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TO: La Plata County Board of County Commissioners
Sheryl Rogers, La Plat County Attorney
FROM: Bryan Treu
Christina Hooper
DATE: October 13, 2017
RE: Conflicts Memo

A. **ISSUE:**

We have been asked to provide legal advice concerning best practices to ensure local official compliance with applicable Colorado ethics and conflict of interest laws (the "Ethics Rules"). We've been asked to prepare a memo analyzing the applicable Ethics Rules, with reference to the limited body of case law established by the Colorado Independent Ethics Commission's ("IEC") interpretation of the same. In addition, we've been asked to consider specific sets of facts related to activities of La Plata Commissioners under these Ethics Rules. These specific set of facts include Commissioner Lachelt's participation in both legislative and quasi-judicial matters relating to oil and gas while employed by the Western Leaders Network ("WLN"), Commissioner Lachelt's paid travel by WLN to testify in Washington regarding the Bureau of Land Management Methane Rule (the "Methane Rule"), and Commissioner Blake's paid travel by Trout Unlimited to discuss cleanup funding of the Animas River. We have conducted phone conferences with Commissioners Lachelt, Blake, and Westendorff, as well as County Attorney Sheryl Rogers. We have reviewed relevant case law, news articles, memos, hearings and verifications in providing this memo. We have broken this memo out into a brief discussion of the applicable Ethics Rules, application of those Ethics Rules to the circumstances at issue, and a recommendation for best practices for your consideration. You should be commended for your attention to these matters. We are honored that you reached out to us for assistance and are happy to provide additional input as necessary.

B. **APPLICABLE ETHICS RULES:**

Due Process Clause. When a public official performs a quasi-judicial act, the Due Process Clauses of the United States and Colorado Constitutions come into play. *Hide-A-Way Massage Parlor, Inc. v. Board of County Commissioners*, 597 P.2d 564 (Colo. 1979); *Elizondo v. State*, 570 P.2d 518 (Colo. 1977). An applicant appearing before the BoCC is entitled to a fair and impartial tribunal as a matter of law. *Riggins v. Goodman*, 572 F.3d 1101, 1112 (10th Cir.

2009) (citing *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975)). An adjudicatory hearing will be held impartial in the absence of a personal, financial, or official stake on part of the decision-maker. *Soon Yee Scott v. City of Englewood*, 672 P.2d 225 (Colo. App. 1983). The requisite impartiality may be overcome in two ways. First, when the proceedings and surrounding circumstances demonstrate actual bias. *Stivers v. Pierce*, 71 F.3d 732 (9th Cir. 1995). Second, when the hearing officer's pecuniary or personal interest in the outcome of the proceeding creates an appearance of impropriety that is "intolerably high", even without showing bias. *Riggins* at 1112.

Colorado Standards of Conduct. Colorado adopted a comprehensive code of ethics in 1988 that can be found at C.R.S. 24-18-101 *et seq*. (the "Colorado Standards of Conduct"). The purpose of the legislation was to ensure elected officials carry out their duties for the benefit of the people of this state. The Colorado Standards of Conduct recognize that some actions represent per se conflicts for elected officials with either a public or a private interest, while other actions may or may not create a conflict depending upon the surrounding circumstances. Types of conduct creating a *per se* conflict of interest include the following:

1. Engaging in a substantial financial transaction for his or her private business purposes with a person whom he or she inspects or supervises in the course of his public duties. C.R.S. §24-18-109(2)(a);

2. Performing an official act directly and substantially affecting a business or other undertaking[1] to its economic benefit in which the official has a substantial financial interest or is engaged as counsel, consultant, representative or agent. C.R.S. §24-18-109(2)(b);

3. Accepting goods or services for personal benefit offered by a person who is providing goods and services to the local government without full and adequate consideration. C.R.S. §24-18-109(2)(c); and

4. Accepting a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

   a. which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties;

   b. which he knows or a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken. C.R.S. §24-18-104.

[1] As will be discussed further below, the IEC has interpreted the terms "business or other undertaking" to including private businesses and nonprofit corporations, but not a local government official's appointment to represent the local government's interest on another governmental or quasi-governmental entity such as a transportation authority, water district, etc. *See IEC Advisory Opinion 17-04: "*the reference to "other undertaking" should not be interpreted to refer to . . . a "public body politic and corporate" . . . ." This IEC decision seems to indicate that where an official receives no personal economic benefit from service on a board of another governmental or quasi-governmental entity, but rather serves as a representative of the county, this provision is not necessarily going to be implicated. Nonetheless, a fact-specific inquiry should always be undertaken whenever an official action of a county commissioner will potentially benefit a separate entity on which he or she is also involved.

A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members. C.R.S.§24-18-109(3)(a).[2]

Article XXIX of the Colorado Constitution and the IEC. In 2006, Colorado voters added Article 29 to the Colorado Constitution, commonly known as "Amendment 41." This Amendment generally precludes government officials, government employees, and their immediate family members from accepting any gifts in excess of fifty dollars[3] unless equal consideration is provided in return. Concurrent to the passage of Amendment 41, the IEC was created to enforce this gift ban. The IEC's mission is to give "advice and guidance on ethics issues arising under this Article and any other standards of conduct or reporting requirements as provided by law, and to hear complaints, issue findings and assess penalties and sanctions as appropriate." Amendment 41, Sec. 5(1).

The IEC also had jurisdiction to enforce "any other standards of conduct and reporting requirements as provided by law." In addition to the specific standards of conduct for local government officials by the Colorado Standards of Conduct, the IEC views the "Purposes and Findings" provisions of Section 1 of Amendment 41 as creating another, more amorphous, standard for public officials concerning their obligation to uphold the "public trust:"

(1) The people of the state of Colorado hereby find and declare that:

> (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
>
> (b) They shall carry out their duties for the benefit of the people of the state;
>
> (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
>
> (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and
>
> (e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.

[2] A conflicted board member may still vote only if necessary to obtain a quorum if he/she notifies the Secretary of State. This is an affirmative defense to a charge of breach of fiduciary duty. The action will still subject the decision to civil challenge and will not provide a shield for an IEC complaint. Accordingly, this defense should be avoided.
[3] Currently fifty-nine dollars adjusted for inflation.

C. **APPLICATION**

1. Gwen Lachelt's participation in County decisions regarding oil and gas matters. As a member of the BoCC, Commissioner Lachelt routinely participates in special use and other land use review of oil and gas applications. Additionally, Commissioner Lachelt routinely votes on regulations and other legislative actions relating to oil and gas matters, the most recent example being the resolution against changing the Methane Rules. May she continue to perform such actions under the Ethical Rules? The answer is yes.

Due Process. Elected officials are members of small communities and are not expected to leave their opinions at the door when they come to work. However, they are expected to be fair and avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated. As stated above, the 10th Circuit has recognized that "[i]mpartiality of the tribunal is an essential element of due process." *Riggins* at 1112. However, there is a presumption of honesty, integrity and impartiality on the part of decision-makers and a **substantial showing of personal bias** is required to disqualify a hearing officer or tribunal. (Emphasis added) *Id*. The facts surrounding Commissioner Lachelt's dual roles do not reach this high standard for automatic disqualification. Commissioner Lachelt is a paid employee of WLN, a 501(c)(3) non-profit comprised of current and formal local and tribal elected officials created to stop the federal rollback of environmental policies. Commissioner Lachelt's employment by, participation in and shared beliefs of WLN do not preclude her involvement in BoCC decision making, provided she can objectively apply adopted standards of La Plata County to each file.

It is generally not improper for a government official to take a position on a policy question and then later participate in a decision in which that policy question becomes an issue. It only becomes a problem when the official actually prejudges a particular set of facts or is incapable of applying adopted standards to a particular file. For example, it is fine to express opposition to development generally, but still hear particular development projects. It is fine to express a desire for more affordable housing generally, but still apply adopted housing guidelines to particular developments. And it is fine to express concern for the rollbacks of federal environmental policies and still hear oil and gas files. "A decision maker is not disqualified on due process grounds simply for having taken a position, even in public, on a policy issue related to the dispute, if there is no showing that the decision maker is incapable of judging the particular controversy fairly on the basis of its own circumstances." *Mountain States Telephone and Telegraph Co. v. Public Utilities Commission*, 763 P.2d 1020 (Colo. 1988).

There has been no substantiated allegation that Commissioner Lachelt is in any way incapable of hearing a file or performing a legislative action relating to oil and gas objectively. We understand that she routinely approves special use permits regarding oil and gas and applies adopted standards appropriately. The mere employment by a non-profit board with an environmental purpose is not dispositive of a conflict. As a matter of law, much more is required to support such a claim. *See Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482 (1976) (holding that mere familiarity with the fact of a case gained by an agency in the performance of its statutory role does not disqualify a decision maker); *Johnson v. City Council of the City of Glendale*, 595 P.2d 701 (Colo.App. 1979) (holding that it was not impermissible for board members during a personnel appeal to receive evidence at a prior "informal hearing"

and then make a final decision after a subsequent formal hearing); *Mountain States Tel. Co. v. Pub. Utils. Comm'n*, 763 P.2d 1020, 1028 (Colo. 1988) (holding that a decision maker is not disqualified on due process grounds simply for having taken a position, even in public, on a policy issue related to the dispute, if there is not a showing that the decision maker is incapable of judging the particular controversy fairly on the basis of its own circumstances); and *Applebaugh v. Bd. of Cty. Comm'rs*, 837 P.2d 304 (Colo. App. 1992) (holding there was not a denial of due process in a rezoning hearing in which the Board was both the applicant and the decision maker).

The cases that have found a due process violation emphasize the exceptional circumstances required for disqualification of the local decision maker based on the appearance of impropriety. *Caperton v. A.T. Massey Coal Co. Inc*., 556 U.S. 868, 883 (holding that a West Virginia Supreme Court of Appeals Justice should have recused himself when a litigant contributed over $3,000,000.00 to his election campaign. The Court said "(o)n these extreme facts the probability of actual bias rises to an unconstitutional level."); *Staton v. Mayes*, 552 F.2d 908 (10th Cir. 1977) (holding that actual bias was shown with respect to a hearing on the termination of a school superintendent because three of the school board members promised to terminate the superintendent during their election campaigns.); *McClure v. Independent School District Number 16*, 228 F.3d 1205, 1215-16 (10th Cir. 2000)(holding that bias rose to a due process violation where decision makers publicly stated their intent to terminate an employee prior to the termination appeal hearing); and *Smith v. Beckman*, 683 P.2d 1214 (Colo. App. 1984)(holding that a marital relationship between a judge and deputy district attorney created an appearance of impropriety warranting judge's recusal).

The outcomes of the above-referenced cases are very fact specific. However, it is our opinion that Commissioner Lachelt's employment status with WLN does not disqualify or otherwise preclude her participation in oil and gas-related decisions. This opinion could change under different fact patterns such as WLN being an actual applicant before the BoCC, Commissioner Lachelt's salary or WLN contributions being contingent upon her voting a certain way, ex parte statements by Commissioner Lachelt regarding an inability to be objective, etc. Absent such exceptional facts, the circumstances fall short of the substantial showing of personal bias required for disqualification on due process grounds.

Colorado Standards of Conduct. The relevant preclusions applicable to this matter are i) performing an official act directly and substantially affecting a business to its economic benefit in which the official has a substantial financial interest or is engaged as counsel, consultant, representative or agent (C.R.S. §24-18-108(2)(d)), and ii) accepting a gift of substantial value or a substantial economic benefit which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties or which he knows or a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken. C.R.S. §24-18-104.

Often times a commissioner will sit on a non-profit or community board that may have shared vision or similar goals and objectives. Eagle County, for instance, has had commissioners and employees sitting on Habitat for Humanity, the school district, metro districts, early childhood education, non-profits, etc. Their interest in those boards is generally derived from a shared passion. Again, whether those shared passions or similarities rise to a level of preclusion

depends on the circumstances. In addition, Eagle County has always had a commissioner serve as a director on a board of a transportation authority, which is a separate legal entity whose interests are not always aligned with those of Eagle County. It is our opinion that Commissioner Lachelt's role as a paid employee of WLN does not on its own preclude her taking an official action related to any oil and gas matter as a BoCC member. Rather, the facts of the particular matter at issue must be analyzed on a case by case basis to determine if a conflict may arise.

To rise to the level of violating the Colorado Standards of Conduct, there is a requirement that a showing that an official action of the commissioner created a benefit to WLN, and that such benefit was both *direct* and *substantial*. Examples of situations that could rise to the level of a direct and substantial benefit would include such things as: WLN being an applicant before the BoCC, Commissioner Lachelt voting to fund WLN operations from the County's general fund, WLN's Board encouraging Commissioner Lachelt on how to vote on a particular file, etc. Here, any alleged benefits resulting from Commissioner Lachelt's vote on the Methane Rule would be tangential at best. WLN is dedicated to the prevention of environmental regulation rollback at the federal level. Any action the La Plata BoCC takes to prevent such rollback, such as the Methane Rule Resolution, may lead to shared successes, but cannot be viewed as a direct benefit to WLN as contemplated by the Colorado Standards of Conduct. To hold otherwise would create a chilling effect on elected officials ever sitting on other boards that may share similar philosophies. Elected officials in La Plata County and throughout the state would have to seriously reconsider their willingness to serve on non-profit boards which would have the unintended consequence of removing those best suited and willing to serve from these non-profit organizations.

As stated above, there would be concerns if a direct and substantial benefit to WLN could be shown to be connected to an official action taken by Commissioner Lachelt, or if a gift were perceived to be a reward for a particular action or to influence a decision. For example, if private donations to WLN were contingent on the rulings or actions of Commissioner Lachelt as a BoCC member there would be a violation of the Colorado Standards of Conduct. Special donations made or a salary increase in response to her voting on the Methane Rule Resolution could also be viewed as WLN using gifts to influence or reward official action. Our understanding is that donations are made to support a broad range of WLN activities, some of which may be consistent with La Plata BoCC philosophies and some of which may not. The donations are made to effectuate change at the federal level and are not contingent on local actions, even if those local actions sometimes overlap with WLN objectives. We have offered some best practices below to help mitigate these concerns.

<u>Amendment 41 and the IEC</u>. The IEC views Amendment 41 as creating an additional standard of conduct under its jurisdictional purview. Thus, the IEC will consider whether proposed or prior actions of a public official would violate "the public trust" or "creates a justifiable impression among members of the public that such trust is being violated." Colorado Constitution, Article XXIX, Section 1(c). In this vein, the most recent version of the Independent Ethics Commission Handbook, states that "occasionally a situation will arise which, although legally and/or technically appropriate, may nevertheless raise concern regarding the potential for an appearance of impropriety." The IEC recognizes that some conduct represents per se conflicts while other conduct may or may not create a conflict depending upon the surrounding circumstances, but conduct that creates an appearance of impropriety should be

avoided because "appearances of impropriety can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law." *IEC Advisory Opinion 17-03, p. 4.*

Recent IEC decisions seem to indicate that advanced public disclosure tends to mitigate any perception of a violation of the public trust. In *Advisory Opinion 17-04*, the IEC considered a whether a county commissioner holding the dual role as a director on the board of a separate transportation authority would violate the public trust by taking official action in one role or another. In that case, the IEC determined that the unique nature of the dual roles presented no inherent conflict of interest or general appearance of impropriety because the county commissioner received no personal financial gain and was expected to represent the county's interest equally in both roles. Even so, the IEC cautioned quite broadly that "due to the unique nature of the Requestor's dual role, the Commission recommends that the Requestor disclose her dual role whenever taking official action for the County that would also implicate Requestor's role in the RFTA." *Id.* at p. 4.

In *Advisory Opinion 16-05*, the IEC considered whether a member of a town board of trustees, who also owned a property management business, could engage in a policy debate or vote on the town's short term rental issues in the context of her duties as a member of the board of trustees. The IEC concluded that under the Colorado Standards of Conduct, the town trustee's ownership interest in a property management company precluded her from voting (or influencing the other trustee's vote) on the issue of short-term rental uses in the town when doing so could affect a direct economic benefit her business. As to the appearance of impropriety resulting from her employment role concurrent with her role as a town trustee, the IEC opined:

> [i]n order to avoid the appearance of impropriety, local government officials should avoid voting on or debating questions in a manner that may lead the public to perceive that the local government official is either placing his or her own private business interests in a position of competitive advantage or keeping his or her own private business interests from being adversely affected by the decisions of the governing body.

*Id.*at p. 4.

It is possible that in this case, while there may be no technical violation of the Colorado Standards of Conduct, the IEC could caution that Commissioner Lachelt's dual role as a paid employee of WLN and La Plata Commissioner could create the "appearance of impropriety" in that Commissioner Lachelt will be expected to represent the interest of the WLN Board on one hand and the interests of La Plata County on the other. This is particularly true when the actions of the BoCC are very similar, if not identical to, the lobbying efforts of WLN such as the Methane Rule support. However, there is no clear indication of any business conducted on behalf of La Plata County actually being tied to the business interests of Commissioner Lachelt as an employee of WLN. The best practices suggested below are offered to mitigate this unknown and include disclosing BoCC and WLN roles, examining the circumstances of the particular action to be taken and ensuring no technical violation of the Colorado Standards of Conduct.

2. Gwen Lachelt's paid travel by WLN to Washington DC. As a member of the BoCC, Commissioner Lachelt traveled to DC to speak against the Methane Rule change. Airfare was paid by WLN and the offer was not made to other sitting BoCC members. However, La Plata did pass a prior resolution opposing such Methane Rule change. Did Commissioner Lachelt violate the Amendment 41 gift ban by accepting airfare from WLN? The answer is no.

As stated above, the Amendment 41 Gift Ban prohibits a local government official from accepting, without compensation of equal or greater value, a thing of value (including travel expenses) valued over $59. The Gift Ban does not apply if the gift is offered to a governmental agency, rather than to an individual. *See IEC Position Statement 12-01*. Here, the travel expense were offered to Commissioner Lachelt individually, and not to La Plata County generally or to the entire Board of County Commissioners. Therefore, most likely the IEC would interpret the travel expenses as a gift to a covered individual, which would mean Amendment 41 would apply.

Nonetheless, one of the exceptions to the Gift Ban can be found at Section 3(3)(f) of Amendment 41, which allows a local official to accept:

> reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities: . . . .

This exception allows an individual elected official or government employee to accept a gift of reasonable travel expenses to a (1) convention; (2) fact-finding mission or trip; (3) or other meeting if the individual is scheduled to (a) deliver a speech; (b) make a presentation; (c) participate on a panel; or (d) represent the state or local government,[4] but only if the gift is being offered by a non-profit organization that receives less than five percent (5%) of its funding from for-profit organizations or entities. Thus, there are three separate inquires necessary to determine whether this exception applies: 1) the type of event; 2) the purpose of the invitation; and 3) the type of organization presenting the gift.

WLN offered to pay Commissioner Lachelt's travel expenses to attend meetings in Washington D.C. in order for Commissioner Lachelt to represent La Plata County, who had previously taken a position on the Methane Rule by Resolution of the La Plata Board of County Commissioners, as the federal government considered the Methane Rule. After the airfare was paid for and travel occurred, La Plata County obtained verification from WLN that it is a nonprofit organization receiving less than five percent of its funding from for-profit

[4] As opposed to an individual being asked to deliver a speech, make a presentation or participate on a panel, expenses paid under this exception for and individual's attendance at a convention, fact-finding trip or other meeting for the purpose of "representing the state or local government" would seem to inherently require approval by or concurrence of the state or local government governing body to serve as the "representative." Still, even though discussion with the board may only be necessary when the individual is attending for the purpose of representing the county, we recommend that regardless of the purpose, the acceptance of any travel expenses under this exception should be vetted with or disclosed in a meeting of the board to avoid any appearance of impropriety.

organizations or entities. Based on these facts, it appears that the gift of travel expenses fits within the exception found at Section 3(3)(f) of Amendment 41.

However, even if no technical violation of the Gift Ban exists, another recent IEC decision suggests that the appearance of impropriety standard may nonetheless be implicated. In *Advisory Opinion 17-03*, the IEC considered whether a State Representative/member of the Colorado General Assembly may accept from a constituent the gift of conference space to hold certain meetings where the Representatives would serve as moderator. While the IEC determined that the circumstances described in the request for advisory opinion did not technically violate the Gift Ban under Amendment 41 (by virtue of having met one of the Gift Ban exceptions), the IEC "also cautions the Requestor to consider whether acceptance of the venue would create the appearance of impropriety." *Id* at p. 4. The IEC went on to say, "while the acceptance of a venue for holding a town meeting may be in compliance with one of the exceptions to the gift ban, the recipient may wish to explain or be prepared to explain why the gift of the venue is permissible under Article XXIX." *Id.* Here, the risk is that the IEC may question whether there is an appearance of impropriety where the nonprofit that employs Commissioner Lachelt also paid her airfare to appear in Washington D.C. to represent La Plata County as a County Commissioner. Once again, as will be discussed in the "Best Practices" section below, advanced discussions with the Board of County Commissioners and advanced public disclosures/explanations of these matters seems to proactively protect against claims under the nebulous "appearance of impropriety" standard.

3. Brad Blake's paid travel by Trout Unlimited to Washington DC. As a member of the BoCC, Commissioner Blake traveled to DC to seek funding for the Animas River cleanup efforts. Airfare was paid by Trout Unlimited. Did Commissioner Blake violate the Amendment 41 gift ban by accepting airfare from WLN? The answer is no.

Commissioner Blake was invited by Trout Unlimited to attend meetings in Washington D.C. with the Environmental Protection Agency to represent La Plata County's position related to designating the Bonita Peak Mining District as a superfund site. After the airfare was paid for and travel occurred, La Plata County obtained verification from Trout Unlimited that it is a nonprofit organization receiving less than five percent of its funding from for-profit organizations or entities. It is our understanding that prior to travel, Commissioner Blake discussed the invitation with the Board of County Commissioners, who agreed that Commissioner Blake would attend the meeting as representative of La Plata County. Based on these facts, it appears that the gift of travel expenses clearly fits within the exception found at Section 3(3)(f) of Amendment 41.

D. **BEST PRACTICES:**

La Plata County should be proud of the professionalism shown in day-to-day operations. From your handbook to reaching out to us for assistance, there is a clear commitment to integrity that should make the citizens of La Plata proud. The Ethical Rules must be taken seriously. A BoCC member who has a personal or private interest must not only disclose such interest, but must also refrain from voting or attempting to influence the decisions of the other members. C.R.S. §24-18-109(3)(a). A conflicted member's vote is not simply discounted. Rather, a

hearing containing a conflicted member is tainted and tantamount to no hearing at all. Accordingly, a lot of time and money can be wasted. It is clear that the employees of La Plata County understand the relevance of the Ethical Rules and respect the trust placed upon them.

Perceived conflicts are generally in the eye of the beholder. Accordingly, I would advise pre-disclosure on every situation that may call the integrity of the BoCC into question. Commissioners should always feel free to contact their county attorney to discuss matters privately. However, disclosures on the record prior to formal action always mitigate claims of bias or conflict. It is when disclosures aren't made and the conduct is subsequently questioned that BoCC members and staff can appear to be covering or hiding facts that usually prove to be innocuous. Pre-disclosure allows the BoCC to control the message and get in front of any issues. The simple fact that BoCC and staff are willing to raise the issue publicly greatly diminishes claims of any untoward conduct.

As it relates to Commissioner Lachelt hearing oil and gas matters while working with WLN, I felt the county attorney did a great job of asking the correct questions on the record in opining that no statutory conflict existed. Additionally, Commissioner Westerndorff should be commended for her role as the chair in clarifying the actions of her fellow commissioner. However, the fact that Commissioner Lachelt was a paid employed of WLN was not disclosed. As indicated above, our opinion would not change based on Commissioner Lachelt receiving a salary. In this particular case, the WLN salary was first raised in a pro-industry publication which could lead to further questions as to why such disclosure was not made. Assuming continuing employment and salary from WLN, best practice would be full disclosure of the WLN connection, including receipt of a salary. Additional pre-hearing disclosures could then have been made indicating that the salary is unrelated to her actions as a BoCC member, independent of and not contingent upon any particular vote she may take as a BoCC member, and would not impair her ability to otherwise be objective.

As WLN is comprised of current and former elected officials, I would also suggest that any donations to WLN be accompanied by a statement that such donations are to support the general mission and overall purpose of WLN and are in no way to encourage or reward any particular vote or action of any WLN Board member or employee for official action taken in their elected capacities. To the extent possible, I would try to collect donations on a uniform basis (i.e. annually) as opposed to accepting donations that may be construed as following a particular BoCC action or decision. Finally, I would separate the WLN and BoCC agenda and actions items wherever possible. WLN is focused on federal reform and prevention of environmental protection rollback. Generally, the actions of the BoCC regarding oil and gas will be dealing with more local concerns. There will be times, such as the Methane Rule Resolution or other lobbying efforts, where BoCC and WLN agendas will overlap. The closer the agendas, the more heightened the concern of conflict. Best practice would be for Commissioner Lachelt to clearly delineate her roles as a WLN employee and BoCC member when these overlapping items appear. She should be commended for having an outside agency pick up the cost of travel for La Plata County citizens. However, to mitigate against any concerns that she is speaking for WLN rather than La Plata citizens, all BoCC members should discuss commissioner participation in lobbying efforts when on behalf of the BoCC. The BoCC members should decide which member will attend and represent the BoCC. This allocation and assignment would be

according to skillset and availability. This is particularly true for those issues that may not have had prior BoCC support like the Methane Rule Resolution.

The above suggestion of the BoCC collectively allocating lobbying efforts also increases the BoCC's ability to accept travel payment by nonprofits. Amendment 41 precludes certain gifts of travel expenses, but such ban does not apply to a gift to a government entity rather than an individual. *IEC, Advisory Opinion*, 14-16 (2014). In determining whether the gift is to an individual or entity, the IEC looks at such factors as whether the gift is to a specific individual or to the designee of an agency; whether the offer is made ex officio; whether the travel is related to public duties, etc. A BoCC decision on which member to attend appears to be a prerequisite in the analysis on paid travel. A group BoCC decision, with county attorney input, would help determine the appropriateness of accepting nonprofit payment of travel expenses. Accordingly, best practice would be for decisions regarding the acceptance of travel expense gifts not to be made by individual commissioners.

Additionally, under Amendment 41 a local government official may accept reasonable expenses paid by a nonprofit for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the local government, *provided that the nonprofit organization receives less than five percent of its funding from for-profit organizations or entities*. Colo. Const. Art. XXIX, 3(f). The provision allows for the acceptance of travel expenses even when the gift is made to an individual rather than the entity provided the 5% threshold is met. The IEC has said "a written statement obtained in good faith *prior* to participation in an event … should prove sufficient evidence for compliance with the exception." (emphasis added). *IEC, Advisory Opinion, 10-01*. The BoCC did get verifications from both WLN and Trout Unlimited that the 5% threshold was met. However, the verifications were obtained after the travel had occurred. Best practice would be to disclose such travel plans in advance of travel so staff can obtain necessary verifications prior.