



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES


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MEMORANDUM

2014-003

DATE: July 15, 2013

TO: All Soil and Water Conservation Districts

FROM:  Colleen Meredith, Director
Soil and Water Conservation Program

SUBJECT: **Cooperative Working Agreement**

The Soil and Water Districts Commission held a conference call this morning to review the status of the Cooperative Working Agreement's that have been signed and submitted by soil and water conservation districts. The Commission had previously determined that the Cooperative Working Agreements are to be signed and submitted to the Program Office by 5 p.m. on July 15, 2013.

During their meeting, a letter from the Attorney General's Office to the Soil and Water Districts Commission was read by Commission Chair Richard Fordyce. This letter is included with the memo. Based upon the guidance provided in the letter, the Commission decided to maintain the deadline and that all funding for soil and water conservation districts that do not meet the deadline will be withheld until the Cooperative Working Agreement has been signed and returned.

We appreciate the work that everyone has done to update and finalize the Cooperative Working Agreement to benefit the Partnership. Should you have any questions please contact me at colleen.meredith@dnr.mo.gov or 573-751-7143. Thank you.

Attachment



ATTORNEY GENERAL OF MISSOURI

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July 12, 2013

Richard Fordyce, Chairman
And the Members of the Soil and Water Conservation Districts Commission
P.O. Box 176
Jefferson City, MO 65102

Dear Mr. Fordyce:

RE: Cooperative Working Agreement (CWA) Issues

This letter responds to questions regarding the legal effect of the CWA and the consequences for a District that refuses to sign it.

The current CWA replaces any previous document that had been referred to as such, or called a "memorandum of understanding." The CWA is designed to facilitate an understanding among the signing Partners of their roles and responsibilities in providing the Commission's programs to landowners.

Questions have arisen because the Agreement includes a sentence asserting that it is not a "legally binding document." I read that to mean that the obligations are not intended to be enforced in a court of law as terms of a contract. To regard the CWA as an enforceable contract would be inconsistent with its stated purpose to be a "pledge of cooperation in providing leadership and assistance in natural resource conservation." The document is an assurance of mutual respect for what each Partner contributes to the success of the conservation programs. Including the disclaimer makes sense from the practical standpoint that using the CWA for litigation would result in a diversion and waste of resources that are dedicated to providing funds and services to the Partners' customers.

Even though the terms of the document, once it is signed, are not intended to be legally enforceable through a lawsuit on a contract, executing the agreement is still a lawful condition for a District to administer the

conservation programs. The Commission's rules require a District to execute a Memorandum of Understanding to administer funds allocated for various programs.¹ Furthermore, under the Commission's rules, termination of the agreement by either the Commission or the District has the immediate consequence that the District must release any unused funds.² Therefore, the Commission may refuse to award funds to any District that refuses to sign a memorandum of understanding or its equivalent, such as the CWA, as an eligibility requirement for participating in these programs. Indeed, the legislature has granted the Commission that authority. Section 278.080.5(7) RSMo empowers the Commission to

... determine the withholding of state aid of any amount or kind from any soil and water conservation district that has failed to follow the policies of the state soil and water districts commission in any matter under the provisions of sections 278.060 to 278.300.

I understand that at least one District has indicated a reluctance to sign the CWA because the District does not want to work with the Department of Natural Resources as one of the Partners. I have previously offered my legal opinion, in a letter I sent to Colleen Meredith on July 9, 2012, that the CWA correctly describes the legal roles and responsibilities of the Department and the Commission. That letter is enclosed.

The Department manages and must account for the use of soil and water conservation funds. The Commission has set July 15, 2013, as the deadline for each District to return an executed CWA, presumably to allow the Department to properly budget and disperse the allocated funds. The Commission has the authority to establish the contents of the agreement and this deadline as matters of policy.

You may regard this letter as a privileged communication from your attorney and consider it a closed record, but I have no objection if you decide to share it with the public.

¹ See, e.g., 10 CSR 70-5.010(1) and -5.050(1) – cost share; 10 CSR 70-8.010(1) and -8.050(1) – SALT.

² 10 CSR 70-5.020(2)(C) – relating to the cost share program. See also 10 CSR 70-8.010(2)(C), which is the same provision under the SALT rules.

Richard Fordyce and Members of the Soil and Water Conservation Districts Commission
July 12, 2013

Please let me know if you need any further assistance.

Sincerely,

CHRIS KOSTER
Attorney General of Missouri

A handwritten signature in black ink, appearing to read "Timothy P. Duggan", written over a horizontal line.

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TPD:cg
enclosure