



# State Conservation Commission

2219 CAREY AVENUE

PHONE (307) 777-7321

CHEYENNE, WYOMING 82002

WAYNE A. EDGERTON  
CONSERVATION COMMISSION STATE EXECUTIVE

TIMOTHY J. KAUTZA  
DISTRICT PROGRAM CONSULTANT

DWIGHT KIMSEY  
20R WATER QUALITY COORDINATOR

**COMMISSION MEMBERS:**

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EUGENE HARDY (LIVESTOCK BOARD)  
JOHN NILAND (D.E.P.A.D.)

October 12, 1978

Honorable John Rooney  
Attorney General  
State of Wyoming  
Capitol Building  
Cheyenne, Wyoming 82002

Dear Mr. Rooney:

Attached is an October 2 letter from the LaPrele-Glenrock Conservation District, a duly constituted district under W.S. 11-19-101 through 11-19-118, as amended.

This district has asked me to request an opinion on behalf of the sponsors who are:

1. The Conservation District
2. Converse County
3. The City of Douglas

The two questions relate to flooding and responsibility. The district has attached a letter from the Chairman of the County Commissioners and a map which I am also forwarding to you.

I request an opinion on their two questions. If you need more details, please advise.

Sincerely,

Larry J. Bourret, Chairman  
Conservation Commission

LJB/rdm

cc: Wayne Edgerton



# LaPrele-Glenrock Soil and Water Conservation District

CONVERSE COUNTY DOUGLAS, WYO.  
Route 6 • Douglas, Wyo.

RECEIVED

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WYOMING DEPT. OF  
AGRICULTURE  
CHEYENNE, WYOMING

State Conservation Commission  
2219 Carey Avenue  
Cheyenne, Wyoming 82002

Attention: Larry Bourett, Chairman

Gentleman:

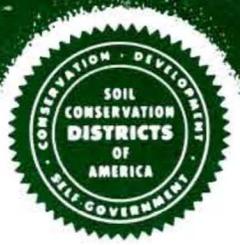
At the present time we are participating with the Town of Douglas and the Converse County Commissioners in development of a PL-566 Watershed Plan and Environmental Impact statement for the Douglas Watershed. The Soil Conservation Service is providing technical and financial assistance on the project. The work plan and environmental impact statement for the project is under going interagency review at the present time.

During this review the work plan was sent to the Office of General Counsel in Washington, D.C. (OGC). OGC raised some questions regarding the agreements that had been worked out between the local sponsors and the Soil Conservation Service for handling potential damages from increased frequency, depth and duration of flooding of two county roads crossing Miller Draw. The increased flooding results from the diversion of additional runoff into this drainage. The two county road locations are identified as A and B on the attached project map.

Peak discharges in Miller Draw just upstream of the railroad will increase about 10% in a 1% chance event (once in 100 years) and about 17% in a 10% chance event (once in 10 years). The increased discharge results in an increased floodwater depth of about 0.8 feet and does not measurably increase the area inundated by the 1% chance event. No induced physical damage in the flood plain is expected; however, if some would occur, sponsors would be responsible for the additional damages (see the attached letter from the Chairman, Converse County Commissioners).

In order to clarify the position of the sponsors and the Soil Conservation Service on this matter, we ask that you request an opinion from the State Attorney General on the following two questions:

- 1) During times of floodwater inundation or if the roadway has been damaged by floodwater, do the County Commissioners have the right, by state statute, to temporarily close the roadway?
- 2) Could the local sponsors or the Soil Conservation Service be held liable for personal injury that might occur as a result of the county roads being flooded?



# LaPrele-Glenrock Soil and Water Conservation District

CONVERSE COUNTY DOUGLAS, WYO.  
Route 6 • Douglas, Wyo.

We need an opinion from the State Attorney General on these two questions as soon as possible.

Sincerely,

*Robert J. Vollman*

Robert Vollman, Chairman  
La Prele - Glenrock Conservation District

Attachments

Rec'd 11/10/78

	COPY	THIS
MON		
RWC		
RLC		
CDC		
JRL		
GEO		
GKW		
RLX	✓	
JWH		

*Landfill*

CONVERSE COUNTY COMMISSIONERS  
 Drawer 990  
 Douglas, Wyoming 82633

Mr. Blaine O. Halliday,  
 State Conservationist  
 P.O. Box 2440  
 Casper, Wyoming 82602

Dear Mr. Halliday:

We are aware that the structural measures planned for the Douglas Watershed will result in some increased flooding of two of our county roads, which cross Miller Draw, South of the Town of Douglas.

We do not feel that this will create any serious problems for the residents of the County, as these roads are subject to occasional overflow under the present situation.

As a sponsor for the Douglas Watershed Project, we will allow the increased flooding to occur and will accept the responsibility of maintaining the roadways under the future flooding conditions as we have under past flooding conditions.

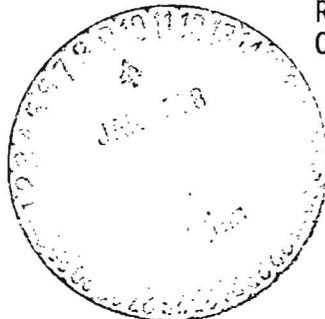
During times of flood water inundation or if the roadway has been damaged by floodwaters, we have the right to temporarily close the roadway as provided by Wyoming Statute 18-149, which says:

18-149.7: To layout, alter or discontinue any road running through the County, and for such purpose may acquire title to lands therein, either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease; and also perform such other duties respecting roads as may be required by law.

Sincerely,

*Richard Burks*

Richard Burks,  
 Chairman



RB/vg

*Attorney General*

CHEYENNE, WYOMING 82002

*f*V. FRANK MENDICINO  
ATTORNEY GENERAL

October 25, 1978

Mr. Larry J. Bourrett  
Chairman,  
State Conservation Commission  
2219 Carey Avenue  
Cheyenne, Wyoming 82001

Dear Mr. Bourrett:

You have presented certain facts whereby the La Prele-  
~~General~~ Soil and Water Conservation District, Board of County  
Commissioners of Converse County, and the City of Douglas,  
Wyoming are participating in the development of a PL-566 Water-  
shed Plan and Environmental Impact statement for the Douglas  
Watershed. It is anticipated that as a result of certain con-  
templated construction there will be some increased flooding  
of two county roads. As a result of this flooding condition,  
you have ask for opinions on the following questions:

1. During times of floodwater inundation or if the roadway has been damaged by floodwater, do the County Commissioners have the right, by state statute, to temporarily close the roadway?
2. Could the local sponsors or the Soil Conservation Service be held liable for personal injury that might occur as a result of the county roads being flooded?

Answer to Question No. 1;

W.S. 18-3-504 sets out the general powers of the county commissioners. §(a)(vi) states:

Layout, alter or discontinue any road running through the county, and for such purpose may acquire title to lands therein, either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease; and also perform such other duties respecting roads as may be required by law.

Larry J. Bourrett  
October 25, 1978  
Page Two

W.S. 24-1-104 states:

All county roads shall be under the supervision, management and control of the board of county commissioners of the county wherein such roads are located . . .

It becomes apparent that the county is obligated to properly maintain and control their highways. The responsibility of safe travel of the traveling motorists is a primary concern to the county, thus, if within their wisdom and discretion, situations exist that require the closing or limiting of the use of a highway, they are authorized to so do.

Answer to Question No. 2:

W.S. 18-2-101(a) states:

Each organized county in the state is a body corporate and politic. The powers of the county shall be exercised by a board of county commissioners which may:

(i) Sue and be sued . . .

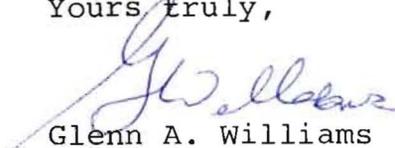
Most recently, the Supreme Court of Wyoming in Oroz v. Board of County Commissioners of Carbon County, Wyo. 575 P2d 1155 (1978) abrogated the sovereign immunity of all counties. Thus, your question must be answered that the county can be sued for injuries or damages caused by the flooding of the county roads. This is especially so when it would be through the action of the county that a road would be closed or damaged by admittedly county action. It is further noted that by an undated letter from the Converse County Commissioners, signed by Richard Burks, Chairman, that the county would accept the responsibility of maintaining the roadways under future flooding conditions as they had under past flooding conditions.

As to the liability of the local sponsors and the Soil Conservation Service being liable for personal injury that might occur as a result of the county roads being flooded, it is axiomatic that anyone can be sued. It is impossible to predict what a jury or court would do, but it would appear logical to say that if only the county exercised the control over the roads then the other parties should not be held responsible.

Larry J. Bourrett  
October 25, 1978  
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This letter of advice shall not be considered a formal Attorney General Opinion and shall not be copied, reprinted, cited, or disseminated as such.

Yours truly,

A handwritten signature in blue ink, appearing to read "G. Williams", written over the typed name.

Glenn A. Williams  
Senior Assistant  
Attorney General

GAW:csw