



# Washington State Conservation Commission

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August 26, 2018

**TO:** Conservation Commission Members  
Mark Clark, Executive Director

**FROM:** Ron Shultz, WSCC Policy Director

**SUBJECT:** Proposed Legislation Regarding Engineering Services at CDs

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**Requested Action:** Approval for the development of legislation for the 2019 legislative session relating to engineering services at conservation districts.

**Discussion:**

Recently, staff at the Washington State Auditor's Office (SAO) informed the State Conservation Commission and conservation districts that the employment and use of engineers by conservation districts violates state statutes relating to the contracting for services by local governments.

The SAO position is based upon a 2011 Attorney General Opinion (AGO), which states that a state or local agency or special district may not contract directly with another agency for architectural or engineering services, without first complying with the procurement procedures specified in statute. AGO 2011 no. 2.

The AGO further states a state or local agency or special district must first comply with the procurement procedures under RCW 39.80 when acquiring "professional services" as defined in RCW 39.80.020. The Interlocal Cooperation Act, RCW 39.34, does not excuse compliance with those requirements, but does allow public agencies to join together in acquiring such services. The AGO recognized that other specific statutes may independently authorize an agency or special district to contract directly with another agency or special district for architectural or engineering services.

The SAO position is a conservation district does not have specific authority in statute to enter into a contract with other conservation districts for engineering services. Therefore, the SAO is prepared to issue audit findings against conservation districts who obtain engineering services through the conservation district "engineering clusters". It's the SAO position that conservation districts must procure engineering services in a manner consistent with state statutes relating to procurement of services by local governmental entities.

Conservation Commission staff have communicated with the SAO and argued there are provisions in RCW 89.08 which authorize the Commission and conservation districts to enter into agreements for the procurement of engineering services. See the attached memo from Mark Clark to the State Auditor's Office dated June 6, 2018. The SAO disagrees with this interpretation, and suggests the best corrective measure would be to put specific authority in RCW 89.08 for procuring engineering services.

Attached is proposed text for legislation to address this situation. With the Commission's approval, Commission staff will work with conservation districts, the SAO, and our Assistant Attorney General to further develop this proposed legislation for introduction in the 2019 legislative session.

## **Proposed Legislation for the 2019 Legislative Session for Engineering Services at Conservation Districts**

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AN ACT Relating to engineering services acquired and provided by conservation districts.

New Section is added to RCW 89.08

A conservation district may employ an engineer on either a full-time or part-time basis, or may contract with another conservation district for the engineering services of an engineer from such other conservation district.

Conservation districts may, through an interagency agreement, agree to share the services of an engineer on either a full-time or part-time basis. The conservation commission shall facilitate the development and implementation of such interagency agreements for shared engineering services between conservation districts. The conservation commission may establish, by rule or guidance, the form and language for any engineering interagency agreement between conservation districts. The conservation commission shall give final approval for any engineering interagency agreement entered into between conservation districts.

The conservation commission may provide funding, technical resources, and other assistance for the development and implementation of engineering interagency agreements.

The conservation commission may develop any rule or guidance deemed necessary to implement this section.

June 6, 2018

**TO:** State Auditor's Office  
Ginny Waltman, Conservation District Audit Manager

**FROM:** Mark Clark, WSCC Executive Director

**RE:** Conservation District Professional Engineers & WSCC Engineering Grants

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At a meeting earlier this year with WSCC regional managers, Shana Joy and Stu Trefry, you brought up a potential issue pertaining to our agency's area engineering grants to conservation districts and sharing of engineering staff between conservation districts with respect to the attached AG's opinion from 2011. Thank you for bringing this to our attention at the WSCC and for allowing us time to look into the matter before it became an issue during individual conservation district audits. While I understand your view of the matter, I believe that our agency's engineering grants to districts and the practice of districts sharing professional engineers is legal and here is why:

While the procurement requirements for professional services in RCW 39.80 apply to conservation districts as units of local government, the conservation districts have a separate and specific statute in RCW 89.08 that provides their authorities and governs their operations. Specifically:

- RCW 89.08.220(4) provides conservation districts the authority "to cooperate or enter into agreements with...to furnish financial or other aid to any agency, governmental or otherwise...."
- RCW 89.08.220(12) provides conservation districts the authority such that "any two or more districts may engage in joint activities by agreement between or among them in planning, financing, constructing, operating, maintaining, and administering any program or project concerned with the conservation of renewable natural resources. The districts concerned may make available for purposes of the agreement any funds, property, personnel, equipment, or services available to them."
- RCW 89.08.070(1) (c) authorizes the WSCC to "coordinate the programs of the several districts and resolve any conflicts in such programs;" which is why our area engineering grants were set up in the first place. We needed to ensure that conservation district projects were being worked on by licensed professional engineers where appropriate.

- RCW 89.08.070(1)(d) authorizes the WSCC to “To facilitate, promote, assist, harmonize, coordinate, and guide the resource conservation programs and activities of districts as they relate to other special purpose districts”. The sharing of professional engineering staff by multiple conservation districts is an effective and efficient method of ensuring that conservation projects are properly designed and engineered by licensed professionals. Our agency’s organization of conservation districts into ‘areas’ and our granting of funds to those groups of districts for the purposes of acquiring licensed engineering services is pursuant to this authority.

It is our position that RCW 89.08, being more specific to conservation districts than either RCW 39.80 or RCW 39.34, is the prevailing statute in this situation. The practice of sharing professional engineering staff and participating in the WSCC’s area engineering grant program should not be an issue when conservation districts are audited.

Please contact me, or Ron Shultz, WSCC Policy Director at [rshultz@scc.wa.gov](mailto:rshultz@scc.wa.gov) or (360) 407-7507, if you have any questions or would like to discuss this matter further.

cc: Shana Joy, WSCC Regional Manager