

November 6, 2014

Root Routledge (root@alpineanalytics.com)  
Pat Blair (prblair@bresnan.net)  
Petition signees (via bcc)

**RE: Legal Review of Petition to Remove Board**

Dear Mr. Routledge, Ms. Blair and Signees:

The Durango Natural Foods Cooperative ("DNF") Board of Directors ("Board"), while working on the verification of the signatures on the Petition, received legal counsel that the purported goal of the Petition itself violates the DNF Cooperative Bylaws. Accordingly, and for the reasons stated below, the Petition cannot be brought to a vote.

The Bylaws state at Section 2.6, captioned "Settlement of Disputes", that "In any dispute between the Co-op and any of its owners or former owners which cannot be resolved through informal negotiations, it will be the policy of the Co-op to prefer the use of mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement. Neither party with a grievance against the other shall have recourse to litigation until the matter is submitted to mediation and attempted to be resolved in good faith."

The clear intent of the Bylaws is to require mediation of disputes rather than subjecting DNF Cooperative to the types of procedures, such as the one you propose, that tear at the very fabric of the organization. Since your grievances were not brought before the Board for negotiation as the Bylaws require, the Board recommends mediation to resolve our differences, address our concerns, clarify the facts, preserve our relationships and create solutions by following a cooperative model.

The Board recognized and accepted the submission of the Petition, relying on your representations that it met the criteria of Section 3.2 and Section 3.9 of the Bylaws. Since that time, the Board has been advised that the petition violates Section 3.2 — Special Meetings, which states "Special meetings of owners may be called...within ninety days of the receipt of one or more petitions...such petitions stating any proper issue to be brought before the meeting." We stated in our correspondence on September 11, "Only proper issues will be considered during the meeting."

The following issues are not in compliance with the Bylaws and are therefore "not proper":

1) Section 4.2 of the Bylaws, captioned "Number and Qualifications" states in relevant part that "The board shall consist of seven Board members." That provision does not allow for the "Immediate and voluntary resignation of the current DNF Co-op Board of Directors; or their removal by member vote." It specifically does not provide for the appointment of

an interim board as requested in the Petition, to give "temporary leadership of DNF Co-op under the direction of long-time members: Root Routledge and Pat Blair as an interim board." Most specifically, it does not allow for the management of the affairs of DNF Co-op by Petition, especially when the Petition is inaccurate and misleading. Further, with the withdrawal of your names as Board members on the new Board ballot through the Nominating Committee, the Petition is further invalidated.

2) Section 4.1, captioned "Powers and duties" states "Except as a matter reserved to owners by law or these Bylaws, the business and affairs of the Co-op shall be managed under the direction and supervision of the Board of Directors." It would be a violation of the Bylaws and an abdication of responsibility for the Board to comply with the Petition's request on Page 1, Petition #2: "Request that no further decisions be made by this Board; in particular, the search and hiring of a general Manager". This vote removes the Board's authority to make any further decisions that affect the current and future operations of DNF Co-op." Also, in requesting the "retention of Kimberly Wiggins," the Petition violates the Bylaws as Section 4.1 which states "The duties of the Board shall include, but not be limited to, overseeing the operations...engaging a general manager and monitoring and evaluating his or her performance, and assuring that the purpose and mission of the Co-op are properly carried out." The Petition and you as petitioners are attempting to take over powers and responsibilities that are the sole province of the Board.

3) Pursuant to Section 2.5 — Access to Information: "An owner shall...be provided information concerning the operational and financial affairs of the Co-op...subject to reasonable restrictions or conditions determined by the Board of Directors to be necessary to protecting confidentiality and sensitive information." However, this access to information is not absolute. This Bylaw affords the Board the opportunity to impose "reasonable restrictions or conditions as is determined by the Board of Directors to be necessary to protect confidential or sensitive information." The Board, pursuant to the discretion given it in the Bylaws, has determined that the "Non-Binding Letter of Intent" referred to in the Petition's Supporting Analysis to protect DNF Co-op and La Montanita Co-op should not be released at this time in order to protect sensitive financial information that could be detrimental to both businesses, and in particular DNF Co-op's business, if the information were to fall into competitors hands.

4) The Bylaws, at Section 4.9, provide for a procedure for resignation and removal of directors. That section provides that "Any removal for cause must be at a meeting called for that purpose, and the accused director must be accorded fair notice of the charges and an opportunity to respond in person or in writing." The Petition process, and in particular the manner in which you have gone about that process, has failed to provide any opportunity for any of the Directors to respond to the "charges."

5) Section 10.1 vests in the Board "the power, with or without advice of legal counsel, to interpret these Bylaws, apply them to particular circumstances, and adopt policies in furtherance of them, provided that all such actions are reasonable and consistent with these Bylaws."

6) There are numerous irregularities on the signatures collected and in the manner of collection of those signatures. The Board has determined not to address those issues, as the Bylaws require mediation.

**Pursuant to the above-referenced sections, a special meeting that was previously called for December 3 is not legitimate because it was not called to address proper issues, nor is it in accordance with the DNF Cooperative Bylaws. Only proper issues will be considered during the meeting. See Sections 3.2 and 3.9, Bylaws. Further, it does not comply with the requirements for mediation of any internal disputes as established by the Bylaws.**

Recognizing the importance of the issues that are foundational to the Petition, and in order to move the grievance process forward, the Board is, in accordance with the dictates of the Bylaws, proposing that the Board engage in mediation with Root Routledge and Pat Blair to clarify and resolve Petition issues. The Board would like to schedule mediation as soon as possible to address your concerns and arrive at a satisfactory solution. Even if the mediation is not successful, it may help to frame the issues that need to be resolved. Once there is an agreement on "proper issues" and the best course of action for the owners of DNF Cooperative, we can move forward. Please reply to this letter within three days.

Sincerely,

Geoff Wolf  
President, DNF Board of Directors  
[Board@durangonaturalfoods.com](mailto:Board@durangonaturalfoods.com)