front cost for his allocated portion of an improvement project BEFORE a tax assessment has been approved and therefore not pay an assessed tax? In other words, while other landowners within the District are paying a yearly assessment to pay for an approved project, can landowners that have already paid a one-time up-front cost, not be assessed? Does there have to be some type of uniformity in who pays assessed taxes with a Watershed

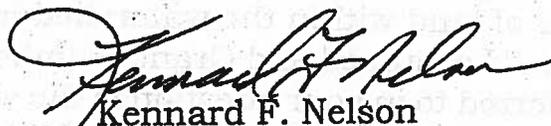
Mr. Jim Schwartz  
December 18, 2003  
Page Four

Improvement District or can there be individual payment plans as described above?

**Answer.** Taxes are assessed and levied annually. There are no provisions in the statutes for one-time up-front payments which would result in the removal of lands from the watershed improvement district assessment rolls. The watershed improvement district board of directors are required to make annual assessments and levies, taking into account the estimated operating and maintenance charges, the maturing indebtedness for the ensuing year as provided in its contracts, the maturing of bonds and interest on all bonds, and deficiencies and defaults of prior years. The assessment and levy process is dynamic and the funds needed may vary from year to year. The amount of the special assessment necessary for future years cannot be accurately determined in advance. Such assessments must be made and the tax thereon paid annually, as is the case with other taxes on real property.

If further explanation is required or I can provide any further information on these or other matters please let me know.

Very truly yours,



Kennard F. Nelson  
Senior Assistant Attorney General

## SPECIAL DISTRICTS – PUBLIC MEETING LANDER, WY – 4/6/04

Handouts –

- 1) Basic Timelines
- 2) Watershed Improvement District Statutes

Questions needing researched/answers?

- Q. Why Watershed Improvement District versus another type of “special district”?
- irrigation district
  - water conservancy district

A. Benefits:

- assessment only against the land that benefits directly from improve
- WSID does not impose on individual/personal water rights (41-8-126)

Shortcomings:

- assessment role and confusion on who benefits
- title on land may not be listed under WSID, many landowners change over, but county clerk can file land in “misc” and assessments may never transfer to new owner and WSID loses assessment
- assessments not showing up for charge/fee until land comes out

Q. Part 1 – Step 1?

- 1 vote (as elector or landowner) – what constitutes “majority” (for formation)

*Answer: WS 41-8-110 states, “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 votes cast in the referendum (over 50%), which affirmative votes represent a majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district.”*

Q. For WSID, beyond irrigation improvements, what are other benefits to landowners?

- local wells (land within WSID)

*Answer: Under supervision of the Conservation District Board of Supervisors, the Watershed Improvement District can (WS 41-8-113 (a)):*

- Levy and collect assessments for special benefits
- Acquire, maintain, and dispose of property
- Have power of eminent domain
- Construct structures

- Borrow money
- Cooperate with towns, cities, counties, state, and federal agencies

*WS 41-8-102 states, "and also provide for the prevention and control of erosion, floodwater and sediment damages, for agricultural uses, and the storage, conservation development, utilization and disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety and general welfare of the people of this state. Recreational use may be included in conjunction with projects developed in compliance with the purposes of this act."*

Q. As an "irrigation" or "ditch" company, if we form WSID, do we give up our rights to function and operate as board or ditch company?

***Answer:** NO. Ditch companies can operate within the same boundaries as a watershed improvement district as long as there are no conflicts. Before a petition is filed, the County Assessor and Department of Revenue reviews the boundaries for any proposed conflict and provides written comments with the petition (22-29-109). They will provide the comments within 60 days of receiving notice of the petition. The Conservation District provides notice to the Assessor's office when a group requests the petition information. The working group and Conservation District should set up an appointment with the Assessor to go over the boundaries on a map developed by the group. The Assessor's office can help develop the legal description from the map.*

Q. What funds to operating expenses of WSID?

***Answer:** In regards to formation and election expenses, the Special Districts Election Act (22-29-111) states, "the election shall be conducted under the direction of the county clerk and shall be at the expense of the sponsors of the proposed district. The sponsors may apply to the county for financial help under WS 22-29-113(c). If the proposed district is approved, upon request of the sponsors or the county commissioners, the special district shall reimburse the cost of the election." In regards to operating expenses, the watershed improvement district may utilize grants in aid, issue bonds, levy assessments, accept gifts, or generate other revenue that is legal and acceptable to the watershed improvement district board.*

Q. Measuring water – would WSID have the right to change the way we (ditch company) currently measure?

A. SEO is only entity that can measure water.

Q. How do you determine the scope or size (area) or boundary of WSID?

***Answer:** WS 41-8-104 states, "The land area embraced in a watershed improvement district must lie within the same or adjoining watershed or sub-watershed areas. A watershed improvement district may embrace land lying in one (1) or more conservation districts. Land lying within the boundaries of one (1) watershed improvement district*

*shall not be included in another watershed improvement district." Boundaries are generally determined by landowners and electors within a specific watershed or sub-watershed that have a common goal to address a specific concern or to implement management practices that will benefit the area.*

Q. If 10 landowners are on ditch (after WSID is formed), 6 do want project (less than 50% land) (want to make improvement) and 4 don't, but they have majority of land, how do you get project moving?

A. A hearing is held for any proposed project before any movement and/or direction if majority (owners and land) all will pay for benefits.

Q. Involved with any "storage" projects within WSID?

A. Yes, rehabilitation of Lake Adolade.

Q. For WSID, did you purchase liability insurance for project, for the board?

Follow-up:

Q. Can WSID be eligible for LGSIP under the Conservation District?  
(need to ask of AG)

- individual liabilities and board liabilities

*Answer: Yes, both Shell and Cokeville Watershed Improvement Districts participate in the Local Government Self Insurance Pool (LGSIP). Watershed improvement districts are eligible to participate in the LGSIP as authorized by WS 1-42-201. Coverage will respond to claims brought against local governments under the Wyoming Governmental Claims Act and arising under federal law or laws of other jurisdictions. Generally, LGSIP's liability program will include the following coverage categories:*

- 1) *General liability (including personal injury, civil rights, fiduciary liability, watercraft liability, among others)*
- 2) *Automobile liability*
- 3) *Public official errors and omissions liability.*

*In addition, both individual and board liabilities are covered.*

Q. Does WSID board (once formed and elected) direct the activities of local ditches or irrigation district?

- Can WSID force local ditch company and irrigation districts to do things they don't want to do?

***Answer:*** NO. They are separate entities with different roles and responsibilities within the same watershed. They may be connected but operate separately. For example, the ditch company may be responsible for maintenance and operation of an irrigation conveyance system while the watershed improvement district may be responsible for the initial planning and construction of the system.

Q. What sources of funding is available to WSID, that's not available to local ditch companies?

A. WWDC Level I – 100%  
Level II – 100%  
Level III  
NRCS PL-566

Q. What if someone refuses to pay their assessment?

- goes on roles as delinquent tax and can loose property

***Answer:*** As per WS 41-8-123, "All taxes and assessments levied against any land under this act (41-8-101 through 41-8-126) together with all interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall, until paid, constitute a perpetual lien upon such land on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such land to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments. If the taxes and assessments levied are not paid as herein provided, then such land shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of this state for selling real property for nonpayment of general taxes.

Q. Does WWDC have preference on what legal entity?

Q. How long did it take to get permit from Forest Service to build/rehab structure?

Q. Difference between irrigation district (legally formed) and WSID (legally formed), what is the key difference between powers – duties and authorities?

***Answer:*** The key difference is that Irrigation Districts are corporations that are governed by 3 or 5 commissioners (depending on the size of the district) that are appointed by the County District Court with the primary purpose of acquiring water rights for the construction of irrigation conveyance systems. The Irrigation District Commissioners are under the control of the court at all times. Watershed Improvement Districts are governed by 5 locally elected Board Members that must be landowners within the proposed district. Watershed Improvement Districts have a much broader purpose and could virtually implement any type of natural resource improvement project within a watershed which could include irrigation projects. Both Watershed Improvement Districts and Irrigation districts have the power of eminent domain, can levy taxes, and

*have the authority to enforce a perpetual lien on lands that are delinquent in payment of taxes or assessments.*

- Q. What is key difference between formation and operation (powers, duties, responsibilities) of the irrigation district versus WSID?
- do side by side comparison of irrigation district, WSID, flood control districts and water conservancy district

*Answer: See attached side by side.*

- Q. Any advantages and disadvantages as to the size of WSID (large versus smaller)?

A. Based on how you desire to set/establish boundaries – how big of a chunk do you want to bite off.

A. Statute allows for consolidation and joining of smaller WSID into larger size.

- Q. What type and kinds of benefits are available or lended to land not “benefiting” or deriving a direct benefit (i.e. non-water users)?

- how can we sell this to non-water users
  - (follow up the example of water well supplying water to a number of houses as water supply) is this benefit to those who own land within the WSID
- (pursue better answer)

*Answer: Many benefits can be obtained to include:*

*-Improved wildlife habitat*

*-Potential of increase ground water levels*

*-Downstream flood control and abatement due to better water management*

*-Healthier riparian areas and improved water quality*

*-Improved fisheries and recreational opportunities*

*-Potential boost to local economies due to purchase of construction materials, equipment, and labor for improvement projects*

*-Less erosion*

Clarification form WWDC:

WWDC requires “total” 2,000 acres in land in application, but can have less than 2,000 acres irrigated land (i.e. Hi Line WSID 2,000 acres, but only 350 irrigated acres)

- Q. Do WSID have automatic taxing authority?

A. No, for an improvement, the WSID must do appraisal, hearing, etc. (process).

**From:** "Jeri Trebelcock" <jerit@wyoming.com>  
**To:** "Bobbie Frank" <waocd@trib.com>, "Grant Stumbough" <GSTUMB@state.wy.us>  
**Date:** 4/27/04 4:29PM  
**Subject:** FW: LGLP Coverage

Grant and Bobbie -  
FYI - Here is Monty Lauer's response to our question on LGLP insurance.  
Jeri

-----Original Message-----

**From:** Monty Lauer [mailto:mlauer@bresnan.net]  
**Sent:** Tuesday, April 27, 2004 1:12 PM  
**To:** jerit@wyoming.com  
**Subject:** RE: LGLP Coverage

Jeri,

Response to your email questions.

I am assuming the newly formed Watershed Improvement District would be their own separate district and established in accordance with Wyoming Law. The Watershed Improvement District would be eligible to participate in LGLP on their own.

You asked if the ditch group that handles the day to day maintenance of the ditch system would be covered under LGLP. It depends on what the ditch group is. LGLP covers employees of the entity. The ditch group would have to be employees of the Watershed Improvement District. If the ditch group is an independent contractor they would not be covered by LGLP and should be required to carry their own liability insurance with minimum limits of \$1,000,000.00 per occurrence. If the ditch group is an independent contractor you should have a written agreement that spells out the ditch groups responsibilities and the agreement should clearly stated they are not employees or a department of the Watershed Improvement District.

The Wyoming Governmental Claims Act defines a "public employee" means:

- A. Any officer, employee or servant of a governmental entity, including elected or appointed officials, peace officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;
- B. Does not include an independent contractor.

To be covered under LGLP they must be a "public employee" as defined above. What you have to note is that the definition of a "public employee" is plural, which means one person. Therefore a group is not one person and the group is more than likely an independent contractor.

You asked if the Watershed Improvement District has total control of that ditch system including day to day operation and maintenance would LGLP cover the day to day operation and any associated claims? If the District has total control of the ditch system then I am assuming the District would have their own employees taking care of the day to day operation including maintenance of that ditch. If this is the case then Yes LGLP would cover them for any claims.

You need to understand that the District's are governmental entities and Watershed Districts as well as Conservation Districts have governmental immunity. Governmental Immunity means they have immunity from any claims. The Wyoming Governmental Claims Act (W.S. 1-39-101 through 1-39-120) was passed by the legislature in 1978 and this act specifies the areas where governmental entities have waived their immunity. The Governmental Claims Act does not mention Conservation or Watershed Districts, therefore, our stance on most claims would be you are not liable due to governmental immunity. LGLP covers you for any and all claims that fall under the Governmental Claims Act and Federal statute. Federal claims apply to wrongful terminations, discrimination, Americans with Disabilities Act, etc. Federal claims are claims for violation of civil rights and the Governmental Claims Act applies to tort actions. Also, we only pay claims if it falls under the Governmental Claims Act and the entity is negligent in some way. LGLP does not pay claims for public relations.

LGLP does not have a web site. I hope this answered your questions. If you wish to discuss this matter further just give me a call.

Thanks  
Monty Lauer  
Executive Director

-----Original Message-----

From: Jeri Trebelcock [mailto:jerit@wyoming.com]  
Sent: Tuesday, April 27, 2004 9:58 AM  
To: lglp@bresnan.net  
Subject: FW: LGLP Coverage

Monty -

Popo Agie Conservation District is in the process of forming a Watershed Improvement District. We would like to run a couple potential scenarios by you.

If the Watershed Improvement District participated in the LGLP program would the ditch group that handles the day to day maintenance of the ditch system be extended the benefits of LGLP. That ditch group could be either an LLC, incorporation, or a loose group of folks who maintain the system. And/or the WID Board and local ditch company board could be one in the same, but the ditch company has its own set of bylaws, etc.

Or, if the watershed improvement district has total control of that ditch system including day to day operation and maintenance would LGLP cover that day to day operation and any associated claims?

If you have any web sites that could provide us with additional liability coverages we would appreciate that info.

Thank you.  
Jeri Trebelcock  
Popo Agie Conservation District  
307-332-3114

## MEMORANDUM

**DATE:** September 30, 2003

**TO:** CARRIE ROGACZEWSKI, DISTRICT MANAGER - Sheridan County CD  
JASON NEHL, PROGRAM SPECIALIST

**FROM:** Bobbie Frank, WACD

**RE:** Response to questions in regard to formation of Watershed Improvement District

**Carrie & Jason,**

Please find below my answers to the questions you posed in regard to the procedures associated with the formation of a watershed improvement district. Please understand that these are based solely on my review of the two statutes that apply to the questions you had posed. I would suggest that if any of these issues are contentious in nature, the District may want to pursue opinions from the Attorney General's office. If you do choose to pursue obtaining a formal AG's opinion, please let me know as I would like to coordinate that effort with some questions that WACD may need answered in relation to the District loan issue. I hope the information below is helpful. I am sharing this information with others who are assisting or may be assisting districts with these same formation issues.

### QUESTION:

- 1) Is the conservation district board of supervisors responsible for acting upon the petition and providing a public hearing with appropriate notice or is this the board of commissioner's responsibility? W.S 41-8-107(a) suggests the board of supervisors replace the commissioners in W.S.22-29-109, however, W.S. 22-29-109 is written with the county commissioners in mind. We would like confirmation that the board of supervisor's act as the board of commissioners for the purposes of W.S. 22-29-109 (action on formation petition).

### RESPONSE:

Yes, the Supervisors do act in this capacity. The Special Districts Elections Act applies to all the districts mentioned in the Act, only when the principal act, which in this case is the Watershed Improvement District statute, is "silent or unclear". My analysis of the two statutes would be that the Watershed Improvement District statute is not "silent or unclear" on what entity acts on the petition, i.e. the statute specifically discussed the Conservation District Board. 41-8-105 states: "A petition to establish a watershed improvement district shall be filed with the board of supervisors of the conservation district in which the proposed watershed improvement district is situated." This is very clear in terms of the Conservation Districts role. However, this paragraph goes on to state "The petition shall comply with requirements of WS 22-29-105. "

Given that the Watershed Improvement District law is "silent and unclear" on the exact format of petition, required percent of signatures, information to be contained in petition, etc. the provisions of Special Districts Elections Act apply at 22-29-105.

In reviewing several other special district statutes, i.e. water & sewer, flood control, improvement, etc. Most of the Principal Act's that apply to these districts do specifically state the requirements of format and content of a formation petition. The Special Districts Elections Act was adopted in 1994 to fill in the blanks, in essence, when a district's principal act is silent or unclear.

In summary, the Conservation District Board is clearly responsible for acting on the petition, however the details of how the petition is to be structured is governed by 22-29-105.

22-29-106(d) also states "The secretary of state shall, after consultation with the county clerks, develop uniform petition forms which shall be used by special districts."

I am uncertain if these uniform petitions exist. If the District would like I can investigate this further through Secretary of State's office.

**QUESTION:**

- 2) Who pays for the election-the county, the conservation district, or the group forming the petition (i.e. ditch company)?

**RESPONSE:**

Watershed Improvement District law 41-8-101, Definitions (d) states Notice for any election or referendum required by this act shall be as specifically provided in this act, or if not specifically provided in this act, as required in the Special Districts Elections Act of 1994."

Further, 41-8-108 states that after the board of supervisors has made and recorded a determination that there is a need for a watershed improvement district... "it shall consider the question whether the operation of a district within the proposed boundaries...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 WS 22-21-103 ...." It goes on to state, "Notice of the referendum shall be given by the board of supervisors as provided in the Special Districts Election Act of 1994"

However, again the Principal Act (Watershed Improvement District law) is silent on the issue of who is responsible for the cost of the election. In reviewing the Special Districts Elections Act for clarification on the issue, at 22-29-105,(d)(viii) it indicates that the petition must include "who shall be responsible for the costs associated with formation."

Further, 22-29-111 Formation and initial director election (b) states: "The election shall

be conducted under the direction of the county clerk and shall be at the expense of the sponsors of the proposed district. The sponsors may apply to the county for financial help under WS 22-29-113(c). If the proposed district is approved, and upon request of the sponsors or the county commissioners the special district shall reimburse the cost of the election.”

I would suggest that if this issue causes conflict, i.e. the landowners petitioning for the watershed improvement district are requesting that the District, in addition to conducting the election, also pay for the costs associated with the election, that the District, along with the landowners approach the County Commission for assistance in paying the costs associated with the election. If this avenue is unsuccessful, I would then suggest the District coordinate with WACD to obtain a formal Attorney General's opinion on the matter. Again, I would request you coordinate with WACD as we may be seeking Attorney General's review and direction, via the Department of Agriculture, on some issues related to the District loan issue we discussed at area meetings.

#### **QUESTION**

- 3) It is our understanding that the election can take place via mail-in ballot (W.S. 41-8-108). Would there be any requirement to establish a specific polling place?

#### **ANSWER**

Again, for the details on how to conduct the mail ballot election, the District should refer to 22-29-115 - 116 of the Special District Elections Act. Again 22-29-115(b) states, “the secretary of state, after consultation with the county clerks, shall establish procedures for conducting mail ballot elections.” I am uncertain if these procedures exist, upon the request of the Sheridan County CD, I can further investigate via the Secretary of States office.

Further detail is provided at 22-29-116(v) which states, “No sooner than twenty-five (25) days and no later than 4:00 p.m. on election day, mail ballots shall be made available at the election official's office for voters entitled to vote in the election but who are not otherwise listed on the county voter registration records or the registration list if otherwise authorized to vote.” This section goes on to state (b) “The election official responsible for conducting the election shall provide a minimum of one (1) polling place on the day of the election which shall be open for not less than five (5) consecutive hours at any time between the hours of 9:00 a.m. and 7:00 p./m. as set forth in the notice of election.”

Subsequently, as described in the Special District elections Act the District would need to make available one polling place for the election even if a mail ballot election is conducted.

**QUESTION**4) Can conservation district staff be the polling officers and/or the polling superintendent? It appears the polling superintendent cannot be a board supervisor because the polling superintendent certifies results to the board of supervisors.

**ANSWER** Watershed Improvement District law at 41-8-110 states "The votes cast in the referendum shall be counted by the polling officers at the close of the polls and a report of the results, along with the ballots, shall be delivered to the polling superintendent, who shall certify the results to the board of supervisors; and the board shall then..."

This is the only language specific to the polling officers/superintendent that I can locate in the Watershed Improvement District law.

Again, in light of the silence on the issue the question appears to be addressed in Special Districts Elections Act at 22-29-114(e) which states "...Any special district election not conducted by a county clerk shall be canvassed by a special district canvassing board. The special district canvassing board shall consist of the district secretary and two (2) electors appointed by the district board. Any canvass shall be conducted in accordance with chapter 16 of the Wyoming Election Code of 1973, as amended. The canvass shall be conducted within seven (7) days of the election."

I did a quick review of chapter 16 of the Election Code and basically it spells out the details for timeframe, etc. in which the canvassing board shall operate.

Obviously, the District Secretary is mentioned specifically as being one of the canvassing board members. The language does not specifically disqualify District personnel, however I would recommend that the District Board attempt to find two individuals who are not involved in the issue itself, i.e. individuals not affected by the watershed improvement district formation and also not involved directly with the operations of the Conservation District. However, this is only a recommendation, not a requirement.

## **QUESTION**

- 4) Would each member of a Homeowners Association be allowed a vote or would one vote count for the entire association? Matt Hoobler, WDA, has told Carrie it's a judgment call by the ditch company or the Association. However, Mark Shirley, NRCS, was informed by an attorney that all individuals within a subdivision were entitled a vote.

## **ANSWER**

In reviewing the Attorney General's opinion we have on file from 1979 the following question was posed to the AG's office: "Whether or not the Town of Greybull can represent its residents respecting private property within the municipal boundaries or whether each individual landowner within the Town would be considered to be a 'landowner' as defined in W.S. 41-8-101(c). In essence, the AG answered that Greybull is not a landowner because the work "corporation" in the watershed improvement district law did not include "municipal corporations". The AG goes into much greater detail in terms of the legalities of a town or other entity representing landowners "collective property interests". I can provide the District a copy of this opinion if so requested. I would assume the same opinion could be applied to your question in regard to Homeowners Association. In essence, those meeting the definition of a "landowner" at 41-8-101(c) are eligible to vote. A Homeowners Association could be allowed to vote if

the Association itself owns land, however the Homeowners Association would not be allowed to vote on behalf of the property owners, who happen to belong to the Association.

Cc:

Grant Stumbough, WDA  
Jason Fearneyough, WDA  
George Cleek, NRCS  
Doug Miyamoto, WACD  
DeMont Grandy, NRCS Cokeville  
Brenda Lazcanotegui, Lincoln CD