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August 17, 2001

Privileged and Confidential

Grant Stumbaugh
Natural Resources Division
Wyoming Department of Agriculture
2219 Carey Avenue
Cheyenne, WY 82002

Re: Sheridan County Conservation District Official Policy

Dear Mr. Stumbaugh:

You have requested our opinion on an official policy recently crafted by the Sheridan County Conservation District Board. That board adopted the written policy on 7/24/2001; a copy of the policy is attached. You requested that we review the policy in light of the Wyoming Public Records Act. You also supplied a copy of a June 14, 1999 letter from this office addressed to Ron Micheli regarding "Conservation District Water Quality Monitoring and Data Collection." The advice contained in that letter is pertinent to the proposed policy at issue here, as they both relate to the topic of ownership of water quality and monitoring data and release of information. The case law cited has not been overturned, nor has the statutory law been amended in such a manner as to render any different conclusion since the June 14, 1999 letter.

It is understood that the water quality data the conservation district collects derives from voluntary private participation with the conservation district as well as public sources. The question is limited to the status of the data obtained from

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analysis and monitoring conducted on private lands. The private landowners voluntarily allow conservation district personnel to periodically collect samples for laboratory analysis and to monitor streams, rivers and other sources of water on the private lands. It is important to note that in all instances the analyses and monitoring activities are conducted by a governmental subdivision of the state of Wyoming and paid for with public funds.

The written policy at issue contains several restrictions that are not supported by the Wyoming Public Records Act (W.S. 16-4-201, *et seq.*) (the "Act") or by case law interpreting the Act.

First, the third paragraph attempts to exclude data compiled by the Sheridan County Conservation District by describing it as belonging to the landowner. This issue was addressed head-on in the June 14, 1999 letter advising that, "Water quality information and monitoring data collected with public funds should be available to the public as a public record." In short, when public funds are used to compile the data, it does not belong to any private individual. Such attempts to characterize the data as private or confidential will not make it so.

Second, there are at least three references to the "discretion of the District." While W.S. 16-4-202 allows "the official custodian . . . [to] make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian", the Act does not provide "discretion" to custodians of public records regarding the right of inspection. Rules and regulations exceeding the scope of authority delegated by the legislature may not be properly promulgated. Policies purporting to carry out such functions are likewise ineffective and improper.

Third, the fourth paragraph referencing QA/QC procedures places a burden on the information that does not come within any of the Act's provisions regarding grounds for denial of access. W.S. 16-4-203.

Fourth, the Act does not provide for any requirement to notify private landowners when public information is requested. In placing that burden and inherent delay on providing information to the public, the requirement in numbered paragraph "2.)" of the written policy may be viewed as an improper attempt to shield information that the public should be able to access relatively efficiently.

Fifth, regarding numbered paragraph "4.)", again there is no discretion of the conservation district allowed by the Act with respect to copies being made "under the discretion of the District." In regard to copying public records, the requestor has a right to have or make copies. The copies may be made in the office and a reasonable fee charged, or the requestor may be given access to the records to make copies. W.S. 16-4-204 is quite specific in this respect:

16-4-204. Right of inspection; copies, printouts or photographs; fees

(a) **In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian.** Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall apply.

(b) **If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs.** The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be

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made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section.

Emphasis added.

It is possible that circumstances may exist in which a court could find some of the information to be confidential. However, the Wyoming Supreme Court has stated on a number of occasions that the Act will be liberally construed in favor of disclosure and exemptions to public disclosure will be construed narrowly. *Sheridan Newspapers, Inc. v. City of Sheridan*, 660 P.2d 785 (Wyo. 1983). *Sublette County Rural Health Care District v. Miley*, 942 P.2d 1101 (Wyo. 1997). See also, *Laramie River Conservation Council v. Dinger*, 567 P.2d 731 (Wyo. 1977).

The last two sentences of the June 14, 1999 letter to Ron Micheli bear repeating here:

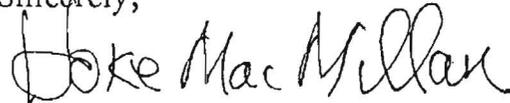
Water quality information and monitoring data **collected with public funds** should be available to the public as a public record. It is our opinion that such information is not confidential and **cannot be shielded from disclosure** by leaving it with the landowner.

Emphasis added.

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For all of the foregoing reasons, we believe the Sheridan County Conservation District's Official Policy, as submitted, fails to meet the requirements of the Wyoming Public Records Act.

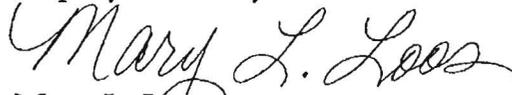
Sincerely,



Hoke MacMillan
Attorney General



Rowena L. Heckert
Deputy Attorney General



Mary L. Loos
Assistant Attorney General

HM:RLH:MLL:bkm

Attachment: Sheridan County Conservation District Official Policy, adopted
7/24/2001

Sheridan County Conservation District

Official Policy

CATEGORY: OPERATIONS

Adopted: 7/24/2001

Reviewed/Retained:

Rescinded:

Data Ownership and Release of Public Information

The Sheridan County Conservation District will accept requests for information that the District maintains in its possession at the Sheridan Field Office and will provide information in an accurate and official manner. Public requests for information maintained by Natural Resources Conservation Service must proceed through NRCS procedures and personnel for release.

Information that is considered to be public information includes: subdivision reviews and recommendations; resource materials; public interest/policy files; general district documents, files, and correspondence; and published data. Such information will not be allowed out of the office, but may be copied within a reasonable amount of time under the discretion of the District. Information in the Conservation Library may be checked out but must be returned in a timely manner. Depending upon availability, individuals may be required to make copies of the material at their own expense.

The District will make every effort to protect landowner/user anonymity and specific information regarding individual landowner/user practices and data. Certain data compiled by the Sheridan County Conservation District may belong to the landowner who requested said information and is not included as information available to the public.

Data compiled and maintained by the Sheridan County Conservation District will not be released to the public until said data have been examined for Quality Assurance/Quality Control (QA/QC) by the District QA/QC officer. Requests for information that has not undergone QA/QC review may be denied. Under the discretion of the QA/QC officer some information may be reviewed in the District office. Persons interested in reviewing specific data or information files may be asked to complete the following items:

- 1.) Send a request in writing to the Sheridan County Conservation District Board of Supervisors, outlining the request. Please provide specific information and details as to what is requested, what the information will be used for, and when the information will be needed. Provide Township and Range, Specific Stream Reaches, pastures, etc.
- 2.) The Board has 15 days to notify the landowner/user of your request for his/her information.
- 3.) The data will be provided to persons at a scheduled time for review in the District Office. Landowners/users may be invited to sit in at the time of the review. Landowners providing sampling access will be permitted to review the information collected on their property at any time.
- 4.) The information may not be allowed out of the office. Copies will be made under the discretion of the District.