State of West Virginia
Office of the Attorney General

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The Honorable Randy Smith
President of the Senate
State Capitol Building 1, Room 229M
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear President Smith:

You have asked for an Opinion of the Attorney General about the oversight of dams owned or sponsored by local conservation districts. This opinion is issued under West Virginia Code § 5-3-1, which provides that the Attorney General will "render to the President of the Senate … a written opinion or advice upon any questions submitted to the Attorney General by them … whenever he … is requested in writing so to do." Where this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

You explain that the Legislature recently amended West Virginia Code § 19-21A-8, which details the powers and duties of conservation districts and supervisors. The bill, Senate Bill 941 (2025), provides that "[a]ny alteration, improvement, or agreement related to a dam owned or sponsored by a local conservation district is subject solely to the authority of the Department of Environmental Protection."

Despite this language, we understand that at least one local conservation district is refusing to cede oversight authority to the Department of Environmental Protection unless and until an opinion of this Office confirms that authority. We also understand that this dispute is affecting imminent mining operations. Given that expediency, "this opinion must necessarily be brief" "[i]n order to provide you with a prompt answer to your question." 50 W. Va. Op. Att'y Gen. 163 (1963).

With these facts in mind, your letter raises the following legal question:

In light of S.B. 941, do local conservation districts continue to exercise any oversight authority over dams that they own or sponsor?

We conclude that, under the facts you have described, local conservation districts *cannot* exercise authority over alterations, improvements, or agreements pertaining to the dams that the districts own or sponsor (that is, maintain).

Discussion

"[C]onservation districts are authorized by statute," *Hesse v. State Soil Conservation Comm.*, 153 W. Va. 111, 118, 168 S.E.2d 293, 297 (1969), and "political subdivision[s] of the State of West Virginia," *Potomac Valley Soil Conservation Dist. v. Wilkins*, 188 W. Va. 275, 277, 423 S.E.2d 884, 886 (1992). While formed under a variety of prior enactments, they were "continued" by the Legislature. W. Va. Code § 19-21A-5. Like similar entities that are "creatures of statute," they are "delegates of the Legislature" whose "power is dependent upon statutes," such that "they must find within the statute warrant for the exercise of any authority which they claim." *Div. of Just. & Cmty. Servs. v. Fairmont State Univ.*, 242 W. Va. 489, 498, 836 S.E.2d 456, 465 (2019).

The local districts' "powers and duties" are described in West Virginia Code § 19-21A-8. As relevant here, they may exercise certain authority pertaining to water resources. W. Va. Code §19-21A-8(a). But in Senate Bill 941, the Legislature amended this provision to expressly provide that "any alteration, improvement, or agreement related to a dam owned or sponsored by a local conservation district is subject solely to the authority of the Department of Environmental Protection." *Id.* Conversely, the statute does not expressly provide conservation districts any affirmative authority over dams. And according to its title, the bill was specifically intended to "clarify[] certain authority regarding dams owned or sponsored by local conservation districts." This new proviso parallels the Secretary of Environmental Protection's powers under the Dam Control Act. *See* W. Va. Code § 22-14-5.

The language of the dam proviso is unambiguous: only the Department of Environmental Protection may now oversee these dams. The statute broadly covers alterations, improvements, or agreements, reflecting an intent to embrace all manner of activities pertaining to dams. The statute's use of "any" confirms its breadth. After all, "[t]he word 'any,' when used in a statute, should be construed to mean any." *Shaffer v. Fort Henry Surgical Assocs.*, 599 S.E.2d 876 (W. Va. 2004); *see also Williams v. W. Va. Dept. of Motor Vehicles*, 419 S.E.2d 474 (W. Va. 1992) (same); *Thomas v. Firestone Tire & Rubber Co.*, 266 S.E.2d 905 (W. Va. 1980) (same); *accord Romero v. Barr*, 937 F.3d 282, 292 (4th Cir. 2019) ("[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"). Likewise, "'[s]olely for' means 'exclusively for.' It 'leaves no leeway.'" *Stockton Harbor Indus. Co. v. Comm'r*, 216 F.2d 638, 645 (9th Cir. 1954); *see also United States v. Clingan*, 254 F.3d 624, 626 (6th Cir. 2001) ("'Solely' means 'SINGLY, ALONE ... to the exclusion of alternate or competing things.'"). So by saying the Department of Environmental Protection was "solely" responsible, it left no room for anyone else to act—conservation districts included—unless the Department chooses to coordinate or otherwise *allow* such a role. Lastly, the specific language related to dams would prevail over the more general language related to water conservation. *See Newark Ins. Co. v. Brown*, 218 W. Va.

346, 352, 624 S.E.2d 783, 789 (2005) (explaining how specific provisions prevail over general ones).

In the end, such plain language must prevail. *See Beasley v. Sorsaia*, 247 W. Va. 409, 412, 880 S.E.2d 875, 878 (2022). Whether one agrees or disagrees with the choice behind the proviso is irrelevant. "It is the duty of the Legislature to consider facts, establish policy, and embody that policy in legislation." *State v. Louk*, 237 W. Va. 200, 201, 786 S.E.2d 219, 220 (2016). It has done just that here—and that choice must be respected. *Id.*

And indeed, the legislative history confirms that, when it comes to these dams, the Department of Environmental Protection was intended to act alone. *See State ex rel. Games-Neely v. Silver*, 226 W. Va. 11, 13, 697 S.E.2d 47, 49 (2010) (noting how courts construing statutes can consider "the legislative history" after text to determine legislative intent). Speakers before the Senate Energy, Industry, and Mining Committee largely—including the committee chair, another senator, committee counsel, and the state Conservation Agency—all agreed that Senate Bill 941 was intended to foreclose responsibility over dams by local conservation committees; professional engineering personnel at the Department of Environmental Protection are now in charge. *See* Hearing Before Senate Energy, Industry, and Mining Committee, 87th W. Va. Leg. (Mar. 28, 2025), *available at* https://tinyurl.com/mst7fbpk. This consensus view confirms that conservation districts were not intended to exercise authority after bill passage.

Conclusion

Local conservation districts cannot exercise authority over alterations, improvements, or agreements related to the dams that the districts own or sponsor.[*] Under current law, only the Department of Environmental Protection may do so.

Sincerely,

John B. McCuskey
Attorney General

Michael R. Williams
Solicitor General

cc: Senator Chris Rose

[*] We have not been presented with any specific legal basis for any conservation district's objection to the Department of Environmental Protection's sole authority. Although we have endeavored to consider all relevant West Virginia law in rendering this opinion, that lack of information—combined with the time constraints we faced here—may lead us to revisit this opinion should the circumstances warrant it.