

**REPORT TO THE  
UTAH LEGISLATURE**

Report No. 99-04

**A Performance Audit  
of the  
Central Utah Water Conservancy District**

July 1999

Audit Performed by:

Audit Manager	Tim Osterstock
Audit Supervisor	Janice T. Coleman
Audit Staff	Mark J. Roos
	Pauline Williams

**Table of Contents**

	<b>Page</b>
Digest .....	i
 Chapter I	
Introduction .....	1
History of the Central Utah Project .....	1
Central Utah Project Today .....	3
Audit Scope and Objectives .....	4
 Chapter II	
District Financial Management Is Inconsistent .....	5
Federal Debt Pre-Payment Created Major Savings .....	6
CUPCA Cash Management Is Poor .....	7
District Tax Rate Not Based on Need .....	12
Many Budget Recommendations From 1989 Audit Implemented .....	21
 Chapter III	
District Policies and Procedures Lack Sufficiency and Enforcement .....	25
District Financial Participation with Board Members Should Be Avoided .....	26
General Manager Contracted Bonus Agreement Appears Inappropriate .....	32
District Control of Expenditures Needs Tightening .....	33
District Motor Vehicle Controls Need Improvement .....	38
District Has Some Questionable Procurement Practices .....	41
 Chapter IV	
Discontinuation of SFN Project Affords Opportunity to Redirect Efforts .....	47
District Leadership Has Maintained Historical Plan .....	48
Former SFN Plan May No Longer Be the Best Alternative .....	53
An Open Independent Analysis Is Needed .....	64
 Appendices .....	 69
 Agency Response .....	 73

# Digest of A Performance Audit of the Central Utah Water Conservancy District

This audit was initiated in response to a Legislative request for a follow-up of our 1989 audit. Discussions involving replacement of the district's property tax revenue with another source of revenue are going to occur, and a careful review of the districts financing was desired. In addition, we also reviewed issues surrounding the former Spanish Fork-Nephi Irrigation and Drainage System (SFN). In our opinion, management oversight and administrative controls within the Central Utah Water Conservancy District (the district) could be significantly improved.

- First, the district's financial management can be more consistent.
- Second, district policies and procedures lack sufficiency and enforcement.
- Third, in addition to these managerial issues, the discontinuation of the SFN system affords an opportunity to analyze the district's water efforts.

**District Financial Management Is Inconsistent.** Some financial decisions made by district management have been beneficial to the taxpayer while others have not. Specifically, we found the following:

- Debt pre-payment will save \$117 million by 2047
- Poor cash management has cost taxpayers \$ 3.7 to \$4.4 million
- Poor fund management has cost taxpayers \$7.2 million
- Poor taxing decisions could cost taxpayers \$81 million by 2011 and \$170 million by 2015

Central Utah Water Conservancy District, as a taxing entity, has a fiduciary responsibility to properly manage its funds. Management of those funds is a major task of the organization given the enormous size of its projects and the fact that the timing of funding and construction are not congruent. The district must invest its funds and disburse its funds to meet the needs of its projects and to ensure the greatest possible benefit for its constituents. Failing to achieve the greatest possible benefit from financial decisions is unacceptable.

### **District Policies and Procedures Lack Sufficiency and Enforcement.**

District management has allowed lapses in administrative controls that have resulted in questionable administrative practices. Disregard for policies and procedures, liberal interpretation of expense policies, and general manager approved violations of policies has resulted in approximately \$90,000 of questionable expenses and \$185,000 of expenses that violate accepted business practices. Examples of questionable district administrative controls demonstrative of either violated policies or poor controls include:

- District board members indirectly receiving at least \$110,000 from district contracts, although specifically prohibited by state code and district policy.
- District management benefits including a \$75,000 contracted bonus agreement for future work as well as a \$37,000 car for the general manager and inappropriately reported car allowances for another senior manager.
- Travel expenses at least \$35,000 in excess of necessary travel costs; because the district failed to use the lowest available rates or follow its own lodging policy.
- Vehicle fleet utilization that does not appear adequate to support the number of fleet vehicles. Further, use of district vehicles for commuting purposes is not controlled well.
- District procurement practices resulting in retention of many services without using a competitive bid process.

### **Discontinuation of SFN Project Affords Opportunity to Redirect Efforts.**

In our opinion, district leadership has maintained a historical plan in the SFN water allocations. In particular, district leadership appears to be closely tied to delivering an irrigation project to southern Utah County and eastern Juab County. This focus is primarily defended using two arguments:

- commitment to the area
- growth in the area

With Utah's rapid urbanization, it is possible that the former SFN plan may no longer be the best alternative. In particular, demographic and economic data question the water allocations of the former SFN water project. For example, east Juab County is projected to need 2,506 acre-feet of culinary water by

2050 while Salt Lake County is projected to need 286,133 acre-feet of water and northern Utah County is projected to need 91,566 acre-feet of water. In spite of this need, east Juab was to receive 42,000 acre-feet of water while Salt Lake County was to receive 70,000 acre-feet of water and northern Utah County was to receive 20,000 acre-feet of water. We believe that the Legislature should form a task force or study committee to independently analyze and recommend a position the Legislature could consider adopting regarding allocation of the former SFN water.

**This Page Left Blank Intentionally**

# Chapter I

## Introduction

Management oversight and administrative controls within the Central Utah Water Conservancy District (the district) could be significantly improved. First, the district's financial management can be more consistent. While the district reduced its long-term debt by making advantageous use of the federal government's need for cash, cash management at the district could be revamped. Further, with better financial planning, the district might be able to reduce its tax rate. Second, district policies and procedures lack sufficiency and enforcement. Specifically, lapses in administrative controls occurred which resulted in questionable administrative practices. Third, in addition to these managerial issues, the discontinuation of the Spanish Fork-Nephi (SFN) system affords an opportunity to analyze the district's water efforts. In our opinion, a legislative task force should be formed to independently re-assess the former SFN water allocations.

Additionally we received three allegations related to district operations. The first allegation involved transactions between the district and Strawberry Water Users Association. The second allegation involved the activities of a group known as Waterwatch. The third allegation concerned bidding procedures for large district contracts. The first two allegations appeared to have no merit and the third was not addressed for lack of pertinent information.

## History of the Central Utah Project

---

**The primary objective of the CUP was to help Utah claim its 1.7 million acre-feet a year from the Colorado River by storing and diverting water from the Colorado River Basin to the Bonneville Basin**

---

The Central Utah Project (CUP), which is being completed by the Central Utah Water Conservancy District, has had a long and fairly tumultuous history. In 1922, the Colorado River Compact divided the waters of the Colorado River between the lower basin states (California, Arizona, and Nevada) and the upper basin states (Wyoming, Colorado, Utah, and New Mexico). Each basin was allocated about 7.5 million acre-feet of water annually. It was determined in 1948 that Utah had a 23 percent share of the upper basin water which equaled approximately 1.7 million acre-feet a year.

The CUP was first described in a 1951 Bureau of Reclamation report. The CUP was so large that it was divided into two phases: the initial phase and the ultimate phase. Together, these two phases formed the comprehensive plan.

Under the CUP comprehensive plan, 800,600 acre-feet of water would be provided to Utah at an estimated total cost of a little over \$1 billion. This amount of water would provide a full irrigation supply for 200,000 acres of new land and a supplemental supply to 239,900 under-irrigated acres. In addition, 48,800 acre-feet of municipal and industrial water was to be provided. In 1956, the Colorado River Storage Pact (CRSP) was passed with the CUP as the largest CRSP project. The primary objective of the CUP was to store and divert water from the Colorado River Basin to the Bonneville Basin. Flaming Gorge and Glen Canyon were the first CUP dams completed to aid in this objective. These dams were to function as “cash register” dams by generating power for the Intermountain West. The revenue from these power sales would help repay some costs of the CUP and other reclamation projects.

---

**The CUP was conceived 50 years ago when Utah was a more agrarian state. Today, Utah is the sixth most urban state in the nation.**

---

Certainly many changes have occurred since the CUP was first described. When the CUP was conceived, the development of the agricultural economies of the states was a national goal. At this time, Utah was a more agrarian state. Today, Utah is the sixth most urban state in the nation. According to census data, 87 percent of Utah’s population either lives in an urbanized area (Utah has four: Logan, Ogden, Salt Lake City, and Provo-Orem) or in a city over 2,500 persons. As a result, competition for water resources between urban and agricultural uses has become prominent. In addition to this change, environmental considerations have also become a significant factor today whereas these considerations were negligible fifty years ago. Because of environmental and other factors, it is simply harder and more costly today to construct a large-scale water project.

Because of the above factors, the CUP appears to be scaled back in size. Today the plan most closely resembles the initial phase of the comprehensive plan. Under the current plan, 264,360 acre-feet of water are scheduled to be provided; 44,400 acre-feet are designated for fish habitat; 107,360 acre-feet are for M&I use, while 112,600 acre-feet are for irrigation use. This amount of irrigation water provides a full irrigation supply to 10,000 acres of new land and a supplemental supply to 65,570 under-irrigated acres. To date, \$1.7 billion has been spent on the CUP. If the project is completed as planned with little time delay, the CUP is estimated to ultimately cost \$2.3 billion.



---

**The CUP is estimated to ultimately cost \$2.3 billion.**

---

In 1964, the Central Utah Water Conservancy District was organized by Utah's Fourth District Court. Seven counties were originally represented within the district: Uintah, Duchesne, Wasatch, Utah, Salt Lake, Summit, and Juab. Later, five more counties joined: Sanpete, Garfield, Piute, Millard and Sevier. Today, with the 1994 exodus of Millard and Sevier Counties, the district represents ten counties.

## **Central Utah Project Today**

The CUP is currently made up of six units: the Ute Indian Unit, the Vernal Unit, the Jensen Unit, the Uintah Unit, the Upalco Unit, and the Bonneville Unit. The Vernal and Jensen Units are the only two units which have been fully completed. Both the Uintah and Upalco Units are at an impasse because a long-standing disagreement between the Ute Tribe and the downstream water users over storage rights has never been resolved. Construction on the Ute Indian Unit is also on hold. The Bonneville Unit, the largest CUP unit, is partially completed; however, this unit has recently run into trouble as well.

---

**Work on 2 of the 6 units has stalled due to a long-standing storage rights disagreement**

---

The Bonneville Unit has both a municipal and industrial (M&I) component and an irrigation and drainage (I&D) component. M&I is essentially culinary water use while I&D is essentially agricultural water use. The M&I system, of which the Jordanelle Reservoir is a primary component, is finished. However, the M&I component cannot function without the completion of another component- the Diamond Fork System. The proposed I&D system, of which the Strawberry Reservoir is a primary component, has not been completed and has recently run into trouble.

The Spanish Fork-Nephi System (SFN), the I&D delivery system, has been a controversial project for some time. In general, the need for and expense of the project have been questioned. Recently, questions have been raised concerning competing water needs. Specifically, the wisdom of sending high quality water to southern Utah County and eastern Juab County as irrigation water was questioned, given the need for additional M&I water in Salt Lake County.

---

**The Bonneville Unit, the largest CUP unit, is partially completed and has also run into trouble.**

---

In spite of these questions, the district was in the process of completing a Draft Environmental Impact Statement (DEIS) for the SFN system. However, in July 1998, the Department of Interior (DOI) instructed the district to discontinue planning on the SFN system since it had become clear from public comments on the SFN DEIS that the former SFN project must be re-analyzed.

The district is currently in the process of obtaining a Final Supplemental to the Final Environmental Impact Statement (FS/FEIS) on the Diamond Fork System which was previously included in the SFN DEIS. While the SFN pipeline is an optional system, the Diamond Fork System is not. The Diamond Fork System must be completed in order for Jordanelle Reservoir to make contractual water deliveries to Salt Lake County. The relationship between the Diamond Fork System and the Jordanelle Reservoir revolves around the Jordanelle Exchange which is explained in Appendix A. Once construction begins on Diamond Fork, reanalysis will begin on the former SFN system.

## **Audit Scope and Objectives**

This audit follow-up was initiated in response to a request by several legislators. In particular, these legislators were concerned that property tax payments for the CUP might not be the most equitable means of paying for water use. However, before this issue could be analyzed, the legislators requested current information on the district, the chief agency responsible for the CUP. As a result, these legislators requested a follow-up of our 1989 audit on the district. The previous audit had identified a number of financial and administrative concerns, and it was the desire of the requesting legislators to determine how well managed the district is today.

While this audit focused primarily on issues identified in the 1989 audit, we also reviewed some additional CUP issues. In 1989, the district was not the agency responsible for administering the CUP; rather, the Bureau of Reclamation was. However, in 1992, the Central Utah Project Completion Act (CUPCA) took the administration of the CUP away from the Bureau of Reclamation and gave that responsibility to the district. As a result, we allowed our scope to extend to some CUPCA issues.

Our audit objectives were the following:

1. Determine if the district's financial management is sound.
2. Determine if the district's administrative controls are adequate and functioning well.
3. Identify possible concerns surrounding the re-scoping of the former SFN system.

## **Chapter II**

# **District Financial Management Is Inconsistent**

District application of generally accepted financial management principles has been inconsistent. Some financial decisions made by district management have been beneficial while other decisions have not been well thought out and have cost taxpayers at least \$11.1 million. Unchecked, poor district taxing decisions could cost Utah taxpayers tens of millions more. District financial decisions have an effect on Utah's taxpayers; failing to achieve the greatest possible benefit from financial decisions is unacceptable.

In part, the success of some district decisions has contributed to the failure of other decisions. Prior to 1998, the district did little long-term financial planning and, as such, had no strong criteria for setting tax rates. The district bases a great deal of its planning on work of the Governor's Task Force in 1993, which indicated that funding shortfalls might occur. However, the district's federal repayment and changing plans have dramatically altered the district's funding needs. The district has not recognized its own changing environment in its planning process and, as of May 1999 continued to incorrectly state that it would need to tax at the highest possible rate.

Central Utah Water Conservancy District (the district), as a taxing entity, has a fiduciary responsibility to properly manage its funds. Management of those funds is a major task of the organization given the enormous size of its projects and the fact that the timing of funding and construction are not congruent. The district must invest and disburse its funds to meet the needs of its projects and to ensure the greatest possible benefit for its constituents. The following topics are addressed in this chapter:

- Debt pre-payment will save taxpayers \$117 million by 2047
- Poor cash management has cost taxpayers \$3.7 to \$4.4 million
- Poor fund management has cost taxpayers \$7.2 million
- Poor taxing decisions could cost taxpayers \$81 million by 2011 and \$170 million by 2015
- Earlier recommendations have been implemented

## **Federal Debt Pre-Payment Created Major Savings**

In 1992, federal government balanced-budget initiatives allowed CUWCD to prepay district-owed federal debt at a substantial discount. As a result of this allowance, the district pre-paid most of its federal debt in late 1998. Federal debt covering agricultural water was not pre-paid because this debt accrues no interest. The district calculates that this 1998 prepayment resulted in gross savings of \$117 million over the coming years, a savings that they calculate is worth \$25.5 million to Utah taxpayers today.

---

**Federal Government's movement toward a balanced budget resulted in \$117 million in savings to Utah taxpayers by 2047**

---

This savings was made possible primarily because of the federal government's movement toward a balanced-budget which would create needed cash. The incentive presented to the district and other entities owing the federal government was extremely favorable reductions in long-term debt for cash up-front. Specifically, the federal government allowed a pre-payment to reduce not only the interest owed but the principle owed as well.

For the district, this meant a decrease not only in gross expenses but also in annual expenses. It also has the added benefit of reducing the district's property tax revenue obligated to paying debt. These unobligated tax revenues could now be used in helping to pay for Utah's share of CUPCA project costs.

### **District Has Significant Federal Debt**

In 1985, the Utah taxpayers voted to approve \$508 million in general obligation bonds to repay the costs of the Jordanelle Dam project to the federal government. In 1992, the district's total federal debt was \$467 million. In addition to this debt, the passing of CUPCA in 1992 made the district responsible for 35 percent of the costs to finish the project. The total amount the district will owe for its share of CUPCA was estimated by the district to be approximately \$221 million. This amount would have increased the district's debt payment by approximately 47 percent and pushed the district over the voter approved debt ceiling.

### **District Needed Funds to Support Future Obligations**

Given the district's estimate of possible local CUPCA costs, it became clear that the district did not have the property tax revenue to support its CUPCA

local cost share obligation and the entire \$467 million already owed. The district's first approach to the problem was to ask the Legislature to raise the district's tax rate from .0004 to .0006; however, this was not supported by the Governor or the Legislature. The district was instructed to find another way to fund their portion of CUPCA.

A matching of the district's need for long-term financial funding and the federal government's desire for short-term funds appeared to meet both organization's needs. The federal government was committed to balancing the federal budget and wanted cash immediately. The district had short-term funding available but needed a method of reducing long-term revenue needs in one area which would allow the application of revenue in another area. Specifically, by reducing the revenue necessary to pay off currently owed federal debt, the saved revenue could then be used to pay the anticipated future debt created by the local cost share. As a result, debt pre-payment was viewed by both the district and the federal government as a good solution to their respective problems.

Because of two previous pre-payments, by 1997 the district owed the federal government \$419 million. In 1998, the district pre-paid \$128 million to the federal government by issuing general obligation (limited tax) refunding bonds. Because of the incentives offered by the federal government, the M & I debt now owed by the district has fallen to \$292 million. The district believes that this reduction in debt will allow them to meet the local cost share of CUPCA without having to raise taxes.

While this debt pre-payment was beneficial to local taxpayers, other district actions have not benefitted local taxpayers.

## **CUPCA Cash Management Is Poor**

Even though the district has struggled to meet its debt obligation, it has not fully realized the potential earnings of all its assets. In fact, management of some of its cash reserve accounts has been neglected. The principle example of district management neglect is the CUPCA cash reserve account which has lost at least \$3.7 million by accepting an unnecessarily low interest rate. Further, with some effort the district could have earned an additional \$700,000 by investing in a number of higher yielding investment funds. Of the \$3.7 million, \$1.3 million is interest lost on local taxpayer money while \$2.4 million is interest lost on federal taxpayer money.

**The CUPCA cash reserve account has lost approximately \$3.7 million through unnecessarily low yield investing.**

CUPCA cash reserves, which reached \$72.2 million in December 1998, have been kept in a checking account receiving far less interest than higher yielding investment options or even the treasury bill rate (i.e., the risk-free rate). The district does have plans for the use of these funds, but that use is not immediate. If the district continues to neglect these funds in 1999, an additional \$1.3 million of interest income could be lost. In a positive action, the district moved its CUPCA funds in the second quarter of 1999 from a checking account to a money market account having a rate approaching the treasury bill rate.

### **CUPCA Cash Reserves Have Grown**

Construction on CUPCA’s projects, including Diamond Fork, SFN, Uintah/Upalco and the Wasatch County Water Efficiency Project (WCWEP), have not followed the originally planned timetable. As a result, the CUPCA fund balance and cash reserves for that balance have grown significantly. A positive fund balance represents a situation in which revenues received have exceeded expenditures made. In other words, a positive fund balance represents a current surplus of funds.

Because revenue growth has exceeded expenditure growth, the fund balance has been steadily rising. Most importantly, the majority of this fund balance has been maintained in the form of cash or liquid assets. This growth is shown in Figure I.

**Figure I  
CUPCA Ending Fund Balances and Liquid Assets  
1993 to 1998  
(Millions)**

	<b>1993</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
Fund Balance	\$14.5	\$25.3	\$34.2	\$59.1	\$86.1
Liquid Assets	12.7	24.0	35.9	35.0	55.5

*1993 represents a calendar year. 1995 through 1998 represent fiscal years. 1994 was a transitional period between the two accounting methods. As a result, 1994 data was not comparable and so are not reported.*

*In 1996, the liquid assets exceeded the fund balance. This excess is because liabilities, one of the three balance sheet categories, are not shown in the above figure. Instead, only the fund balance (i.e., owner’s equity) and assets are shown. Since liabilities plus owner’s equity equals assets, sometimes assets shown exceed the fund balance (owner’s equity).*

---

High CUPCA cash balances are attributed to construction delays.

---

District officials stated that unanticipated delays in SFN, WCWEP, and Uintah/Upalco project construction have caused CUPCA fund balances to grow. CUPCA money was to have been spent as the projects moved along, and it was thought that federal funds would actually lag behind project completion. Obviously, this projected funding need has not been the case.

### **District Believed Money Had to Be Held in a Checking Account**

---

CUPCA contract does not appear to prevent the district from investing in higher yielding accounts.

---

District management interpreted the federal contract overseeing CUPCA money as requiring that all CUPCA money be held in a checking account. As a result, the district never analyzed its cash management options. However, the **CUPCA Cost-Sharing Agreement** does not stipulate fund maintenance in a checking account. Further, even if the money had to be maintained in a checking account, the district always had the power, given the size of the fund, to negotiate a higher checking account interest rate. Article VI, paragraph C of the district's **CUPCA Cost-Sharing Agreement** states:

- CUPCA funds must be maintained in a separate interest bearing account in a federally chartered bank for CUPCA activities only
- Federal and local cost share money must remain in same account
- Interest earned is divided proportionally (65% to the federal government, 35% to the district)
- Interest earned on federal funds reduces the total amount the federal government must pay for CUPCA

It appears that the goal of the agreement was to insure that the state-match is accounted for and that the funds be maintained in a separate, secure account; hence, the federally-chartered bank stipulation. We believe that the contract's investing stipulations are straight forward. We are confused, however, with the varying interpretations of its simple language. Particularly the interpretation of ...a separate interest-bearing account in federally-chartered bank... .

The federal CUPCA manager has indicated that this language does not mean the money must be held in a checking account. "Basically, the bottom line for DOI is that all the money be held in one account," but the type of account does not matter. The federal CUPCA manager also indicated that the contract does

not preclude investing the CUPCA money in higher yield investments although he admits he has never encouraged the district seek higher yields. It was his belief that the additional interest would create an “accounting nightmare.” More recently the federal CUPCA manager has reversed his position stating that the fund must be in an interest-bearing checking account because the federal interpretation of the contract calls for the ability to write checks from this account.

Conversely, the district originally believed the fund had to be invested in a checking account but has now switched the CUPCA account to a limited access money market account. We don’t understand why a money market account or any other type of investment fitting within the contract stipulations would be inappropriate.

### **District Has Not Explored Investment Options**

The district defends its actions by maintaining that the federal government required the funds be held in a checking account. This district belief does not appear to be correct, nor does it appear that the district ever attempted to investigate other investment options. Assets have basically been stored for five years waiting for projects to get underway. During this period, the district took no action to maximize the use of the CUPCA assets held in its trust. The district did not pursue higher interest rates from its own financial institution nor did the district investigate investment options outside its established financial structure.

---

**District has not investigated better investment options in the 5 years it has held the high CUPCA balances.**

---

To analyze the possible investment value of the CUPCA assets, we compared the interest earned by the district in its checking account to the interest earning potential of both treasury bills and the State Treasurer’s Public Treasurer’s Investment Fund (state pool). We selected the state pool as a representative of higher yielding accounts because its performance is representative of investment funds and the pool’s information was readily available. We believe that the state pool meets all the criteria set by the DOI. The state pool is available to the district’s financial institution, relatively risk-free (actually three basis points higher, on average, than the treasury rate for essentially the same risk), and highly liquid (two day withdrawal time).

Further, the district is aware of the state pool and its benefits. The 1989 legislative audit recommended that the district invest in the state pool to receive additional interest earnings. The audit reported that the district could have obtained over \$12,000 additional interest in 1987 and nearly \$15,000 in 1988



---

**The district's bank has higher yield investment options but was never asked to use them.**

---

by investing excess checking account balances in the state pool rather than leaving the balances in the checking account. As a result, the district now uses the state pool for money not designated for CUPCA.

The district maintains that the state pool option is impossible for CUPCA money under the federal contract as written. The investment manager for their bank, however, indicated that the district had never approached him for possible options. Further, he recommended the district have the bank invest with the state pool as it has consistently delivered a higher yield than other investment options offered by the district's bank.

A representative of the State Treasurer's Office reported that the district could comply with the federal agreement by having its bank establish a trust account for CUPCA monies. A trust account would honor federal contract requirements that CUPCA funds remain in a federally chartered bank. The district's bank would then write an agreement with the State Treasurer's Office to invest CUPCA money in the state pool. The trust account would function similarly to the district's current checking account except that the funds would generate higher interest.

---

**The district did not use its large CUPCA account balance to negotiate a higher interest rate with the bank.**

---

Even if CUPCA money had to be maintained in a checking account, as the district believed, the district could still have obtained a higher interest rate. The CUPCA account has always been a very large account and, as such, carried a great deal of negotiating power regarding interest rates received and bank service fees charged. A representative of the district's bank confirmed that no attempt to negotiate for a higher interest rate had been made by the district. This lack of negotiation meant that this multi-million dollar account was allowed to receive an interest rate of 3 percent which is 2 percentage points less than a \$20,000 checking account can receive (A \$20,000 high yield checking account qualifies for an interest rate equal to the 30 day T-Bill rate). In addition, we found no evidence that the district shopped among banks for competitive interest rates.

### **Significant Interest Earnings Have Been Lost**

---

**The district's \$72.2 million account received a lower interest rate than a \$20,000 account.**

---

The district has held the CUPCA cash reserves in a checking account since 1993. Between October 1993 and December 1998, this checking account paid interest between two and three percent, earning the CUPCA funds a total of \$5 million in interest. These rates are approximately 2 percentage points below the risk-free rate, yet the risk represented by these checking account rates is the same. By not achieving the treasury bill rate, \$3.7 million in interest

was lost. Sixty-five percent of this CUPCA money is federal money while 35 percent is local taxpayer money. As a result, \$2.4 million is federal interest lost while \$1.3 million is state interest lost.

During this same time period, higher yielding investment funds were generally 3 basis points above the risk free rate for approximately the same risk. If the district had required its bank to invest the CUPCA cash in such a fund, \$9.4 million in interest would have been earned. By not investing CUPCA cash in such a fund, \$4.4 million in interest was lost. Again, sixty-five percent of this CUPCA money is federal money while 35 percent is local taxpayer money. Thus, the federal taxpayers lost \$2.9 million in interest while the local taxpayers lost \$1.5 million.

---

**Investment in a higher yielding account would have nearly doubled fund earnings.**

---

The increasing balance held in CUPCA's checking account means that more interest income is lost each year. In its checking account, the CUPCA cash balance would earn approximately \$2.1 million for 1999. In a higher yielding investment account, the CUPCA cash could earn \$3.6 million— yielding the taxpayers an additional \$1.5 million for the year.

Neither the district nor the DOI was aware of the amount of interest being lost by holding CUPCA funds in a low interest yield checking account. When we presented our analysis of the interest lost, officials from both the district and DOI expressed surprise. In fact, the federal CUPCA manager, who had been previously lukewarm to investment possibilities, appeared convinced by the interest lost that a cash management change should be investigated.

## **District Tax Rate Not Based on Need**

District revenues have been far greater than district expenditures which has resulted in high district fund balances and indicate that the district has, since 1995, collected at least \$7.2 million more in property taxes and water sales than necessary. As of May 1999, the district's plans were to continue taxing at the highest possible rate. At that rate, the district would have unnecessarily collected \$81 million by the year 2011. At a discount rate of 5 percent, this gross amount has a present value of \$65 million.

District staff now agrees that lower taxes are possible given new information added to their planning documents. Excessive tax collections can be eliminated by tighter financial control of district fund balances and an improved planning process. The new district tax reduction plan agrees with our calculations. The

---

**District records indicate they have collected at least \$7.2 million more in property taxes and water sales than necessary. If this trend continues, the district will have unnecessarily collected \$81 million by the year 2011.**

---

resulting gross savings of the two plans are roughly equivalent. However, the district plan maintains higher tax rates in earlier years, which benefit the district. We believe tax rates in earlier years can be lower which benefit the taxpayer.

The district's revenue contribution from its high tax rate is best exemplified by the district's increasing fund balances. Annual ending fund balance increases demonstrate greater revenue than expenses. The district's general fund, which is intended to account for the district's daily operating expenses, has an ending balance that increased 30 percent (\$3.4 million) between 1995 and 1998 even though district financial statements showed there was no need for the additional funds. A reduction of this fund balance to a more prudent amount would have resulted in a lower tax rate and would not have jeopardized any district planning. District leadership justifies its tax rate and the resulting projected fund balance by stating that its position is allowable by statute.

---

**Unnecessary fund growth was noted in 1989.**

---

The growth of district fund balances is not a new concern. Our 1989 audit report noted concerns with the district's fund balances. Specifically, concern was expressed over the fact that total fund balances had grown from \$9.1 million in 1980 to \$22.7 million in 1988. In addition, the audit noted that these large fund balances had been accumulated without the board clearly establishing a need for the funds. Finally, the audit raised the possibility that the district's fund balances may be too large and that the district's tax rate could be reduced. In our opinion, these concerns still exist and are even stronger today.

District fund balances, expected expenditures, and expected tax and water sale revenues do not appear to have received priority treatment by the district's general manager or board. District financial planning and forecasting have been left to the district's controller and CUPCA program manager who are already charged with considerable duties.

Much of the district's current thinking is derived from the 1993 Governor's Task Force conclusion that more funding may be needed in the future. The findings of that group became obsolete in 1997 due to the district's debt prepayment. In our opinion, specific financial expertise at the district is lacking. We believe, given the volume and nature of the district's finances, that in-house financial expertise should be sought. District finances should be thoroughly examined by the district's board as a prelude to establishing property tax rates. Further, we believe the Legislature should reconsider the current statute regarding special district fund balances to encourage efficient stewardship of property taxes. Statutory adjustments can be made to increase control of general fund and capital projects fund balances.

## General Fund Balances Lack Purpose and Appear Excessive

A positive fund balance represents reserve money which accumulates when revenues exceed expenditures.

By state standards, the district's general fund ending balance was high, and has increased by 30 percent since fiscal year 1995 for no specific purpose. A positive balance represents reserve money which accumulates when revenues exceed expenditures. Approximately 70 percent of the district's general fund revenues are derived from property tax collections and, as such, we believe it is unacceptable for the district to maintain unnecessarily high reserves in its fund balances. If more prudent fund balance criteria were followed, the general fund's fund balance could be significantly reduced, saving district taxpayers approximately \$7.2 million in taxes.

Increasing Fund Balance Lacks Purpose. The general fund's ending balance has increased by \$3.4 million since 1995. According to the district's accountant, this increase is not based on any need. Rather, he states that the general fund was simply underspent. The district's accountant pointed out that the level of the general fund balance is allowed by state statute and, therefore, the district did not feel a need to further justify the rising balance. Figure II shows the fund balance increases since fiscal year 1995.

**Figure II**  
**General Fund's Fund Balance Over Time**  
**(Millions)**

	FY 95	FY 96	FY 97	FY 98
Ending Balance	\$ 8.2	\$ 9.9	\$11.3	\$11.6

Since the district's general fund balance is allowed by statute, the district does not feel a need to justify the rising balance.

Currently, **Utah Code** 17A-1-415(2) allows the general fund's ending balance to be as great as 100 percent of the current year's property taxes (\$22.9 million in 1998) but does not call for justification based on need or purpose. The fact that a fund balance is allowed under statute is inadequate justification for setting high reserve levels. These reserves, stated as fund balances, are in effect taxpayer and service user funds; the greatest contribution coming from property tax payers via property tax rates set by the district at the maximum rate allowed by statute.

The district's capital projects fund balance has grown 81 percent since 1995.

A review of the district's general fund alone is, however, insufficient. General funds and their balances are closely tied to capital project funds through statute. Capital projects fund revenue comes from the general fund and is allowed by **Utah Code** 17A-1-415 to be a sweep account for the general fund, meaning that excess revenue accumulated in the general fund can be moved and stored in the capital projects fund. Unlike the general fund, the capital projects fund has no monetary limit on its balance. Rather, its balance is not to exceed the total projected cost of approved capital projects.

Figure III shows the increase in the capital projects fund balance. In reporting this balance, we also included the capital projects contingency fund which is an unreserved fund.

<b>Figure III</b>				
<b>Capital Projects Fund Balance Over Time</b>				
<b>(Millions)</b>				
	<b>FY 95</b>	<b>FY 96</b>	<b>FY 97</b>	<b>FY 98</b>
Balance	\$10.3	\$14.9	\$18.0	\$18.6

As can be seen, the capital projects fund has grown 81 percent since 1995. This 1998 amount is statutorily allowed because the value of the board approved project (expansion of the Utah Valley Water Treatment Plant) has an estimated completion cost of \$19.2 million.

Because of this relationship between the general fund and the capital projects fund, it is possible the district is not particularly motivated to lower their tax rate. In fact, the district's accountant indicated that every year during the budgetary process, he determines how much excess tax revenue is going to be received and then budgets to move those funds into the capital projects fund. He told us that the fact that the balance in the general fund is increasing tells him he has not done a through job of sweeping money into the capital projects account.

Certainly the district must be able to save for construction of capital projects. However, there must be a balance between an appropriate saving rate for capital projects and a reasonable tax-rate which does not produce large amounts of excess tax revenue. Even the district's own review of bond

---

District only needs \$4.4 million of its \$11.2 million general fund balance.

---

obligation identifies that the district will have excess funds in both the general fund and the capital projects fund.

**District's General Fund Balance Appears Excessive.** The current general fund balance of \$11.2 million appears unnecessarily large. If the general fund balance had been dropped to \$4.4 million, the district could have taxed at a lower rate and saved the taxpayers \$7.2 million. However, the district has done no analysis as to a prudent fund balance to maintain in the general fund. Instead, the general fund balance is acceptable to the district as long as it falls within statutory limits.

**Utah Code** 17A-1-415(1) statutorily defines two primary reasons for general funds:

- To save for future asset purchases
- To provide coverage for unexpected expenditures

In addition, a general fund balance can also be used to cover emergencies. This need does not appear necessary for the district, however, because it maintains a separate emergency reserve account. District personnel and planning documents indicate that the district's rising general fund balance is not the result of saving for future asset purchases or for unexpected emergencies. Thus, the district's general fund balance functions to cover unexpected expenditures.

---

Finance says district could mirror state rainy day fund balance percentage

---

The State of Utah, nationally recognized as a financially well managed state, maintains a rainy day fund in the general fund which is for the same purposes as allowed general fund balances in special service districts. By statute, the state's rainy day fund balance is allowed to be a maximum of 8 percent of the total general fund appropriations. State Division of Finance personnel believe that a ratio of the district's general fund balance to district expenditures should mirror the state's requirement and would be an appropriate comparison ratio. However, since the district does not have the financial resources of the state, we doubled the state's criteria to 16 percent of total general fund expenditures. Figure IV shows the district's historical ending fund balance to annual expenditure ratios.

**Figure IV**  
**Ratio of All District Expenses to**  
**General Fund Balance**  
**(Millions)**

	1995	1996	1997	1998
General Fund Balance	\$ 8.2	\$ 9.9	\$11.3	\$11.6
Expenditures	26.0	19.4	24.8	27.3
Ratio	32%	51%	46%	43%

As can be seen, the ratio of general fund balances to district expenditures far exceeds the 16 percent figure which is twice what is deemed adequate by the state. Our review of the district's historic expenses shows that there should not be any unexpected expenditures that exceed 16 percent and unexpected costs should never be 30 to 50 percent of the district's normal annual expenditures. Figure V shows the ending fund balance allowed by maintaining 16 percent of the district's expenditures and the ending fund balance actually held by the district.

**Figure V**  
**Comparison of Actual Fund Balance to**  
**16 Percent Fund Balance**  
**(Millions)**

	1995	1996	1997	1998
Expenditures	\$26.0	\$19.4	\$24.8	\$27.3
16% Balance	4.2	3.1	4.0	4.4
Actual Balance	8.2	9.9	11.3	11.6
<b>Difference</b>	<b>\$ 4.0</b>	<b>\$ 6.8</b>	<b>\$ 7.3</b>	<b>\$ 7.2</b>

In essence, the district has taxed district taxpayers an additional \$7.2 million to support fund balance growth that has no apparent purpose and is unnecessarily large to cover unanticipated expenditures. While the district wants to hold

enough of a fund balance to protect itself from unexpected expenditures and provide itself with a source of working capital, it should not hold so much that the taxpayers are taxed without cause. District management now believes that a fund balance percentage equal to 25 percent of revenues is adequate.

The following tax rates shown in Figure VI could have met the district's actual expenditures while saving the taxpayers \$7.2 million in excess revenue collection. In performing this analysis, we calculated the target fund balance (16 percent of district expenditures) and gradually reduced the actual fund balance to the 1998 target balance of \$4.4 million.

<p align="center"><b>Figure VI</b>  <b>Potential District Tax Rates and Savings</b>  <b>1995 - 1998</b></p>			
<b>Fiscal Year</b>	<b>CUWCD Tax Rate</b>	<b>Revised Tax Rate</b>	<b>Yearly Tax Savings</b>
1995	.000396	.000319	\$2,796,555
1996	.000349	.000300	2,194,008
1997	.000323	.000284	1,929,379
1998	.000400	.000391	322,564
<b>Total Potential Savings</b>			<b>\$7,242,506</b>

The data in Figure VI is based on the district's actual expenditures. However, it is important to note that many of the expenditures identified in the general fund are actually transfers to other district accounts. Some of these transfer amounts are mandatory (i.e., the transfer of the local cost share into the CUPCA account). However, some of these transfer amounts are more flexible (i.e., the transfer amount into the capital projects account). An expenditure analysis might have provided more room for a decrease in tax rates.



## District Expenditures Don't Justify Future Tax Rate

The excess funding between 1995 and 1998 is a trend the district had planned to continue according to district records. In May 1999, the district's financial plans had not incorporated the then instituted debt pre-payment previously discussed. As a result, district financial forecasts under-estimated revenues and over-stated expenses. The net result of these errors convinced the district that taxing at the maximum rate was justified. This despite the fact that the district's bond obligation report identified that the district's general fund would exceed the maximum allowable ending year balance by the year 2004. The bond report estimated the general fund balance would be approximately \$45 million and further projected fund growth to be \$6 million per year. This general fund balance growth was due to the lower expenses allowed by the debt pre-payment plan.

---

**Documents indicate the district planned to tax at the maximum allowable rate of .0004 between 2002 and 2012 even though that funding level is unnecessary.**

---

The district's projections, without the benefit of the debt pre-payment identified in the bond report, show that the district intended to maintain its high tax rates to the year 2012. This projection identified that the district planned to tax at the .0004 percent rate for the years 2002 through 2011, even though the level of funding attained will not be necessary. If the district taxed at the .0004 rate, the district would have a general fund balance of \$55 million and a capital projects fund balance of \$30 million for a total balance of \$85 million. Current district projections estimate a necessary fund balance total of only \$15.4 million. With lower fund balance requirements, we estimate that only \$13 million would be needed.

Using the district's anticipated revenues and expenditures, the district now has preliminary plans to gradually reduce its tax rate from .00039 to as low as .0002 by 2011. This change would reduce annual taxes up to 50 percent and would, for example, on a \$200,000 home save \$40 per year by 2011. We believe that advancing the tax rate reductions is possible. In fact, given the district's current balances, taxes can immediately be reduced to .00033 (a 17.5 % reduction). Tax rate reductions could continue as low as .00017, which would be an operational maintenance level.

---

**Prior district taxing plans would collect \$81 million more than necessary by 2011 and \$170 million more than necessary by 2015.**

---

Both scenarios reduce gross taxes between 1999 and 2011 (the year most major building expenses end) by \$81 million. They differ in when savings would be realized by the taxpayer and the level of funding maintained in reserve balances. The greater savings to the taxpayer is realized when tax reductions are made sooner. As a result, our plan has a present value of \$65 million and the district's plan has a present value of \$61 million. Savings for both projection plans are more dramatic for the years 2012 through 2015 where

taxes are reduced by \$22 million per year. The total gross tax savings to 2015 is projected to be \$170 million which has a present value of \$120 million. For greater detail please see Appendix B.

### **Statute Governing Fund Balances Needs Review**

Since the district's fund balance is in effect tax-based, there should be logic and prudence justifying the rate to both the Legislature and the taxpayer. The district's board of directors should have an analysis performed to determine an appropriate and justifiable general fund balance level. From that fund balance level, the board should establish a tax rate which is sufficient for the district's anticipated budgeted expenditures and maintains a sufficient, but reasonable, reserve for unanticipated expenditures. A review by the Legislature may also be called for to possibly modify statutes governing special districts' fund balances. As the statute is currently written, it appears that little control over the district's expenditures and taxing policies exists.

According to **Utah Code** 17A-1-415(2), the accumulation of a fund balance in the general fund may not exceed the greater of:

- 100 percent of the current year's property taxes, or
- 25 percent of the total general fund revenues for districts with annual general fund budgets greater than \$100,000.

While these requirements set the dollar limit that can be maintained in the general fund ending balance, they do not limit the funding available to the district. Statute also allows excess general fund balances to be shifted to the capital projects fund. The capital projects fund has no specific monetary limitation. Rather, it is limited by a formal long-range capital plan adopted by the governing body. As a result of this code language, the district could in 1998 technically maintain \$22.9 million in its general fund balance and an amount within its capital projects fund limited only by the monetary scope of the capital projects plan.

Because of this fund interrelationship, we believe there is little actual control over fund balances within the district. Given code descriptions of the intent of general fund accounts, it does not seem that the Legislature's intent was to allow large, unchecked general fund balances. As a result, we believe the

---

**District can reduce its tax rate 17.5 percent to .00033 and still meet its obligations, resulting in a gross tax savings of \$81 million by 2011.**

---

---

**Lack of fund balance control suggests the Legislature should re-examine Utah Code 17A-1-415 and determine if statute changes are appropriate.**

---

Legislature should re-examine **Utah Code** 17A-1-415 and determine if changes to this statute are appropriate.

While the majority of our work focused on cash management and tax issues, we also reviewed implementation of the 1989 budget recommendations.

## **Many Budget Recommendations From 1989 Audit Implemented**

Most of the budget recommendations made in the 1989 audit, not already discussed in the body of this chapter, have been implemented by the district. The recommendations made in the 1989 audit centered around two basic issues:

- (1) improving board oversight of the budgetary process; and,
- (2) providing more information for the budget and financial processes.

In 1993, our office conducted an in-depth follow-up of the recommendations made in 1989 and found most of them had been implemented. The follow-up in this audit concurs with most of the findings in the 1993 follow-up audit.

### **Improving Board Oversight of Budget Process**

The 1989 audit recommended that the board spend as much time as needed to verify the appropriateness of management requests. That audit also recommended that district staff provide the board with any information requested by them. The 1993 follow-up audit indicated that both these recommendations had been implemented. The board members interviewed in 1993 felt that they were given enough time to review the budget and question staff about any additional information they felt was lacking. Further, they believed they had no difficulty in obtaining information from staff. The board members interviewed in this follow-up voiced similar feelings.

### **Providing More Information for Budgetary and Financial Processes**

The 1989 audit recommended improvements to the budgetary and financial processes. The staff was asked to prepare additional budget line items and to provide more supporting information to explain requested expenditures. The board was asked to establish the purpose and dollar limits for the various funds

---

**Board members reported they have enough time to adequately review the district's budget.**

---

held by the district. Also, the audit recommended that the board improve its capital planning and establish a separate capital projects fund. The 1993 audit found that all recommendations related to this area were implemented. This current follow-up found that all but one of these recommendations were implemented.

**Prepare a Single Budget Line Item for Lobbying Expenses with**

**Detailed Amounts.** The 1993 follow-up found this recommendation was implemented because an account entitled “Consultants-Federal” was used for federal lobbying and an account called “Consultants-State/Local” was used for lobbying on the state level. While these accounts are still in the budget, in this current audit we do not believe the recommendation is still implemented.

---

CUPCA lobbying expenses, averaging \$7330 per month, are still not itemized in the district’s annual budget.

---

Specifically, the district’s CUPCA lobbying expenses are not itemized in the district’s annual budget. Over the past three years, the district has paid over \$270,000 for Washington, D.C., lobbying efforts or \$7,330 per month. However, this amount is contained in the CUPCA budget under the CUWCD *Direct Expense* category. The total budgeted funds in this category were \$1,072,900 for fiscal year 1999, which the lobbying expense is a part. As a result, we believe the district is not fully complying with this recommendation for a single budget line item identifying lobbying expenses.

**District Prepare Additional Budget Line Items for Travel and Any**

**Other Areas of Concern.** The original audit discovered that there were no line items for travel, but the expenses were dispersed throughout the budget. The 1993 follow-up found that this recommendation had been implemented. The district had created three accounts to which travel expenses are posted: Director Expense, which covers travel for the board; Staff Expense; and, Staff Training, which covers travel for staff. This audit noted the use of two expense accounts to cover the same areas: Director Expense and Staff Expense/Training. Our only concern is the fact that the total cost of trips and training events are not readily available. Many records must be reviewed to discover the total cost of a board training or other staff event.

---

Board members believe budget requests are accompanied by enough information for the district’s board to make informed decisions.

---

**Budget Requests Be Accompanied by Enough Supporting Information to Explain Expenditures and How They Arrived at the Budget Amount.**

The 1993 follow-up found this recommendation was implemented. Board members that were talked to indicated that the budget has enough information to justify expenditures and to help the board understand how staff prepared the budget requests. In this follow-up, we found descriptions explaining why each budget area is needed and how the funds are to be used. The board members

also indicated that they have adequate information available to justify expenditures.

**Staff Prepare Specific Descriptions for Each Budget Category.** The 1993 follow-up indicated this recommendation had been implemented. It was noted that the board is presented with a summary of all accounts and the total amount in each one. As supporting information, the accounts are broken down into specific activities and each one has a quantity, unit cost, and total cost which gives the board a good idea of the type and amount of work being done. The current follow-up found similar information being presented to the board. Further, the board felt that adequate information was presented in the budget.

**Budget Proposal Should Compare New Budget Requests to the Original Budgeted Amount for the Prior Year.** The 1993 follow-up reported this recommendation as implemented. The budget is prepared to give the board a historical view of each budget item. Our follow-up found this practice is still followed.

**Board Designate Purpose of Debt Service Sinking Fund, Future Construction Reserve Fund, Contingency Reserve Fund, and Any Others Where Needed.** The 1993 follow-up audit reported this recommendation was implemented. At the time of the 1989 audit, few of the funds had sufficient explanation as to their purpose or how the money was to be spent. The 1993 follow-up found most of the funds now have a written policy. Further, the Debt Service Sinking Fund no longer existed. In addition, the Future Reserve Construction Reserve Fund has been incorporated into the Capital Projects Fund. This current follow-up found the existing reserve funds to have a defined purpose.

**Board Establish a Maximum Amount for Each Fund.** The 1993 follow-up found this recommendation implemented. When the 1989 audit was conducted there was concern that the asset funds held by the district could possibly have unlimited fund balances with no restrictions. The 1993 follow-up found that all reserve funds had maximum dollar limits placed upon them. This current follow-up also found reserve accounts having maximum dollar limits with the exception of the Facility Reserve fund.

In our opinion, the district could improve financial management. The district could revamp CUPCA cash management. In addition, we see no justification for the rising general fund balance. The rising fund balance opens the possibility that the district might be able to lower its tax rate with better planning. We did see, however, that the district has implemented all but one of the financial recommendations from the prior audit.

## Recommendations:

1. We recommend the district invest, through its financial institution, unspent CUPCA monies in a manner whereby interest earnings are maximized at an acceptable risk level. The state pool may be a good candidate.
2. We recommend the district and its board of directors decide on an appropriate general fund balance level and establish a tax rate which will allow the district to meet expenditures while avoiding unnecessary increases in the general fund balance.
3. We recommend the district consider adding a position in-house which incorporates specific financial management skills.
4. We recommend the Legislature review **Utah Code** 17A-1-415 to determine if changes are necessary to eliminate excessive fund balances.
5. We recommend the district itemize its Washington, D.C. lobbyist expenses in its annual budget.

## **Chapter III**

# **District Policies and Procedures Lack Sufficiency and Enforcement**

Central Utah Water Conservancy District (district) management has allowed lapses in administrative controls that have resulted in questionable administrative practices. Disregard for policies and procedures, liberal interpretation of expense policies, and general manager approved violations of policies have resulted in approximately \$90,000 of questionable expenses and \$185,000 of expenses that violate accepted business practices. Examples of questionable district administrative controls demonstrative of either violated policies or poor controls include:

- District board members indirectly benefitting from district contracts although specifically prohibited by state statute and district policy.
- District management benefits including a \$75,000 contracted bonus agreement for future work; a \$37,000 car for the general manager; and, inappropriately reported car allowances for another senior manager.
- Travel expenses at least \$35,000 in excess of necessary travel costs because the district failed to use the lowest available rates or follow its own lodging policy.
- Vehicle fleet utilization that does not appear adequate to support the number of fleet vehicles. Further, use of district vehicles for commuting purposes is not controlled well.
- District procurement practices resulting in retention of many services without using a competitive bid process.

District leadership has revised the district's policies and procedures to address past audit criticisms. Human resource and procurement policies have been strengthened. We are, however, concerned that although policies have been reviewed and apparently strengthened, problems seem to persist. Often these revised policies and procedures appear to be overridden by the district's management with the knowledge of some or all of the district's board.



## District Financial Participation with Board Members Should Be Avoided

Two district board members have received at least \$110,000 in benefits from district contracts with closely related organizations even though district management is aware that such financial relationships are not allowed. The board chairman has received \$89,295 in consulting fees, and a second board member has received \$19,300 for management work. We have similar concerns with a district supported contract with its' vice-chairman's company, where that company was awarded a \$500,000 contract to do construction work for a district-funded project.

Certainly some district board members have indirect relationships with the district which are potential sources for conflict of interest. For example, two board members are employees of water conservancy districts while three are associated with local irrigation companies. It is possible that these indirect relationships are inherent in a board which seeks individuals knowledgeable about water. However, we are concerned with the three board members discussed in this chapter because they received indirect payments from the district.

---

Two board members inappropriately received \$110,000 from district contracts.

---

Financial dealings with board members beyond payments for actual board duties appear to be conflicts of interest and quid pro quo agreements that imply favoritism and are difficult to overcome in the most innocent of cases. For this reason, the Utah Legislature specifically prohibits financial dealings with board members. **Utah Code** 17A-2-1410(1) states:

*Each director... shall take and subscribe to an oath...that he...will not be interested directly or indirectly in any contract entered into by the district.*

The district has also recognized the problem with the appearance of board member conflicts of interest and also prohibits either direct or indirect relationships. District policy, updated in 1996, mirrors the state statute:

*Directors shall not...(f) receive or agree to receive compensation for assisting any person or business entity in any transaction involving the district; (g) participate in their official capacity or receive compensation in respect to any transaction between the*

*District and any business entity in which the director is also an officer, director, or employee or owns a substantial interest...*

In spite of recognizing the problem with the appearance of conflicts of interest, the district has allowed and continues to allow indirect payments to board members. The district's legal counsel maintains the district does not directly pay board members for the services they provide to other special districts and that such work performed by district board members is out of district control.

### **District Payments to the Board Chairman May Violate State Statute**

---

**Board chairman  
received \$89,295  
from a questionable  
district contract.**

---

The district's board chairman has received \$89,295 from a district contract with Wasatch County. The contract's performance requirements pertain directly to work done by the district board chairman, intended to advance district projects. The work, which certainly contradicts the spirit of conflict of interest language, appears to contradict state statute as well as the district's own policy. In addition to appearing at odds with the **Utah Code** 17A-2-1410(1) and district policy, these indirect payments also appear to violate the contractual agreement between the district and Wasatch County which states:

*No member of Congress, Departmental employee, or District Board member or employee shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom.*

As background, the district has contracted with either Wasatch County Special Service Area (WCSSA) or Wasatch County for WCSSA service. WCSSA was created in 1992, with district staff assistance, to coordinate and manage water-related issues in Wasatch County. The primary duty of the WCSSA is to provide assistance to the district with the Wasatch County Water Efficiency Project (WCWEP).

The district's board chairman has served as chairman of the WCSSA oversight board, as a consultant for WCSSA, and as general manager of WCSSA. The chairman's work with the WCSSA is contractual through his firm, Royal Solutions. As such, he views himself as a consultant, not as an employee of WCSSA. Funding for this project flows from the district to either the WCSSA or Wasatch County and then in turn to Royal Solutions for its managerial consulting services.

---

**Board chairman has reported some situations as both WCSSA and district business.**

---

The district has had knowledge of this arrangement since its inception and has attempted to clarify and validate the arrangement within the contract. In 1996, the contract was modified to demonstrate a separation between the district and its board member working with Wasatch County and WCSSA. The agreement states:

*...Wasatch County's representative will contract directly with the WCSSA and is not considered to be an employee of the district for any purpose.*

We believe that the connection between the district and its board chairman's work for WCSSA is clear and gives an inappropriate appearance, in spite of the above contract wording. We also believe that further questions of possible conflicts of interest are raised by the district's failure to enforce requirements within the contract. The contracts with Wasatch County are specific in calling for:

- A clear separation of district board members and any possible conflict of interest.
- Matching of district and county funds with district participation being limited to 50 percent for contracts dated through January 1997.

**Chairman's Dual Roles Are Confusing.** It is difficult to determine if the chairman's activities are performed as a representative of the WCSSA or as a representative of the district board. A distinction is important since the WCSSA work is compensated on an hourly basis whereas board work is compensated by a flat monthly payment. In an effort to further review the board chairman's work arrangement, we compared reported WCSSA work hours with district expense reimbursement forms. The comparison found the board chairman reported some situations as both WCSSA and district business. Some examples, indicating the difficulty in separating the work, include:

- Hours billed to the WCSSA for a presentation at a water conference in St. George while the district paid for mileage, lodging, meals, and registration
- Hours billed to the WCSSA to deliver a memorandum of understanding to the district while the district was billed for mileage from Heber City to Orem

- Hours billed to the WCSSA for telephone discussions on unknown subjects with district staff
- Hours billed to the WCSSA for interviews with local media regarding the WCWEP project; the WCWEP project is a district project which the WCSSA is facilitating.

---

Royal Solution's invoices document only a portion of the board chairman's billed hours.

---

One of the reasons that the chairman's roles are confusing is that the chairman has done an inadequate job of documenting his time. In fact, Royal Solution's invoices document only a portion of the board chairman's billable hours. Specifically, none of Royal Solution's payments from the WCSSA checking account (where district money was deposited) included information identifying and supporting the billed amount. Further, no information was sent to the district documenting how the money was spent. On the other hand, Royal Solution's four bills presented to the county for payment in 1997 were minimally documented. In 1998, only one of Royal Solution's monthly invoices included any information identifying and supporting the billed amount.

The district contracts with WCSSA have varied in their requirements for expense documentation. However, according to the CUPCA program manager, the 1998 contract is a cost reimbursement contract. Thus, in order to receive payment from the district, expense documentation will be necessary. A Wasatch County official stated they have asked, to no avail, that documentation of hours be sent with invoices. In our opinion, expenses should be thoroughly documented when the expense is submitted for payment.

---

District unnecessarily paid \$10,000 because contract was not enforced.

---

**District Did Not Enforce Contract Requirements for a 50 Percent Cost Share Between the District and Wasatch County.** As a result, the district paid approximately \$10,000 more than necessary in fiscal year 1997. Billing invoices from the WCSSA to the district in 1994 and 1995 show a 50 percent reimbursement requirement stipulated in the contract was followed. However, the district did not enforce the requirement in fiscal year 1997, apparently due to a request by Wasatch County.

Wasatch County's request, signed by a county commissioner and the district's board chairman (in his role as Wasatch Water Board Chairman), asked the district to submit monthly payments of \$6,250 in lieu of matching county funds. The district accepted the request and paid more in fiscal year 1997 than was contractually required. The request did not mention any repayment from Wasatch County.

Not enforcing the contract requirements may be indicative of incapacitated enforcement by the district. The ultimate recipient of the contract's monetary benefits is the district's chairman of the board. It seems reasonable to assume that the district would be reluctant to take action which may unnecessarily antagonize the board chairman. Thus, possible reluctance to antagonize may have led the district to inadequate contractual enforcement. Given WCSSA's limited internal controls, we believe district contract monitoring is particularly important.

---

**WCSSA's internal auditors have noted internal control weaknesses including related party transactions and poor segregation of duties**

---

---

**\$30,346 of board chairman's income was not reported to the IRS by WCSSA.**

---

### **WCSSA's Own Financial Auditors Have Noted Potential Control Issues**

**Within WCSSA.** First, WCSSA's external financial auditors have stated concerns with related party transactions. Current and past WCSSA general managers have also been directly involved with other water districts and water user organizations. Second, the WCSSA's internal controls are lacking and do not include proper segregation of duties. WCSSA's own auditors have stated that financial decisions at the WCSSA are dominated by a single person (i.e., the WCSSA manager) having control of both receipt and disbursement of cash.

In addition, a review of checks written by the WCSSA in 1997 and 1998 showed \$30,346 of IRS-unreported income was paid to Royal Solutions. In essence, the district's board chairman received WCSSA payments without that income reported on Form 1099-MISC for Internal Revenue Service use. The previous manager also received WCSSA payments without reporting the income on Form 1099-MISC for Internal Revenue Service use.

### **A District Contract with Juab County Pays Board Member for Work Related to the District**

In a situation similar to Wasatch County, a district board member from Juab County has questionably received \$19,300, in wages and expenses from a district contract with the East Juab Water Conservancy District. Again, we believe that such payments are contrary to **Utah Code** 17A-2-1410(1). In addition, the district has exercised insufficient control over the contract by not enforcing the contractual requirement for expense documentation, including hours worked.

The East Juab Water Conservancy District (EJWCD) was created to act as an arm of the district; to assist with the East Juab Water Efficiency Project. Prior to 1998, EJWCD received all of its funding from the district. The EJWCD currently has one board member, a part-time general manager, and a part-time secretary. A district board member works part-time as the general manager of

---

**A second district board member inappropriately received \$19,300 in wages from a district contract.**

---

the EJWCD and is paid a monthly salary of \$1,000. The district board member provided free management services for EJWCD for six months before receiving a salary.

The district and EJWCD have a cost reimbursable agreement in which all expenses including salaries, furniture, supplies, mileage, copying, and phone expenses are submitted to and paid for by the district. The contract between the district and Juab County, although for similar intent, is not the same contract used for Wasatch County. The most interesting difference is the lack of any language declaring that district board members may not benefit from this contract.

### **Work Performed by a Board Member's Company Creates a Questionable Appearance**

As an example of questionable appearances, we identified one case where a county indirectly contracted with a board member's company for construction services. The district provided funding for the project, creating the net result of paying \$500,000 to a firm owned by one of its board members.

In the above case, the district provided funds to the Sanpete County Water Conservancy District (SCWCD) for a canal rehabilitation project. The SCWCD hired an engineering firm for project planning which, in turn, requested bids from construction companies for design and construction services. The engineering firm is also widely used by the district. The bids contained both a subjective and objective component with the \$500,000 bid award going to the board member's company. Of this amount, \$380,000 was paid to the construction firm directly from the district. The remaining amount came through the engineering firm.

---

**Contract award to a board member raises questions.**

---

In this kind of circumstance, the appearance of an improper quid pro quo contract award exists. A quid pro quo arrangement is one in which favorable consideration is given by one entity in exchange for favorable consideration by the other entity. District board members are involved in selecting engineering firms and assigning funding for district projects. If board member-owned companies are sub-contracting for portions of projects, pressure is placed on either the contracted county or the general contractor to deal with the possible conflict of interest. There is a possibility that subjective assessments can be swayed in favor of the board member anticipating favorable consideration by a board member for future work.

In conducting our analysis of possible conflicts of interest, we also noted that the CUPCA manager has a tie to an engineering firm which is often used by the district. Specifically, his father-in-law owns the engineering firm, and the CUPCA manager was formerly employed there. We reviewed some of the bids involving this engineering firm and found no evidence that the CUPCA manager exerted improper influence. As a result, we did not pursue the issue further.

## **General Manager Contracted Bonus Agreement Appears Inappropriate**

---

**General manager's  
\$75,000 bonus  
agreement deviates  
from policies.**

---

The district's general manager, who receives a \$96,000 annual salary, will also receive \$75,000, over a five year period, as a result of a contract between him and selected members of the district's board. The contract is written to signify the payment is a bonus for work not yet performed or evaluated. We are concerned with the contract because it violates the district's own internal bonus policy and deviates dramatically from state policies.

Further concerns arise when some board members note that the contract was created not as a bonus, as stated in the contract, but as salary and retirement benefit and that the contract was never presented to the entire board. Only one board member, besides the chairman and vice chairman, stated he had seen the actual agreement and that board member requested the agreement from legal counsel.

The agreement was signed April 1, 1998, by the general manager, the board chairman, and the board vice-chairman and contains the following provisions:

- A monthly bonus of \$1,250 (\$15,000 annually) starting April 15, 1998 and ending December 31, 2001 for a total of \$75,000.
- A death or health-related termination clause that allows for continuation of bonus payments to the general manager's wife if the general manager's termination of employment is due to health problems or death.

---

**Average  
performance by the  
general manager is  
sufficient for bonus  
receipt.**

---

**Bonus Agreement Is Not Linked to Performance Reviews.** As a result, the agreement acts as a base salary increase not a bonus. Bonuses, by definition, should be justified by meritorious performance. The agreement

contracts for future bonus payments. The bonus may be terminated for a negative performance review; however, average performance is sufficient for the bonus.

We were unable to find any recorded performance appraisal of the general manager in the last three years. District policy, however, states that an annual performance review must be conducted on the general manager and that the district will use written performance appraisals to determine employee merit and bonus payments.

**Agreement Is Outside the District's Own Personnel System.** The board requires the district's human resource manager to conduct annual salary surveys and to present a human resource budget inclusive of merit adjustments. The board meets to accept the human resource budget and, in so doing, sets the level of allowable merit increases for the year. The human resource manager was unaware of the general manager's bonus agreement. He feels the general manager's base salary, without the bonus, is appropriate and competitive with comparable positions.

---

**General manager's bonus is four times greater than the board approved merit increase and far exceeds the state's bonus limit.**

---

District policy states that the chairman and vice-chairman will annually review the performance of the manager and make recommendations for salary and benefits package adjustments to the board. A majority of board members remember discussing a salary adjustment for the general manager in 1998, but they were not aware of specific bonus amounts or provisions in the agreement. No indications in board meeting minutes or from board members show that the provisions of the agreement were voted on by the entire board. The agreement sets the general manager's earnings at a higher level than validated by the human resource salary study and gives him an annual merit increase (performance bonus) four times greater than that approved by the board.

The general manager's bonus is also well outside state policies and procedures concerning bonuses. We use state policies as a reference because many of the district's policies are based on those of the state system. The Utah Department of Human Resource Management rules limit bonuses to \$4,000 per year and declare that executive directors cannot receive a bonus that will bring the total salary over their market salary range maximum. The district's general manager bonus grants \$15,000 annually without any true performance appraisal and sets his salary far above that of other in-state water district managers' salaries.



---

**Internal control weaknesses have resulted in \$40,000 of unnecessary expenses.**

---

## **District Control of Expenditures Needs Tightening**

Our 1989 audit found that the district did not have sufficient internal controls over travel expenses and thus allowed a number of expenditures to exceed expected limits. Our current audit found that a number of internal control policies have been added or changed to address earlier problems, but they are either not followed or are so liberal as to not be effective.

We found internal control lapses still exist and have identified nearly \$40,000 of unnecessary expenditures. These excess expenses occurred as a result of:

- The district failing to obtain the best transportation rates available
- Management approval of lodging charges above district policy limits
- Inappropriate application of district meal reimbursement policy
- Poor review and control over general manager expenditures

In each case, expenditures were made outside district policy by either general manager approval or as an accepted practice.

### **District Does Not Seek Lower Travel Costs**

Our current review identified approximately \$32,000 of unnecessary travel expenses— most were incurred because the district did not attempt to seek lower air fares, and a lesser amount occurred due to the high cost of mileage reimbursement paid when air travel was more cost efficient. Both of these areas show improvements since the 1989 audit, but they also demonstrate that problems persist.

---

**Over \$30,000 in airfare could have been saved by using the State Travel Office.**

---

**The District Could Have Saved as Much as \$30,000 in Airfare by Using Utah’s State Travel Office.** The district makes flight reservation through a local travel office, booking primarily with one airline with midweek flights and no weekend stay. Such bookings are higher priced, and with change penalties which occur often as district plans change, can be very expensive. The district can book its airfare through the state travel office. That office negotiates lower

airfare contracts with airlines. The tickets are contracted as refundable and changeable without a penalty and do not require a weekend stay.

In the last three years, district employees and directors have averaged 70 business flights a year. The majority of flights are taken by four staff members: the general manager, assistant general manager, public relations director, and environmental programs director. Most district flights are to eight cities:

- Bosie, ID
- Buffalo, NY
- Denver, CO
- Las Vegas, NV
- Palm Springs, CA
- Sacramento, CA
- Phoenix, AZ
- Washington, D.C.

A comparison of the state negotiated rates for the above cities to the rate paid by the district showed that, with minimum planning, the district could have saved approximately \$30,000 by using state travel services.

---

**An excess of \$625 was paid for mileage when airfare was less expensive.**

---

**Mileage in Lieu of Airfare Is Being Paid When Airfare Is less Expensive.** In 1997 (the most current completed year available), the district paid \$625 in excess reimbursements for vehicle travel over the cost of airfare to the same destination. Both district and state policy specifically state that if a person chooses to drive a private vehicle in lieu of flying, transportation reimbursement will be mileage, at the current IRS rate, or airfare whichever is less.

### **Lodging Charges Often Exceed Policy Limits**

District management approved approximately \$1,800 in excess lodging charges in 1996 and 1997. For 1997 district travel, we found 37 cases where lodging rates were approved by the general manager even though each clearly exceeded the district's lodging policy. The findings are exclusive of lodging rates for conference hotels. The total excess for 1997 was \$1,275 with rates exceeding policy by as little as \$4.00 and as much as \$150 per night. A less extensive review (four district travelers) of 1996 travel information identified an additional \$460 of excess expenditures. A review of informal travel reservation logs from 1993 to

---

**\$1,800 in excess lodging was approved by management and paid in 1996 and 1997.**

---

---

**The district's lodging budget does not follow district lodging policy rates.**

---

1998, kept by the administrative secretary, showed only four lodging rate reservations within the district's policy limit.

The district policy limits in-state and out-of-state lodging rates for district staff to \$60 per night except in Washington, D.C., which is limited to \$120 per night. The district policy for directors does not have a dollar limit on lodging but states the charges shall not exceed a reasonable single occupancy rate. In comparison, state travel policy limits in-state lodging to \$55-68 per night depending on geographic location and \$65 per night out-of-state. Both district and state policies allow stays in conference hotels to be reimbursed at the actual cost. Interestingly, the district's 1998-99 fiscal year budget does not follow the district's own policy. Instead, budgeting is based on in-state lodging rates anticipated at \$55 a night, out-of-state rates at \$75 a night, and Washington, D.C. rates at \$200 a night.

### **The District's Meal Reimbursement Policy Is Liberal**

The district's meal reimbursement policy is unique in that it allows district employees to choose per diem rates or actual expenses to their advantage. A review of meal reimbursements for the four most traveled staff in 1996 and all staff and directors in 1997 showed direct meal expenses ranged anywhere from \$7-50 and that approximately \$320 was reimbursed in excess of per diem guidelines.

District employees can request actual expense reimbursement if the meal costs more than the per diem rate or per diem if the meal costs less than the per diem rate. It is not uncommon for a district employee to request a combination of per diem and actual expenses while traveling. As an example:

- An employee expenses room service breakfast for \$7.50 (breakfast per diem is \$5.00), but requests per diem reimbursement \$7.00 for lunch.
- An employee accepts per diem payments for low cost breakfast and lunch meals and expenses dinners which cost from \$34 to \$50.

---

**The district's meal reimbursement policy is generous.**

---

The district policy allows employees to choose between meal per diem and actual expenses for meal reimbursement. The state policy allows only per diem reimbursement with the exception of "premium" cities such as New York and Washington, D.C., where the employee can choose per diem or actual expenses limited to \$50 per day.

The district's meal reimbursement policy, while based on the state's policy, is more generous. Just as with the state, the district's meal per diem for overnight travel is based on the time of day the traveler leaves and returns home. The time parameters are the same as state policy. However, the district's non-overnight travel meal policy is more generous than the state policy, allowing meal reimbursement for non-overnight travel without a distance from home-base mileage criteria.

District policy allows for lunch reimbursement during non-overnight travel. The policy reimburses employees \$7.00 for lunch when the employee is away from home-base on business between 11:00 a.m. and 2:00 p.m. This policy contains no distance from home-base criteria. The state policy will reimburse lunch for non-overnight travel only if the traveler is 100 miles from home base, left home-base before 10:00am and returned after 2:00pm.

### **Some General Manager Expenses Are Questionable**

---

**There are no guidelines for price or replacement parameters of the general manager's vehicle.**

---

The district board has allowed some expenditures by the district's general manager that we believe are questionable. First, the general manager has been given a personal use vehicle as part of his compensation. We believe that, given the price of the vehicle he selected (\$37,000), board oversight of his purchases needs to be exercised. Second, inaccurate expense documentation of a Delta Crown Room membership leaves us with a concern for the degree of control over the general manager's expenses.

The district does not have a policy or guideline defining the price parameter or replacement period of the general manager's car. As a result, the general manager's vehicle purchase has gone unchecked. The general manager replaced his three-year old vehicle in October, 1998 with a \$37,342 Ford Expedition. We believe this purchase was at least \$5,000 beyond the price range set, using comparable and reasonable criteria.

According to state fleet operations, the price parameter for state positions comparable to the district's general manager allow cars priced between \$28,000-32,000. Our survey of vehicles driven by other water district's managers showed vehicle prices ranging from \$17,000 to \$33,000. State fleet operation policies allow executives to replace vehicles at the beginning of each elected term or appointment period, approximately every four years, while other state divisions replace directors' cars, according to state replacement guidelines, every five to six years or 75,000-80,000 miles. In our opinion, the

---

**The general manager's expenses may not be well controlled.**

---

district's board needs to establish parameters for the general manager's vehicle compensation and usage.

In a related incident, district records inaccurately identified payment of a Delta Crown Room membership for the general manager's wife. Specifically, the documentation in the file specified her as the recipient of the membership. It is against district policy that expenses are incurred on behalf of a spouse. Later, documentation was provided to us which demonstrated that the membership was for the general manager. However, accounting had processed and paid for the expense without ever receiving proper documentation of the expense. This leaves us with a concern for the degree of control over the general manager's expenses. Additionally, the state does not allow the purchase of such memberships by state employees.

## **District Motor Vehicle Controls Need Improvement**

The district's policies and guidelines for district-owned vehicle usage are poor because they allow too many vehicles and inappropriate use of vehicles. Better control of vehicle fleet size based on utilization for business purposes could result in a vehicle fleet reduction at head-quarters of 20 percent; a savings of approximately \$52,000. Further reduction in fleet size and vehicle operating costs would be achieved with the elimination of inappropriate vehicle use for staff commuting.

---

**Control of fleet size appears poor.**

---

The district currently maintains 36 trucks and sedans for its 62 employees. Fifteen of these sedans, trucks and sport utility vehicles are maintained at headquarters. We analyzed usage of the vehicles at headquarters and found that 20 percent did not appear necessary. In addition, we reviewed mileage and available commute records for all the districts' vehicles and found that more than 50 percent of district vehicles are driven less than 12,000 miles per year. The mileage figure of 12,000 miles per year is a common criterion for justifying the ownership of a vehicle.

Additionally, some of the vehicle miles are derived from employees commuting to and from work in district vehicles. The district does not have a commute policy and allows eight employees to consistently use district vehicles for commuting. Use of district vehicles for commuting is a problem accentuated by

some employees' failure to meet federal Internal Revenue Service (IRS) requirements.

### District Vehicle Fleet Can Be Reduced

Usage data suggest the district can decrease fleet size by two sedans and one truck, for a savings of \$52,000. To determine vehicle usage need, we divided the district fleet into two categories:

- Headquarter trucks and sport utility vehicles
- Headquarter sedans

We then identified the maximum number of vehicles in each category used on any given day. These figures were then used as the criteria for the essential number of vehicles. Any vehicles in the fleet above the maximum usage were considered excess.

The district, as a whole, does not track or record the demand or use of its vehicles; therefore, we relied on daily vehicle monitoring during the course of our audit. Actual daily use was based on observations made over a 19-day period during the summer, a busy work period for the district. Figure VII shows vehicle usage for the headquarter's trucks, sport utility vehicles (SUV's) and sedans.

**District fleet size can be reduced for a savings of \$52,000.**

<b>Figure VII</b>			
<b>Headquarter Trucks and SUV'S</b>			
<b>Total Number of Vehicles</b>	<b>Percent of time all 7 Vehicles Used</b>	<b>Percent of Time 6 Vehicles Used</b>	<b>Percent of Time 5 Vehicles Used</b>
7	0%	26%	26%
<b>Headquarter Sedans</b>			
<b>Total Number of Sedans</b>	<b>Percent of time all 8 Sedans Used</b>	<b>Percent of Time 7 Sedans Used</b>	<b>Percent of Time 6 Sedans Used</b>
8	0%	0%	5%

---

An in-depth analysis of vehicle usage is needed.

---

Based on our analysis, we believe that one truck and two sedans can be eliminated from the fleet. Further, we believe our estimate is conservative. The district needs to do an in-depth analysis of how and when the fleet is in use. As part of this analysis, the district needs to weigh the cost a sedan or truck needed only five percent of the time with paying personal mileage for those five percent use times.

Usage data was not available for all district vehicles; therefore we reviewed gas card mileage data. Given the mileages shown on the gas cards (50 percent of district vehicles average less than 12,000 miles per year), we believe that a vehicle usage analysis is warranted at the other district sites as well.

### **District Does Not Have a Commute Policy**

The district does not have a commute policy stating when a commute is justified (i.e., 24-hour call-out or vehicle as virtual office). Commute privileges are at the discretion of department managers. The state, on the other hand, has specific criteria which must be met to justify a commute (e.g., 24-hour call-out, virtual office and alternate work site). District management allows eight district employees to regularly use district vehicles to travel to and from work. Using each of the eight employees, an estimate of stated commute mileage and submitted IRS commute forms shows commute miles account for 7-92 percent of total mileage on these vehicles. The high commute mileage indicates that without the commute mileage some of these vehicles may not be needed for day-to-day operations. The district's vehicle fleet size could be reduced even further.

---

Commute miles account for 7-92 percent of total miles on selected vehicles.

---

As a comparison, Utah State, by policy, would not permit the use of some of these vehicles for commuting. The state fleet operations commute policy grants commuting under the following conditions:

1. **Law enforcement duties**
2. **24-hour "on-call"** – it must be demonstrated that the commute is for a potential emergency and a complete list of call-outs must be recorded.
3. **Virtual office** – the employee must require a vehicle to perform work duties and work out of his/her home or vehicle most of the time.
4. **Alternate work site** – it must be more practical for the employee to go directly to an alternate work site than report to the office and pick up a car.
5. **Provided as compensation by state statute**

6. **Extreme emergencies** – determined on a case-by-case basis provided the commute is in the state’s best interest.
7. **Limited Commute** – authorized on a limited basis, not to exceed five days per month.

---

**Some commute privileges may not be justified.**

---

Using the state’s criteria, it is difficult to justify the use of some district vehicles for commuting. Those that may be justified are not supported by call-out records demonstrating the need. Four managers and supervisors, assigned vehicles for emergency purposes, take vehicles home nightly. Other employees take a vehicle home periodically when they are assigned on-call duties. In either case, no call-out records are kept to determine need, frequency, or timely and appropriate response to after-hours emergencies.

The public relations director’s commute is not justified according to state policy. The public relations director commutes in a district car daily. He uses a district car to travel from his home in Sandy to district headquarters in Orem. Occasionally he does work in the Salt Lake Valley and will go directly from his home in Sandy to meetings in Salt Lake. We were unable to establish how often this occurs.

### **Employee Vehicle Benefits May Be Under Reported**

---

**The general manager and the public relations director do not complete IRS commute forms.**

---

Employee fringe benefits may also be under reported to the IRS because some district employees are not completing IRS commute benefit logs. Of the eight employees who commute regularly, two —the general manager and public relations director — do not complete IRS commute forms and others do not complete forms on a monthly basis. These forms require information regarding the vehicle involved and the number of days commuted. When the public relations director was asked why he didn’t complete commute forms, he stated he didn’t think he had to and that he would fill out commute forms only if it was discussed in this report.

The IRS requires employees using business-owned vehicles for commuting to report commuting as a taxable fringe benefit. The district fleet management guidelines require employees who commute to complete a vehicle fringe benefit computation form monthly.

Further deviation from federal IRS requirements exist in the district’s reporting of car allowances. The CUPCA manager receives a \$375 a month car allowance, which is paid separately from payroll and reported on an IRS Form 1099-MISC. IRS instructions specifically state that auto allowances cannot be



reported on Form 1099-MISC and should be reported on Form W-2 to prevent any underpayment of social security and medicare taxes.

## **District Has Some Questionable Procurement Practices**

---

**Procurement practices appear to avert competitive processes.**

---

Some district procurement practices appear to avert a competitive process. New procurement policies and procedures have been written since our 1989 audit; however, there appear to be some liberal interpretation of the exception for procurement without competition. The policies allow the district to procure services without competition for the specific areas of sole sourcing, no advantage (instances where a competitive process is impractical or impossible and would not result in an advantage to the district), emergencies, and small purchases (less than \$15,000 for supplies or \$25,000 for engineering services). Examples of procurement processes by the district used to negate competitive bidding include:

- Requiring one engineering firm to subcontract with another engineering firm for a \$470,000 task, implying an immediate need in order to meet water delivery obligations.
- Failing to use a competitive process to retain the services of attorneys, lobbyists, environmentalists, and other specialists deemed sole-source providers.

### **Contracted FS/FEIS Work Raises Concerns Over District Protocol**

A district contract required the contractor to sub-contract \$470,000 for a final supplement to the final environmental impact statement (FS/FEIS) with another engineering firm. In effect, the requirement resulted in a non-competitive contracting process that benefitted a firm with a long history of working with district employees. It appears that other firms were capable of completing the FS/FEIS but were not considered because the manager making the decision for the district was happy with prior work by the selected firm. It is unknown whether these other firms could have performed the work less expensively.

---

**A district required \$470,000 sub-contract resulted in a non-competitive process.**

---

The circumstances of the contract are similar to a problem identified in our 1989 audit. In that prior case, an engineering agreement was signed, without using a competitive process, based on an emergency need for the contracted service. However, the contract was clearly not for an emergency as it extended

over four years. Our current audit found a similar deflecting of a competitive process, stating a time factor need for engineering services to meet water delivery obligations. However, current progress indicates construction on the project has been delayed and the district maintains that water deliveries can still be met, thus raising doubt as to the emergency status. The district maintains had they bid the project, they would be even further delayed. Whether or not the delay would ultimately be critical to the project is unknown.

**Contractually Requiring the Use of a Specific Firm by Another Firm Appears Inappropriate.** In August 1998, a task order to prepare the final supplement to the Diamond Fork FEIS was written as part of a general program management contract. The task order specified that the general contractor use a district selected subcontractor to complete the FS/FEIS. The general contractor was allocated \$22,000 for administrative costs, and \$470,000 was allocated to pay the subcontractor.

The district defends its selection stating that using a competitive process would delay the project and make the district unable to meet obligated water delivery needs in 2003. However, even though current work on the FS/FEIS has already delayed construction by one year, the district maintains it can meet water deliveries in 2003. The district has an obligation to send 50,000 acre-feet per year of water to Salt Lake County in 2003. The current CUP system can only deliver 38,800 acre-feet of water; therefore, completion of the Diamond Fork system is necessary to meet this obligation.

The task order implied that completion of the Diamond Fork system by 2003 required the FS/FEIS be completed by late 1998; federal acceptance of the FS/FEIS by early 1999; and, construction to begin by summer 1999. The declared emergency implied that any delay would prevent the district from being able to meet its water delivery obligations in 2003.

As of March 1999, the FS/FEIS was not yet complete, federal acceptance is not anticipated until fall 1999, and construction will not begin until summer 2000. District management states that even with construction beginning a year later than planned, the Diamond Fork system can be operational and deliver the obligated water to Salt Lake County by 2003.

**Other Engineering Firms Were Qualified to Prepare the FS/FEIS.** The district's environmental compliance manager requested the specific subcontractor be used because of previous work they had done for the district. The selection was made even though other engineering firms, including the firm that completed the EIS on another phase of the same project, appeared

---

No formal analysis was completed to determine the qualifications of the engineering firm or opponents.

---

qualified. No formal analysis was conducted to determine either the qualifications of the selected contractor or possible opponents. It is unknown whether another firm could have performed the task less expensively.

### **Some District Support Services Are Procured Without Competition**

---

**Selected providers with longtime district service are considered sole-source providers.**

---

A number of district support services are procured without competition even though they do not fall under the small purchase exception nor appear to be sole-source providers. Rather, district management and employees consider selected providers with long-time district service as sole-source providers. The result is some district contracts, although called for by district policies and procedures, are not competitively bid. Examples of services retained without competition include:

1. **Lobbyist** – retained by the district in 1985. The names of a number of federal lobbyists were obtained by the district. The current federal lobbyist was selected after an interview by the general manager and the board chairman. He was retained in 1985 and has worked for the district since mid-1996 without a contract.
2. **Legal Counsel** – the district’s current legal counsel has been retained for years. Staff at the district are unsure when the legal counsel first contracted with the district. No open competition for attorneys has been conducted since the current attorneys were retained. We could not find any support that any contract has existed since 1989.
3. **Financial advisor** – the current financial advisor was originally retained when the district had their first bond issue on the Jordan Aqueduct in the early 1990’s. The financial advisor has an open-ended contract, dated July 1, 1996, with payment to be negotiated yearly.
4. **Fish biologist** – was originally contracted by the district, in the early 1980’s, to assist in public relations efforts surrounding the June Sucker. District staff consider the fish biologist a sole-source even though the district was contracting with another fish biologist on the June Sucker issue, and more recently a fish biologist was hired by the district as a full-time employee. The most recent contract, valid until June 30, 1999, is for \$45,000.
5. **Contract and agreement writer** – justified by a statement within the contract stating that the specific contract writer is the sole- source of

---

**Weak control over sole-source providers may result in contractor favoritism.**

---

the services contemplated by the agreement. We question the likelihood that there is only one contract/agreement writer available in the state.

As can be seen, the district retains a number of sole-source providers, thus bypassing the competitive bidding process. As a result, the district cannot be assured of getting the best service for the most reasonable price. State and district code both allow contracts to be awarded without competition but only after it has been determined, in good faith, that there is only one source for the service. A record of all sole-source procurement should be maintained as a public record. This record is maintained so that possible competitors can challenge the sole-source justification. The district has not maintained a record of all sole-source contracts. Rather, the district has allowed district employees to sole-source contract without documentation. Such loose control can result in problems, such as contractor favoritism.

The state Purchasing Director recommended that for some of these services (lobbyist, legal counsel, financial advisor), the contract should be rebid every five years. This rebid allows continuity of service but also insures that the best service is obtained for a reasonable cost.

#### **Recommendations:**

1. We recommend that the district enforce state code and district policy regarding board members receiving direct and indirect benefits from district projects and contracts.
2. We recommend that the district's board members conduct an annual performance review on the general manager and the full board vote on salary and benefit changes.
3. We recommend the district utilize the State Travel Office to make flight arrangements.
4. We recommend the district comply with lodging and meal reimbursement policies.
5. We recommend the district improve vehicle controls by tracking vehicle usage to make informed decisions on fleet size, develop a commute policy, and enforce IRS commute reporting.

6. We recommend the district improve documentation for sole-source procurement and implement a competitive procurement process for support services (i.e., every five years complete a competitive process for financial, legal, lobbyist, etc).

**This Page Left Blank Intentionally**

## Chapter IV

# Discontinuation of SFN Project Affords Opportunity to Redirect Efforts

The Department of Interior's (DOI) instruction to the district to discontinue planning of the Spanish Fork-Nephi (SFN) project has created a need to revisit district plans. We believe the district now has an excellent opportunity to re-think its operational plans and its proposed water allocations. Planning appears limited by federal funding requirements and federal water use controls but, we believe that alternatives do exist. However, we also believe that district leadership wishes to maintain much of its now discontinued SFN plan. In particular, district leadership appears to be closely tied to delivering an irrigation project to southern Utah County and eastern Juab County. This focus is primarily defended using two arguments:

- commitment to the area
- growth in the area.

With Utah's rapid urbanization, it is possible that this plan may no longer be the best use of water resources. In particular, demographic and economic data question the allocations of the former SFN project. We believe that the Legislature should independently analyze and form a legislative position on how the former SFN water should be allocated.

---

**800,600 acre-feet were originally proposed to be developed under CUP. Today 264,360 is proposed for development.**

---

The Central Utah Project (CUP), of which the SFN is a part, was conceived over fifty years ago as a federally supported agricultural project which would allow Utah to claim its portion of the Colorado River water. According to district personnel, the government's goal in the 1940's was to develop the agricultural economies of the states. Based on the Bureau of Reclamation's 1951 CUP report, the purpose of the CUP project was to supply enough irrigation water to protect agriculture from urban encroachment. In fact, of the 800,600 acre-feet proposed to be developed under the comprehensive CUP plan, only 48,800 acre-feet was to be developed for municipal and industrial (M&I) use. Today, of the 264,360 acre-feet proposed to be developed, 107,360 acre-feet are for M&I, 112,600 acre-feet are for agriculture, and 44,400 acre-feet are left in the streams for fish habitat.

The CUP project was to be carried out in two phases: the initial phase and the ultimate phase. In the initial phase, development was to be limited to areas between Salt Lake City and Nephi. The ultimate phase extended the areas

served to include Levan, Richfield, Delta and Fillmore. In 1992, the district proposed a plan in the federal Central Utah Project Completion Act (CUPCA) which would have essentially served the areas described in the ultimate phase of the CUP. As an alternative, the district also proposed a general plan in the CUPCA statute which would serve the areas described in the initial phase of the CUP. When Millard and Sevier Counties withdrew from the district in 1994, the district moved to the alternative plan outlined in CUPCA. This project became known as the SFN project.

## **District Leadership Has Maintained Historical Plan**

Some key district employees, as well as many board members, appear committed to building an irrigation project which will serve southern Utah County and eastern Juab County. In other words, these individuals appear committed to carrying out the historical initial phase of the CUP. This preference for an irrigation project going south is justified by the district using two arguments. First, district leadership maintains that a commitment was made to southern Utah County and eastern Juab County many years ago and that commitment must be honored. This commitment was codified in the 1992 CUPCA statute which the district helped draft. Second, some district employees and board members argue that bringing water into these areas will encourage growth. It is up to the Legislature to decide the legitimacy of either argument.

## **District and Board Appear Closely Tied to an Irrigation Project in the South**

We believe that some key district employees and many board members prefer an irrigation project in the south. Further, we believe that it would be difficult for some board members to objectively consider sending the SFN water north to Salt Lake County or northern Utah County if these alternatives were presented during the district's upcoming scoping process on the SFN replacement project. The board's preference may result from the predominately rural irrigation representation on the board.

In 1997, a district board member stated to the Salt Lake County Council of Governments that the district board strongly favors the SFN project and it is very unlikely that it would ask for a change in legislation to redirect whatever water would be available north to Salt Lake County. Today, many of the board members appear to feel similarly—that the water should stay south. We

---

**62 percent of the board members interviewed supported the water going south.**

---



interviewed 13 of the 18 board members. We were unable to make contact with the remaining five board members. Eight of the board members interviewed (62 percent) indicated that the water should go south as originally planned. Two reasons were given in support of the original plan: (1) the district made and should honor past commitments to southern Utah County and eastern Juab County, and (2) water placement in rural areas would encourage growth there. In fact, it is the board members and district employees who primarily make these two arguments against possible water reallocation. Only two of the board members cited the CUPCA legislation as a reason for sending the water south. The following are examples of board member comments:

*Completing SFN is a matter of integrity because those agreements were made 25 years ago and you don't enter a project and then say "Sorry, we lied to you guys; we can't deliver water to you after all."*

*The district's chief responsibility is to complete the SFN as it was originally intended.*

*This re-scoping process is going to open a whole can of worms by having Salt Lake County and other counties vying for SFN water.*

*If the water can't go south, it should be left in the Uintah Basin.*

*The district hasn't really looked at alternatives to sending the water north because they made commitments to the rural or southern part of the state and they ought to honor those commitments.*

*The CUPCA legislation authorized the district to develop a plan wherein they could study taking the water south or north, and while there wasn't an in-depth study, it was common knowledge that the water was more beneficial going south.*

---

**"This re-scoping process is going to open a whole can of worms."**

---

---

**"If the water can't go south, it should be left in the Uintah Basin."**

---

Given these comments, we have concerns whether the board can objectively analyze alternatives outside the original SFN plan. For example, the Central Utah Project Completion Act (CUPCA) legislation, referred to above, required that the district conduct a feasibility study of direct delivery of Colorado River Basin water from the Strawberry Reservoir or elsewhere in the Strawberry Collection System to the Provo River Basin. Moving the water to the Provo River Basin would allow the water to be moved into Salt Lake County or northern Utah County, if desired. District management maintains that this was

not the purpose of the study. Other individuals who negotiated the CUPCA legislation maintain that it was. In our opinion, the CUPCA legislation appears to open the door for an analysis of a water delivery alternative, possibly into Salt Lake County or northern Utah County, for which money had not yet been authorized.

---

**District spent at least \$500,000 analyzing various alternatives to move essentially non-existent water into the Provo River Basin.**

---

In doing this study, district personnel decided not to consider the direct delivery of Colorado River Basin water to the Provo River Basin as an alternative to the proposed SFN System. Because district personnel made this assumption, little water was available to consider delivering into the Provo River Basin (only 3,000 acre-feet under one alternative). Thus, if the purpose of the study was to analyze a water delivery alternative to the Provo River Basin, that purpose was rendered moot. However, the district probably spent between \$500,000 to \$1 million of federal money analyzing various alternatives to move essentially non-existent water into the Provo River Basin. The district's CUPCA manager acknowledged that this study was a limited analysis. The methodology of this study could indicate a resistance on the part of the district to objectively consider a water allocation other than the original plan.

It is possible that the sentiment to keep the water south is a result of the makeup of the board. Potential board members are approved by county commissioners, then by the Governor, and finally by the Senate. However, some of the board members have sat on this board for a very long time. For example, the board member representing east Juab County has been a board member for 35 years while six other board members have served between 10 and 16 years. In our opinion, these time periods are too long. The board is supposed to function as an objective watchdog of the district's activities. Lengthy board membership can negatively impact the ability to objectively analyze the district's operations.

---

**The board member representing east Juab County has been on the district's board for 35 years.**

---

In addition, twelve of the eighteen board members (67 percent) represent a rural irrigation perspective. Given that the CUP was originally conceived of as an irrigation project, this representation makes sense. However, with the states' population, primarily in urban areas now, this weighting toward rural irrigation makes less sense today. While the rural irrigation viewpoint is an important perspective, we believe it should be appropriately balanced with the urban viewpoint.

In our 1989 audit, we also commented that a substantial number of board members were involved in irrigated agriculture. Further, the 1989 audit noted that a majority of the board members were directly connected with the water industry whose interests may not necessarily represent the public interest. As a result, that audit recommended the Legislature consider changing the makeup of the board— but this was not done. Given the shift to urbanization, the Legislature might want to take another look at changing the makeup of the district’s board.

### **District Defends Its Focus with Two Arguments**

The district defends taking the water south using two arguments. First, the district maintains that a commitment was made to southern Utah County and eastern Juab County which should be honored. Second, the district indicates that water placement in these areas could encourage growth.

**Was a Binding Commitment Made?** Board members and district personnel maintain that because of promises to the people of southern Utah County and eastern Juab County, a reallocation of SFN water would be unfair. The people in these counties have been paying taxes to the district for over 34 years, and it would be wrong for these two counties to receive no water.

---

**Eastern Juab County has paid \$1.7 million in property taxes to the district and received a \$3.2 million water project.**

---

We are unclear as to the nature of any promise. We could not locate any contracts with either county which guarantees a specific amount of water to the two counties. However, one board member indicated that the informal board commitment was made in 1965 when a construction choice between the Jordanelle Reservoir and an irrigation project was made by the board. In addition, it has been planned for many years that these two counties would receive water. In the 1951 Bureau of Reclamation report on the Central Utah Project, the initial phase of the CUP was to serve the area from Salt Lake to Nephi. The comprehensive plan of the CUP extended the area served to include Levan, Fillmore, Richfield and Delta. The latter three cities were eliminated from the CUP when Millard and Sevier Counties pulled out of the district. Levan, in eastern Juab County, was eliminated from the project because it was not in the Utah Lake Drainage Basin. In addition, it was possibly considered too expensive to pump water into the Levan area.

It would be unfair to keep county taxes and then not provide any benefit from those taxes. However, the CUPCA legislation anticipated this issue. Section 206 provides two options for counties who elect not to

---

Counties which leave the district can receive a tax rebate or a grant for a local development project.

---

participate in the project anymore. While east Juab County has the option to withdraw, Utah County does not.

The first option is a tax rebate. All taxes paid to the district by the county would be reimbursed plus interest minus the value of any benefits received by the county. Eastern Juab County has paid approximately \$1.7 million to the district. However, the district will pay at least \$3.2 million for the East Juab Water Conservation Project which is projected to conserve 6,700 acre-feet of water within eastern Juab County through more efficient water delivery.

A second option would be a grant provided to the county for local development. These grants could be used for water distribution and treatment, agricultural water management, and other public infrastructure improvements. As a result of CUPCA section 206, we believe that avenues exist to compensate counties who do not receive project benefits.

**Does Water Placement Encourage Growth?** Many district board members argue that placing water in southern Utah County and eastern Juab County will encourage migration of Utah's population into these counties. Thus, placing water in these areas will cause the population to spread out and relieve some of the population pressures in the Salt Lake and Provo areas.

This argument may have some merit; however, the Department of Interior (DOI) has argued against it in the past. In the 1973 Final Environmental Statement on the Bonneville Unit, the DOI makes the following statements:

*According to a study prepared for the National Water Commission, water development and regional economic growth are not necessarily connected. Ample water supplies for agriculture and/or municipal-industrial use, the existence of water-based recreational resources, the availability of low cost hydroelectric power, etc., do not provide in and of themselves a sufficient condition for economic growth. Furthermore, in some situations they may not even be necessary conditions for such growth to occur.*

*...Accessibility to major markets, availability of quality labor supply, transportation costs and alternatives, and climate all play a role in establishing conditions favorable for growth. ...The fact that an ample water supply may not, under certain conditions, be necessary for growth is indicated by the rapid rate of economic*

---

**Federal study says water development and regional economic growth are not necessarily connected.**

---

*growth in certain so called “water short” areas of the west and southwest.*

This statement appears to support the position that the DOI believes people do not follow water; rather, water tends to follow people. Interestingly, the district also appears to adhere to this philosophy in district reports. Specifically, population changes (i.e., growth) are not assumed by the district when allocating water. Thus, it would appear more prudent to place water where the population is projected to be instead of placing water in an area and assuming the population will move there.

While the Legislature may find either of these arguments compelling, there is other information which indicates that the former SFN plan may need to be reconsidered.

## **Former SFN Plan May No Longer Be the Best Alternative**

Sending irrigation water to southern Utah County and eastern Juab County may be questionable. First, the SFN Draft Environmental Impact Statement (DEIS) was found to have serious problems requiring a new scoping process. Second, demographic and economic indicators question the historical placement of the water. Third, the political argument of equity questions the historical placement of the water.

### **SFN Environmental Impact Statement Had Serious Problems**

Because of serious problems, the Department of Interior (DOI) requested the district cease all planning efforts on the SFN DEIS. Two problems were primarily responsible for the cessation of the SFN DEIS planning efforts. The first problem concerns the purpose and need of the SFN irrigation system, and the second concerns the increased salinity in Utah Lake caused by the SFN irrigation system.

---

**The Diamond Fork System is necessary. Jordanelle Dam project relies on its water.**

---

Before any federal dollars could be obligated or expended on the SFN system, the Central Utah Project Completion Act (CUPCA) required compliance with the National Environmental Policy Act (NEPA). As part of meeting the NEPA requirements, the district issued (for public comment) in March 1998, a draft environmental impact statement (DEIS) on the SFN system. By July 1998, it was clear that the DEIS had failed to meet NEPA requirements and in that

---

The SFN irrigation system is optional with no prior commitments upon its operation.

---

same month the district was asked by the Department of Interior (DOI) to cease planning efforts on the SFN system.

The original SFN DEIS included two elements. The first element was the Diamond Fork System. This system is not optional because another project relies upon its operation. Specifically, Diamond Fork is necessary for the Jordanelle exchange and must be completed if Jordanelle Reservoir is to make its contractual water deliveries to Salt Lake County by 2003. For more information on the Jordanelle exchange see Appendix A. The district is currently in the process of trying to complete a Final Supplemental on the Final Environmental Impact Statement (FS/FEIS) on the Diamond Fork System.

The second element was the SFN irrigation system, which is an optional system since no other system relies upon its operation. The purpose of the SFN irrigation system is to provide irrigation water to southern Utah County and eastern Juab County. Once the Diamond Fork FS/FEIS is completed (hopefully by August 1999), scoping work can begin on the former SFN system (now renamed the Utah Lake Drainage Basin Water Delivery System). For the former SFN system to remain as planned, the potentially fatal comments received in the SFN DEIS must somehow be overcome.

**Project Purpose Is Problematic.** Specifically, the purpose and need of the project was compromised primarily by the Strawberry Water Users Association's (SWUA) response to the DEIS and by information in the DEIS itself. In their DEIS response, SWUA, a large irrigation company in southern Utah County, reinforced their intention to convert some or all of their water from irrigation to M&I. In fact, some SWUA irrigation water has already been converted to M&I use, possibly in violation of its DOI agreement. SWUA's intention to convert, raised questions as to the need for supplemental irrigation water in the area served by the SFN.

---

The EPA declared the DEIS fundamentally flawed because the project's purpose was stated as irrigation, yet the true purpose appeared to be M&I.

---

The district's general manager noted that SWUA's written comments struck at the heart of the SFN's purpose and need. SWUA's response opened the door for the following question: If SWUA is going to convert its irrigation water to M&I, then why is the SFN sending down supplemental irrigation water? The EPA echoed these sentiments. In their DEIS response, the EPA reiterated that the stated purpose of the SFN project was to supply supplemental irrigation water, yet information in the DEIS proposed to reduce or even eliminate the irrigation aspect of the SFN project. Based on this information, the EPA declared the DEIS fundamentally flawed. Thus, if an irrigation project is going to be built in this area, the public comments impacting the purpose and need of the SFN are going to have to be overcome.

**Increased Salinity in Utah Lake Is Also a Concern.** SFN runoff from irrigated lands is predicted to cause the salinity of Utah Lake to exceed state standards. Specifically, Utah Lake's salinity is predicted to rise to 1400 parts per million (ppm) while the State water quality standard for irrigation is 1200 ppm. The water quality in Utah Lake was one of the significant issues raised by both the EPA and the State Division of Water Quality in their SFN DEIS review. The EPA, in its DEIS response, noted that the water quality of Utah Lake and its tributaries has been degraded for many years and the SFN project is projected to exacerbate this condition. The EPA does not believe that project-related, adverse water quality impacts should be allowed. This is especially important as the cost for treatment of the poor water quality in Utah Lake is passed on to non-project beneficiaries.

---

**Utah Lake salinity problem has been known for years, yet was not included in the DEIS.**

---

According to an EPA representative, the EPA has been telling the district about this salinity problem for over 10 years. In spite of this, an analysis of the salinity problem was not included in the DEIS. The EPA representative indicated that the district has two choices regarding the salinity problem: (1) either comply with the state standard or, (2) change the state water quality standard. The Division of Water Quality has indicated that this latter option might be possible. However, the Salt Lake County Water Conservancy District, which uses Utah Lake water, has indicated that they might oppose any increase in the standard since it would increase their costs to clean the water.

In addition to the EPA's questioning the historical purpose and placement of the water, demographic and economic indicators also appear to question the historical placement of the water.

Historically, the SFN system was to deliver 11,200 acre-feet of M&I water to southern Utah County and 73,100 acre-feet of irrigation water to southern Utah County and eastern Juab County. An acre-foot is the amount of water which will cover an acre of land to a depth of one foot. Figure VIII shows the acres served and the acre-feet of irrigation water going to each county under the former SFN system.

**Figure VIII  
Irrigation Acre-feet Received and Acres Served  
by County  
(SFN Water Only)**

Location	Acres Served	Acre-feet Received
Southern Utah County	52,210	31,100
Eastern Juab County	23,360	42,000
<b>TOTAL</b>	<b>75,570</b>	<b>73,100</b>

*The 23,360 acres served in eastern Juab County includes approximately 10,000 acres of land which have never received any irrigation water. These lands are being given a full water allotment (3 acre-feet per acre or 30,000 acre-feet). The remaining eastern Juab acres are under-irrigated and are receiving water to bring them up to a full water allotment. Southern Utah County is only adding additional water to under-irrigated acres to provide a full water allotment. As a result, eastern Juab County is receiving more water per acre served than southern Utah County.*

SFN project allowed eastern Juab County to irrigate 10,000 new acres but does not allow any new irrigation in southern Utah County.

In 1998, the cost of bringing the above water into these two counties was estimated to be \$251,000,000. The district taxpayers' portion of this cost is estimated to be \$87,850,000. Figure IX shows the costs to run the pipeline to each county.

**Figure IX  
Total and Local Costs to Extend the Pipeline  
by County**

Location	Total Cost (1998 Dollars)	Local Portion of Total Cost
Southern Utah County	\$163,150,000	\$ 57,730,000
Eastern Juab County	87,850,000	30,120,000
<b>TOTAL</b>	<b>\$251,000,000</b>	<b>\$87,850,000</b>

The federal portion of the SFN system is capped at \$125,000,000 (This amount is stated in 1991 dollars and there is an inflation adjustment.) Local taxpayers are required to pay, at a minimum, 35 percent of the project's cost.



This local cost-share requirement is very unusual for an irrigation project which, in the past, was subsidized almost 100 percent by the federal government. As a result of the federal spending cap, any project cost overruns will be borne by district taxpayers.

In addition, these costs do not include the costs of the distribution systems which must be built within the two counties. Theoretically, these distribution costs are to be borne by the counties; however, the Strawberry Water Users Association (SWUA) has recently requested that the Salem Low Pressure System be funded by the district. Thus, it appears possible that some of the distribution costs may be paid for by the district. If this is the case, the local taxpayer portion of the SFN system would increase.

### **Demographic and Economic Indicators Question Former SFN Water Allocation**

---

**Utah is the sixth most urban state in the nation.**

---

Current county population projections question the allocation of the SFN's water. While the population is expected to grow substantially in Salt Lake and Utah Counties, far less growth is expected in Juab County. As a result, this population growth does not appear to support the allocation to Juab County. In addition, from an agricultural perspective, county agricultural production statistics also question the former allocation. Agriculture in Utah County yields a greater dollar value per acre-foot than does agriculture in Juab County. This agricultural production does not appear to support the allocation to Juab County.

---

**Irrigation water is ultimately going to be converted to an M&I use.**

---

As noted earlier, the CUP was planned from an agricultural preservation perspective. Now, however, most of Utah's population is clustered in the urbanized areas (Salt Lake, Provo-Orem, Ogden, and Logan). As a result, Utah ranks as the sixth most urban state in the nation. District management noted that given the long CUP planning time (50 years), needs have changed and now urban water uses are becoming more pressing than agricultural water uses. As a result, district management now realizes that any irrigation project is merely holding the water until the M&I need is there. Thus, because of population growth, this irrigation use is, ultimately, going to convert to an M&I use.

---

**Salt Lake and Utah Counties are projected to gain the most in population while Juab is projected to gain the least.**

---

**Population Projections Question the Original Allocation.** Given that this water appears to have an ultimate M&I use, population projections become important. It makes sense from this perspective that water would be placed where the population is expected to go. Figure X shows population projections for Salt Lake County, northern Utah County, southern Utah County and Juab

County. Data for eastern Juab County was not available. While Salt Lake County was not scheduled to receive water from the SFN (Salt Lake will receive 70,000 acre-feet from Jordanelle), Salt Lake County is included in this analysis because the county is a possible candidate to receive reallocated water and has unmet needs.

**Figure X**  
**Population Projections for Selected Counties**  
**1997 - 2050**

County	Population 1997	Projected Population 2020	Projected Population 2050	Net Population Change 1997 to 2050
Salt Lake	830,627	1,301,094	1,975,160	+1,144,533
Northern Utah	264,827	407,535	631,092	+366,265
Southern Utah	65,976	127,515	318,006	+252,030
Juab	7,702	11,847	17,727	+10,025

As can be seen, Salt Lake and Utah Counties are projected to gain the most in population while Juab is projected to gain the least. Further, southern Utah County has a significantly higher projected population increase than does Juab County. This comparison becomes clearer when looked at from a water needs perspective.

One general rule is that a family of four will consume approximately one acre-foot of water a year. Figure XI shows the projected change in the number of families and the resulting amount of water needed to meet the requirements of these additional families.

**Figure XI  
Projected Additional M&I Water Needs by County**

<b>County</b>	<b>Projected Additional Population 2050</b>	<b>Projected Additional Families of Four 2050</b>	<b>Projected Additional Water Needs 2050</b>
Salt Lake	1,144,533	286,133	286,133 acre-feet
Northern Utah	366,265	91,566	91,566 acre-feet
Southern Utah	252,030	63,008	63,008 acre-feet
Juab	10,025	2,506	2,506 acre-feet

Again, based on population, Salt Lake and Utah Counties are projected to need significantly more water than Juab County. However, although Juab County is projected to need a small additional amount of M&I water, the county was scheduled to receive a large water allocation. Figure XII shows a comparison of projected additional water needs and the water allocation by county. The water allocations reported in this figure are Bonneville Unit water allocations, not just SFN water allocations. These water allocations include both M&I and irrigation water.

---

**M&I water need is low in Juab County.**

---

**Figure XII  
Bonneville Water Allocations Compared to Water Needs**

<b>County</b>	<b>Projected Additional Water Needs in 2050</b>	<b>Bonneville Unit Water Allocation</b>
Salt Lake	286,133 acre-feet	70,000 acre-feet
Northern Utah	91,566 acre-feet	20,000 acre-feet
Southern Utah	63,008 acre-feet	42,300 acre-feet
Juab	2,506 acre-feet	42,000 acre-feet

---

**Juab County is projected to save 6,700 acre-feet of water through the East Juab Water Conservation Project. This saved water will be available for county use.**

---

Based on the projected M&I needs, which the district indicated is the ultimate use of this water, it is not clear to us why these water allocations were made. For example, it appears that Juab County is receiving far more water than it needs in the next 50 years while Utah and Salt Lake Counties are receiving less. (In addition to this additional water, Juab County is also projected to save 6,700 acre-feet of water a year as a result of the East Juab Water Conservation Project.) Further, according to the 1997 Utah Water Data Book, Salt Lake County is expected to exceed its culinary water supply by 2016 while Utah County is expected to exceed its culinary water supply by 2025.

Salt Lake County is planning on meeting some of its M&I needs through importation of Bear River water, which is a lower quality water than Bonneville Unit water. The Bear River project is currently estimated to cost between \$350 and \$700 million, depending on when construction begins. In 1995, the district estimated costs between \$14 and \$230 million to send water to the Provo River Basin from which Salt Lake County could access the water (These costs are only for the delivery system. Sending M&I water to Salt Lake County might result in an additional \$500 million cost as explained later). Additional water to meet Salt Lake and Utah County M&I needs will come from irrigation conversion, conservation, desalting Utah Lake, and reuse of wastewater.

---

**Salt Lake County is planning on meeting some of its M&I needs with the \$350 to \$700 million Bear River Project, desalting Utah Lake, and reusing wastewater.**

---

While population projections appear to support a reallocation of the SFN water, we believe that agricultural production statistics question the allocation as well.

**Agricultural Indicators Question the Original Allocation.** The agricultural revenue produced per acre of farmland is greater for Utah Counties' 1,790 farms than for Juab Counties' 228 farms. Since irrigation is holding the water until an M&I need arises, we reasoned that it might be wise to place irrigation water: first, where there is a projected M&I need; and, second, where the economic benefit to the state is the greatest. Figure XIII shows the market value of the crops and livestock produced per acre of crop land by county as reported in the 1997 Agricultural Census. In this analysis we did not consider Salt Lake County since relatively few acres are irrigated in this county.

**Figure XIII**  
**Comparison of Per-acre Value of Crops**  
**and Livestock by County**  
**1997**

County	Total Crop Land	Market Value of Crops & Livestock (1997)	Per-acre Value of Crops (1997)
Utah	149,920 acres	\$97,009,000	\$647.07/acre
Juab	66,400 acres	8,353,000	125.80/acre

---

**Juab farmers probably won't change their crop patterns as a result of the new water.**

---

While it is possible that Juab County could produce a greater market value per acre with additional water, it is not clear to us that this market value will significantly increase relative to Utah County. Further, according to statements made in a 1995 district study on water pricing, it appears unlikely that Juab County farmers will shift production to a higher value crop unless net income significantly increases. Net income equals the market value of crops and livestock minus expenses incurred. Farmers have an economic incentive to grow crops that provide the greatest net income. Low cost water allows farmers to earn a greater net income than otherwise would have been the case from crops like alfalfa (Juab County's primary crop). Further, alternative crops require alternative markets, alternative production methods, and alternative risks.

---

**Southern Utah County has 70,901 identified arable acres that are not addressed by the project.**

---

Given this comparison, it would appear reasonable to focus irrigation water on Utah County since the crop value per acre is significantly higher than in Juab County. In other words, it might make more sense to encourage Utah County to open up new acres to irrigation. However, under the former SFN system, Utah County was not provided with water to irrigate new acreage. Eastern Juab County, on the other hand, was provided with enough water to open up 10,000 acres of new land to irrigation.

According to the General Manager of SWUA, southern Utah County has a great deal of acreage which could possibly be opened up to irrigation. This contention is supported by an analysis of arable acreage. The Secretary of Interior has certified 101,771 acres in southern Utah County and eastern Juab County as arable. Arable land is land that has sufficient income potential to warrant consideration for irrigation development. Southern Utah County has 70 percent of these identified arable acres or 70,901 acres. The General

Manager of SWUA could give no reason why southern Utah County was not given the option to open new acreage to irrigation. In fact, this issue is a concern of SWUA.

In our opinion, both the demographic and economic indicators support a re-analysis of the former SFN water allocation. In addition, there is a political argument which also supports a re-analysis of the SFN water as well.

### **Funding and Benefits Are Not Equitable**

Some in Salt Lake County argue the water allocations within the Bonneville Unit are inequitable. In addition, some Salt Lake County legislators are also beginning to raise this issue. The argument is based on a comparison of the project funding each county has provided to the water allocation each county will receive.

---

**Juab has paid less than one percent of the total taxes and is receiving 19 percent of the water.**

---

The district was formed and began collecting taxes in 1965. Figure XIV shows the total amount of taxes that have been collected through 1997 and each county's dollar and percent contribution to the total. Figure XIV also shows the acre-feet and the percent of total water allocated to each county. Since Millard and Sevier Counties left the district, their tax contributions (\$6,379,125 and \$2,196,888 respectively) were excluded from the analysis.

**Figure XIV  
Comparison of Funding Contributed and Benefits  
Received by County**

<b>County</b>	<b>Total Amount Paid</b>	<b>Percentage of Total Paid</b>	<b>Acre-Feet Allocated</b>	<b>Percentage of Total Allocation</b>
Salt Lake	\$167,222,507	71.0%	70,000	31.82%
Utah	41,701,716	17.7	62,300	28.32
Uintah	10,787,171	4.6	3,000	1.36
Duchesne	7,339,935	3.1	24,900	11.32
Wasatch	2,969,074	1.3	17,760	8.08
Sanpete	2,619,286	1.1	-0-	-0-
Juab	1,694,239	.7	42,000	19.10
Garfield	683,693	.3	-0-	-0-
Piute	298,823	.1	-0-	-0-
Summit	175,551	.1	-0-	-0-
<b>Total</b>	<b>\$235,491,995</b>	<b>100%</b>	<b>219,960</b>	<b>100%</b>

*Additional water is not the only benefit of participation. For example, Piute, Sanpete, and Garfield Counties will benefit if the Hatchtown Dam is constructed.*

---

**Salt Lake County is projected to exceed its culinary water supply by 2016 while Juab County does not appear to need additional culinary water.**

---

Proponents of the equity argument use Salt Lake County and Juab County as examples of inequity. As Figure XIV shows, Salt Lake County has contributed 71 percent of the total taxes collected by the district yet is scheduled to receive only 31.82 percent of the project water and is projected to exceed its culinary water supply by 2016. Juab County, on the other hand, has contributed less than one percent of the total taxes collected by the district yet is scheduled to receive 19.1 percent of the project water. Based on population projections, Juab County does not appear to need additional M&I water.

Based on these comparisons, some see the water allocations as inequitable. On the other hand, urban areas often subsidize

governmental services in rural areas. Whether this subsidization is appropriate in this case is a matter for legislative consideration.

It should be noted that benefits other than additional water are provided by CUPCA. For example, Piute, Garfield, and Sanpete Counties are hopeful that the Hatchtown Dam will be constructed. While this project may not bring these counties additional water, it will allow for better regulation of existing water. In addition, Wasatch County is benefitting from the Wasatch County Water Conservation Project, estimated to conserve 23,000 acre-feet of water within the county.

The demographic and economic indicators support a re-analysis of the former SFN's water allocation. Further, we believe this re-analysis should be performed by the state.

## **An Open Independent Analysis Is Needed**

Possible water allocations should be analyzed in an open fashion by an independent committee. As noted earlier, the district and its board appear closely tied to an irrigation project in southern Utah County and eastern Juab County. As a result, we believe the Legislature should form a task force or study committee to independently analyze possible water allocation alternatives and determine what alternative would be best for the state as a whole. According to the district's general manager, it would be helpful if the state would adopt a water allocation position. In making this analysis, the task force will have to carefully weigh a number of difficult issues.

---

**District's general manager believes it would be beneficial for the state to take a position on where the SFN water should go.**

---

As noted earlier in this chapter, some district employees and board members appear to prefer an irrigation project in the south. Many board members believe that a promise made to send water south should be kept. Further, it appears that some of the board members would not be able to objectively consider sending the water north if that alternative were presented. Some board members appear to believe that the water should either go south or it should stay where it is.

This re-analysis of the former SFN water allocation is a critical, political decision which should be made with the benefit of the overall state's interest in mind. Thus, we believe that the water allocation alternatives merit an open, independent review by the state. Currently there is an internal task force within the Department of Natural Resources which is analyzing some of the issues surrounding certain water allocation



alternatives. However, according to statements made at the February 1999 task force meeting, we do not believe that this task force will recommend any particular alternative.

In our opinion, the Legislature should study the SFN water allocations and make a recommendation on a legislative position regarding the water. This study might be able to use some of the work generated by the internal task force. The district's general manager believes it would be beneficial for the state to take a water position. He believes that the federal government would not oppose whatever allocation the state determined to be in its best interests.

In making this analysis, there are several difficult issues that the task force will have to weigh.

### **Several Issues Will Impact Analysis of Water Allocation Alternatives**

All three of the likely water allocation alternatives have difficult issues surrounding them. One alternative is to allocate the water to southern Utah County and eastern Juab County as originally conceived in the SFN plan. This alternative is estimated to cost \$251 million and has the following issues: (1) a questionable purpose and need; (2) the increasing salinity of Utah Lake; (3) the possible lack of SWUA participation; and, (4) unknown irrigation to M&I conversion costs. A second alternative is to allocate irrigation water to Utah County only. This alternative is estimated to cost \$163 million and has the same issues as the original SFN alternative. A third alternative is to reallocate the SFN water to Salt Lake County as M&I water. This alternative was estimated in 1995 to cost between \$14 million and \$230 million for the delivery system (An additional \$500 million in cost could be added as a result of the conversion to M&I.) This will be explained below and has the following issues: (1) code constraints; (2) unknown costs; and, (3) reduced water availability. While these are not the only possible alternatives, they are alternatives which have been raised in the past.

---

**SWUA has stated its intention to convert some or all of its water to M&I use.**

---

**Irrigation Water Could Be Supplied as Originally Planned.** The plan serving southern Utah County and eastern Juab County is estimated to cost \$251 million and is impacted by the following issues:

**A Questionable Purpose and Need.** The need for an irrigation project in southern Utah and eastern Juab Counties was compromised by SWUA's stated intentions to convert some or all of their water from irrigation to M&I. This intention resulted in the EPA questioning the need for the project. If SWUA is going to convert its irrigation water

to M&I, then why is the SFN furnishing supplemental irrigation water? The EPA declared that the DEIS was fundamentally flawed, given the stated project purpose of providing supplemental irrigation water and comments in the DEIS which indicated a possible reduction or elimination of the irrigation aspect of the project.

**An Increase in Utah Lake Salinity.** SFN water percolating through irrigated lands coupled with a decreased flow from the Provo River is predicted to cause the salinity of Utah Lake to exceed acceptable standards. Specifically, Utah Lake's salinity is predicted to rise to 1,400 parts per million (ppm) while the State water quality for irrigation is 1,200 ppm. The water quality in Utah Lake was one of the significant issues raised by both the EPA and the State Division of Water Quality in their SFN DEIS review. An EPA representative indicated that the district has two choices regarding the salinity problem: (1) either comply with the state standard, or (2) change the state water quality standard which would affect other users of Utah Lake.

---

The district's general manager has informally offered to pay SWUA's project cost of \$40 million in an effort to get SWUA's needed participation.

---

**SWUA May Not Participate.** SWUA's participation is important to the SFN project for two reasons. First, the SFN system assumed use of SWUA's Highline Canal as part of the SFN distribution system. Without SWUA's participation, the canal would not be available for use. Second, SWUA is the largest irrigator in southern Utah County and facilitates the federally required user commitment for 90 percent of the SFN water delivery. Without 90 percent of the water under contract, no federal money can be spent on construction.

In addition to these two issues, another SWUA issue which impacts the district, regardless of SWUA's participation, is a contractual water delivery commitment made to SWUA by the district. If this contractual obligation is binding, then SWUA water could potentially utilize the full capacity of the Diamond Fork System leaving no room for SFN water. As a result, SFN water would become an unreliable source of water, most likely during critical periods (hot, dry spells).

Toward obtaining SWUA's willing participation, the district's general manager has made an informal offer. This offer states that the district will pay SWUA's cost of project participation (estimated to be \$40 million) and will deliver water to SWUA as long as it is used for irrigation. However, upon conversion to M&I, the water reverts to management by the district and the district gets the money from the

---

Federal government heavily subsidizes irrigation projects while M&I projects are paid for by the system users.

---

---

Upon conversion from irrigation to M&I, the costs local users might be expected to pay are unknown.

---

---

Strawberry Reservoir costs (approximately \$500 million) could be transferred to M&I users for payment.

---

M&I sales. It is unknown what release from the SWUA delivery obligation will cost the district and the district's taxpayers.

**Conversion Costs Are Unknown.** Irrigation projects are heavily subsidized by western power users. M&I projects are not subsidized and M&I users are expected to pay the full cost of the system. Upon conversion from irrigation to M&I, the costs that local users might be expected to pay are unknown. It is possible that some of Strawberry Reservoir's construction costs (approximately \$500 million) could be transferred for payment to M&I users. While Section 211 in the CUPCA was written to protect the state from additional CUP costs, it is debatable whether it will actually do that.

**Irrigation Water Could Be Supplied to Utah County Only.** The cost of this alternative is estimated at \$163 million. This alternative is impacted by the same issues as the irrigation alternative to southern Utah County and eastern Juab County. Again, these issues are: (1) questionable purpose and need, (2) increased salinity in Utah Lake, (3) possible lack of SWUA participation, and (4) unknown irrigation to M&I conversion costs. Because these issues were discussed above, we will not discuss them further here.

**M&I Water Could Be Supplied to Salt Lake County.** The cost of this alternative was estimated by the district in 1995 to range between \$14 and \$230 million depending on the delivery alternative selected. It should be noted that this cost is for construction of the delivery system only. Other costs (approximately \$500 million) could also be realized as discussed below. Code constraints, unknown costs, and limited water availability are three issues which must be considered under this alternative.

**Code Constraints** - It appears that CUPCA does not authorize any money for a feature to carry water into Salt Lake County. According to the district's general manager, the CUPCA statute was deliberately written this way to fulfill the commitment to deliver water south. Thus, any feature needed to deliver M&I water to Salt Lake County would appear to require a change in the federal CUPCA statute. While CUPCA appears to preclude any new features to move water to Salt Lake County, it may not preclude moving water into Salt Lake County by trading water shares with other water users.

**Cost Issues** - The financial risk of an M&I conversion is unclear. Currently this project is defined as an irrigation project. Irrigation projects are heavily subsidized by the federal government. M&I

---

Because of the Jordanelle exchange, approximately 35,000 to 43,000 acre-feet can be delivered to Salt Lake County as opposed to 84,300 to southern Utah and eastern Juab Counties.

---

projects, on the other hand, are paid for in full by the M&I users. DOI management has indicated that if the SFN irrigation water is converted to M&I use, then the M&I users could be required to repay as much as an additional \$500 million to the federal government. Whether or not this is the case depends on the protection that CUPCA Section 211 actually provides. However, if the federal CUPCA statute is changed to authorize an M&I project, Section 211 and any protection it offers may be lost.

**Water Availability** - Approximately 35,000 to 43,000 acre-feet could be available for delivery to Salt Lake County for M&I water. This acre-footage is made up of 14,700 acre-feet of Bonneville Unit water with the remainder coming from conversion of the district's water rights in Utah Lake. (The district owns water rights which yield approximately 50,000 acre-feet of water a year). The acre-footage which could be delivered to Salt Lake County is less than could be delivered to southern Utah County and eastern Juab County (84,300 acre-feet of water). This reduced acre-footage to Salt Lake County is because of the required Jordanelle exchange. (See Appendix A for information about the Jordanelle exchange.)

As can be seen, the analysis of these alternatives is not going to be easy. While demographic and economic indicators may support one alternative, other issues coupled with that option may negatively impact the alternative. We do believe, however, that an open, independent analysis of the alternatives and their surrounding issues will result in a decision that is best for the state as a whole.

### **Recommendations:**

1. We recommend that the Legislature review the district's board makeup and length of service and consider making a statutory change to board composition to improve representation of overall state interests.
2. We recommend that the Legislature form a task force or study committee to re-analyze former SFN project water allocations. This task force or study committee should recommend a water allocation position that the Legislature could consider adopting.

---

## Appendices

**This Page Left Blank Intentionally**

## **Appendix A**

### **The Jordanelle Exchange**

The Jordanelle Exchange must be made if the Jordanelle Reservoir is to meet future contractual water deliveries. The Jordanelle Reservoir was constructed, in part, to supply M&I water to Salt Lake County. In fact, the district has a contractual obligation to deliver 70,000 acre-feet of M&I water from the Jordanelle Reservoir to Salt Lake County by 2002. The Jordanelle Reservoir obtains its storage water by withholding water which would normally flow down the Provo River and into Utah Lake. However, all the water in the Provo River is committed to various water users. In addition, a 1987 environmental decision stated that Utah Lake must be maintained at a minimum level. Thus, in order for the Salt Lake County contractual obligation of 70,000 acre-feet a year to be met, the Jordanelle Reservoir must maintain a certain minimum Provo River flow and the Utah Lake must be maintained at a certain minimum level.

The process which will allow the Jordanelle Reservoir to meet the contractual obligations is called the Jordanelle Exchange. The key to the Jordanelle Exchange rests with the Strawberry Reservoir and the Diamond Fork System. Essentially, water from the Strawberry Reservoir will be transported through the Diamond Fork System to Utah Lake as a replacement for water being withheld in Jordanelle Reservoir. If this water is not replaced in Utah Lake, then the Salt Lake contract cannot be honored.

Under the former SFN system, most of the Utah Lake replacement water was coming in the form of drainage from the 73,100 acre-feet of irrigation water supplied to southern Utah and eastern Juab counties. Only a small amount of water was going to be delivered directly to Utah Lake through the Diamond Fork System. If the irrigation portion of this project is not done, then 86,100 acre-feet of water will have to be delivered directly through the Diamond Fork System to maintain Utah Lake's minimum level.

## Appendix B

### CUWCD Tax Revenue Comparison

(millions)

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total Tax Reduction
<b>Original Taxing Plan</b>	<b>19.9</b>	<b>20.4</b>	<b>21.1</b>	<b>22.9</b>	<b>24</b>	<b>25.1</b>	<b>26.3</b>	<b>27.5</b>	<b>28.7</b>	<b>30.1</b>	<b>30.5</b>	<b>32.9</b>	<b>34.5</b>	<b>36.1</b>	<b>37.8</b>	<b>39.5</b>	<b>41.4</b>	
<b>District Proposed Tax Plan</b>	<b>19.9</b>	<b>20.4</b>	<b>21.1</b>	<b>21.8</b>	<b>22.5</b>	<b>23.2</b>	<b>24</b>	<b>24.7</b>	<b>21.6</b>	<b>15</b>	<b>15.7</b>	<b>16.5</b>	<b>17.2</b>	<b>15.8</b>	<b>16.5</b>	<b>17.3</b>	<b>18.1</b>	
Reduction from Original	0	0	0	1.1	1.5	1.9	2.3	2.7	7.2	15	15.7	16.5	17.2	20.3	21.2	22.2	23.3	<b>168.1</b>
<b>Auditor Proposed Tax Plan</b>	<b>16.4</b>	<b>16.9</b>	<b>17.4</b>	<b>18.9</b>	<b>19.8</b>	<b>20.7</b>	<b>21.7</b>	<b>22.7</b>	<b>23.7</b>	<b>22.6</b>	<b>23.6</b>	<b>24.7</b>	<b>14.7</b>	<b>15.3</b>	<b>16.1</b>	<b>16.8</b>	<b>17.6</b>	
Reduction from Original	3.5	3.6	3.7	4	4.2	4.4	4.6	4.8	5	7.5	7.9	8.2	19.8	20.7	21.7	22.7	23.8	<b>170.1</b>

*Note: Reductions are based on the most current revenue and expenditure data provided by CUWCD and its bonding consultants. The district the auditor's plans, while having similar gross total reduction values, differ in when reductions should be made. The district plan maintains higher fund balances and greater flexibility as more funding is available in the earlier years. The auditor plan maintains fund balances sufficient for the district's needs (twice as high as the state's rainy day fund balance) and, in doing so, requires the district maintain discipline in its cost control measures.*



## **Agency Response**

TABLE OF CONTENTS

Chapter I  
Introduction ..... 4

Chapter II  
District Financial Management ..... 6  
    CUP Funding History ..... 6  
    Federal Debt Pre-payment Created Major Savings ..... 8  
    CUPCA Cash Management ..... 9  
    CUPCA Cash Reserves Have Grown ..... 15  
    Tax Rate Not Based on Need ..... 15  
    The General Fund Balances Lack Purpose and Appear Excessive .. 18  
    The Increasing Fund Balance Lacks Purpose ..... 19  
    The District’s Fund Balance Appears Excessive ..... 19  
    The District’s Expenditures Don’t Justify Future Tax Rate ..... 19  
    Statute Governing Fund Balances Needs Review ..... 19  
    The 1989 Budget Recommendations ..... 20  
    Recommendations ..... 23

Chapter III  
District Policies and Procedures ..... 25  
    Board Members’ Independent Business Activities Do Not Violate  
    State Law ..... 25  
        District Payments to Board Chairman ..... 27  
        The District Contract with Juab County Pays Board Member  
        For Work Related to the District. .... 32  
        Work performed by a Board Member’s Company Creates a  
        Questionable Appearance ..... 34  
    The General Manager’s Bonus Agreement .....  
        ..... 36  
The District’s Control of Expenditures .....  
    ..... 39  
Vehicle Expenses .....  
    ..... 41  
Procurement Practices .....  
    ..... 42

Chapter IV  
Discontinuation of SFN Project Affords Opportunity to Redirect Efforts 45  
    Current Board Selection Process Protects Interests of all Utahns ... 45  
    Board Experience With Local Water Users Is a Significant Benefit . 46  
    Board Members Work Together To Benefit the Entire District .... 47

Legal and Policy Arguments Support Board Actions on SFN . . . . . 47  
Federal Law Limits the Project to the Utah and Juab Counties . . . . . 47  
State Water Law Mandates the Return of Most SFN Water to Utah  
Lake . . . . . 48  
Repayment Considerations . . . . . 49  
Utah Lake Water Quality Issues . . . . . 50  
Water Infrastructure and Growth . . . . . 50  
A Commitment Was Made . . . . . 52  
Salt Lake County’s Tax Payments are Balanced by Benefits . . . . . 52  
Scoping New Project Features . . . . . 53

# Response to the Performance Audit of the Central Utah Water Conservancy District

The Legislative Auditor (the “Auditor”) started a management audit of the Central Utah Water Conservancy District (the “District”) over one year ago. This document is the response from the District which has been unanimously approved by the District’s Board of Directors.

## The Audit’s Criticisms of the District are Unfounded

The Audit suggests three fundamental criticisms of the District.

The Auditor claims;

*First, the District’s financial management can be more consistent.*

The District responds as follows:

- The District’s financial plan has been dictated by Governor Leavitt’s 1993 CUP Cost Sharing Task Force and the CUP Cost Sharing Agreement with Department of the Interior.
- The District’s financial plan will save taxpayer’s \$117 million.
- Implementation of the Auditor’s financial recommendations could cost Utah the federal contribution towards completing CUP.
- The District is maximizing its financial capabilities to enable it to pay the local cost sharing for CUP without a tax increase.

*Second, District policies and procedures lack sufficiency and enforcement.*

The District responds as follows:

- After the 1989 and 1993 Audits, the District revised its policies and procedures to address audit criticisms. Human Resource and procurement policies have been strengthened.

---

The District’s financial plan will save taxpayer’s \$117 million.

---

---

Implementation of the Auditor’s financial recommendations would cost Utah the 65% federal contribution towards completing CUP.

---

---

In accusing Board leadership of code violations, the Auditor chooses to ignore the *Utah Public Officers’ and Employees’ Ethics Act*,

---

---

Board member involvement with other water districts is reviewed by legal counsel to insure compliance with federal and state law and District

---

---

Every water district board in the state (including the State Board of Water Resources) has board members who are also affiliated with local water users or districts which according to the Auditor creates an “indirect” conflict of interest.

---

- The District takes strong exception to the Auditor’s statement that policies and procedures appear to be overridden by management with the knowledge of the board.
- In accusing Board leadership of code violations, the Auditor chooses to ignore the *Utah Public Officers’ and Employees’ Ethics Act*, Utah Code Ann. §67-16-1 *et. seq.* (1969), §67-16-2 of the Act explains its purpose. It reads:

For the purpose of establishing a standard of acceptable conduct for all state officers, employees and those of all political subdivision of the state where there are actual or potential conflicts of interest between their public duties and their private interests. . . **It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.**

- Board member involvement with other water districts is reviewed by legal counsel to insure compliance with federal and state law and District policy.
- Every water district board in the state (including the State Board of Water Resources) has board members who are also affiliated with local water users or districts which according to the Auditor creates an “indirect” conflict of interest.

*Third, in addition to these managerial issues, the discontinuation of the SFN system affords an opportunity to analyze the District’s water efforts.*

The District responds as follows:

- The Auditor advocates delivery of SFN water to Salt Lake County as an alternative to the Bear River Project. By making this recommendation, the Auditors have substantially expanded the original scope of the audit to advocate sweeping changes in the existing federal and state water policies affecting regional water allocations.
- The District is required by federal law to build a system to deliver SFN water to the Utah and Juab counties (Utah Lake Drainage Basin) .

---

**Elimination of the irrigation features of CUP may cost local taxpayers \$575 million in reallocated federal costs.**

---

- The State Water Engineer requires that SFN water be deposited into Utah Lake so that water from Jordanelle Reservoir can be delivered to Salt Lake county.
- Elimination of the irrigation features of CUP may cost local taxpayers \$525 million in reallocated federal costs.

## Chapter I Introduction

---

the Auditor has overlooked the significance of one key factor; *the CUP is a federal water project.*

---

The Audit is basically correct about most of the history of the Central Utah Project (“CUP”); however, the Auditor has overlooked the significance of one key factor; *the CUP is a federal water project.*

- The facilities are owned by the federal government.
- The project’s water rights are in the name of the federal government.
- The Bonneville Unit trans-basin diversion of water was planned by the federal Bureau of Reclamation.
- From 1964 until 1993, the project was constructed by the federal government with money which came 100 percent from the federal Congress.
- The project is still governed predominantly by federal reclamation law and other environmental statutes.

---

no federal funds could be spent “until the District enters into a binding agreement with the Secretary to be considered a ‘federal agency’

---

### The Central Utah Project Completion Act

In 1992, when Congress passed the billion dollar Central Utah Project Completion Act (Public Law 102-575), (“CUPCA”) to finish the CUP, it agreed to let Central Utah Water Conservancy District assume the role of the Bureau of Reclamation as construction manager to finish the CUP. CUPCA stipulated that no federal funds could be spent “until the District enters into a binding agreement with the Secretary to be considered a ‘federal agency’ for purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of such funds, and to comply with this Act.”

---

Many of the criticisms of the District in the audit are based upon actions which have been taken to comply with these federal laws and agreements.

---

The District and the federal government entered into three comprehensive written agreements which dictate to the District how to carry out its responsibilities under CUPCA. Should the District violate the terms of any of these agreements, federal funding for CUP would be lost.

Many of the criticisms of the District in the audit are based upon actions which have been taken to comply with these federal laws and agreements. While this has been pointed out to the audit team, they have either not understood the complexity of these requirements or they have selectively chosen to minimize or ignore them. The report fails to fully explain the federal nature of the CUP and the limited role the CUWCD and its Board played prior to the enactment of CUPCA.

The Audit recites factual statistical information borrowed largely from District and Bureau documents however, the Audit reveals a fundamental lack of understanding about how CUP works. For example, the Auditor incorrectly identified Glen Canyon dam and Flaming Gorge Reservoir as the first CUP dams built. In reality, these dams are not part of CUP at all but regulating reservoirs which supply water to the lower basin states of Arizona, California and Nevada.

The audit states that it was initiated in response to a request by several legislators. “In particular, these legislators were concerned that property tax payments for the CUP might not be the most equitable means of paying for water use”.

**Governor’s Task Force on CUP Cost Sharing**

The introduction fails to mention that the District’s tax policy is based upon the recommendations of Governor Leavitt’s 1993 Blue Ribbon Task Force for funding the state share of the CUP which included many distinguished members of the legislature and the public. The draft audit omitted this critical part of the history relating to the District’s 1993 approach to the Legislature for an increase in taxing rate in order to provide the local cost share required by the Central Utah Project Completion Act of 1992 (“CUPCA”).

The recommendations of the Task Force were presented to the Auditor during the audit as the policy direction upon which the Boards’ taxing rate was based but it was not mentioned anywhere in the original draft. The District has summarized the findings of the 1993 task force in its Chapter II responses. The Auditor’s objectives for the current audit are summarized in the following tables:

Auditor’s Objectives	District’s Response
1. Determine if the District’s financial management is sound. 2. Determine if the District’s administrative controls are adequate and functioning well. 3. Identify possible concerns surrounding the rescoping of the former SFN system.	1. Agree and support. 2. Agree and support. 3. Rescoping provides an opportunity for new input into the Utah Lake Drainage Basin Water Delivery System.

---

the District’s tax policy is based upon the recommendations of Governor Leavitt’s 1993 Blue Ribbon Task Force for funding the state share of the CUP

---



---

Rescoping provides an opportunity for new input into the Utah Lake Drainage Basin Water Delivery System.

---



Auditor's Objectives	District's Response
4. Determine if allegations concerning District employees have merit.	4. Agree and support

## Chapter II District Financial Management

---

**The Auditor claims that some of the decisions have cost federal and local taxpayers at least \$11.1 million. The District strongly disputes this amount.**

---

The Auditor claims that the financial management of the District is inconsistent. The Auditor claims that some of the decisions have cost federal and local taxpayers at least \$11.1 million. The District strongly disputes this amount. This figure is based largely on the Auditor's speculative assumption that the District could have earned a higher interest rate on its CUPCA account balances. Because of limitations in the contractual agreements with the federal government concerning account management, the District disputes that it could have earned the amount suggested by the Auditor. It is somewhat academic that the Auditor's interpretation of the federal agreements would allow the District to invest in the State Pool since the federal government's interpretation is to the contrary. However, it is clear that the centerpiece of the District's financial management decisions, the federal debt prepayment, has saved the local taxpayers many times this amount. Each item raised by the Auditor will be discussed in our response.

### CUP Funding History

---

**Prior to 1992, the federal government funded 100 percent of CUP**

---

When CUPCA was passed in 1992, the U.S. Bureau of Reclamation ("Bureau") was replaced by the District as construction agent for the CUP. With this responsibility came the requirement for the District to fund between 35 and 50 percent of the various unfinished features of the project. Prior to 1992, the federal government funded 100 percent of CUP.

The District was able to use its property tax revenues collected into the general fund each year to pay operating costs and transfer the remainder into its capital account for the construction of much needed water treatment plants, pipelines, canals and other infrastructure needs within the District's service area. The District's tax levy was set by the Board of Directors at levels based upon annual operating needs and planned capital projects.

The Department of the Interior ("DOI") informed the District that as a component of the cost sharing agreement with the U.S. government, the District

must demonstrate that it had the present financial ability to fully fund all of the project's local cost sharing requirements for the entire project. Based upon Bureau of Reclamation estimates, the local cost sharing requirement exceeded \$321 million. The District did not have that financial ability, so the District approached the Governor and the 1993 General Session of the legislature requesting an increase in its authorized rate of 0.0004 .

---

**the Cost Sharing Agreement provided that the District must show its cost sharing capability on a project feature by project feature basis**

---

Through a series of negotiations with DOI, the District and the Governor were able to persuade the federal government to abandon the requirement for the District to demonstrate it could raise the local funds for the entire project. Instead, the Cost Sharing Agreement provided that the District must show its cost sharing capability on a project feature by project feature basis after several years of planning and environmental compliance work. With this change of DOI policy, the immediate need for a tax rate increase was eliminated and the tax rate increase bill was pulled.

---

**After the 1993 General Session, a special task force was created by the Governor to develop a funding plan consistent with these federal requirements**

---

After the 1993 General Session, a special task force was created by the Governor to develop a funding plan consistent with these federal requirements. Members of the CUP Funding Task Force included;

- Governor Michael O. Leavitt
- Speaker Glen Brown
- Representative Christine Fox
- Representative Tim Moran
- Senator Howard Stephenson
- Senator Eldon A. Money
- Senator Craig Peterson
- Dr. Kelly Mathews, Chief Economist, First Security Corporation
- D. Kent Michie, Vice President, Smith Capital Markets
- Dallin W. Jensen, Water Attorney, Parsons, Behle and Latimer
- Pamela Hendrickson, Sevier County Assessor
- Orval C. Harrison, former legislator
- Don Olsen, Senior Vice President, Huntsman Chemical Corporation
- James Barker, Staff Director and General Counsel, Senator Robert Bennett
- Chuck Peterson, former Senator
- Ted Stewart, Executive Director, Department of Natural Resources
- Larry Anderson, Director, Division of Water Resources

---

**Central to this was a recommendation that the District proceed immediately to raise its tax levy to maximum statutory rate and to maintain that maximum rate as the principal funding source of cost sharing funds through the CUP construction period**

---

Following numerous public meetings and months of analysis, the task force recommended to the Governor and the Legislature that the District pursue several creative financing alternatives which had been presented at its hearings. In addition, the Task Force recommended that the District should, to the

maximum extent possible, develop a plan to self fund the local share contribution year by year. Central to this was a recommendation that the District proceed immediately to raise its tax levy to maximum statutory rate and to maintain that maximum rate as the principal funding source of cost sharing funds through the CUP construction period. The Task Force recommended that the District spend its then current capital reserves to cover the immediate costs of the newly authorized project feasibility studies. The Task Force further recommended that the District borrow from the State Board of Water Resources revolving fund to the extent its annual tax revenues were not sufficient to meet its non-CUPCA capital projects needs. The District did indeed borrow from the Board of Water Resources for the projects which the capital reserves had been dedicated. The District was to levy its maximum tax rate of 0.004, build up reserves for the future cost share requirements, while the demands of construction were not yet activated, then bond for the unfunded balance when needed. Even with the implementation of these recommendations, the task force determined that additional revenue would be needed to fully fund the completion of the CUP and that by 1997, the District would have to approach the legislature for additional revenue such as a surcharge on project water or an increase in property tax.

After the task force made its recommendations, the District used its capital reserves to fund feasibility studies and the District, applied for and received funding for the reserved capital projects which have now been completed.

Prior to the 1998 and 1999 legislative sessions, the District was able to inform the Governor and the Legislature that the anticipated future reliance upon either State General Fund revenues or a property tax rate increase would not be necessary to complete the remaining features of the project. This important goal was accomplished not only through creative but prudent financial planning but by reducing the cost of several project features below what the Bureau of Reclamation had planned.

The balances being generated in the general fund are to be transferred each year to fund the next year's cost sharing reserve requirement. If, when construction is fully underway, the 0.0004 rate does not produce sufficient revenue to provide the local cost sharing required, the District will be able to bond because of the federal debt prepayment plan.

### **Federal Debt Pre-payment Created Major Savings**

The District's General Manager and Washington, D.C. based attorney devised a creative financing plan to allow the District to prepay its debt to the

---

**The savings generated by the federal debt prepayment plan and the accumulation of cash reserves have provided the District with the additional bonding capability needed for the local cost share**

---

---

**the District's federal debt prepayment plan will save the local taxpayers \$117 million**

---

federal government on a heavily discounted basis. The plan was approved by the Governor and taken to the Utah Congressional delegation for introduction. This prepayment decision will save \$117 million. The present value of this savings is worth \$25.5 million to the District taxpayers today.

*The Audit says “this savings was made possible primarily because of the federal government’s movement toward a balanced-budget which would create needed cash.”*

- Actually, the Clinton Administration opposed the plan in testimony before Congress and vetoed the legislation the first time it was passed.
- Ultimately, in 1996, the District enacted special Congressional legislation which required the Secretary of the Interior to accept the District’s prepayment .
- The District in late 1998 and March 1999 issued revenue bonds and prepaid most of the federal debt.
- The federal debt prepayment plan is the integral component of the District’s financial management planning has been recognized as a groundbreaking, innovative financial tool which is now being copied by other water districts around the West.

---

**the District’s debt prepayment plan is now being copied by other water districts around the west.**

---



---

**The \$117 million savings generated by prepayment combined with the accumulation of annual property taxes revenues will enable the District to meet its local cost share requirement for the completion of the CUP *without raising the District’s tax rate.***

---

Auditor’s Comments	District’s Response
<p>The Auditor says that “in 1992, federal government balanced-budget initiatives allowed CUWCD to prepay District-owed federal debt at a substantial discount”</p>	<p>The District developed this federal prepayment plan and in 1996 obtained special legislation from Congress to implement it.</p> <p>The \$117 million savings generated by prepayment will enable the District to meet its local cost share requirement for the completion of the CUP <i>without raising the District’s tax rate.</i></p> <p>The District retains the ability to prepay additional debt and obtain further significant savings.</p>

## CUPCA Cash Management

---

To do as the Auditor suggests would jeopardize millions in federal funding for CUP

---

*The Audit accuses the District of financial mismanagement by failing to earn an extra \$3.7 million for federal and local taxpayers by investing CUPCA funds in the State Treasurer's Pool.*

- In fact, in 1993 the District sought permission from the Federal government to do so and was told it could not.
- On June 30, 1999, the District supplied the Auditor with a written letter from the Department of the Interior which reiterates this position.
- To do as the Auditor suggests would jeopardize millions in federal funding for CUP.

---

the District was given a policy directive in 1993 by the Governor's Blue Ribbon CUP Cost Sharing Task Force to maximize it's local tax revenues to pay the 35 % local cost sharing during construction of the project.

---

*The Audit accuses the CUWCD Board of overtaxing Utahns \$7.2 million for maintaining its statutory maximum property tax levy.*

- To avoid a tax increase, the District was given a policy directive in 1993 by the Governor's Blue Ribbon CUP Cost Sharing Task Force to maximize it's local tax revenues to pay the 35 % local cost sharing during construction of the project.
- The District's Board annually reviews the needs of the District to determine the appropriate tax rate.
- After CUP is completed, leftover taxes will be used to pay off debt.

The Auditor claims that the management of the CUPCA cash is poor and that it could have earned an additional \$3.7 million for federal as well as local taxpayers had its funds been invested in the State Treasurer's Pool. Under CUPCA, the Congress appropriates to the District cash to fund the federally authorized work program each year. The District must match federally appropriated funds at the ratio for most of the projects on a 65% to 35% basis.

The federal cost sharing agreement between the District and the Department of the Interior requires that both the federal 65% and the local 35% contributions must be deposited in a federally chartered banking institution. Interest earned on the federal 65% will be credited to the federal government and not to the local taxpayers. The federal interest is recaptured by

a equal reduction in future federal funding. Future federal appropriations are indexed to adjust for inflation and then offset by any interest earned on the federal portion of the CUPCA account.

---

**The District has provided the Auditor with a letter from the CUP federal program director which supports the District's version of the facts and reiterates the federal position that the District cannot invest CUPCA funds in the State Treasurer's Pool or similar instrument.**

---

Before the CUPCA account was established, the District asked the CUP federal program manager if it could utilize the State Treasurer's Pool as the CUPCA account. The answer was negative since the Treasurer's Pool is not a federally chartered bank account. The District has recently resubmitted the same request and the answer from the federal program director remains the same. It is somewhat academic that the Auditor's interpretation of the federal agreements would allow investment in the State Pool since the federal government's interpretation is to the contrary.

The Audit quotes the CUP federal program director as indicating that the District has not attempted to obtain permission to invest in the State Treasurer's Pool. The District has provided the Auditor with a letter from the CUP federal program director which supports the District's version of the facts and reiterates the federal position that the District cannot invest CUPCA funds in the State Treasurer's Pool or similar instrument. See Exhibit "A".

---

**The District expects to receive Interior's approval to proceed with final construction of the Diamond Fork System within 90 days**

---

It was not anticipated that there would be a substantial accrual of funds in this account as it was contemplated that funds would be withdrawn throughout the year to pay for planning and construction of project features. Due principally to opposition to construction of certain features of the Diamond Fork System, construction approvals have lagged and on December 31, 1998, the CUPCA fund was up to \$72.2 million. However, the District expects to receive Interior's approval to proceed with final construction of the Diamond Fork System within 90 days and the balance in the account will be substantially depleted as construction proceeds.

**The District's management has instituted a fund management system that enables reserve balances to earn a higher interest rate and satisfies the federal requirements.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. Pursuant to the cost share agreement, the CUPCA funds were deposited in a federally chartered bank and received an interest payment approximately 2% less than the rate paid by the State Treasures's pool for similar municipal investments.</p>	<p>1. The District is prevented from depositing CUPCA funds into the Treasurer's pool by the terms of the cost sharing agreement with the federal government. In an effort to enhance interest revenues, the District has taken steps to invest all CUPCA funds and other funds at in rates consistent with both federal law and the State's Money Management Act.</p>
<p>2. The funds were transferred to a money market account which paid a slightly higher interest rate in the 2<sup>nd</sup> quarter of 1999.</p>	<p>2. The District's management has instituted a fund management system that enables reserve balances to earn a higher interest rate and satisfies the federal requirements.</p> <p>In addition to the change noted by the Auditor, effective May 1, 1999, the District's federally chartered bank will provide for an interest payment in the amount the Federal 90-day Treasury Bill rate.</p> <p>This will only be a temporary rate while the District explores additional investment opportunities consistent with State and Federal requirements.</p>

65 percent of all interest earned is on the federal CUPCA funds and does not accrue to local taxpayers. This interest is used to offset future federal contributions.

the federal and local contributions had to be deposited in a federally chartered bank account in order to comply the cost sharing agreement

Auditor's Comments	District's Response
<p>3. This decision cost the taxpayers \$3.7 million if the funds had been invested in the State Treasurer's pool for a similar period of time.</p>	<p>3. The District disagrees with the amount claimed by the Auditor.</p> <p>65 percent of all interest earned is on the federal CUPCA funds and does not accrue to local taxpayers. This interest is used to offset future federal contributions.</p> <p>The District intends to explore additional investment opportunities consistent with state and federal requirements.</p>
<p>4. The District felt that it had no choice but to invest in the federal chartered bank checking accounts.</p>	<p>4. The District was told by Interior Department personnel in Washington, D.C. and Utah that because the majority of CUPCA funds came from Congressional appropriations, both the federal and local contributions had to be deposited in a federally chartered bank account in order to comply with the cost sharing agreement. The District's ability to invest pursuant to the State Money Management Act is subject to federal approval. The District will work to achieve the highest investment rates consistent with State and Federal requirements. The federal CUPCA program director has provided a letter stating that CUPCA funds cannot be invested in the State Treasurer's pool either directly or through a trust arrangement as suggested by the Audit. See Exhibit "A".</p>



Auditor's Comments	District's Response
<p>5. The Auditor contacted the "investment manager" for the District's bank and claims that this bank officer indicated that "the District had never approached him for possible options." He further recommended that the District should invest in the State Pool because of its higher interest rate. This person also told the Auditor about a \$20,000 high-yield checking account that would also earn interest at a higher rate. The revised Audit has reduced the amount that could have been earned from \$4.4 million to \$3.7 million to more closely track the rate.</p>	<p>5. The Vice-President referred to by the Auditor is assigned to the Capital Markets group for the bank. At Capital Markets, this individual works with the State Treasurer's Pool and is a commissioned sales person deriving his income from the sale of investments. The District's bank stated that this individual has <b>no authority</b> to speak for the bank about regular banking matters. Additionally, he was not assigned any responsibility for the District's account. The bank further notes that this <b>individual is not qualified</b> to issue any opinion on whether the Federal CUPCA Agreement allows the District to invest in the State Treasurer's Pool. The bank has further indicated that the high-yield checking account recommended as a standard to judge the District's performance against is a banking product only available to individuals and is not available for either corporations or governmental entities like the District.</p>

**CUPCA Cash Reserves Have Grown**

**these CUPCA funds are likely to be expended or obligated within several months**

<b>Auditors Comments</b>	<b>District's Response</b>
<p>The Auditor has documented the increase in CUPCA cash reserves. The amount has grown from \$14.5 million in 1993 to \$86.1 million in 1998. The high CUPCA cash balances are attributed to construction delays.</p>	<p>The District agrees that the high CUPCA cash balances are attributed to construction delays on a variety of federally approved projects. When federal appropriations are received by the District for authorized projects, the federal money, plus the District's 35% local cost share, is deposited as required into this fund. As stated above, these CUPCA funds are likely to be expended or obligated within several months. The new investment practice mentioned above will however insure appropriate stewardship of the account until the authorized federal projects are constructed.</p>

**Tax Rate Not Based on Need**

**The District strongly disagrees with the Audit's assumptions with respect to future water infrastructure needs and the appropriate tax levy to meet them**

The Audit claims that the District's annual tax revenues have exceeded expenditures resulting in high fund balances and that since 1995, the District has collected at least \$7.2 million more in property taxes and water sales than necessary. The Audit suggests that if this trend continues, the District will have collected \$81 million in unneeded funds by the year 2011.

The District strongly disagrees with the Audit's assumptions with respect to future water infrastructure needs and the appropriate tax levy to meet them. As revealed in Chapter IV, the Audit adopts a biased posture against the need for water systems for irrigated agriculture. The Audit fails to acknowledge that the District's immediate plan to maintain collections near the existing statutory maximum rate is based upon the policy recommendations of Governor's CUP Funding Task Force which the Auditor now believes has somehow become "obsolete".

Until the CUP is completed, the District's Board will review annually the needs for revenue and the appropriate tax levy. The Audit's projections of

**Until the CUP is completed, the District's Board will review annually the needs for revenue and the appropriate tax levy**

unneded future revenues based upon speculation that the District will maintain a maximum tax levy beyond completion of CUP for decades into the future is both irresponsible and inflammatory. The amount of surplus funds maintained by the District is in full compliance with State law which allows for a fund balance equal to 100% of the District's annual tax revenue.

The Auditor's recommendation that the Legislature change the law to reduce this amount would significantly impair the District's ability to raise local cost sharing monies required to construct needed water features throughout its ten county service area, particularly to finish the CUP and provide for other additional water infrastructure.

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. The District's general fund has increased from \$8.2 million in 1995 to \$11.6 in 1998. The Auditor stated that the District's accountant pointed out that the State law allows a general financial balance of up to 100% of the current year's property taxes without justification, UCA 17A-1-415(2). In 1998 this would allow \$22.9 million, therefore no justification was needed. The Auditor also stated that the accountant also claimed that the increase was not based on need.</p>	<p>1. The District strongly disagrees that monies collected into the general fund are unnecessary. The District further disagrees with the Auditor's speculation that by 2011 the District will have unnecessarily collected \$81 million. While the general fund balance is well within the limit allowed by law, the District has a clear financial policy that the Auditor was given and ignored. The Auditor also ignored in its original draft most of the history behind the current CUP funding plan. The District has acted consistent the Governors Task Force recommendations and with its financial plan and the amount of taxes levied has been appropriate and based on significant need.</p>

**The District has determined based on its experience that the year-end general fund balance should be approximately 25% of an annual tax collection**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>2. The Auditor initially suggested that the appropriate amount for the general fund year-end balance is 8% of District expenditures or an amount of \$2.2 million and then suggested that the difference between the ending balance of \$11.6 million and their 8% (\$2.2 million) is excessive and that taxes should be reduced by \$9.4 million. The Auditor now recommends a 16% general fund balance and thus reduced his excessive tax claim to \$7.2 million.</p>	<p>2. The District disagrees with the Audit. The District does have a funding plan. It was reviewed with the Auditor and has been mentioned here again. The taxes being collected are consistent with CUP Funding Task Force recommendations. The District's cost sharing plan is based upon the needs identified through years of planning and feasibility studies. The timing of the end of the fiscal year has also made a difference in the amount of money needed in the general fund. A higher balance was needed when the District's fiscal year ended in December, immediately after collecting all of the tax revenue. The District has now switched to a June 30<sup>th</sup> fiscal year-end. The District unlike the state receives its funding in lump sum payment once a year from local property tax and from congressional appropriations. The District has recently reviewed its working capital needs to make sure that an appropriate amount is available in the general fund. The District finds that the amounts suggested of 8% or 16% are not adequate. The District has determined based on its experience that the year-end general fund balance should be approximately 25% of an annual tax collection. As a part of its year-end closing, any part of the general fund in excess of 25% will be transferred to approved projects.</p>

**The large numbers created by the Auditors incorrectly assume that the District's Board will maintain its maximum allowable tax levy beyond completion of CUP**

**The District is following the example of the State on the I-15 project by paying for as much of the construction costs with cash and only bonding when cash reserves are not sufficient.**

**In the event that anticipated CUPCA features are not approved for construction, the collected funds will then be utilized by the District to reduce bonded indebtedness further saving the taxpayers additional costs.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>3. The Auditor states that the excess funding between 1995 and 1998 is a trend that will continue and that by 2011, the balance will be \$81 million and that the tax rate of the District should be lowered by 21%. The revised audit reduction recommendation is now 17.5% instead of 21%.</p>	<p>3. The District disagrees. The amounts suggested by the Auditor as potential excess funds are pure fiction. The large numbers created by the Auditors incorrectly assume that the District's Board will maintain its maximum allowable tax levy beyond completion of CUP (see funding history above).</p> <p>In fact, as shown by the Audit, out of the last five years (1995-1999), the District has only once taxed at its maximum rate of .0004.</p> <p>Reserves for authorized CUPCA projects will be identified, as well as reserves for anticipated CUPCA cost share requirements. Each year the Board will take all of these factors into consideration and develop its budgets and set its tax rate as required by law.</p> <p>The District is following the example of the State on the I-15 project by paying for as much of the construction costs with cash and only bonding when cash reserves are not sufficient. In the event that anticipated CUPCA features are not approved for construction, the collected funds will then be utilized by the District to reduce bonded indebtedness further saving the taxpayers additional costs.</p>

**The General Fund Balances Lack Purpose and Appear Excessive**

See the discussion for above.

**The Increasing Fund Balance Lacks Purpose**

See the discussion for above.

**The District’s Fund Balance Appears Excessive**

See the discussion for above.

**The District’s Expenditures Don’t Justify Future Tax Rate**

See the discussion for above.

**Statute Governing Fund Balances Needs Review**

---

**By appropriately reserving cash while construction needs are minimal, savings will be generated by the elimination of unnecessary bonded debt when full funding cost sharing requirements are presented**

---

**The District is in compliance with the State’s policy for general and capital reserve funds.**

---

<b>Auditor’s Comments</b>	<b>District’s Response</b>
1. The District’s board should perform an analysis to determine an appropriate and justifiable general fund balance level. From that fund balance level, the board should establish a tax rate which is sufficient for the District’s anticipated budgeted expenditures and maintain a sufficient, but reasonable reserve for unanticipated expenditures.	1. The District does and will continue to determine the appropriate justifiable general fund year end balance. It will function as a working capital fund. The District will continue to reserve for the local cost share requirement for project which obtain federal approval and which are likely to be federally approved. By appropriately reserving cash while construction needs are minimal, savings will be generated by the elimination of unnecessary bonded debt when full funding cost share requirements are presented.
2. The Auditor is recommending a legislative review over the policy that governs general and capital reserve funds, suggesting that the Legislature may want more control over the District’s expenditures and taxing polices.	2. The District is in compliance with the State’s policy for general and capital reserve funds. When the total local cost share requirement is considered, the District policy for cash management is wise and prudent and will save the taxpayers of the District significant funds.

**The 1989 Budget Recommendations**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. The 1989 Audit recommended that the Board spend as much time as needed to verify the appropriateness of management requests. The 1993 Audit indicated that these recommendations were being complied with. The 1998 Audit indicated that Board members felt that this was being complied with.</p>	<p>1. Agree and support.</p>
<p>2. The 1989 Audit recommended improvements to the budgetary and financial processes. The Board was asked to establish the purpose and dollar limits for the various funds and to establish a separate capital projects fund. The 1993 Audit found that all recommendations related to this area were implemented. The 1998 Audit found that all but one of these recommendations were still being implemented, but didn't specify which recommendation was not being followed.</p>	<p>2. The District feels that it is in compliance with the 1989 recommendations. It has a purpose for each fund. The District's financial management practices have saved local taxpayers \$117 million.</p>

**The District feels that it is in compliance with the 1989 recommendations**

The District believes that this approach is sound because the services are clearly a CUPCA related expenditure and should be reported as such.

Total travel expenses are readily available, just as other common expenses shared by each division.

Auditor's Comments	District's Response
<p>3. The 1989 Audit recommended that a single line item be prepared to identify lobbying expenses. The 1993 found two accounts, one for federal activity and one for state activity. The 1998 Audit found that the District's Washington DC lobbying account is now included in the CUPCA budget under CUWCD Direct Expense. The other information was there, but not in one account.</p>	<p>3. The District has placed its Washington D. C. based attorney expense in the CUPCA account because it is directly related to CUPCA activities. The Washington, D.C. counsel has worked with the Congressional delegation to achieve the highest level of federal appropriations annually. The costs for these professional services are funded principally from these appropriations. The District believes that this approach is sound because the services are clearly a CUPCA related expenditure and should be reported as such.</p>
<p>4. The 1989 Audit found no line item for travel, but did find that travel expenses were dispersed throughout the budget. The 1993 Audit found that this recommendation had been followed. The 1998 Audit found that three accounts were now used to track travel expenses. The Auditor was concerned that it may be difficult to see what the total costs of travel expenses were.</p>	<p>4. The District has adopted a practice of identifying the travel expenses in three main areas of operation: Director Expense, Staff Expense and Staff Training. The District's board and management find that planning and budgeting needs of the District require this additional detail. Total travel expenses are readily available, just as other common expenses shared by each division.</p>
<p>5. The 1989 Audit recommended that sufficient information be made available to the Board to justify the respective budget amounts. The 1993 Audit found that this had been implemented. The 1998 Audit found that Board members felt sufficient information was made available to justify proposed budget recommendations.</p>	<p>5. Agree and support.</p>



Auditor's Comments	District's Response
<p>6. The 1989 Audit recommended that the new budget requests be compared to the original budgeted amount for the prior year. The 1993 Audit reported this recommendation as implemented. The 1998 audit found this recommendation was still being followed .</p>	<p>6. Agree and support.</p>
<p>7. The 1989 Audit found that few of the Districts funds had little explanation as to their purpose or how the money was to be spent. The 1993 Audit found most of the funds having a written policy. The 1998 audit found the existing reserve funds to have a defined purpose.</p>	<p>7. Agree and support.</p>
<p>8. The 1989 Audit recommended that the Board establish a maximum amount for each Fund. The 1993 Audit found this recommendation implemented. The 1998 Audit also found reserve accounts having maximum dollar limits.</p>	<p>8. Agree and support.</p>

**Recommendations**

**The District has already increased its investment rate to the 90-day federal treasury rate**

**The District already has a policy that is consistent with the Auditor's recommendations**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. Recommend fund balances be invested where interest earnings are maximized at an acceptable risk level. The state pool is recommended as an example.</p>	<p>1. The District has already increased its investment rate to the 90-day federal treasury rate, while exploring the ability to obtain a rate comparable to the State Pool rate. The District will take all necessary steps to invest all CUPCA funds and other funds at the highest rates consistent with both federal law and the State's Money management Act.</p>
<p>2. Recommend the Board establish an appropriate general fund balance and establish a tax rate to meet expenditures while avoiding unnecessary increases in the general fund balance.</p>	<p>2. The District already has a policy that is consistent with the Auditor's recommendations. By taxing at its authorized rate the District is following the recommendation of the Governor's CUP Funding Task Force. Reserves for anticipated local cost share will continued to be budgeted for. The funding of the local cost share by saving cash now will save substantial interest costs if these have to be borrowed to match federal appropriations. Any reserves found to not be needed for capital projects will be used to reduce current debt of the project, creating additional savings for the tax payers of the District.</p>

**The District's practice is consistent with federal accounting guidelines for the CUP.**

**The District's staff have complied with Federal requirements and have successfully completed favorable audits each year**

**The District disagrees with the audit that it has excessive funds.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>3. Recommend the District itemize its Washington DC lobbyist expense in its annual budget.</p>	<p>3. The District does itemize all of its lobbying expenses in its annual budget. The expenses of the Washington DC based attorney are included in the CUPCA account where those activities are directly related to CUPCA. His activities unrelated to CUPCA are included in the budget, but not under CUPCA. The District's practice is consistent with federal accounting guidelines for the CUP.</p>
<p>4. Recommend the District consider adding position with incorporates specific financial management skills.</p>	<p>4. The District's staff have complied with Federal requirements and have successfully completed favorable audits each year.</p>
<p>5. Recommend that the legislature review UCA 17A-1-415 to determine if changes are necessary to eliminate excess fund balances.</p>	<p>5. The District disagrees with the audit that it has excessive funds in its general fund. The District is in compliance with state law and the recommendations of this Governor's CUP Funding Task Force.</p>

### Chapter III District Policies and Procedures

The Auditor finds that the District's management has allowed lapses in administrative controls resulting in questionable administrative practices that either violated policy or indicate poor control. According to the Auditor, these include:

1. Board members benefitting from indirect District contracts,
2. the evaluation and bonus compensation of the general manager,
3. travel expenses in excess of necessary travel costs,
4. inadequate vehicle fleet utilization,
5. and the retention of services without competitive bidding.

---

**The District takes strong exception to each of these findings.**

---

After the 1989 and 1993 Audits, the District revised its policies and procedures to address audit criticisms. Human Resource and procurement policies have been strengthened. Notwithstanding this, the Auditor states that he is still concerned that policies and procedures appear to be overridden by management with the knowledge of the board. The District takes strong exception to each of these findings.

#### **Board Members' Independent Business Activities Do Not Violate State Law**

The Auditor chooses to ignore the *Utah Public Officers' and Employees' Ethics Act*, Utah Code Ann. §67-16-1 *et. seq.* (1969). §67-16-2 of the Act explains its purpose. It was adopted:

For the purpose of establishing a standard of acceptable conduct for all state officers, employees and those of all political subdivision of the state where there are actual or potential conflicts of interest between their public duties and their private interests. . . **It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.**<sup>1</sup>

---

**State Ethics laws were not violated. The Ethics Act allows the pursuit of economic activity provided that public duties are not compromised and that full disclosure is made.**

---

---

<sup>1</sup>Utah Code Ann. §67-16-2.

This Act embraces all public officers, employees, lay board members of all state agencies and political subdivisions.<sup>2</sup> It has tightly defined standards of conduct and expressly prescribes the procedures necessary for disclosure of any actual or potential conflict of interest. Once disclosure has been made as required by §67-16-7, the public officer, employee or board member may continue to participate fully in his or her capacity and to pursue his or her business activities.<sup>3</sup>

Conflicts of interest are prohibited by the Act, and “no public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.”<sup>4</sup> An intentional and knowing violation of the Act is a felony. In addition, the offending officer or employee may be dismissed and any contracts entered into may be rescinded or voided.<sup>5</sup>

It is important to note that the Auditor **does not** allege that any of these three board members has violated the provisions of this act. In fact, the Auditor fails to even cite the Act. Instead, the Auditor cites an obscure provision of the Water Conservancy Act,<sup>6</sup> containing an oath of office each appointed director is required to take upon appointment to the board. The Conservancy District Act oath provides that a director: “will support the Constitution of the United States and the state of Utah, will honestly, faithfully, and impartially perform the duties of his office, and will not be interested directly or indirectly in any contract entered into by the District.”<sup>7</sup> This section was adopted in 1941. It does not define what conduct would rise to the level of an impermissible indirect interest in a contract of the District, and we have no interpretive case law from the Utah Supreme Court to guide us. Yet the Auditor relies on this very imprecise and subjective standard of conduct to label the business activities of these three board members as “inappropriate,” and states that “such financial relationships are not allowed” by law.

---

**The Auditor does not allege that these three board members violated the provisions of the Ethics Act. Instead, the Auditor relies on an obscure 1941 code provision containing no definition of what is impermissible conduct, in arriving at his subjective conclusion that the financial relationships were inappropriate.**

---

---

<sup>2</sup>Utah Code Ann. §67-16-11.

<sup>3</sup>Utah Code Ann. §67-16-8.

<sup>4</sup>Utah Code Ann. §67-16-9.

<sup>5</sup>Utah Code Ann. §67-16-12, §67-16-14.

<sup>6</sup>Utah Code Ann. §17A-2-1402.

<sup>7</sup>Utah Code Ann. §17A-2-Utah 1410(1).

This characterization of these directors' business activities by the Auditor ignores the existence of the more recent and supervening *Utah Public Officers' and Employees' Ethics Act*, which permits ordinary business relationships to exist so long as they do not require or induce the officer or employee to (1) disclose controlled information gained by reason of his official position; (2) improperly disclose such information for his or other's private gain; (3) use his official position to secure special privileges; (4) accept employment that would impair his independence of judgment in the performance of his public duties; and (5) accept other employment that would interfere with the ethical performance of his public duties.<sup>8</sup> None of these business activities would be prohibited under the Ethics Act. So long as the required disclosures are made if a conflict arises, no public officer or employee is prohibited from availing themselves of the "opportunities available to all other citizens of the state to acquire private economic or other interests, so long as this does not interfere with his full and faithful discharge of his public duties."<sup>9</sup> None of the conduct condemned by the Auditor has interfered with the performance of any of these three directors' public duties, nor has the Auditor so alleged. There are also no allegations of fraud, self-dealing, or any other incidents of malfeasance or misfeasance in the performance of their public duties. All the Auditor has claimed is that when weighed against this vague and undefined standard of "indirect interests in contracts" contained in a 1941 code provision, that the conduct of these three board members looks bad.

The District agrees that its board members should not engage in activities that create either direct or indirect conflicts of interest with the District. It has promoted this legal requirement through the adoption of this standard in its own policies. It is the District's position however, that none of the relationships complained of by the Auditor violate either state law or District policy.

### **District Payments to Board Chairman**

The District contracts with Wasatch County to coordinate and manage water-related issues in Wasatch County that are primarily connected with the Wasatch County Water Efficiency Project ("WCWEP"). Wasatch County in turn has contracted with the Wasatch County Special Service Area ("SSA") which was created in 1992 to serve as the Wasatch County Representative providing the services being contracted for by the District. The primary duty of the SSA is to provide assistance to the District with WCWEP. Starting

---

**The Wasatch County Commission nominated this individual for appointment to the District's Board, and later hired him as an independent consultant to facilitate water development in the county.**

---

---

<sup>8</sup>Utah Code Ann. §67-16-4.

<sup>9</sup>Utah Code Ann. §67-16-2.

January 1, 1997, the SSA contracted with Royal Solutions, a limited liability company (“LLC”), owned by the District’s board chairman, to provide consulting services in connection with water development in the county. There is no water district board anywhere in the state (including the State Board of Water Resources) where a significant number of board members are not also affiliated with local water users or districts in some fashion. According to our understanding of the Auditor’s definition of “indirect” conflict, all of these people would be in violation of the state ethics law.

---

**There is no water district board anywhere in the state where most board members are not also affiliated with local water users or districts. Under the Auditor’s definition of “indirect” conflict all would be in violation of state ethics laws.**

---



---

**The funding arrangements with Wasatch County began in 1993, before this director was even on the board. He did not enter into a contract with the county until 1997 to provide consulting services.**

---

<b>Auditor’s Comments</b>	<b>District’s Response</b>
<p>1. The Auditor finds that this contract with the Chairman’s company violates the indirect prohibition contained in both the state law and District policy mentioned above, and a provision in the contract between the District and the County.</p>	<p>1. The District disagrees with this finding of the Audit. The independent consulting agreement in question is sufficiently attenuated from the District to not violate either state law or District policy. No conflict is alleged by the Auditor to have existed and in fact none did. All parties involved had the common goal of constructing the WCWEP.</p> <p>Commencing in 1993, before its current Chairman was even on the board, the District began contracting on a year to year basis, initially with Wasatch County and later with the Wasatch County Special Service Area (“SSA”) and the county, to facilitate WCWEP. Additionally, the interim funds were used to provide a portion of the SSA’s operating funds until the SSA was able to fund its own operations and expenditures. It was not until January 1, 1997 that Wasatch County contracted with the Chairman’s limited liability company (“LLC”) to provide consulting services to the County. The LLC’s primary responsibility was to facilitate the WCWEP.</p>

Auditor's Comments	District's Response
	<p data-bbox="966 275 1419 827">Some of the interim operating funds provided to the SSA by the District and Wasatch County were used to pay the salary of its general manager, the fees of its legal counsel, expenses of its governing board, and the consulting fees of the LLC. All of the LLC's invoices were reviewed by the general manager of the SSA, LeeRoy Farrell, and/or by the chairman of the county commission before payment. Wasatch County received fair value in services for its payments to the LLC.</p> <p data-bbox="966 869 1386 982">Although the opportunity for conflicts existed, the consulting agreement expressly provides that:</p> <p data-bbox="966 1031 1419 1810"><i>Consultant is required to disclose any outside activities or interests that conflict with the best interests of the County. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any activity that Consultant may be involved with on behalf of the County. Consultant agrees to comply with the Utah Public Officers and Employees Ethics Act . . . including any necessary disclosures as required by the Act. Consultant agrees that if a potential or real conflict of interest arises, that he will take necessary action to eliminate the conflict including disclosure or recusal.</i></p>



The Director received the advice of District legal counsel before accepting the employment to insure compliance with state and federal laws. The reality is that no conflict existed as all concerned had the common goal of constructing WCWEP.

No District funds were paid directly to the director. The District's funds went to the County and/or SSA, who in turn paid its operating expenses, including consulting fees.

Auditor's Comments	District's Response
	<p>Since the Wasatch County Commission nominated the Chairman for the District's Board, they had knowledge of his "potential conflict" and still decided to retain his consulting services to provide the work product contracted for by the District. The Chairman requested advice from the District's legal counsel before entering into the consulting agreement with the SSA. He was reminded of his oath of office, advised of the disclosure requirements of the Utah Public Officers and Employees Ethics Act, and of the necessity to make the required disclosure if a conflict arose requiring disclosure and/or to recuse himself where disclosure alone was not adequate. The Auditor has not pointed to any such conflict that arose during the period of the Audit. The reality is that no conflict existed as all concerned had the common goal of constructing the WCWEP. At most, the Auditor says the Chairman's various roles were confusing.</p> <p>No District funds were paid directly to the LLC. All District funds were paid to Wasatch County and/or the SSA. The SSA used these funds and those provided by Wasatch County to pay its operating expenses including the salaries of its employees and the fees of its consultants and advisors.</p>

**Although the Director’s services and responsibilities at time overlapped, the Auditor makes no allegations of improper conduct, fraud, self-dealing, over billing or double billing. Instead, the Auditor says the Chairman’s roles were confusing.**

Auditor’s Comments	District’s Response
	<p>The contract clause in the funding agreement that provides that “no member of Congress” etc., is to benefit was drawn from the federal agreements. Agreements are drafted by many different staff members of the District, and this clause has been included in some agreements and not others. The District believes it would be desirable to included this clause as a standard clause in all District funding agreements and will implement this change.</p>
<p>2. The Auditor finds that it is difficult to determine if the Chairman’s activities are performed as a representative of the SSA or as a representative of the District’s board.</p>	<p>2. Any work performed by the Chairman under Royal Solutions’ consulting agreement with Wasatch County was performed in his capacity as a consultant and independent contractor. He has accounted for his time expended and has been compensated pursuant to his consulting agreement. At times his duties with the County as a consultant and the District as board chairman would overlap as certain meetings he attended were of benefit to both the District and to the County and/or the SSA. In those instances, he fairly and equitably divided his time and expenses between the two entities. There is nothing improper about what he did nor has the Auditor pointed out any instance where he over billed or double billed for his time and/or expenses.</p>

Auditor's Comments	District's Response
3. The Auditor finds that the District has not enforced contract requirements for expense documentation.	3. The District did require the submittal of documentation, although some payments were made in advance of receiving such documentation, due to the financial needs of the SSA and critical stage of the NEPA review and scoping of the WCWEP. The District will tighten its procedures to insure this does not happen in the future.
4. The Auditor finds that the District did not enforce the contract requirement for a 50% cost share between the District and Wasatch County.	4. The District amended the funding arrangement at the request of Wasatch County, and changed the manner in which it advanced funds to the SSA to a flat monthly payment of \$6,250. At that point, the 50% match from the county was eliminated and the District's funding commitment was independent from the funding commitment of Wasatch County. The District has no reluctance to enforce its agreement but no breach occurred requiring enforcement. The fact that its Chairman has an independent consulting agreement with Wasatch County has played no role whatsoever in the District's relationship with the SSA or Wasatch County.
5. WCSSA's own financial auditors have noted potential control issues within WCSSA.	5. The District has no knowledge of any concerns the SSA's outside financial auditors may have had.

**The District Contract with Juab County Pays Board Member For Work Related to the District.**

Pursuant to a petition from residents of Juab County, the District Court has recently created the East Juab County Water Conservancy

The board member was employed as general manager of the local water District many months after the District's funding agreement was entered into. Legal counsel reviewed the arrangement and advised him of the necessity of avoiding conflicts of interest and to make disclosure if a conflict arose in the future. No conflict exists because all had the common goal of completing the EJWEP. The board member's employment by EJCWCD is not the type of

District (“EJCWCD”) to develop water for eastern Juab County. The project is known as the East Juab Water Efficiency Project (“EJWEP”). The District has entered into a contract with the EJCWCD to provide planning services for water to be allocated to eastern Juab County. The Board of the EJCWCD has hired a part time general manager, who is a member of the District’s Board. The part-time general manager worked for his local District for six months without pay and then started receiving a monthly payment of \$1,000, for a total amount of \$19,300. At the time of the Audit, the only source of revenue for the East Juab Water Conservancy District was its contract with the District. The legislative freeze on property tax prevented the newly formed District from levying taxes in 1998. In 1999, the District will be able to have independent revenue.

<b>Auditor’s Comments</b>	<b>District’s Response</b>
<p>The Auditor notes that this arrangement violates both the state law and Board policy mentioned above. The Auditor also notes that this contract does not contain the same prohibition against Board members conflicts included in the contract with Wasatch County.</p>	<p>The District disagrees with this Audit finding. Although the District did contract with EJCWCD to provide funding for the EJWEP, it did not make any payments to the board member, nor has the board member entered into a contract with District. The funds provided by the District were used by EJCWCD to pay the salaries of its employees and other operating expenses. Many months after the District entered into this agreement, EJCWCD hired the board member to work as its part-time general manager. He served as an employee for almost 6 months without any compensation at all, and was paid a monthly salary of \$1,000 thereafter. Before accepting employment as the part time manager, the Board Member asked the District’s legal counsel if this would be a prohibited conflict</p>

Auditor's Comments	District's Response
	<p>of interest. After review the District's counsel concluded that there was no prohibited conflict and similarly advised about the necessity of avoiding conflicts of interest and the need to disclose is any arise later. No actual conflict exists because the District and EJCWCD have a common goal of successfully completing the EJWEP. The board member's employment by EJCWCD is not a violation of state law or of District policy and is not the type of relationship state law seeks to prohibit.</p>

**Work performed by a Board Member's Company Creates a Questionable Appearance**

---

The construction contracts were entered into by two irrigation companies and were four steps removed from the District's rebate of property taxes to Sanpete County under §206.

---

The Auditor has identified a Board member whose company constructed a canal rehabilitation project that was paid in part with District funds. Together with Sanpete County (the "County"), Sanpete County Water Conservancy District (the "Sanpete District") identified at least two local canal rehabilitation projects with two different canal companies. The County then applied for and received a federal CUPCA, Section 206, grant for a water conservation project from the District. The County then contracted with the Sanpete District to build the water conservation projects. The Sanpete District in conjunction with the two project sponsors, then requested bids for design build projects to rehabilitate the canals. The Board member's construction company teamed up with an engineering firm and submitted their proposal for each design build project in a sealed bid which contained notification of his District board membership. The engineering firm that joint ventured this project with the District director has also done engineering work for the District. Their bid was the low bid on each project, and the two canal companies each awarded the canal rehabilitation design build contracts to the bidding Board member's construction company. The combined contract amount was approximately \$500,000. These projects were funded in part by a general grant transferred to the District from the federal government for 65% of the project. The balance was paid for by a rebate of ad valorem tax dollars

collected by the District from the residents of Sanpete County. Since all of the funds for the project were held by the District, both local tax and federal grant, the District reimbursed the Sanpete District pursuant to its contract with the County for costs incurred on these projects, who in turn then paid the contractors or the District directly paid contractor or subs on invoices approved for payment by the Sanpete District.

**This contract was awarded through the competitive seal bid process which eliminates any suggestion of improper conduct or favoritism. The board member's construction company was the lowest responsive and responsible bidder. The Board member disclosed his board membership in his bid documents, as per advice of counsel.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>The Auditor finds that this type of contract with a board member's company creates the appearance of an improper quid pro quo arrangement.</p>	<p>Although the District has tried repeatedly to provide the Auditor with available information, the Audit still contain inaccuracies and incorrect statements. For example, in a design built contract, the engineers are part of bidding entity. Therefore, the District disagrees with the Audit's finding of "the appearance of improper conduct" comments. The Audit ignores that this construction contract was awarded through a sealed, competitive bidding process and that the board member's construction company was the successful low bidder. Prior to bidding, the Board member asked the District's counsel if bidding on these projects would violate District policy. The District's counsel advised that it was not a direct conflict and further recommended that notice of Board membership should be given with the bid, fully disclosing any indirect conflict possibility as required by the state ethics law. The District provided funding through the County and the Sanpete District to the canal</p>

Auditor's Comments	District's Response
	<p>companies under the provisions of Section 206 of CUPCA for the construction of two water conservation projects. The Sanpete District served as the local sponsor and supervised the projects which involved the reconstruction of diversion facilities owned and operated by two mutual irrigation companies. The actual construction contracts were entered into by the two mutual irrigation companies and the general contractor. Neither the District, the County nor the Sanpete District were parties to the construction contracts. The contracts were between the canal companies and the contractor.</p> <p>The fact that this contract was awarded through the competitive seal bid process eliminates any suggestion of improper conduct or favoritism in the awarding of this contract or in the award of any future contract by the District to others. The board member's construction company was the lowest responsive and responsible bidder and therefore was awarded the contract. The consulting engineers involved in this project provide consulting services to many irrigation companies, municipalities, water districts and have also performed work for the District.</p>

**The General Manager's Bonus Agreement.**

The General Manager received a bonus agreement that provided \$75,000 over a five year period, not \$93,750 as mentioned by the original draft of the audit. The agreement was signed on April 1, 1998 and provided \$18,750 as a

---

**This agreement is clearly justified by the General Manager's performance as evidenced by the \$117 million savings**

---

retroactive bonus payment back to January 1, 1997, which is part of the five year \$75,000 bonus. The agreement provides that the general manager will receive the balance of the \$75,000 with a monthly payment of \$1,250 per month starting April 15, 1998 and ending December 31, 2001. The District's Board believes that this agreement is clearly justified by the General Manager's performance as evidenced by the \$25 million savings associated with the District's federal debt prepayment plan which was conceived and implemented by the General Manager and the District's Washington, D.C. counsel.



**To characterize the bonus as other than Board approved is false.**

Auditor's Comments	District's Response
<p>The Auditor finds that the bonus agreement is not linked to performance reviews and is outside of the District's own personnel system. The Auditor also questions whether the bonus agreement was authorized by the Board. The Auditor also criticizes the amount of the General Manager's compensation.</p>	<p>The District disagrees with the Auditor's findings. The Board discussed the General Manager's performance in various Board meetings in executive session as a personnel-related matter. The Board authorized the Chairman and Vice Chairman to enter into the current bonus agreement with the General Manager. To characterize the bonus as other than Board approved is false. The Board will continue to conduct formal annual evaluations of the General Manager, including the appropriateness of the current Bonus Agreement. An unsatisfactory performance could cancel or modify the current bonus agreement. When the total amount of the General Manager's compensation was established, the Board reviewed comparable districts on the Colorado River system for the compensation of their general managers. The amount selected by the Board Chairman and the Vice Chairman and approved by the Board is less than similar Colorado River water districts and has been included in each year's budget. The District will continue to evaluate the performance of the General Manager on a regularly scheduled annual review.</p>

Auditor's Comments	District's Response
	<p>The Auditor refused to include in his Audit the appropriate comparisons of compensation. The Auditor utilizes a state compensation standard against which the General Manager compensation appears excessive. Attached, as Exhibit B, is a table showing comparisons to the current salaries of comparable general manager positions. It should be noted that this information does not include bonuses, but most entities indicated that bonuses were also given to each general manager. <i>This information indicates that the General Manager's compensation is less than his comparable positions and even with a \$15,000 annual bonus, he is paid less than the Regional Director of the Bureau of Reclamation, his federal counterpart.</i></p>

**The District's Control of Expenditures.**

The Auditor alleges that the District does not exercise sufficient control over expenses. The District disagrees.

**Travel Expenses**

Auditor's Comments	District's Responses
<p>1. The District does not seek lower travel options, and referred to the state's travel contract as a good example, claiming that the District could have saved \$31,792.00 by using the State's office.</p>	<p>1. The District was not aware of the availability of the state travel contract. All future air fares will be purchased through the State travel office, unless necessitated by emergency travel or unavailable from the state office. (Tickets at the state's rate are often unavailable.)</p>

Auditor's Comments	District's Responses
<p>2. The District does not pay air fare when lower than mileage reimbursement. The Audit identified a \$625 difference in three years.</p>	<p>2. The District does require the lower reimbursement of air fare compared to mileage reimbursement. Additional direction has been given to staff to comply with the District's reimbursement policy.</p>
<p>3. The District's lodging charges often exceed policy limits. In three years these amounted to \$2,260.</p>	<p>3. The District does require lodging to be compensated pursuant to its existing policy. Additional direction has been given to staff to comply with the District's lodging reimbursement policy and to evaluate whether the current lodging policy is consistent with the now existing lodging market.</p>
<p>4. The District's meal reimbursement policy is liberal. Apparently the District has paid \$324 more than per diem guidelines.</p>	<p>4. The District believes that its policy more accurately reflects the current costs of meals. Additional direction has been given to staff to make sure that reimbursement complies with the District's policy. Mixing and matching per diem with actual cost is not allowed for reimbursement.</p>
<p>5. In the first Audit draft, the Auditor claimed that the District paid for a Crown Room membership for the General Manager's wife. When presented evidence that the Crown Room was not for his wife, but for the General Manager, the Auditor now complains that the District staff should not have paid for the General Manager's Crown Room membership based on the existing documentation.</p>	<p>5. The District did not pay for the General Manager's wife Crown Room membership. It would be against the policy of the District. <i>The District did pay for the General Manager's Crown Room membership.</i> His wife does not have a Crown Room membership. Evidence of this was provided to the Auditor.</p>

**Vehicle Expenses.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. The General Manager drives a Ford Expedition. The Auditor recommended that the General Manager should drive a vehicle that cost \$5,000 less.</p>	<p>1. The District disagrees. The District was aware that a number of general managers and local government officials are currently driving vehicles with 4-wheel drive, including Ford Expeditions. A 4-wheel drive vehicle with expanded seating was selected to provide access to the District's construction projects which are located in mountainous terrain. The budget contained authorization and sufficient funds to purchase the General Manager's car and the District will benefit from the higher value when the Expedition is traded in or sold. The District will review its commuting policy and ensure that the appropriate IRS reporting requirements are implemented.</p>
<p>2. The Auditor suggested that the District's vehicle fleet could be reduced by 2 sedans and 1 truck.</p>	<p>2. The employees who drove these vehicles were out with health related problems. One has retired and will be replaced. The other will return to work when his health permits. At that time both vehicles will be back in use.</p>
<p>3. The District does not have a commute policy.</p>	<p>3. See above.</p>
<p>4. The District may be under reporting employee vehicle fringe benefits.</p>	<p>4. See above.</p>

**Procurement Practices.**

<b>Auditor's Comments</b>	<b>District's Response</b>
<p>1. The Auditor felt that the direction to an engineering firm to sub-out the completion of the FEIS to a specific firm for a specified \$470,000 under a general contract in the amount of \$22,000 was a procurement abuse.</p>	<p>1. When the District discontinued the SFN planning process, the FEIS portion of the Diamond Fork Project was impacted. The District needed to have this work completed in order to deliver water to Salt Lake County. With the complete concurrence of the CUPCA program director, an existing contract with an engineering firm was used for review purposes. This firm, subcontracted with another engineering firm that had completed the FEIS work on other CUPCA projects, to do the necessary FEIS work on the Diamond Fork project. The environmental information necessary for the FEIS had to be collected during the 1998 summer, and the District determined that this was the fastest way to get qualified engineers working on a time sensitive project. As required by procurement laws, engineers are selected first, based on their qualifications, and then the fee is negotiated to achieve a reasonable cost arrangement. This practice was followed in this case. The work was done timely, and the FEIS is now filed.</p>
<p>2. The Auditor found that some support services (not construction) were procured without competition even though they were not emergency or sole source providers.</p>	<p>2. The District will review its selection of support services and in the future utilize an RFP process for selection.</p>

THIS PAGE INTENTIONALLY BLANK

**Auditor’s Recommendation.**

<b>Auditor’s Recommendations</b>	<b>District’s Response</b>
<p>1. Recommend the Board enforce state code and District policy prohibiting board members receiving direct or indirect benefits from District contracts.</p>	<p>1. The District agrees that its board members should not engage in activities that create direct or indirect conflicts of interest with the District. <i>The District disagrees with the Audit that the activities noted in the Audit create a conflict prohibited by state law or District policy.</i></p>
<p>2. Recommend that the District board members conduct annual performance evaluation of the General Manager and that the full board vote on General Manager compensation.</p>	<p>2. Concur. The Board has conducted an annual review of the General Manager’s performance in closed executive sessions. It has not, however, reduced its discussions to a formal written performance evaluation. The full board does vote and approve of compensation for all employees, including the General Manager.</p>
<p>3. Recommend the District utilize the state travel office.</p>	<p>3. Concur.</p>
<p>4. Recommend that the District comply with lodging and meal reimbursement policies.</p>	<p>4. Concur.</p>
<p>5. Recommend the District improve vehicle controls.</p>	<p>5. Concur. Plan discussed above.</p>
<p>6. Recommend the District improve documentation for sole source procurement and implement competitive procurement process for support services.</p>	<p>6. Concur. The District will utilize the RFP process where appropriate. In other areas, where more appropriate, a more formal sole source process will be utilized.</p>

---

The Auditor advocates delivery of irrigation water to Salt Lake County as an alternative to the Bear Bear River Project

---

---

The Auditor has minimized or excluded altogether federal and state law, federal cost reallocations and other important policy arguments which run counter this perspective.

---

## **Chapter IV Discontinuation of SFN Project Affords Opportunity to Redirect Efforts**

This Chapter of the Audit echos attacks on the Central Utah Project which had heretofore been voiced only by opponents of the project. In doing so, the Auditor has substantially expanded the scope of this Audit beyond its originally announced purpose to review the financial management of the District and to insure that the District was in compliance with state law and procedure.

Chapter IV reveals that the Auditor advocates sweeping changes in the existing State water policies affecting CUP regional water allocations. The Auditor suggests that irrigation water developed for delivery to southern Utah and Juab Counties should be reallocated to Salt Lake County as an alternative to the Bear River Project. The Auditor has minimized or excluded altogether federal and state law, federal cost reallocations and other important policy arguments which run counter this perspective.

The Audit suggests the water allocations of the SFN system should be reexamined by the Legislature to evaluate taking water from irrigation in south Utah and Juab Counties and deliver the water to Salt Lake County because of its population projections. The Auditor further suggests that the board members of the District could not make objective decisions with respect to this alternative because 67 percent of the board represents an irrigation perspective.

The Auditor's claim that because a majority of board members were directly connected with the water industry, these board members interests may not necessarily represent the public interest. For example, the audit singles out the board member from Juab County for having served 35 years. The Auditor believes that longevity of service on the board can negatively impact Board members objectivity. Finally, the Auditor suggests that the Legislature should consider changing the makeup of the board to reflect a more urban perspective and that the Legislature should itself establish a task force to analyze the efficacy of redistributing the SFN water to Salt Lake County.

### **Current Board Selection Process Protects Interests of all Utahns**

- The current selection process established by the legislature for Board appointments to the Central Utah Water Conservancy District requires that a Board member obtain the approval of three independently elected public bodies.



---

**Recent history indicates that CUP board members have favored “urban” needs over rural ones**

---

- First, the County Commission must nominate individuals to serve on the board. Second, the Governor proposes the appointment of the board member and third, the appointment must be confirmed by the Senate.
- The Board makeup insures that both urban and rural perspectives are heard. While a majority of the board comes from outside Utah and Salt Lake Counties, the board’s decisions have not been driven by an urban versus rural split. In fact, in an overwhelming majority cases, board votes are unanimous.
- Recent history indicates that CUP board members have favored “urban” needs over rural ones. For example, the board’s decision to prioritize the completion of Jordanelle reservoir to secure the Salt Lake County water supply was contrary to the recommendations of the Bureau of Reclamation which planned to use remaining federally authorized funds to begin construction of the irrigation and drainage system.

### **Board Experience With Local Water Users Is a Significant Benefit**

---

**There is nothing more important and hard fought than western water rights and the local knowledge which board members possess provides important insights as the District works with local water users.**

---

- Not surprisingly, County Commissions nominate individuals who are involved with the water users of their counties. Board members are nominated to advocate for the water needs of their areas.
- The water-related expertise of board members is a significant asset to the District in planning and constructing water features throughout the state.
- There is nothing more important and hard fought than western water rights and the local knowledge which board members possess provides important insights and assistance as the District works with local water users.
- It is because of this “institutional knowledge” that many board members have been reappointed by the Governor and confirmed by the Senate for several terms in office.
- The water expertise and tenure of service of the District’s board members has proven to be a significant factor in the successes of building a water project which benefits the public.



---

As the District begins public hearings on the Utah Lake Drainage project, the District board will maintain an objective and unbiased perspective of all alternatives.

---

the District's board will follow federal and state law as well as important policy considerations received during the scoping process.

---

---

Federal law restricts the District to the "construction of alternative features to deliver irrigation water to lands in the Utah Lake drainage basin,"

---

### **Board Members Work Together To Benefit the Entire District**

- Board members take very seriously their duty to oversee the District's administration in an objective and sound manner.
- Further, with respect to the SFN preferred alternative, the board *increased* the M&I water supply from 1,590 acre feet to 11,200 acre feet for the cities in south Utah County.
- As the District begins public hearings on the Utah Lake Drainage project, the District board will maintain an objective and unbiased perspective of all alternatives. In selecting a new preferred alternative, the District's board will follow federal and state law as well as important policy considerations received during the scoping process.

### **Legal and Policy Arguments Support Board Actions on SFN**

The Auditor's report that the District defends sending the water south with the "political arguments" that a commitment was made to do so and that doing so would encourage growth in these areas. The Auditors present a series of arguments which advocate the redistribution of SFN water to Salt Lake County, including their own financial analysis showing a favorable comparison of the costs of bringing SFN water to Salt Lake County in lieu of building the Bear River Project.

From the earliest drafts the Auditor has revealed a bias in favor of a reallocation of SFN water to Salt Lake County as an alternative to defeat the Bear River Project. The board believes the Auditor's bias colors the audit's own objectivity. The Auditors have repeatedly excluded important factors which have guided the board's planning decisions (which are discussed below), crediting the board with making only two "political" arguments in support of these decisions.

The Board of Directors strenuously disagrees with the conclusions and recommendations of this Chapter and offers the following background with respect to the District's work in planning a water delivery system.

### **Federal Law Limits the Project to the Utah and Juab Counties**

The last paragraph of Section 202(B) of the CUPCA (Public Law 102-575) says;

---

**Congress would have to pass a new law to re-authorize the use of this \$125 million of federal money before additional project water could be delivered to Salt Lake County.**

---

*“Provided, however, That in the event that construction is not initiated on the features provided for in subparagraph (A), \$125,000,000 shall remain authorized pursuant to the provisions of this Act applicable to subparagraph (A) for the construction of alternative features to deliver irrigation water to lands in the Utah Lake drainage basin,”*

The District and its board are planning a water delivery system which complies with the limitations of this federal statute. The SFN DEIS did review the alternative of sending water to Salt Lake County and eliminated this alternative because it did not meet the project’s purposes as determined by Congress. Congress would have to pass a new law to re-authorize the use of this \$125 million of federal money before additional project water could be delivered to Salt Lake County.

### **State Water Law Mandates the Return of Most SFN Water to Utah Lake**

The Bonneville Unit (of which the SFN system was to be a part) is an interconnected series of tunnels, pipelines and dams designed to work in coordinated fashion to develop municipal and industrial (M&I) water for Salt Lake and Utah Counties as well as supply supplemental irrigation water to Utah and Juab Counties. The heart of the M&I water system is Jordanelle Reservoir which captures high quality Provo River water which would otherwise flow into Utah Lake and diverts it through underground pipelines north through Utah County up into Salt Lake County. This water system is already complete.

The Utah State Water Engineer has ruled however that the project must replace the Jordanelle water which is being prevented from reaching Utah Lake. A majority of the trans-basin diversion water coming from Strawberry Reservoir through Diamond Fork and into south Utah County will satisfy this requirement. The SFN project as well as whatever is designed to replace it, must provide enough return flow water into Utah Lake to replace the M&I water being delivered to Salt Lake and Utah Counties from Jordanelle reservoir.

---

**According to the State Engineer, SFN irrigation water must flow into Utah Lake to replace the M&I water being delivered to Salt Lake County from Jordanelle reservoir.**

---

The fundamental operation of the Bonneville Unit was explained to the Auditor and not until the final draft was recognition given to the requirement of the project to supply water to Utah Lake to secure the water in Jordanelle. Even though the Auditor attempts to explain the Jordanelle exchange (see Appendix A), the Audit contains a significant internal inconsistency which demonstrates the Auditor’s failure to understand how the CUP works.

---

In short, the Auditor's recommendation would jeopardize full delivery of Salt Lake County's 70,000 acre feet of CUP water from Jordanelle.

---

Figure VIII from the Audit correctly shows the proposed total SFN irrigation water deliveries to be 73,100 acre-feet (42,000 for Juab and 31,100 for southern Utah County). Appendix A begins;

“The Jordanelle Exchange must be made if the Jordanelle Reservoir is to meet future contractual water deliveries...to Salt Lake County.”

The last paragraph of Appendix A concludes;

“If the irrigation portion of this project is not done, then 86,100 acre-feet of water will have to be delivered directly through the Diamond Fork System to maintain Utah Lake's minimum level.”

Since the Auditor acknowledges that the amount of water which must be delivered to Utah Lake exceeds the entire SFN irrigation supply, the District wonders where the Auditor suggests the District find enough water needed to replace the amount of SFN water diverted north. In short, the Auditor's recommendation would jeopardize full delivery of Salt Lake County's 70,000 acre feet of CUP water from Jordanelle.

### **Repayment Considerations**

Currently, all costs allocated to irrigation above the irrigator's ability to repay, are repaid to the federal government from the sales of hydroelectricity generated at federal dams along the Colorado river. Under the terms of the Colorado River Storage Project Act of 1956, Utah is entitled to 21 percent of federal hydroelectric revenues to repay the construction costs of irrigation features of the CUP. When the CUP is completed, the General Accounting Office will conduct a cost allocation audit for the entire project. All project costs will be allocated to one of several categories. They are; irrigation, M&I, fish and wildlife, recreation, and flood control. Local taxpayers are obligated to repay only those costs allocated to M&I uses. These costs will be paid for by the District when it completes prepaying its federal repayment debt as part of its financial management/cost sharing plan (described above).

The Audit appears to misunderstand what the suggested SFN re-allocation would cost Salt Lake County. By bringing that agricultural water north to Salt Lake and converting it to M&I water, Salt Lake County users would then have to assume all of the sunk federal costs which had been previously allocated to irrigation for repayment from Colorado River Storage Project power revenues. This could triple the current M&I rates being paid in Salt Lake County for CUP water at the present time.

---

If irrigation features are not completed, \$575 million of sunk costs in the Strawberry Collection and Diamond Fork systems which have been allocated to irrigation may be reallocated to M&I water users in Salt Lake County

---

It must be clearly understood that if the water which is currently allocated to irrigation is reallocated to M&I uses in Salt Lake County (as suggested by the Auditor), not only will the federal government's authorized direct contribution of \$125 million be unavailable (as explained above), \$575 million of sunk costs in the Strawberry Collection and Diamond Fork systems which have been allocated to irrigation may be reallocated to M&I water users in Salt Lake County.

### **Utah Lake Water Quality Issues**

The audit identified concerns which have been raised consistently by EPA and the Utah Division of Water Quality about the SFN project's possible impacts on salinity in Utah Lake. This is a complex issue. CUPCA provided \$1 million for the District to conduct, with public involvement, a feasibility study to reduce the salinity of Utah Lake. While the proposed SFN system may have added salinity content from irrigation return flows into Utah Lake, the District is prepared to mitigate these impacts with several measures. One suggested by EPA is to deliver more fresh water directly from the trans-basin diversion through the Spanish Fork river into the Lake to dilute salinity. The diversion of SFN water north to Salt Lake County as suggested by the Auditor will itself have salinity concentration impacts on Utah Lake which would need to be resolved.

### **Water Infrastructure and Growth**

The Auditor noted that in his interviews with board members, two "political" arguments were offered to justify the District's selection of the SFN as the preferred alternative. While there were many additional factors including federal and state law which weighed in favor of this selection (which were supplied to the Auditor but not included in the report), one mentioned was that a system which delivered water to Juab County would encourage growth in this area. The board views this issue as more an issue of "policy" than "politics".

This policy consideration was first articulated by Governor Leavitt on January 7, 1997, at a news conference with the District held at Jordanelle visitor's center. On that occasion, Governor Leavitt called the SFN system "an important and necessary investment in the future of central Utah." Speaking to the issue of growth management along the Wasatch Front Governor Leavitt said:

---

**Governor Leavitt called the SFN system "an important and necessary investment in the future of central Utah."**

---

---

**In each of the four growth scenarios studied, the Envision Utah planners embraced what the Auditor calls the “historical plan” for the Central Utah Project and assumed the construction of a water delivery infrastructure to the southern end of the Greater Wasatch Area in Nephi.**

---

“There is a big picture, a long term public-policy issue here that cannot be ignored. Ever since our forefathers conceived the Central Utah Project 40 years ago, there have been plans to deliver water to Juab County and other rural communities throughout central Utah. Right now, that water will be used primarily for agriculture. But 30 or 40 years from now, that water may well be used for municipal and industrial purposes. Juab County and southern Utah County are two places where our expanding metropolitan population can and will go. Twenty years from now, the Wasatch Front will have more than 3 million people if growth continues. It will be impossible to sustain the high quality of life we know now with that many people packed into one area. If we concentrate our growth we’ll have three to four million people in those areas. We will kill the quality of life of our people. By developing the infrastructure now, Juab and southern Utah County are the logical expansion points. Juab County is one of the fastest-growing counties, by percentage, in the state today. We need to encourage that growth by providing adequate water while we have the opportunity to do so under such favorable conditions.”

The board supports the policy that a water infrastructure system along the full extent of the Wasatch Front should be encouraged. By providing such an infrastructure, the state economic development opportunities can be expanded to attract industries and companies who do not want to locate in a congested urban area.

---

**Unlike the costs of an M&I system which are 100 % repaid to the federal government, the federal cost of building an irrigation system is not repaid by the taxpayers of Utah**

---

The audit presents statistical information proving that Salt Lake County is growing more rapidly and in larger numbers than Juab County leading to a conclusion that the SFN water should be reallocated to follow this concentration of population growth. Without the construction of a water infrastructure which will allow the state to encourage the broader distribution of economic development outside of Salt Lake County, this trend will continue leading to greater air quality problems, more gridlock and even greater transportation, water and other infrastructure needs in Salt Lake County.

The Audit also provides information concerning the low economic value derived from farming such as that which is done in Juab County. Congress however recognized that irrigation water required a subsidy. Hence, unlike the costs of an M&I system which are 100 % repaid to the federal government, the federal cost of building an irrigation system is not repaid by the taxpayers of Utah. Under the Federal law authorizing the CUP, the costs allocated for irrigation water are paid by the individual farmers (limited to their ability to pay) and then from power revenues from the Colorado River Storage Project hydro-power units which pay the balance.

---

**Governor Leavitt has requested the Department of Natural Resources to prepare an independent, comprehensive review of the CUP water distribution issue. This review involves all agencies of state government and will be completed this fall**

---

In March 1999, Envision Utah completed an analysis of four scenarios “to help the public understand the inherent trade-offs associated with alternative future development patterns” for the Greater Wasatch Area. The geographic area which is defined to be the Greater Wasatch Area in the study is bounded by Brigham City to the north stretching to Nephi in the south. In each of the four growth scenarios studied, the Envision Utah planners embraced what the Auditor calls the “historical plan” for the Central Utah Project and assumed the construction of a water delivery system infrastructure to the southern end of the Greater Wasatch Area in Nephi.

In anticipation of public hearings which will be conducted later this year when the District begins scoping what the new Utah Lake drainage system should be, Governor Leavitt has requested the Department of Natural Resources to prepare an independent, comprehensive review of the CUP water distribution issue. This review involves all agencies of state government and will be completed this fall. While the Auditor does not give much credence to this effort, we believe it will provide a thorough analysis, independent of the District, of this issue. The District’s board would welcome any involvement the Legislature may wish to have in this important policy discussion.

### **A Commitment Was Made**

The Auditor identified as the second “political” argument made by board members in support of sending irrigation water to Juab County is that a commitment was made by the District to Juab County that it would do so. The board believes that this question is more a “moral” one than a “political” one. While the Auditors are correct in their observations they could find no written agreements which document this commitment; the board does not believe that this is the issue. Juab County has been a member of the District since 1965 with an expectation that Bonneville Unit water would be delivered to provide a stable water supply beyond their existing flow rights with no storage capability. While the Auditor points out that section 206 of CUPCA allows the District to provide Juab County with money in lieu of water, this option is at the election of Juab County and not the District.

### **Salt Lake County’s Tax Payments are Balanced by Benefits**

The Auditor suggests that since Salt Lake County contributes 71 % of the District’s annual property taxes revenues it is being shortchanged by receiving only 32 % of project water. The Auditor has chosen a “money to water” comparison which is the same as “apples to oranges”. When comparing apples to apples, the scales are more balanced.

---

**Salt Lake County pays 68% of the taxes and is to receive 65% of the M&I water supply developed by the Bonneville Unit**

---



Salt Lake County taxes actually account for 68% of all taxes collected by the District which has provided substantial financial support for development of the Bonneville Unit M&I water supply. This contribution is in balance when it is understood that Salt Lake County is to receive 65% of the M&I water supply developed by the Bonneville Unit. The federal costs of irrigation features are repaid by farmers according to their ability and from power revenues from Colorado River dams.

In addition, the District has made major investments in Salt Lake County over the past 25 years from tax collections. The following is a breakdown of these project investments:

<u>Tax Collections to Date</u>	<u>\$183,980,000</u>
<u>from SL County by the District</u>	
<u>Salt Lake County Projects: to date</u>	
<u>built by District from tax collections</u>	
Jordan Water Treatment Plant	37.7 million
Jordan Aqueduct System	26.4 million
Jordan Terminal Reservoir	18.7 million
34% of water payment	5.0 million
70% Olmsted Tunnel Project	10.2 million
70% Olmsted Diversion Project	3.1 million
Administration 1965-1996	21.0 million
<hr/>	
TOTAL	\$122.1 million

In addition to the paying for the projects listed above, it is a long standing policy of the District's Board to pay 34% of Municipal & Industrial (M&I) water costs from the District's collected property taxes. The M&I users pay 100% of the costs allocated to M&I. This was accomplished through the Debt prepayment plan.

### **Scoping New Project Features**

When a final record of decision is obtained for the Diamond Fork pipeline, the District will begin scoping for the Utah Lake Drainage Basin Water Delivery System. In compliance with federal law, the District will begin public hearings to gather input with respect to the needs of the area and suggested ways to meet those needs. The process will include input from cities, farmers, local and state officials, the Legislature, federal agencies and the public. As it has with past

---

**In compliance with federal law, the District will begin public hearings to gather input with respect to the needs of the area and suggested ways to meet those needs.**

---

scoping activities, the board will maintain an objective and unbiased perspective with respect to these suggestions. The board will however be guided in its determinations by federal and state law as well as policy considerations provided during the scoping process.

The process will include input from cities, farmers, local and state officials, the legislature, federal agencies and the public

The board's decisions have not been driven by an urban versus rural split

the board *increased* the M&I water supply from 1,500 acre feet to 12,500 acre feet for the cities in south Utah County

Auditor's Comments	District's Response
<p>District Leadership Has Maintained Historical Perspective</p> <p>"The District and Board Appear Closely Tied to an Irrigation Project in the South"</p> <p>"It would be difficult for some board members to objectively consider sending the SFN water north."</p> <p>"We have concerns that the board can objectively analyze alternatives outside the original SFN plan. In particular, we are concerned that the District and the board can objectively consider sending the water north."</p> <p>"Moving the water to Provo River Basin would allow the water to be moved into Salt Lake County. Thus, the CUPCA legislation appears to be opening the door for an analysis of a water delivery alternative possibly into Salt Lake County for which money had not been authorized."</p> <p>"It is possible that the sentiment to keep the water south is a result of the makeup of the board."</p>	<p>While it is true that a majority of the board comes from outside Utah and Salt Lake Counties, the board's decisions have not been driven by an urban versus rural split. In fact, in an overwhelming majority cases, board votes are unanimous. Recent history indicates that the board members have favored "urban" needs over rural ones. For example, the board's decision to prioritize the completion of Jordanelle reservoir to secure the Salt Lake County water supply was contrary to the recommendations of the Bureau of Reclamation which planned to use remaining federally authorized funds to begin construction of the irrigation and drainage system. Further, with respect to the SFN preferred alternative, the board <i>increased</i> the M&amp;I water supply from 1,590 acre feet to 11,200 acre feet for the cities in south Utah County. As the District begins public hearings on the Utah Lake Drainage project, the District board will maintain an objective and unbiased perspective of all alternatives. In selecting a new preferred alternative, the District's board will follow federal and state law as well as important policy considerations received during the scoping process.</p>

**It is because of this “institutional knowledge” that many board members have been reappointed by the Governor and confirmed by the Senate for several terms in office**

**The board selection process requires that before a board member can sit, they must “pass muster” at the state and local levels of government**

<b>Auditor’s Comments</b>	<b>District’s Response</b>
<p>“Some board members have sat on the board for a very long time.”</p> <p>“The board member representing east Juab County has been a board member for 35 years while another has been on the board for 16 years. In our opinion, this time period is too long.”</p> <p>“Lengthy board membership can negatively impact the ability to objectively analyze the District’s operations.”</p> <p>A majority of board members “were directly connected with the water industry” suggesting that “these board members interests may not necessarily represent the public interest”.</p>	<p>The current selection process established by the legislature for Board appointments to the Central Utah Water Conservancy District requires that a Board member obtain the approval of three independently elected public bodies. First, the County Commission must nominate individuals to serve on the board. Second, the Governor proposes the appointment of the board member and third, the appointment must be confirmed by the Senate.</p> <p>Not surprisingly, County Commissions nominate individuals who are familiar with the water uses and needs of their counties. The water-related expertise of board members is a significant asset to the District in planning and constructing water features throughout the state. There is nothing more important and hard fought that western water rights and the local knowledge which board members possess provides important insights and assistance as the District works with local water users. It is because of this “institutional knowledge” that many board members have been reappointed by the Governor and confirmed by the Senate for several terms in office. The water expertise and tenure of service of the District’s board members has proven to be a significant factor in the successes of building a water project which benefits the public. Board members take very seriously their duty to</p>

Auditor's Comments	District's Response
	<p>project which benefits the public. Board members take very seriously their duty to oversee the District's administration in an objective and sound manner.</p>

Auditor's Comments	District's Response
<p>1. The Auditor recommends that the Legislature review the make up and light of service of the District's board and consider making a statutory change to board compensation to improve representation of overall state interests.</p>	<p>1. The District disagrees that knowledgeable board members do not represent the "overall" state's interest. The Auditor questions the integrity not only of the existing board, but the County Commission, the Governor, and the Senate that participated in the appointment of the current board.</p>
<p>2. The Auditor recommends that the Legislature reanalyze former SFN project water allocation.</p>	<p>2. Several times the Auditor has noted a bias about the wisdom of the former SFN irrigation project and the goal of bringing water north to Salt Lake County for M&amp;I uses. Rescoping will occur and the Board will welcome input from any source. Final discussion on rescoping will be consistent with federal law.</p>

