

# MEMORANDUM

State of Alaska

Department of Law

TO: Nancy Welch, Executive Director,  
Alaska Natural Resource  
Conservation and Development  
Board

DATE: February 3, 2004

FILE NO.: 661-04-0439

TEL. NO.:

THRU:

FAX:

FROM: Dennis Wheeler   
Assistant Attorney General  
Natural Resources Section

SUBJECT: Soil and Water Conservation  
Districts and authority to contract  
directly with federal agencies.

You have asked if the local Soil and Water Conservation Districts (AS 41.10) may contract directly with federal agencies.

Currently, these districts receive both state and federal money. The State money is provided to each district from the Department of Natural Resources (DNR) upon written agreement. The federal money is largely passed to the districts through the Alaska Association of Conservation Districts, a not-for-profit corporation.

Under AS 41.10.110(4) the commissioner has been delegated authority to "cooperate with, furnish assistance to, and enter into agreements with, a user of land or agency within the state". Under AS 41.10.110(7) the commissioner has been delegated authority to "accept contributions in money, services, materials, or equipment from the United States or its agencies, from an agency of the state, and from any other source, for use in carrying out the purposes of this chapter." The issue is whether these powers can be subdelegated.

In the Alaska Supreme Court case of *Kaiser v. Sundberg*, 734 P.2d 64, 69 (Alaska 1987), the Court stated that the general rule on delegation is whether "it is reasonable to believe the legislature intended a particular function to be performed by designated persons because of their special qualifications. If the legislature intended a function to be performed only by limited persons, a subdelegation is invalid." Here as in *Kaiser*, the legislature has specifically authorized delegations of the powers at issue. Under AS 41.10.130(a) the legislature has provided that the commissioner may "delegate to the district supervisors powers as the commissioner considers necessary to accomplish the purposes of this chapter within the district boundaries."

You have indicated that a previous commissioner has already delegated all of the commissioner's authority under AS 41.10.110, including both (4) and (7). That

delegation is contained in a memorandum dated January 25, 1993 (attached). On page two of the memorandum it states "the powers identified in AS 41.10.110 of [AS 41.10] are hereby delegated directly to SWCD and the boards of supervisors which oversee SWCD programs."

Therefore, the districts are authorized to contract directly with the federal agencies.

DAW:kkd

M.K.H.

# MEMORANDUM

Department of Natural Resources

State of Alaska  
Office of the Commissioner

TO: Alaska Soil & Water  
Conservation Board  
Assistant Commissioners  
Division Directors

DATE: January 25, 1993

FILE NO:

TELEPHONE NO: 762-2483

SUBJECT: Department Order 114  
Delegation of Powers  
to the Soil & Water  
Conservation District

FROM: Glenn A. Olds  
Commissioner



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## Goal

It is the Department's mission to fulfill and implement the Owners' State resource conservation and development goals in response to the economic, social and cultural needs of Alaskans. Furthermore, it is the overall mission of the Alaska Soil and Water Conservation Board to provide for the management and orderly development of natural resources on private lands and for guiding the settlement of public lands through the concept of wise land-use planning.

## DIRECTOR'S OFFICE

## Background

The Alaska Soil & Water Conservation Board (ASWCB) and the nine local soil & water conservation districts (SWCD) are organized under the Department of Natural Resources, pursuant to the State's Soil & Water Conservation Law (AS 41.10), for the purpose of the orderly development of land, for guiding settlement, and for conserving soil and water resources by controlling and preventing soil erosion.

The five member, governor-appointed ASWCB is comprised of land users from the five geographic regions of the state, as identified in AS 41.10. Local SWCD have five member boards of supervisors elected by the land users within the SWCD; SWCD have memorandums of understanding (MOU) with the USDA-Soil Conservation Service who provide technical assistance through the local districts. Other federal and state agencies can and do provide assistance through the SWCD.

Presently there are nine SWCD. A map showing their jurisdictional boundaries is attached. The portion of the state that is not within an organized SWCD is known as the Alaska District, and is governed by the ASWCB.

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130 is  
about  
creation of  
NEW districts.

The soil and water conservation law identifies delegated powers (AS 41.10.110) of the commissioner which are normally delegated SWCD in other states. AS 41.10.130 provides for the delegation of powers to the districts as the commissioner considers necessary to accomplish the purposes of the soil & water conservation law. Powers of the commissioner relating to soil and water conservation are:

- (1) conduct land capability surveys and investigations of potential agricultural areas and of soil conservation and erosion control, including necessary preventative and control measures, in the state; to publish the results of these surveys and investigations and to disseminate information concerning the results of the surveys and investigations to prospective settlers and the general public;
- (2) make technical guidance and other assistance available to settlers of new land to assure the development of the land in a manner that will permit it to be used in accordance with its capabilities and treated in accordance with its needs;
- (3) carry out measures for soil conservation and erosion control within the state, including engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land, with the consent and cooperation of the land user or agency having jurisdiction of the land;
- (4) cooperate with, furnish assistance to, and enter into agreements with, a user of land or agency within the state;
- (5) construct, improve, and maintain soil erosion control and conservation structures as are necessary and practical for carrying out the purposes of this chapter;
- (6) develop comprehensive plans for the conservation of soil and control of soil erosion within the state, cropping programs, tillage practices and changes in land use, and publish plans and information and bring them to the attention of users of land within the state;
- (7) accept contributions in money, services, materials, or equipment from any other source, for use in carrying out the purposes of this chapter.

### Policy

It is the policy of the department to carry out the purpose of AS 41.10 through soil and water conservation districts described in that chapter; the powers identified in AS 41.10.110 of that chapter are hereby delegated directly to SWCD and the boards of supervisors which oversee SWCD programs. As part of this policy, Districts will:

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A. accept financial and technical assistance from state and federal agencies involved in natural resource conservation and development through implementation of AS 41.10:

(1) USDA-Soil Conservation Service MOU's will be continued and expanded as appropriate in support of district programs.

(2) MOU's will be encouraged with other federal agencies to support the delivery of program services to local communities, groups and individuals in natural resource conservation and development.

B. stimulate local initiative and personal responsibility by providing program direction for local resource development opportunities to local communities to the extent possible.

Division directors with responsibilities in resource conservation and development shall apprise themselves of the state's soil & water conservation law (AS 41.10), the ASWCE, and the SWCD in order to carry out this policy. Further information may be obtained from the ASWCE Executive Director or Chair.

cc: Soil & Water Conservation District Chairs  
Anchorage Commissioner's Office File

attachments

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