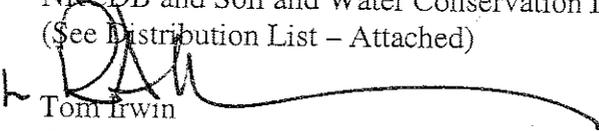


MEMORANDUM

State of Alaska
Department of Natural Resources
Office of the Commissioner

DATE: December 5, 2003

TO: NRCDB and Soil and Water Conservation Districts
(See Distribution List - Attached)

FROM: 
Tom Erwin
Commissioner

SUBJECT: Instructions for SWCDs

A recent review of the Conservation District Procedure Manual (CDPM) revealed that there is lack of clarity in certain topics. At the Natural Resources Conservation and Development Board (NRCDB) December 3, 2003 meeting, the Board determined that this manual should be updated in concert with the Alaska Association of Conservation Districts (AACD). Until the manual is updated, this memorandum is to provide instruction regarding the use of alternates, what constitutes a quorum, and the authority of the chairman.

USE OF ALTERNATE SUPERVISORS

In Section 320.5, the CDPM outlines the use of alternate supervisors to help implement the districts' programs. Subparagraph five states that

Alternate supervisors may be given as much power and responsibilities as regular supervisors; however, legal responsibility remains with the five regular supervisors.

The common practice among districts is to use alternate supervisors during meetings when an elected (or appointed) supervisor may be absent. At the December 3rd NRCDB meeting, Assistant Attorney General Dennis Wheeler cautioned the state board in the use of alternates to conduct business for the districts. In particular, alternates may not be privy to information on "old business" and, therefore, not be making decisions with full information. (Supervisors are also cautioned to remain informed of content in meetings in which they were absent for purposes of decision-making.)

The Alternate Supervisors should be encouraged to continue to attend meetings and participate in the discussion of business if that has been the customary practice. However, **any business conducted by the district should be by a quorum of the elected/appointed supervisors** in the form of motions, seconds, and majority vote. **Alternate Supervisors may not be used to establish a quorum nor for voting on business during a meeting.**

Alternate Supervisors may be given authority to assist the boards, such as acting on subcommittees. This should be expressed in the form of a motion, second, and vote during a

regular business meeting. Alternates should not, however, have any power to bind the board to a particular course of action.

Alternates may serve out the term in the place of a resigned or removed supervisor, but only if appointed by the board at a meeting having a quorum. The alternate to be appointed cannot be counted towards a quorum until after appointment.

QUORUM

AS 41.10.130(a) states that the governing body of any district is five land users (to be known as district supervisors). The CDPM states that "official business cannot be transacted without a **quorum – at least three supervisors.**" Section 320.3(3) subparagraph four. [emphasis added] Further, the attached memorandum from Dennis Wheeler to Nancy Welch presents the basis for quorum. He states,

Where a statute is silent on the number of votes necessary for a body to take action, the common law states that a majority of the quorum is sufficient to transact the business of the body.¹

Thus, for purposes of the districts, the minimum needed for a quorum is three supervisors (not alternates) as presented in the CDPM.

It is important for the chair to confirm at the beginning of a meeting which supervisors are present and establish that a quorum exists before transacting any business. This must also be adequately reflected in the district's minutes of any meeting. Further, if a quorum ceases to exist (such as a supervisor has to leave during the meeting), it is the chairman's responsibility to point out that a quorum no longer exists and not allow any business to be conducted, other than the adjournment of the meeting. Any supervisor can raise the issue of quorum with the chairman.

Rules/Examples:

3 of 5 is a minimum for quorum. In that case, 2 of 3 votes needed to pass any motion. If 4 or 5 present, need 3 of 4 or 5 to pass any motion.

AUTHORITY OF THE CHAIRMAN TO CONDUCT BUSINESS ON BEHALF OF THE BOARD

AS 41.10.130(a) states that the commissioner of the Department of Natural Resources supervise the election of, prescribe the duties of, and install a **governing body of five land users to be known as district supervisors . . .** and delegate to the

¹ *Alaska Federation for Community Self-Reliance v. Alaska Public Utilities Com'n*, 879 P.2d 1015, 1022 (Alaska 1994).

district supervisors powers as the commissioner considers necessary to accomplish the purposes of this chapter within the district boundaries.

The statute is clear that the governing body is the board of supervisors. Thus, the board of supervisors must approve all business transactions. The board must sanction (through proper motion and voting in a business meeting) any authority of the chairman to act on behalf of the board. Minutes of any such board action must accurately reflect any powers given to the chairman by the board to conduct business for the board between meetings. In absence of this authority, the chairman can not enter into agreements or expend funds.

If you have any questions about these instructions, feel free to contact Nancy Welch at (907) 269-8426.

cc: Nancy Welch, Executive Director, NRCDB
Dennis Wheeler, Assistant Attorney General, DOL
Shirley Gammon, State Conservationist, NRCS
Mike Swan, President, AACD

DISTRIBUTION LIST:

Alaska SWCD & NRCDB

Dick Zobel, Chairman
Perry Mendenhall
David Rogers
Jim Van Oss
Rachel Morse, District Coordinator

Anchorage SWCD

Larry Traw, Chairman
Greg Bell
Mark Stearns
Mike Miller
Jon Nauman
Vicki Trytten, Executive Director

Fairbanks SWCD

Jerry Norum, Chairman
Tony Gasbarro
Tim Hammond
Dave Schmitz
Mary Gleason
Myra Stone, Office Assistant

Homer SWCD

Chris Rainwater, Chairman
Shirley Schollenberg
Jim Van Oss
Steve Gibson
Otto Kilcher
Shirley Schollenberg, District
Manager

Kenai SWCD

Mike Swan, Chairman
Bill McDermid
Mary Lambe
Abby Ala
Calvin Mott
Susan True, District Manager

Kenny Lake SWCD

John Wenger, Chairman
John Devens
Sam Lightwood
Terry Van Wyhe
Dee Wygant
Rick Pierson, District Manager

Kodiak SWCD

Charles Dorman, Chairman
Omar Stratman
Bill Burton
Duncan Fields
Chris Flickinger
Sam Christian, District Office
Manager

Mid-Yukon Kuskokwim SWCD

Jeffrey Nelson, Chairman
Travis Pate
Kathleen Hoffman, District Manager

Palmer SWCD

Wayne Bouwens, Chairman
Teri Weiland
Doug Warner
Bruce Bush
Tiny DePriest
Catherine Inman, District Manager

Salcha-Delta SWCD

Rex Wrigley, Chairman
Scott Schultz
Phil Kaspari
Doug Grant
Randy Peterson
Kathy Sonnichsen, District Manager

Upper Susitna SWCD

Kelly LaDere, Chairperson
Steve Strong
Pam Hopkins, Office Manager

Wasilla SWCD

Craig Trytten, Chairman
Rachel Hecker
Terry Ellis
Delbert Simineo
Glenda Smith, Watershed Project
Coordinator