



OFFICE OF THE  
**UTAH STATE AUDITOR**

January 29, 2016

Reginald Williams,

Dear Mr. Williams:

Enclosed you will find the following records as requested in your letter dated January 14, 2016:

Report No. 13-JSSD-8L – Jordanelle Special Service District

Report No. 15-SIT-8 – School and Institutional Trust Lands Administration

Please be aware that all GRAMA requests are posted on our website as a matter of office practice. We do this to provide transparency and accountability to the public at large.

Sincerely,

Linda Siebenhaar  
Records Officer

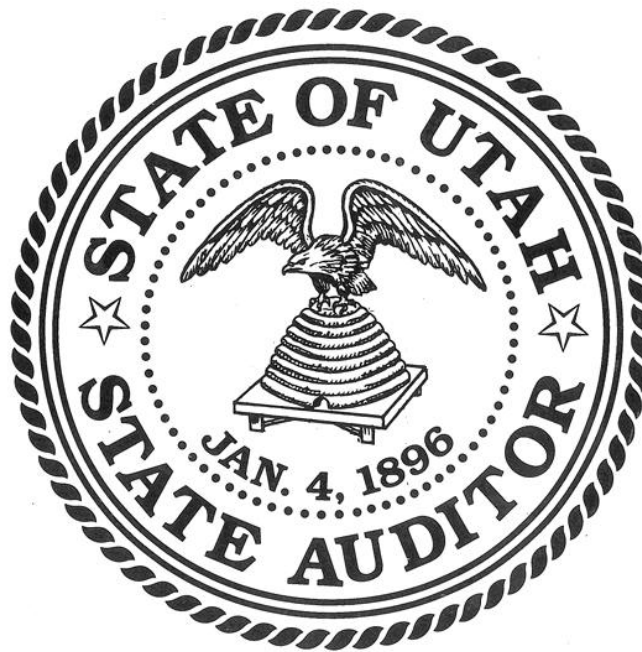
# JORDANELLE SPECIAL SERVICE DISTRICT

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Findings and Recommendations  
April 16, 2015

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Report No. 13-JSSD-8L



OFFICE OF THE  
UTAH STATE AUDITOR

# **JORDANELLE SPECIAL SERVICE DISTRICT**

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Findings and Recommendations  
April 16, 2015

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Report No. 13-JSSD-8L

**AUDIT LEADERSHIP:**

Van H. Christensen, CPA, CFE, Audit Director  
Leslie Larsen, CPA, CFE, Audit Supervisor



OFFICE OF THE  
**UTAH STATE AUDITOR**

**REPORT NO. 13-JSSD-8L**

April 16, 2015

Board of Directors  
Jordanelle Special Service District  
P.O. Box 519  
Heber City, Utah 84032

Dear Board Members:

We have performed the procedures described below to certain aspects of Jordanelle Special Service District's (the District's) internal control and compliance for the period January 2008 through December 2013, unless stated otherwise. The purpose of these procedures was to investigate allegations of mismanagement and potential misappropriation of public funds. We performed the following procedures at the District:

1. We evaluated the control environment at the District by considering the history of audit findings and recommendations issued to the District, management's response to those findings, the District's policies and procedures, and financial transactions executed by the District.
2. We reviewed the District's written policies and procedures for adequacy and completeness.
3. We examined contracts between the District and other special service districts within Wasatch County, as well as contract payments made to the District, for propriety. We also reviewed the write-off of bad debt associated with the contracts.
4. We examined the District's water reservation fees and associated interest and penalties for propriety and compliance with certain laws.
5. We reviewed two land purchases made by the District for adequate documentation and compliance with certain laws and policies and procedures.
6. We examined credit card transactions and supporting documentation, when available, for reasonableness and propriety.
7. We evaluated gas card purchases for reasonableness and propriety.
8. We assessed the issuance and use of travel per diem to Board members and employees for reasonableness and propriety.

9. We evaluated the District's conflict of interest disclosures and policy related to conflict of interests, as well as the District's expenditures for transactions which may indicate possible conflicts of interest.
10. We assessed the potential for impact or liability on the State or other governmental entities in the event of default on bonds issued by the District.
11. We reviewed the District's public notice and other required procedures associated with the issuance of bond debt, and the resulting assessment to the rate payers within the District, for compliance with certain laws.
12. We reviewed other miscellaneous procedures as considered necessary.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of the District's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of the District's internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. We feel that findings 1 through 11 in this report are key internal control weaknesses or important compliance issues to the District. In addition, we included other matters in this report to indicate additional areas we reviewed and the issues we noted. The responses to the individual findings and recommendations provided by the District have been integrated into the report after each applicable finding and recommendation. The cover letter submitted by the District with their responses is included as an attachment to this report.

The Office of the Utah State Auditor is the auditor of public accounts by authority of the Utah Constitution Article VII, Section 15 and *Utah Code* 67-3-1. Audits are conducted to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness and adequacy of financial controls, and compliance with the law, as the auditor determines necessary. The Utah Constitution and the *Utah Code* provide for limited authority in regards to audits of private entities or citizens and, as such, the Office has focused this audit on the activities of only the District.

If you have any questions regarding this report, please contact me.

Sincerely,



Van H. Christensen, CPA, CFE  
Audit Director  
801-538-1394  
vchristensen@utah.gov

# **JORDANELLE SPECIAL SERVICE DISTRICT**

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# **JORDANELLE SPECIAL SERVICE DISTRICT**

## **FINDINGS AND RECOMMENDATIONS**

### **BACKGROUND**

The Jordanelle Special Service District (the District) was established by Wasatch County in 1993 to provide water treatment and distribution, as well as waste water operations to residents within the District's boundaries. The main operating revenues of the District consist of fees for water and sewer treatment services, water reservation fees, tap fees, and construction inspection fees.

Since 2013, the Wasatch County Council has acted as the District's Board of Directors (Board). Prior to 2013, the District was governed by an administrative control board, which was comprised of members of the Wasatch County Council as well as other citizens appointed to the Board.

### **FINDINGS AND RECOMMENDATIONS**

#### **1. WEAK CONTROL ENVIRONMENT**

The District has a weak control environment as evidenced by the District's failure to:

- obtain, organize, and retain critical documents,
- implement a comprehensive policies and procedures manual,
- follow existing policies,
- implement audit recommendations, and
- hire personnel with the appropriate expertise.

The District's weak control environment has also been evident as the District has resisted, delayed, and opposed our requests for information. For example, in response to a request for documents related to our audit, the District included the following in a letter dated January 7, 2015, "... [the District] is compelled to voice objections to your request." Similar language has been included in response to other requests for information. Some objections have been in response to requests for clearly public information such as meeting minutes. All information requested by the Office of the Utah State Auditor has been within the scope of provisions found in the Utah Constitution and State statute.

We reviewed the District's annual financial statement audits for the period of 2006 through 2013 and found that of the 35 findings issued, 20 were repeat findings or findings for similar past issues. The issues noted were similar to those found in this report, such as lack of a written agreement or contract, lack of policies and procedures, or conducting business outside the accounting system. The District's failure to implement recommended corrective action indicates a dismissive attitude toward sound business practices.

As noted in the following findings, the District often responded that the documents we requested were missing. Given the volume of missing records and the claims of a litigation hold, we are concerned with the disregard for reasonable record keeping and whether there was a concerted effort to impair our audit.

The errors noted in this report may have been caused by a lack of expertise among the governing body and management regarding internal controls and good financial

# **JORDANELLE SPECIAL SERVICE DISTRICT**

## **FINDINGS AND RECOMMENDATIONS**

management procedures. However, complaints and opposition of management toward the audit, unusual delays in providing requested information, unsupported transactions, missing documents, repetitive errors, and lack of proper policies and procedures should not be automatically dismissed as sloppy record keeping and poor management practices as these activities could also indicate an intentional effort to conceal inappropriate activity or the possibility of fraud.

The control environment established by management and the governing body includes the attitudes, actions, policies, and management styles that influence the day-to-day activities and culture or tone within an entity. It also consists of the integrity, ethical values, and competence of the entity's people. A weak control environment allows a tolerance, and sometimes even an encouragement, for misconduct within an entity. It provides the opportunity for District assets to be lost, stolen, or misused without detection.

### **Auditor's Recommendation:**

**We recommend that the District establish a strong control environment by implementing strict policies and procedures, ensuring that policies and procedures are followed by all employees of the District, and providing effective oversight. We also recommend that the District implement all recommendations from previous audits, as well as those recommendations in this report in a timely manner.**

### **District's Response to Finding:**

*This Finding improperly implies that JSSD "resisted, delayed and opposed [y]our requests for information" From the very first request in January, 2014 to the last request this past month, JSSD cooperated with and provided the Auditor with information requested, and acknowledged the fact that documents may not have been located. (See Summary of State Auditor's Document Requests and JSSD's Responses.) The concerns raised by the District from the beginning stemmed from the fact that it was embroiled in contentious litigation and that the Auditor's office was being used in an effort to bolster the private litigants claims. The Auditor's own website expressly provides that **[c]omplaints about issues that are being litigated are generally not accepted.***

*JSSD incorporates comment no. 6 in its cover letter accompanying this response. Instead of performing a qualitative analysis, the Auditor's report merely conducts a "quantitative analysis" to leave the misimpression that "the District's failure to implement recommended corrective action indicates a dismissive attitude toward sound business practices." JSSD had only 15 unique findings in eight years (35 total findings less 20 noted as repeat findings). The Audit Report fails to note that repeat findings occur in the year immediately subsequent to the original finding and then were corrected. Hence, the above pattern does not indicate a "failure to implement recommended corrective action" or "a dismissive or apathetic attitude toward sound business practices." The District has acknowledges that it is short on adequate staff and personnel (both accounting and management personnel) to meet the daily management needs of the organization. Corrective action is being taken as*



## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

*evidenced by the fact that JSSD has hired a comptroller to assist in assuring financial controls are in place.*

*The District recognizes there may have been a lack of expertise among management regarding internal controls. The above findings, however, leave the misimpression of JSSD's record keeping. The "volume of missing records" belongs primarily to one transaction class (credit cards) in which the Auditor sought records dating back more than four (4) years. This does not suggest there "was a concerted effort to impair [their] audit." JSSD was open and honest about its records and owned up to the fact that certain documents could not be located, not because of any intention to hide documents, impair the audit or conceal inappropriate activity.*

*It is reasonable, based on the plethora of private litigants asserting unfounded claims against JSSD, that JSSD would be cautious about demands for information that closely paralleled the issues in the pending litigation. Regardless, it is unfair to infer that JSSD's "activity" was an "intentional effort to conceal inappropriate activity and indicates the possibility of fraud." There is simply no evidence the District or Auditor of misuse of public funds, self-dealing or fraud.*

#### **District's Response to Recommendation:**

*JSSD concurs with this Recommendation. The District **has already taken** steps to establish a strong control environment by implementing strict policies and procedures. (See Capson email to Leslie Larsen, dated October 7, 2014, a copy of which is attached.) This includes hiring a comptroller for the purposes of assuring that financial policies are followed.*

## **2. MISSING CLOSED MEETING MINUTES AND RECORDINGS**

The District has not retained closed meeting minutes and recordings in accordance with the Utah Public Records Management Act (*Utah Code*, Title 63A Chapter 12) and the State Archives General Retention Schedule, which require government entities to retain closed meeting minutes and recordings permanently. We requested all closed meeting minutes and recordings for the period January 2008 through December 2013. The District only provided minutes for 2013 and 6 of 8 closed meetings held during 2012 (a total of 10 meetings). The District did not provide any other minutes or recordings for the 20 other closed meetings that took place during the time period requested.

The Board is ultimately responsible for the proper recording and maintenance of Board meeting minutes. The Board's failure to retain documentation of important discussions that occurred during closed meetings not only violated State statute, but impaired our ability to conduct our audit. Our primary purpose in requesting closed meeting minutes was to determine why the District purchased the property noted in Finding No. 6. The purpose given in the open meeting minutes indicated that the purchase was made because "...this is a very good deal for the district." Simply being a good deal is not sufficient justification for purchasing property.

# **JORDANELLE SPECIAL SERVICE DISTRICT**

## **FINDINGS AND RECOMMENDATIONS**

### **Auditor's Recommendation:**

**We recommend that the Board ensure all Board meetings are properly documented by recording and taking minutes, as applicable, at each meeting and by permanently retaining all meeting minutes and recordings in accordance with the Utah Public Records Management Act and the State Archives General Retention Schedule.**

### **District's Response to Finding:**

*JSSD acknowledges that it was unable to locate closed minutes from 2008 through 2010. (See Mark R. Gaylord's letter of May 19, 2014 in which he discusses the alleged missing minutes, a copy of which is attached.) However, since 2012 all closed meeting minutes exist and JSSD is "ensur[ing] all Board meetings are properly documented by recording and taking minutes, as applicable, ... in accordance with the Utah Public Records Management Act and the State Archives General Retention Schedule." The Audit fails to recognize that all Board meetings during the relevant time frame were "properly documented." Finally, the Auditor concedes that the primary purpose in requesting the closed minutes was to "determine why the district purchased the property noted in Finding No. 6" relating to the Willey transaction. The Willey transaction, however, was openly discussed during public hearings and not in a closed meeting.*

### **District's Response to Recommendation:**

*The District concurs with this Recommendation and believes that it is following the recommendation that the Board ensure all meetings are properly documented. In fact, this Recommendation actually leaves the misimpression that minutes have not been properly maintained when the Findings only focus on closed meetings. The District (and its Board) has been complying with this Recommendation even before the investigation began as there is no indication that there are missing minutes, public or closed, since 2011.*

### **3. LACK OF POLICIES AND PROCEDURES**

The District does not have a complete, written policies and procedures manual. We requested the District's financial policies and procedures manual multiple times before the District acknowledged they do not have a complete, written policies and procedures manual. The District does have small portions of written policies for personnel, purchasing, vehicle use, and various operational matters. However, the policies are deficient and do not address important issues such as the handling of cash receipts, cash disbursements, credit card use, etc. We are also concerned because there appears to have been a lack of follow-up by management and the Board related to the implementation of policies and procedures. During our review of Board minutes, we noted that in 2008 the general manager stated he would draft a cash handling policy; however, based on the lack of further discussion in the minutes and the lack of policy, there was no follow-up by the general manager nor the Board.

## **JORDANELLE SPECIAL SERVICE DISTRICT**

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Because the District has been in existence since 1993 and has operated for many years without written policies and procedures, and because of additional concerns we have related to a poor control environment at the District (see Finding No. 1), we consider the lack of written policies and procedures to be a serious concern. A complete, written policies and procedures manual is essential to a good control environment and to helping ensure proper control over and use of public funds. In the absence of fully developed policies and procedures, the District should default to the policies and procedures of Wasatch County, its creator.

#### **Auditor's Recommendation:**

**We recommend that the District establish or adopt a complete, written policies and procedures manual to help establish a good control environment and ensure proper control over and use of public funds.**

#### **District's Response to Finding:**

*Assuming the Audit Report is limited to the period of 2008 through 2013, the District agrees that its written policies and procedures manual were incomplete. This concern was raised during the July, 2014 interview of Board members and management. On October 7, 2014 a copy of the newly adopted Administrative Policy and Procedures Manual was provided to the Auditor. (See Capson Email attached hereto.) The Auditor fails to acknowledge this in the Audit Report.*

#### **District's Response to Recommendation:**

*The District agrees with this Recommendation and has adopted a complete written financial policy and procedures manual which the Audit Report fails to acknowledge.*

#### **4. CONCERNS OVER CONTRACT WITH AND DEBT WRITE-OFF FOR STRAWBERRY LAKEVIEW SPECIAL SERVICE DISTRICT**

While reviewing contracts between the District and other Wasatch County special service districts, as well as bad debt write-offs made by the District, we found the following problems related to a contract between the District and Strawberry Lakeview Special Service District (SLSSD) for the calendar years 2012 and 2013:

- a. SLSSD has not paid the District for the services provided under the contract. This violates the contract, as the contract specifically states that it is "not the intent of the parties that one district subsidize the operation of another" and the District "shall not provide service to SLSSD for less than the actual cost of the service and annual adjustments shall be made in the costs of services to prevent such subsidization." The District should perform an annual review of the costs and make sure SLSSD pays their share of the costs. We believe this situation places an unfair burden on the District's

## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

ratepayers as they are subsidizing the management, operation, and maintenance costs of SLSSD.

- b. The District wrote-off the \$30,000 debt from SLSSD for 2012, as evidenced by discussion of the write-off in the 2012 SLSSD financial statements. However, we could find no evidence of the District's approval of the write-off or discussion of the write-off in the Board minutes. The Board should discuss large write-offs and document Board approval of the write-offs to help ensure write-offs are appropriate and meet District policy. The Board should also avoid write-offs for other governmental entities.
- c. The contract details services (management, operation, and maintenance) the District will provide for SLSSD, but lacks a specific monthly payment amount. Instead, the contract states that SLSSD shall pay the District on an "as-needed basis" for the services provided. We believe the contract wording is unusual and vague; especially compared to similar contracts between the District and other Wasatch County special service districts, which specify a monthly amount.
- d. Prior to our audit, the District lacked both verbal and written policy related to the write-off of bad debts. Lack of policy can cause unreliable and inconsistent Board decisions regarding the write-off of bad debts.

#### **Auditor's Recommendation:**

**We recommend that the District:**

- **Perform an annual review and adjustment of the costs of services and ensure that other special service districts pay the District for their portion of management, operation, and maintenance services, as required by the contracts, so that the costs are not subsidized by ratepayers of the District.**
- **Document Board discussion and approval of the write-off of large debt amounts.**
- **Amend any current contracts and ensure future contracts between the District and other special service districts include provisions for specific monthly payment amounts by the other special service districts sufficient to reimburse the District for actual costs of services provided.**
- **Implement written policy related to the write-off of bad debts and avoid write-offs for other governmental entities.**

#### **District's Response to Finding:**

*The Auditor was informed during the July 17<sup>th</sup> interview of JSSD's governing board and manager that the debt write-off was done with the full knowledge and consent of the governing board.*

## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

*Furthermore, although the written minutes do not reflect the scope of the discussion, a review of the recording of the February, 2012 board meeting reveals a six minute and 40 second discussion about the difficulty in charging a set rate to SLSSD for the services rendered. The minutes themselves reflect that Resolution 2012-02 was adopted in which the County asked JSSD to take over maintenance of the lagoon because of State requirements to have a certified employee oversee the lagoon. Accordingly, it is JSSD's position that the Board and management acted appropriately and reasonably in regards to the relationship with SLSSD.*

#### **District's Response to Recommendation:**

*The District understands, agrees and will take steps to implement the Recommendation. In fact, the District already has in place management contracts with other special service districts which the County has requested JSSD manage to save costs. Copies of these contracts were provided to the Auditor on March 27, 2014.*

#### **5. INADEQUATE WATER RESERVATION FEE LIST AND CONTRACTS**

In order for a developer to obtain development approval, they must ensure water is available for each building lot. The developer may already have water rights or may purchase water shares on the open market. If the developer does not have water or is unable to find more favorable options on the open market, they may voluntarily enter into an agreement with the District to reserve water accumulated by the District.

When a developer conveys property or building lots approved for development, the fee is attached to the property and paid by the subsequent landowner. The information requested and recommendations made in this finding pertain only to the developer who entered into an agreement with the District to reserve water and not to landowners who subsequently purchased property from the developer.

To determine whether the District had a process in place for establishing the fees and whether they had entered into contracts with original developers which noted specific terms, such as the amount of the fees and interest rates charged for late payment, we requested a list of water reservation fees that were charged to developers who entered into agreements with the District.

We found that the District does not have a readily available list of developers who initially entered into water reservation fee agreements. Because the District does not have a readily available list, we are unable to determine how many written contracts may have been prepared for these agreements. As acknowledged by the District, and based on information they provided to us, the District does not have contracts for all developers who entered into agreements with the District.

The contracts that were provided to us did include the amount of the water reservation fee charged and a provision for a 1.5% interest rate for late payment. However, the contracts

# **JORDANELLE SPECIAL SERVICE DISTRICT**

## **FINDINGS AND RECOMMENDATIONS**

did not include a provision for an additional late penalty, which most often ranged from 5% to 10% of the outstanding balance each month. We are concerned that the amount of the penalty was not a term or condition of the original agreements in which the developers voluntarily entered into.

### **Auditor's Recommendation:**

**We recommend that the District always enter into a contract with a developer for water reservation fees. We also, recommend that the District clearly define terms and conditions at the inception of the water reservation fee. In order to ensure that the District is properly charging and tracking water reservation fees, we recommend that the District maintain a listing of developers being charged the fee, and retain the associated contract.**

### **District's Response to Finding:**

*The Auditor's Findings regarding Water Reservation Fees charged to property owners seeking development approval calls into question an historical business practice of JSSD with regards to charges for JSSD to reserve water for the benefit of developers. Over the years JSSD has acquired and/or leased water rights for the benefit of its citizens. As a way of assuring it had sufficient water to meet the needs of its community, JSSD adopted a Water Rate Resolution beginning in approximately 1999 and amended over the years to address changes in costs associated with reserving water. (Copies of the Water Rate Resolutions were provided to the Auditor.) As the Auditor correctly points out, pursuant to Wasatch County Ordinance 10.01.01 any property owner seeking development approval from the County is obligated "to demonstrate to the satisfaction of the County that the developer owns sufficient culinary and irrigation water rights to service the proposed subdivision or development activity." The Water Rate Resolution was a governing document which sets forth the terms and conditions upon which a property owner could voluntarily request to reserve water for their specific development. In addition, JSSD provided a "Will Serve" letter to the County confirming it would deliver water to the developer. (A copy of a Will Serve letter was provided as part of this Audit.)*

*The Auditor is critical that JSSD was unable to locate and/or may not have entered into written agreements with property owners looking to reserve water for their developments. Although JSSD did enter into some written contracts affirming water reservations, this was not a practice of JSSD's as it considered the Water Rate Resolution as the document governing the relationship between it and the property owner. The terms and conditions upon which JSSD provides water reservations to property owners is set forth in the Water Rate Resolutions including the reservation fee charged and the late fees and interest charged in the event that payment is not received timely. The property owner was then issued an annual bill for payment of the reservation fee charged to reserve water. The property owner unilaterally and voluntarily elected to pay the bill and to the extent it declined to do so the Water Rate Resolution entitled JSSD to either (a) terminate service for violation or non-payment, which rights were spelled out in the resolution or place a lien on*

**JORDANELLE SPECIAL SERVICE DISTRICT**  
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*the customers property for past due fees and charges for commodities, services, or facilities that the district has provided to the customer's property. Utah Code Ann. § 17B-1-902*

**District's Response to Recommendation:**

*The District agrees with the Recommendation to the extent that it complies with the Utah Municipal General Records Retention Schedule. JSSD's governing body adopted Jordanelle Special Service District Water Reservation Policy Resolution 2015-4 on February 10, 2015, a copy of which was provided to the Auditor last month. In addition, the District now has posted on its website an Application for Water Reservation Agreement which anyone interested in reserving water may fill out, date, and deliver to JSSD. It will endeavor to identify and track the reservation fees charged to developers who have not obtained subdivision plat approvals. Once subdivision approval is obtained and the property is subdivided by lots the reservation fee will attach to that lot or lots and JSSD will charge the current owner of the lot in the same manner that it charges an owner who has connected to a water system.*

**6. PURCHASE OF PROPERTY UNDER UNUSUAL CIRCUMSTANCES**

We noted the following problems and concerns related to the District's purchase of a 52-acre tract of land for \$1.8 million in October 2008:

- a. Purchase Made on Behalf of a Separate Entity – The Board minutes show that management represented that the land would initially be purchased by the District, but would be sold to the North Village Special Service District (NVSSD) “when the bond comes through.” The land is located in the North Village area. It is unusual for one political subdivision to purchase land for the use of another political subdivision. District management represented that the use of the land was intended to benefit both the District and NVSSD. However, due to poor documentation and a questionable purchase arrangement with NVSSD (discussed in b. below), it is unclear why the Board purchased the land. (Also see Finding No. 2.)
- b. Purchase Arrangement Not Documented – Although District management represented to the Board that NVSSD would buy the property, we found no mention of this arrangement in the NVSSD minutes at the time, nor was there any type of written agreement with NVSSD at the time. Although the District is contracted to perform the management function for NVSSD and, at the time, two of the District board members were also NVSSD board members, the two districts are separate legal entities and should be treated as such. Therefore, if the purchase was indeed legitimate and desirable to both entities' boards, the terms should have been documented and agreed to in writing.

We are particularly concerned that there is no mention of the transaction in the NVSSD minutes until December 2011, when the District's general manager, who also acts as the NVSSD manager, informed the NVSSD Board that they would be paying the third and final installment of the loan in February 2012. This indicates that the NVSSD board

## **JORDANELLE SPECIAL SERVICE DISTRICT**

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may not have been fully informed about or agreed to the arrangement with the District. We also question whether the District's Board adequately discussed or considered the ramifications of this purchase. The District minutes reflect only one conversation about the purchase prior to purchasing the property. Due to the unusual nature of the purchase, we expected to see more discussion over a longer time period to fully consider the ramifications of the arrangement. The Board should have ensured that the arrangement with NVSSD was documented and the terms clearly defined before committing District funds to the purchase.

- c. Untimely Property Transfer Agreement and No Repayment Arrangement – The District made the down payment and two of three installments on the loan. NVSSD made the final installment in February 2012. Due to a finding and recommendation from the District's financial auditors, the District finally entered into a written Property Transfer Agreement with NVSSD in May 2013. This was almost five years after the original purchase and over one year after NVSSD had paid the third and final installment on the loan. As noted above, an agreement should have been in place before the property was purchased. The Property Transfer Agreement specified that the District and NVSSD would negotiate a payment plan within 150 days of the date of the Agreement, whereby NVSSD would repay the District for the remainder of the property. To date, the payment plan does not exist.
- d. The Property Purchase Was Never Ratified – The Board discussed the original property purchase during the October 2008 board meeting and made a motion to purchase the property. The motion was seconded and was to be ratified at the next board meeting. However, the District's Board never actually ratified the action, apparently due to an oversight. The failure to follow-up on this action and put it on the agenda for the next meeting is problematic and could result in adverse actions against the District. The Board should ensure that proper voting procedures are followed and documented in the minutes.
- e. Current Status is Unclear – The Property Transfer Agreement specified that NVSSD's payment of the third installment "resulted in the equitable ownership of an undivided one-third of the property to pass to NVSSD." The Agreement also provides that when NVSSD repays the District, ownership will transfer to NVSSD. However, since the two entities never executed the repayment agreement and no repayments have been made, the property is still jointly owned. Further, the District has provided no evidence that there was an appraisal of the land around the time NVSSD made the final payment on the land nor around the time of the Property Transfer Agreement. We believe that it was inappropriate for NVSSD to make the final payment and enter into the Property Transfer Agreement without a current appraisal to establish the land value. Likewise, it would be inappropriate for NVSSD to continue the process of purchasing/transferring the property without an appraisal to establish the current land value to ensure that the property is a good value for their rate payers. Again, the failure to establish the terms in writing with NVSSD when the property was originally purchased has caused complications and uncertainty as to whether NVSSD should pay the current market price for the property or the original purchase price. For these reasons, we believe it is unclear whether the



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District will be able to sell the property to NVSSD or whether it will be used jointly by both entities. The lack of a properly crafted and documented agreement at the outset of this transaction has contributed to a potential waste of funds.

Due to a lack of documentation about the original purchase and the lack of resolution of the property transfer to NVSSD, we cannot say with certainty whether this purchase was in the rate payers' best interest for either the District or NVSSD. We believe that a deficiency of Board control and oversight as evidenced by the lack of timely written agreements and establishment of repayment terms allowed this situation to occur. The Board should ensure that management is acting in the best interest of the District and its ratepayers, and should provide appropriate oversight to ensure transactions are reasonable and proper.

#### **Auditor's Recommendation:**

**We recommend that the Board exercise proper oversight of unusual transactions, require written agreements when appropriate, require appraisals for land transactions, and ensure that all Board actions are properly executed. We also recommend that the District Board review the status of the Property Transfer Agreement with NVSSD and clearly document and execute appropriate agreements between the entities.**

#### **District's Response to Finding:**

*The District objects to the implication raised by this Finding to the extent that it fails to acknowledge that the District provided the Auditor with a detailed description of the transaction, the benefits of the transaction and that the transaction was fully vetted during Board meetings open to the public, albeit by the JSSD board. It also fails to acknowledge that the general manager of JSSD was asked to manage NVSSD pursuant to a written agreement (which was reduced to writing) in order to save costs to the respective districts. Copies of the Maintenance Agreements between JSSD and other special service districts within Wasatch County (including NVSSD) were produced as part of this Audit on March 27, 2014. The audit should reflect the Board and management documented these relationships. Although the Auditor may wish to characterize the transaction as "unusual," when it comes to providing services to its citizens, this transaction is a reflection of two districts working cooperatively to serve those needs. The transaction actually provides a benefit to the residents within JSSD's and NVSSD's jurisdiction.*

#### **District's Response to Recommendation:**

*The District agrees to the recommendation and will continue to take steps to improve its oversight and controls in making sure that transactions are properly documented, approved and/or ratified.*

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### **7. INADEQUATE CONTROL OVER AND POSSIBLE IMPROPER USE OF DISTRICT CREDIT CARDS**

We reviewed District credit card expenditures for the period January 2008 through December 2013 and found a lack of internal control over and possible improper use of the cards. Of particular concern is the District's resistance to implementation of better control and review of credit card expenditures. The District was issued a finding related to credit cards during their 2011 audit. The Board discussed the audit findings during their meeting held on August 14, 2012. However, based on our evaluation of credit card transactions after August 14, 2012, we found that 166 of a possible 307 credit card transactions were not supported by a receipt (54%). Furthermore, of the 141 receipts provided, only 108 were itemized receipts, and only 33 included a written comment or explanation of business purpose. The failure to implement proper controls and review over credit card transactions has allowed potential misuse of District credit cards to occur, as noted below.

The District used various credit cards during the time period and up to three District employees were in possession of cards at various times. However, our analysis showed that 85% of the total dollar amount of purchases were made using cards assigned to the general manager. The chart below summarizes by type the purchases made with District-issued bank credit cards and notes whether there was sufficient documentation to support the transactions. Due to the lack of supporting documentation as discussed in a. below, we had to assign categories for most transactions based solely on merchant name. The problems noted with credit card use are detailed after the table.

<b>Credit Card Transactions – January 2008 to December 2013</b>					
<b>Category (as assigned by the Office of the State Auditor)</b>	<b>Amount</b>	<b>Total # of transactions per category</b>	<b>No receipt/ supporting documentation</b>	<b>% of transactions unsupported</b>	<b>Additional problems noted</b>
Gas Station	\$ 9,012	204	201	98.5%	See b.
Assets	27,756	111	86	77.5%	See c.
Grocery	18,747	312	296	94.9%	See d.
Restaurant	10,838	262	210	80.2%	See e. & f.
Finance Charges	1,427	64	n/a	n/a	See g.
Travel	19,007	108	94	87.0%	
Internet	8,443	75	n/a	n/a	
Security	4,799	204	n/a	n/a	
Misc. (training, licensing, employee morale, office supplies, auto maintenance)	31,502	180	143	79.4%	
Total	\$131,531	1,520	1,030	67.7%	See a.

#### **a. Inadequate Supporting Documentation**

Of the 1,520 credit card transactions, 1,030 (\$90,140) were not supported by a detailed receipt or explanation of business purpose. It was not possible for the Board to have performed an adequate detailed review of credit card expenditures considering the lack

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of supporting documentation, yet the Board approved the credit card expenditures at every monthly Board meeting during the 6-year period reviewed. As mentioned above, after the Board discussed the credit card finding in 2012, there continued to be a significant number of unsupported credit card purchases. This indicates a weak control environment, as audit findings and recommendations were not properly implemented.

b. **Questionable Gas Station Purchases** (also see Finding No. 8)

District credit cards were used for purchases at gas stations even though District policy (*Resolution No. 2005-6*) requires that State Fleet Services fuel cards (Fuelman cards) be used for the purchase of fuel and minor vehicle-related expenses. We question these credit card purchases for the following reasons:

- 1) Of the 204 transactions, 201 were not supported by a receipt.
- 2) Most of the transactions were charged on the credit card issued to the general manager; however, 20% of the transactions were for \$25 or less which is counter to our expectation since the general manager drives a truck, which would likely cost more than \$25 to fill. This leads us to question whether these are non-fuel purchases.
- 3) We would expect most, if not all, fuel purchases to be made using the Fuelman account.
- 4) Using District credit cards rather than using Fuelman cards to purchase fuel caused the District to pay \$729 more in excise taxes, assuming these were all charges for fuel.

Fuelman cards are intended to help ensure that the District pays a low, fair price and tracks fuel usage. The District's use of credit cards instead of Fuelman cards and the lack of supporting documentation can lead to wasteful or improper purchases.

c. **Questionable Purchases at Retail Store Where the District Has a Charge Account**

Of the total amount categorized in the above table as "assets," \$2,784 was charged at The Home Depot on the general manager's District-issued credit card even though the District has a charge account with The Home Depot. None of these purchases were supported by receipts. Although it is not inappropriate to use a credit card for retail store purchases, since the District has a charge account directly with The Home Depot, the lack of receipts could indicate that the purchases were made using credit cards rather than the charge accounts so the receipt could be discarded and conceal what was purchased. Whether an employee uses a credit card or a charge account, they should always provide a detailed receipt to justify the business purpose of the purchase.

d. **Questionable Purchases at Grocery Stores**

Of the 312 credit card purchases at grocery stores, 296 were not supported by a receipt documenting what was purchased. Our review of the 16 receipts provided, which amounted to \$960, indicated that approximately half the amount was spent on treats, drinks, magazines, etc.

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#### **e. Questionable Local Restaurant Charges**

We question many of the credit card charges to local restaurants (in Wasatch and adjacent counties) for the following reasons:

- 1) Of the \$8,508 charged for meals at local restaurants, \$7,454 did not have sufficient documentation to indicate whether the charge was for a legitimate business purpose.
- 2) The dollar amount which the District spends on meals at local restaurants has steadily increased each year, with the 2013 amount being more than triple the 2008 amount. This seems unusual considering the economic downturn. We would expect that local restaurant charges would be infrequent and would only occur when there is a legitimate business purpose.

#### **f. Restaurant Charges During Travel**

As noted in Finding No. 9 regarding problems with per diem payments, two District employees used their District credit cards during conferences or other out-of-town travel to purchase \$2,208 in meals for themselves and others, likely employees or Board members who were also receiving meal per diem. These charges are improper because travel per diem was already distributed to the employees in advance of the travel dates.

#### **g. Finance Charges on District Credit Cards**

The District paid various finance charges on the credit cards including late fees, interest, expedited payment fees, and over limit fees. As noted in the table, these charges amounted to \$1,427 during the period reviewed. Although the amount of fees has decreased over the years, with only \$89 in 2013, we consider these charges to be unnecessary and a waste of public funds.

#### **h. Excessive Credit Limit and Number of Cards Issued**

Other than a two-month window in 2012, the general manager had two District-issued credit cards in his name. Also, the credit limit was increased from \$5,500 to \$10,000 in 2012. We believe the number of cards and the credit limit are excessive and increase the opportunity for improper purchases, especially combined with the lack of detailed receipts and independent review of credit card transactions. Employees should be issued the minimum number of cards and lowest credit limit necessary to achieve the business purpose in order to minimize risk to the District.

The use of credit cards can be an efficient way to make purchases; however, without effective controls, there is a high risk of improper use. Controls over credit card purchases can be time consuming; therefore, some entities choose to limit their use to certain types of purchases and minimize the available credit balance. The District should establish a policy that balances the convenience and efficiency of using credit cards with the cost of implementing appropriate controls over their use. In some instances this policy may require employees to use their own credit card to make purchases and subsequently seek reimbursement from the District. As a result of our testwork, we have determined that the District's use of credit cards has been of questionable purpose, and in some cases, wasteful or improper.

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### **Recommendation:**

**District management and the Board should improve controls over the use of credit cards and reduce the risk of potential waste and abuse of District funds as follows:**

- **Ensure that the Board performs a more thorough review of credit card expenditures to determine that there is appropriate documentation for expenditures and that expenditures have a valid business purpose and are reasonable.**
- **Optimize accountability by requiring utilization of Fuelman and other merchant accounts when in place and retention of receipts when using District credit cards.**
- **Ensure that meal purchases are appropriate and do not constitute a double payment when per diem is also paid.**
- **Ensure that necessary credit card accounts are properly managed so that finance charges and other penalties are not incurred.**
- **Limit the number of credit cards issued and ensure they have the lowest credit limit necessary.**

**We also recommend that the Board review potential misappropriations to consider appropriate disciplinary actions, including the payment of restitution as considered necessary.**

### **District's Response to Finding:**

*The District agrees that even the slightest impropriety in use of credit cards is unacceptable. It has also acknowledged that its internal controls with regards to credit card receipts may have been lacking, but have corrected this issue over the past several years. The Findings, however, are critical of JSSD's practices which it will seek to improve but require some explanation or comment.*

*First, as mentioned in the cover letter, the audit only focuses on one class of transactions. Considering the scope and size of JSSD's annual budget (almost \$62 million in operating expenses for the District between 2008 and 2013) the total amount of all credit card transactions during the same period totaled \$131,531 (only 21,921.83/year), which represent 0.21% of all expenditures (or 1/5<sup>th</sup> of 1%).*

*Second, despite the Auditor's "concern is the District's resistance to implementation of better control and review of credit card expenditures," the District has not resisted in any respect to implement better controls. The District has established and adopted complete written financial policies and procedures manuals to help establish a good control environment. (See Capson Email dated October 7, 2014, which attaches the policies.)*

*Third, the Auditor questions local restaurant charges, which are a function of JSSD's day-to-day*

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*business and interaction with consultants and other professionals. Further, the total amount of charges over 6 years was \$8,508. This is only \$118 per month, which seems reasonable considering operations of the District.*

[Auditor's Note: no "Fourth" item was included in the District's response.]

*Fifth, at page 14, h., the Auditor's issue with the "excessive credit limit" of two District issued credit cards ignores that credit limits are needed to cover costs of the board going to the CRWUA conference each year.*

#### **District's Response to Recommendation:**

*The District agrees with the Recommendation. What it objects to is the implication that there has been "misappropriations" that may require "appropriate disciplinary actions." The District and/or its Board have not uncovered any evidence that its management or employees have acted improperly or contrary to the best interests of the District with respect to the use of credit cards but is prepared to move swiftly to enforce and remedy any mismanagement or misuse of public funds and implemented this Recommendation.*

## **8. INADEQUATE REVIEW OF AND PROBLEMS WITH GAS STATION PURCHASES**

We noted the following concerns while reviewing gas station purchases for calendar years 2008 – 2013:

### **a. General Manager's District-Issued Credit Cards Used for Gas Station Purchases**

The general manager's District-issued credit cards were often used for gas station purchases rather than Fuelman cards assigned to the District vehicles (see Finding No. 7.b.). The general manager represented that the credit cards were used because there were very few gas stations in Heber City that accepted the Fuelman card and availability was limited. However, a station which did accept the Fuelman card was located on the same street and less than one mile away from the other stations where credit card purchases were regularly made. In addition, the general manager's Fuelman card was used at that station during the same periods of time when credit card purchases were made at the other stations.

### **b. Multiple Gas Station Charges within Short Timeframe on General Manager's District-Issued Cards**

We reviewed the gas station charges made on the general manager's District-issued credit cards and the Fuelman gas card assigned to his vehicle. As seen in the table below, 23% of the total dollar amount charged occurred within two days of another gas station purchase in Heber City or Park City using the same Fuelman card or credit card or a combination of cards. We question the propriety of these purchases. The frequency of these purchases could indicate that the District credit card was used to put fuel into a personal vehicle or to purchase non-fuel items. The District's policy prohibits the

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charging of fuel purchases for non-District vehicles and is grounds for termination or other disciplinary action.

<b>Frequency of Purchase</b>	<b>Dollar Amount</b>	<b>Number of Transactions</b>	<b>Percent of Total Dollar Amount</b>
Same Day	\$1,092	22	5%
Within 1 Day	\$1,843	34	8%
Within 2 Days	\$2,194	47	10%

In addition, another 5% (\$1,049) of the total dollar amount charged occurred within two days of another purchase, but at least one of the purchases was outside of Heber City or Park City. This situation indicates that the general manager was traveling; however, because we were unable to determine the propriety of the travel and its relation to the amount of fuel purchased due to inadequate records, we were unable to determine the propriety of these transactions.

c. No Fuel Record Kept by General Manager

The general manager did not keep a record of his fuel purchases. District policy (*Resolution No. 2005-6*) requires that a record of fuel purchases be maintained then “signed by the employee and turned in when full.” If the general manager had used the Fuelman cards issued to the vehicle, the proper records would have automatically been maintained by State Fleet Services (see d. below).

d. Inadequate Fuel Records Policy

The District’s policy to maintain a record of fuel purchases is inadequate. The record retention period of one year is too short, and the necessary information to be included on the record is not specified. The State Archives record retention schedule applicable to the District requires that accounts payable records be retained for at least 4 years. Therefore, the fuel records should be maintained for at least 4 years as they are essential to the proper documentation of the expenditures. At a minimum, each record should include the date of purchase, odometer reading, number of gallons purchased, and purchase price. The recording and maintenance of this information would allow a proper review and approval of the expenditures and help to prevent and detect the misappropriation of funds. This review and approval process is eased because reports maintained by the State’s Fleet Services provide all the necessary information.

e. Inaccurate Records for Fuelman Cards

District employees did not accurately record information required for the fuel records maintained by the State’s Fleet Services. As a result of inconsistencies noted upon our initial review, we more thoroughly reviewed the 427 purchases made for two of the District’s 17 Fuelman cards. Although we tested the transactions of only two cards, we believe we would have noted similar problems had we reviewed other cards. We noted the following:

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- 1) For the 427 purchases, 60 recorded odometer readings resulted in negative miles driven, which indicates the odometer readings were not correctly recorded. Inaccurate recording of odometer readings could indicate an unintentional error, an intentional disregard for policy, or an attempt to hide a misappropriation, such as fueling a personal vehicle or improper use of a District vehicle.
- 2) Numerous odometer readings appeared to be estimates rather than actual because the number of miles driven were rounded to an even hundred. For example, we would not expect fill ups to occur exactly every 200 or 300 miles. It seemed as though the odometer readings were being entered based on a set number of miles. This could have been done to force a reasonable fuel efficiency so as to make the fuel purchases appear reasonable.
- 3) Of the 427 purchases, 74 purchases resulted in unusually low fuel efficiency based on miles per gallon, which was calculated using the odometer readings recorded by the employees. Of these 74 purchases, 32 were made either the same day or within one day of another purchase. The frequency of the purchases, in addition to the low fuel efficiency, could indicate a potential misuse.

f. **Fuelman Cards for Specific Vehicles Used to Purchase Different Types of Fuel**

Fuelman cards assigned to vehicles requiring unleaded gasoline were used to purchase \$2,530 worth of clear diesel fuel (\$904 of the transactions were made with the two cards noted in e. above), and the Fuelman card assigned to the dump truck requiring diesel fuel was used to purchase \$3,387 of unleaded gasoline. Since Fuelman cards are assigned to specific vehicles, only the fuel type for that specific vehicle should be purchased with that card. Therefore, we question the propriety of these purchases. The improper purchases indicate the cards either were not used for the vehicles assigned, as represented by the District, or that the cards were intentionally misused to purchase fuel for other vehicles. The District's policy prohibits the purchase of fuel for non-District vehicles and is grounds for termination or other disciplinary action.

g. **Failure to Report Taxable Fringe Benefits**

The District did not properly determine taxable fringe benefits. District vehicles are used for daily commuting by the general manager, assistant manager, and on-call employees. Commute use of a District-provided vehicle is considered a taxable fringe benefit per IRS Publication 15-B since commuting to and from work and home is considered a personal use of the vehicle. The District indicated that they believed they did not have to report the employees' commute use of the vehicles as a fringe benefit because public safety vehicles are exempt from the requirement. However, Internal Revenue Bulletin: 2010-23 indicates that a public safety vehicle does not include pickup trucks. The bulletin does allow for specialized utility repair trucks that are specifically used to carry heavy tools, testing equipment, or parts if the modifications make it unlikely the vehicle will be used more than a *de minimis* amount for personal purposes. The vehicles provided to the District employees noted above do not appear to meet the definition of a public safety vehicle. Therefore, the District should determine and report the taxable amount of fringe benefits using one of the approved methods described in IRS Publication 15-B. Because the District has not been appropriately reporting taxable



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fringe benefits, it may not be in compliance with federal and state laws and the employees' incomes may have been understated and underreported.

Although the District indicated that fuel reports were reviewed two times per year, those reviews were inadequate. The questionable transactions noted above were allowed to occur without detection because the District does not have controls or other procedures to ensure that expenditures are properly reviewed and approved. A thorough review should be performed monthly and should include a review of compliance with all applicable policies as well as a review of frequency and locations of purchases, miles driven, fuel efficiency, and gas type purchased in order to determine the propriety of the purchases. Any irregularities should be followed up on, as they could indicate potential abuse and fraudulent charges and could help management identify expenditures that require more documentation and/or employees that require more monitoring.

Someone with adequate authority should be responsible for reviewing these reports in order to adequately approve the propriety of the fuel purchases. Because we are questioning activities of the general manager, the Board needs to provide adequate oversight to ensure compliance and propriety at all levels of the District.

#### **Auditor's Recommendation:**

**We recommend that the Board implement and enforce an adequate policy for District fuel purchases and perform adequate oversight, including a monthly review of fuel records, to ensure compliance and propriety at all levels. The policy and oversight should include the following:**

- **A requirement that only Fuelman cards, rather than District-issued credit cards, be used for the purchase of fuel and minor vehicle-related expenses, except for the rare circumstances when a gas station that accepts Fuelman cards is not available.**
- **Ensure that regular reviews of fuel purchases are completed. The reviews should look for unusual activity and promptly follow up on unexpected behavior, such as fuel purchases made within a short timeframe for the same vehicle.**
- **Ensure that District personnel comply with the District's policy requiring a fuel record to be kept for all fuel purchases.**
- **The requirements that: 1) fuel records be maintained in accordance with the State Archives record retention schedule (at least 4 years), and 2) specific information be recorded for all fuel purchases, including date of purchase, odometer reading, number of gallons purchased, and purchase price.**

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- **A requirement that actual odometer readings be recorded rather than estimates, and follow up on records which indicate unusual frequency of purchases, low fuel efficiency, or irregular odometer readings.**
- **A requirement that Fuelman cards be used to purchase fuel for only the vehicles to which they are assigned.**
- **Accurate determination and reporting of taxable fringe benefits in accordance with IRS Publication 15-B.**

**We also recommend that the Board review potential misappropriations to consider appropriate disciplinary actions, including the payment of restitution as considered necessary.**

#### **District's Response to Finding:**

*The Finding ignores the fact that the District's fuel uses extend beyond the fleet of vehicles and beyond just the Heber Valley. The District has historically purchased all fuel for fleet (vehicles assigned a Fuelman card) and non-fleet (backhoes, backup generators, lawn mowers, etc.) with either Fuelman cards or credit cards. The District recognizes that in order to make the Fuelman an effective monitoring tool, all non-fleet fuel purchase needs to be made outside the Fuelman system and effective monitoring the Fuelman statements needs to be done.*

*With regards to the Auditor's criticism about the general manager's use of credit cards for gas station purchases (p. 16, a.), JSSD admits the general manager has used the District's credit card to fuel the District vehicle assigned to him. The suggestion that the general manager "represented that the credit cards were used because there were very few stations in Heber City that accepted the Fuelman card" is taken out of context.*

*Likewise, it is unclear which two vehicles the auditor's office reviewed. Based on a quick review of the Fuelman statements given to the auditor, item e.2) on page 18, the District believes the audit actually refers to an employee's vehicle that had a transfer tank. Looking at trends and irregularities for ALL vehicles it is not uncommon that an unusually low fuel efficiency fuel-up is followed by an unusually high fuel efficiency fuel-up; or vice versa. This reflects that an erroneous odometer input is corrected by the subsequent correct one. The general and assistant manager assigned vehicles also repeatedly show unusually high mileage efficiency without a corresponding low efficiency. This is consistent with the fact that both had District credit cards and acknowledged use of their assigned credit cards to fill their respective vehicles, which reflects that there was no attempt to conceal the purchases of fuel for the vehicle, whether done with a credit card or Fuelman card.*

*Finally, with regards to the Auditor's criticism about failure to report taxable fringe benefits regarding the District's vehicles provided to management and on-call employees, the District respectfully disagrees with this conclusion. As noted below with regards to call logs, the District believes it is reasonable that its manager, assistant general manager and*

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*on-call employees be assigned and provided a vehicle. They are expected to be available 24/7 and the vehicles **do** meet the necessary qualifications of the Internal Revenue Code and related regulations.*

#### **District's Response to Recommendation:**

*The District agrees better controls need to be in place. The District has taken the necessary steps to assure this is being done, which includes better control over company issued credit cards.*

#### **9. WEAKNESSES RELATED TO TRAVEL PER DIEM AND REIMBURSEMENT**

The District made duplicate payments for employee meals during travel. The District paid employees and Board members a flat meal per diem rate of \$50 per day for District-related travel. However, the District's policy on travel states that the District will reimburse for actual meal expenses "up to" an approved amount per day. Further, the policy indicates that the employee must keep receipts to support the reimbursement requested. These two provisions in the District's current policy indicate that meal reimbursements should be for actual expenses and not on a per diem basis. The District should either follow its existing policy for reimbursement of actual travel expenses, which would require employees to keep all receipts for reimbursement, or amend its policy to allow and properly monitor per diem payments.

We also reviewed the per diem payments for 2010 through 2013 and found that the use of a flat rate per diem resulted in overpayments and waste as noted in the following situations:

- a. As noted in Finding No. 7.f., two employees used the District-issued credit card to charge \$2,208 for meals during travel when per diem was also issued for the trips. We believe it is likely that at least some of these meal purchases benefitted other employees and/or Board members; however, these other individuals also received per diem for travel. We are very concerned that employees and/or Board members would accept per diem when their meals were purchased with the District credit card since such activity would be a waste and abuse of public funds.
- b. The District did not make adjustments to the per diem rate for less than a full day of travel or when meals were provided by other parties. Two Board members indicated that while traveling, some of their meals were paid for by others (engineers, vendors, etc.). We also noted instances where it appeared some meals were provided by the hotel. Both the Federal/IRS guidelines and State Administrative Code require reductions in per diem for these situations. It is reasonable to expect the District to adjust per diem when the employee does not have to pay for meals. Failure to reduce per diem for less than full days of travel or for meals provided by others results in a waste of public funds.
- c. The District's travel policy allows for advances of travel per diem; however, the District does not have adequate procedures in place to review the travel advances after travel has

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been completed and compare them to actual travel expenses (as evidenced by receipts), and to require reimbursement by the employee, when necessary. Lack of a review and reconciliation of travel advances to actual travel expenses could allow improper travel advances to be made without detection.

These situations occurred because the District was not following its current policy on reimbursement for actual travel expenses, including the requirement to submit receipts, and also because the District does not have adequate internal controls in place to review travel reimbursement requests and make appropriate adjustments for partial days traveled, meals paid for by other entities, and travel advances received.

#### **Auditor's Recommendation:**

**We recommend that the District either follow its current policy for reimbursement of actual travel expenses, which would require the submission of receipts, or amend the policy regarding per diem payments. The policy should include the following:**

- **A provision to reduce reimbursement or per diem for meals provided by other parties.**
- **A procedure to ensure that employees do not use the District-issued credit card for meals when they are also receiving per diem, a travel advance, or a reimbursement of expenses.**
- **A provision to reduce reimbursement or per diem for less than a full day's travel.**
- **A procedure to review and/or reconcile travel advances to actual travel expenses.**

**Finally, we recommend that the District seek reimbursement for the cost of meals that were paid for twice by the District (through credit and per diem) or were provided by other parties.**

#### **District's Response to Finding:**

*The District is committed to complying with its own policies as well as the mandates of the Internal Revenue Service. The Auditor raises valid concerns in the manner in which the District documents its travel expenses, which the District will endeavor to improve. However, the District disagrees that it made duplicate payments for employee meals during travel. The District (payor) reasonably believed that the employee or board member incurred meal and incidental expenses during each day of travel. As such, no reimbursement is required.*

*IRS Rev Proc 2011-47 (Internal Revenue Bulletin: 2011-42) states:*

*.03 Meals provided in kind. A payor is not required to reduce the federal per diem rate or the federal M&IE rate for the locality of travel for meals provided in kind, provided the payor has a reasonable belief that the*

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*employee incurred or will incur meal and incidental expenses during each day of travel.*

*Moreover, an employee or board member is not required to reimburse the per diem if a vendor, prospective vendor or other third-party pays for a meal. Therefore, we believe the Auditor's conclusions are contrary to the IRS code and/or there is a difference of opinion in this regard.*

#### **District's Response to Recommendation:**

*As reflected above, the District disagrees with the findings of the Auditor with regards to per diem travel expenses. Regardless, the District has adopted a financial policy that addresses the issue of seeking reimbursements for expenses incurred during travel, which it shall do its best to comply with going forward. (See Capson email, attached hereto.)*

#### **10. FAILURE TO EVALUATE THE REASONABLENESS OF ALLOWING ON-CALL EMPLOYEES TO USE DISTRICT VEHICLES FOR COMMUTING**

The District allows the General Manager, Assistant General Manager, and on-call employees to use District vehicles for daily commuting. The District justifies this practice in order to allow for timely responses to emergencies outside regular business hours. We asked the District to provide us with emergency call out logs to determine whether the number of emergency call outs justifies the cost of commuting privileges. The District responded that they did not maintain any logs. The District did indicate that they could reconstruct a log using employee time records; however, it is apparent that the District has not evaluated the frequency of call outs to ensure that employee use of District vehicles for commuting is reasonable. This practice is particularly concerning since one employee granted commuting privileges commutes approximately 100 miles each day. If a timely response to emergencies is, indeed, the justification for allowing an employee to use a District vehicle for commuting, we question the reasonableness of having an employee who lives approximately 50 miles away from Heber City designated as a person available to respond timely.

#### **Auditor's Recommendation:**

**We recommend that the District maintain a log of after-hour emergency call outs and determine whether the frequency of the call outs and the improved timely response justify the expense of allowing employees to use District vehicles for commuting.**

#### **District's Response to Finding:**

*The Auditor's Findings question the reasonableness of JSSD's business decision to provide a vehicle to its general manager, assistant manager and others employees without maintaining call logs of when the vehicle is used for (a) de minimus non-work purposes and (b) for after hour emergency calls. The District's decision to provide a vehicle for its*

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*management is a reasonable decision because of the limited number of staff available for emergency calls. The District believes it is complying with applicable statutes and regulations regarding the fringe benefits offered with regards to vehicles.*

#### **District's Response to Recommendation:**

*The District will undertake a determination regarding whether its current policy regarding call-out logs is sufficient. It has considered requiring all vehicles that are called out on emergencies after hours to have a "log book" that shall document each emergency call. As part of this process, the District will evaluate the reasonableness of allowing employees to use District vehicles for commuting.*

#### **11. LACK OF POTENTIAL CONFLICT OF INTEREST DISCLOSURE**

One former Board member did not disclose a potential conflict of interest as required by *Utah Code 67-16-8 Utah Public Officers' and Employees' Ethics Act*, which requires that a public officer or employee not participate in his official capacity in respect to any transaction with a business entity where the public officer or employee is also an officer, director, or employee unless disclosure has been made. The former Board member is employed by a company which sells a modest amount of materials to the District and, as such, should have filed a sworn statement with the Board before participating in the review and approval of payments made to the company.

We believe the deficient policies and procedures contributed to the lack of conflict of interest disclosure. The law requires a conflict of interest disclosure to be completed when first becoming a public officer and to be updated on an as-needed basis. Proper disclosure by public officers and employees and abstaining from voting, when applicable, strengthens the faith and confidence of the citizens in the integrity of their government.

#### **Auditor's Recommendation:**

**We recommend that the District implement proper policies and procedures requiring Board members and management to complete a conflict of interest disclosure as required by *Utah Code 67-16-8*.**

#### **District's Response to Finding:**

*The District agrees with the Auditor that public officers have a duty to disclose any potential conflict of interest. It also agrees that there is benefit in establishing policies and procedures related to potential conflict of interest. The District, however, takes issue with the Finding that a "former board member is employed by a company which sells a modest amount of materials to the District, and, as such, should have filed a sworn statement with the Board before participating in the review and approval of payments made to the company." It also takes issue with the Finding that the "law requires a conflict of interest disclosure to be completed when first becoming a public officer ... ."*

## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

*Although Board members and management may not have filed a sworn statement as provided in Utah Code Ann. § 67-16-7, the District disputes such a disclosure was required. Utah Code Ann. § 6-16-1 et seq. is intended to have public “officers and employees” disclose conflicts when the officer and/or employee has a “private interest” in **the transaction** with whom the public entity is doing business or a “substantial interest” in any company, which is defined as “at least 10% of the outstanding stock of a corporation or a 10% interest in any business.” Utah Code Ann. § 67-16-3(15). None of Wasatch County councilmembers or employees (including its general manager) of JSSD own a “substantial interest” in a company doing business with JSSD. Moreover, the mere fact that JSSD purchased a modest amount of materials from a company in which a council member was employed, does not in and of itself require disclosure if the council member was unaware of the purchase (or transaction) before it was made and the entire council was asked to approve warrants that included the purchase.*

*The audit also ignores the numerous times when a positional conflict arose, concerning a transaction, the affected councilmember excused himself from the meeting and/or voting on the issue. The District disagrees that each of its members must file conflict of interest disclosure statements annually. The members of the Board and management cannot anticipate whether a conflict of interest occurs unless and until it arises. Once it becomes known that a conflict may exist, it has been a practice of the District to identify, disclose and recuse themselves from voting on the issue even though doing so is not required by law. The District believes this is a reasonable policy and has followed it for years.*

#### **District’s Response to Recommendation:**

*The District agrees with the Recommendation and affirmatively asserts it currently complies with Utah Code Ann. § 67-16-8. It will continue to monitor conflicts of interest and disclose them when necessary and/or required by Utah law.*

### **OTHER MATTERS**

During the course of our audit we evaluated a number of matters not included in the findings and recommendations above. Findings and recommendations represent exceptions that require corrective action. The following matters were not found to be exceptions and are included here only to indicate additional areas we reviewed and the issues we noted.

#### **A. ASSESSMENT AREA BOND LIABILITY**

We evaluated the potential for assessment area bonds issued by the District to become a liability of the District, Wasatch County, or the State of Utah. *Utah Code* 11-42-606 states that, “(1) Assessment bonds are **not a general obligation of the local entity** that issues them. (2) A local entity that issues assessment bonds: (a) **may not be held liable for payment of the bonds...**” (emphasis added)

## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

We found provisions such as the following in the various bond documents:

- “Neither the Issuer nor Wasatch County, Utah shall be liable for the payment of the Series 2009 Bonds...”
- “Neither Wasatch County nor the State shall in any event be liable for the payment of the principal of, premium, if any, or interest on any of the Bonds...”
- “The Bonds do not represent or constitute a debt of Jordanelle, Wasatch County, or of the State...”

Based on State statute and the bond documents it does not appear that the District, Wasatch County, or the State of Utah is liable for the payment of the bonds simply because landowners within the assessment area fail to pay the assessment. The District may be liable for the bonds if they fail to perform certain duties outlined in the bond documents or state statute; however, we did not identify significant noncompliance with required provisions.

#### **B. ASSESSMENT AREA BOND INTEREST RATE**

We evaluated the reasonableness of the interest rate charged for the assessment area bonds. We found that during construction, warranty bonds were issued to pay for construction costs. When construction was complete, the warranty bonds were required to be repaid with assessment area bonds.

The District issued warranty bonds and construction began prior to the sharp decline in property values in 2008. By the time construction was complete and the warranty bonds were to be repaid, property values within the assessment area had declined significantly. As provided in State statute and the assessment area bond documents, assessment area bonds are secured only by the value of the property within the assessment area, which made a very limited market for the assessment area bonds.

With the District in a poor negotiating position, the purchasers of the bonds were able to dictate terms such as the interest rate and default rate. Therefore, it appears that the timing of the issuance of the warranty bonds and the issuance of the assessment area bonds created a market condition that led to the high interest rates.

#### **C. NOTICE TO PROPERTY OWNERS WITHIN THE ASSESSMENT AREA**

We evaluated the process by which property owners are notified that their property would be included in an assessment area. *Utah Code* 11-42-201 through 209 outlines provisions for holding a public hearing, publishing notice of the hearing, and mailing notice to each property owner within the proposed assessment area. It also contains provisions for a property owner to protest the designation of the assessment area, the inclusion of the owner's property in the assessment area, and the proposed improvements.



## **JORDANELLE SPECIAL SERVICE DISTRICT**

### **FINDINGS AND RECOMMENDATIONS**

We reviewed meeting minutes, court transcripts containing a property owner's testimony, and other similar information. It appears that the District followed the notice and hearing requirements as found in State statute.

#### **D. WATER TREATMENT FACILITY LAND ACQUISITION**

We reviewed a complaint that the District purchased property for a water treatment facility in a manner that allegedly allowed District personnel to improperly benefit. We obtained explanations from District officials, sworn affidavits from parties involved, and real estate transaction documents which offered the following explanation of the transaction. The District identified a parcel of property that was better suited for a water treatment facility than property originally obtained by the District. The property was listed for sale; however, another party had begun negotiations to purchase the property for \$300,000 below the list price. Without first obtaining an appraisal, the District negotiated with this intermediate party who agreed to sell the property to the District at the list price. As part of the District's negotiation, the District assisted the intermediate party with their financing by granting the intermediate party's financing bank a security interest in \$2.5 million of the District's bank deposits.

This transaction allowed the District to obtain property suitable for a treatment facility and the intermediate party to make a profit of approximately \$300,000. Both the District and the intermediate party have attested that the transaction was arms-length and proper. To the extent we have authority to investigate, we found no evidence that District personnel improperly benefited. However, we recommend that the District obtain appraisals before purchasing property.

We also reviewed Utah Constitution (Article VI, Section 29), which prohibits a political subdivision from lending its credit, and determined that the District's granting of a security interest in the \$2.5 million bank deposit is likely not a violation of the Utah Constitution.



OFFICE OF THE  
**UTAH STATE AUDITOR**

## **AUDITOR'S CONCLUDING REMARKS**

The Office of the Utah State Auditor received multiple complaints regarding the District, and after reviewing the information, we determined that further investigation was warranted. As we evaluated matters initially brought to our attention, certain risk factors caused us to determine that expanding the scope of the audit was also appropriate.

### **Audit Scope**

The District complains that based upon language found on our website we “generally” do not look into certain matters. However, the scope of an effective audit cannot be determined by the auditee (i.e. the District) and must be made according to the auditor’s professional judgment. One of the significant risk factors causing the expansion of the audit has been the District’s attempt to limit and direct the scope of the audit.

For example, throughout the audit, the District has required that all information and requests be “filtered” through their external litigation attorney. Inhibiting access to individuals and records has caused unnecessary delays and inefficiencies during the audit. In our professional judgment, the unusual matters we found raised questions and caused us to request information that our office “generally” may not look at due to pending litigation or the passage of time. However, when during the course of an audit we identify strange, odd, or unusual activity, we cannot “look the other way” simply because the issue was not included within a predetermined scope.

Again, the scope of an audit is not the District’s decision to make. Attempts by the District to define or redirect that scope concerns us because it impedes an effective audit.

### **Lack of Expertise**

It was our hope that with changes in Board membership and District management critical improvements could be implemented. However, the District’s response indicates a resistant and obstructive “business as usual” tone. Their response also reinforces the most significant matter noted in the report (see Finding No. 1) which points to the Board’s attitude, actions, and management style that are resistant and dismissive to sound business practices.

The District’s response complains multiple times that the report fails to give the District credit for corrective action already taken. However, this is outside the scope of the audit. Additionally, given our experience with the District’s resistant attitude and manipulation of facts, we chose not to make a statement regarding corrective action without the corrective action being implemented, consistently applied, and verified by our office. Implemented corrective action would need to be operating for at least a year for our office to assess the effectiveness of the process and ensure that policies have been converted into consistent practices.

## AUDITOR'S CONCLUDING REMARKS

(continued)

As noted in the report, the deficiencies found may be caused by a lack of financial management expertise among the governing body and management. The District asserts that certain corrective actions are in progress; however, these actions will be meaningless unless the governing body and management understand and enforce policies and procedures designed to safeguard and ensure the efficient use of public funds. The Board's response indicates that they still lack the necessary expertise. The following examples from the District's response are indications that they do not understand critical issues:

- *Meal Reimbursement, Finding No. 11* – The District refers to an IRS Revenue Bulletin justifying board members double dipping of meal reimbursements. The IRS Bulletin is irrelevant; the point of the finding is that the Board members failed to follow District policy. Their argument implies that IRS provisions are designed to provide internal controls for the District, which they are not, and that a governing body cannot adopt policies more restrictive than IRS guidelines.
- *Illusion that “Fraud does not happen here,” Finding No. 1* – The response includes the statement that there is no evidence “...of misuse of public funds, self-dealing or fraud.” The Board fails to understand their responsibility to establish internal controls that minimize the risk of fraud, and that the District's lack of internal controls would not detect errors or fraud if it was occurring.
- *Projecting Conclusions Regarding Credit Card Errors* – The District complains that the report unfairly concludes that potential problems exist in areas other than credit cards and that credit cards are a small part of District expenditures. It is reasonable to project credit card disbursements to other transaction classes because:
  - The Board asserts that they review credit cards, but without credit card receipts an effective review cannot be completed. The Board also asserts that they review all disbursements; however, given the Board's ineffective review of credit card transactions, it is reasonable to believe that they do not conduct an effective review of other disbursements.
  - The District lacked policies establishing controls over credit cards, which led to weaknesses identified. The District also lacked policies over cash receipts and other disbursements; therefore, it is reasonable to conclude similar weaknesses exist in other areas that lack controls.
- *Delegation of Board Role* – In many instances, the Board has deferred questions and responsibility for the audit and its conclusions to their external litigation attorney. By doing this, the District has allowed their external litigation attorney to function as a defacto member of the governing body rather than simply an advisor. The Board should not delegate their role of governing the District to another individual or group who cannot be held accountable to the citizenry.

## AUDITOR'S CONCLUDING REMARKS

(continued)

- *Misinterpretation of Conflict of Interest Statute, Finding No. 11* – The District's response misinterprets the conflict of interest statute found in *Utah Code 67-16-8*. This statute states:

*"No public officer or public employee shall participate in his official capacity or receive compensation in respect to **any** transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director or employee **or** owns a substantial interest..."* (emphasis added) [definition of "agencies" includes political subdivisions, i.e. JSSD]

The District's response fails to recognize the two words highlighted in the above law. The response focuses on "substantial interest" but the report is not saying that the instance identified includes "ownership" which would trigger the substantial interest criteria. The instance noted in the report identifies a board member who works for a company from which the District buys supplies. The board member was involved in approving disbursements for the company.

### **Distortions, Deflections, Contradictions and Misstatements of Fact**

Much of the publicly available information regarding District concerns is confusing and contains conflicting accounts. As the scope of the audit expanded, we attempted to provide clarity to disputed issues. The District's response is consistent with the District's approach throughout the audit, which has been to defend inappropriate activity and cloud relevant facts by distorting, deflecting, and manipulating facts and information. Essentially, the District defends certain actions simply by throwing mud in a clear pool of water so that the picture becomes cloudy.

In evaluating how to clarify items in the District's response which conflict with conclusions found in our report, our primary objective is to again provide clarity without providing an excessive amount of details which may lead to confusion and satisfy the District's objective. Therefore, the following examples do not constitute an all-inclusive list of distortions, deflections, contradictions, and misstatements of fact found in the District's response, but are examples illustrating this point.

- *Missing Closed Meeting Minutes, Finding No. 2* – The District's response to Finding No. 2 indicates that "the audit fails to recognize that all Board meetings during the relevant time period were "properly documented." This statement is simply untrue. Only 10 of 30 closed meetings during the audit period were properly documented with the documentation retained in accordance with Utah Code and the State Archives General Retention Schedule. Further, the land transaction was not adequately discussed and documented – see Finding No. 6.
- *Concerns Over Contract With and Debt Write-Off For SLSSD, Finding No. 4* – The District's response to Finding No. 4 states that the "write-off was done with the full knowledge and consent of the governing board." However, lack of documentation causes us to question the transparency and justification for the write-offs. Further, the District

## AUDITOR'S CONCLUDING REMARKS

(continued)

refers to a six minute and 40 second discussion about SLSSD. This discussion was irrelevant to the issues discussed in Finding No. 4.

- *Purchase of Property Under Unusual Circumstances, Finding No. 6* – The District's response to Finding No. 6 refers to a detailed description provided during the audit of the land transaction conducted by the District and NVSSD. However, an after-the-fact description of a transaction is not sufficient for audit purposes. Any transaction, especially a large land transaction, should be adequately documented in the entity's records. The District contends that "the transaction was fully vetted during Board meetings open to the public, albeit by the JSSD Board." However, we found that the transaction was not adequately discussed or documented in the District's minutes and was not discussed or documented at all in the NVSSD minutes. It appears the Board is contending that the limited discussion in the District's minutes is sufficient documentation of NVSSD's participation in the transaction. To assert that discussion during one entity's board meeting (the District) is sufficient to justify a large land transaction also entered into by a separate entity (NVSSD) shows a complete disregard for proper procedure, protocol, and transparency to the public.
- *Inadequate Review of and Problems with Gas Station Purchases, Finding No. 8* – The District's response to Finding No. 8 asserts that our Office did not take certain facts and conditions into consideration when evaluating Fuelman card use. However, the Office did consider the use of transfer tanks, corrections in fuel efficiency due to odometer input errors, or use of the credit card to purchase fuel, etc. Even when taking these facts into consideration, our testwork showed problems with the use of Fuelman cards which highlight the need for a detailed review of Fuelman card use by the District.

Again, the above listing is not intended to be a complete list of distortions or contradictions. It is only a partial listing intended to illustrate general concerns.

We affirm and stand by the conclusions found in the report. We also continue to have concerns about District financial practices and the Board's ability to correct these issues.

## **ATTACHMENTS RELATED TO THE DISTRICT'S RESPONSES**

NOTE: The responses to the individual findings and recommendations provided by the District have been integrated into the report after each applicable finding and recommendation.

(NOTE: No changes have been made to the District's responses other than references to page numbers which changed with the input of the responses.)

The District's cover letter to their responses is included as Attachment A to this report. Also included, as Attachments B and C, is the verbiage of the two emails referenced in the District's response.

**Jordanelle Special Service District**

P.O. Box 519  
Heber City, UT 84032  
OFFICE: (435) 654-9233  
FAX: (435) 657-9582

April 8, 2015

***Via E-mail and Hand Delivery***

John Dougall  
State of Utah  
Office of the State Auditor  
Utah State Capitol Complex  
East Office Building, Suite E310  
P.O. Box 142310  
Salt Lake City, Utah 84114-2310

***Jordanelle Special Service District  
Audit Report No. 13-JSSD-8L (the "Audit Report")***

Dear Mr. Dougall:

This letter represents Jordanelle Special Service District's ("JSSD") response to the "DRAFT" Audit Report delivered to JSSD's Board of Directors on March 13, 2015. The Audit Report includes the Findings and Recommendations of the Auditor based on the audit of JSSD that your office commenced over a year ago to "investigate allegations of mismanagement and potential misappropriation of public funds." It is our understanding that this letter will be included in the final Audit Report as JSSD's official response to the Findings and Recommendations made by the Auditor.

To begin with, JSSD welcomes the Recommendations made by the Auditor with regards to its internal controls. Every organization can benefit from an audit and the Audit Report shows JSSD could have had better internal controls in place for the period covered by the Audit Report. It is important for any organization to regularly evaluate its procedures and internal controls, and then to improve them as recommended. JSSD appreciates the opportunity to improve and provide this response to the Audit Report.

In doing so, we trust the Auditor will take JSSD's comments in the vein that they are offered, which is to identify concerns the District has with some of the Findings (not Recommendations) based on the record provided. This is not intended to excuse the need for improvements in JSSD's internal controls. However, JSSD is compelled to distinguish between the conclusions of some of the Findings based upon the record provided and investigated for the Audit Report and the Recommendations. A summary of these concerns are as follows:

**1. Although JSSD welcomes the Recommendations, the Auditor did not find any mismanagement or misappropriation of public funds.**

JSSD understands that the Audit Report was done pursuant to Utah Code Ann. § 67-3-1(4) whereby it performed a “special purpose audit.” In doing so, we understand the Auditor **did not** follow generally accepted audit procedures because the nature of the audit was to “investigate allegations of mismanagement and potential misappropriation of public funds.” Although the Audit Report found “internal control weaknesses” it did not find any mismanagement or misappropriation of public funds. JSSD has and will continue to monitor and improve upon its internal controls as recommended and is prepared to move swiftly to correct and enforce any transactions involving mismanagement or misappropriation of public funds.

**2. Although the Recommendations are helpful, the Auditor’s office has ignored its policy of generally not investigating complaints that are the subject of litigation and JSSD is concerned that the Auditor’s office could potentially be used by litigants to gain a tactical advantage.**

Since the Auditor commenced this investigation in late January of 2014, JSSD raised concerns that the investigation was being undertaken for the benefit of private litigants. In the District’s letter to the Auditor’s office on January 31, 2014, and in repeated verbal and written communications thereafter, JSSD informed the Auditor’s office that it was embroiled in contentious litigation with customers served by JSSD. It explained that the “anonymous” tip to the Auditor’s office was likely from a disgruntled landowner and litigant within JSSD’s jurisdiction and that the Auditor should follow its own policy which is not to accept or pursue such investigations when parties are embroiled in pending lawsuits. (<http://auditor.utah.gov/hotline/>, Related Issues (“Complaints that are currently under investigation by another entity will generally not be accepted.”)) Although JSSD welcomes this investigation, it appears the Auditor’s office has ignored its own policies in doing so.

**3. Missing from the Audit Report is an acknowledgement of JSSD’s timely response to the Auditor’s concerns reviewed in a full day’s meeting last July by implementing certain controls, policies and procedures as then recommended.**

JSSD welcomes the Audit. What is noticeably absent, however, from the Audit Report is an acknowledgement that JSSD heard the Auditor’s concerns back in July of 2014 when they had a full day meeting with the Auditor’s office, and have implemented specific controls, policies and procedures as recommended that demonstrates the concern and responsiveness of JSSD.

**4. While JSSD acknowledges the clear importance of internal controls over all transactions, it is inaccurate for the Auditor to project general control weaknesses to all transactions, especially with the majority of transaction classes never being tested by the Auditor.**

It is important to note that the Auditor did not test all transaction classes within JSSD. The Auditor’s efforts focused solely on certain transaction classes such as credit cards, gas cards, and per diem payments. In fact, the sum total of all transactions tested by the Auditor amount to less than 1%



of all transactions over the same period of time. While JSSD acknowledges the clear importance of internal controls over all transaction classes, it is inaccurate to project control weaknesses from one transaction class to all other transaction classes that were not tested by the Auditor.

5. **JSSD has been anxiously awaiting the final Audit Report, not delaying it. However, given the similarity between the Auditor's investigation and on-going litigation, JSSD was cautious in its production of records —making some delays inevitable (although JSSD can appreciate the Auditor's concern over some delays).**

In light of the concern over the Auditor's office being used by private litigants to gain information and/or findings that could be used in their respective cases, JSSD was cautious in its production of records. The Auditor criticizes JSSD and concludes that it has a "weak control environment" because it "resisted, delayed and opposed" requests for information. Although the Auditor's office may have perceived delays in some circumstances, JSSD did not seek to resist, intentionally delay or oppose the Auditor's request for information. JSSD was careful to inspect and ensure all records were made available and that the responses were accurate. This vetting process inevitably resulted in some delays. JSSD cooperated thoroughly and completely with the Auditor's request for information over a thirteen month period. JSSD Excel Spreadsheet provided the Auditor with the level and scope of its cooperation. It also openly admitted when it was unable to locate some records (a concern to JSSD leading to process changes), it was not because JSSD was resisting or opposing such production.<sup>1</sup>

6. **The Auditor sought materials going back more than six (6) years despite the Auditor's policy that complaints are generally not accepted if the alleged wrongdoing has been more than two years ago, and the investigation extends beyond a period in which JSSD was statutorily required to retain records related to the audit.**

JSSD understands that the investigation was primarily for the period of January 2008 through January 2013, although the Auditor also examined internal controls for other periods which in some instances date back over fifteen (15) years ago. JSSD is concerned with the time frame of the audit period in two respects: To begin with, the State Auditor's own website provides that complaints are generally not accepted if the time elapsed since the alleged wrongdoing has been more than two years. Here, the Auditor sought (and in many instances obtained) materials going back more than six (6) years. (<http://auditor.utah.gov/hotline/>, Timing.) Next, the investigation extends beyond a period in which JSSD was required to retain certain records that requested during the investigation. On January 31, 2014, JSSD informed the Auditor that it follows the Utah Municipal General Records Retention Schedule. This fact is important because the Audit Report is critical of the absence of

<sup>1</sup> It bears noting that many of the requests for information by the Auditor paralleled requests and/or allegations being asserted by private litigants, including the claims of mismanagement and misappropriation of bond funds.

John Dougall  
April 8, 2015  
Page 4

records (particularly the credit card information) that the District was permitted under Utah law to discard after the passage of more than four (4) or six (6) years ago. (See Utah Municipal General Records Retention Schedule, <http://archives.utah.gov/recordsmanagement/grs/mungrs-list.html>.) It is reasonable that certain records may not have been retained in accordance with the Schedules imposed and adopted by the State of Utah.

With the foregoing comments in mind, attached hereto are JSSD's Responses to the Findings and Recommendations set forth in the Audit Report. We thank the Auditor and his staff for the opportunity to provide these responses and look forward to working with the Auditor in the future.

Thank you for your consideration. Let us know if you have any questions.

Very truly yours,

JORDANELLE SPECIAL SERVICE DISTRICT

A handwritten signature in blue ink, appearing to read "Michael Kohler", is written over the printed name.

Michael Kohler, Chairman

Enclosures

cc: Mark R. Gaylord, Esq.  
Randall Larsen, Esq.  
Steve Capson

**Gaylord, Mark (SLC)**

---

**From:** Steve Capson <src@khsa.biz>  
**Sent:** Friday, February 13, 2015 12:47 PM  
**To:** Gaylord, Mark (SLC)  
**Subject:** Fwd: JSSD Policies and Procedures  
**Attachments:** JSSD Admin Policy and Procedures Manual- 10-02-14.pdf; ATT00001.htm

Stephen R. Capson, CPA  
*(Sent from my iPhone)*

Begin forwarded message:

**From:** Steve Capson <src@khsa.biz>  
**Date:** October 7, 2014 at 3:19:28 PM MDT  
**To:** "leslielarsen@utah.gov" <leslielarsen@utah.gov>  
**Cc:** "dmatthews@jssd.us" <dmatthews@jssd.us>, "Darrel Scow (darrel@jssd.us)" <darrel@jssd.us>, "Van Christensen (vchristensen@utah.gov)" <vchristensen@utah.gov>  
**Subject:** JSSD Policies and Procedures

Leslie,

We have been waiting for your findings before adopting our administrative policies and procedures. We understood that you would be busy with the State's CAFR and, according to you, your findings could take a "couple of months" to complete. However, after several months and after receiving yet another request for documents, we could no longer wait to adopt our policies and procedures for an audit that seems endless.

I received a copy today of the JSSD Administrative Policy and Procedure Manual adopted by the Board last Thursday (October 2, 2014). I converted it to a PDF and have bookmarked it for you convenience.

Stephen Capson

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May 19, 2014

**Via E-mail**

Leslie Larsen, CPA, CFE  
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Salt Lake City, Utah 84114-2310

**Jordanelle Special Services District Response to  
State Auditor Subpoena dated May 14, 2014**

Dear Ms. Larsen:

As you know, this firm represents Jordanelle Special Service District ("JSSD"). We are in receipt of the Subpoena directed to Jay Price, Chairman of the Wasatch County Council. The Subpoena seeks the production of the following CONFIDENTIAL records of JSSD:

Closed meeting minutes and recordings of Jordanelle Special Service District for January 2008 through December 2011, June 2012, and August 2012.

With respect to the foregoing request, JSSD and the Auditor's office has already been down this road with regards to JSSD's executive session minutes and the Auditor's demand for the production of such records. In fact, the parties entered in to a Stipulated Protective Order, a copy of which is attached. JSSD reaffirms its position that the request for its "Closed Meeting Minutes" is improper and goes far beyond the investigation being undertaken.

Regardless, as you also know, JSSD did produce all executive session minutes (i.e. Closed Meeting Minutes) from January 2012 to the present, save and excepting June and August. Attached hereto is a list of the Closed Meeting Minutes that we allowed Mr. Paul Tonks to review in accordance with the Protective Order. Although the Closed Meeting Minutes were not included in what was produced to Mr. Tonks, if you review the minutes of JSSD for those two months, you will see the subject matter of both executive sessions is disclosed. In June it was to address a staffing issue and "pending litigation" while the August minutes reveal the executive session was used to discuss a "Property sale or acquisition" and "pending litigation." Although JSSD has been unable to locate the audio recordings and/or written minutes, the public meetings we produced months ago reveal the subject matter of the two executive sessions.

DMWEST #10812509 v1

Leslie Larsen, CPA, CFE  
May 19, 2014  
Page 2

With regards to the "Closed Meeting Minutes" from January 2008 through December 2011, as we mentioned to Mr. Tonks when he came to review the Closed Meeting Minutes for 2012 and 2013, JSSD has undertaken an exhaustive search for the minutes from the "executive sessions" prior to 2012 without success. Apparently, JSSD's former employee, charged with taking and recording minutes during the JSSD board meetings, had maintained these records on her computer. When she left JSSD, as a shared employee, it appears that the Closed Meeting Minutes were inadvertently deleted from the computer. JSSD has continued to review its files to determine if any of the Closed Meeting Minutes were retained in hard copy, but that too has proven unsuccessful.

Finally, with regards to the information sought by the Subpoena, JSSD objects to the inference that JSSD held executive session meetings during each board meeting for a four year period. That simply was not the case. A review of JSSD's minutes for the same time period reveals that only four times during the 2008, 2010 and 2011 did JSSD hold an executive session, while it held five such meetings in 2009.

In closing, JSSD continues to be concerned about the Auditor's investigation to the extent that it would appear the Auditor's office is being used to further private litigants' lawsuits. Much of the information the Auditor has sought from JSSD parallels the very claims and charges being leveled at JSSD in no less than four separate lawsuits. We would very much like the opportunity to meet with you and Mr. McDougall to address our client's concerns. Although we welcome the Auditor's inquiries, we trust you can understand the concerns we've raised with you in prior communications.

Thank you for your consideration. Should you have any questions regarding the foregoing please do not hesitate to give me a call.

Very truly yours,

BALLARD SPAHR LLP

  
Mark R. Gaylord

MRG/mjg

Enclosures

cc: Melanie Vartabedian, Esq. (via email)  
Paul Tonks, Esq. (via email)  
Mr. Jay Price (via email)  
Mr. Steve Capson (via email)  
Mr. Michael Kohler (via email)

# **SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**

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Departmental Review  
For the Period July 1, 2013 through December 31, 2014

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Report No. 15-SIT-8



**OFFICE OF THE  
UTAH STATE AUDITOR**

# **SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**

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Departmental Review  
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Report No. 15-SIT-8

## **AUDIT LEADERSHIP:**

Jason Allen, CPA, CFE, Audit Supervisor  
Nancy Watson, CPA, Audit Supervisor



OFFICE OF THE  
UTAH STATE AUDITOR

**REPORT NO. 15-SIT-8**

June 9, 2015

Kevin S. Carter, Director  
School and Institutional Trust Land Administration  
675 East 500 South, Suite 500  
Salt Lake City, UT 84102-2818

Dear Mr. Carter:

We performed procedures to evaluate the School and Institutional Trust Land Administration's (SITLA) compliance with the sections of *Utah Code* Title 53C which govern the allocation of revenues to various funds, as well as the distribution of those revenues, for the period July 1, 2013 through December 31, 2014.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of SITLA's internal control or any part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures or had we conducted an audit of the effectiveness of SITLA's compliance or internal control, other matters might have come to our attention that would have been reported to you.

Our finding resulting from the procedures is included in the attached Finding and Recommendation section of this report. We feel that this finding is a key internal control weakness and important compliance issue to SITLA.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by SITLA's personnel during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please contact me.

Sincerely,

Jason Allen, CPA, CFE  
Audit Supervisor  
801-808-0716  
jasonallen@utah.gov

cc: Lisa Y. Schneider, Finance Director



# **SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**

## **Departmental Review**

### FINDING AND RECOMMENDATION FOR THE PERIOD JULY 1, 2013 THROUGH DECEMBER 31, 2014

#### **NONCOMPLIANCE WITH ALLOCATION OF REVENUES FROM FEDERAL LAND EXCHANGE PARCELS**

The School and Institutional Trust Lands Administration (SITLA) did not calculate correctly the allocations of revenues from certain federal lands and did not distribute the allocations in a timely manner as required by *Utah Code* 53C-3-202 and 203. SITLA collects revenues from federal land exchange parcels and allocates them to the United States, the Land Grant Management Fund (LGMF), and the Land Exchange Distribution Account (LEDA) based on percentages outlined in *Utah Code* 53C-3-202 and 203. SITLA is allowed to retain 3% of the money collected to cover the cost of administering federal land exchange parcels; however, any unused balance that exceeds \$2,000,000 (hereinafter referred to as “excess admin revenue”) at the end of a fiscal year is also to be allocated to the above beneficiaries. The revenue allocable to the LGMF in excess of SITLA’s administrative costs is distributed to the Permanent School Fund.

We reviewed SITLA’s fiscal year 2014 (FY14) allocations, including the allocations made for each quarter as well as the year-end allocation of excess admin revenue. Errors noted during our review prompted us to review the year-end allocation made for FY13 as well. We noted the following errors:

- a. Untimely Distribution of Allocations – SITLA did not distribute some of the FY14 allocations in a timely manner. *Utah Code* 53C-3-202(2) requires the distributions to be made by the last day of the second month following each calendar quarter. However, SITLA made only one distribution to the United States for all FY14 allocations, resulting in the payments for the first three quarters of FY14 being 65 – 247 days late. In addition, SITLA’s year-end distribution of excess admin revenue to LEDA was 81 days late.
- b. Lack of Distributions – SITLA had four leases set up in the Business System (SITLA’s internal accounting system) with the incorrect beneficiary coding. As a result, \$174.32 of revenue collected in FY14 was not distributed to the United States or the Permanent School Fund. At the time of our testwork, SITLA had not determined the correct beneficiary for these distributions.

Further, SITLA did not distribute any FY13 excess admin revenue to the United States or the Permanent School Fund (see finding c.2 below), and due to an oversight, SITLA did not distribute any of the FY14 excess admin revenue to the United States or the Permanent School Fund.

- c. Incorrect Calculations of Allocations – SITLA made a series of errors—each one leading to the next—related to the calculation and distribution of excess admin revenue as follows:

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- 1) In SITLA's calculation of the excess admin revenue for FY13, they mistakenly doubled the amount available for distribution. The actual amount available for distribution was \$123,123.77.
- 2) SITLA then made a distribution to the LEDA; however, the amount of the distribution was double what it should have been (\$123,123.77 instead of \$61,561.88) because of the miscalculation of the excess admin revenue noted in 1) above. SITLA discovered the miscalculation error before any other distributions were made; however, the over-distribution to the LEDA left no money to distribute to the United States or the Permanent School Fund, as noted in b. above. SITLA corrected the FY13 duplicate distribution to the LEDA by reducing the FY14 amount allocated to the LEDA.
- 3) When SITLA recorded the distribution to the LEDA of the FY13 excess admin revenue into the accounting system, they coded it to the wrong account. As a result, even though a distribution had been made to the LEDA, the account where the excess admin revenue was deposited was still showing the funds as being available.
- 4) Because the FY13 excess admin revenue distributions were not coded to the correct account, as noted in 3) above, SITLA's calculation of FY14 excess admin revenue was incorrect because it added the already distributed FY13 balance of \$123,123.77 to the actual FY14 available balance of \$201,169.69 for a total distribution of \$324,293.46. Because of this error, SITLA over-allocated funds to all beneficiaries in FY14 even though they had reduced the FY14 allocation to the LEDA by the amount of the FY13 duplicate distribution noted in 2) above.

Because of the multiple errors affecting multiple years, we were unable to determine the specific allocations that should have been made to each beneficiary, but we do not expect the total error to exceed \$123,123.77.

- 5) Per *Utah Code* 53C-3-203(i), a portion of the deposits to the LEDA are to be paid to counties in amounts proportionate to the total acreage of federal land exchange parcels and the mineral revenue generated from this land within each county. Not all counties have these kinds of lands or mineral interests; however, SITLA was unable to provide to us support for the amounts allocated to counties. As a result of our questions about these allocations, SITLA subsequently revised the allocations. The total amount allocated did not change, but the amounts allocated to the individual counties changed. The allocation to Carbon County and Sevier County changed most significantly, with the allocation to Carbon County increasing by \$20,784.33 and the allocation to Sevier County decreasing by \$17,951.13. SITLA acknowledged that allocations made to counties in prior years could include similar errors.

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### **FINDING AND RECOMMENDATION FOR THE PERIOD JULY 1, 2013 THROUGH DECEMBER 31, 2014**

The errors described above occurred because the employee who performs the various allocations has not been adequately trained and the reviews of the allocations were not performed in sufficient detail to detect errors. As a result of these errors, the distribution of some of the revenues described in *Utah Code* Sections 53C-2-202 and 203 have been calculated incorrectly and have not been distributed in a timely manner.

#### **Recommendation:**

**We recommend that SITLA comply with *Utah Code* 53C-3-202 and 203 by correctly calculating the allocation of revenues from certain federal lands and distributing such allocations in a timely manner. We also recommend that SITLA design and implement internal controls to ensure compliance with *Utah Code* 53C-3-202 and 203 and adequately train the individual performing the allocations.**

#### **SITLA's Response:**

*We agree that the distributions to the United States were not made in compliance with the statute. The Deputy Assistant Director determined it would be prudent to distribute the earnings to the federal government on an annual basis to save time and money, however, that decision was made without full knowledge of the statute. These funds will be distributed quarterly in the future.*

*The discrepancy of \$174.32 was a result of an incorrect suffix being used on the lease. The accounting was done correctly but the report included these amounts erroneously. The reports have been adjusted to reflect the proper beneficiary, which was School.*

*As outlined in the findings, the distribution of the excess management fees collected in FY 2013 and FY 2014 were not handled correctly. There were a series of errors made that resulted in an incorrect distribution in FY 2013 (a doubling of the amount available and incorrect coding on the entry to transfer the LEDA portion). The coding error produced an inflated balance appearing to be available for FY 2014. In FY 2013 the excess available for distribution was \$123,123.77, which was sent in total to the state for LEDA distribution rather than being split between the LEDA account, School and the United States. The net result was that the LEDA account received an excess of \$61,561.88. The reallocation of this overpayment will occur with the distribution of the FY 2015 excess.*

*The original FY 2013 entry was made using the wrong subaccount code which made the excess balance at the end of FY 2014 appear to be \$324,293.46 when in reality only \$201,169.69 was available. The FY 2014 portion of the excess fees was made properly to the LEDA accounts in the amount of \$100,584.84. The remaining balance that should have been distributed to School and the United States was not made until April, 2015 when it was discovered these balances were still being held. Again, this issue has been discussed with*

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*the Deputy Assistant Director and it has been stressed these entries need to be made in a timely manner.*

*Concerning the issue regarding the allocation of the excess fees to the three parties (LEDA, School and the United States), we have developed a new spreadsheet to properly account for the source of all revenue associated with these transactions. We will recalculate the distribution of excess monies from FY 2010 through FY 2014 and compare those results with what was actually distributed. If there are adjustments than need to be made they will be done in conjunction with the FY 2015 excess distribution.*