



OFFICE OF THE  
UTAH STATE AUDITOR

**Auditor Alert – 2016-4**

**Subject:** Creation of Special Service Districts for the Purpose of Separating Federal Mineral Lease and PILT Revenues

**Date:** July 26, 2016

**Purpose:**

To provide guidance regarding the governance and operation of separate legal entities that have been created by a county to receive federal mineral lease monies.

**Background:**

In accordance with 31 U.S.C. 6903 (a)(1)(H), Payments in Lieu of Taxes (PILT payments) received by counties from the Federal Government must be reduced by the amount of funds received by such counties under the Mineral Leasing Act. Consequently, to assist counties impacted by mineral extraction on public lands in maximizing funds received from the Federal Government, an opinion was requested from the United States Department of the Interior regarding the use of special service districts to directly receive mineral lease monies without affecting the PILT funding to the counties.

In response, the Department of the Interior issued a memorandum in October 1988 setting forth guidelines that, if followed, would allow special service districts created by a county to receive mineral lease monies without a subsequent reduction in PILT payments received by the county. This memorandum referenced a 1978 decision by the Comptroller General on this matter, which stated in part:

Congress did not intend that payments to local governments under the Act [Mineral Leasing Act] be reduced by amounts which, by virtue of state law, merely pass through these governments on the way to politically and financially independent school or single-purpose districts which are alone responsible for providing the services in question.

**Guidance:**

The following guidance, which further defines “political and financial independence,” is based in part on a November 1988 legal opinion issued by a private law firm (see Attachment A). Portions of the guidance have been updated by the Office of the Utah State Auditor to reflect changes in circumstances or highlight components that have evolved over the past nearly 30 years since the opinion was issued.

### *Political Independence*

The following should be considered in establishing political independence:

- The county could establish a legally separate entity (i.e. special service district) and create an administrative control board having at least three members. It is preferable that no member of the county commission serve on the board. If it is considered necessary for members of the county commission to serve on the board, they should constitute a minority of the members on the board.
- In order for the entity to be considered politically independent, the county should not control the decision-making process of the entity.

### *Financial Independence*

The following should be considered in establishing financial independence:

- Decisions regarding the use of mineral lease money should be the responsibility of the entity's governing board.
- Mineral lease funds should be separately budgeted and accounted for to ensure that they are spent in accordance with restrictions on their use. If a county acts as the fiscal agent for a district that receives mineral lease funds, the county should also separately account for the funds, clearly distinguishing them from county funds.
- If the entity's board chooses to use money for projects that also fall within the scope of county services, such as maintenance and construction of county roads, a formal agreement should be established that defines the entity's area of jurisdiction. The agreement should indicate that the county would not have the responsibility to undertake a function of the entity if the entity itself failed to execute those functions.

*Utah Code* 17D-1-201(14) states that a special service district can be created for "receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease Funds, and expending those funds to provide construction and maintenance of public facilities, traditional governmental services, and planning, as a means for mitigating impacts from extractive mineral industries." This law is consistent with the Federal Mineral Lease Act of 1920, as amended, 30 U.S.C. 191 (1988).

**Disclaimer:** Although the Office of the State Auditor provides general guidelines, you should seek advice from your legal counsel regarding your particular circumstances in implementing guidelines outlined in this Auditor Alert.