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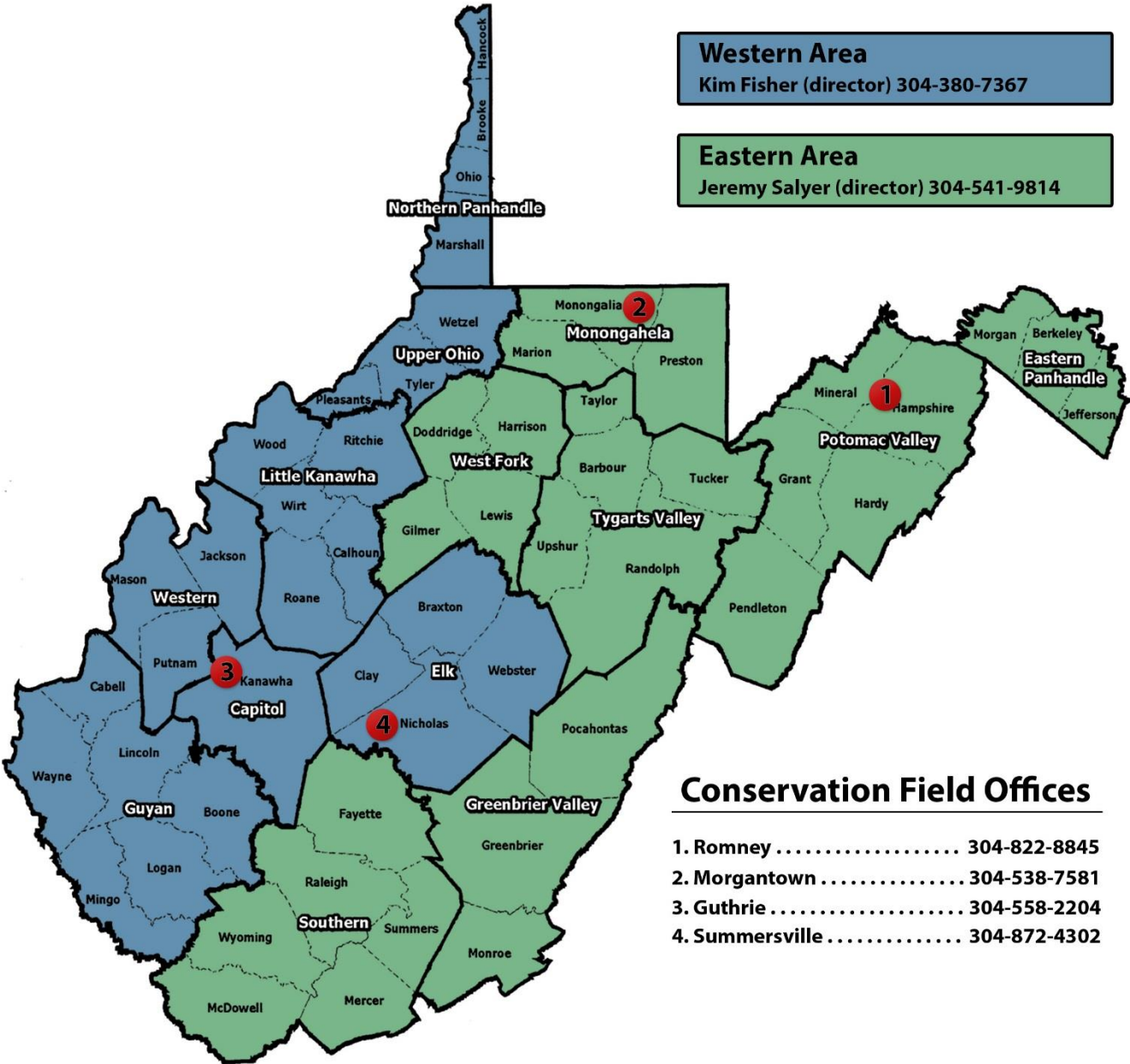
# West Virginia Conservation District Supervisor Handbook



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# West Virginia Conservation District Map



# MISSION

*The mission of the Conservation Districts is to provide local self-government leadership and initiative in the development and conservation of soil, water, and related resources. A balanced planning, education and management program that protects, restores and improves those resources will be accomplished in cooperation with landowners, government agencies and private organizations.*





# ***PHILOSOPHY***

## ***Conservation Districts***

That conservation, development, and wise use of our soil and water resources are essential to the national security and welfare.

That the national interest demands the conservation and orderly development of our soil, water, forest, and related resources as rapidly as possible.

That the major and final responsibility for achieving soil and water conservation rests with the people who own or operate the land.

That the people who own or operate the land have demonstrated they will accept the responsibility if they are fully informed and are provided with assistance, in kind and amount, needed to supplement their own knowledge and resources.

That soil and water conservation districts are the best device so far created whereby people who own or operate the land can exercise local initiative and leadership in achieving the conservation and orderly development of soil, water, timber, and related resources.

That people working together in neighbor, community and watershed groups with locally elected district leadership, and with the guidance of annual and long-range district plans is the best way to get the soil and water conservation job done.

That the districts should enlist the assistance of all individuals' agencies, institutions, and organizations in a position to contribute to the solution of the soil and water conservation problems.

That government should do for the people only those things which need to be done in the public interest and which people are unable to do for themselves.

*W. R. Keyser*

## PURPOSE OF CONSERVATION DISTRICTS

As set forth in Chapter 19-21A-2 of the West Virginia Code the responsibilities of West Virginia's fourteen Conservation Districts and the West Virginia State Conservation Committee are directed to "provide for the conservation of the soil and soil resources of this State, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage, and for furthering the conservation, development, utilization, and disposal of water,

The purpose of this charge is to "preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State."

The Conservation Districts Law (Chapter 19-21 A of the WV Code) established Conservation Districts which are chartered legal sub-divisions of state government. Districts operate under the guidance and with the support of the West Virginia State Conservation Committee (State Agency) and develop and implement local soil and water conservation programs based upon established resource priorities.

Created under the same state law, the West Virginia State Conservation Agency and Conservation Districts function not as two separate entities but as two portions of the same entity. Operating within this unique partnership is the USDA Natural Resources Conservation Service which assigns approximately 200 employees to West Virginia to assist in conducting the State and District's soil and water conservation program responsibilities.



# HISTORY OF CONSERVATION

In response to the worst environmental disasters in the nation's history, the Dust Bowl, Congress created the soil conservation movement.

On April 27, 1935, Congress passed the Soil Conservation Act to address the "wastage of soil and moisture resources on farm grazing and forest lands." The act also created the Soil Conservation Service, the predecessor of today's Natural Resources Conservation Service.

On February 27, 1937, President Franklin D. Roosevelt sent a letter to all state governors recommending enactment of soil conservation district legislation. The proposed act suggested establishing districts as local units of government, established by the people, and governed by the people through elected supervisors. The model law dictated local initiative, local action, local responsibility, local planning and local conservation guided and assisted by the states and the federal government. Each district would be empowered to determine local needs, would have personal contact with local individual landowners within the community, and would thus be able to encourage maximum cooperation on a voluntary basis.

The West Virginia Legislature passed the state's Soil Conservation Districts Act (Chapter §19-21A, see Appendix 1) in 1939.

The law called for local referendums to create conservation districts. West Virginia's first districts were created in 1940 with the last established in 1947.

Today all 50 states, Puerto Rico, and the Virgin Islands have passed the enabling legislation necessary for the creation of approximately 3,000 local districts.

West Virginia's conservation law has been modified several times since its enactment. The modifications have included:

- Removing the word "soil" when describing the State Conservation Committee and the 14 conservation districts in recognition of conservation's evolving nature.
- Expanding the membership of the State Conservation Committee to include the state forester and the president of the West Virginia Association of Conservation Districts.
- Requiring that conservation district supervisors be elected on countywide nonpartisan primary ballots. Supervisors serve four-year terms, and must be farmers or retired farmers.

# STATE CONSERVATION COMMITTEE

The SCC consists of the following ten members:

1. Four citizen members;
2. The following ex officio members, or the designee:
  - a. The director of the State Cooperative Extension Service;
  - b. The director of the State Agriculture and Forestry Experiment Station;
  - c. The secretary of the Department of Environmental Protection;
  - d. The state commissioner of agriculture, who is the chairperson of the committee;
  - e. The director of the Division of Forestry; and,
  - f. The president of the West Virginia Association of Conservation Districts.
3. The SCC may invite the U.S. secretary of agriculture to appoint one person to serve with the committee as an advisory member. Currently, West Virginia's state conservationist with the USDA-NRCS serves in this capacity.
4. The governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

The SCC may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff are collectively known as the West Virginia Conservation Agency (WVCA).

The SCC is the oversight authority to administrative functions for the conservation districts with directives through the WVCA. The SCC generally meets once per quarter, in January, April, July and October.

# State Conservation Committee

## Ex-Officio Members



**Chairman:**  
**Kent Leonhardt, Commissioner**  
WV Department of Agriculture  
304.558.3550



**Dr. Ken Blemings, Interim Dean**  
WVU Davis College of Agriculture,  
Natural Resources & Design  
304.293.2395 | Ken.Blemings@mail.wvu.edu



**Austin Caperton, Cabinet Secretary**  
WV Department of  
Environmental Protection  
304.926.0440 | austin.caperton@wv.gov



**Bill Stewart, President**  
WV Association of Conservation Districts  
304.272.6422  
dstewart7552@yahoo.com



**Steve Bonanno, Director**  
WVU Cooperative Extension Service  
304.293.5691  
scbonanno@mail.wvu.edu



**Barry Cook, State Forester**  
WV Division of Forestry  
304.558.2788  
Barry.L.Cook@wv.gov

## Appointed Members



**Angie Rosser**  
304.637.7201  
arosser@wvrivers.org



**Dr. Eli McCoy**  
304.346.7304  
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**Timothy VanReenen**  
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twvanreenen@frontiernet.net



**Rocky Adkins**  
304.792.8626  
radkins@lccwv.us

## Advisory Members



**Louis Aspey**  
State Conservationist, NRCS  
304.284.7545  
Louis.Aspey@wv.usda.gov



**Roger D. Dahmer**  
State Executive Director  
USDA - Farm Service Agency  
304.284.4801



# WEST VIRGINIA CONSERVATION AGENCY

The SCC has placed upon the WVCA the following responsibilities:

1. Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;
2. Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts;
3. Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;
4. Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;
5. Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;
6. Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations.
7. Yearly budgets are prepared by the executive director based on project, program and operation need. Each of the 14 conservation districts receive state appropriations based on the WVCA's annual budget.
  - a. Project dollars are distributed to the conservation district(s) based on the cost of such project.
  - b. Program funds are appropriated in accordance to the program that has been approved by the SCC.
8. WVCA employees provide administration, communication and technical support to the districts.

# CONSERVATION DISTRICTS

As set forth in West Virginia Code Chapter 19-21A-8(8) the state's 14 Conservation Districts and are charged with preserving natural resources, controlling floods, preventing impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, preserving wildlife, protecting the tax base, protecting public lands and protecting and promoting the health, safety and general welfare of the people of this state.

The 114 elected conservation district supervisors serve on local boards that develop and implement urban and rural conservation programs designed to protect and conserve soil, water, woodland, wildlife, and other renewable natural resources.

## LEADERSHIP QUALITIES OF A CONSERVATION DISTRICT SUPERVISOR

1. Puts his/her agenda aside and does what's best for the organization.
2. Builds a sense of fellowship among those with whom he/she works.
3. Understands the overall goals and objectives of conservation.
4. Is trusted by the other members of the Board and staff.
5. Communicates well, in writing and verbally.
6. Works well on a team.
7. Is accepting of people with opinions different than his/hers.
8. Asks questions which challenge the status quo.
9. Understands the organization's finances and takes fiscal responsibility.
10. Has a strong commitment to the mission of the organization.

# CHARACTERISTICS OF THE “PERFECT” SUPERVISOR

1. Listens well.
2. Effectively solves problems.
3. Makes decisions based upon data.
4. Is passionate about the organization.
5. Understands the finances of the organization.
6. Focuses on the mission of the organization in all decision making.
7. Has a sense of vision and wants the organization to be more than it is today.
8. Understands the needs of the members.
9. Works as a team member but offers respectful dissent.
10. Asks probing questions, especially on matters that are unfamiliar.
11. Makes decisions based upon the organization’s strategic plan.
12. Follows through on Board and Committee assignments.
13. Support state and national conservation objectives.
14. Take an active role in developing and updating district’s long-term strategic plans.
15. Participate in developing, publishing, and distributing annual reports (including a financial report of district accounts) at the end of each fiscal year.
16. Participate in planning and conducting public meetings on proposed laws and policies concerning conservation.
17. Work with other board members to form committees of key stakeholders to deal with issues affecting soil and water conservation.
18. Work with other board members and the West Virginia Conservation Agency to provide continued training and development to all Supervisors.
19. Maintain integrity, and abstain from any action or vote which could be considered a conflict of interest.
20. Work with other Board members to establish the business procedures required for accounting and financial management of the district’s fiscal affairs in accordance with state law.
21. Periodically visit farmers and other land users to review and better understand individual as well as collective conservation needs throughout the District and, where appropriate, encourage them to become district cooperators.
22. Cooperate with other district boards in sponsoring watershed protection and flood prevention projects.
23. Work with other board members to make available education programs to the youth of West Virginia on soil and water conservation in all schools within the respected district. Encourage participation in Envirothon, conservation camps, SAMARA programs.
24. Work with other board members to promote conservation tours, field days and pasture walks.
25. Work with other board members to participate in district observances of Soil and Water Conservation Stewardship Week.

# ROLES AND RESPONSIBILITIES OF DISTRICT SUPERVISOR BOARDS

1. Review, approve, and understand agreements that they may enter into with state, local or federal entities.
2. Take an active role in developing the annual plan of work. Identify local conservation needs, develop district programs and set priorities for providing technical assistance to landowners.
3. Be knowledgeable of local, state and federal legislation and policies, and regulations that may affect the District's cooperators.
4. Need to establish working relationships with local, state and federal officials.
5. Solicit and encourage new cooperator participation with the Conservation district.
6. Recruit and support Associate Supervisors in order to expand the District's reach.
7. Offer all programs and services of the District on a non-discriminatory basis without regard to race, color, national origin, religion, sex, age, marital status, or handicap.
8. Participate in the development of the annual district budget.
9. Work with other board members to secure funds for local delivery of programs, services and providing good fiscal oversight.
10. Provide for appropriate and continuing conservation of the state's resources through the development of multi-year programs.

## POWERS OF CONSERVATION DISTRICTS AND SUPERVISORS

1. Conduct surveys, investigations and research, with approval from State Conservation Committee, relating to the character of soil erosion and floodwater and sediment damage and to the conservation, development, use and disposal of water and the preventive and control measures needed.
2. Conduct conservation demonstration projects on any land within the district, whether state or privately owned, upon obtaining consent from the proper authority.
3. Carry out preventative and control measures within the district including, but not limited to, engineering operations, cultivation methods, vegetative cover improvement and land use changes, with the cooperation and consent of the proper authority.
4. Cooperate or enter into agreements with any person to furnish aid to any land occupier within the district to furnish financial or other aid for the purpose of installing best management practices.
5. Obtain options upon and to acquire, by purchase, exchange, lease, gift, grant or condemnation or by other legal means, any real or personal property or rights or interests in it for the purpose of furthering the conservation programs.
6. Maintain, administer and improve any acquired properties and expend the income from the properties to further the conservation programs.

7. Sell, lease, or otherwise dispose of district property or interests in it to further conservation programs.
8. Construct, improve, operate and maintain any structures needed to carry out the district's conservation programs.
9. Develop and publish, with the approval of the State Conservation Committee, detailed, comprehensive plans for the conservation of soil and water resources within the district. Plans are to specify the acts, procedures, performances, best management practices needed, and be brought to the attention of district residents.
10. Take over by purchase, lease, or other legal methods and administer any conservation or flood prevention project located within the district and undertaken by agencies of the state or federal government.
11. Act as agent for federal or state agencies in connection with the acquisition, construction, operation, or administration of any conservation or flood protection project within their boundaries.
12. Sue and be sued in the name of the district.
13. Have a judicially recognized seal.
14. Make and execute contracts and other instruments needed to carry out district operations.
15. Make, amend, and repeal rules and regulations pertaining to conservation districts in order to accomplish district goals.
16. Secure contributions in money, services, materials or otherwise as a condition to extending benefits or performing work.
17. Encourage landowners to enter into and perform agreements regarding permanent land use that will prevent soil erosion, flooding, and sedimentation.
18. Enter into contracts with persons, government entities, corporations, and others for cooperation of assistance in performing operations which will achieve district goals.
19. Formulate rules and regulations governing the use of land within the district in order to conserve soil and soil resources and to control soil erosion. Supervisors shall conduct public meetings and hearings upon tentative rules and regulations as necessary.
20. Co-sponsor watershed programs and other related project activities with Resource Conservation and Development Council (RC&D).

*The powers of districts are presented here in an abbreviated form. In some instances they have been paraphrased. For exact reference, see the Conservation Districts Law, Chapter §19-21A (Sections 7,8,9).*



# CHARACTERISTICS OF A SUCCESSFUL DISTRICT

1. Have supervisors understand and accept their responsibilities and powers that are established by state law and district policy.
2. Have and use a good long-range plan that encompasses everything involved in the conservation and development of the land and water resources for both agriculture and non-agriculture uses.
3. Have supervisors who understand their conservation programs.
4. Help local people understand and support the long-range conservation plans.
5. Develop and carry out a good annual plan of operations, with the active input and involvement of local people.
6. Have regular board of supervisors' meetings.
7. Have funds to carry out responsibilities.
8. Use all available people and resources.
9. Develop and present educational programs.
10. Establish and maintain communications and working relations with federal and state agencies, organizations, groups, institutions, individual leaders and others who are potential contributors to the work of the district.
11. Keep the national and state legislators and governing bodies in county and city governments informed.
12. Provide an annual report of its district.
13. Prepare an annual budget and maintain adequate bookkeeping that reflects all income and expenditures with an annual financial statement and audit as required.
14. Provide a district policy manual for reference.
15. Enter into working agreements or memorandums of understanding for assistance and cooperation in carrying out the conservation programs.

## MEETINGS

Board meetings shall be held at least once a month and the agenda published in accordance with the *West Virginia Open Governmental Proceedings Act*. These meetings require planning and participation by all involved in the district's programs to be productive. Monthly board meetings have two basic purposes: to decide on conservation district policy and monitor its implementation. Board meetings also serve communication, educational, inspirational and social purposes. Board meetings are open to the public with the exception of portions which deal with sensitive personnel issues.

As the agenda is prepared each month, the annual plan of work should be reviewed so that appropriate action items can be taken on each item at the proper time of year.

**Note that the WV Code of Ethics precedes "Roberts Rules of Order" regarding meetings.**

Please refer to: "WV Code of Ethics," Appendix 5; "Roberts Rules of Order."

# ASSOCIATE SUPERVISORS

Many conservation districts find the use of associate supervisors to be extremely important to their district programs. Associate supervisors are officially appointed by the conservation district board as advisors and representatives. The district board determines the roles and authorities of associate supervisors within the constraints of the district law and policy. Generally an associate supervisor can do anything a district supervisor can except make motions and vote. Associate supervisors augment your knowledge and experience, and assist with conservation district programs.

Associate supervisors are usually appointed for one year. General approval of the board is the only requirement for appointment.

Reimbursement for travel expenses is at the discretion of the board. Funds must come from the district board, since the State Conservation Committee is not authorized to reimburse expenses of associate supervisors.

# VOLUNTEERS

Districts may also obtain free help through volunteers, hosted workers, and alternative sentence workers. Organizations such as FFA, Scouts, garden clubs, civic clubs and others offer a wealth of volunteer assistance for specific projects such as tree planting, critical area stabilization, Soil and Water Stewardship Week activities, dedications, field days, etc. Many of these groups provide insurance for their members. If they don't, districts may wish to purchase short-term insurance to cover them while they work on the district project.

Hosted volunteers are workers who are paid or receive benefits from another entity.

These include: Job Training Partnership Act (JTPA) participants, Retired Senior Volunteer Program (RSVP) volunteers, and volunteers from businesses or large companies.

# COOPERATOR AGREEMENTS

Any person, firm, or corporation can be a cooperator no matter how many acres they own, lease, or rent. The cooperator agrees to work with the district in developing plans based on proper land use and the needs of the farm enterprise and will implement the conservation plan by making land use adjustments and establish conservation practices.

The district agrees to furnish assistance in development of a conservation plan and implementation of the conservation practices called for in the plan. This agreement is between the conservation district and the cooperator.

It is important that all members of the conservation partnership encourage the landowners and occupiers who request assistance through the district to sign a cooperator agreement. Districts should review cooperator agreements every three years to ensure they are up to date.

# Conservation Agreement

Cooperator Interest

(Revised 7/18)

(Check all that apply)

☐ Grassland Management

☐ Forestry Management

☐ Wildlife Management

☐ Conservation Planning

☐ Cost-Share Programs

☐ Equipment Rental

☐ Urban Conservation

☐ Other (specify) \_\_\_\_\_

Cooperator Number \_\_\_\_\_

Hydrologic Unit \_\_\_\_\_

Acres \_\_\_\_\_

Between the \_\_\_\_\_ Conservation District, and \_\_\_\_\_

\_\_\_\_\_, a landowner in, \_\_\_\_\_ County, West Virginia.

Location: \_\_\_\_\_ Previous Owner: \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
(Street or Route)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State & Zip)

\_\_\_\_\_  
(Telephone)

I am interested in conserving the natural resources of my property. I desire assistance in developing a conservation plan, which will be based on proper management of my natural resources and the needs of my enterprise. I will cooperate in establishing the conservation practices called for in my conservation plan, which are acceptable and feasible for me to install.

The Conservation District will make available the technical assistance required to develop the plan and to implement the resource management systems as described in the plan.

It is understood that neither the District representative nor landowner will be liable for any damages to the other's property or personal injury resulting from carrying out the conservation plan in accordance with all applicable federal, state, and local permitting requirements.

This agreement will remain in effect until terminated in writing by either part.

\_\_\_\_\_  
Signature of Owner/Operator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved by Conservation District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved CD Supervisor

\_\_\_\_\_  
Date

**SIMPLIFIED PARLIAMENTARY PROCEDURE:  
Based On Robert's Rules Of Order  
BY NACD**

**I. ORDER OF BUSINESS**

1. The meeting is "called to order" by the chairperson.
2. The minutes of the preceding meeting are read by the secretary and:
  - a. May be approved as read.
  - b. May be approved with additions of corrections.
3. Monthly statement of Treasurer is "Received as read and filed for audit." (Chair so states.)  
No motion of approval is necessary.
4. Reports of standing committees are called for by the chairperson.
5. Reports of special committees are called for by the chairperson.
6. Unfinished business is next in order at the call of the chair or of the meeting.
7. New business.
8. The program (if an annual or other special meeting). A Program is part of the meeting; the chairperson "presides" throughout.
9. Adjournment.

**II. DUTIES OF A CHAIRPERSON**

1. To preside at all meetings.
2. Keep calm at all times.
3. Talk no more than necessary while presiding.
4. Have agenda for meeting before him and proceed in a businesslike manner.
5. Have a working knowledge of parliamentary law and a thorough understanding of the constitution and by-laws or other legal charter of the organization.
6. Keep a list of committees on the table while presiding.
7. Refrain from entering the debate of questions before the assembly. If it is essential that this be done, the vice-chairperson should be placed in the chair. A chairperson is not permitted to resume the chair until after the vote has been taken on the question under discussion.
8. Extend every courtesy to the opponents of a motion, even though the motion is one that the presiding officer favors.
9. Always appear at the rostrum a few minutes before the time the meeting is to be called to order. When the time arrives, note whether a quorum is present; if so, call the meeting to order, and declare "a quorum is present."

### **III. OTHER OFFICIALS**

#### **Vice-Chairperson**

The vice-chairperson of an organization is the one who acts in the place of the chairperson, whenever needed in case of resignation or death of the chairperson, the vice-chairperson automatically becomes the chairperson unless the by-laws provide other methods.

In official meetings, the vice-chairperson should preside in the absence of the chairperson or whenever the chairperson temporarily vacates the chair.

If the chairperson should be absent for a long period, the vice-chairperson may exercise all duties of the chairperson except to change or modify rules made by the chairperson.

The vice-chairperson cannot fill vacancies where the by-laws state that such vacancies shall be filled by the chairperson.

In case of resignation or death of the chairperson, and the vice-chairperson does not care to assume the office of chairperson, the vice-chairperson must resign.

The office of vice-chairperson becomes vacant when the vice-chairperson assumes the office of chairperson. If there are several vice-chairpersons, they automatically move up to the higher office leaving the lower office vacant. This office should be filled as instructed by the by-laws or authorized legal authority.

In the absence of the chairperson, the vice-chairperson is not “ex-officio” a member of any committee.

#### **Secretary**

The secretary should issue all calls or notices of meetings and should write such letters as the board of directors or executive committee may designate.

The secretary should keep a neat and careful record of all business done in the meetings, with the exact wording of every motion and whether it was lost or carried. Brief extracts from speeches, if important, may be recorded but no comment of any kind, favorable or unfavorable, should be made. The minutes should show the names of persons appointed to committees, and it is the duty of the secretary to notify all persons nominated or elected on any committee.

The secretary should be on hand a few minutes before a meeting is called to order.

He should have the minutes book of the organization with him so that reference can be made to minutes of past meetings.

The secretary should always have a copy of the by-laws; standing rules; book of parliamentary procedure endorsed by the organization; list of members or clubs; and a list of unfinished business, copy of which should be given the presiding officer.

The minutes of an organization should contain a record of what is done and not what is said.

Minutes should contain:

1. Date place and time of meeting
2. Whether it is a regular or special meeting.
3. Name of person presiding.
4. Name of secretary. (in small boards, the names of those present should be recorded.)
5. All main motions, whether adopted or rejected.
6. The names of the persons making the motions; the name of the seconder need not be recorded.
7. Points of order and appeals, whether sustained or lost.
8. A motion which was withdrawn should not be recorded.



### **Treasurer**

The Treasurer of any organization is the custodian of its funds and receives and disburses them upon authority from the organization, the board, executive committee or the finance or budget committees. A treasurer should be bonded.

The organization should approve the budget or authorize the executive committee or the board of directors to do so. A committee chairman or an officer or member should get permission from the chairperson or board to make an expenditure.

No treasurer should accept bills for payment, such as for postage, traveling expenses, etc., from a committee chairperson unless receipts are enclosed.

The treasurer should make a monthly statement and a report once a year, or upon the request of board or parent body during the year. The annual report should be audited. An auditors' reports should be presented following the treasurers report. The presiding officer states to the assembly that to adopt the report of the auditor (if carried) has the effect of accepting the treasurer's report.

### **Committees**

Committees have no authority except that which is granted by the constitution or by vote of the organization. Unless otherwise provided, the person first named or the one receiving the largest number of votes is its chairperson. A committee has no right to incur any debt or involve the organization in any way unless given full authority to do so.

Under no circumstances should one or more members of a committee go ahead with the business without action by a quorum; usually a majority of the committee, being present. Failure to observe these rules renders such action "the action of individuals" and subject to "censure."

## **IV. PRINCIPAL MOTIONS**

General Statement: When a motion has been made, seconded, and stated by the chair, the assembly is not at liberty to consider any other business until this motion has been disposed of. If the motion is long and involved, the chairperson asks the mover to hand it in writing to the secretary. The mover cannot withdraw his motion after it has been stated by the chair. In general, all important motions should be seconded, which may be done without rising or addressing the chair.

1. **To Amend:** This motion is "to change, add, or omit words" in the original main motion, and is debatable; majority vote.

To Amend the Amendment: This is a motion to change, add or omit words in the first amendment; debatable, majority vote.

Method: The first vote is on changing words of second amendment, the second vote (if first vote adopts change) on first amendment as changed; the third vote is on adopting main motion as changed.

2. **To Commit:** When a motion becomes involved through amendments or when it is wise to investigate a question more carefully, it may be moved to commit the motion to committee for further consideration. Debatable and amendable, but a committee must make report on such question.

3. **To Lay on the Table:** The object of this motion is to postpone the subject under discussion in such a way that it can be taken up at some time in the near future when a motion "to take from the

table” would be in order. These motions are not debatable or amendable; majority vote.

4. **To Postpone:** A motion to postpone the question before the assembly to some future time is in order, except when a speaker has the floor. Debatable, majority vote.

5. **To adjourn:** This motion is always in order except:

- a. When a speaker has the floor.
- b. When a vote is being taken.
- c. After it has just been voted down.
- d. When the assembly is in the midst of some business which cannot be abruptly stopped.

When meeting the above conditions, the motion is not debatable. When the motion is made adjourn to a definite place and time, it is debatable.

6. **To Reconsider:** The motion to reconsider a motion that was carried or lost in order if made on the same day or the next calendar day, but must be made by one who voted with the prevailing side. No question can be twice reconsidered. Debatable, majority vote.

Requires Two Votes: First on whether it should be reconsidered, seconded on original motion after reconsideration.

7. **The Previous Question:** The motion is to close debate on the pending question. This motion may be made when debate becomes long drawn out. It is not debatable. The form is “Mr. (Madam) Chairperson, I move the previous question.” The chairperson then ask, “Shall debate be closed and the question now be put?” If this be adopted by a two-thirds vote, the question before the assembly is immediately voted upon.

8. **Point of Order:** This motion is always in order, but can be used only to present an objection to a ruling of the chair or some method of parliamentary procedure. The form is “Mr. (Madam) Chairperson, I rise to a point of order.” The Chairperson: “Please state your point or order.” After the member has stated his objection, the chair answers:

- a. “Your point of order is sustained”
- b. “Your point of order is denied.”

If any member is not satisfied, he may appeal from the decision of the chair. The chairperson then addresses the assembly. “Shall the decision of the chair be sustained?” This is debatable and the presiding officer may discuss it without leaving the chair. Voted on like any other motion. Majority or tie vote sustains the decision of chair. Requires a majority of “no” votes to reverse decision of the chair.

## **ASSOCIATE SUPERVISORS**

Many conservation districts find the use of associate supervisors to be extremely important to their district programs. Associate supervisors are officially appointed by the conservation district board as advisors and representatives. The district board determines the roles and authorities of associate supervisors within the constraints of the District Law and policy. Generally, an associate supervisor can do anything a district supervisor can except make motions and vote. Associate supervisors augment your knowledge and experience, and assist with conservation district programs.

Associate supervisor's main qualifications should be an interest in natural resources Conservation and time to devote to district activities. Generally, associate supervisors assist the board with a particular program such as: conservation education, solid waste, watersheds, public relations, legislation, water quality, etc.

Associate supervisors should be appointed to satisfy a certain need of the district. Some possible reasons for associate supervisors are to:

1. Train for supervisor positions.
2. Work on specific committees or projects.
3. Provide citizen input.
4. Review plans and regulations in their area of expertise.
5. Act as district liaison to potential cooperators.
6. Allow supervisors to "step down" while still retaining an official role with the district. This option is often taken by supervisors whose health or lifestyle prevent them from being a full-time supervisor.
7. Allow supervisors who have lost an election to remain active in district programs.

### **Term of office:**

Associate supervisors are usually appointed for one year. General approval of the board is the only requirement for appointment.

### **Expenses:**

Reimbursement for travel expenses is at the discretion of the board. Funds must come from the district board, since the State Conservation Committee is not authorized to reimburse expenses of associate supervisors.

### **Insurance:**

Under state law the State Committee may not provide tort and injury coverage for associate supervisors. Districts may include associate supervisors and other volunteers under their own insurance policies. NRCS provides tort and injury coverage to associate supervisors who are signed up as "Earth Team" Volunteers.

### **Number of Associates:**

Districts may appoint as many associate supervisors as they desire.

### **Associate Supervisor Activities:**

To keep active associate supervisors, districts must keep them interested and actively participating at board meetings and in district committees and functions. This can be done by:

- assigning specific duties to associate supervisors,
- requesting reports from them at board meetings,
- and consulting them on problems in their area of expertise.

Associate supervisors are of great value to districts. If you need them, appoint them. If you appoint them, involve them and utilize their talents for the best interests of the Conservation District.

# WEST VIRGINIA CONSERVATION INITIATIVES RECOGNIZED BY DISTRICTS

*Please note that participation in these programs is voluntary and will vary district by district.*

1. Conservation Education Awards Programs
  - a. Teacher of the Year Contest
  - b. Education District of the Year
2. District Public Speaking Contest
3. Land Judging
4. National Association of Conservation Districts Awards Program
  - a. Photo Contest - district, state and national levels
  - b. NACD Auxiliary Poster Contest – district, state and national levels
5. Samara Program
6. WV Envirothon
7. WV Grassland Evaluation Contest
8. Forestry Contest
9. Conservation Camps
  - a. Jr. Conservation Camp (Cedar Lakes)
  - b. WV Conservation Camp (Camp Caesar)
  - c. West Virginia Forest Industries Camp



# ANNUAL DISTRICT AND STATE AWARDS

1. CD Supervisor Perfect Attendance
2. Carroll Greene Award (District Supervisor of the Year)
3. District/Area/WV Conservation Farm Program
4. Years of Service Recognition
5. Land Judging Contest
6. Grassland Farmer
7. WVACD Scholarship Awards

For more information on West Virginia Conservation District sponsored awards and recognition contests visit [www.wvca.us/education](http://www.wvca.us/education). Contest and rules subject to change.

# WEST VIRGINIA ASSOCIATION OF CONSERVATION DISTRICTS

The West Virginia Soil Conservation District Supervisor Association was formed on December 15, 1942. On October 15, 1963, the Association was incorporated as the “West Virginia Soil and Water Conservation District Supervisors Association.”

The Association is a 501(c)3 tax exempt, nonprofit organization and is now the West Virginia Association of Conservation Districts. A copy of the tax-exempt documentation is available through the West Virginia Secretary of State’s Office.

The Association is organized exclusively for educational, scientific, and charitable purposes. Its goals are to promote soil and water conservation and proper land use, and to ensure a continuing productive agriculture essential to the national welfare. To further these objectives, the WVACD:

1. Supports improved conservation legislation;
2. Conducts an educational program regarding its goals and accomplishments in support of conservation programs at the district level;
3. Provides forums to inform, train, and educate supervisors and recognize outstanding district individuals and programs;
4. May conduct a full business meeting at the July quarterly meeting. The WV Conservation Awards Council sponsors the annual district supervisor meeting at the October quarterly meeting.
5. Holds quarterly board of director’s meetings.

The business of the WVACD is managed by a board of 28 directors (two from each conservation district in the state). Directors must be:

1. Members of the WVACD
2. Nominated by the conservation district board of supervisors, of which he or she is a member; and
3. Seated at the July quarterly meeting following the primary election.
4. Officers are elected from the WVACD board of directors according to the bylaws.

**Bylaws and Constitution (See Appendix 6)**

## ACRONYM GLOSSARY

**ACP** - Agricultural Conservation Program  
**AgEP** – Agricultural Enhancement Program  
**AMA** - Agricultural Management Assistance Program  
**AML** – Abandoned Mine Land Program  
**APO** - Annual Plan of Operations  
**APW** – Annual Plan of Work  
**BMP** - Best Management Practice  
**CD** – Conservation District  
**CED** - County Executive Director  
**CRP** - Conservation Reserve Program  
**CREP** - Conservation Reserve Enhancement Program  
**CTA** - Conservation Technical Assistance  
**DC** - District Conservationist  
**EBA** - Ecosystem Based Assistance  
**ECP** - Emergency Conservation Program  
**EEO** - Equal Employment Opportunity  
**EIS** - Environmental Impact Statement  
**EPA** - Environmental Protection Agency  
**EWP** - Emergency Watershed Protection Program  
**EQIP** - Environmental Quality Incentives Program  
**FAIRA** - Federal Agriculture Improvement and Reform Act of 1996  
**FIP** - Forestry Incentive Program  
**FOTG** - Field Office Technical Guide  
**FSA** - Farm Service Agency  
**GIS** - Geographic Information System  
**GHG** - Green House Gases  
**GRP** - Grassland Reserve Program  
**GPS** - Global Positioning System  
**GRASS** - Geographic Resource Analysis and Support System

**HEL** - Highly Erodible Land  
**ICM** - Integrated Crop Management  
**I&E** - Inventory and Evaluation of Soils  
**IPA** - Interagency Personnel Agreement  
**IPM** - Integrated Pest Management  
**LESA** - Land Evaluation and Site Assessment  
**LISA** - Low Input Sustainable Agriculture  
**LRF** - Limited Resource Farmer  
**LTA** - Long Term Agreement  
**MOU** - Memorandum of Understanding  
**NACD** - National Association of Conservation Districts  
**NASCA** – National Association of Conservation Agencies  
**NPS** - Non-Point Source (pollution)  
**NRCS** - Natural Resources Conservation Service  
**NRI** - National Resources Inventory  
**PRMS** - Performance Results Measurement System  
**RAMP** - Rural Abandoned Mine Program  
**RC&D** - Resource Conservation and Development  
**RD** - Rural Development  
**RUSLE** - Revised Universal Soil Loss Equation  
**SIP** - Stewardship Incentive Program  
**SSRP** – Stream Stabilization and Restoration Program  
**SWCS** - Soil and Water Conservation Society  
**(T)** - Soil Loss Tolerance  
**USDA** - United States Department of Agriculture  
**USLE** - Universal Soil Loss Equation  
**WHIP** - Wildlife Habitat Incentive Program  
**WQ** - Water Quality  
**WQIP** - Water Quality Incentive Program  
**WRP** - Wetland Reserve Program  
**WVDA** – West Virginia Department of Agriculture

**WVDEP** - West Virginia Department of Environmental Protection

**WVDNR** - West Virginia Division of Natural Resources

**WVDOF** – West Virginia Division of Forestry

**WVOWR** - West Virginia Office of Water Resources

**WVACD** - West Virginia Association of Conservation Districts

**WVCA** - West Virginia Conservation Agency

**WVSCC** – West Virginia State Conservation Committee

**WVUCES** - West Virginia University Cooperative Extension Service

# APPENDICES

Appendix 1 .....	West Virginia Conservation Law §19-21A
Appendix 2 .....	State Conservation Committee Legislative Rules 63CSR1, 63CSR2
Appendix 3.....	A Guide to the West Virginia Open Governmental Proceedings Act, FOIA, and Open Meetings Act
Appendix 4.....	The Ethics Act: A Code of Conduct for Public Servants
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Appendix 6.....	West Virginia Association of Conservation Districts Constitution/ Bylaws
Appendix 7 .....	Conservation District Supervisor Statement of Qualifications, Removal from Office, How to Fill a Vacancy, Oath of Office
Appendix 8 .....	WVCA Supervisor Travel Policy & Procedures
Appendix 9 .....	Strategic Plan for WV Conservation Activities
Appendix 10 .....	CD Supervisor Travel Policy (Provided by District)
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# **Appendix 1**

WV Code Chapter 19  
Article 21A

## CHAPTER 19. AGRICULTURE.

### ARTICLE 21A. CONSERVATION DISTRICTS.

#### **§19-21A-1. Title of article.**

This article may be known and cited as the "Conservation Districts Law of West Virginia".

#### **§19-21A-2. Legislative determinations and declaration of policy.**

It is hereby declared, as a matter of legislative determination:

(a) That the farm and grazing lands of the State of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water and flooding is increased with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible and increases the potential damages from flooding.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of



rainfall runoff, causing more severe and more numerous floods which bring suffering, disease and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings and other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, grazing and reduction of suitable land available for homes and businesses.

(c) That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damage and further the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development, utilization and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state.

(e) This article contemplates that the incidental cost of organizing conservation districts will be borne by the state, while the expense of operating the districts so organized will be provided by donations, gifts, contributions, grants and appropriations, in money, services, materials or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources, with the understanding that the owners or occupiers will contribute funds, labor, materials and equipment to aid in carrying out erosion

control measures on their lands.

### **§19-21A-3. Definitions.**

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) "Agency of this state" means the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(2) "Committee" or "State Conservation Committee" means the agency created in section four of this article.

(3) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(4) "Governing body" means the supervisors of any conservation district, town or city, council, city commission, county court or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city or county in this state.

(5) "Land occupier" or "occupier of land" means any person, firm or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter or tenant.

(6) "Landowners" or "owners of land" means any person or persons, firm or corporation who holds title to any lands lying within a district organized under the provisions of this article.

(7) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in such notice, adjournment may be made, from time to time, without the necessity of renewing such notice for such adjournment dates.

(8) "Petition" means a petition filed under the provisions of subsection (a), section five of this article for the creation of a district.

(9) "Soil conservation", "erosion control" or "erosion prevention projects" means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(10) "State" means the State of West Virginia.

(11) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(12) "United States" or "agencies of the United States" means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(13) "Works of improvement" means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

**§19-21A-4. State Conservation Committee; continuation.**

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the state Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and

other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the state Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state Conservation Committee and expended as provided in this article.

(8) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the 2005 regular session of the Legislature.

(9) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

(10) The State Conservation Committee is continued until July 1, 2012, pursuant to the provisions of article four, chapter ten of the Code of West Virginia, unless sooner terminated, continued or reestablished

pursuant to the provisions of that article.

**§19-21A-4a. Administration of West Virginia Conservation Agency programs; legislative rules.**

(a) If a conservation district supervisor applies to participate in a West Virginia Conservation Agency financial assistance program, then his or her application for that particular program shall be evaluated for approval or denial by the West Virginia Conservation Agency.

(b) A conservation district supervisor may not vote for the authorization, approval or ratification of a contract in which he or she or an immediate family member is beneficially interested.

(c) The State Conservation Committee shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code to establish:

(1) The criteria, ranking and standards required for an applicant to qualify to participate in West Virginia Conservation Agency programs;

(2) A process to disclose the recipients of the award; and

(3) The process for an unsuccessful qualified applicant to appeal an award.

(d) The State Conservation Committee may propose emergency rules as necessary to implement the provisions of this section.

**§19-21A-5. Continuation of conservation districts.**

The conservation districts formed throughout the state under the prior enactments of this section are continued and shall remain in effect until reformed or reorganized as provided in section fourteen of this article.

**§19-21A-6. Election of supervisors for each district; filling vacancies.**

(a) Each county in a district shall elect two nonpartisan supervisors: *Provided*, That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the requirements of article

three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) Supervisors shall be elected in the primary election and serve a term of four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and six months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and six months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

**§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties; removal.**

(a) The governing body of the district consists of the supervisors, appointed or elected, as provided in this article. The supervisors shall be persons who are by training and experience qualified to perform the specialized skilled services which are required of them in the performance of their duties under this section and shall be legal residents and landowners in the district.

(b) The supervisors shall designate a chairperson and may, from time to time, change the designation. On and after the election of supervisors in 2008, the term of office of each elected supervisor is four years. A supervisor holds office until his or her successor has been elected or appointed. In case a new county is added to a district, the committee may appoint two supervisors to represent the county until the next regular election of supervisors for the district takes place.

(c) A supervisor is entitled to reasonable and necessary expenses and a per diem of not more than \$150 nor less than \$30 when engaged in the performance of his or her duties. The expense and per diem rate shall be established by the state committee based on availability of funds.

(d) The supervisors may, with the approval of the State Conservation Committee, employ a secretary, dam monitors, technical experts and any other officers, agents and employees, permanent and temporary, either with or without compensation, as they may require and shall determine their qualifications, duties and compensation, if any. Dam monitors, as specified in any emergency action plan or monitoring plan approved by the Department of Environmental Protection pursuant to its dam safety rules, pertaining to a flood control structure operated or maintained by a soil conservation district and any other employees, agents or officers employed pursuant to this section are "employees" of the district within the meaning of subsection (a), section three, article twelve-a, chapter twenty-nine of this code.

(e) The supervisors may delegate to their chairperson, to one or more supervisors or to one or more agents, or employees, those administrative powers and duties they consider proper. The supervisors shall furnish to the State Conservation Committee, upon request, copies of the ordinances, rules, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities required in the performance of State Conservation Committee's duties under this article.

(f) The supervisors shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) Any supervisor may be removed from office pursuant to section seven, article six, chapter six of this code.

(h) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county.

#### **§19-21A-8. Powers of districts; additional powers of supervisors.**

A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this article:

(1) To conduct surveys, investigations and research relating to the character of soil erosion and



floodwater and sediment damage and to the conservation, development, utilization and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations or research and to disseminate information concerning such preventive and control measures and works of improvement: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods and measures by which soil and soil resources may be conserved and soil erosion in the form of soil washing may be prevented and controlled and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land and the measures listed in subsection (c), section two of this article on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop with the approval of the state committee comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water within the district. The plans shall specify, in as much detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions and grants in money, services, materials or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make and, from time to time,

amend and repeal rules and regulations not inconsistent with this article to carry into effect its purposes and powers;

(11) As a condition to this extending of any benefits under this article to, or the performance of work upon, any lands, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon;

(12) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a district organized hereunder in its acquisition, operation and disposition of property unless the Legislature shall specifically so state;

(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating or maintaining works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention or the conservation, development, utilization and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.

#### **§19-21A-9. Cooperation between districts.**

The supervisors of any two or more districts organized under the provisions of this article may cooperate with one another in the exercise of any or all powers conferred in this article.

#### **§19-21A-10. Cooperation between state agencies and districts.**

Agencies of this state which have jurisdiction over or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder may cooperate with the supervisors of the districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this article.

When such cooperation is undertaken, the supervisors of the districts shall be given free access to enter and perform work upon the publicly owned lands.

**§19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.**

The governing body of any governmental division which may reasonably be expected to receive a benefit from the construction, improvement, operation or maintenance of any works of improvement may expend money for such construction, improvement, operation or maintenance if this expectation exists as to any part of the governmental division and even though such works of improvement are not located within the corporate limits of the governmental division or are not within this state: *Provided*, That if the expenditure is not made directly by the governmental division for such purpose, it shall be made only through a conservation district or watershed improvement district organized under the laws of this state, but it shall not be necessary that any part of the governmental division be within the limits of the district through which the expenditure is made. The governing bodies or governmental divisions may set up in their respective budgets funds to be spent for such purposes and municipalities and counties may levy and collect taxes for such purposes in the manner provided by law: *Provided, however*, That in case sufficient funds cannot be raised by ordinary levies, additional funds may be raised by municipalities and counties as provided by section sixteen, article eight, chapter eleven of this code.

**§19-21A-12. Assurances of cooperation by governmental division.**

(a) By vote of the governing body, any governmental division authorized to expend money on works of improvement by section eleven of this article may alone, or in combination with any other governmental division or divisions authorized to expend money on works of improvement, give assurances, by contract or otherwise, satisfactory to agencies of the United States, congressional committees or other proper federal authority and to conservation districts or watershed improvement districts organized under the laws of this state that the governmental division or divisions will construct, improve, operate or maintain works of improvement or will appropriate a sum or sums of money and expend it for such purposes as provided in section eleven of this article.

(b) The assurances, whether by contract or otherwise, shall be reduced to writing and before final approval of the governing bodies involved shall be submitted to the Attorney General for approval. After approval by the Attorney General and by the governing body or bodies concerned, certified copies of the assurances shall be filed in the office of the county clerk of the county or counties in which the

governmental division is located and in the office of the State Tax Commissioner.

(c) Any assurance hereunder may be valid and binding for a period of time not to exceed fifty years.

**§19-21A-13. Contracts with district for construction of flood control projects; power to borrow money; levy.**

The county commission of each county and the governing body of each municipality in the state are hereby authorized and empowered to enter into a contract or agreement with the conservation district or districts for the purpose of constructing flood control projects within their respective counties or municipalities or adjacent thereto and to use the projects as recreational areas or public parks. For the purpose of defraying the cost of any such project or projects, the county commission or the governing body of any municipality is hereby authorized to borrow from the federal government or from any federal agency having money to loan, a sum sufficient to cover the cost of such project or projects. For the purpose of retiring any indebtedness incurred under the provisions of this section, notwithstanding any other provisions of law, the county commission or the governing body of any municipality is hereby authorized to lay and impose a county or citywide levy as the case might be.

**§19-21A-13a.**

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

**§19-21A-13b.**

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

**§19-21A-13c.**

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

**§19-21A-14. Discontinuing and reforming districts.**

(a) At any time after five years following the organization of a district under the provisions of this article, any twenty-five owners of land lying within the boundaries of a district may file a petition with the state Conservation Committee praying that the district be discontinued and the county or counties of the district be added to another district or districts.

(b) The committee shall conduct one or more public meetings or public hearings upon the petition in

the affected county or counties including the district or districts which may accept one or more counties from the district being discontinued. After the public meetings or hearings have been held by the committee, it shall notify the Secretary of State that a referendum question is to be added to the ballot of the next primary or general election to be held in the county or counties of the affected districts.

(c) The questions shall be submitted by ballots or electronic voting system upon which the words "For discontinuing the \_\_\_\_\_ (name of the conservation district to be here inserted) and adding \_\_\_\_\_ (county or counties) to \_\_\_\_\_ (district or districts) (If one or more counties in a district are to be combined with one or more other districts, each combination must be specified.)" and "Against discontinuing the \_\_\_\_\_ (name of the conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to mark the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district. All registered voters lying within the boundaries of the district to be discontinued and the district or districts to which all or part of the district being discontinued may be added are eligible to vote on the referendum.

(d) If a majority of the votes cast in the referendum are in favor of discontinuing the district, the supervisors shall proceed to terminate the affairs of the district. The supervisors of the district being discontinued shall file an application to discontinue the district with the Secretary of State. The application shall recite the process undertaken in discontinuing the district and the distribution of the property, assets, liabilities, contracts, duties and responsibilities and transfer of territory to one or more districts.

(e) The Secretary of State shall issue to the supervisors a certificate of discontinuance and shall record the certificate in an appropriate book of record in his or her office.

(f) The supervisors of the district or districts gaining all or part of the discontinued district shall file an application with the Secretary of State adding the additional territory to such district or districts.

(g) The property, assets, liabilities, contracts, duties and responsibilities of the district shall be assigned in accordance with the division of the district.

(h) All contracts entered into by the district being discontinued or its supervisors are parties shall remain in force and effect for the period provided in the contract. The reformed district receiving the assets, liabilities, duties and responsibilities related to the contract shall be substituted for the district or supervisors as party to such contracts. The reformed district shall be entitled to all benefits and subject to all liabilities under such contract and have the same right and liability to perform, to require performance, to sue and be

sued thereon and to modify or terminate such contracts by mutual consent or otherwise, as the supervisor or district would have had.

(i) The State Conservation Committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this article more often than once in three years.

# **Appendix 2**

State Conservation  
Committee Legislative  
Rules 63CSR1 63CSR2



TITLE 63  
LEGISLATIVE RULE  
STATE CONSERVATION COMMITTEE

2013 JUN 18 PM 3:10

SERIES 1  
OPERATION OF WEST-VIRGINIA STATE CONSERVATION COMMITTEE AND  
CONSERVATION DISTRICTS

**§63-1-1. General**

1.1 Scope. -- This rule establishes procedures for creating a conservation district and the election and appointment of conservation district supervisors by the State Conservation Committee and the state conservation districts; the expenditure of funds by the State Conservation Committee for watershed programs; and compliance with the West Virginia Open Governmental Proceedings Act.

1.2. Authority. -- W. Va. Code §19-21A and 19-21B.

1.3. Filing Date. -- June 18, 2013

1.4. Effective Date. -- July 18, 2013

**§63-1-2. Procedure for Appointing, Electing and Removing Conservation District Supervisors.**

2.1. The governing body of a conservation district shall consist of the appointed and elected supervisors (W. Va. Code §19-21A-7).

2.2. Each county is entitled to elect two (2) supervisors to represent the county (W. Va. Code §19-21A-7). Provided, that any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

2.2.a. All registered voters are entitled to vote in his or her county for candidates for District Supervisor. Commencing in 2010, elections for county supervisors will be non-partisan. Elections for county supervisor shall be held during the primary election. The term of office for supervisors elected in the year 2010, and in each election thereafter, shall be four years.

2.2.b The provisions of Chapter 3 of the West Virginia Code apply to the election of supervisors, unless otherwise provided for by the provisions of this rule series.

2.3. Qualifications for county supervisor:

2.3.a. Must be a landowner within the county in which he or she is running for office.

63CSRI

2.3.b. Must reside in the county in which he or she is running for office.

2.3.c. Must be an active or retired farmer with a minimum of five years farming experience.

2.3.c.1. "Farmer" means a person engaged in the activity of farming with the potential for producing at least one thousand dollars of products per annum from those activities.

2.3.c.2. "Activity of farming" means the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by other than the producer thereof.

2.3.d. Must have at least five (5) years of land management experience, or experience in other related fields.

2.3.e. Must have a strong working interest in the conservation of natural resources.

2.3.e.1. Must have a knowledge of conservation best management practices either from practical or educational experience. For example: confined feeding areas; filter strips; alternative watering systems.

2.4. All supervisors shall remain in office until the election or appointment and swearing-in of the successor or an official resignation has been received in the office of the State Conservation Committee.

2.5. Any vacancy occurring in the office of district supervisor shall be filled by the State Conservation Committee based on a list of qualified candidates submitted by the district in which the vacancy occurred. The candidate shall be a resident of the county in which the vacancy occurred.

2.5a. To obtain a list of qualified candidates, districts shall advertise in a newspaper of general circulation within the county in which the vacancy occurred. The advertisement shall be placed within seven days of when the vacancy occurred, and shall run for a period of at least one week. The advertisement shall include a listing of any requirements and qualifications necessary to hold the position of supervisor, and instructions on how to apply to the district. The district shall use the list of qualified candidates to make its candidate recommendation to the State Conservation Committee.

2.5b. If a district supervisor vacancy occurs for an unexpired term of less than two years and two months, the appointed person shall hold office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person shall hold the office until a successor is elected in the next primary or general election.

2.5c. Associate supervisors may be appointed by districts as deemed necessary. Associate supervisors may have the same duties as elected supervisors, but may not vote nor make motions. Duties and responsibilities of associate supervisors will be determined by the board of supervisors in their by-laws or policy manual. Expenses for associate supervisors shall be at the discretion of the local conservation district board and be paid by the local district board based on the availability of district funds.

2.5d. Elected and appointed supervisors shall take an oath of office before assuming the position of district supervisor. Original copies of the official oath of office shall be filed with the county clerk's

office. Copies of the oath may be kept at the District office.

**§63-1-3. Expenditure of Funds by the State Conservation Committee for Watershed Programs.**

3.1. Policy. The following requirements shall govern the expenditures of funds by the State Conservation Committee for watershed programs that have or may be made available to it by the state Legislature.

3.1.a. State watershed improvement program funds will only be used to aid legally constituted conservation districts or watershed improvement districts in meeting their obligation of facilitating the planning and operation phase of approved watershed protection and flood prevention programs.

3.1.b. State watershed improvement program funds will be made available only when other funds cannot be obtained and shall be considered supplemental to the capital resources of sponsoring conservation districts or watershed improvement districts in cooperative action with the federal government, local units of government and communities concerned with approved watershed programs.

3.2. Expenditures of State Watershed Improvement Program Funds. State watershed improvement program funds may be spent for the following purposes subject to the procedures outlined in section 3.3 of this rule.

3.2.a. Purchase land or easements on a negotiated value and price basis after certification by a state certified appraiser, one (1) representative of the sponsoring conservation district, one (1) representative of the State Conservation Committee, that the negotiated value does not exceed a fair market value price.

3.2.b. Purchase land, easements or other right-of-way at values resulting from condemnation obstructions.

3.2.c. Negotiate with proper officials on the relocation of roads, public utility lines, or similar actions.

3.2.d. Pay court costs, attorney fees or similar expenses directly connected with any of the above actions.

3.2.e. Assist with expenses incurred by conservation districts or watershed improvement districts in the performance of work related to any watershed activities.

3.3. Operating policies to govern the acquisition of land rights and the general use of state funds.

3.3.a. Each conservation district or watershed improvement district anticipating a need for supplementary state watershed improvement program funds shall prepare and submit to the State Conservation Committee by June 1 of each year, for its action, a comprehensive plan of procedure and statement of intent relative to the acquisition of land rights covering such points as:

3.3.a.1. Estimated total fund needs for land rights;

3.3.a.2. Estimated value of local contributions to this phase of the project;

3.3.a.3. Probable recovery value from land sales; and

3.3.a.4. A description of the (1) methods used, or to be used, to determine land values and (2) a realistic evaluation of the ability of local people to help themselves in the development and completion of a watershed improvement program.

3.3.b. Title to all property acquired shall be vested in the State Conservation Committee.

3.3.c. Easement or other land rights shall be obtained either by the local conservation district or watershed improvement district. An up-to-date listing of all easements (state and district) is to be kept in the district office. Easements should be recorded in the county land records as soon as procured. The list should be checked against courthouse records biannually to ascertain if property has been sold. If sold, the new owner is to be contacted and made aware of the easement.

3.3.d. The sale of the land purchased with state watershed funds must be approved in advance by the State Conservation Committee.

3.3.e. All land purchased with state funds will be sold, subject to necessary easements, as soon as practical. Retention of the area in and above a given structure may be kept for public use development on approval of the State Conservation Committee.

3.3.f. Prior to the selling of such land, an appraisal shall be made by a state certified appraiser, a representative of the local conservation district or the watershed improvement district and a representative of the State Conservation Committee. This appraisal must accompany all proposals to the State Conservation Committee to sell lands acquired with state funds.

3.3.g. Before any property purchased with money from this fund is sold, first refusal shall be given to the property owner from whom it was purchased or his or her heirs. If the previous owner or his or her heirs choose not to repurchase the property notice of the sale must be given. The notice shall be placed in three (3) issues at least a week apart, in a newspaper of general circulation in the conservation district or watershed improvement district affected. The notices are to call for the bids with the property to be sold to the highest bidder. The State Conservation Committee reserves the right to reject any and all bids. And, further, the provisions of this section shall not apply where acquired lands are being sold or disposed for a public use to the State of West Virginia or its political subdivisions. In lieu thereof, consideration other than the present commercial or market value of the property may be used as a basis for the sale or transfer.

3.3.h. Proceeds from the sale of land or products from such areas are to be immediately transmitted to the State Conservation Committee by the conservation district or watershed improvement district.

3.3.i. Improvements other than items covered in watershed work plans are not to be made during the period of conservation district or watershed improvement ownership without specific approval of the State Conservation Committee.

3.4. Representation of the State Conservation Committee. The State Conservation Committee may appoint and authorize a subcommittee, including its Executive Secretary, to act for the Committee in any matters related to this subject.

**§63-1-4. Procedures for Complying with the West Virginia Open Governmental Proceedings Act.**

4.1. The State Conservation Committee and Conservation Districts are required to comply with §6-9A-1 et seq., the West Virginia Open Governmental Proceedings Act.

4.2. Filing in the state register. The time, date and place of all regular and special meetings of the State Conservation Committee shall be submitted to the office of the Secretary of State and by news release to the media and public at large in accordance with §6-9A-3.

4.3. Emergency meetings filed with the Secretary of State. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency: in accordance with §6-9A-3.

63CSR2  
TITLE 63  
LEGISLATIVE RULE  
STATE CONSERVATION COMMITTEE

FILED

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SERIES 2  
CONSERVATION AGENCY FINANCIAL ASSISTANCE PROGRAMS  
OFFICE OF THE CLERK OF THE WEST VIRGINIA  
SECRETARY OF STATE

**§63-2-1. General.**

1.1. **Scope.** -- This rule establishes West Virginia Conservation Agency financial assistance programs and procedures for West Virginia's elected and appointed Conservation District supervisors to participate in the programs without limitations; the transfer of decision-making authority to the West Virginia Conservation Agency when a supervisor applies for a WVCA financial assistance program; and the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee.

1.2. **Authority.** -- W.Va. Code §19-21A-4a.

1.3. **Filing Date.** --

1.4. **Effective Date.** --

**§63-2-2. Definitions.**

For the purposes of this rule, the following definitions apply:

2.1. **Act** -- Conservation Districts Law of West Virginia, W.Va. Code §19-21A-1 et seq.

2.2. **Allocated Funds** -- Funds allocated through the State Conservation Committee and the West Virginia Conservation Agency to West Virginia's Conservation Districts for financial assistance programs.

2.3. **Applicant** -- A cooperator who is applying for or has applied to participate in a West Virginia Conservation Agency financial assistance program.

2.4. **Award** -- The approval of an application for financial assistance.

2.5. **Best Management Practices (BMPs)** -- Agronomic or engineering activities that contribute to the wise use and sustainability of natural resources.

2.6. **Business Day** -- Any day not including Saturday, Sunday, or any legal holiday as set forth in W.Va. Code §2-2-1.

2.7. **Conservation District** -- A subdivision of the state organized under W.Va. Code §19-21A-5.

2.8. **Conservation District Board** -- A board comprised of elected or appointed Conservation District supervisors who serve as a Conservation District's governing body, W.Va. Code §19-21A-7.

2.9. **Conservation District Supervisor** -- One of the members of the governing body of a Conservation District, elected or appointed in accordance with the provisions of W.Va. Code §19-21A-6.

2.10. **Conservation Plan** -- A record of decisions by the applicant, which are approved by the Conservation District for applying and maintaining BMPs and conservation practices on the land.

- 2.11. **Contract** -- A written agreement between the applicant and the Conservation District in which the applicant agrees to implement BMPs for which funds are being paid.
- 2.12. **Cooperator** -- An entity who has entered into a cooperative agreement with a Conservation District for the purposes of protecting, conserving and practicing the wise use of West Virginia's natural resources.
- 2.13. **Eligible Project or Practice** -- A project or practice designated as eligible for financial assistance through a Conservation District.
- 2.14. **Farming Entity** -- A sole proprietorship, corporation, limited liability corporation, partnership, trust or estate or other business entity in which an applicant has a financial interest.
- 2.15. **Financial Assistance Programs** -- State Conservation Committee approved programs that provide financial assistance and are administered by the WVCA and the Conservation Districts for the purpose of protecting and conserving West Virginia's soil, water and related natural resources.
- 2.16. **Immediate Family** -- A spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.
- 2.17. **Nutrient Management Plan** -- A plan that addresses the application, management, amount, source, placement, form and timing of nutrient and soil amendments.
- 2.18. **Program Document** -- A document that outlines the administrative and program participation rules for each West Virginia Conservation Agency financial assistance program.
- 2.19. **Program Year** -- The 12-month period between July 1 and June 30.
- 2.20. **Qualified Applicant** -- A person who has met all program application requirements.
- 2.21. **State Conservation Committee (SCC)** -- The state agency charged with reducing soil erosion and improving water quality, W.Va. Code §19-21A-4.
- 2.22. **West Virginia Conservation Agency (WVCA)** -- The administrative agency of the State Conservation Committee, W.Va. Code §19-21A-4(c).

**§63-2-3. Financial Assistance Programs.**

- 3.1. Conservation Districts shall provide recommendations to the State Conservation Committee on local resource concerns, needed conservation practices, financial assistance rates and other local priority needs.
- 3.2. The State Conservation Committee shall consider the Conservation Districts' recommendations when developing the annual criteria for financial assistance programs.
- 3.2.a. Conservation Districts shall use the State Conservation Committee's approved practice list to generate and submit a local priority list to the West Virginia Conservation Agency for approval prior to the start of the program year.
- 3.3. The WVCA, with the State Conservation Committee's approval, may provide funding to Conservation Districts on an annual basis to aid financial assistance programs.
- 3.4. The WVCA shall provide technical assistance and oversight to the Conservation Districts to ensure proper use of allocated state funds.
- 3.5. Conservation Districts shall administer financial assistance programs in accordance with State Conservation Committee approved policies.

**§63-2-4. Financial Reporting.**

4.1. Conservation Districts shall, with the assistance of WVCA employees, update and maintain the WVCA's financial assistance databases.

4.2. Conservation Districts shall provide annual progress reports to the State Conservation Committee by July 31 detailing how the WVCA's financial assistance programs have benefited the districts' soil and water conservation mission.

**§63-2-5. Eligibility for Financial Assistance Programs.**

5.1. The State Conservation Committee shall annually approve applicant eligibility criteria. At a minimum, an applicant shall:

5.1.a. Be a Conservation District cooperator within the district in which the applicant is applying;

5.1.b. Obtain a conservation plan approved in the Conservation District in which the applicant's land is located;

5.1.c. Obtain a comprehensive nutrient management plan, if applicable. A nutrient management plan's applicability will be addressed in the approved program document.

5.2. The State Conservation Committee's annually approved program document shall specify land eligibility.

**§63-2-6. Conservation District Supervisor Financial Assistance Applications Filed With the WVCA.**

6.1 Conservation district supervisors applying to participate in a WVCA financial assistance program shall submit their applications to the WVCA for evaluation, approval or rejection.

**§63-2-7. Agricultural Enhancement Program (AgEP).**

7.1. Conservation District cooperators may apply for financial assistance to implement Best Management Practices to conserve soil and improve the state's waterways that may be affected by sedimentation and/or agricultural practices.

**63-2-8. Stream Bank Stabilization and Restoration Program (SSRP).**

8.1. Conservation District cooperators may apply for financial assistance to address stream bank stabilization or stream blockages affecting their improved property or reducing a waterway's ability to pass a 5-year storm event.

8.2. To be eligible for financial assistance under SSRP, sites shall:

8.2.a. Be located in the Conservation District in which the cooperator is applying for assistance; and

8.2.b. Meet the technical assessment and criteria established by the State Conservation Committee.



**8.3. Qualified Projects shall seek to:**

- 8.3.a. Stabilize and restore stream banks that are severely eroding and result in limitations on land areas, including agricultural land, urban land, wildlife habitat and other properties and land uses;
- 8.3.b. Prevent sedimentation of streams and the reduction of the flood-storage capacity of lakes and reservoirs;
- 8.3.c. Protect water quality by reducing nutrients and chemicals contained in soil or runoff waters from entering a waterway;
- 8.3.d. Protect aquatic life and habitat by reducing soil erosion, sedimentation and restoring beneficial vegetation;
- 8.3.e. Protect improved public and private property;
- 8.3.f. Protect, create or restore wildlife habitat;
- 8.3.g. Reduce waterway velocity during high water or flooding conditions and reduce flood damage; and
- 8.3.h. Demonstrate the effectiveness of low-cost stream bank stabilization techniques to the public.

**63-2-9. Notification and Disclosure of Application Award or Denial.**

9.1. Conservation Districts shall advertise the availability of WVCA financial assistance programs and the application periods in their respective districts.

9.2. Districts shall disclose application decisions within fifteen (15) business days of when the district's board has rendered a decision on an application.

9.3. Notification and Disclosure shall include:

- 9.3.a. Sending written notification of the decision via first-class mail to applicants;
- 9.3.b. Posting the decision on the Conservation District's and the WVCA's web site;
- 9.3.c. Issuing a news release of the decision to a local newspaper of general circulation in the county from which the application was received; and
- 9.3.d. Specifying whether an application by a Conservation District supervisor, an immediate family member, or farming entity of which the supervisor is a part, was approved.

9.4. The district shall provide a financial assistance contract, financial assistance program rules, implementation standards and deadlines to install the planned practice to successful applicants.

9.5. The district shall provide information on how to appeal a financial assistance decision to the State Conservation Committee to unsuccessful qualified applicants.

**63-2-10. Appeals to the State Conservation Committee.**

10.1. To appeal a decision to the State Conservation Committee, an applicant shall:

- 10.1.a. Submit a written request to the Executive Director of the WVCA within fifteen (15) business days after being notified of the decision; and
- 10.1.b. State specific reasons for the appeal, including evidence to support the claim and the relief sought.

10.2. The State Conservation Committee, or its designee, shall review the appeal and render a written decision to the applicant within ninety (90) business days of receipt of the applicant's appeal request.

10.3. State Conservation Committee members shall recuse themselves from participating in appeal decisions if they, an immediate family member, or a farming entity of which the member is a part, has filed an appeal.

# **Appendix 3**

A Guide to the Open  
Meetings Act. Freedom  
of Info Act and Open  
Meetings Act



# **A Guide to the West Virginia Open Governmental Proceedings Act**

(W. Va. Code §§ 6-9A-1 through 12)



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**The Open Meetings Act**  
generally requires that meetings of a public agency's governing body be open to the public and the media, and that reasonable notice of the meeting and its agenda be given in advance.

## General Information on Open Meetings Act

### Who is covered?

The Act covers all administrative and legislative units of state, county and municipal government including any subunit (e.g. committees) authorized by law to exercise some portion of executive or legislative power. The Act does **not** apply to courts or private organizations that receive government funding.

### What is a governing body?

Two or more members of a public agency who have the authority to make decisions for, or recommendations to, the public agency on policy or administration is considered a governing body.

### What is a meeting for purposes of the Open Meetings Act?

A "meeting" covered by the Act is a convening of a quorum of a governing body or subcommittee in order to make a decision or to deliberate towards a decision.





Meetings may be held by telephone conference or other electronic means, such as video conferencing. In these instances, governing bodies must ensure that all their members can hear, and be heard by, each other and any media or member of the public present at the meeting.

When a quorum of a governing body discusses issues of interest upon which the governing body expects to take some official action, then this is a meeting. If this discussion takes place outside the confines of a public meeting—whether in person, by telephone, email or other telecommunication means — it is an illegal meeting.

### **What gatherings are not meetings subject to the Open Meetings Act?**

General discussions among members of a governing body or committee on issues of interest to the public in a social, educational, training, informal, ceremonial or similar setting, so long as there is no intent to conduct public business or for the discussion to lead to official action, are not gatherings subject to the Open Meetings Act.

Adjudicatory proceedings, on-site inspections, a political party caucus, and discussions on logistical and procedural methods to schedule and regulate a meeting are also not matters covered by the Open Meetings Act.

## **Notice and Agenda**

### **How much advance notice of a meeting is necessary?**

Public notice of the meeting date and agenda must be made available in advance of a meeting to the public and news media.

Every public agency must establish rules for giving advance notice of all regularly scheduled and special meetings. W.Va. Code § 6-9A-3. In addition, the Open Meetings Committee of the West Virginia Ethics Commission, through the issuance of advisory opinions, has established rules which determine how much advance notice is required.



### **How do I calculate days for purposes of the Open Meetings Act?**

In calculating days, do not count the day of the meeting, weekend days or State or Federal Holidays. State Agencies, however have additional obligations for posting meeting notices.





### When and how do I post a Notice?

**State Agencies** - Each State Agency shall file a notice of any meeting with the Secretary of State for publication in the State Register in a manner to allow it to appear in the Register at least **five** calendar days before the date of the meeting.

**Local Governing Bodies** - Notice must be given in a reasonable manner. When a governing body meets in accordance with a fixed schedule, such as the second and fourth Monday of each month, it may comply with the meeting notice requirement in the Act by annually posting notice of the date, time and place of these regular meetings or regular committee meetings for the coming year, and keeping this notice posted throughout the year.

**Regular meetings** – For local governing bodies which do not have a fixed schedule, these bodies may comply with the Open Meetings Act by posting a notice **three** business days in advance of the meeting.



**Special meetings** - When a local governing body meets on an irregular schedule, or needs to meet before the next regularly scheduled meeting to address matters that do not involve an emergency, these are considered special meetings. Notice must be posted **two** business days in advance of the meeting.

Although State Agencies may conduct a special meeting, i.e. a meeting held between regularly scheduled meetings, due to the more restrictive language in the Open Meetings Act, the State Agency meeting notice must be published in the State Register at least **five** calendar days prior to the date of the special meeting. State Agencies may **not** call an Emergency Meeting for a subject that is not a true emergency. Failure to file a timely notice of the meeting with the Secretary of State does **not** constitute an emergency.

(See **Emergency Meetings** on page 8.)

### What must a notice include?

Notice must include the date, time and place of the meeting. For special meetings or emergency meetings, the notice must state the purpose.





### When do I post the Agenda?

Regular meeting – **three** business days before the meeting.

Special meeting- **two** business days before the meeting.

Emergency meeting – As soon as practicable

### Where and how do I post an agenda?

A governing body complies with the Act by posting its meeting agenda for each regularly scheduled meeting in a public place at its central office, as well as having copies of the agenda available to be picked up at the same location during regular business hours.

In addition, in its discretion, it may distribute agendas to the news media by mail, telephone facsimile or E-mail, or the agenda may be posted on the governing body's internet website, if it has one. While additional dissemination to the public and the media is encouraged, failure to provide an agenda by such additional means will not invalidate an otherwise proper public meeting.



### What about governing bodies which meet weekly?

For governing bodies which meet weekly, different rules apply. The agenda may be issued **two** business days before the meeting.

### May I amend an agenda?

Yes. The agenda may be amended up to two business days before the meeting. If you amend the agenda, you must repost the agenda following the procedure you used to post the original agenda. The only circumstances under which a governing body may amend an agenda during a meeting is if a true emergency arises.

### How specific must an agenda be?

Agendas must give reasonable notice to the public of every issue that will be discussed. Specifically, any matter requiring the governing body to take official action must be listed on the agenda. For example, "filling position of office manager" would be sufficient.

Use of vague headings such as "old business" and "new business" is clearly insufficient. The public should also be given notice of significant additions or changes to the agenda, as noted above. Each governing body should have rules on how such notice will be given.



## Minutes

### Should minutes be prepared?

The Act requires that written minutes of all open meetings be available to the public within a reasonable time after the meeting. The minutes must include:

- The date, time and place of the meeting.
- The name of each member of the governing body present and absent.
- All motions, orders, resolutions, ordinances and measures proposed, the name of the person proposing each action and the disposition of the matter.
- The results of all votes, including roll call votes by member name, if such votes are conducted.



## Emergency Meetings

### What is an emergency?

Governing bodies should exercise caution when calling an **emergency meeting**. Ordinarily, an “emergency” involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health and safety.



Every unexpected or sudden event does not constitute an emergency. For example, employing an attorney to assist the governing body does not constitute an emergency. Likewise, acting on a questionable bill for legal services does not constitute an emergency.

### Is immediate action required?

When in doubt as to what constitutes an emergency, ask what are the consequences if the governing body does not act immediately. If it can wait two business days without significant adverse consequences, then you should call a special meeting instead.



Or, call the Ethics Commission to discuss the situation with staff.

In order to satisfy the terms of an emergency meeting exemption, not only must a matter involve an emergency, the governing body must be required to take immediate official action in response to the situation.

For example, if a flood were to contaminate a town's water supply, the council may be required to approve various actions to protect public health and restore the system to safe operation.

#### **Must a notice or an agenda be posted?**

For an **emergency meeting**, the notice must be posted as soon as practicable. The notice must set forth the reason for, and purpose of, the emergency meeting. Similarly, governing bodies that wish to add emergency matters to their meeting agenda must post an amended agenda which includes the emergency item. The amended agenda shall further explain the facts and circumstances which warrant adding the emergency item to the agenda.

In the event of an emergency requiring immediate official action, a State Agency may file an emergency meeting notice with the Secretary of State at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and facts and circumstances of the emergency.

#### **Are written minutes required for an Emergency Meeting?**

Yes. The explanation for the emergency must be repeated during the meeting and set forth in the written minutes of the meeting.

## **Executive Sessions**

#### **When may a governing body go into an executive session?**

A governing body may go into an executive session for any of the reasons set forth in the Open Meetings Act at W.Va. Code § 6-9A-4. Some common grounds for going into an executive session are to discuss personnel matters, pending litigation, to consider matters involving the purchase, sale or lease of real property, or to plan or consider an official investigation.

#### **How do you convene an executive session?**

A member of the governing body must make a motion to go into executive session. The motion must state in plain language the grounds for convening an executive session.





For example, a member may state that he or she is moving to go into executive session based upon the personnel exception. It is not necessary to cite the specific code provision. A governing body may go into executive session to discuss **only** matters that appear on the meeting agenda.



**Must the agenda state that the governing body will go into executive session?**

No. In fact, a governing body may not decide in advance of a meeting that it will go into executive session. The agenda **may** indicate that it is anticipated that a matter may be discussed in executive session, but the governing body may only go into executive session by a majority vote of the members present.

The agenda item must be descriptive enough to put the public on notice of the nature of the matter being discussed regardless of whether it will be discussed in an open session or executive session.

For example, an agenda item to discuss pending litigation may read, "Discuss pending lawsuit of *Smith v. Jones* with Legal Counsel." Once again, generic agenda items such as "Discuss pending litigation" are too vague to adequately put the public on notice as to the matter to be discussed.

**May a governing body vote on matters in executive session?**

No. Votes may not be taken in an executive session. Instead, the governing body may only vote once it reconvenes in an open session.

One exception is that a governing body may vote to give its attorney settlement authority in an executive session. The fact that a governing body has authorized its attorney to engage in settlement negotiations and/or has set a settlement range is not required to be disclosed. If a settlement is reached, then the settlement agreement, including the amount, becomes a matter of public record.

**Is a governing body required to take minutes for an executive session?**

No. The decision of whether or not to take minutes for an executive session lies within the discretion of the governing body. The



governing body may want to seek the advice of legal counsel concerning whether minutes should be taken.

If a governing body decides to take minutes in an executive session, the Act does not require the disclosure of such minutes to the public.

## Advice and Advisory Opinions

### How do I get advice?

Call or write the Ethics Commission for informal advice from one of the attorneys, or check out the Commission's website for relevant advisory opinions.

### What is an Advisory Opinion?

The West Virginia Ethics Commission's Committee on Open Governmental Meetings gives written advisory opinions to governing bodies and their members on whether a proposed action or an action of an ongoing nature violates the law.

The opinions provide an absolute defense in any civil suit or criminal prosecution to the requesting agency and any other governing body which is similarly affected, provided the opinion is relied upon in good faith.

The Committee on Open Meetings meets on the first Thursday of each month to consider written requests.

Requests for written advisory opinions should be submitted in writing at least ten calendar days before the Open Meeting Committee meeting.



### Why ask for a written Advisory Opinion?

A written advisory opinion gives the persons seeking the opinion an absolute defense to civil suits and criminal charges for future actions taken in good faith reliance on the opinion.

**NOTE:** The Committee cannot provide advice on an action that has already occurred. However, if the action is part of an ongoing course of conduct, an advisory opinion on continuing that course or



practice may be requested.

The Commission's website, [www.ethics.wv.gov](http://www.ethics.wv.gov), contains precedential opinions. A governing body that acts in good faith reliance on a precedential advisory opinion has an absolute defense to a civil suit or criminal prosecution as long as the underlying facts and surrounding circumstances are substantially the same as those addressed by the written opinion.

## Enforcement and Penalties

### How is the Act enforced?

The Ethics Commission has no role in enforcing the Act and does not investigate complaints of violations. The Act provides that any citizen may file a civil action in Circuit Court within 120 days after the action or decision complained of occurred.

Only the Court has the power to compel compliance with the Act or annul a decision made in violation of the Act. Additionally, anyone who willfully and knowingly violates the provisions of the Act is subject to criminal prosecution for a misdemeanor.

### What are the penalties for violating the Act?

In civil actions, in addition to injunctive relief requiring a governing body to rescind an action taken in violation of the Act, the prevailing party may obtain attorneys' fees and costs. If a public official is criminally prosecuted and found guilty, then he or she may be fined up to \$500 for a first offense.







## Frequently Asked Questions



### **Are committee meetings subject to the Open Meetings Act and meeting posting requirements?**

*Yes. All sub-units of a governing body, regardless of size, must follow the Open Meetings Act. This includes regular, standing, and ad hoc committees.*

### **Are work sessions subject to the Open Meetings Act?**

*Yes. The term work session is frequently used by governing bodies to describe a meeting where the members of the governing body or subcommittee are discussing a project or reviewing a budget, but will not be taking official action.*

### **May citizens and the media record meetings?**

*Yes. Pursuant to the Open Meetings Act, anyone may record the meetings. The governing body may adopt rules governing the placement of the recording equipment, but it may not prohibit anyone from recording a meeting.*

### **Does the Open Meetings Act require that meetings be electronically recorded by the governing body?**

*No. However, governing bodies should check their enabling legislation or local ordinances to determine whether recording is required pursuant to statute or rule.*

### **May items be added to the agenda during a meeting?**

*No. If a citizen or member of the governing body raises a matter during the course of a meeting, the item may not be discussed or voted upon at the meeting. Instead, it must be added to a meeting agenda for a future meeting. The only exception is if the item is an emergency. In that case, the governing body should follow the procedure set forth for emergency meetings and agenda items.*



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**Are governing bodies required to allow members of the public to speak at a meeting?**

*No. The purpose of the Open Meetings Act is to allow citizens to observe the governing body for purposes of promoting transparency. However, governing bodies are encouraged to have a public comment period. A governing body may adopt rules which impose restrictions upon public comment periods such as the amount of time which will be allocated to each speaker.*

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**For more information on the Open Meetings Act,  
please contact the:**

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Charleston WV 25301**

**(304) 558-0664 toll free 1-866-558-0664 fax (304) 558-2169**

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**7/2010**



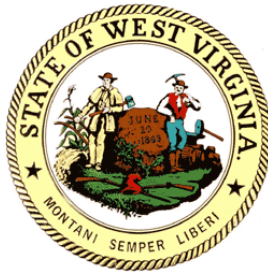


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# **Appendix 4**

## **The Ethics Act A Code of Conduct for Public Servants**



# The Ethics Act

## A Code of Conduct for Public Servants

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## What is the Ethics Act?

The West Virginia Governmental Ethics Act (W. Va. Code §§ 6B-1-1 through 6B-3-11) is a code of conduct to guide public officials and public employees in avoiding conflicts between their personal interests and their public responsibilities.

## Who is covered by the Act?

The code of conduct established by the Act applies to all full-time and part-time public servants (public employees, elected and appointed public officials) who serve in the legislative, judicial and executive branches of state, county and municipal governments and their respective boards, commissions and agencies.

## What is the Ethics Commission?

The West Virginia Ethics Commission was created to administer the Ethics Act. It is comprised of nine part-time citizen members appointed by the Governor and approved by the West Virginia Senate. The Commission is supported by a staff of five full-time and two part-time employees.

## What does the Commission do?

The Ethics Commission is responsible for enforcing the Ethics Act and advising public servants regarding the Act.

Many questions from the public can be addressed by staff over the phone. Please call (304)558-0664 or contact staff by email at [ethics@wv.gov](mailto:ethics@wv.gov).

Some questions require consideration by the full Commission at its regular monthly meeting through the issuance of a written Advisory Opinion.

The Commission's Committee on Open Governmental Meetings answers questions from governing bodies and their members, and provides Advisory Opinions on the meaning and application of the Open Meetings Act.

The Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides Advisory Opinions to them which interpret the Code of Conduct for State Administrative Law Judges. It also rules on complaints filed against ALJs.

The Ethics Commission is also responsible for the registration and reporting of lobbyists and for the processing of Financial Disclosure Statements.

## Minimal Ethical Standards\* Established by the Act

*\*Agencies may impose stricter rules of conduct than those set forth in the Ethics Act.*

### Private Gain

The basic principle underlying the code of conduct created by the Ethics Act is that those in public service must use their positions for the benefit of the public and not for their own private gain or for the private gain of another.

For example:

- Public servants may not use their agency's supplies or equipment for personal projects or activities.
- Public employees and full-time appointed officials may not work on personal projects or activities during work hours for which they are paid by their government employer.
- Public servants may not use subordinates to work on personal projects or activities during work hours or compel them to do so on their own time.

## **Nepotism**

The Ethics Act prohibits “nepotism,” which is favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides. “Public official” and “public employee” include all elected and appointed public officials and public employees, whether full- or part-time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

"Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner. To the extent possible, a public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

If a public official or public employee must participate in decisions affecting the employment, working conditions or supervision of the public official or public employee’s relative or a person with whom the public official or public employee resides, then:

- An independent third party shall be involved in the process. A public official or public employee may not use a subordinate for the independent third party unless it is an elected public official who may not lawfully delegate the powers of his or her office, *e.g.*, county assessor or county clerk, and
- The public official or employee shall exercise his or her best objective judgment in making the decision, and be prepared to justify his or her decision.

## **Gifts**

The Ethics Act provides that public officials and public employees may not solicit a gift unless the solicitation is for a charitable purpose, and the charitable purpose must be one from which they and their immediate family members derive no direct personal benefit. (However, see the exceptions set forth below.)

Public officials and employees may not directly solicit a subordinate for any gift even if the gift is for a charitable purpose. The Ethics Act’s prohibition against solicitation of gifts does not apply to solicitation of political contributions.

The Ethics Act prohibits public officials and public employees from accepting gifts from lobbyists, or any person whom the official or employee knows or has reason to know is doing or seeking to do business of

any kind with his or her agency; is engaged in activities which are regulated or controlled by his or her agency; or has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

Notwithstanding the general prohibitions set forth in the prior two sections against public officials and employees accepting gifts, the Ethics Act provides that the following types of gifts **may** be accepted by public employees or public officials from lobbyists or others:

- (A) Meals and beverages of any dollar value may be accepted if the person purchasing the meal is present. Otherwise, public officials and employees may accept meals and beverages totaling \$25;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value are permissible if the value of any one item, or a combination of items from the same source, given to a public official or employee does not total more than \$25 in one calendar year;
- (D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement. A public official or employee **may not** accept expenses for amenities at the event such as free golf or spa treatments unless they are part of the room package for all guests staying at the hotel. Reasonable expenses for food, travel and lodging for one guest to attend may be accepted;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office and the tickets are given by the sponsor of the event. Free tickets to sporting events may only be accepted if the ticket is \$25 or less and the ticket is given by a sponsor of the event. If the price of entrance is greater than \$25, an official may accept the ticket only if it is incidental to the conduct of official or ceremonial duties;
- (F) Gifts that are purely private and personal in nature, or
- (G) Gifts from relatives by blood or marriage or a member of the same household.

## **Selling to Subordinates**

Although they may choose to buy from a supervisor, a public servant may not personally solicit (in person, by phone or by personal letter) private business from subordinates who the public servant directs, supervises or controls. Solicitations directed to the public at large for sale of property which the public servant is not regularly engaged in selling are permitted.

## **Voting\***

A public official may not vote on a matter in which she, or an immediate family member, has a financial interest or matters involving a business with which she or an immediate family member is associated.

Legislative voting is governed by a separate provision in the Act which permits voting by Legislators after a ruling from the presiding officer in their chamber regarding a potential conflict is obtained.

*\*See **Voting Provisions of the WV Ethics Act** Guideline for detailed information.*

## **Private Interests in Public Contracts, Purchases & Sales**

A public servant may not have a financial interest in any contract, purchase or sale over which her public position gives her control. The public servant's spouse, dependent parents or dependent children also may not have such an interest unless the total value of the contracts, purchases or sales is less than \$1,000 in a calendar year. The Commission has authority to grant an agency a hardship exemption from this provision.

This provision applies only to:

- (1) those contracts which one's job gives him authority to award or control, and
- (2) those purchases and sales he is authorized to make or direct others to make.

Part-time appointed officials (except those covered by W. Va. Code § 61-10-15) are not subject to this prohibition provided they recuse themselves from considering and acting on such matters consistent with the provision regarding voting.

## **Use of Name or Likeness Using Public Funds**

This section of the Act is commonly referred to as the "trinkets statute" and provides that public officials, their agents, or anyone on the public payroll may not place the official's name or likeness on trinkets and other places paid for with public funds in violation of the section's limitations and prohibitions. This section is set forth in W. Va. Code § 6B-2B-1 through -6.

This section of the Act provides limitations and prohibitions on the use of public officials' names or likenesses on "trinkets," advertising, vehicles, table skirts, banners, educational materials, websites and social media if these items are paid for with public funds.

The statute does not prohibit a public official's name and likeness on any official record, official report, letterhead, or document, certificate or instructional material issued in the course of his/her duties as a public official. Other official documents, such as fax cover sheets, press release headers, office signs and envelopes may include the public official's name, but not his or her likeness.

## **Licensing & Rate-Making**

A public servant may not take official action on a license or rate-making matter affecting an entity in which she, or the members of her immediate family, own or control an interest of 10% or greater. In addition, unless he files a prior written public disclosure with his agency, a public servant may not take official action on a license or rate-making matter affecting a person to whom the entity in which he has an interest has sold goods or services totaling more than \$1,000 during the preceding year.

## **Changing Jobs**

Full-time public servants may not: (1) seek employment with, (2) be employed by or (3) seek to purchase from, or sell or lease real or personal property to, any person or business:

(a) that has a matter before the agency on which they are taking, or a subordinate is known to be taking, regulatory action, or

(b) that had, within the preceding 12 months, a matter on which they took, or a subordinate is known to have taken, regulatory action.

The Ethics Commission has authority to grant an exemption from this prohibition.



## **Conflicts of Interest: Employment**

Full-time public servants may not take personal regulatory action on matters affecting a person:

- (a) by whom they are secondarily employed, or
- (b) with whom they are seeking employment or have an agreement concerning future employment.

## **Dual Compensation**

No public servant may receive compensation from two sources in state, county or municipal government for working the same hours except under certain limited circumstances. Persons who are allowed to make up time missed with a governmental employer to perform the duties of another governmental position are required to maintain specific time records. Their employers are required to submit these records to the Ethics Commission on a quarterly basis.

## **Private Pay Prohibited**

Full-time public servants may not accept private pay for providing information or services which are within the scope of their public duties. They cannot sell, even on their own time, services which their public position requires them to provide.

# **Limitations During and After Governmental Service**

**Confidential Information:** Public servants may not, during or after governmental service, knowingly and improperly disclose confidential information acquired through their public positions or use it to further the personal interests of themselves or of another person.

**Prohibited Representation:** The Ethics Act requires a public servant to obtain her agency's consent before she represents a client in a matter in which she is or was substantially involved on behalf of the agency. This applies both during and after the person's governmental service.

The prohibition applies only to those matters in which the public servant was personally involved in a decision-making, advisory or staff support capacity. It does not apply to legislators or legislative staff.

**Limitation on Practice:** Certain public servants are prohibited from representing persons before the agency which they serve during their employment or service and for one year after the termination of their employment or service. This is referred to as the "revolving door prohibition."

This prohibition applies only to elected and appointed public officials and full-time staff attorneys and accountants in agencies authorized to hear contested cases or make regulations.

This prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings and in efforts to influence the expenditure of public funds. It does not apply to legislators or legislative staff.

The Ethics Commission has authority to grant an exemption from this prohibition.

**Lobbying:** The following public officers or employees may not, during or for one year after the termination of their public employment or service, be allowed to register as lobbyists:

- (1) Members of the Legislature;

(2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia (Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General);

(3) Will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature;

(4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;

(5) Members of the Supreme Court of Appeals;

(6) Secretaries of the Departments of Administration, Education and the Arts, Environmental Protection, Health and Human Resources, Military Affairs and Public Safety, Revenue, Transportation, Commerce and Veterans' Assistance; and

(7) Heads of any state departments or agencies.

## For County Public Servants Only

Certain county personnel are also subject to W. Va. Code § 61-10-15, which is a criminal statute containing a similar, but more comprehensive, prohibition regarding contracts. The Ethics Commission is responsible for advising public servants about this statute but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

(1) elected county officials (including sheriffs, county commissioners and school board members),

(2) appointed county officials (those who serve on county boards, commissions, authorities and agencies), and

(3) public school superintendents, principals and teachers.

It does not apply to other county workers.

W.Va. Code §61-10-15 prohibits these county employees and officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control." The prohibition extends to their spouses, those whom they support, and businesses in which they have an ownership interest or by which they are employed.

The Ethics Commission has authority to grant exemptions to a county agency based upon documented hardship.

W.Va. Code §61-10-15 imposes strict limitations on nepotism in employment. County officials may not hire their spouses or dependent family members.

There are certain very specific exceptions to this statute. Contact the Ethics Commission with questions.

## Complaints

The Ethics Commission and its Probable Cause Review Board investigate and resolve violations of the Ethics Act. Any citizen who is aware of a violation of the Act may file a written complaint with the Commission. In addition, the Commission itself may initiate a complaint if it receives credible evidence of a material violation of the Act.

Complaints are first reviewed by the three-member Probable Cause Review Board to determine whether the allegations in the complaint would constitute a violation of the Ethics Act. The Review Board dismisses complaints which allege trivial or inconsequential violations without an investigation.

If a complaint is investigated, at the conclusion of the investigation the Review Board may either dismiss the complaint or issue an order finding that there is probable cause to believe that the person against whom the complaint was filed violated the Ethics Act. The matter will then proceed to a public hearing or be resolved through a settlement, or “conciliation,” agreement.

Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to \$5,000 per violation. The Commission also may order restitution, reimbursement to the Ethics Commission for its costs, or recommend that the person be terminated from employment or removed from office.

It is a violation of the Act to give false and misleading information to the Commission or to procure or induce another to provide false information to the Commission. If the Commission finds by clear and convincing evidence that a complaint was made in bad faith it may issue sanctions against the person who filed the complaint.

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Revised July 7, 2017

# **Appendix 5**

## **Conservation Related Ethics Commission Opinions**

## **ADVISORY OPINION NO. 2010-20**

**Issued On December 2, 2010 By The**

**WEST VIRGINIA ETHICS COMMISSION**

### **OPINION SOUGHT**

A **Conservation District** asks whether it may expend public funds to construct a soil conservation project on property owned by an Elected Board Member.

### **FACTS RELIED UPON BY THE COMMISSION**

Conservation Districts were created to conserve land from soil erosion. See W.Va. Code § 19-21A-2. The districts have been in existence in some form since 1939 and were originally called “Soil Conservation Districts” until 2002 when their name was changed to “Conservation Districts.”<sup>1</sup> The Requester’s Board consists of ten supervisors representing five counties.

A district may consist of land in one or more counties. Land owners in one or more counties may form a district by petitioning the State Conservation Committee.<sup>2</sup> Each county in a district shall elect two non-partisan supervisors.<sup>3</sup> The majority of the districts consist of two or more counties.

The districts have the statutory power to conduct surveys relating to the character of soil erosion.<sup>4</sup> The districts may also expend public funds for demonstration projects on land within a district for the purpose of determining which “means, methods and measures” best prevent soil erosion.<sup>5</sup>

The Conservation District in question has a member who, prior to his election to the District, was the recipient of a demonstration project on his property for purposes of alleviating erosion resulting from flooding from a river located next to his property. According to the Requester, after six (6) years it has been determined that the project is not performing as the District intended. Specifically, the Requester states that the fields of the property owner/District Member are continuing to erode.

The District asks whether it may expend approximately \$50,000.00 to armor the banks of the property of its Board Member. Based upon information and belief, other properties are located along the same river. It does not specifically state whether it considers this project

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<sup>1</sup> S.B. 417, 2002 Regular Session.

<sup>2</sup> W.Va. Code § 19-21A-14 when read in conjunction with 19-21A-5 as amended in 2002.

<sup>3</sup> W.Va. Code § 19-21A-6. Counties which meet the population requirements shall elect additional supervisors in accordance with this code section. Id.

<sup>4</sup> W.Va. Code § 19-21A-8(1)

<sup>5</sup> W.Va. Code § 19-21A-8(2)

part of the original project or whether it considers it a new demonstration project. The affected Board Member recused himself from voting on this matter.

### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control... Provided however, That nothing herein shall be construed to prohibit... a part-time appointed public official from entering into a contract which the part-time official may have direct authority...

W. Va. Code § 6B-2-5(d)(3) provides that where the provision of subdivision (1) of this subsection would result ... in excessive cost, undue hardship, or other substantial interference with the operation of a ... county... the affected government body ... may make written application to the ethics commission for an exemption from subdivision (1) ... of this subsection.

W. Va. Code § 61-10-15(a) states in part that ... It shall be unlawful for any member of a county commission... or any county or district officer ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such ... member, officer... he may have any voice, influence, or control.

### **ADVISORY OPINION**

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit county officials and employees from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

### **The Ethics Act**

Pursuant to W. Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. This prohibition contains an exception for part-time appointed officials. However, there is no exception for elected officials.<sup>6</sup>

The Conservation District Member is an elected member and as such, is subject to the prohibitions in West Virginia Code § 6B-2-5(d). If the Conservation District expends public funds to improve his property, then it constitutes a public contract between the property

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<sup>6</sup> There is also an exception for contracts which do not exceed \$1,000.00 per calendar year. However, based upon the cost of the project, \$50,000.00, this exception is inapplicable.

owner/District Member and the District.<sup>7</sup> The Elected Board Member would have a financial interest in this project.<sup>8</sup> Therefore, a Conservation District may **not** expend public funds to construct a demonstration project on the property owned by one of its Members as the Members would have a prohibited interest in a public contract.

An exception to the public contract restrictions in the Ethics Act exists if it is a continuing contract which the governing body entered into prior to the election or appointment of the affected member to the governing body. A.O. 2008-10. Here, the Requester does not state that it has a legal obligation, pursuant to the terms of the original demonstration project, to expend public monies to armor the banks of the property owner/Board Member. In fact, the term demonstration project appears to indicate that it is an “experimental” project which may not abate the problem it seeks to fix. Furthermore, based upon the estimated cost of the project, \$50,000.00, it appears that this project is beyond the original scope of the demonstration project constructed six (6) years ago. Hence, the Commission finds that, based upon the facts presented, the project does not fall within the definition of a continuing contract.

Accordingly, based upon the foregoing, the Commission finds that the District may not expend public funds to construct the demonstration project in question as the project costs is over \$1,000.00, the limited interest exception in the Ethics Act. The District may construct the project if it seeks and receives a contract exemption to construct the project. In order to obtain a contract exemption, it must demonstrate that imposing this restriction in the Ethics Act will result in excessive cost, undue hardship, or other substantial interference with the operation of the District. W. Va. Code § 6B-2-5(d)(3).

If the District seeks a contract exemption, as part of this process, the District must demonstrate that there are compelling reasons why the project should be constructed on the property in question, not on other properties located on the same river. If the District seeks an exemption, it must consider this matter during a properly noticed public meeting. The affected Member must continue to recuse himself from consideration of this matter. Further, both during and outside of meetings, he may not attempt to influence the District Members to pursue this project.

Conservation Districts may also construct projects on property owned by its members if the Ethics Act or the Districts’ enabling statute is amended to allow their Members to participate in projects wherein public funds are expended. The Ethics Commission takes no position on this issue.

### **West Virginia Code § 61-10-15**

W.Va. Code § 61-10-15, a separate criminal statute, contains a stricter standard than the

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<sup>7</sup> A different conclusion exists in regard to Farmland Protection Boards who members are part-time appointed board members. The Ethics Act prohibition against having an interest in a public contract contains an exception for part-time appointed board members. See *also* A.O. 2003-07.

<sup>8</sup> For purposes of the prohibitions in “d”, it is not sufficient for public official to recuse themselves from voting.  
A.O. 2010-20 (Page 3 of 4)

Ethics Act, and imposes criminal penalties against any “member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer” who are pecuniarily interested, either directly or indirectly, in the proceeds from a public contract over which the public official may exercise voice, influence or control. Any person who violates this provision is guilty of a misdemeanor and may be removed from public office. This provision does not contain a \$1,000.00 exception or exceptions for part-time appointed officials.

The Commission must determine whether Conservation Districts are subject to this provision. West Virginia Code § 61-10-15 was enacted in 1879. There is no Supreme Court case or Attorney General Opinion specifically finding that Conservation Districts fall within the purview of this code section. The Districts are unique to the extent that they are formed with the consent of a State Board, *i.e.* the State Conservation Committee, not by the County Commission. Due to the unique nature of the Districts, and in the absence of clear language in § 61-10-15 bringing them within its purview, the Commission finds that they are not subject to West Virginia Code § 61-10-15. See A.O. 2010-06 finding that a public library created by the Legislature and funded by two public bodies, a City and a County, was not subject to § 61-10-15.<sup>9</sup>

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

S/S  
R. Kemp Morton, III, Chairperson

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<sup>9</sup> This conclusion is also consistent with the Commission’s rulings that regional bodies are not subject to W.Va. Code § 61-10-15. See A.O. 2000-12.



## **ADVISORY OPINION NO. 2013-43**

**Issued On October 3, 2013 By The**

**WEST VIRGINIA ETHICS COMMISSION**

### **OPINION SOUGHT**

A **County Solid Waste Authority** asks what is its obligation, if any, when a member has a purported conflict of interest but refuses to recuse himself.

### **FACTS RELIED UPON BY THE COMMISSION**

The Requester previously sought an opinion from the Ethics Commission to determine whether a member of the County Solid Waste Authority (SWA) should recuse himself because of a potential conflict of interest. In that opinion, recorded as Advisory Opinion 2013-03, the Commission ruled in relevant part that:

The SWA's attorney should carefully review with the affected SWA Members this rule of law and determine whether in fact the Board Member/Banker is an employee, and whether he has been involved in approving loans for the Board Member/Waste hauler. If so, then the SWA Member/Banker must recuse himself from matters affecting the SWA Member/Waste hauler . . . [t]he Board Member/Banker shall also recuse himself from matters relating to the lawsuit.

Accordingly, the SWA's attorney reviewed this rule of law in accordance with the Commission's opinion, and determined that the affected board member has a conflict of interest. The attorney based this decision on the nature of the Member/Banker's relationship with the Member/Waste Hauler, and also because the Member/Banker was relaying information to the Member/Waste Hauler that was obtained during Executive Sessions from which the Member/Waste Hauler was recused.

According to the Requester, the Member/Banker has ignored the attorney's advice and stated that he would not recuse himself from the meeting in question or any meeting.

### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) provides in part that:

A public official or public employee may not knowingly or intentionally use his or her office or the prestige of his and her office for his own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private

gain does not constitute use of public office for private gain under this subsection.

W. Va. Code § 6B-2-5(d)(1) explains in relevant part that:

In addition to [W. Va. Code § 61-10-15], no . . . public employee . . . may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

W. Va. Code § 6B-2-5(e) states:

No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

W. Va. Code § 6B-2-5(j) states in relevant part:

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months.

### **ADVISORY OPINION**

This opinion is a matter of first impression. The Requester asks what its own obligation is when one of its members refuses to comply with the Ethics Act. The question presented is similar in content to Advisory Opinion 1997-30. In that case, a Town Recorder was presented with bills for Town purchases made from a business owned by a Council Member. The Recorder was concerned as to whether she would violate the Ethics Act by paying the bills.

The Commission explained that the Ethics Act prohibits public servants from being a party to a public contract, purchase or sale, and if the Recorder paid the bills in question, the Council Member in question would receive public funds he or she would not have a right to receive. Therefore, the Recorder would be guilty of using her office for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1).

Here, similarly, the potential exists for at least one underlying violation by another public servant. In this case the Member/Banker might violate W. Va. Code §§ 6B-2-5(b), (d)(1), (e), and (j) by failing to recuse himself. The question, then, is whether the Requester,

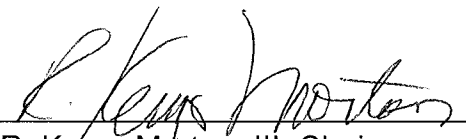
i.e. the other members of the governing body, individually or collectively, violate the Ethics Act when the member with the purported conflict of interest refuses to recuse himself. The instant case can be differentiated from Advisory Opinion 1997-30 by the nature of the Requester's involvement with the alleged violations. In order for the Recorder in Advisory Opinion 1997-30 to violate the Ethics Act, she would have to take an affirmative step to assist with the ethics violation by paying the bills – mere knowledge of the bills would not be enough to trigger a violation of the Ethics Act. In other words, the Recorder's own conduct in paying the bills was the operative issue.

In this case, Respondents did nothing to assist with the Member/Banker's alleged violations, and therefore should not be guilty of assisting in his actions. The rationale behind this decision is similar to a classic tort law concept – namely, that while a person may be held liable for committing a negligent act, the same person may not be held liable for failing to take any action while another commits one. Similarly, here, the Commission hereby finds that individual members of a governing body do not violate the Ethics Act by continuing a meeting after one member has refused to recuse himself.

Here, the individual members are not obligated to physically remove the Member/Banker from the meeting; instead, the remaining members of the Solid Waste Authority have satisfied their ethical obligation by complying with the steps outlined in Advisory Opinion 2013-03. If a member of the Solid Waste Authority who has a conflict of interest as defined by the Ethics Act refuses to recuse himself as required by the Ethics Act, then that member violates the Ethics Act thereby.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Commission for further advice as it may alter the analysis and render this opinion invalid.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, III, Chairperson

## **ADVISORY OPINION NO. 2013-50**

**Issued on November 7, 2013 By the**

**WEST VIRGINIA ETHICS COMMISSION**

### **OPINION SOUGHT**

A **State Agency** asks if its employees assigned to the various Conservation Districts may participate in the state-funded Agricultural Enhancement Program that is administered by the districts.

### **FACTS RELIED UPON BY THE COMMISSION**

Conservation Districts were created to conserve land from soil erosion. See W. Va. Code § 19-21A-2. The districts have been in existence in some form since 1939 and were originally called "Soil Conservation Districts" until 2002 when their name was changed to "Conservation Districts." A district may consist of land in one or more counties. Landowners in one or more counties may form a district by petitioning the State Conservation Committee.

Conservation Districts participate in the Agricultural Enhancement Program (AgEP) which offers a cost share program to local landowners who qualify for the program. This program provides cost-share for a variety of best management practices farmers can implement to reduce soil erosion, improve water quality and enhance production on their farms, e.g., one cost-share practice involves the spreading of lime.

The AgEP mission is to assist the agriculture cooperators of West Virginia with the voluntary implementation of best management practices on agricultural lands in order to conserve and improve land and water quality. Practices are determined by each Conservation District and applications are presented to each Conservation District Board for review and approval at monthly board meetings.

Districts have the statutory power to conduct surveys relating to the character of soil erosion. Districts may also expend public funds for demonstration projects on land within a district for the purpose of determining which "means, methods and measures" best prevent soil erosion. Some of the Districts' programs involve cost-sharing whereby landowners receive certain benefits but also pay a portion of the cost.

The State Agency is a board that oversees the implementation of soil conservation and watershed programs in the State. The State Agency is also charged with working with the Conservation Districts and the elected Conservation Supervisors to implement conservation programming at the local level.

The Requester asks if the employees assigned to the various Conservation Districts may participate in the AgEP that is administered by the districts. The employees provide

services to the districts and to the AgEP. They are not, however, members of any Conservation District.

### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) reads, in relevant part:

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.... The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(d) reads, in relevant part:

(1) No elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

...

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

### **ADVISORY OPINION**

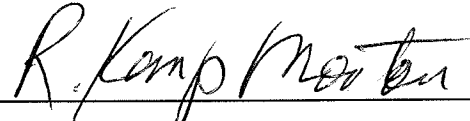
In Advisory Opinion 2010-20, the Commission ruled that a Conservation District was not permitted to expend public funds to construct a soil conservation project on property owned by an Elected Board Member of the District. In reaching this conclusion, the Commission relied upon W. Va. Code § 6B-2-5(d)(1) which prohibits full-time public servants from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control.

The State Agency employees assigned to work with the Conservation Districts either serve as administrative staff who take minutes at District meetings and accept payments or are technicians who verify that the work required for various programs was completed. Therefore, the Commission finds that the State Agency's employees **may** participate in the AgEP program because the employees do not exercise direct authority or control over the program. The employees are cautioned, however, not to take any actions relating to their own involvement in the AgEP program beyond ministerial functions, including

evaluating whether the necessary work was completed to fit with the AgEP program's guidelines for their own participation, or approving any payment thereof.

The staff advice rendered herein is based upon the facts provided. If all material facts have not been provided, or if new facts arise, you should contact us for further advice as it may alter the analysis and render this advice invalid. This advice is limited to the analysis of whether the Ethic Act would be violated by the proposed conduct. The Ethics Commission is without authority to determine whether other laws or rules, including the policies of the government agency by which you are employed or serve, prohibit or otherwise restrict the proposed conduct.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and W. Va. Code § 61-10-15 and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

A handwritten signature in cursive script, reading "R. Kemp Morton", is written over a horizontal line.

R. Kemp Morton, III, Chairperson

## CONTRACT EXEMPTION NO. 2013-06

Issued On November 7, 2013 By The

### WEST VIRGINIA ETHICS COMMISSION

#### EXEMPTION SOUGHT

The **Little Kanawha Conservation District** seeks an exemption to allow Calhoun County Conservation Supervisor Roger Collins to offer private delivery services for a cost-share program that the District offers.

#### FACTS RELIED UPON BY THE COMMISSION

Conservation Districts (Districts) were created to conserve land from soil erosion. See W. Va. Code § 19-21A-2. A District may consist of land in one or more counties. Landowners in one or more counties may form a District by petitioning the State Conservation Committee.<sup>1</sup>

Each county in a District shall elect two non-partisan supervisors.<sup>2</sup> A candidate for Conservation Supervisor "must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required in this article."<sup>3</sup> Additionally, the Code requires Conservation Supervisors to "be persons who are by training and experience qualified to perform the specialized skill service which are required of them in the performance of their duties under this section and shall be legal residents and landowners in the District."<sup>4</sup>

Districts participate in the state Agricultural Enhancement Program (AgEP) which offers a cost share program to local landowners who qualify for the program. This program provides cost-share for a variety of best management practices farmers can implement to reduce soil erosion, improve water quality and enhance production on their farms, e.g., one cost-share practice involves the spreading of lime.

The AgEP mission is to assist the agriculture cooperators of West Virginia with the voluntary implementation of best management practices on agricultural lands in order to conserve and improve land and water quality. Practices are determined by each District and applications are presented to each District Board for review and approval at monthly board meetings.

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<sup>1</sup> W. Va. Code § 19-21A-14 when read in conjunction with 19-21A-5 as amended in 2002.

<sup>2</sup> W. Va. Code § 19-21A-6. Counties which meet the population requirements shall elect additional supervisors in accordance with this code section. Id.

<sup>3</sup> Id.

<sup>4</sup> W. Va. Code §19-21A-7(a).

Districts have the statutory power to conduct surveys relating to the character of soil erosion.<sup>5</sup> Districts may also expend public funds for demonstration projects on land within a district for the purpose of determining which "means, methods and measures" best prevent soil erosion.<sup>6</sup> Some of the Districts' programs involve cost-sharing whereby landowners receive certain benefits but also pay a portion of the cost.

The Conservation District has a program for lime spreading. Individual farmers or landowners apply to the Conservation District, seeking cost sharing on lime and lime spreading. The Conservation District Board votes to approve each landowner's application to participate in the program. Thereafter, the landowner is notified of the approved application and the landowner is responsible to purchase and spread lime or other nutrients as required by the program. Collins operates a trucking service that provides off-road deliveries to farmers who purchase lime for their fields. Some of these farms participate in the District's AgEP program. The District provides funding directly to the farmers, who then pay Collins for the delivery.

In support of the request for a contract exemption, the Requester states:

The Little Kanawha Conservation District is requesting the exemption because Mr. Collins has indicated he will be forced to resign as a Calhoun County Supervisor if he has to make a choice between his personal business or serving in an elected capacity.

If Mr. Collins were to resign, the citizens of Calhoun County would be without one of two elected representatives on the Little Kanawha Conservation District board of supervisors. The District would also be put in a position of seeking a replacement for Mr. Collins who meets the requirements of West Virginia Code §19-21A-6(b).

#### **CODE PROVISIONS RELIED UPON BY COMMISSION**

W. Va. Code § 6B-2-5(d)(1) provides that no elected public official or business with which s/he is associated may be a party to or have an interest in the profits or benefits of a contract which such official may have direct authority to enter into, or over which s/he may have control.

W. Va. Code § 6B-2-5(d)(3) provides that if a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public

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<sup>5</sup> W. Va. Code § 19-21A-8(1)

<sup>6</sup> W. Va. Code § 19-21A-8(2)



officials shall also comply with the voting rules prescribed in subsection (j) of this section.

W. Va. Code § 6B-2-5(4) states, in pertinent part, that where the provisions of subdivisions (1) and (2) of this subsection would result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption.

W. Va. Code § 6B-2-5(j)(1)(A) provides that Public officials may not vote on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

W. Va. Code § 6B-2-5(j)(3) provides that for a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

### **ADVISORY OPINION**

The Ethics Act prohibits public servants from being a party to or having a financial interest in a public contract which they have the power to award or control. This prohibition prevents a public entity from doing business with one of its own Board Members. This prohibition, like the others in the Act, is designed by the Legislature to keep public servants out of harm's way. The prohibition is intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety. It aims to steer public servants away from inherently questionable situations.

The Ethics Act also provides, however, that the Ethics Commission may grant a public entity an exemption from this prohibition if the public entity demonstrates that compliance with the prohibition will cause the public entity excessive cost, undue hardship or substantial interference with its operation.

This is not the first time that the Ethics Commission has applied W. Va. Code § 6B-2-5(d)(1) to District Members. In Advisory Opinion 2010-20, the Commission first concluded that a District Member is an elected member and subject to the prohibitions in West Virginia Code § 6B-2-5(d). As a result, if the District were to expend public funds to improve a District Member's property, then it would constitute a public contract between the property owner/District Member and the District. The Elected Board Member would have a financial interest in this project.<sup>7</sup> Thus, in Advisory Opinion 2010-

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<sup>7</sup> For purposes of this prohibition, it is not sufficient for public officials to recuse themselves from voting.

20, the Commission concluded that a District may **not** expend public funds to construct a demonstration project on the property owned by one of its Members unless the District seeks and receives a contract exemption to construct the project. In order to obtain a contract exemption, the District must demonstrate that imposing this restriction in the Ethics Act will result in excessive cost, undue hardship, or other substantial interference with the operation of the District. W. Va. Code § 6B-2-5(d)(3).

In Advisory Opinion 2012-42, the Commission ruled that—assuming that the District has the statutory authority to expend public funds for scholarships—a District may award a \$500 annual scholarship to a District supervisor's child.<sup>8</sup> The Commission noted that this award was permissible so long as the District supervisor recuses him/herself from all participation in selection of scholarship participants, leaves the room during discussion and decision-making period, and fully discloses his or her interests. The Commission further noted that W. Va. Code § 6B-2-5(d) prohibits public servants from having a financial interest in a public contract. The Ethics Act defines a prohibited financial interest as one greater than \$1,000 per calendar year. W. Va. Code § 6B-2-5(d)(2)(A). Thus, the Commission found that the scholarship was not a prohibited public contract because the scholarship amount is only \$500, less than the \$1,000 per calendar year threshold.

More recently, in Advisory Opinion 2013-25, the Commission was asked whether it was a conflict of interest for a District to reimburse landowners for goods and services purchased from an Elected Board Member and, if so, whether it may be cured by his recusal from voting thereon. The Commission wrote:

Since the Conservation District Board approves the application of each landowner prior to the procurement of the lime and/or spreading, each Board Member has direct authority or control over each such application. Similarly, after a landowner incurs the expense, the Board votes to approve the landowner's request for reimbursement of her/his payment to a provider for goods or services; thus, each Board Member has direct authority or control over each such reimbursement request. If a Board Member provides the goods or service to a landowner, then that Board Member has a financial interest in the benefits of a public contract. The fact that the landowner pays for the service out of pocket prior to being compensated by the Conservation District does not solve the problem given that the transaction is between the landowner and an Elected Board Member.

Advisory Opinion 2013-25.

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<sup>8</sup> The Commission found no explicit statutory authorization for a District to expend its public money on scholarships and therefore recommended that the District seek an opinion from the W. Va. Attorney General's Office as to whether Conservation Districts are authorized to grant scholarships.

The Requester states that many trucking companies do not deliver lime to locations that are one mile (or more) off the road. As a result, it would result in an undue hardship to those farmers who would otherwise be unable to obtain lime. In Contract Exemption 2007-01 and Advisory Opinion 2013-25, the Ethics Commission noted that although in most cases the hardship falls on the governing body, in certain circumstances it may be extended to citizens or Conservation District participants.

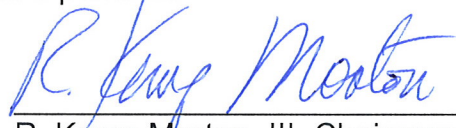
The District would suffer undue hardship and substantial interference with governmental operations because removing one of the two elected supervisors would leave the County inadequately represented before the District. The legal requirements for serving as a supervisor, namely that the individual operate an active farm (or be retired therefrom), may make replacing a supervisor with one who does not wish to have some level of participation in the AgEP difficult.

Based upon the information provided by the Requester, the Commission finds that the Requester has demonstrated that prohibiting its supervisor from continuing to operate his trucking service while serving as a County Supervisor will result in undue hardship to itself and its program participants and other substantial interference with governmental operations.

Collins must recuse himself from all votes related to any and all lime funds as a part of the AgEP. For recusal to be proper, public servants must first fully disclose on the record their disqualifying interest in any matter before the governing body, then leave the room during the discussion, deliberation and vote on the matter. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the affected Member left the room during all consideration, discussion and vote on the item under consideration.

This contract exemption is effective until November 7, 2014 at which time the District must submit a new request for an exemption if it seeks to continue to allow the Collins to continue serve as County Conservation Supervisor while operating his private trucking business. Of course if the affected County Supervisor does not seek re-election, resigns or is not re-elected, then this step is not necessary.

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as precedent by other persons.



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R. Kemp Morton, III, Chairperson

## **ADVISORY OPINION NO. 2013-25**

**Issued On July 11, 2013 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

An **Attorney for a Conservation District** asks whether a conflict of interest exists with an Elected Board Member and, if so, whether it may be cured by his recusal from voting thereon.

#### **FACTS RELIED UPON BY THE COMMISSION**

The Conservation District is one of 14 districts that participates in the state Agricultural Enhancement Program (AgEP) which offers a cost share program to local landowners who qualify for the program. The Conservation District receives AgEP funds from the WV State Conservation Committee/WV Conservation Agency.

The AgEP mission is to assist the agriculture cooperators of West Virginia with the voluntary implementation of best management practices on agricultural lands in order to conserve and improve land and water quality. Practices are determined by each individual Conservation District Board and applications are presented to each Conservation District Board for review and approval at monthly board meetings.

The members of the Conservation District Boards are elected.

The Conservation District has a program for lime spreading. Individual farmers or landowners apply to the Conservation District, seeking cost sharing on lime and lime spreading. The Conservation District Board votes to approve each landowner's application to participate in the program. Thereafter, the landowner is notified of the approved application and the landowner is responsible to purchase and spread lime or other nutrients as required by the program. These other nutrients may include fertilizer.

The Conservation District also provides a fertilizer cost sharing program. After the landowner has completed the approved practice of applying the lime and/or fertilizer or both, the landowner then submits invoices to the Conservation District Board for payment review and cost share payment approval. If the landowner has correctly followed the guidelines, then the Conservation District Board votes to approve payment and the Conservation District issues a check payable to the landowner as reimbursement to the landowner who has already incurred the obligation to pay for the lime and/or fertilizer and the cost of spreading thereof.

The Conservation District Board reviews the approved invoices submitted by the landowner and reimburses the landowner, **not** the merchant, at a cost share rate set in

the relevant policy. The cost sharing includes reimbursement for the cost of the lime, delivery and spreading. At no time does the Conservation District ever pay any money directly to the business or entity that spreads or delivers lime or fertilizer.

Only two or three entities or persons in the area provide both lime and/or fertilizer and/or spreading. One of the recently elected Conservation District Board members provides such products and services. (In the past, a Conservation District employee gave landowners the names of qualified individuals to spread lime and fertilizer--including the Elected Board Member--but now the Conservation District no longer does so, but leaves it up to the farmer to locate said sources.)

Thus, the Requester asks whether a conflict of interest exists with an Elected Board Member and, if so, whether it may be cured by his recusal from voting thereon. In the alternative, the Requester asks whether an Elected Board Member may contract with a vendor for delivery and/or spreading of either lime or fertilizer for landowners participating in the lime and/or fertilizer programs.

Additionally, the father of the same Elected Board Member owns a store that sells feed, fertilizer and lime. According to the Requester, the son has no involvement or any economic interest in his father's store and neither father nor son is financially dependent on the other. Other sources of information suggest that the son may have at least a limited financial interest in the store. Further, it is unclear whether father and son have any other financial relationship, e.g. loans together, joint ownership of property, etc.

The Requester asks if the relationship between father and son creates a conflict for a landowner to purchase material for lime and fertilizer from the father's store, and if so, whether recusal resolves the conflict.

#### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) prohibits public officials from knowingly and intentionally using their offices or the prestige thereof for their own private gain or that of another person.

W. Va. Code § 6B-2-5(d)(1) provides in part that no elected public official or business with which s/he is associated may be a party to or have an interest in a contract which such official may have direct authority to enter into, or over which s/he may have control: Provided however, That nothing herein shall be construed to prohibit a part-time appointed public official from entering into a contract over which the part-time official may have direct authority.

W. Va. Code § 6B-2-5(d)(3) provides in part that where the provision of subdivision (1) of this subsection would result in excessive cost, undue hardship, or other substantial interference with the operation of government, the affected government body may make written application to the ethics commission for an exemption therefrom.

## **ADVISORY OPINION**

The Ethics Act prohibits the use of public office for private gain. Thus, the mere appearance of the business of an Elected Conservation District Board Member on a list provided by the Conservation District could cause the public to perceive an appearance of impropriety. Here, it is possible that a landowner could select the board member's business in the hopes of more favorable treatment in current or future contracts.<sup>1</sup> See Advisory Opinion 2011-01 (County Council Member's private business must be removed from list provided to customers by Sheriff's Department) As a result, the District is prohibited from providing the name of the business of the Elected Conservation District Board Member either verbally or in writing to any interested landowner.

Next, pursuant to W. Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. This prohibition contains an exception for part-time **appointed** officials, but there is no exception for **elected** officials.<sup>2</sup> Thus, the Conservation District Member is an elected member and as such, is subject to the prohibitions in W. Va. Code § 6B-2-5(d). The Commission must determine, then, whether the reimbursement of a participating landowner constitutes a contract in which the Elected Board Member has a financial interest.

Since the Conservation District Board approves the application of each landowner prior to the procurement of the lime and/or spreading, each Board Member has direct authority or control over each such application. Similarly, after a landowner incurs the expense, the Board votes to approve the landowner's request for reimbursement of her/his payment to a provider for goods or services; thus, each Board Member has direct authority or control over each such reimbursement request. If a Board Member provides the goods or service to a landowner, then that Board Member has a financial interest in the benefits of a public contract. The fact that the landowner pays for the service out of pocket prior to being compensated by the Conservation District does not solve the problem given that the transaction is between the landowner and an Elected Board Member.<sup>3</sup>

An exception to the public contract restrictions in the Ethics Act exists if it is a continuing contract which the governing body entered into prior to the election or appointment of the affected member to the governing body. In Advisory Opinion 2008-10, the

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<sup>1</sup> Depending on the information disclosed on a landowner's application, the Board Member could also be perceived to be using confidential information to further his or her own personal interests in violation of W.Va. Code § 6B-2-5(e). For example, by directly soliciting land owners before any other service providers have an opportunity to make their services available.

<sup>2</sup> There is also an exception for contracts which do not exceed \$1,000 per calendar year. Based upon information and belief, however, this exception is inapplicable.

<sup>3</sup> For purposes of the prohibitions in "d", it is not sufficient for public officials to recuse themselves from voting.

Commission found an exception to the public contract restrictions exist when a contract was lawful at the time it was agreed to. The Commission ruled that where the public servant had no control over the contract at the time of its execution, or where the public servant's interest in the contract arose after the contract was already in effect, a continuing contract exception exists.

As a result, if a participating landowner used the business of the Elected Board Member **before** his election, then the Conservation District Board is permitted to reimburse that landowner for those expenses. The Elected Board Member shall recuse himself from any such vote. Otherwise, based upon the foregoing, the Commission finds that the Conservation District may not reimburse landowner expenses where the provider is a Member of the Conservation District Board unless the Conservation District seeks and obtains a contract exemption. In order to obtain a contract exemption, it must demonstrate that imposing this restriction in the Ethics Act will result in excessive cost, undue hardship, or other substantial interference with the operation of the District. W. Va. Code § 6B-2-5(d)(3).

The Ethics Commission notes that the hardship may fall to landowners who have already paid the Elected Member **after** his election, through no fault of their own. In Contract Exemption 2007-01, the Commission granted an exemption to a County Commission to allow an elected Commissioner to continue to rent HUD housing even though the County Commission exercised control over the County Housing Authority which administers HUD housing funds, and wrote:

The Commission finds that to require the tenant, a widow, to vacate the premises would impose an undue hardship on her. While in most cases the "hardship" must be suffered directly by the government entity making a request, the Ethics Commission finds that ... in limited circumstances, [the statutory language] allows it to grant an exemption when a citizen ... will experience undue hardship.

The Requester has asked whether an Elected Board Member may contract with a vendor for delivery and/or spreading of either lime or fertilizer for landowners participating in the lime and/or fertilizer programs. Based on the Commission's past precedential opinions, the proposal is still a prohibited contract. The Ethics Commission has consistently ruled that subcontracts are subject to the same prohibitions in the Ethics Act as the contracts are. See *generally* Advisory Opinions 2013-22 and the opinions cited therein. Thus, the Elected Board Member may not contract with a vendor to provide goods and services that the Ethics Act prohibits him from directly providing.

Finally, the Requester states that the father of the same Elected Board Member owns a store that sells feed, fertilizer and lime. According to the Requester, the son has no involvement nor any economic interest in this store and is not dependent upon his father for financial assistance, nor is his father dependent upon him for financial assistance.



Other sources of information suggest that the son may have at least a limited financial interest in the store. Pursuant to W. Va. Code § 6B-2-6(a), all Elected Board Members are required to submit annually a Financial Disclosure Statement (FDS) to the Ethics Commission by February 1. On the FDS submitted last year, the Elected Board Member at issue here did not identify his father's business as an entity in which he has a financial interest or as a source of income. By the same token, however, his FDS did not list his lime and fertilizer business either, rendering it impossible to rely on the FDS definitively.

Based on conflicting and missing information, the Ethics Commission tabled this opinion last month and requested additional information about the Board Member's financial relationship with his father. The Elected Board Member, however, has declined to respond. The Commission notes that, despite repeated reminders, the Elected Board Member has failed to file his FDS this year. This fact, together with his failure to cooperate with the Commission in its attempt to obtain additional relevant information, troubles the Commission. The Commission frowns on such conduct, and questions whether the Elected Board Member is intentionally avoiding disclosing information that could subject him to prosecution for violating the Ethics Act.

Without more information, the Ethics Commission is unable to answer this question conclusively. **The affected Elected Board Member shall, within twenty (20) days comply with the Ethics Commission's request for information and submit a new request for an advisory opinion.** He is advised that knowingly failing or refusing to file a Financial Disclosure Statement constitutes a misdemeanor. W. Va. Code § 6B-2-10(c). He is further advised that knowingly giving false or misleading information to the Ethics Commission or knowingly and willfully concealing a material fact in filing the FDS constitutes a misdemeanor and could result in an ethics complaint against him. W. Va. Code §§ 6B-2-10(b) and (f). Pursuant to W. Va. Code § 6B-2-2, the Ethics Commission is authorized to initiate a complaint against a public official should credible evidence appear that s/he has engaged in conduct that is a material violation of the Ethics Act.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.



Jonathan E. Turak, Vice-Chairperson



# **Appendix 6**

## **WV Association of Conservation Districts Constitution Bylaws**

## CONSTITUTION & BY-LAWS



**Article VII: Committees Page 6 Section 1 C.**

# CONSTITUTION & BY-LAWS

West Virginia Association of Conservation Districts, Inc.

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July 12, 2010

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# **CONSTITUTION & BY-LAWS**

**Approved – 07/12/2010**

## **West Virginia Association of Conservation Districts, Inc.**

### **ARTICLE I: NAME & INCORPORATION**

#### **SECTION 1. Name**

The name of this Association shall be the West Virginia Association of Conservation Districts, Inc. The official abbreviation of the name shall be WVACD.

#### **SECTION 2. Incorporation**

This Association was incorporated under the laws of the State of West Virginia as a non-profit, non-stock association with no power to issue capital stock or pay dividends at Sutton in Braxton County on October 17, 1963. The incorporators are Burl Allen-Northern Panhandle CD, Edward Bumgarner-Western CD, Luther S. Britton-Monongahela CD, Silas Compton-Potomac Valley CD, Doyle Hale-Little Kanawha CD, Clarence W. Jackson-Monongahela CD, Clyde E. Kerens-Tygart Valley CD, Leonard Marcum-Guyan CD, E. P. Saville-Potomac Valley CD, Dewey F. Sharpe-Greenbrier Valley CD. Elk CD provided the initial office facilities.

### **ARTICLE II: PURPOSE**

The purpose of this Association shall be to provide a forum for the common consideration of the mutual conservation interests of the various conservation Districts, Watershed Improvement Districts, and the Conservation Partnership members.

This Association is dedicated to the advancement and understanding of the educational, scientific, charitable, and moral aspects of conservation interests.

The Association is committed to the principles of conservation planning embodied in the Conservation District 2000 strategic plans. The Association pledges to be a partner to other governmental, public and private entities engaged in the conservation and enhancement of natural resources and improvement of the general welfare and safety of the citizens of the State of West Virginia.

The Association recognizes the history and origin of the conservation movement in these United States as well as West Virginia's individual role in that history. The significance of agriculture in our daily lives and its unique responsibility to the environment is also recognized. Therefore, the Association dedicates itself to the successful continuation and accomplishment of the conservation, natural resources, and environmental goals of our historical beginnings.

## **ARTICLE III: MEMBERS**

### **SECTION 1. Classes**

The membership shall consist of those persons who are:

- a. Appointed as supervisors by the State Conservation Committee.
- b. Elected as supervisors in accordance with legislative rules Title 63, Series 1 of the State Conservation Committee.
- c. Designated as associate supervisors by a local conservation district Board of Supervisors. Associate supervisors shall not have the right to make motions, vote, or hold office.
- d. Granted honorary membership by the Board of Directors. Honorary members shall not have the right to make motions, vote, or hold office.

### **SECTION 2. Eligibility/Qualifications**

Any adult resident of the State of West Virginia shall be eligible for membership provided that they are included in Article III, Section I.

- a. Each district after Primary Elections and before the third quarterly meeting will select two (2) supervisors as their directors to the WVACD for a two (2) year term and provide the names to the secretary of the WVACD prior to the quarterly meeting. District directors will be seated as the first order of business at the third quarterly meeting.
- b. Elected or appointed supervisors must have executed an oath of office and filed the original copy with the county clerk of the county in which elected and will provide copies to their district board and state conservation committee/conservation agency.
- c. Associate supervisors must file a letter of designation signed by the chairperson of the district board with the West Virginia Conservation Agency.
- d. Honorary members are not required to be state residents.

### **SECTION 3. Dues**

- a. The Board of Directors shall set the amount of annual dues.
- b. Individual member dues of the Association shall range from \$6 - \$24 dollars per calendar year for each appointed or elected supervisor.
- c. District dues shall not be less than \$400.
- d. Dues shall be paid to the Treasurer of the Association on an annual basis. Dues can also be prorated if the payment period is changed.
- e. Failure to pay dues shall suspend the privileges of membership while a sum is owed.

### **SECTION 4. Privileges of Membership**

- a. The privileges of membership for all appointed and elected supervisors are: making motions, voting, election or appointment to office, officially representing the Association, reimbursement for approved association expenses, signing petitions, and such other rights normally conveyed with membership.
- b. The privileges of membership for all associate and honorary members are those specifically granted by the Board of Directors excluding making motions, voting, and election or appointment to office.

## **ARTICLE IV: OFFICERS**

The officers of the Association shall be: a President, First Vice-President, Second Vice-President, Secretary and Treasurer.

### **SECTION 1. Duties**

Officers shall perform those duties:

- a. Prescribed by these bylaws
- b. Assigned by the Board of Directors
- c. Customary to the office as described in the parliamentary authority of the Association.

### **SECTION 2. Term of Office**

- a. Officers shall be elected to a two - (2) year term.
- b. The terms of office shall be from July through June 30.
- c. No member shall serve connective terms in the office of president and all officers shall remain in office until a successor takes office. Outgoing officers must comply with Article VII Section 4 of the By-Laws.

### **SECTION 3. Nomination & Election**

- a. In the year in which Primary Election is held, the president shall appoint a nominating committee of three (3) to five (5) members at the second calendar quarterly meeting. The committee shall select from the seated directors a slate of names for each office and present them at the third calendar quarterly meeting of the board of directors/business meeting.
- b. Officers shall be elected at the third calendar quarterly meeting.
- c. No member, excluding directors, shall hold more than one elected office at a time.
- d. Members elected to the offices of President, First Vice-President, Second Vice-President, Secretary and Treasurer shall each be from separately created conservation districts.
- e. Nominations from the floor are permitted.
- f. Officers shall be selected from the Board of Directors membership.

### **SECTION 4. Removal**

- a. The President, First Vice-President, Second Vice-President, Secretary, or Treasurer may be removed from office or censured by a 3/4 vote of the Board of Directors or by a 2/3 vote of the membership for malfeasance, misfeasance, personal misconduct, or personal immorality.
- b. Directors may be removed from office or censured by action of the Board of Supervisors from the district they represent or by 2/3 vote of the Association membership for malfeasance, misfeasance, personal misconduct, or personal immorality
- c. Members, other than officers and directors, may be removed from membership or censured by 2/3 vote of the Board of Directors or majority vote of the Association membership for personal misconduct or personal immorality adversely affecting the Association.



## SECTION 5. Vacancy

- a. The President, First Vice-President, Second Vice-President, Secretary and Treasurer shall submit their resignation in writing to the Board of Directors.
- b. The First Vice-President shall immediately fill a vacancy in the Presidency.
- c. The Board of Directors shall have the authority to appoint a director to the vacancy in the offices of First Vice-President, Second Vice-President, Secretary, or Treasurer.
- d. The Board of Directors shall fill officer vacancies at the next quarterly meeting.

## **ARTICLE V: MEETINGS**

### SECTION 1. Annual Meeting

- a. The Association shall hold a business meeting and supervisor luncheon during the fourth calendar quarter in conjunction with the Annual Conservation Partnership and Awards Conference.
- b. This meeting shall be for the presidents' annual report of the association and to address any other business or concerns of the membership.
- c. All members of the Association and invited guests are urged to attend.

### SECTION 2. Board of Directors Meeting

- a. The Board of Directors shall meet at least once each calendar quarter and otherwise, as they deem necessary.
- b. Only seated Directors or designated alternates with written authorization may vote.
- c. All members of the Association and invited guests may attend.

### SECTION 3. Executive Committee Meeting

- a. The executive committee shall meet as deemed necessary to conduct the day-to-day business of the Association.
- b. All Directors of the Association and invited guests may attend.

### SECTION 4. Standing Committees

- a. Each standing committee shall meet at least once each calendar quarter and otherwise, as deemed necessary.
- b. Each committee shall present official minutes to the Secretary and provide other reports as required to the President.

### SECTION 5. Quorum

- a. Annual Business Meeting: A quorum is 25 members with privileges of membership.
- b. Board of Directors and Committee Meetings: A quorum is a majority of the members with privileges of membership unless otherwise specified in these Bylaws.

### SECTION 6. Voting

A majority vote of those with privileges of membership (Article III, Section 4) shall decide all questions unless otherwise specified in these bylaws.

#### SECTION 7. Special Association Meeting

- a. A special meeting may be called by (1) the President, (2) the executive committee, (3) at the written request of at least nine members of the Board of Directors or (4) by a petition signed by a majority of the membership. The directors written request or membership petition shall state the purpose for the meeting and be delivered by certified mail to the Secretary of the Association.
- b. The President shall send a written notice stating the purpose of the meeting and specifying the location, date, and time of the special meeting by certified mail to the chairperson of each conservation district and to each member by regular mail.
- c. The special meeting must be held within 60 days of notification to the Secretary.
- d. The President's notice must provide at least 30 days advance notification.

#### SECTION 8. Teleconferencing and other electronic meetings

Meetings of the Board of Directors and Executive committee may be held by electronic means.

#### SECTION 9. Minutes

Official minutes shall be prepared for the following meetings: Annual Association, Board of Directors, Executive Committee, standing committee and special committees, excluding any executive session of these meetings.

### **ARTICLE VI: BOARD of DIRECTORS**

#### SECTION 1. Membership

- a. The Board of Directors shall consist of two supervisors designated by each District Board of Supervisors as representing that district as an incumbent director.
- b. Written designation as an incumbent director shall be delivered to the Secretary of the Association in the form of district approved minutes of the meeting when selected.
- c. Directors shall be appointed or elected supervisors.

#### SECTION 2. Authority

- a. To set Association policy and have general supervision of the business of the Association between annual meetings.
- b. To set the location and date of the annual meeting and Board of Directors meetings.
- c. To conduct other business as required to carry out Article II of the bylaws and the will of the membership.
- d. To grant Honorary memberships, without dues, by simple majority vote of directors present, to individuals who have rendered continuing distinguished service to the Association or who have notable careers in conservation matters worthy of special recognition.

#### SECTION 3. Alternate Directors

- a. A District chairperson may designate alternate directors to the WVACD Board of Directors.
- b. Alternate directors may serve only during the absence of an incumbent director.

#### SECTION 4. Vacancies

- a. Directors shall submit their resignation in writing to the Secretary of the Association.
- b. Conservation District Boards of Supervisors are requested to fill vacancies of their Association Directors within 60 days.

#### SECTION 5. Board of Directors Advisory Associates

With the concurrence of the Board of Directors, the following are ex-officio, non-voting, advisors to the Board of Directors:

- a. Farm Service Agency - Executive Director
- b. NACD officer or board member
- c. Natural Resources Conservation Service - State Conservationist
- d. State Conservation Committee Members
- e. WV Conservation Agency - Executive Director

### **ARTICLE VII: COMMITTEES**

#### SECTION 1. Executive Committee Membership

The membership of the executive committee shall consist of the following:

- a. President, First Vice-President, Second Vice-President, Secretary, and Treasurer
- b. Immediate Past President
- c. Chairpersons of the following committees:
  1. Conservation Education
  2. District Operations
  3. Legislative
  4. Natural Resources
  5. Water Resources
  6. Special Committee

#### SECTION 2. Executive Committee Authority

- a. To provide day-to-day supervision of the business of the Association between Board of Directors meetings.
- b. To set the location and date of executive committee and special committee meetings.
- c. To conduct other business of the Association as required to carry out Article III of the bylaws, policies of the Board of Directors and the will of the membership.

#### SECTION 3. Standing Committees

- a. Association standing committees are:
  1. Conservation Education Committee
  2. District Operations Committee
  3. Legislative Committee
  4. Natural Resources Committee
  5. Water Resources Committee
- b. The President shall appoint members with privileges of membership to standing committees.

#### SECTION 4. Transition Committee

A transition committee (team) is established to provide for the transfer of leadership from incumbent officers to the officers elect of the Association.

- a. Members are the executive committee and officers elect, excluding other directors.
- b. The term of activity is from the election date of new officers to the start of the term for the newly elected officers.
- c. All transition committee members may vote except advisory members.

#### SECTION 5. Special Committees

The President may establish special committees and appoint Association members thereto.

Members who are appointees shall be reimbursed for incurred expenses to attend such meetings that are not reimbursed by the WV Conservation Agency or their respective Districts.

#### SECTION 6. Ex-officio membership

The President, First Vice-President, Second Vice-President, Secretary and Treasurer are ex-officio, non-voting, advisory members of all Association committees except the Nominating committee, Transition committee and standing committee of which they are a member where they may vote.

#### SECTION 7. Committee Chairpersons, Vice-chairpersons & Resignations

- a. The President shall select a chairperson from committee membership unless otherwise specified in these bylaws.
- b. Vice chairperson is selected by the committee membership.
- c. Chairperson District Operation Committee shall be the Association First Vice-President
- d. Chairperson Legislative Committee shall be the Immediate Past President.
- e. Committee Chairpersons shall submit their resignation to the President of the Association.
- f. Committee members shall submit their resignation to their committee chairperson.

#### SECTION 8. Standing Committee Advisory Associates

With the approval of the President, personnel designated in writing to the WVACD by the following executives are non-voting, advisors to assigned committees.

- a. Chairperson - State Conservation Committee
- b. Executive Director - Farm Service Agency
- c. Executive Director - West Virginia Conservation Agency
- d. State Conservationist – Natural Resources Conservation Service

#### SECTION 9. Past Presidents

All Association past presidents who are currently appointed or elected supervisors are members of the Legislative Committee.

## **ARTICLE VIII: PARLIAMENTARY AUTHORITY**

### **SECTION 1. Rules of Order**

The rules contained in the [1990 Ninth Edition] of Robert's Rules of Order shall govern the business of the Association where they are not inconsistent with these bylaws and any special rules adopted by the Association.

### **SECTION 2. Revised Rules of Order**

As other revised additions of Robert's Rules of Order are published, the Board of Directors shall review them before they are adopted at any Board of Directors meeting as the parliamentary authority of the Association.

## **ARTICLE IX: AMENDMENT**

### **SECTION 1. Notice**

A notice of amendment describing the proposed revision and specifying the location, date and time of the meeting shall be provided by the President 30 days in advance of the meeting by certified mail to the chairperson of each conservation district and each member by regular mail.

### **SECTION 2. Amendment Meeting**

The meeting shall be held at a location where the entire membership can be accommodated with lodging, food and meeting arrangements.

### **SECTION 3. Vote**

The Association bylaws may be amended by a 2/3 vote of the membership present at any quarterly business meeting or at a special meeting of the Association called for that purpose.

## **ARTICLE X: CORPORATE ACTIVITIES**

### **SECTION 1. Authorized Activities**

The Corporation (Association) shall carry out activities consistent with Article II except those prohibited to:

- a. A Corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
- b. A Corporation, whose contributions are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

## **ARTICLE XI: DISTRIBUTION OF ASSETS**

### **SECTION 1. Earnings**

No part of the net earnings of the Corporation shall be distributable to members, Directors, or Officers, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered in carrying out the purposes in Article II.

### **SECTION 2. Assets**

- a. Upon the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall dispose of all assets of the Corporation in accordance with the intent of Article II.
- b. In this matter, consideration should be given to disposal of assets to organizations qualifying under Section 501 (c) (3) of the Internal Revenue Code.
- c. An appropriate court of the county in which the principal office of the Corporation is located shall dispose of any assets not disposed of by the Board of Directors.
- d. The court should consider organizations that are operated exclusively for purposes similar to Article II of these bylaws.

## **ARTICLE XII: AFFILIATED ORGANIZATIONS**

An auxiliary organization known as the West Virginia Association of Conservation Districts Auxiliary is authorized to promote the interests of the Association in accordance with Article II. The official abbreviation of the name shall be WVACDA.

## **ARTICLE XIII: NACD REPRESENTATION**

### **SECTION 1. Affiliation**

The Association may join and participate in the offices, boards, committees and activities of the National Association of Conservation Districts (NACD) unless the Board of Directors of the Association determines that certain purposes, policies, or activities of the NACD are not compatible with the philosophy and purpose of this Association.

### **SECTION 2. State Association Representative**

The Board of Directors of the WVACD shall select a representative to serve as the voting representative on the NACD Board of Directors.

### **SECTION 3. Alternate State Association Representative**

The President shall serve as the alternate representative to the NACD unless otherwise provided by the Board of Directors. In the event the President cannot attend, the executive committee may appoint the First vice-President or a replacement that is an appointed or elected Supervisor in good standing of the Association.

## **ARTICLE XIV: INDEMNIFICATION**

### **SECTION 1. Coverage**

The Board of Directors may provide for indemnification by the Association of any and all of its Directors, Executive Committee Members, or Officers or persons formerly holding any of these positions. Indemnification shall be against any expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they are made party or parties, by reason of such office.

### **SECTION 2. Exemption**

Indemnification shall not include any Director, Executive Committee Member or Officer adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty and to any matters settled by agreement predicated on the existence of such liability.

## **ARTICLE XV: BONDING**

### **SECTION 1. Fidelity Bonds**

The Treasurer and all other Officers, agents and employees of the Association who handle funds of the Association shall execute fidelity bonds in favor of the Association in such amounts as the Board of Directors specifies. Each fidelity bond shall be executed by the Treasurer, Officer, agent or employee as principal and by a surety approved by the Executive Committee.

### **SECTION 2. Premium**

The Association shall pay all premiums for fidelity bonds required, and the premiums shall be considered an Association expense.

## **ARTICLE XVI: SPECIAL APPOINTEES**

The President may appoint a Chaplain, Congressional Liaison, Historian, Legislative Liaison, Parliamentarian and Sergeant at Arms.

### **SECTION 1. Chaplain**

The President may appoint a chaplain from the membership; however, if the chaplain is not an appointed or elected supervisor, the approval of the Board of Directors is required. The chaplain serves the Association in such manner as it may require.

### **SECTION 2 Congressional Liaisons**

The President may appoint congressional liaisons from the membership. Duties of liaisons shall be to carry out the instructions of the President to represent the WVACD to the Senate and House of Representatives of these United States.

### **SECTION 3. Historian (curator)**

The President may appoint a historian from the membership; however, if the historian is not an appointed or elected supervisor, the approval of the Board of Directors is required. The historian/curator serves the Association in such manner as it may require.

#### SECTION 4. Legislative Liaison

The President may appoint legislative liaisons from the membership. Duties of liaisons shall be to carry out the instructions of the President to represent the WVACD to the Senate and House of Congress and the State of West Virginia.

#### SECTION 5. Parliamentary

The President may appoint a parliamentarian; however, if the parliamentarian is not an appointed or elected supervisor, the approval of the Board of Directors is required. The duty of the parliamentarian is to function as an advisor to the President, Directors, and Committee Chairpersons in matters of parliamentary procedure. The parliamentarian shall not vote on any question in which the parliamentarian rendered a dutiful opinion unless the vote is by ballot.

#### SECTION 6. Sergeant at Arms

The president may appoint a Sergeant-at-Arms; however, if the Sergeant-at-Arms is not an appointed or elected supervisor, the approval of the Board of Directors is required.

- a. The Sergeant-at-Arms at the request of the President shall remove or cause to be removed any nonmember who is creating a nuisance or adversely affecting proceedings.
- b. The Sergeant-at-Arms shall at the request of the President or upon majority vote of the Directors remove or cause to be removed any supervisor who is creating a nuisance or adversely affecting proceedings.
- c. In exercising such authority to remove a person from the assembly, the Sergeant-at-Arms shall use only such force as necessary to escort the offender from the assembly and prevent reentry to that meeting unless re-entry is approved.
- d. The Sergeant-at-Arms is responsible for physical arrangements, security issues, ushers and may serve as doorkeeper.

**Attest**\_\_\_\_\_

**Secretary of the Association**



# **Appendix 7**

CD Supervisor  
Statement Of  
Qualifications, Removal  
from Office, Filling a  
Vacancy, Oath of Office

**West Virginia State Conservation Committee  
Vacancy Appointment for Conservation Supervisor  
Statement of Qualifications**

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE: \_\_\_\_\_ CELLPHONE: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

CONSERVATION DISTRICT: \_\_\_\_\_ COUNTY: \_\_\_\_\_

**QUALIFICATIONS FOR COUNTY SUPERVISOR PURSUANT TO WEST VIRGINIA CODE §§ 19-21A-6  
*et seq.* and 19-21A -7 *et seq.* and WEST VIRGINIA CODE R. § 63-1-2 *et seq.*:**

1. Must be a landowner within the county where he or she is running for office.
2. Must reside in the county where he or she is running for office.
3. Must be an active or retired farmer with a minimum of five years farming experience.
4. "Farmer" means a person engaged in the activity of farming with the potential for producing at least one thousand dollars of products per annum from those activities.
5. "Activity of farming" means the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by other than the producer thereof.
6. Must have at least (5) years of land management experience, or experience in other related fields.
7. Must have a strong working interest in the conservation of natural resources.
8. Must have knowledge of conservation best management practices either from practical experience or education experience. For example: confined feeding areas; filter strips; alternative watering systems.

By attesting below I am certifying that I possess the qualifications to fill the vacancy for  
\_\_\_\_\_ Conservation District Supervisor.

Name (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**§6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds; cost.**

(a) Any person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, neglect of duty, incompetence or for any of the causes or on any of the grounds provided by any other statute.

(b) Charges may be proffered:

(1) In the case of any county officer, member of a board of education or magistrate:

(A) By a duly enacted resolution of the county commission which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article;

(B) By the prosecuting attorney of the county; or

(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a county with a population in excess of fifty thousand; the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a county with a population in excess of ten thousand but not in excess of fifty thousand, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iii) In a county with a population not in excess of ten thousand, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(2) In the case of any municipal officer:

(A) By a duly enacted resolution of the governing body of the municipality which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article;

(B) By the prosecuting attorney of the county wherein such municipality, or the greater portion thereof, is located; or

(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a Class I city, the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a Class II city, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(iii) In a Class III city, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iv) In a Class IV town or village, the lesser of fifty or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(3) By the chief inspector and supervisor of public offices of the state where the person sought to be removed is entrusted by law with the collection, custody and expenditure of public moneys because of any intentional or unlawful misapplication, misappropriation or embezzlement of such moneys.

(c) When removal is proffered by a duly enacted resolution of a county commission or municipal governing body, a certified copy of the resolution shall be served by the clerk of the commission or municipal governing body upon the circuit court in whose jurisdiction the officer serves within five business days of adoption of the resolution. The proffering county commission or municipal governing body shall be responsible for the prosecution of the removal resolution.

(d) When removal is proffered by the prosecuting attorney, the charges shall be reduced to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer serves, and the prosecuting attorney shall be responsible for the prosecution of the removal action.

(e) When removal is proffered by petition, the charges shall be reduced to writing and each page on which signatures are affixed shall include the name and office of the challenged officer, the charges or grounds for removal, which may be achieved by attachment to each signature page, and an informed acknowledgement of an agreement with the charges. At least one of the persons bringing the petition shall serve the original petition upon the circuit court in whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal action.

(f) Any resolution or petition submitted pursuant to this section shall be received and entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the resolution or petition, requiring the officer or person named therein, or legal counsel therefor, to appear before the court for a preliminary hearing, at the courthouse of the county where such officer resides, for the purpose of a judicial determination as to the validity of the resolution or petition, the clerk having ascertained whether such signatures are the signatures of eligible residents, and to hear any related objections or motions that may be presented.

The summons shall be served in the manner by which a summons commencing a civil suit may be served within five business days of the receipt of the resolution or petition by the court.

(g) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect, and to consider all the allegations made in the resolution or petition in light of the applicable case law and the required strict construction of the grounds asserted, and conclude whether or not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant the removal of the officer from office. In the case of a petition, the court may require that the clerk responsible for the maintenance of voting records for the governing body for whom the officer serves provide an affidavit verifying the number of qualified petitioner signatures and the applicable total number of registered voters.

If the court finds, after consideration of any motions or objections, or in the court's discretion provided for herein, that the resolution or petition is defective or the allegations stated therein do not meet the standards for removal set forth herein, the resolution or petition shall be dismissed by the court. If the court finds that the resolution or petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, the court shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

Upon receipt of said resolution or petition, the chief justice of the Supreme Court of Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition, designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the resolution or petition was filed and, in the order of such appointment, shall require that the three-judge court designate the date, time and place for the hearing of the resolution or petition forthwith.

Such three-judge court shall, without a jury, hear the charges, any motions filed by either party and all evidence offered in support thereof or in opposition thereto, and upon satisfactory proof of the charges by clear and convincing evidence, shall remove any such officer from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all issues presented to it in the matter.

(h) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the Supreme Court of Appeals within thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court of Appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the manner provided by law for such office.

(i) In any case wherein the charges are proffered by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county, school district or municipal officer, the proceedings under this section shall be conducted and prosecuted in the same manner set forth herein for removal by resolution or petition by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the Attorney General of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges.

(j) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of the challenged officer who has been found to be acting in good faith, the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.

**§19-21A-6. Election of supervisors for each district; filling vacancies.**

(a) Each county in a district shall elect two nonpartisan supervisors: *Provided*, That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the requirements of article three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) Supervisors shall be elected in the primary election and serve a term of four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and six months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and six months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

**STATE CONSERVATION COMMITTEE OF  
WEST VIRGINIA**

**OATH OF OFFICE**

I, \_\_\_\_\_, do solemnly swear (or affirm)  
that I will support the Constitution of the United States and the Constitution of the  
State of West Virginia, and I will faithfully discharge the duties of Supervisor of  
the \_\_\_\_\_ Conservation District,  
upon which I am now about to enter.

Conservation District Supervisor Signature

\_\_\_\_\_

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_

Notary Public Signature



# **Appendix 8**

## **WVCA Supervisor Travel Policy and Procedures**

# **Conservation District Supervisor Travel and Per Diem Policy and Procedures**



**West Virginia Conservation Agency and the  
State Conservation Committee**

**July 2015**

**Approved:**

**Brian Farkas, Executive Director WPCA**

**Date:**

**6/16/2015**

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## **1. Purpose**

- 1.1. The purpose of the Conservation District Supervisor Travel and Per Diem Policy and Procedures is to provide conservation districts with funding to cover necessary expenses incurred by supervisors in carrying out the duties as required by virtue of their elected status.

## **2. Policy**

- 2.1. The West Virginia Conservation Agency (WVCA) provides funding to conservation districts for supervisor travel and per diem as required by West Virginia State Code §19-21A-7(c).

## **3. Annual Funding**

- 3.1. The State Conservation Committee (SCC) shall approve (and amend as necessary):
  - 3.1.1. Per diem rate
  - 3.1.2. Mileage rate
  - 3.1.3. Meal rates
- 3.2. The SCC shall approve the annual conservation district budget allotment for travel and per diem every April.
- 3.3. The WVCA shall notify the conservation districts of the total annual allotment and the amounts to submit on the Letters of Request (LOR).
- 3.4. Conservation districts shall approve and submit the LORs to the WVCA prior to July 1<sup>st</sup> of each year.
- 3.5. The WVCA shall process the proper LOR each quarter in the budgeted fiscal year.

## **4. Conservation District Actions**

- 4.1. Conservation districts shall develop and approve their own travel and per diem policy that include the requirements of this policy at a minimum.
- 4.2. A conservation district may add restrictions to their policy, such as board approval for certain travel or not paying for attendance to certain events. This must be in the district's policy prior to enforcement.
- 4.3. LORs are authorized by conservation districts and sent to WVCA prior to the beginning of the fiscal year.
- 4.4. Conservation districts shall design travel and per diem forms or use forms as provided by WVCA to submit travel to their accounting service.
- 4.5. If the SCC approves the use of General Services Administration (GSA) rates for mileage and/or meal reimbursement, it is the responsibility of the Conservation District to monitor, maintain, and apply those rates until such time the SCC would adopt a different rate for mileage and/or meals.
- 4.6. Conservation district board shall delegate to the Treasurer the authority to review and approve all submitted forms and report actions at the next board meeting.

The Chairperson shall be delegated the authority to review and approve the Treasurer's forms and report actions at the next board meeting.

- 4.7. After the appropriate approval, the WVCA District Manager or other designee by the conservation district shall submit the travel and per diem form to the district's accounting service for processing and payment.
- 4.8. Travel, per diem, and related expense totals shall be submitted to the WVCA on the annual Conservation District Operating (CDO) Expense Report as specific line items.

## **5. District Accounting Services**

- 5.1. The district's accounting service shall:
  - 5.1.1. Provide the district with a monthly report detailing year-to-date travel and per diem expenses per supervisor.
  - 5.1.2. Provide the district a monthly report detailing the total remaining budget for travel, per diem, and related expenses.
  - 5.1.3. Generate printed payroll checks for supervisors based on submitted travel and per diem forms.
  - 5.1.4. Withhold any necessary taxes as appropriate.
  - 5.1.5. Submit tax payments to the IRS as appropriate.
  - 5.1.6. Provide each supervisor that claimed per diem or a taxable meal a W2 as required by the IRS.



## **Conservation District Travel and Per Diem FAQ**

**Q: Is it legal for Conservation Districts to administer the payment of travel and per diem for Supervisors?**

A: Yes. West Virginia State Code §19-21A-7c charges the State Conservation Committee (SCC) to establish the expense and per diem rate based on the availability of funds.

**Q: What if a Conservation District incurs expenses greater than the amount provided by the State Conservation Committee?**

A: Districts may supplement their travel and per diem budgets with Conservation District Operating (CDO) Grant funds. Districts must ensure they can still fund expenses for internet and accounting services as these reimbursements have been added to the CDO Grant funds for fiscal year 2016. All funds budgeted for travel and per diem by the SCC will be sent directly to the Conservation Districts.

**Q: When will funds be sent to the Conservation Districts to cover travel and per diem?**

A: The West Virginia Conservation Agency (WVCA) will send funds to the Conservation Districts the first month of each quarter (July, October, January, and April). Fund will be provided in the amount of 35%, 25%, 25%, and 15% respectively.

**Q: Does the Conservation District need to pay for unemployment insurance on Supervisors?**

A: No. Per Workforce West Virginia, Supervisors are exempt by state code from collecting unemployment benefits as elected officials.

**Q: Does the Conservation District need to pay for Worker's Compensation on Supervisors?**

A: No. Per the West Virginia Insurance Commission, Supervisors as elected officials would not seem to constitute an "employee" of the Conservation District. They are not paid a wage or salary (only reimbursed for expenses) and do not work under the control or supervision of the Conservation District that a statutory employee normally would requiring Workers Compensation.

**Q: Is per diem taxable to a Supervisor?**

A: Per diem is subject to FICA taxes and possibly Federal withholding (determined by tax tables). Conservation Districts should obtain further information from their accounting services provider. Individual Supervisors may also obtain further guidance from their tax professional.

**Q: Are travel expenses taxable to a Supervisor?**

A: Travel expenses (hotel, mileage, overnight status meals, and other fees) are **typically** not taxable if actual expenses are reported and reimbursed. Conservation Districts should obtain further information from their accounting services provider. Individual Supervisors may also obtain further guidance from their tax professional.

**Q: Are day meals (non-overnight status) taxable to a Supervisor?**

A: The single day meals Supervisors' claim are typically taxable. Conservation Districts should obtain further information from their accounting services provider. Individual Supervisors may also obtain further guidance from their tax professional.

**Q: Can a 1099 be issued rather than a W2 for per diem paid to a Supervisor?**

A: No. A W2 must be issued to a Supervisor as their per diem does not constitute self-employment income.

A 1099 would be issued to an individual that has self-employment income. An individual must carry on a "trade or business" in order to have self-employment income per 26 C.F.R. §1.1402(c)-1. 26 C.F.R. §1.1402(c)-2(a) states "the performance of the functions of a public office does not constitute a trade or business." 26 C.F.R. §1402(c)-2(b) further defines public office to include any elective or appointive office of a State or its political subdivisions.

# **Appendix 9**

## **Strategic Plan for WV Conservation Activities**



**WV Conservation Agency & WV Conservation Districts**

# **Strategic Plan for West Virginia Conservation Activities**

**JUNE 2013 FINAL REPORT**



**2013**

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# Strategic Plan for West Virginia Conservation Activities

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Prepared by

## **Strategic Planning Committee Members**

### **West Virginia Conservation District Supervisors**

- Floyd Kursey, Eastern Panhandle Conservation District.
- Brian Eglinger, Potomac Valley Conservation District.
- Bill Stewart, Guyan Conservation District.
- Tim VanReenen, Greenbrier Valley Conservation District.
- David McCardle, Northern Panhandle Conservation District.
- Jim Foster, West Fork Conservation District.

### **West Virginia Conservation Agency Representatives**

- Dinah Hannah, Administrative Officer, West Fork Conservation District.
- Justin Tincher, Monitor, Stream Section, Morgantown.
- Beth McClintock, Administrative Officer, Capitol Conservation District.
- Dennis Wyer, Programmer, Guthrie.
- Dennis Burns, Conservation Specialist, Greenbrier Valley.
- Carolyn Hefner, Operations Division Director, Guthrie.
- Russ Campbell, Watershed Division Director, Guthrie.
- Brian Farkas, Executive Director, Guthrie.

### **NRCS Representative**

- Louis Aspey, Acting State Conservationist, Morgantown.

With the assistance of

### **Michael John Dougherty**

Extension Specialist and Professor  
West Virginia University Extension Service

**Final Report: June 2013 (Unproofed)**

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# Strategic Plan for West Virginia Conservation Activities

## Background

The 14 conservation districts and the state agency which works with them are statutorily defined in Chapter 19, Article 21A of the *West Virginia Code – Agriculture: Conservation Districts*.

The history of this resource conservation activity began with the realization in the 1930s that action was needed to counteract the ecological degradation caused by unsustainable plowing practices, followed by drought and wind-driven erosion. The ensuing “Dust Bowl” crippled the Great Plains and made the entire nation aware of this environmental disaster. As a result, Congress created the Soil Conservation Service within the Department of Agriculture in 1935. Two years later, President Franklin D. Roosevelt recommended to the states that they create legislation that would allow landowners to form soil conservation districts.

West Virginia created the Soil Conservation Committee in 1939. The first conservation districts – West Fork, Eastern Panhandle, and Greenbrier Valley – were formed in February 1940. The result was the creation of a unique federal-state-local partnership to address issues related to erosion, water quality, and flood control.

The names of the agencies and districts have changed over time as a result of the broadening scope of conservation activities undertaken. But the basic partnership and its basic reason for being has remained intact. The federal agency became the Natural Resources Conservation Service (NRCS) in 1994. The West Virginia Legislature renamed the state board the State Conservation Committee in 2002, which led to districts removing “soil” from their name (and being relabeled conservation districts) as well.

## Strategic Plan Development

Given the long history and broad scope of conservation activities, it is not surprising that the current executive director saw the need for the West Virginia Conservation Agency to seek a direction for conservation activities in the state. This strategic plan seeks to fulfill that need. It was developed on behalf of the agency and the districts with a West Virginia University Extension Specialist guiding participants through the input sessions and planning process. The steering committee included six district supervisors, seven agency staffers, and one representative of NRCS.

The strategic planning process began with an initial meeting with the agency executive director and the NRCS assistant state conservationist in August 2012 at the NRCS office in Morgantown. Shortly thereafter, a series of six scoping meetings involving different constituency groups followed. Input was first sought from the State Conservation Committee during its September meeting at the Gus R. Douglass Agricultural Center at Guthrie. In October, district supervisors and agency staff from the northern part of the state were given an opportunity to speak in separate meetings in Morgantown. Meanwhile, their counterparts from the southern part of the state were given an opportunity to speak in separate meetings at Guthrie. In early November, a final input meeting was held for managers at Guthrie. Overall, more than 100 district supervisors and agency staff participated in at least one of these scoping meetings.

Once the meetings were completed, volunteers were sought for a strategic planning steering committee. The group met from December 2012 to February 2013 to outline the issues to be covered, determine the direction of conservation efforts, and review and finalize the details of the strategic plan. A plan draft was finished and made available for review in March 2013. The plan was finalized in June 2013. Its completion represents the beginning of a continuing process to set the direction for conservation activities in West Virginia. Periodic review will be needed to ensure that the plan and the activities recommended within it remain relevant. The initial review should occur no later than June 2016.

## **Mission Statement**

The mission of conservation activities in West Virginia is “To provide for and promote the protection and conservation of WV’s soil, land, water and related resources for the health, safety, and general welfare of the state’s citizens.”

This statement was developed as part of the strategic planning effort designed to provide future direction for conservation efforts in the state. It is designed to replace the separately developed but similar mission statements of the West Virginia Conservation Agency and the 14 conservation districts around the state.

Currently, the mission of the West Virginia Conservation Agency is to preserve West Virginia’s natural resources by working with partners to promote soil and water conservation. Meanwhile, the conservation districts’ current mission is to provide local self-government leadership and initiative to the development and conservation of soil, water, and related resources. A balanced planning, education and management program that protects, restores and improves those resources will be accomplished in cooperation with landowners, government agencies and private organizations.

## Issue Areas

Along with the mission statement, seven issue areas emerged as part of the strategic planning process. These included internal, organizationally-focused issues as well as external, activity-focused issues. In each case, the issues would need to be addressed by the conservation agency and the conservation districts.

### *Operations*

Many issues will arise that have the potential to impact the day-to-day operations of the West Virginia Conservation Agency and the Conservation Districts. This should not be surprising given the scope of activities undertaken for conservation as well as the distinct operations of 14 conservation districts and the state conservation agency with its headquarters and field offices.

Some of these issues are easily apparent. Communication and coordination remain continual issues for conservation efforts in West Virginia. Related to this, sometimes the level of responsibility or lines of authority for projects are not always clearly defined or known. In addition, there are process concerns. During the scoping meetings, it became apparent that people had suggestions on how they thought conservation efforts in West Virginia could be improved. Many of those ideas were incorporated into the plan. To continue this momentum, there needs to be an on-going formal method to capture ideas. Related to this, there should be a specified way to maintain the efforts that the planning process started – and to update the plan as needed.

Potential actions in this issue area include:

- Clear and constant lines of communication must exist among all those working on conservation activities in West Virginia. Two-way communication is essential between the conservation agency and the conservation districts. The conservation districts need to know what programs are available from the agency and when projects are going to be done in their areas. The districts also need information from the state agency on matters that might impact them to be relayed in a timely manner. Conversely, the agency needs to know what is happening and what needs to happen in each of the districts. Additionally, both the agency and the districts need to maintain strong contacts with partners, especially (but not limited to) NRCS. Policies and procedures would need to be established to facilitate this communication, such as when the conservation districts would need to be notified about projects and policies or who the agency point-of-contact should be for the conservation districts. This would be an on-going effort performed by both the conservation agency and the conservation districts.

- Programs should be operated and administered in a cooperative manner to promote and achieve conservation goals and objectives. This requires the conservation agency, conservation districts, and partners working together to share ownership of such efforts. This would be an on-going activity and specifics would vary from project to project.
- Conservation districts need to speak with a single voice. This involves tasks such as providing leadership for projects or communicating with the conservation agency. To that end, there should be a specified chain-of-command created for each conservation district. It should be led by the district chair or the chair's designee. Such a system would also outline intra-district communication, inter-district communication, and district-agency communication. This would be a one-time activity of the conservation districts, with periodic updating.
- There needs to be a way for new concepts to be brought forward that could benefit conservation activities in the state. To that end, a formal suggestion input system should be created for ideas and complaints to be submitted and to receive regular review and response. A committee could then evaluate the suggestions and recommend action on those that have merit. This would be an on-going activity performed by the conservation agency and possibly, separately by the conservation districts on a district-by-district basis.
- Information on the breadth of conservation activities and their benefits should be provided to elected officials at the local, state, and federal levels. This advocacy activity involves direct and indirect education efforts. It is an on-going activity that needs to be continually undertaken by the conservation agency, the conservation districts, and the partners, as appropriate, depending upon the program, project, and place.
- Revisit the strategic plan every two to three years. This would entail either reconvening the ad hoc committee that developed the plan or bringing together a similar, representative working group to review and revise the planning document. This would be a periodic activity, brought together by the conservation agency and involving participation from both the agency and the districts.

### ***Fiscal Management and Waste Reduction***

The West Virginia Conservation Agency had a programmatic budget of about \$9.6 million for FY2013. It had 85 full-time equivalent positions, of which 10 positions were vacant. In the state budget, it is grouped with the West Virginia Department of Agriculture. The agency's funding stream includes federal pass-through monies, state allocations, and payment for services.

Agency expenditures include programmatic efforts and support provided to the 14 conservation districts. The agency's budget also funds the travel expenses and per diem payments for the district's 114 elected supervisors.

The districts undertake conservation activities at the local/regional level. They follow an annual plan-of-work and also respond to special situations as they arise. The districts receive financial and administrative support from the conservation agency. They also receive payment for services which are done either on a contractual basis by commercial vendors or by district work crew (where they exist).

Given that both the agency and the districts spend public money – either through appropriation from general funds or from charges for services – it is crucial that funds be expended in a prudent and proper manner. Additionally, with the ever-increasing potential for reduced governmental appropriations in the future, there needs to be efforts to broaden the funding base for conservation activities.

Potential actions in this issue area include:

- Cost and operational efficiencies need to be identified and addressed. An evaluation of day-to-day activities should be undertaken to help reveal these possibilities. This would be an on-going activity performed by both agency staff and the conservation districts.
- Informal cost-benefit analysis should be conducted on state and locally-funded, non-emergency projects as appropriate at the discretion of the entity undertaking the project. Using this mechanism to compare the cost of the action to the direct, immediate public benefits should lead to fiscally-wise policy choices. This would be performed by project managers at the agency or conservation district level.
- Efforts should be undertaken to seek funding from non-traditional sources to support conservation efforts. Grants can be sought from other local, state, and federal government agencies, private foundations, and non-profits. Likewise, donations can be requested for specific purposes and causes. This would be an on-going activity performed by both agency staff and the conservation districts.
- Programs shall include cost-sharing policies for landowners and cooperators to contribute to efforts by agency and/or district programs and staff from which the landowners or cooperators derive benefits. This could take the form of charging specific fees for certain programs and activities. Also, it could mean in-kind services could be provided as a way to share the cost on projects. This would be an on-going activity performed by both agency staff and the conservation districts.



- Project benefits need to be documented to demonstrate the value of the current level of state and federal allocations. This would serve to protect conservation efforts from budget cuts and lays the foundation to request additional funding. This would be an on-going activity performed by both agency staff and the conservation districts.
- Information on the need for funding and its benefits should be provided to elected officials at the local, state, and federal levels. This advocacy activity involves direct and indirect education efforts. It is an on-going activity that needs to be continually undertaken by the conservation agency, the conservation districts, and the partners, as appropriate, depending upon the program, project, and place.

### ***Organizational Education and Training***

Conservation activities in West Virginia are a complex effort. The *West Virginia Code* outlines the basic set up in Chapter 19, Article 21A “Agriculture: Conservation Districts.” Over time, organizational arrangements, which were not defined by code, have emerged from practice as well. Regardless, conservation efforts are to focus on protecting soil, land, water, and related resources in the Mountain State.

The West Virginia Conservation Agency is overseen by the State Conservation Committee. The 10-member board is chaired by the state Agriculture Commissioner. The committee’s membership includes six *ex officio* members who represent different conservation constituency groups (agriculture, agricultural experiment stations, conservation districts, environmental protection, extension, and forestry) as well as four members appointed by the governor. There is also an advisory member representing the U.S. Department of Agriculture.

Administratively, the conservation agency is generally covered by the Department of Agriculture’s administrative policies (as opposed to state Department of Administration) and is headquartered at the WVDA’s Gus R. Douglass Agricultural Center at Guthrie.

However, in practice the conservation agency generally functions as an independent agency. It has an executive officer, an operations division that handles fiscal matters, information technology and district administrative issues, and a watershed division that handles external assistance activities such as conservation services, stream work, recovery from natural disasters, and the operation, maintenance and repair of the West Virginia’s flood-control dams and channels.

The 14 conservation districts range in size from one to six counties. At least two supervisors are elected from each county (with counties over 100,000 in population receiving additional supervisors). The districts meet regularly, develop an annual plan of work and budget, and oversee programs and projects in their specified counties.

The districts receive financial support and assistance from the conservation agency staff – including an administrative officer for each district – to accomplish various conservation-related activities. In addition, the supervisors have their own association that provides them a unified voice to deal with important state and federal matters.

Both the conservation agency and the conservation districts work directly with a variety of state and federal partners. Regardless of whether the programs are administered by local, state, or federal agencies, the partners should work in a unified effort to achieve common conservation goals.

At the state level, these include the Department of Agriculture, the Division of Forestry, the Division of Natural Resources, the Division of Homeland Security and Emergency Management, the Department of Environmental Protection and West Virginia University, including the Agricultural Experiment Stations and the WVU Extension Service.

At the federal level, the districts interact with the U.S. Department of Agriculture's Farm Service Agency and the Natural Resources Conservation Service, the U.S. Geological Service; the U.S. Fish and Wildlife Service; and the U.S. Army Corps of Engineers.

Overall, there are a multitude of entities working directly or indirectly on issues related to the protection of natural resources in West Virginia. Additionally, there are multiple ways to meet the varied conservation goals. Thus, it is important for those working on conservation efforts to know about the variety of programs, processes, and partnerships available.

Potential actions in this issue area include:

- New conservation agency employee training should be expanded. It shall include an initial orientation session, structured technical training, and a mentoring program. The orientation session shall explain the agency, the districts and their functions, and the relationship between the agency and the districts. It should also discuss the role of partners in conservation efforts. This would be an on-going activity by the conservation agency.
- Conservation supervisor training opportunities shall be increased and enhanced. Supervisors need to know their roles and responsibilities as elected officials for conservation. They also

need to know what state and federal programs are available to assist land owners and cooperators in their area, what those programs offer, and how to initiate program activities. This would be an on-going activity by the conservation districts with assistance available from the agency, when needed.

- Partners in conservation should offer training and education about their programs. This would be made available to agency staff, district supervisors, cooperators, and partners. This would be an on-going activity by the conservation agency and the conservation districts, done in conjunction with the partner organizations.
- Programs should be operated and administered in a cooperative manner to promote and achieve conservation goals and objectives. To achieve this, the conservation agency, conservation districts and partners must undertake training that emphasizes working together to reach shared goals. This would be a continual and periodic activity by the conservation agency, conservation districts, and partners.
- Certification and professional credentials in appropriate fields or disciplines should be explored for agency staff, district staff, and supervisors. Having such certifications would enhance their work and garner additional respect for conservation efforts. This would be an on-going activity by the conservation agency and the conservation districts.
- Training should not be limited to standard methods. It should embrace new technologies in its delivery methods, such as video conferencing and web-based instruction. This would be an on-going activity by the conservation agency and the conservation districts.
- On-going training is needed to ensure everyone knows (or at least knows about) new approaches and techniques in conservation. This training should be decentralized by using a “train-the-trainer” approach or some similar method to disseminate the knowledge gained. Key individuals could be called upon to take the lead in learning – and then teaching others. This would be an on-going activity by the conservation agency and the conservation districts.
- Information on the meaning, value, and rationale of conservation activities benefits should be made part of all training activities. This will prepare the conservation agencies, conservation districts, and partners to undertake appropriate advocacy activities through direct and indirect education efforts of various audiences. This would be a continual and periodic activity by the conservation agency, conservation districts, and partners.

## ***Branding and Outreach***

Conservation efforts are often described as “a best kept secret” in West Virginia. Most people have no idea what the conservation districts actually do when they vote for their county supervisors as part of the May primary elections. Similarly, most people have little if any knowledge about the function – or even the existence – of the West Virginia Conservation Agency.

The most common positive mention of the agency or the districts found in news reports occurs when annual conservation awards are presented. Other times, the agency may be found in the news for things that have happened and in some cases those reports do not put the agency or the districts in a positive light.

Furthermore, credit is sometimes not given to the WVCA or the conservation districts for their roles in activities such as the “Envirothon.” Likewise, property owners do not always know which entity works to help to restore a stream bank or remove a dangerous blockage from a creek.

There is also little that currently tells people that individuals who are working these events or improving these situations are part of the concerted conservation effort of the West Virginia Conservation Agency and West Virginia’s conservation districts. The WVCA has placed organizational logos on its vehicles; however, few districts have designed district logos for use on the private vehicles driven by conservation supervisors.

Likewise, there is currently no common clothing such as a hat, jacket, vest or uniform that readily identifies those working on conservation efforts or education when in the field. Many other agencies and organizations have some type of easy-to-recognize identifying clothing that helps those groups be known by those with whom they are working.

The main vehicle for promotion and providing information on state conservation efforts is the WVCA website ([www.wvca.us](http://www.wvca.us)). It has interesting and useful information. It also has some issues related to formatting, organization, and timeliness of postings.

The agency has also tried to use newer forms of social media to promote its message. It has a Facebook page, a Twitter feed, and a YouTube account. The most effective of these appears to be the Facebook page, which dates back to mid-2011, while Twitter and YouTube were joined in 2012. None of them, though, appear to yet have a wide-ranging presence.

An awareness of the work of the conservation agency and the conservation districts resonates with decision-makers, helps with education and training and program implementation. Thus, it

is important for the agency and the districts to find ways to increase their profile so that others know what they are and what they do to lead conservation in West Virginia.

Potential actions in this issue area include:

- Individuals working in the conservation agency and the conservation districts must be able to tell the story of conservation work done in the state and the impact that it has had. This needs to be a united effort. This would be an on-going activity by the conservation agency and the conservation districts.
- Conservation districts should create vehicle identification that can be used by supervisors and staff when on official business in the district. This would be an optional, as-needed activity by the conservation districts.
- The conservation agency and the districts should develop (either jointly or independently) clothing to identify them while in the field on official business. This would be an on-going activity by the conservation agency and the conservation districts.
- The conservation agency shall become more proactive in its external communication efforts. This includes enhancing periodic releases on project successes and updating its Internet presence – both on its webpage and in social media – more frequently. This would be an on-going activity by the conservation agency with input from the conservation districts.
- Conservation districts shall develop external communication plans that provide accurate and up-to-date information. These efforts shall be coordinated so that there is not duplication of effort or message confusion. This ranges from newsletters to website postings. Districts should have a committee assigned to this responsibility and should develop a plan on how to approach marketing. This would be an on-going activity of the conservation districts with the assistance of the conservation agency as needed.
- External communication shall use a variety of forms, telling the conservation story and informing the public about on-going conservation activities and programs. The standard newsletter and press release still needs to be done – even if the newsletter is now electronic (e-letter). Information needs to be provided to appropriate newspapers and radio stations. Public service announcements should be crafted for local television stations and cable systems. Internet communications efforts range from websites to social media. This would be an on-going activity by the conservation agency with input from the conservation districts.

- Outdoor signage could be used to a greater extent to identify a district's boundaries and to promote good conservation practices or projects. This would be an optional, as-needed activity by the conservation agency and the conservation districts.
- Current outreach efforts shall be expanded, and enhanced. These include school-focused efforts, conservation contests, field days, workshops, and dinner meetings. As part of this, information could be provided for distribution at schools, county Extension offices, farmers' markets, and government offices. This would be an on-going, as needed activity by the conservation agency and the conservation districts.
- Information on the breadth of conservation activities and their benefits should be provided to elected officials at the local, state, and federal levels. This advocacy activity involves direct and indirect education efforts. It is an on-going activity that needs to be continually undertaken by the conservation agency, the conservation districts, and the partners, as appropriate, depending upon the program, project, and place.

### ***Dams and Other Flood Control Structures***

The West Virginia Conservation Agency, the 14 districts and local partners are responsible for the inspection, operation and maintenance of 170 watershed dams and 22 waterway channels throughout West Virginia. This partnership is also responsible for the repair and rehabilitation of these watershed structures.

These flood control structures were built under federal programs administered by the Natural Resources Conservation Service. Some of these dams are less than a decade old. The dam at Elkwater Fork in Randolph County was dedicated in 2012.

Meanwhile, other dams are more than 50 years old. Generally, these dams are of earthen construction. And while they are located across the state, a majority of West Virginia's flood-control dams are located in the Potomac Valley.

Complicating matters is that most of these dams are located on private property and ownership is not held by a local, state or federal governmental entity. Of the 170 flood-control dams in the state, 169 are classified as having a "high hazard potential" (defined by FEMA as those dams where failure or mis-operation would probably cause the loss of human life). The other dam is classified as having a "significant hazard potential" (defined by FEMA as those dams where failure or mis-operation would cause economic harm but probably not loss of human life).



Another common flood control structure is waterway channels. These typically involve widening and reinforcing the channel so larger storm water flows can be passed safely. These channel improvements are normally not as effective as dams for providing flood protection, but they can provide some benefits, especially in urban areas with limited available property.

Thus, these dams and channels are important as they protect life and property in both rural communities and urban places. For those reasons, taking care of them has been and will remain a prominent priority for the conservation districts and the conservation agency.

Potential actions in this issue area include:

- ◆ Inspections of the watershed dams and channels must continue on an annual and quarterly basis. Additionally, inspections shall be conducted as required as the result of disaster or within the scope of an Emergency Action Plan. Technicians shall be trained in proper inspection techniques and cost-estimation assessment related to the repair of issues discovered during inspections. This is a periodic, continual activity of the conservation agency and the conservation districts in conjunction with NRCS.
- ◆ The results of the structural inspections shall be evaluated to create an annual priority schedule for maintenance and repairs. This would be an annual activity of the conservation agency and the conservation districts.
- ◆ Annual preventive maintenance plans shall be developed and work undertaken to prevent impairment of dams and reservoirs impounded by the dams. This maintenance should be performed in a timely manner with conservation districts taking the lead to ensure that appropriate funds are being expended to meet the highest priority needs. This would be an annual activity of the conservation agency and the conservation districts in conjunction with NRCS and the Dam Safety Section of the WV Department of Environmental Protection.
- ◆ Dams shall be evaluated to determine if they continue to serve a meaningful function. Those that are no longer needed shall be considered for decommissioning, which would make resources available for other structures. This would be an annual activity of the conservation agency and the conservation districts in conjunction with NRCS.
- ◆ Some dams may need to be repurposed. For example, some structures designed solely for flood protection could play a larger role in protecting water quality, providing public water supply quantity, and/or providing water-based recreation. Such changes could cause a change in funding for their operation, maintenance, and repair. Such evaluation would be an annual activity of the conservation agency and the conservation districts, in conjunction with NRCS, in accordance with the rehabilitation planning documents for each dam.

- New partners and sponsors shall be pursued to increase the resources available for the operation, maintenance, and repair of the watershed structures. This would be a continual activity of the conservation agency and the conservation districts in conjunction with current partners and sponsors.
- General public awareness needs to be raised regarding the purpose of the watershed structures. Most people do not know about the dams, how they operate and how the dams may impact their lives and property. Educating people could lead to increased support for these important structures. This would be a continual activity of the conservation agency and the conservation districts in conjunction with current partners and sponsors.

### ***Water Issues – Quality, Quantity, Watersheds***

Water is a life-supporting resource. Additionally, all other natural resources which conservation efforts seek to protect – such as land and soil – suffer tremendously when water resources are compromised. As a result, there are many different aspects to water issues.

Matters related to quality can range from whether water is potable to pollution prevention. Situations involving quantity range from too much in flood events to too little during droughts.

Watersheds are drainage basins where surface water converges to a narrow focal point; actions taken within watersheds provide plenty of opportunity to affect the quality and quantity of water resources.

It should be no surprise that many of the current programs of the West Virginia Conservation Agency and the conservation districts revolve around water resource issues.

The Stream Protection and Restoration Program (SPRP) involves non-emergency situations. Projects are categorized into two areas: non-emergency blockage removal and planned projects using natural stream restoration techniques to improve stream flow, reduce erosion and stabilize stream banks.

In response to state or federal declared disasters, the Emergency Watershed Protection (EWP) program is used to remove stream blockages causing a 75 percent obstruction to stream flow. The EWP is not for maintenance issues (e.g., trash removal, raising banks, dike construction, dredging, etc.).

The Landowner Stream Access Permit Program (LSAPP) is designed to give landowners the opportunity to complete certain types of stream projects with technical assistance provided by



the conservation agency and the conservation districts. Eligible activities can include excavation, stream bank stabilization, debris removal, channel restoration and maintenance with all construction at the expense of the landowner.

The Agricultural Enhancement Program (AgEP) assists farmers and landowners with the voluntary implementation of best management practices (BMPs) on agricultural lands in order to conserve and improve land and water quality. The program offers technical and financial assistance as an incentive to implement suggested BMPs. Program objectives include the reduction of nutrients and sediment from entering the waters of the state and increasing farm profitability and sustainability. Each conservation district has the ability to modify the program to address specific agricultural issues in its area.

Additionally, efforts are made to reduce pollution caused by non-point sources. The conservation agency and the districts work on the state's agriculture and construction components of the Clean Water Act Section 319 Non-Point Source Program. Projects include a wide-range of activities, from the Chesapeake Bay Program to nutrient management plans to confined animal feeding operations (CAFO) practices, and erosion controls.

Finally, the agency and the districts work with other entities to preserve watersheds. Other groups include the West Virginia Watershed Network, a group of state and federal agencies, as well as nonprofit groups that are committed to providing resources for watershed management in West Virginia.

The Watershed Resource Center focuses its energy toward providing training, information transfer, and assistance to the numerous local watershed associations and groups that are active or developing throughout West Virginia.

Potential actions in this issue area include:

- Streams shall need to remain a major focus of water and soil resource protection activities. This means implementing best management practices to improve water quality in impaired waterways so they can be removed from the federal 303-D list of impaired streams in West Virginia. It also means providing protection to stream banks to address current and prevent future erosion problems. This would be an on-going activity by the conservation agency and the conservation districts.
- Efforts shall be made to minimize runoff and flood potential. This includes working to control sedimentation, to plan for storm water drainage and to increase conservation efforts within the overall watershed area. Analysis of these efforts is contained in the "Statewide Flood Protection Plan," published in February 2005. This would be an on-going activity by the conservation agency and the conservation districts.

- External circumstances and non-traditional approaches need to be part of the water resources protection activities. Examples of this include but are not limited to livestock exclusion (from streams); creating upland management systems such as rain gardens, retention ponds, nutrient management, and grazing management; addressing issues related to the direct release of sewage into waterways such as seepage from septic systems and straight pipes from houses to streams. This would be an on-going activity by the conservation agency and the conservation districts.
- Conservation projects shall be connected to infrastructure availability and expansion. This coupling would help produce better decisions on where to protect and how much to protect water resources. Related information is contained in the “Statewide Flood Protection Plan,” published in February 2005. This would be an on-going activity by the conservation agency and the conservation districts.
- The development of a response plan shall be investigated to be prepared for droughts and similar situations. This would be an on-going activity by the conservation agency and the conservation districts.

### ***Emergent Issues***

What the future may bring is unknown. In the context of conservation efforts, predictions of the future may not always be accurate, but a proactive approach will enable the West Virginia Conservation Agency and the Conservation Districts to better anticipate what might happen and to know what to do when those things occur.

There are several issues that potentially could impact natural resources and resource conservation efforts over the next decade.

Concentrated animal feeding operations (CAFOs) have been around for decades, so their problems are not new. But the increase in their scale and scope, particularly in the poultry-producing Potomac Valley, will be cause for concern – and action – in the future.

Likewise, the Ohio River Basin has been plagued with pollution problems for decades. But as problems persist, it may soon be time for a more holistic approach to the situation.

Finally, resource extraction, including natural gas drilling, has been occurring for more than a century in West Virginia. But new methods of horizontal drilling to access natural gas trapped

in the Marcellus and Utica shale formations raise unique questions and concerns for soil, land, and water resource protection.

One way to handle these situations is to use the models of existing programs. For example, programs could follow this approach of offering technical and financial assistance as an incentive to implement suggested best management practices, regardless of the context. This is the method of operation of the current Agricultural Enhancement Program.

Likewise, it may be appropriate to modify programs that were designed for specific purposes for similar situations. For example, cleaning up degraded water systems may require a multiple agency response, analogous in scope and substance to the current West Virginia Chesapeake Bay Program.

It is crucial that those involved in conservation efforts in West Virginia be ready for whatever issues may emerge.

Potential actions in this issue area include the following.

- Scan the internal and external environment on a periodic basis to determine what new matters might need to be addressed. This would be an annual activity of the conservation agency and the conservation districts.
- Create a system to evaluate new conservation issues as they arise. Part of this process would be to determine what the appropriate response by the conservation agency and the conservation districts should be (or can be) as each one arises. One example of this would be to work cooperatively with regulatory agencies to create an agricultural “assurance” system for CAFOs or other issues. This would be an on-going, as needed activity of the conservation agency and the conservation districts.
- Every three years the structure of and the delivery system for conservation efforts in the state shall be examined. This will ensure that as circumstances change the overall mission of the West Virginia Conservation Agency and the 14 conservation districts continues to be met. This would be a periodic activity of the conservation agency and the conservation districts.
- Information on the breadth of conservation activities and their benefits should be provided to elected officials at the local, state, and federal levels. This advocacy activity involves direct and indirect education efforts. It is an on-going activity that needs to be continually undertaken by the conservation agency, the conservation districts, and the partners, as appropriate, depending upon the program, project, and place.