REPORT TO THE

UTAH LEGISLATURE

Report No. 2000-02

A Performance Audit
of
Special Service Districts in
Wasatch County

April 2000

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TO: THE UTAH LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Special Service Districts in Wasatch County** (Report #2000-02). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Wayne L. Welsh
Auditor General

WLW/lm

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Digest of
A Performance Audit of Special Service Districts in Wasatch County

We have completed our analysis of allegations concerning special service districts (SSDs) in Wasatch County as requested by the Audit Subcommittee. We found that three Wasatch County SSDs were not well controlled in the past. However, we found that the county commission's actions regarding the fire district were legitimate. On the other hand, Wasatch County's overhead charges for employees leased to the SSDs appear inaccurate. Also, state water usage standards were not equitably applied among SSDs. Further, the Timber Lakes Water Special Service District (Timber Lakes) could improve its decision-making analysis.

In addition to these issues, we also addressed some allegations in a limited fashion. Our work on these issues was limited either because information was not available or because the issue did not appear worth pursuing further.

Special Service Districts Were Not Well Controlled. Management and board oversight was such that significant financial risk was allowed to exist within the SSDs. First, two consultants received approximately $900,000 over a five-year time period with little evidence of adequate board expenditure review. Further, these consultants were allowed to authorize many of their own pay checks. Second, internal control weaknesses identified by the SSDs' independent auditors were not quickly corrected. For example, a problem with segregation of duties was reported in one district every year since 1994 but was not corrected until 1999. A poor segregation of duties opens the door to financial improprieties. The county commissioners have recognized these problems and have taken significant steps to correct them. Also, the creation of SSDs within Wasatch County was not well controlled. Wasatch County was unaware of how many SSDs it had created. The county commissioners have also taken steps to address this problem.

County Commission's Actions Regarding the Fire District Were Legitimate. The action to dissolve the Wasatch County Fire Protection Special Service District (WCFPSSD) Administrative

Control Board was legitimate. As the creating entity of the WCFPSSD board, the Wasatch County Commission had the authority to dissolve the administrative control board at any time. Also, the actions regarding the construction of the Jordanelle Emergency Services Building (fire station) were legitimate. Specifically, we found no evidence that the architectural and design services were improperly procured through a sole-source contract. However, design costs were not reduced as a result of the sole-source as expected. In addition, we verified that the fire station contracts were not "cost-plus" nor were construction management services paid for twice.

County Overhead Charges Appear Inaccurate. First, overhead charges are inconsistently applied among four special service districts tested even though similar services are received. In fact, the hourly overhead rate the county charges varies by more than $6/hour among the four SSDs. This raises the question of preferential treatment. Second, Wasatch County's overhead charges do not appear closely related to estimated costs. Some lease rates appear comparatively high while others appear low. We estimate that in 1999, Wasatch County may have collected approximately $20,190 above costs in some areas and $8,350 below estimated costs in other areas. We believe the county should establish a reasonable overhead rate that more accurately reflects actual costs. The rate should be well-documented and consistently applied to all users.

Certain Water Rights Did Not Meet Requirements. Wasatch County regulations, mandating the minimum amount of domestic water that property owners and suppliers must have legal rights to in order to build, were not being met in the Jordanelle area. The Jordanelle Special Service District (JSSD) and area developers had entered into water reservation and subscription agreements that called for the purchase of rights to less water per equivalent residential unit (ERU) than county standards require. A water assessment below county standards suggested that the JSSD might, in the future, face a shortfall in legally usable water when the Jordanelle area is fully developed. Further, we believe that using requirements that are below standard created the appearance of bias. The county commission has taken action requiring the county standard be met in JSSD.

Timber Lakes Could Make Managerial Improvements. The Timber Lakes Water Special Service District (Timber Lakes) could make some managerial improvements. In particular, Timber Lakes may have incurred unnecessary cost by allowing two employees to become employees of Wasatch County. In our opinion, Timber Lakes should have made a cost/benefit analysis prior to the decision. On the other hand, we found no support for the allegation that the two Timber Lakes' employees benefitted inappropriately from their transfer to Wasatch County employment. Finally, while we found no support for the allegation of financial impropriety, we do believe that Timber Lakes should implement some simple financial controls.

Some Allegations Addressed in a Limited Fashion. Our work on some allegations and concerns was limited, either by the information available or by the fact that the issue did not appear to be worth pursuing further. Specifically, we received three allegations and one concern which were analyzed in a limited fashion. In particular:

- It was alleged that three SSDs paid $12,000/month in rent ($4,000 a month from each SSD) to the then current county attorney for a small office space.

- It was alleged that two individuals, the then current Wasatch County Attorney and a former county employee, had a conflict of interest from working simultaneously for all three SSDs as well as for the county.

- It was alleged that these two individuals inappropriately accounted for their time, either by double billing or billing for services not performed.

- A concern was raised over the possibility of double taxation within the SSDs.

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Chapter I
Introduction

This audit is the result of allegations, many of which have been publicized in local newspapers. Most of the allegations, directly relating to special service districts (SSDs), are addressed in the body of this report. However, there were some allegations and concerns on which we did only limited work and other allegations relating to county-only issues which were not reviewed. Our analysis of allegations concerning SSDs in Wasatch County resulted in the following conclusions:

- Historically, SSDs were not well controlled in Wasatch County.
- The county commission's actions regarding the dissolution of the fire board and construction of the fire station were legitimate.
- Wasatch County's overhead charges to the SSDs appear inaccurate.
- County water usage standards were not equitably applied among SSDs.
- The Timber Lakes Water Special Service District (Timber Lakes) could improve its decision-making analysis.

In addition to these conclusions, we also addressed some allegations in a limited fashion. Our work was limited either because information was not available or because the issue did not appear worth pursuing further. Even though our review focused on SSDs in only one county, we believe many recommendations are general enough that they should be considered by all SSDs within the state.

Audit Scope and Objectives

This audit was initiated in response to a request by our audit sub-committee. Allegations had been made concerning the operation of some SSDs within Wasatch County, and we were asked to review those allegations. During the course of the audit, we continued to receive allegations. Because of limited time, we only reviewed allegations directly concerning SSDs which we believed would have a significant operational effect. As a result, some of the allegations received were not reviewed. Our audit objectives were to review the following allegations:

1. That three Wasatch County SSDs had been mismanaged, and the two consultants, who provided managerial and legal assistance, were not well controlled.

2. That the Administrative Control Board of the Wasatch County Fire Protection District was inappropriately disbanded by the county commissioners.

3. That the county commissioners entered into a cost-plus contract with the architectural firm designing the new Jordanelle fire station. Cost-plus contracts are not allowed under state procurement procedures.

4. That the county commissioners inappropriately awarded the architectural contract for the new Jordanelle fire station.

5. That the architectural and construction contracts for the Jordanelle fire station were designed in such a way that identical construction management services were paid for twice.

6. That lease rates charged to SSDs for work done by county employees were insupportably high and possibly used as an inappropriate revenue source by Wasatch County's Engineering Department, the administrator of the leased employees.

7. That state water requirements are not consistently applied among SSDs, resulting in possible inequitable treatment of developers.

8. That two Timber Lakes employees inappropriately received Wasatch County benefits at the expense of Wasatch County taxpayers.

9. That operating funds within Timber Lakes were misappropriated.

Chapter II
Special Service Districts Were Not Well Controlled

In the past, some special service districts (SSDs) in Wasatch County were poorly controlled. First, management and board oversight were such that significant financial risk was allowed to exist within the SSDs. The county commission, however, has recognized these problems and made significant improvements in the oversight of SSDs. Second, the creation of SSDs within Wasatch County was not well controlled. Wasatch County was unaware of how many SSDs it had created. In addition, the county commissioners might consider formalizing some criteria further defining the statute in the **Utah Code** concerning the creation of SSDs.

This audit was initiated by a general allegation that three Wasatch County SSDs had been mismanaged and that the two consultants, who provided managerial and legal assistance, were not well controlled. Because of these allegations, our review focused on three special service districts within Wasatch County:

- Wasatch County Special Service Area #1 (WCSSA)
- Jordanelle Special Service District (Jordanelle)
- Twin Creeks Special Service District (Twin Creeks)

Even though our review focused on only three districts in one county, we believe the findings are broad enough that the recommendations should be considered by all special service districts within the state.

When these three districts were formed in Wasatch County, a former Wasatch County employee (referred to in this report as Consultant A) was hired by the county as a consultant to manage all three districts. According to Consultant A, a consultant was used rather than an employee because the districts were very small and the county was unsure if the districts would last. Taken together, these three small districts offered the equivalent work of one full-time worker. Consultant A began receiving payments from WCSSA in 1993; Jordanelle in 1994; and Twin Creeks in 1996. By 1999, he was no longer a consultant for any of the three districts.

Upon his hire, Consultant A chose the then current Wasatch County Attorney (referred to in this report as Consultant B) to provide legal services for all three districts. Since the county attorney position was a part-time position at this time, Consultant B also had a part-time private practice and provided legal services to the districts as part of his private practice. In addition, Consultant B's secretary provided office support, particularly secretarial and accounting functions for the districts. In January 1999, Consultant B was appointed General Manager of Jordanelle, and his secretary now provides secretarial support for Jordanelle.

In 1997, a third consultant was also used. The Chairman of Central Utah Water Conservancy District's (CUWCD) Board and, simultaneously, the Chairman of WCSSA's Board of Trustees, became a consultant for WCSSA (referred to in this report as Consultant C). For approximately six months, both Consultant C and Consultant A were paid consultants for WCSSA; then, Consultant A was made Chairman of the WCSSA Board of Trustees, and Consultant C became the sole managerial consultant for WCSSA. As of December 1999, Consultant C was still the managerial consultant for WCSSA. However, this appearance of a conflict of interest is being resolved by the county commission, as we discuss later in this chapter. Our July 1999 audit of the Central Utah Water Conservancy District discussed our concerns with the CUWCD's board chairman's consulting practices. As a result, we will discuss aspects of his consulting in a very limited fashion in this report.

Significant Risk Was Allowed Within the Three Districts

Poor management and board oversight allowed significant financial risk to exist in the WCSSA, Jordanelle, and Twin Creeks special service districts. Little control was exercised over the reimbursements to Consultant A and Consultant B. Instead, it appears these consultants were allowed to pay themselves with little board oversight. Further, over the years, important internal control weaknesses were identified by the districts' independent auditors. These weaknesses were often not corrected in a timely fashion. As a result, some internal control weaknesses were allowed to remain within two of the districts for years. Finally, the services of the consultants were not procured using an open selection process. As a result, the

selection process used is open to public criticism regarding favoritism and/or potential bias. However, special service districts are not currently required by Utah statute to have a procurement code.

Little Control Existed Over Consultants' Payments

The payments to the consultants did not appear to be well controlled by the governing boards. As a result, the consultants could have been paid too much. We saw little evidence in meeting minutes of expenditure review and approval by the governing boards as required in **Utah Code** 17A. Adding to the risk was the fact that Consultants A and B often signed their own paychecks.

Over $900,000 was paid to two consultants over a five-year time period without adequate control.

The amount of money that Consultant A and Consultant B were paid from the three districts is significant and should have been controlled. Figure 1 shows the amount of money Consultant A received from each district since 1994 while Figure 2 shows the amount of money Consultant B received from each district since 1994. These amounts were identified from available checks and check registers from each district. Since not all checks could be located for review, the totals shown in Figures 1 and 2 may, in reality, be slightly higher.

Figure 1. Payments Received by Consultant A (1994-1998)

Year	WCSSA	Jordanelle	T Creeks	Total
1994	74,397	16,950		91,347
1995	67,790	44,750		112,540
1996	65,388	50,008	22,991	138,387
1997	50,869	72,321	41,443	164,633
1998	9,789	111,465	9,299	130,553
Total	268,233.00	295,494.00	73,733.00	637,460.00

Figure 2. Payments Received by Consultant B (1994-1998)

Year	WCSSA	Jordanelle	T Creeks	Total
1994	18,100	830		18,930
1995	32,914	9,797		42,711
1996	44,891	6,440	6,120	57,451
1997	25,193	21,100	4,935	51,228
1998	31,741	45,780	22,063	99,584
Total	152,840.00	83,947.00	33,118.00	269,904.00

In addition, Consultant C received approximately $51,000 from WCSSA in 1998. In spite of the amount of money received by Consultants A and B, only a small number of checks received board review.

SSD governing boards should approve all expenditures.

Little Evidence Exists That the Governing Boards Reviewed and Approved Expenditures at Least Quarterly. A review of expenditures and a review of financial reports are required, at least quarterly, in **Utah Code** 17A Part 4 Budgetary/Fiscal Procedures. Available minutes provide little evidence that these reviews took place.

Utah Code 17A-1-447 requires the following:

(1)The district governing board shall approve all expenditures of the district except as otherwise provided in this section.

(2) The governing body may authorize the district manager or other official approved by the governing body to act as the financial officer for the purpose of approving:

- *payroll checks if the checks are prepared in accordance with a schedule approved by the governing body; and,*
- *routine expenditures, such as utility bills, payroll related expenses, supplies, and materials.*

(3) Notwithstanding Subsection (2), the governing body shall, at least quarterly, review all expenditures authorized by the financial officer.

In a similar vein, **Utah Code** 17A-1-442 requires the following:

> *The district clerk or other delegated person shall prepare and present to the governing body detailed quarterly financial reports showing the financial position and operations of the district for that quarter and the year-to-date status.*

We found no evidence of board review in 1997 and little evidence in 1998.

In searching for evidence of governing board expenditure and financial report review, we reviewed governing board meeting minutes from 1997 to the present. We were unable to review minutes prior to 1997 because complete meeting minutes for all three governing boards could not be found. For Jordanelle and Twin Creeks, Wasatch County Commission meeting minutes were reviewed. For WCSSA, the WCSSA Board of Trustee meeting minutes were reviewed.

For 1997, we found no evidence in any of the minutes reviewed that indicated the governing boards were approving district expenditures either as the expenditures were made or on a quarterly basis. In addition, we found no evidence that the governing boards were reviewing quarterly financial reports. This lack of review was corroborated by a former county commissioner.

For 1998, we found some evidence in the minutes indicating the governing boards were reviewing some expenditures in Twin Creeks and Jordanelle. Specifically, we found evidence of warrant reviews for 3 of the 12 months. During this time period, we found evidence that WCSSA's expenditures were approved by one county commissioner. However, we found no evidence in WCSSA's Board of Trustee minutes indicating that expenditures were ever reviewed either as they occurred or on a quarterly basis by the board. In addition, we found no evidence that financial reports were reviewed on a quarterly basis. The districts' independent auditor did report to us, however, that quarterly reports were generated for the fourth quarter of 1998.

In our opinion, expenditure review as the expenditures occurred and quarterly financial report reviews were critical given the related party transactions occurring within the three districts.

The consultants signed their own checks over 50 percent of the time.

Consultant A and Consultant B Signed Many of Their Checks Themselves. Of the 203 checks reviewed paid to Consultant A or

Consultant B's businesses, we found either one or both of their signatures on 93 percent of the checks. Perhaps more importantly, we found Consultant A's signature on 64 percent of the checks paid to him and Consultant B's signature on 58 percent of his checks. These checks required two signatories to be valid. However, we believe that the merit of two signatories is undone if the recipient of the check is one of the signatories. If both consultants did not sign their checks, then Consultant B's secretary generally provided the other signature. Only 7 percent of our sample of checks to these individuals had a board member's signature. In 1998, WCSSA was an exception to this pattern. Beginning in this year, WCSSA expenditures were paid primarily through the county.

The merit of two signatories is undone if the recipient of the check is one of the signatories.

Given the working relationship between Consultant A and Consultant B (Consultant A hired B and rented from B), we are concerned that they were allowed, by the governing boards, to countersign each other's checks. In this situation, we are not convinced that these two individuals could perform oversight functions at an "arm's length distance." We also do not believe the practice of signing one's own check offers any control. Further, Consultant B's secretary was in no position to provide oversight for either individual. The governing boards were in the best position to provide this level of oversight, yet board members rarely countersigned on any of these checks.

Internal Control Weaknesses Were Not Quickly Corrected

All three districts had basic internal control weaknesses identified by their independent auditors. Some of these internal control weaknesses, e.g., poor segregation of financial duties and untimely bank reconciliations, increase the potential for financial improprieties. Of particular concern is that these internal control weaknesses were sometimes not corrected by the following year. Good management would have moved quickly to correct these weaknesses, and strong board oversight would have insured the weaknesses were corrected.

A problem with segregation of duties was consistently reported in WCSSA since 1994 but not corrected until 1999.

Between 1994 and 1998, independent auditors alerted the three districts to 13 reportable conditions. A reportable condition is a significant deficiency in the design or operation of financial reporting internal controls which could adversely affect the financial statements. Of particular concern is the fact that six of these reportable conditions were

noted more than once. Further, in 1998, a material weakness was reported in WCSSA. A material weakness is a condition which allows the possibility of a significant misstatement in the financial statements. Figure 3 shows the reportable conditions for each district by year.

Figure 3. Reportable Conditions by Year and District.

Year	WCSSA	Jordanelle	Twin Creeks
1994	Segregation of Duties Administrative Monitoring	Not Available	Not Available
1995	Segregation of Duties Administrative Monitoring	Documentation Administrative Monitoring	Lack of Authorization
1996	Segregation of Duties Administrative Monitoring	Segregation of Duties Administrative Monitoring	
1997	Segregation of Duties Administrative Monitoring Untimely Bank Reconciliation	Segregation of Duties Documentation Untimely Bank Reconciliation	Untimely Bank Reconciliation Documentation
1998	Lack of Timely Accounting Segregation of Duties Administrative Monitoring Untimely Bank Reconciliation Documentation	Segregation of Duties	Segregation of Duties

We are concerned that these districts were being cited for basic weaknesses in accounting practices. It is a basic accounting practice to reconcile bank statements and to have adequate documentation for why a bill was paid. In addition, we are concerned that some reportable conditions were noted year after year with no correction. For example, the segregation of duties issue was reported to WCSSA since 1994, Jordanelle since 1996 and one time to Twin Creeks in1998. A poor segregation of duties means that the same person is performing multiple critical financial functions. This is an important control since a poor segregation of duties opens the door to financial impropriety. Both WCSSA and Jordanelle agreed every year to correct the condition; however, it was never done.

Finally, WCSSA was cited in 1998 with a lack of timely accounting which is a material weakness. A material weakness is one which allows the possibility of a significant misstatement in the financial statements. For example, an overstatement of expenses could lead to the belief that fees need to be increased when, in fact, they do not. The auditors noted that because the accounting had not been done in a timely fashion, invoices had been paid twice and/or not properly authorized. To be cited with a material weakness is, in our opinion, evidence of poor management and board oversight.

Consultants Were Not Chosen in an Open Process

None of the three consultants were chosen using an open selection process. As a result, the selection process used is open to criticism concerning favoritism or bias.

A closed selection process facilitates charges of favoritism and bias.

We believe that good management practice dictates that when government organizations hire employees or consultants they: (1) determine a list of qualifications (or criteria); (2) advertise the position to the public; and, (3) interview all qualified applicants. This practice helps to identify the most qualified people for the position and assures that all interested parties have an opportunity to apply. When these controls are by-passed, the process can be considered tainted and open to public criticism regarding favoritism or potential bias.

On the other hand, this process can be logically by-passed if the position being considered is so unique that only one individual (a sole-source)

offers the service. In our opinion, however, none of the positions referred to in this section fall into a sole-source category.

- **Consultant A.** It does not appear that Consultant A was chosen as a consultant using an open process. The Wasatch County Commission minutes contained no indication that criteria were established or proposals were requested for the work Consultant A eventually got. The only reference we found was in the December 20, 1993 Wasatch County Commission minutes. The minutes note that—

  ...[Consultant B] submitted a contract for consultant services on the Wasatch County Water Conservancy District for ...[Consultant A].

In fact, two contracts for Consultant A's services were signed on this day; the WCSSA contract and the Jordanelle contract. We were unable to find a signed Twin Creeks contract or a reference to any open process used to choose the consultant for Twin Creeks in the Wasatch County Commission meeting minutes.

Consultant A also believes that no one else bid for any of the contracts. He was simply offered the work (he does not remember by whom), and he accepted.

This lack of an open process was not a violation of Wasatch County's procurement policy since the county had no procurement policy at this time. Wasatch County's procurement policy was adopted in 1998. Further, the **Utah Code** does not require SSDs to have a procurement policy. However, in spite of the lack of procurement requirements, we believe that an open process would have best served the districts.

- **Consultant B.** Consultant A stated that he was responsible for hiring Consultant B and that Consultant B was not hired in an open process. Consultant B had expressed his eagerness to do the legal work for the districts, and he also indicated to Consultant A that he had the time to do the work. Consultant A stated that he did not want to offend his acquaintance, Consultant B, by opening the position to other attorneys. Thus, he offered Consultant B, who was the county attorney at this time, the work.

In our opinion, this lack of an open employment process violates good management practices. As stated earlier, a position should be advertised and all qualified applicants interviewed. This process helps identify the most qualified people available and ensure that all interested parties have a chance to interview. Because this process was not done, concerns of favoritism or potential bias are possible. We see no reason why this employment action should not have been open.

– **Consultant C.** Like the others, Consultant C was not selected as a WCSSA consultant using an open process. According to Consultant A, the WCSSA manager at the time, no open process took place. Consultant C was simply given the consulting position by the Board of Trustees, of which he was Chairman. The WCSSA Board of Trustees meeting minutes of January 22, 1997 appear to support this action. The following is the relevant excerpt:

  Gene made a motion to go into Executive Session to discuss personnel issues.

  The Board returned to general session and took the following action:

  > *...[Consultant C] vacated the Chairman position and appointed Gene as Chairman pro-temp.*
  >
  > *Cal made a motion for the Service Area to enter into a contract with ...[Consultant C] for consulting services and to authorize Cal, ...[Consultant A], and ...[Consultant B] to negotiate the contract for Board approval.*

This lack of an open process was not a violation of WCSSA's procurement policies since it had none. However, we see no reason why this service should not have been obtained using an open process. In fact, we believe it was particularly important in this case, given the fact that Consultant C was the Chairman of the WCSSA Board of Trustees at the time he was given the consulting contract.

In summary, significant financial risk was allowed to exist within the three districts reviewed. The governing boards did not do an adequate job of reviewing district expenditures, particularly the consultants' expenditures, in spite of the fact that related party transactions were occurring. In fact, the governing boards allowed the consultants to countersign each other's

checks. Financial internal control weaknesses were also not corrected quickly, and a few were not corrected at all. Further, none of the consultants was hired in an open process. In our opinion, the management within the three districts was poor, and the oversight provided by the governing boards was inadequate. This condition is changing, however.

County Commissioners Have Made Substantial Improvements

Significant SSD operational changes have been made by the county commissioners. In particular, oversight has been improved, policies and procedures have been drafted, and two concerns have been resolved.

Changes concerning the districts were first noted in the fourth quarter of calendar year 1998. According to a former county commissioner, changes were begun when the former county commission first learned what Consultants A and B had made from all three SSDs in 1997. The former county commission was very surprised at the amount of money received and began taking steps to increase their control of the SSDs. In 1999, the new county commission continued making changes significantly affecting the SSDs.

Governing Board Fiscal Oversight Has Improved

The county commissioners, acting as the governing board, are exercising better oversight over expenditures. In particular, the governing board is now reviewing and approving warrants for Twin Creeks, Jordanelle, and WCSSA. Evidence of this review is documented in the 1999 meeting minutes for each district. In our opinion, this review and approval by the governing board is a significant step in improving board oversight.

Managerial Operations Are Improving

The county commissioners, acting as the governing board, have taken steps to improve managerial operations within the SSDs. First, the districts are now in the process of drafting some policies and procedures. In addition, the accounting function has been significantly improved.

The SSDs are in the process of drafting procurement policies.

Previously, WCSSA, Jordanelle, and Twin Creeks had no written policies and procedures. For example, none of these districts had procurement policies and procedures. Now, however, each district has at least a draft procurement policy under consideration. In addition, Jordanelle is planning to adopt Wasatch County's personnel policies and procedures.

While we believe that developing policies and procedures is a positive step, care should be taken to ensure reasonable policies are drafted. For

example, the dollar amounts dictating types of bids required in the Jordanelle and Twin Creeks draft policies seem very liberal compared with Wasatch County's policy.

Under the Jordanelle and Twin Creeks policies, $10,000 is considered a purchasing amount not requiring bids of any type—while under Wasatch County's policy that same limit is $500. It is not clear to us why Jordanelle and Twin Creeks would need a purchasing policy which is so much more liberal than the county's policy. WCSSA's draft policy, on the other hand, matches the county's policy. We believe that the governing board should carefully review this issue and bring the Jordanelle and Twin Creeks more in line with county policy.

In addition to developing policies and procedures, the accounting function has also significantly improved. The accounting functions for all three districts were brought inside the county in March, 1998 and are currently performed by an individual who has budgeting and accounting experience. As a result, bank reconciliations are being performed and monthly financial statements are being generated. This is a significant improvement over accounting functions performed in the past.

Two Concerns Are Being Resolved

The county commissioners are in the process of resolving two concerns. One source of concern was the fact that the former part-time Wasatch County Attorney was also the attorney for WCSSA, Twin Creeks, and Jordanelle. A second source of concern was the fact that Consultant C was a paid consultant for WCSSA at the same time he was Chairman of WCSSA's governing board and Chairman of Central Utah Water Conservancy District's (CUWCD) governing board. Both of these situations are being changed.

The Wasatch County Attorney will no longer provide legal services to the SSDs.

With the appointment of the present county attorney in February, 1999, the position of county attorney became a full-time position. The Wasatch County Attorney will no longer provide legal services for any Wasatch County SSD. As a result, WCSSA, Jordanelle, and Twin Creeks are in the process of soliciting bids for legal services.

The current Wasatch County Attorney believes this is a good action to take. He indicated that, in some instances, the interests of an SSD and the

interests of the county may diverge. If divergence occurs and the county attorney represents both the county and the SSD, the county attorney would be required to withdraw from representing both clients. Thus, having separate counsel seems to him to be the wisest course of action.

The CUWCD board chairman will no longer be a consultant for WCSSA.

Finally, Consultant C is going to be replaced as general manager of WCSSA. According to one commissioner, WCSSA needs a full-time general manager, and Consultant C already has a full-time job. As a result, the Board of Trustees is in the process of soliciting applications for a new WCSSA general manager.

In our opinion, all the changes represent significant improvements over how the SSDs used to operate. We encourage the county commission to continue taking appropriate steps. Specifically, we believe that the county commission should read all the **Utah Code** which applies to SSDs and insure that all the requirements of the code are being met by all SSDs which have been created. In addition, we believe that the county commission should review all the independent audits performed on all the SSDs and insure that all the concerns noted in the managerial letter are satisfactorily resolved.

In addition to making changes affecting internal district operations, Wasatch County also needs to develop a process for tracking created SSDs and to consider further defining the creation criteria for SSDs.

SSD Creation Needs Better Controls

Wasatch County needs to better control and monitor the creation of special service districts within the county. The Wasatch County Commissioners were unaware of the number of SSDs which had been created. Since Wasatch County is ultimately responsible for the actions of the SSDs, the county needs to know exactly how many SSDs it has created and in what activities the SSD is involved. Also, the Wasatch County Commissioners might also want to consider formalizing criteria or guidelines which further define when the creation of an SSD is appropriate or beneficial.

Creation Tracking Needs Improvement

The number of special service districts created by Wasatch County was unknown. Since Wasatch County is ultimately responsible for the special service districts created, we believe that the county needs to keep accurate records of special service district formation.

Wasatch County did not know how many SSDs had been created.

Wasatch County could not provide us with a list of all the SSDs created by the county. The most comprehensive list located contained 18 Wasatch County special service districts. However, the individual who had compiled the list stated he had done so from memory.

We believe at least 24 special service districts have been created within Wasatch County. Since SSDs are created through county resolutions, we generated this number by reviewing all Wasatch County resolutions, and discussing the SSDs identified with current county commissioners.

The Wasatch County Commissioners are ultimately responsible for all special service districts created in their county. Thus, we believe they have an obligation to maintain an up-to-date list of all SSDs created, appropriate contact personnel, boundaries served, and services provided. In our opinion, the county commissioners should review all Wasatch County resolutions and develop such a master list.

At the end of the audit, the Wasatch County Attorney provided us with a resolution adopted in March, 2000 to address this issue. This resolution orders the Wasatch County Clerk to maintain a master list of all SSDs in Wasatch County and to maintain a file on each SSD containing the formation documents and a map of the district boundaries.

Commissioners Might Consider Additional Creation Criteria

The county commissioners have no further defining criteria, other than the general language in the **Utah Code**, to aid them in determining when the creation of a special service district is beneficial. There are at least two existing SSDs whose justification is questioned by one county commissioner. We believe, due to Wasatch County's growth potential, that the county commissioners will see an increase in petitions for SSD creation. Consequently, now might be a good time for further definition

of when SSD creation is beneficial. For example, SSD creation might be linked to the county's master growth plan.

There are two SSDs within Wasatch County created to aid two private individuals. These individuals wanted to connect to Heber Valley Special Service District's (HVSSD) sewer system. The property for these two individuals lay between Heber City and HVSSD's collection system. Thus, the only way for these two individuals to connect to HVSSD's sewer system was for them to connect directly to the main trunk line.

Directly connecting to the sewage truck line presents a liability issue over what is then put directly into the main sewer trunk line. HVSSD told the two individuals that they could directly connect to the sewer line in one of two ways: (1) Heber City could annex the properties and assume the liability; or, (2) the two individuals could become public entities (such as SSDs) with which HVSSD would have to cooperate. HVSSD officials did not believe the latter option was likely.

Heber City refused to annex the properties because the two properties were too far outside the city limits. Thus, the only other alternative was to become a public entity. The two individuals petitioned the county for the creation of two SSDs. The county commissioners granted their petition despite the protest of both Heber City and the HVSSD over the liability issue.

One current county commissioner questions the creation of both of these SSDs, whose creation the **Utah Code** allowed. However, there is no further definition of the **Utah Code** by the county commissioners which can be used to help determine when the creation of a special service district is appropriate.

A former Wasatch County Planner believes SSD creation decisions should be based, in part, on the county's master growth plan.

This lack of guidelines or formal creation criteria was an issue with the former county planner. He believed Wasatch County needed additional guidelines for SSD formation. In particular, he believed the county master plan should be completed, and SSD decisions should then be based on that plan.

With the growth occurring within Wasatch County, we believe that petitions for SSD creation will increase. As a result, we believe it is a good time to logically formulate some additional SSD creation criteria. In our

opinion, the county commissioners together with the county planner and the county attorney should discuss and formulate additional creation criteria. These criteria might have their basis in the county's growth or master plan and in the number of people expected to benefit from the SSD's creation.

According to the county attorney, the county commissioners recently awarded a contract to draft a county-wide master plan. This plan, combined with statutory guidelines, will be used to assist the county commissioners in deciding when an SSD should be created.

In conclusion, we found that three SSDs within Wasatch County had been poorly managed and controlled. The two consultants wrote checks to themselves with little board oversight. Further, financial control weaknesses were allowed to exist for many years with no correction. The county commission has taken significant actions, however, to remedy many of these control problems. We believe the county commissioners should also implement a tracking system for SSDs which have been created and to consider developing additional criteria for justifying the creation of a special service district.

Recommendations:

1. We recommend that the county commissioners in Wasatch County review and familiarize themselves with all aspects of the **Utah Code** which pertain to special service districts and insure that all applicable statutes are followed by the county commissioners and the special service districts.

2. We recommend that the county commissioners review all independent financial audits of Wasatch County special service districts and insure that all findings are corrected by the special service districts.

3. We recommend that the county commissioners develop a procedure for tracking the creation of special service districts.

4. We recommend that the county commissioners consider developing additional creation criteria of special service districts within Wasatch County.

5. We recommend the Legislature request an audit of special service districts in other counties to insure that similar problems are not occurring elsewhere.

Chapter III
County Commission's Actions Regarding the Fire District Were Legitimate

We believe that the actions taken by the Wasatch County Commission as they pertain to the dissolution of the Wasatch County Fire Protection Special Service District (WCFPSSD) Administrative Control Board and the construction of the Jordanelle Emergency Services Building (fire station) were legitimate. The commission's actions were within the purview of controlling constitutional and statutory provisions.

With regard to the dissolution of the board, both the **Utah Constitution** and **Utah Code** require the governmental entity that creates a special service district administrative control board to retain supervisory control over the board. As the creating entity of the WCFPSSD board, the Wasatch County Commission had the authority to dissolve the administrative control board at any time.

It is our opinion that both the decisions to construct the Jordanelle Fire Station while a duly constituted fire protection board existed and to use general funds to finance the initial stages of construction were also legitimate. Statutory provisions granting counties the authority to provide adequate fire protection gives them the discretion to decide as to what is necessary to satisfactorily discharge that duty and the means by which the service is funded. The creation of a special service district does not preclude a county from acting on its own authority to make improvements and pay for it out of general funds.

Member municipalities' expectations of continued representation on the fire board and input in the administration of the WCFPSSD were unwarranted. Constitutional and statutory provisions vest ultimate authority in the creating entity. It is immaterial that member municipalities negotiated for a certain level of representation on the board and an accompanying say in its administration. Likewise, it is immaterial that representatives of member municipalities believed, under the circumstances, that their approval was necessary for the construction of the fire station.

We also believe that the actions taken by the WCFPSSD and Wasatch County in relation to collateral issues involved in the Jordanelle Fire Station's construction were legitimate. Specifically, we find no evidence that the architectural and design services for the fire station were improperly procured through a "sole-source" contract. We also found that the financing strategy adopted by the county commission insures that only Jordanelle area developers and residents will pay the fire station construction debt. Furthermore, we verified that the fire station contracts were not "cost plus" contracts. Finally, we found the county was not paying two construction managers for duplicate services.

This chapter is a response to allegations and concerns regarding the proper scope of the county commission's authority. The chronology of events that led to the revocation of the board's authority; the county commission's apparent usurpation of an existing board's authority; and the use of general funds to finance the initial phase of the construction; all contributed to the appearance of impropriety that led to questions about the scope of the commission's authority. Additionally, the construction of the fire station generated questions regarding the type of procurement used for the design phase of the contract and several aspects of the fire station design and construction contracts.

County Has the Authority to Dissolve the SSD Board

The creating entity bears ultimate responsibility for governing a special service district.

We believe the county has the constitutional and statutory authority to assume supervisory control over the special service districts it creates. This authority exists, despite the county's delegation of the power to municipalities to "act as the governing authority of a special service district" through an administrative control board. As the creating entity of the WCFPSSD, the Wasatch County Commission has the authority to dissolve the board or revoke any authority delegated to it. Hence, the actions taken by the county commission were entirely within the purview of controlling statutes.

The WCFPSSD was established on June 24, 1987. The board was created on December 16, 1987, with the delegation of powers for the proper administration of the district occurring immediately thereafter. All powers and responsibilities delegated to the board were revoked and the board was dissolved by the county commission on May 24, 1999.

The language and structure of the applicable constitutional and statutory provisions place ultimate responsibility for governing a special service district squarely upon the creating entity. In this case, the WCFPSSD was created by Wasatch County; thus, they have the responsibility to govern the district. Article XIV, Section 8 (1)(a) of the **Utah Constitution** requires that "special districts within all or any part of the county, city, or town be governed by the governing authority of the county, city or town."

Furthermore, while **Utah Code** Section 17A-2-1313 (2) permits the delegation of authority to an administrative control board, the delegation of authority is neither final nor absolute. Under Section 17A-2-1326 (5)(d), the creating entity has the power to "revoke in whole or in part any power or authority delegated to an administrative control board." Taken together, these statutory provisions indicate that the creating entity retains supervisory control over the special service district and its board even after the delegation of broad authority.

Taken together, these statutory provisions indicate that the creating entity retains supervisory control over the special service district and its board even after the delegation of broad authority. Absent constitutional or statutory provisions requiring notice or cause, the creating entity may dissolve the administrative control board or revoke any authority delegated to it at any time, without cause.

We discussed with the Office of Legislative Research and General Counsel (OLRGC) our reading of applicable constitutional and statutory provisions, as well as our resulting opinion that the creating entity is ultimately responsible for the supervision and control of the special service district. OLRGC confirmed our interpretation of the constitution and the **Utah Code**.

Attorney General's Opinion No. 81-004 provides additional documentation regarding the view that the creating entity retains supervisory control of the special service district. According to the opinion, under Section 11-23-12, (now 17A-2-1313):

> *the legislature specifically authorized the delegation of the performance of all activities in the exercise of a service district's powers to an administrative control board or to designated officers or employees subject to the supervisory control of the creating governmental entity.*

County Has Independent Authority to Construct a Fire Station

Counties have discretion as to the means they choose to provide and fund services.

The county commission's decision to construct a fire station, despite the existence of an administrative control board, was legitimate. Conflicting language in the documents creating and granting authority to the WCFPSSD Board creates a dispute as to whether the county commission retained the authority to construct facilities. Nonetheless, it appears that statutory provisions authorizing counties to provide fire protection services gives the county discretion as to the means by which to accomplish this duty.

Several sections of the **Utah Code** authorize counties to provide fire protection services. The general welfare authority granted to counties by 17-5-263 and the more specific provisions of Sections 11-7-1 and 17-34-2 require counties to provide adequate fire protection services within their territorial limits and in unincorporated areas. The construction of fire stations is a direct aid in providing fire protection services.

Counties May Use a Variety of Ways to Provide Fire Protection Services

Counties may provide fire protection in a variety of ways under the code. The county may provide fire protection by either: (1) creating its own fire department, (2) contracting to receive fire protection, (3) entering into inter-local agreements, or (4) creating a special service district. The absence of a statutory directive as to the particular method that counties must use in efforts to provide fire protection implies that counties have the discretion to decide which method to use and what elements are necessary to discharge the duty.

The creation of a special service district is merely one way by which fire protection services can be provided. The creation of a special service district does not preclude a county from acting on its own authority to make improvements that they deem necessary to protect the welfare of their citizens.

The County May Use General Funds to Pay for the Construction of the Fire Station

We believe that the county had the authority to use general funds to pay for the initial phases of constructing the Jordanelle Fire Station. At issue here is the question of whether the creation of a special service district prevents the county from using general funds to pay for services or improvements that benefit the district. After all, sections of the **Utah Special Service District Act** allow for the levy of taxes and the imposition of fees and charges on properties benefitting from improvements to pay for those improvements.

Counties may resort to using general funds to pay for improvements in a special service district rather than rely on the funding methods enumerated in the **Special Service District Act**. We rely on court decisions defining the ability of municipalities to use general funds to pay for improvements in the face of statutory provisions allowing for special assessments. The same reasoning should be applicable to counties.

According to the courts, when a municipality—

> *has power to make or provide for the making of improvements it has power to make arrangement to meet the expense thereof...In the absence of express direction the method to be adopted is within the discretion of the proper authorities.*

The levying of special taxes or the imposition of fees and charges are viewed as additional methods by which payment can be made. Courts consider a general authority to pay for improvements through special assessments, fees or charges as "not affecting the power of the municipal corporation to make improvements and pay therefore out of the general revenue." The choice of means for defraying the expenses incurred is left to the discretion of the proper municipal authorities. Consequently, statutory provisions allowing special assessments do not deprive municipalities of the power to pay for improvements out of its general fund.

In this case, Wasatch County has the power to provide fire protection within its territorial limits. As such, the funding methods enumerated in the **Utah Special Service District Act** present alternative methods for defraying the cost of constructing the fire station. Given the

circumstances, the county can legitimately use general funds to pay for the initial stages of construction.

Revocation of Authority Harmful to Expectations of Municipalities

Dissolution of board was detrimental to municipalities' expectations of having both a representative board and a say in the governance of the district.

Revoking the board's authority to govern the WCFPSSD, however, deprives the municipalities that consented to inclusion in the district of representatives whose duty is to advance each municipalities' particular interests and a direct voice in the district's administration. We are mindful of Wasatch County's position that the municipalities expectations were unwarranted, given the inclusion of statutory language permitting the revocation of any and all of the board's authority at any time. Still, the negotiations regarding the number of representatives municipalities would have and language in the resolution creating the administrative control board that "it shall act as the governing authority" of the WCFPSSD may have created the belief that the municipalities would have continued representation on the board and input into the district's administration.

Consent to Inclusion Contingent on Having a Representative Board

Minutes of the Wasatch County Commission, Heber City Council, and interviews with municipal representatives at the time of the fire district's creation suggest that the participation of the municipalities was contingent on acquiring the appropriate level of representation on the board and a corresponding say in the administration of the district.

Negotiations regarding the actual level of representation the municipalities were to have took place. Heber City originally opposed inclusion into the WCFPSSD. Heber City Council members believed that Heber City could create its own fire district and that the county would be unable to form a district without Heber City. Still, both the county commission and city council minutes show that the county solicited Heber City's agreement to participate in the SSD. In the course of negotiations, the level of Heber City's representation on the board was used as an inducement.

As originally conceived by the county commission, each municipality would "have the opportunity to place one member on the board." However, the March 23, 1987 Heber City Council minutes show that the

council discussed the county attorney's proposal that Heber City have three representatives on the board. Further, the county commission minutes for August 5, 1987 explicitly acknowledge that the increased level of representation for Heber City was negotiated, and representation levels of other municipalities were for consideration. Finally, the board's by-laws memorialize the fact that Heber City would have three representatives on the board.

Municipalities Expected Input in Administration of District

According to Heber City's current mayor, the city gave up its fire department on the condition that a representative control board would be formed. A former Heber City Council member indicated that the city's support was contingent on having a significant voice in the administration of the district. Heber City's population constituted half the people in the county, and properties within its boundaries accounted for more than half the assessed value of property in the county. Its residents would bear the majority of the tax burden that would be imposed. Consequently, the city council wanted to have a sufficient number of votes on the board to come as close as possible to controlling it.

According to the former mayor of one of the municipalities that consented to inclusion, all the municipalities insisted on having representatives on the board. They would not have agreed to inclusion without representation because the county would be imposing taxes for fire protection services on their residents.

Board Members Believed Board Approval Was Required

Some WCFPSSD board members believed that the construction of the Jordanelle Fire Station required board approval. To some, the county commission appeared to have usurped the authority of an active and duly appointed administrative control board when it entered into a contract for the construction of the Jordanelle Fire Station. As such, the validity of the county commission's actions with regard to construction of the fire station came into question.

It also appeared that the Wasatch County Commission had changed the priority of improvements that were to be undertaken by the WCFPSSD. Individual board members wanted to undertake other projects prior to the

Jordanelle Fire Station. Comments by several board members during interviews indicated that the construction of the Jordanelle Fire Station was not foremost among the projects they wanted to undertake. According to these board members, projects in Midway and Wallsburg had a higher priority than the Jordanelle Fire Station. However, we are unable to find a clear indication of project priorities within WCFPSSD board minutes.

Wasatch County takes the position that the board's priorities changed when a motion to move forward on the Jordanelle Fire Station was made and seconded on January 13, 1998. However, interviews with board members indicate that the motion was merely intended to allow exploration of the matter. The motion was not meant to place the construction of the fire station at the head of the list of priorities. Furthermore, the board was greatly influenced by the representation that the site would be donated and that the developers would fully fund a full-time station. However, these particular representations changed.

Expectations Are Unwarranted

Expectations of continued input in the administration of the districts are unwarranted.

The foregoing discussion provides an abject lesson to all municipalities throughout Utah that are, or may become, members of county-created special service districts. Any expectation they may have regarding the continued existence of a representative board and input in the administration of a special service district are unwarranted. Nothing in the controlling constitutional or statutory provisions supports these expectations. Any beliefs municipalities may have regarding a continued say in the way special service districts are administered are unwarranted.

During the course of our audit, it has become abundantly clear that in the relationship between the creating entity and a special service district, power effectively resides with the creating governmental entity. Special service districts are not fully independent bodies, and a municipality's membership and input are nonessential.

Constitutional and statutory provisions preserve the creating entity's supervisory authority over the district despite the delegation of authority to an administrative control board. Absent constitutional or statutory provisions requiring notice or cause, the creating entity retains the power to dissolve the board or revoke its authority at any time. Therefore,

agreements reached between municipalities and the creating entity can be disregarded by the creating entity.

Furthermore, special service districts do not have exclusive jurisdiction over matters concerning the services they provide. If creating entities are authorized to provide these services, then they continue to retain the authority to act within that sphere. Consequently, creating entities may legitimately supercede a special service district's actions.

Actions of County and WCFPSSD During Station Construction Were Appropriate

A number of specific allegations related to the construction of the Jordanelle Fire Station were conveyed to the audit team. Specifically, we find no evidence that the architectural and design services were improperly procured through a "sole-source" contract. We also found that the financing strategy adopted by the county commission insures that only Jordanelle area developers and residents will pay the fire station construction debt, rather than all county residents. Furthermore, we verified that the fire station contracts were not "cost plus" contracts but were consistent with conventional construction contracts. Finally, we determined that the county was not paying two construction managers for duplicate services.

Design Costs Were Not Reduced as a Result of Sole-sourcing

The county's procurement of the architectural and design services contract for the Jordanelle Fire Station did not go out for bid but was a sole-source procurement. Sole-sourcing the contract was justified because the county particularly liked the architectural design of the already built Pine Brook Fire Station in Park City. It was believed that by using the same architect and plans, the WCFPSSD would trim costs as a result of reduced design costs and a shortened construction period. However, our review indicates that WCFPSSD did not save on design fees, nor did they significantly shorten the construction period as a result of sole-sourcing the architectural contract.

We note that Section 63-56-24 of the **Utah Procurement Code** and R33-3-4 of the **Utah Administrative Code** allow for sole-source procurement. While we do not question the grounds used by the

WCFPSSD to justify the award of a sole-source contract, we do note that the anticipated savings in design costs did not come to fruition. Additionally, while it appears that the construction period may have been somewhat shortened as a result of copying the Pine Brook Station's administration wing, we were unable to obtain a solid estimate of the time saved.

The architectural contract was awarded to a firm whose design of the Pine Brook Fire Station in Park City was well-liked. The sole-source procurement was partially defended on the grounds that the WCFPSSD would realize cost savings simply by modifying the plans.

However, using a design prototype does not always result in cost savings. According to an employee of the Utah Division of Facilities Construction and Management, the state sometimes uses prototypes that are to be adapted to different sites. The state typically expects a reduction in fees when a prototype is adapted to a site. However, once changes to the characteristics of a project are made, (*e.g.*, increased size), no reduction in fees is expected.

A representative from the architectural firm confirmed the fact that there was no direct reduction in design fees despite the fact that the Pine Brook Station was being used as the template for the Jordanelle Fire Station project. Most of the drawings for the Jordanelle Fire Station had to be done "from scratch" because the Jordanelle Fire Station was twice as large as the Pine Brook Station. Plans had to be altered to include a basement, training room and additional offices.

Due to the extensive alterations requested, only a small part of the Pine Brook plans were repeated in the Jordanelle Station design. According to the architectural firm, the administrative wing of Pine Brook was repeated. This repetition resulted in some time savings because it accounted for 10-20% of the floor plan.

The architectural firm's fee is based on construction cost times a design factor fee. There is an inverse relationship between construction costs and the fee factor. That is, as the construction cost increases, the fee factor decreases. Both the contract and invoices used to bill for services rendered show that the architectural firm used the design fee factor normally applicable to a project whose construction costs were similar to those of the Jordanelle Fire Station.

Jordanelle Area Will Bear the Burden of Financing the Fire Station

The developers and future residents of the Jordanelle area will pay for the construction of the fire station. Revenues generated from the fees and charges on properties directly benefitting from the fire station will be used to pay for the construction.

Concerns were expressed about residents in other areas paying for the fire station, due to the use of general funds to pay for the initial stages of construction. However, the financing strategy used to pay for the Jordanelle Fire Station insures that only Jordanelle area developers and residents will bear the burden of servicing the construction debt. At present, the county has been reimbursed for the monies, along with the interest it had advanced for the construction of the fire station with funds generated from the sale of Municipal Building Authority revenue bonds.

The fact that the WCFPSSD could only impose fees and charges to pay for the fire station's construction made it difficult for the WCFPSSD to issue bonds on its own because fees and charges are considered an inferior form of security. Consequently, it was determined that the best way to finance the construction was to create a Municipal Building Authority (MBA) that would own the fire station and issue revenue bonds which would be serviced by lease payments on the property.

The fire station would be leased to Wasatch County which, in turn, would sub-let it to the WCFPSSD. The fire district would then impose fees and charges equaling the debt service amount in order to pay its lease to the county. The county would then pay the MBA which would make payments to its bond holders.

On September 13, 1999, the Wasatch County Commission passed a resolution imposing service charges on the residents and property owners of the Jordanelle area. The service charge was imposed for the express purpose of paying for "the costs associated with providing fire protection service within the Jordanelle Area." These charges will pay for the construction, and future charges will be imposed to pay for the operation of the fire station.

Architectural Services Contract Was Not Cost Plus

Consultations with individuals in the state procurement system lead us to conclude that the architectural services contract for the Jordanelle Fire Station was not a "cost plus" contract. Concerns that the contract was "cost plus" stemmed from the fact that the sections dealing with compensation indicated that total fees for basic services "shall not exceed the design fee factor times construction cost." A cost plus contract is less desirable because the incentive is to increase costs rather than control them.

According to the director of the Utah Division of Purchasing and General Services, the architectural and construction contracts cannot be read separately; they are interrelated. The fact that the construction contract has a guaranteed maximum price prevents the architectural contract, which uses construction factors to determine compensation, from being a "cost plus" contract. He reviewed the contracts and told us they were not "cost plus."

Construction Managers Provided Different Services

Wasatch County did not pay two companies to provide the same construction management service for the Jordanelle Fire Station project. Questions were raised as to whether Wasatch County was paying twice for the same service since both the architect and the general contractor, under the terms of their respective contracts, were each required to provide construction management services. However, interviews indicate that the construction management services provided by the architect differed from those provided by the general contractor.

According to a DFCM employee, the contracts for the Jordanelle Fire Station do not create two construction managers with overlapping responsibilities. The nature of the services that each entity provides differ. The contract defines the role that the architect and the general contractor are to have as construction managers.

As a construction manager, the architect provides overall project management and fulfills the role of advisor. They protect the owner's interests by acting as its representative in efforts to deliver the project within cost estimates. The architect's responsibilities range from preparing

comparative estimates for the cost evaluations of alternative systems and materials, to soliciting bids from general contractors, to preparing and updating project construction schedules and preparing progress reports, to maintaining cost accounting records.

On the other hand, the general contractor is providing on-site construction management services by managing the actual construction of the project. As such, the contractor consults with the architect, develops subcontractor interest in participating in the project and obtains bids from subcontractors and suppliers, and develops preliminary cost estimates.

Recommendations:

1. We recommend that municipalities weigh the benefits of membership in a county-created special service district against the possibility of having no future input in its administration or direction.

2. We recommend that counties and municipalities consider, as an alternative, the use of inter-local agreements to achieve economies of scale in providing services if a voice in the decision-making process is a paramount concern.

3. We recommend that both Wasatch County and the special service districts enumerate the conditions under which sole-source procurement will be allowed.

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Chapter IV
County Overhead Charges Appear Inaccurate

Wasatch County's overhead charges for employees leased to special service districts appear inaccurate. First, overhead charges are inconsistently applied among the four special service districts tested even though similar services are received. In fact, the hourly overhead rate the county charges varies by more than $6/hour among the four SSDs. This inconsistency raises the question of preferential treatment given to some special service districts at the expense of others. Second, Wasatch County's overhead charges do not appear closely related to estimated costs. Some of the lease rates appear comparatively high while others appear low. As a result, we believe that in 1999, Wasatch County collected approximately $20,190 above estimated costs in some areas and $8,350 below estimated costs in other areas. In our opinion, the county should establish a reasonable overhead rate that closely reflects actual costs. The rate should be well-documented and consistently applied to all users.

We received an allegation concerning the fairness of costs charged by the county for employees leased to the special service districts. It was alleged that the lease rates were insupportably high and possibly used as an inappropriate revenue source by the Wasatch County's Engineering Department, the administrator of the leased employees.

The four SSDs have paid $122,000 in overhead over the past two years.

Special service districts have been leasing county employees since 1995. In 1998, the county leased eleven employees who provided the work equivalent of 4.58 full-time equivalents (FTEs) to four SSDs. For this work, the SSDs paid approximately $255,700 in total costs. Of this amount, $51,900 was overhead costs. In 1999, the county leased nine employees who provided the work equivalent of 5.67 FTEs to four SSDs. For this work, the SSDs paid over $336,700 in total costs. Of this amount, $70,800 was overhead costs. It was reported that these lease arrangements evolved because the SSDs were so small they could not afford their own employees.

The leased employees perform primarily SSD work but may also do some county work as well. Since these employees are county employees, the county performs all the administrative functions surrounding the

employees (i.e., collecting and maintaining time records, issuing paychecks, providing benefits and monitoring benefit usage). The SSDs are then billed by the hour for the services of each leased employee. This hourly billing includes a wage and benefit charge and up to three overhead charges.

The County Engineer developed three possible overhead charges which can be assessed on leased county employees. First, a vehicle overhead charge is added to the employee's hourly wage if the employee drives a county vehicle. Second, an office overhead charge can be added to the employee's hourly wage to cover the County Engineer's administrative overhead—the County Engineer's office administers the leased employees. Third, a county overhead charge can be added to the hourly wage to cover Wasatch County government's general overhead. In our analysis, we considered office and county overhead costs together and refer to this combination as general overhead.

Overhead Charges Are Inequitably Applied

SSDs pay different hourly overhead rates even though similar county services are received.

General overhead charges among the SSD's are inconsistently applied. The reasons for the inconsistent application appear to be an inability to pay by one SSD; and, an unwillingness to pay by another. In spite of these reasons, all four special service districts appear to receive the same services from the county. As a result, we believe the county overhead charges are inequitable among the four districts. In addition, the health benefits are assessed in such a way as to make their application inequitable. This health benefit issue is discussed in a later section.

The four SSDs pay significantly different hourly charges for general overhead. We reviewed the hours worked and the overhead charges made for 1998 and 1999. The resulting hourly overhead charges are shown in Figure 4.

Figure 4. Overhead Charges per Hour Paid by Four SSDs. (1998 and 1999)

SSD	One	Two	Three	Four
1998	$1.84/hour	$5.00/hour	$8.08/hour	$8.32/hour
1999	$2.15/hour	$5.49/hour	$7.95/hour	$8.48/hour

As can be seen, there is a substantial difference among the SSDs as to what they pay Wasatch County, on average, in general overhead charges. This difference would make more sense if Wasatch County provided substantially different service levels for each of the SSDs; however, this is not the case. All four SSDs appear to receive the same level of service.

Overhead charges were reduced for two SSDs because one could not pay and one would not pay.

SSDs One and Two pay less because the former was unable to pay and the latter was unwilling to pay. Specifically, SSD One could not afford to lease county employees under Wasatch County's general overhead structure unless user fees were increased. Because of this inability to pay, the County Engineer dropped the $5.00/hour office overhead charge from their rate. SSD Two challenged the overhead charges as being excessively high. Because of this unwillingness to pay the overhead rate, a county commissioner dropped the county overhead percentage from their rate.

In our opinion, these rate adjustments have resulted in inequitable treatment among the SSDs. If an overhead charge is legitimate, then all SSDs should pay it. If an SSD does not pay a legitimate cost, then that cost is passed on to another SSD or Wasatch County taxpayers who have to pay. If the overhead charge is not legitimate, then no SSD should pay it.

In addition to the rate adjustments, the health benefit assessment discussed in the next section is a form of inequitable treatment. Employees in SSDs One and Two are assessed a benefit cost based on membership in the family health plan—the health plan with the highest premium. However, most of the leased employees for those SSDs are not on that plan. It is inequitable that SSDs One and Two pay more than actual cost for their employees' benefits.

Three SSDs have been charged in excess of estimated costs while one has been charged less.

Because of the inequitable treatment among the four SSDs, as well as a poor relationship between overhead charges and estimated costs (discussed in the next section), we believe that Wasatch County collected approximately $20,190 over estimated costs from three SSDs and approximately $8,350 under estimated costs from one SSD in 1999. Figure 5 shows the results of both these factors (inequitable treatment and charges not relating to costs) working together (by SSD). This figure takes into account overcharges or undercharges in the following three areas: (1) vehicle costs; (2) general overhead costs; and, (3) health benefit costs (each of which will be discussed in the next section.)

Figure 5. Cumulative Overcharge/(Undercharge) by the County for Four SSDs. (1999)

District:	One	Two	Three	Four
Overcharge/(Under-charge)	($8,350.00)	$990.00	$4,800.00	$14,400.00

As can be seen, based on our estimate of costs, one SSD paid less then it should have, while the other three paid more. Particularly striking is the range of overpayment among the SSDs. We believe Wasatch County should charge each SSD in an equitable fashion. Legitimate county costs should not be waived.

In addition to overhead charges applied in an inequitable way, we also found that the overhead charges are not closely related to costs.

Overhead Charges Don't Relate Well to Estimated Costs

Wasatch County's overhead charges appear high when compared to estimated overhead costs. First, the county's general overhead charges do not relate well to estimated costs. Full general overhead charges are high and partial overhead charges are low when compared with private employee leasing companies' overhead charges. Contributing to this high overhead charge is the fact that an inaccurate benefit assumption inappropriately increases charges for some leased employees. Second, the hourly vehicle rental cost appears high when compared with the Utah Department of Transportation's (UDOT) internal service fund rates. Since the county did not base its overhead charges on a thorough analysis of county costs, it is possible that Wasatch County's charges are not closely related to actual costs.

We believe reasonable costs should closely relate to actual costs.

According to **Utah Code** 17A-2-1314(1)(g), districts should reimburse the county a reasonable amount for services rendered. In our opinion, since government operations are typically not-for-profit, a reasonable amount is one which relates closely to actual costs. Since Wasatch County had not analyzed its actual overhead costs, we estimated them. We used UDOT's internal service fund rates to estimate vehicle costs since these rates are designed to cover costs and no more. We used overhead

percentages from private employee leasing companies to estimate general overhead costs, since these companies perform overhead functions similar to ones the county performs. Further, these companies know their overhead costs. In our opinion, Wasatch County should know its overhead costs as well.

The County Engineer developed three possible overhead charges which can be assessed on leased county employees. First, a vehicle overhead charge is added to the employee's hourly wage if the employee drives a county vehicle. Second, an office overhead charge can be added to the employee's hourly wage to cover the County Engineer's administrative overhead. Third, a county overhead charge can be added to the hourly wage to cover Wasatch County government's general overhead. In our analysis, we considered office and county overhead costs together and refer to this combination as general overhead.

General Overhead Charges Do Not Relate to Estimated Costs

Wasatch County's charges for general overhead do not appear related to estimated costs. As used here, general overhead includes both office and county overhead which covers overhead within the County Engineer's Office and within Wasatch County, respectively. When general overhead is fully assessed, the resulting overhead percentage is high compared to the overhead percentage charged by private employee leasing companies. When general overhead is only partially assessed, the resulting overhead percentage is low compared to the overhead percentage charged by private employee leasing companies. In our opinion, general overhead should be based on a valid measure. Specifically, it should either be based on an analysis of actual county overhead costs, or it should be based on criteria reasonable for a non-profit organization.

The county does not know its actual general overhead costs.

The office overhead is assessed at $5.00/hour. The county overhead charge is 10 percent of the wage, benefit, vehicle, and office overhead subtotal. Since the County Engineer has not analyzed actual overhead costs, we thought a good measure of the reasonableness of county charges would be to compare the resulting county overhead percentage to that of a private employee leasing firm.

We contacted representatives of two employee leasing firms, one which leases a wide range of personnel, and one which leases construction personnel. We were told that the environment is very competitive. As a

result, overhead charges generally don't exceed 60 percent of an employees base salary unless the worker's compensation rate is very high. At the 60 percent level, approximately 30 percent is profit. Thus, an overhead rate of 42 percent of base salary would be approximately the rate at which no profit is made.

In addition, it was reported that the overhead rate for a long-term leased construction employee, which is comparable to Wasatch County's situation, would be lower since the costs of employee recruitment are far less. In fact, the overhead rate for a long-term leased construction employee could be as low as 30 percent. However, to be conservative in our estimate of overhead costs, we used the overhead rate of 42 percent.

Of the nine leased employees, five are assessed full overhead. In other words, the lease rate for these employees includes both office and county overhead. Figure 6 compares the actual wage the SSDs are charged for each of the five employees to the wage using an overhead rate of 42 percent.

Figure 6. Comparison of Actual SSD Charges to Estimated Charges. (Employees Assessed Full Overhead)

Employee:	One	Two	Three	Four	Five
Actual Charge	$23.08	$31.37	$35.63	$39.33	$47.64
Estimated Charge	$19.62	$27.96	$33.45	$36.96	$46.36

As can be seen, the 42 percent criterion yields a lower hourly wage rate than the actual rate charged. In our opinion, this difference raises the possibility that Wasatch County charges too much to cover its overhead when overhead is fully assessed.

We believe the county's general overhead charge is high for two SSDs and low for two SSDs.

There are four employees for whom overhead is not fully assessed. Either office or county overhead is assessed, but not both. Figure 7 shows a comparison of the actual wage charges for these four leased employees to the theoretical wages which would be charged using an overhead factor of 42 percent.

Figure 7. Comparison of Actual SSD Charges to Estimated Charges. (Employees Not Assessed Full Overhead)

Employee:	One	Two	Three	Four
Actual Charge	$19.22	$24.93	$25.37	$30.05
Estimated Charge	$21.12	$27.57	$27.96	$30.54

As can be seen, wages charged for employees who are assessed one or the other overhead charge may not be fully recovering overhead costs. This result causes us concern because it means that the two SSDs assessed full overhead charges are possibly subsidizing the two SSDs who have not been assessed full overhead. We believe this difference has resulted in an equity problem among the four special service districts which we discussed previously.

Aside from the equity issue, these Figures 6 and 7 lead us to conclude that overhead does not appear closely related to estimated costs. When compared to the 42 percent criterion, the full overhead assessment is too high, while partial overhead assessment is too low. In our opinion, the overhead assessment should be consistently applied and reasonably based.

Currently, the overhead rates may not be reasonably based. The office overhead rate is based on an allocation of a secretary's salary, which we believe was incorrectly analyzed and allocated. The county overhead rate was based on a for-profit criterion which may not be appropriate for a non-profit entity.

In our opinion, Wasatch County should reconsider the general overhead rates. Either Wasatch County's actual overhead costs should be determined and appropriately allocated, or a reasonable overhead criterion should be adopted and consistently applied. In our opinion, the current general overhead charges are not well supported and do not reflect accurate costs.

While the office and county overhead charges appear to exceed costs in some cases, a specific benefit charge also exceeds costs.

Some Health Benefit Charges Exceed Actual Costs

Health benefit charges exceed actual cost by 56 percent for one SSD and 29 percent for another.

The assumption that all leased employees are on the family health plan inappropriately overcharges for benefits received by four of the leased employees. In calculating benefits for the leased employees, the county assumes that all eight employees are on a family health plan. However, only four leased employees are on the family health plan. As a result, in 1999, one SSD was charged $5,100 or 56 percent in excess of actual benefit costs while another was charged $1,200 or 29 percent in excess of actual costs. We believe these overcharges have also occurred in past years.

A benefit calculation is appropriately included in the overhead calculation of each leased employee. The health benefit is a relatively large contributor to the benefit calculation. The county, however, makes the assumption that all leased employees are on the family health plan and the family health plan is the most expensive benefit plan. Thus, benefit charges for those leased employees not on the family plan exceeded actual costs.

This benefit assumption affects two special service districts. One SSD has three leased employees whose benefit calculation was inaccurate. As a result, we believe this SSD was charged $5,100 in excess of actual benefit costs in 1999. The second SSD has one employee whose benefit calculation was inaccurate. In 1999, we believe this SSD was charged $1,200 in excess of actual benefit costs.

In our opinion, the benefit calculation is easy to determine and should be exact. It is not necessary to make assumptions, particularly with such a small number of employees involved. We believe all benefit calculations should be re-computed to insure their accuracy.

Vehicle Charge Exceeds Estimated Cost

The hourly vehicle charge assessed by Wasatch County appears high when compared to UDOT's internal service fund rate. The County Engineer indicated that he based the lease rate on what UDOT allows private contractors to charge UDOT hourly for a half-ton 4 x4.

Wasatch County's vehicle lease rate is $6.00/hour. The County Engineer reported that this rate is based on UDOT's allowance for a 1998 half-ton

4x4. The County Engineer stated that UDOT allows a private contractor to charge UDOT $6.00/hour to cover fixed costs and $4.55 to cover variable costs for a total hourly charge of $10.55/hour. Thus, the County Engineer believed he was being conservative by only charging the $6.00/hour fixed costs portion of the rate.

We estimate that Wasatch County charged approximately $1.00/mile for its leased vehicles in 1999.

We believe a better estimate of vehicle costs can be found in UDOT's own fleet which is managed through an internal service fund. An internal service fund charges rates designed to cover costs only. The fleet manager at UDOT reported that a half-ton pick-up is charged .35/mile while a three-quarter ton is charged .43/mile. On a long-term vehicle assignment, the UDOT fleet manager believes that a mileage rate is a more reasonable way of collecting vehicle costs than an hourly rate.

For 1999, 2.25 county vehicles were leased to two SSDs. The two SSDs were charged a total of $14,319 for use of these vehicles. We estimated that these vehicles drove approximately 14,150 miles for the SSDs. Thus, Wasatch County charged $1.00 a mile. Under UDOT's .43/mile rate structure, the two SSDs would have been charged a total of $6,095. An analysis using Central Motor Pool's rates (another internal service fund) yields results similar to the UDOT analysis.

Wasatch County's $6.00/hour rate structure thus appears high compared to estimated costs. In our opinion, Wasatch County should either adopt a more reasonable criterion for setting its vehicle rate structure or thoroughly analyze the actual costs of operating its own motor pool and set the vehicle rate accordingly. If $6.00/hour turns out to be Wasatch County's actual vehicle cost, then contracting with Central Motor Pool would save Wasatch County taxpayers money. A half-ton truck would have to be driven over 63,000 miles a year before Wasatch County's rate would become the least expensive rate.

In summary, the criteria used to set overhead rates and health benefit charges appear problematic. As a result, employee overhead charges do not appear closely related to actual and estimated costs. We believe that the County Engineer should either request an analysis of actual overhead costs or base the overhead charges on criteria more reasonable for a non-profit entity. Further, inequities exist among the SSDs because overhead costs are waived for no clear reason. In our opinion, the County Engineer should have a thorough understanding of what each overhead component covers. If the cost is a legitimate cost for an SSD, it should not be waived.

Recommendations:

1. We recommend that the county commissioners establish overhead charges by one of two methods: (1) identify Wasatch County's actual overhead costs; or, (2) identify and apply overhead cost criteria reasonable for a non-profit organization.

2. We recommend that the county commissioners develop a methodology and thorough understanding of what each overhead charge covers and not allow legitimate costs to be waived.

3. We recommend that benefit costs (i.e., health premiums, workers compensation, vacation leave costs, sick leave costs) be assessed exactly rather than by assumption.

Chapter V
Certain Water Rights Did Not Meet Requirements

JSSD water reservation and subscription agreements called for less water than required.

Wasatch County regulations mandating the minimum amount of domestic water that property owners or suppliers must have legal rights to in order to build were not being met in the Jordanelle area. The Jordanelle Special Service District (JSSD) and area developers have entered into water reservation and subscription agreements that called for the purchase of rights to less water per equivalent residential unit (ERU) than county standards require. A water assessment below county standards suggested that the JSSD might, in the future, face a shortfall in legally usable water when the Jordanelle area is fully developed. Further, we believe that using requirements that are below standard created the appearance of bias. We note that in December, 1999, the JSSD increased their water assessment to match county standards.

The JSSD based the water assessment—the amount of water per ERU that developers must subscribe to in order to build—on estimates of actual water use given the nature, probable use and occupancy of Jordanelle area properties. However, our audit revealed that the water assessment was less than the amount recommended by the JSSD's consulting engineers and that the JSSD had not obtained permission from the state for a reduction in the requirements.

Finally, our review suggests that fears about the capricious termination of water leases may be unwarranted. The entities with whom the JSSD has entered into lease agreements consider leased water to be "surplus" and therefore not necessary to meet future demand from anticipated growth. Further, it is common practice to have all water users, from residential customers to lessors, bear their proportional share of the burdens imposed by shortages in water supply.

Certain Water Rights Requirements Are Below County Standards

Jordanelle area developments were required to provide less water than county standards mandated. Jordanelle area developers entered into water

reservation and subscription agreements that called for the JSSD to obtain, on their behalf, less water than the county standard requires. The amount of water that the reservation and subscription agreements called for were lower than the amounts recommended by the district's consulting engineers. Furthermore, the JSSD has yet to seek relief from state regulations on which the Wasatch County water rights requirements are based. To meet county standards, the JSSD and developers must obtain an additional 0.1 Acre Foot(AF)/yr of water per ERU.

We note that on December 6, 1999, the JSSD imposed a 0.9 AF/yr water requirement for each ERU in the district. Additionally, developers who had previously provided only 0.8 AF/ERU have provided an additional 0.1 AF/ERU in order to compensate for the shortfall caused by the low water assessment.

Wasatch County's domestic water rights requirements are determined by reference to the minimum sizing requirements for public drinking water systems developed by the Utah Division of Drinking Water. The requirements are designed to assure that public drinking water systems are reliably capable of supplying adequate quantities of water.

The applicable domestic water rights standard depends on: the manner in which waste water is treated; and, whether residences are in approved "recreational " developments and therefore not meant to be occupied as permanent domiciles. The domestic water standards that must be met are:

- 0.45 AF/yr/ERU, for those on septic systems
- 0.9 AF/yr/ERU for those connected to sewer systems
- 0.25 AF/yr/ERU for recreational residences on septic and 0.45 AF/yr/ERU for recreational residences on sewer.

Jordanelle Area Developments Were Required to Provide Less Water

Our review of the water rights requirements for eight developments within three special service districts showed that developments in the Jordanelle Special Service District were required to provide less water than standards dictate. Water reservation and subscription agreements between the JSSD and Jordanelle area developments called for only 0.8 AF/yr per ERU (32,600 gallons/yr less than that required by county standards for

residences served by a sewer system). We note that the water assessment was lower than the amounts recommended by JSSD's consulting engineers and that JSSD has yet to obtain permission from the state for a reduction in the requirements.

JSSD Reservation and Subscription Agreements Required Less Than the Standard Dictates. Figure 8 illustrates the differences in the amount of water rights that have been required of developers in order to obtain approval for their respective projects. The Jordanelle area developments, Hailstone and Deer Crest, had reserved and subscribed to only 0.8 AF/yr per ERU, despite the fact that the area will be served by a sewer system operated by the JSSD. In contrast, the developments served by the Twin Creeks Special Service District sewer system (Stonebridge, Wild Mare Farms and Greener Hills), are all required to have rights to at least 0.9 AF/yr of water.

Figure 8. Comparison of Water Rights. Jordanelle Basin water rights requirements were less than required by standards.

Development	Water Rights (per ERU)	Water Standards
Strawberry Lake Estates [1]	0.25 AF/yr	0.25 AF/yr
Strawberry Lake View [1]	0.45 AF/yr	0.45 AF/yr
Wolf Creek Ranches [2]	0.45 AF/yr	0.45 AF/yr
Deer Crest [3]	0.80 AF/yr	0.90 AF/yr
Hailstone [3]	0.80 AF/yr	0.90 AF/yr
Greener Hills [4]	0.90 AF/yr	0.90 AF/yr
Stonebridge [4]	1.00 AF/yr	1.00 AF/yr
Wild Mare Farms [4]	1.00 AF/yr	1.00 AF/yr

1 Recreational Developments
2 Development using septic systems
3 Developments served by Jordanelle Special Service District
4 Developments served or to be served by Twin Creeks Special Service District

Of the eight developments reviewed, only the two developments served by the JSSD have rights to amounts of water below the amounts mandated by standards.

The low water assessments imposed on Strawberry Lake Estates and Strawberry Lake View stem from their status as recreational developments. The standard was lowered for recreational developments because it was assumed that the residences would not be used as permanent domiciles. The difference in water rights required of the two developments is due to the fact that only Strawberry Lake View is connected to a sewer system.

The developer of Wolf Creek Ranches is required to provide 0.45 AF/yr per residence for domestic purposes. The minimum is required because the residences in Wolf Creek Ranches will be using septic systems. Each lot in Wolf Creek Ranches is 160 acres, and the Wasatch County Code allows properties with areas equal to or greater than 5 acres to use septic systems.

Consulting engineers recommended a greater water assessment.

Water Assessment Lower Than Recommended by Consulting Engineers. A review of engineering studies conducted on behalf of JSSD indicates that the water assessment imposed on the Jordanelle area developments is lower than recommended. Using a water supply demand study of similar developments in a similar setting in Park City, one firm estimated water demand for the Jordanelle area to be 0.9 AF/ERU. On the basis of an analysis of metered indoor water use for the Park City/Deer Valley region, another firm calculated the average day demand for indoor water to be 3.5 million gallons per day. Using this base figure, we calculated average annual demand for indoor water to be 1.09 AF/ERU, well above the 0.8AF/ERU that was being assessed to developers.

The Jordanelle area water assessment was based on estimates of actual water use.

Estimate of Actual Water Use Led to Amount of Water Assessment. According to the Director of the JSSD, an estimate of actual water use of residences in the Jordanelle basin was used to arrive at the 0.8 AF/ERU assessment. While no studies supporting this estimate were provided, we were appraised of the factors considered in arriving at the assessment.

The nature of the properties and their likely use led them to believe that water use in the basin would be less than usual. The properties have small lots and, in all likelihood, will have large homes. Also, the topography of the area does not lend itself to the creation of lawns. Further, they believed—based on studies that indicated only 6 weeks occupancy per year of Park City properties—that Jordanelle area properties would only be used in winter, not year round. However, we question whether the assumption that occupation of the properties will be limited will hold as the Jordanelle area matures. We note that the Utah Division of Drinking

Water eliminated the regulatory distinction between recreational developments and typical residential developments as a result of the year round use that residences in recreational developments have seen.

JSSD Has Not Obtained Permission for a Reduction in Water Requirements. State rule R309-203-5 allows for a reduction of the water requirements, on a case-by-case basis, if justified through the presentation of acceptable data. The rule is designed to recognize the fact that water system demands, in different areas of the state, may differ. As such, the rule provides a means for the JSSD to seek relief from the Division of Drinking Water's minimum sizing requirements.

However, the JSSD has yet to apply to the state for a reduction in the water requirements. It is believed that an application for a reduction in water requirements is not presently required because the JSSD is not yet serving the requisite number of clients necessary to be considered a public drinking water system. Still, the magnitude of the Jordanelle area development suggests that the JSSD will quickly fit into the definition of a public drinking water system. If the JSSD insists on using a water assessment that is below the amounts required by standard, regulatory relief must be sought.

Use of a Water Duty That Is Less Than Standard Raises Concerns

Several concerns arose out of the use of a water duty that was less than required by county standards. First, the adequacy of the amount of water that the JSSD had the legal right to use when the Jordanelle Basin is fully developed became an issue. Second, the lower water assessment created the appearance of bias.

JSSD agreements currently provide the district with rights to water that are greater than presently required.

While the JSSD has acquired sufficient water rights to support development in the near future, using a water assessment that was less than required by standards raised concerns about the adequacy of the water rights under the JSSD's control when the Jordanelle area became fully developed. As shown in Figure 9, the JSSD has acquired rights to 7,252 acre feet of water. Only four Jordanelle area developments, accounting for approximately 1200 ERU, have received final approval. Using the county standard of 0.9AF/yr/ERU for those served by a sewer system, these four developments will take up 1,080 acre feet of the 7,252 acre feet of water under the JSSD's control. Accordingly, it appears that JSSD will have a surplus of water until construction either reaches or exceeds the level

allowed by acquired water rights. In fact, JSSD representatives estimate that they will have a surplus of water for the next five years.

Figure 9. Compilation of JSSD Water Rights. JSSD presently has rights to more water than would be required for developments with final approval.

Seller/Lessor	Number of Acre Feet	Method of Acquisition
United Park City Mines Co.*	200	Lease
Salt Lake City Corporation	1,400	Lease
Deer Crest	100	Lease
Beaver & Shingle Creek Irrigation Co.	700	Purchase of stock
CUP	4,000	Allocation
Metropolitan Water Dist. Of Provo	852	Lease
Total	7,252	

** Includes UPCMC's primary reservation of Salt Lake City Corporation's ½ interest in water right No. 55-3365 and right to take, on priority basis, 200 AF Priority Water Right.*

If no changes were made to the water assessment, we believe that the JSSD would have faced a deficit in water rights caused by the incremental difference between the water duty and the county standard—magnified by the number of ERU's approved when the Jordanelle Basin is fully developed. A conservative approach to future water needs would, therefore, suggest that the water duty be raised.

A lower duty allows for more ERUs and less cost to Jordanelle area developers.

Lower Water Assessment Creates the Appearance of Bias. Imposing a lower water assessment than was required by standards provided builders in the area with advantages not available to those in other areas. Some of the consequences of a lower water assessment are:

- Overall, Jordanelle area developments are required to provide less water. Hypothetically, a Jordanelle area developer with approval for 500 ERU would only be required to supply 400 acre feet of water. On the other hand, a developer in another area would be required to provide 450 acre feet.

- Jordanelle area developments face lower water acquisition costs. For example, assuming that water costs $205 per acre foot per year, given present requirements, a Jordanelle area developer with approval for 500 ERU would pay $82,000 per year for an adequate supply of water. All things being equal, a developer in an area that requires 0.9 acre feet per ERU would pay $92,250.

- Developers are allowed to have a greater number of ERUs. Presently, the JSSD has rights to 7,252.37 acre feet of water. Given this amount of water, only 8,058 ERU would be allowed if a duty 0.9 AF/ERU were imposed. However, the present requirement of 0.8 AF/ERU would allow for the approval of 9,065 ERU.

In sum, the JSSD's water assessment was not fair to developers in other areas who would be required to provide more water, incur greater water acquisition costs, and construct fewer ERUs than their counterparts in the Jordanelle Basin.

Cut-off of Leased Surplus Water Unlikely

The sudden termination of a water lease is not likely to occur.

We reviewed allegations to the effect that the JSSD's supply of water was not secure because water leases could be rescinded at any time. Our review suggests that the swift termination of a water lease is not likely. Interviews with representatives of both lessors and the state water engineer revealed that leasing water rights is a common practice in Utah. Additionally, lessors consider leased water to be "surplus" and therefore not needed to meet future demand from anticipated growth. Further, it is common

practice to have all users bear their proportional share of the burdens imposed by shortages in water supply.

Water leases are common.

Interviews revealed that leasing water is a common practice in Utah. Several factors make the leasing of surplus water attractive. First, it provides the entity granting the lease with an income stream. Second, the constant pressure on price exerted by growth has made both the cost of replacing a sold water right and the outright purchase of it prohibitive. Finally, leasing keeps the cost of acquiring rights low, especially for entities that cannot afford outright purchases of water in the quantities needed.

Water users will share equally in the burdens imposed by a limited supply of water.

According to the representatives of both the lessors and the state water engineer, several factors contribute to making the termination of a water lease unlikely. First, water that is the subject matter of a lease has been deemed by the lessor to be surplus and therefore no longer necessary to meet future demand resulting from anticipated future growth. Second, in the event of an emergency, it is common practice to reduce each user's consumption proportionally rather than have one lessee bear a disproportionate amount of the burden by terminating a lease.

JSSD has entered into lease agreements with entities that are not likely to consider leasing water that they believe will be needed to meet demand from reasonable projected growth. For example, Salt Lake City Corporation is prevented by the **Utah Constitution** from entering into transactions with anyone outside its corporate boundaries that do not involve surplus water. Also, water leased by the Metropolitan Water District of Provo is not needed to meet a future demand resulting from growth.

Common practice also operates against swift withdrawal of leased water. While lease agreements contain language reserving the lessor's right to declare water that is the subject of a lease "non-surplus", it is unlikely that one lessee will be entirely cut off. Rather, users—be they individual residential customers or lessees—are asked to bear their proportional share of the burden imposed by shortfalls in water supply.

Recommendation:

1. We recommend that Wasatch County require uniform application of water standards for all developments regardless of area.

2. We recommend that Wasatch County investigate the feasibility of using an ordinance which allows for the reduction in requirements, if data justifying the reduction is presented.

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Chapter VI
Timber Lakes Could Make Managerial Improvements

The Timber Lakes Water Special Service District (Timber Lakes) could make some managerial improvements. In particular, Timber Lakes may have incurred unnecessary cost by allowing two employees to become employees of Wasatch County. In our opinion, Timber Lakes should have made a cost/benefit analysis prior to the decision. On the other hand, we found no support for the allegation that the two Timber Lakes' employees benefitted inappropriately from their transfer to Wasatch County employment. Finally, while we found no support for the allegation of financial impropriety, we do believe that Timber Lakes should implement some simple financial controls.

Upon beginning our audit of Wasatch County special service districts, we were approached with two significant allegations concerning Timber Lakes operations. One allegation concerned the misuse of funds within Timber Lakes. The other alleged that two Timber Lakes' employees inappropriately received Wasatch County employment benefits before they actually became employees of Wasatch County. While neither of these allegations appear to be correct, we did identify some concerns with Timber Lakes operations.

Employee Transfers May Not Have Been Cost Effective

The transfer of two Timber Lakes employees to Wasatch County employment appears unnecessary and costly to Timber Lakes. It does not appear that Timber Lakes needed to transfer these employees to provide the desired benefits (i.e., health insurance and retirement). By transferring these employees to Wasatch County, Timber Lakes costs were increased. As a result, Timber Lakes paid more for the services of these employees than needed.

In the past, Timber Lakes has struggled financially. As a result, it was particularly important that decisions made were financially wise. However,

Timber Lakes did no cost/benefit analysis on the transfer decision. As a result, this decision may not have been cost effective.

Employee Transfer Necessity Is Unclear

Timber Lakes did not need to transfer its two employees to Wasatch County to provide desired benefits. Timber Lakes took this action under the assumption that providing health and retirement benefits would be cost prohibitive because of Timber Lakes' small size. While this assumption is true with health insurance, it is not true with retirement benefits. Further, Timber Lakes had resolved the health insurance cost problem without transferring employment to the county.

Timber Lakes obtained favorable health premiums without transferring employees to the county.

It would have been expensive for Timber Lakes to provide heath insurance to its two employees. According to a representative of the Utah Local Governments Association, Timber Lakes, because of its small size, would have paid a much higher health insurance premium than if they joined a larger group.

Consequently, Wasatch County allowed Timber Lakes two employees to join with Wasatch County's employee pool and receive Public Employee Health Plan (PEHP) coverage on September 1, 1997. (This practice is called "piggybacking" which PEHP allows.) Thus, the two Timber Lakes' employees received Wasatch County's more favorable premium rates. Wasatch County allowed this joining with no requirement that the two Timber Lakes employees become Wasatch County employees.

While health premiums vary with the employer's size, retirement costs do not. According to the Director of the Utah State Retirement Office, Timber Lakes' retirement percentage would have been the same as Wasatch County's—12.74 percent for a contributory system or 10.75 percent for a non-contributory system. Also, the retirement office would have helped Timber Lakes set up their deduction program. Thus, Timber Lakes received no clear benefit by transferring the two employees to Wasatch County in an effort to achieve retirement benefits for them.

Since Timber Lakes had already achieved favorable health premiums by piggybacking with Wasatch County and since Wasatch County offered no retirement benefit advantages, we don't see a clear benefit to the employee transfer. Further, this transfer appears to have increased Timber Lakes' costs.

Timber Lakes' Costs Appear Higher

The employee transfer decision may have cost Timber Lakes approximately $5,400 in 1999 alone. Timber Lakes neglected to perform a cost/benefit analysis on the employee transfer decision to insure the decision was beneficial to Timber Lakes.

Wasatch County charges Timber Lakes an hourly overhead charge equaling 10 percent of the employee's wage and benefit costs. In 1999, the overhead charge for the part-time employee and the full-time employee was $1.75/hour and $2.27/hour, respectively. Based on these rates, Timber Lakes paid approximately $7,000 in overhead for these two employees in 1999. For this charge, Timber Lakes is relieved from performing payroll activities.

Employee transfers may have cost Timber Lakes $5,400 in 1999.

When these employees were Timber Lakes employees, an accountant helped Timber Lakes with its payroll functions. This accountant charged Timber Lakes approximately $1,600 a year for all accounting services. Specifically, he generated their quarterly financial reports, assisted with their payroll and performed other miscellaneous financial functions. Thus, at the very most, Timber Lakes used to pay $1,600 for payroll services. As a result, it appears Timber Lakes' decision caused them to pay $5,400 more a year for payroll.

Based on the available data, it does not appear that Timber Lakes employee transfer decision was beneficial to Timber Lakes. Further, Timber Lakes performed no cost/benefit analysis on the decision. In our opinion, a cost/benefit analysis should be made on all decisions which have cost ramifications.

While we don't believe the employee transfers were beneficial to Timber Lakes, we did not identify any inappropriate benefits received by the two employees prior to their transfer.

Timber Lakes Employees Did Not Receive Inappropriate Benefits

We found no support for the allegation that two Timber Lakes employees inappropriately received Wasatch County benefits prior to their employment by Wasatch County. Given the stated intentions of Timber

Lakes Board, the timing of benefits received by the two employees seems reasonable.

An allegation was made that Wasatch County had backdated the county hire date of the two employees transferred from Timber Lakes employment to Wasatch County employment. As a result of this backdating, the two Timber Lakes employees had received Wasatch County benefits before they were Wasatch County employees. Further, Wasatch County taxpayers may have paid for these benefits.

There are two critical dates associated with both employees: An August 1, 1997 date and a February 23, 1998 date. The August 1st date is the point when the Timber Lakes board intended to provide the two employees, in question, with benefits. The February 23rd date marks the point at which the two employees signed Wasatch County employment paperwork and began receiving a Wasatch County paycheck. What occurred between these two dates appears to be a source of confusion and concern.

On August 22, 1997, the Timber Lakes Board moved to provide the two employees with health benefits and to explore other benefits. On September 1, 1997, both employees were enrolled on the Public Employees Health Plan (PEHP). This enrollment was accomplished by placing the two Timber Lakes employees on Wasatch County's health plan (A practice called piggybacking which PEHP allows). Thus, Timber Lakes was able to benefit from Wasatch County's lower premiums. These premiums were never passed to Wasatch County taxpayers. Rather, Timber Lakes has always paid the health premiums for the two employees.

Wasatch County provided benefits Timber Lakes had intended to provide.

During this six month period, there are indications in the minutes that the Timber Lakes Board intended to provide all county-offered benefits (vacation, sick, holidays) to the two employees. However, the February 23rd minutes indicate that, in spite of the board's intention, the county benefit plan had not been initialized within Timber Lakes. On this date, the board gave the two employees the option of remaining as Timber Lakes employees or becoming Wasatch County employees. Both employees chose to become county employees.

On February 23rd, the Board voted to accept the employees' decision with August 1, 1997 as their county starting date. By choosing this date, the county benefits (vacation, sick, and holidays) could be retroactively provided to both employees, as had been the board's original intent. When the employment forms were signed on February 23, 1998, both employees

were given vacation, sick and compensatory balances. These balances were computed from August 1, 1997 to February 1, 1998. The compensatory time represented holidays that had occurred during this time period.

Since the Timber Lakes Board intended to provide county benefits beginning August 1st but did not, amending the error during the employment transfer does not seem inappropriate particularly because Timber Lakes, and not county taxpayers, paid for the increased benefits. The only problem we noted was with the computation of benefits for the part-time employee. These benefits (vacation, sick, and holidays) should have been pro-rated, according to county policy, but were not. Instead, the part-time employee received full-time benefits.

In addition to this concern involving inappropriate benefits, we also received an allegation concerning missing funds from Timber Lakes' accounts. However, we found no support for this allegation either.

No Evidence of Financial Impropriety Found

We found no evidence that Timber Lakes' funds were misused. We were able to account for all income and expense items contained in the monthly income statements tested. Our probe revealed that the allegation of financial impropriety was based on a lack of complete information. We do believe, however, that Timber Lakes should implement simple financial controls.

During the audit, an allegation of financial impropriety within Timber Lakes was made to the audit team. This allegation was based on a comparison of monthly income statements and bank activity statements. Based on a comparison of the funds shown on the income statements with funds shown in Timber Lakes bank account, it appeared that income was missing. As a result, we reviewed Timber Lakes accounts.

No Timber Lakes Funds Missing

Our tests identified no missing Timber Lakes funds. We reviewed and successfully reconciled four months of Timber Lakes' financial data. This reconciliation involved tracing all checks received for water service during the month to individual deposit records to insure that all checks had been

deposited. Next, monthly income statements and bank statements were reconciled. For the four months we reviewed, there was no check which we could not trace to a deposit record and to the income statement. As a result of this process, we found no evidence to support the contention that funds were missing.

Allegations of misuse were based on incomplete information.

The allegation was based on information that was not complete. Specifically, information in the allegation compared funds shown on mid-month income statements to funds shown on beginning-of-month bank reconciliation reports. The conclusion, based on these comparisons, was that funds were missing. However, since the two reports cover different time periods, the calculations in the allegations did not take into consideration transactions that had taken place between the beginning of the month and the day of the report. Once this comparison was done, we accounted for all funds in our sample.

Timber Lakes Should Implement Simple Financial Controls

Timber Lakes would benefit from implementing some simple financial controls however. First, Timber Lakes should resolve the issue of the separation of financial duties. Second, Timber Lakes should insure that posting to accounts is done in a timely fashion.

Currently, there is no separation of duties between receipt of funds and accounting of funds. In other words, the same person receives all payment checks, records them in the accounts receivable journal and deposits the checks in the bank. Timber Lakes independent auditor has often reported this condition to Timber Lakes, and we encourage Timber Lakes to make every effort to resolve the issue. A poor separation of duties increases the likelihood that funds can be misappropriated.

In addition, postings to the accounts receivable ledger were sometimes not done in a timely fashion. For example, we were initially unable to account for $1,500 when performing our financial reconciliation. This inability resulted from a failure to post the amount into the accounting software system in a timely manner. While the payment had been made on April 3, 1998 and deposited on April 7th, it was not posted to the accounts receivable ledger until May 1, 1998. Deposits and account postings should be made in a more timely fashion to avoid confusion over or misunderstanding of funds in the account.

In conclusion, we found no support for either allegation made concerning Timber Lakes. However, we did find that Timber Lakes failed to perform a cost/benefit analysis on a decision which appears to have been costly for them. In addition, Timber Lakes has not addressed the issue of separation of financial duties and we believe correcting this deficiency would be beneficial to Timber Lakes as well as help prevent continued allegations of financial wrong-doing. Further, Timber Lakes should insure that standard financial practices are followed. In particular, the posting to accounts should be performed in a timely fashion.

Recommendations:

1. We recommend that the Timber Lakes Board perform a cost/benefit analysis on decisions having a financial component.

2. We recommend that the Timber Lakes Board implement processes to insure consistent application of standard accounting practices.

3. We recommend that the Timber Lakes Board separate the responsibilities for receiving and depositing funds.

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Chapter VII
Some Allegations Addressed in a Limited Fashion

Our work on some allegations and concerns was limited either by the information available or by the fact that the issue did not appear to be worth pursuing further. Specifically, we received three allegations and one concern which were analyzed in a limited fashion. In particular,

- It was alleged that three SSDs paid Consultant B a total of $12,000 a month in rent ($4,000 a month from each SSD) for a small office space.

- It was alleged that two individuals, Consultant A and Consultant B, had a conflict of interest from working simultaneously for all three SSDs as well as for the county.

- It was alleged that Consultants A and B inappropriately accounted for their time, either by double billing or billing for services not performed.

- A concern was raised over the possibility of double taxation within the SSDs.

The allegations focus primarily on three SSDs: (1) Wasatch County Special Service Area #1 (WCSSA), (2) Jordanelle Special Service District (Jordanelle), and (3) Twin Creeks Special Service District (Twin Creeks). In addition, these allegations focus on two individuals: Consultant A, a former Wasatch County employee who provided managerial consulting services for all three SSDs and Consultant B, the former Wasatch County Attorney who provided legal services for all three SSDs.

$4,000 in Rent and Office Support Was Paid

The three SSDs did not pay Consultant B $12,000 a month in rent ($4,000 a month from each SSD). However, Consultant A did confirm that in 1997 his private consulting firm paid Consultant B $4,000 a month for rent and office support. According to Consultant A, from 1993 through 1997, he shared an office with Consultant B. As a result, rental

payments were made to Consultant B. However, this $4,000 a month rental payment was a significant increase over rent and office support paid in the past. For the years 1993 and 1994, Consultant B was paid directly by a special service district $1,000 a month for rent and office support. In 1995 and 1996, Consultant B was paid directly by a special service district $2,000 a month for rent and office support.

We were unable to obtain documentation justifying the $4,000/month charge. Consultant A indicated that at the time of the rent increase, Consultant B documented office expenses of $12,000 a month which were then divided equally among three renters. When we asked Consultant B to show us this documentation, he indicated that he did not remember providing any documentation to Consultant A. In his opinion, since the rent payment passed from one private business to another, he indicated we had no right to request any information about the payments. As a result, we can supply no additional information about this monthly payment.

Conflicts of Interest from Simultaneous Employment Not Apparent

We found no evidence that Consultant B's employment by Wasatch County and the three SSDs created, in and of itself, a conflict of interest. We also found no evidence that Consultant A was employed by Wasatch County and the three SSDs at the same time. As a result, we did not pursue the issue.

There does not appear to be a conflict of interest issue over the general fact that Consultant B represented both Wasatch County and the three SSDs simultaneously. During this time, the elected position of Wasatch County Attorney was a part-time position. According to Consultant B, he performed his legal work for the SSDs on his private time.

A representative of the Utah State Bar Office of Professional Conduct noted that it is not unusual and it is acceptable for county attorneys in rural areas to be part-time and to have a private practice on the side. However, the county attorney would have to be very careful about any potential conflicts of interest and withdraw himself if one arose.

It is also not apparent that Consultant A had a conflict of interest arising from simultaneous county and SSD employment. In fact, Consultant A's work with Wasatch County and the SSDs does not appear to have overlapped significantly. We noted six hours of overlapping Wasatch

County and Jordanelle work. We noted no overlapping work with either WCSSA or Twin Creeks. Thus, we did not pursue the conflict of interest issue further.

Analysis of Billing Practices Not Possible

We were unable to address the issue of double billing or billing for services not performed. Complete billing information for either Consultant A or Consultant B was not available in the SSD files. Further, much of the billing information we did obtain was too general to be useful. For example, "management" or "administration" were often the only tasks listed on Consultant A's time sheets. Consultant B's bills contained tasks performed but no time involved.

Most importantly, we were unable to find complete board minutes for the three SSDs. Board meeting minutes were necessary in determining the board's yearly performance expectations regarding these two individuals or the board's analysis of what had been achieved for the year. The board meeting minutes that were located contained no performance expectations or analysis of achievements. Because of this lack of information, we were unable to pursue any analysis of this issue.

Double Taxation Appears Unlikely

Double taxation does not appear likely within Wasatch County's SSDs. Most at risk for double taxation are road and fire districts, since county property taxes are used to fund some of these services. However, we did not find an apparent problem within these types of districts.

There was some concern that road district participants were double taxed because they pay for their own street maintenance and also pay property taxes to the county that are used to maintain and construct roads. County property taxes are used to maintain and construct Class B county roads. However, special service districts were used to finance maintenance and construction for roads that were not designated as Class B county roads. They either did not qualify to be designated as Class B roads or were located in a private community. As a result, double taxation for road district participants was not apparent.

In addition, there was some concern of inequitable taxation for Wasatch County Fire SSD participants. Although the district is funded with property taxes levied countywide, a recently constructed fire station is

located where it will provide more service to the Jordanelle area than to the rest of the more populated county.

In our opinion, there does not appear to be inequitable taxation. The costs for the new fire station were not financed with property taxes nor will taxes fund the station's operating costs. All of the new station's costs will be financed with fees charged only to Jordanelle area property owners.

Based on the results of these sample districts, we did not pursue the double taxation issue further.

Agency Response

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WASATCH COUNTY
RESPONSE

CHAPTER I
INTRODUCTION AND DIGEST
OF WASATCH COUNTY RESPONSE

Introduction

In August of 1999, the Office of the Legislative Auditor began a performance audit of special service districts in Wasatch County.[1] The audit commenced amidst a storm of alleged governmental impropriety. Publicized accusations had fractured the community.

In the midst of this upheaval, the auditor worked for the next seven months, dedicating the resources of at least three legislative auditors at a cost of approximately $77,000.00 to Utah taxpayers. This immense effort culminated in the preceding performance audit report.

In the following response, the County underscores certain facts it deems essential to a fair and objective understanding of that report. In general, however, the County welcomes and agrees with the auditor's findings and recommendations. The report confirms the lawfulness of many County Commission actions. It soundly repudiates false accusations. Finally, it makes recommendations that will help the County Commission chart a course toward better government.

Digest of County Response

The performance audit report encompasses nine specific allegations. The auditor determined that six of these were wholly unfounded. Specifically, the auditor concluded that:

- The County Commission lawfully dissolved the administrative control board of the Wasatch County Fire Protection SSD.
- The County did not enter into an unlawful "cost-plus" contract for construction of the Jordanelle fire station.

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[1]In the County's response, the Office of the Legislative Auditor, and the assigned audit team will be referred to as "the auditor." Special service districts will be referred to generally as "SSD's."

- The County did not pay twice for identical construction management services for the Jordanelle fire station.

- The County lawfully procured the architectural contract for the Jordanelle fire station.

- The County appropriately provided health benefits to Timber Lakes SSD employees.

- No operating funds of the Timber Lakes SSD were misappropriated.

The auditor found that the County had already taken meaningful steps to resolve two other allegations. Specifically:

- Today, the County Commission closely manages operations and oversees expenditures of the Jordanelle SSD, the Twin Creeks SSD, and Wasatch County SSA. Also, the County Attorney holds a full-time position and does not represent SSD's.

- Water requirements in the Jordanelle SSD have corresponded to state requirements since December 1999. Developers previously required to donate .8 acre feet per ERU, have been required to donate the required additional .1 acre foot.

The one remaining allegation relates to overhead charges assessed against SSD's which lease county employees. State law permits this practice. The County maintains that its overhead charges are reasonable. Absent extraordinary circumstances, these charges should be consistently applied. Based on the auditor's recommendations, the County agrees to examine its overhead charge methodology.

CHAPTER II
CONTROL AND MANAGEMENT
OF SPECIAL SERVICE DISTRICTS

The County Created SSD's To Isolate Costs

During the early to mid 1990's, Wasatch County experienced unprecedented growth and with it a demand for water and sewer services in remote areas. The County Commission responded to this demand by creating many SSD's.

Creating an SSD was a way to isolate costs. It ensured that the costs of installing, operating and maintaining the new utility improvements would be paid only by those who benefitted from the improvements. Citizens residing outside the SSD boundaries would not shoulder these costs. For the same reason, the County Commission imposed overhead charges against SSD's leasing county employees (discussed later in this response). In short, SSD's were expected to pay their own way.

In retrospect, the proliferation of SSD's may have been unwise–a useful tool, but not meant for every job. Certainly, SSD management, fiscal oversight, and record keeping needed significant improvement. However, the former and current County Commission recognized these difficulties and corrected them.

Today The Management and Expenditures of Wasatch County SSD's Are Well Controlled

Today, acting as the governing board of many SSD's, the County Commission closely manages operations and expenditures. In March 1998, the former County Commission hired an experienced employee to manage the financial accounting for SSD's.

Expenditures are now presented to and approved in an open meeting by the board for the Jordanelle SSD, the Twin Creeks SSD, and the Wasatch County SSA. SSD board meetings are held separate and apart from County Commission meetings. Minutes are kept. Policies and procedures are being adopted. Financial audits will be reviewed to correct reported conditions. Finally, the SSD's in question have retained independent legal counsel, rather than relying on the current County Attorney for legal services.

SSD's actively providing utility services may best governed by the residents who use the services. In April 1999, the current County Commission appointed residents of the Twin Creeks SSD to serve on an advisory board. This has been a positive change. As other SSD's acquire sufficient population, the Commission will consider delegating its governing authority to appointed or elected governing boards.

The County Now Requires That SSD's Be Tracked On a Master List

The tracking of SSD creation has also improved. On March 27, 2000, the County Commission adopted Resolution 00-11. This resolution requires that the names of all existing and future SSD's be recorded on a Master List. This list is reviewed annually. The Commission can then determine which SSD's continue to serve the public interest and which should be dissolved. This review actually began early in 1999. At that time, The Commission dissolved 17 road districts that it deemed unnecessary. The resolution also requires that files be kept containing all SSD creation documents and a map showing the SSD boundaries. These files will be kept in the County Clerk's office and will be available for public inspection.

The auditor suggests that the County Commission adopt formal "criteria" under which SSD's should be created. This criteria already exists. Under the Utah Code, the county commission "may create a special service district if the public health, convenience, and necessity" require it. Utah Code Ann. §17A-2-1305. The state legislature did not define this grant of authority further. The local governing body is best qualified to determine what will or will not serve local public interests.

Finally, "creation criteria" which makes sense today, may not tomorrow. A general plan might guide the SSD creation decision. However, the general plan adopted today can be amended by a future county commission. Utah Code Ann. § 17-27-403 (permitting general plan amendments). In short, the broad grant of authority to create an SSD allows the county commission to respond to changing needs over time.

The Consultants Provided Valuable Services to the SSD's

The auditor concludes that payments to Consultants A, B and C should have been approved by the governing board. The County agrees. However, the Consultants did provide valuable services to the fledgling SSD's. The Consultants were entitled to be reasonably compensated for these services.

The amount of money paid was substantial; however, it is compensation for an aggregate of twelve years of professional service. In the case of the former County Attorney, the average charge for legal service per district was approximately $18,000.00 per year. The professional services of consultant A averaged approximately $42,500.00 per year for each SSD.

The auditor's suggested process for procuring consultant and legal services has merit and will be considered. However, it is not required by law. Under the Utah Code, SSD's

have the right to "employ officers, employees, and agents . . . including engineers, accountants, attorneys, and financial consultants and to fix their compensation." Utah Code Ann. § 17A-2-1314(1)(h). No procurement process is mandated. *See* Utah Code Ann. § 63-56-5(14) (state procurement code does not apply to political subdivisions created by counties).

There is wisdom in this silence. Professional services are unique to the individuals providing them. The state legislature has acknowledged this. Under state law, an SSD board may "engage the services of a professional engineer, architect, or surveyor" based on a host of criteria personal to the individual or firm. These criteria include the person or firm's (1) qualifications, experience, and background; (2) the individuals assigned to the project and time commitments of each; and (3) the project schedule and planned approach. Utah Code Ann. § 17A-1-801(1). The statute expressly provides that an SSD board may rely on these personal criteria "***rather than solely on lowest cost.***" Utah Code Ann. § 17A-1-801(2).

Response to Recommendations in Chapter II

1. Agree.

2. Agree.

3. Completed.

4. A county commission can create an SSD when "the public health, convenience, and necessity" require it. Utah Code Ann. §17A-2-1305. The state legislature chose not to usurp the authority of local elected officials by defining this criteria further.

5. No position.

CHAPTER III
THE LAWFUL DISSOLUTION OF THE FIRE PROTECTION DISTRICT SSD BOARD AND CONSTRUCTION OF THE JORDANELLE FIRE STATION

The County Will Adopt Standards for Sole-Source Procurement

In February 2000, the current County Attorney drafted a comprehensive procurement ordinance. The ordinance is derived from the state procurement code and the policies of other counties. A copy of this ordinance was provided to the auditor. The Commission will consider the ordinance within the next two months.

The ordinance provides for negotiated purchases when "the product or service sought by the County can be procured from only one source." The County Commission must reach this conclusion in an open meeting. Also, the contract file must document "why the vendor is the only source of supply for the item, and why that particular item is required."

The Municipalities Should Have Known That The Powers of The Former Fire Protection SSD Board Could Be Revoked

The auditor surmises that the municipalities in the Fire Protection SSD "may have believed that they would have continued representation on the board and input in the district's administration." However, the auditor then correctly concludes that this expectation was unwarranted.

The documents creating the Fire Protection SSD and its advisory board expressly state that the board's powers are revocable. The notice of intent to create the district was approved on February 4, 1987. *Resolution 87-2*. It provides: ***"Any delegation to an administrative control board may be revoked, in whole or in part, by resolution of the Board of County Commissioners."***

On December 16, 1987, the Commission passed Resolution 87-9 creating the board. This resolution expressly stated that "any delegation to the Administrative Control Board contained in this or any subsequent resolution may . . . be revoked in whole or in part, by resolution of the Board of County Commissioners." The resolution cites the 1987 statute which expressly permitted revocation of powers delegated to an SSD board. Utah Code Ann. § 11-23-24(6) (1987).

These documents and state law were available to the municipalities in 1987. Under the circumstances, it is difficult to understand how a participating municipality could rationally believe that board membership would last forever.

The Jordanelle Fire Station Was A Priority of The Prior Fire Protection SSD Board

Relying on verbal statements, the auditor asserts that some Fire Protection SSD board members "wanted to undertake other projects prior to the Jordanelle fire station." The auditor concedes, however, that the board's minutes show "no clear indication of project priorities."

In fact, the minutes demonstrate that by January 1998, the Jordanelle fire station was the board's first priority. On January 13, 1998, the board unanimously voted to "move forward with the fire station after talking with the Pine Brook Station employees for opinions." This motion was made and seconded by Heber City representatives. No such action had been taken by the board regarding any other facility projects.

Citizens of The Various Municipalities Continue to Have Representation on the Fire Protection SSD Board

The auditor suggests that when the Fire Protection SSD board dissolved, the municipalities lost "representatives whose duty is to advance each municipalities particular interests." However, municipal representation on the board did not cease to exist; it merely changed form. Municipal residents elect the county commissioners, who now act as the governing board.

The auditor implies that property tax burden is a fair basis for board representation, noting that in 1987, "properties within [Heber City] boundaries accounted for more than half the assessed value of property in the county." Today, properties in the unincorporated county account for 56% of the assessed value of property within the Fire Protection SSD. Property within Heber City accounts for only 21% of assessed value.

The total revenue generated for fire protection in 1999 was $309,621.74. Properties in the unincorporated county account for $173,787.20, while properties within Heber City generate only $66,108.07. If financial burden was the standard for determining the number of board representatives, then the unincorporated county was underrepresented on the prior Fire Protection SSD board.

Response to Recommendations in Chapter III

1. This recommendation is addressed to municipalities; therefore, the County takes no position.

2. Agree.

3. The County Commission will soon consider a comprehensive procurement ordinance which addresses "sole-source" contracts. The County Commission agrees that similar policies should be adopted by SSD's.

CHAPTER IV
COUNTY OVERHEAD CHARGES ARE REASONABLY RELATED TO COSTS

SSD's Have Been Charged A Reasonable Amount For the Property, Equipment, and Facilities Used

A SSD may "utilize any officers, employees, property, equipment, offices, or facilities of the county" provided that the SSD "reimburse the county . . . ***a reasonable amount*** for the services so rendered, or for the property, equipment, offices, of facilities so used." Utah Code Ann. § 17A-2-1314(1)(g). The County agrees that reasonable costs for leased employees should generally approximate actual costs. However, there is no statutory requirement that overhead charges equal costs dollar for dollar.

Nothing in above statute prevents a county from determining that a "reasonable amount" for a well-funded SSD is not reasonable for one with fewer resources. However, the County agrees that generally costs should be imposed consistently upon all districts.

As explained in the audit report, the County waived overhead charges for the Timber Lakes SSD because of inability to pay. At the request of certain Fire Protection SSD board members, the County waived overhead charges for an employee leased to the Fire Protection SSD. With the advantage of hindsight, the auditor has criticized these decisions, lending credibility to the sentiment that "no good deed goes unpunished."

Finally, as previously stated, the purpose of charging overhead on leased employees is to ensure that SSD's pay their own way. Residents within an SSD enjoy the benefits of utility improvements and should therefore incur the costs. Requiring other county

taxpayers to subsidize these costs is unfair. The County imposed overhead charges to avoid this possibility.

The Health Benefit Charge and The Vehicle Charge Are Reasonable

The County Commission maintains that the SSD's have been charged a reasonable amount for health benefits and leased vehicles. A flat rate is imposed for the health benefit. This provides for administrative efficiency, avoiding a change in base rate every time a leased employee switches health plans.

The vehicle overhead charge is based upon a formula used by UDOT in Region III. The formula for a 1998 Gas Crew Cab 130 HP 4x4 ½ ton pickup is as follows: [($600 ÷ 176 hours) x .898 (Region Factor) x 1.014 (Age Factor)] + [$4.40 (Operation/Maintenance)] = $7.51 per hour. The formula for a conventional 1998 pickup of the same type yields an hourly rate of $7.27 per hour. The auditor concludes that these rates include a profit-margin. However, the UDOT representative with whom the County consulted disagrees. Even if the formula does contemplate a for-profit rate, the County derived the rate from the formula, and then reduced it by approximately 8%.

The County Will Examine Its Methodology for Imposing Overhead Charges

Notwithstanding the foregoing, the auditor's report raises issues which merit consideration. Based on the recommendation of the auditor, the County Commission will (1) determine more precisely what costs are covered by its general overhead charge, (2) consider other methods of imposing vehicle overhead charges (i.e. cents per/mile calculation); and (3) assess the administrative feasibility of imposing a variable health benefit rate.

Response to Recommendations in Chapter IV

1. Agree.

2. Agree

3. The County Commission will consider the administrative feasibility of using a variable health benefit rate.

CHAPTER V
JORDANELLE SSD WATER REQUIREMENTS ARE CONSISTENT WITH THE STATE STANDARD

Resolution 99-15 Made Water Requirements in the Jordanelle Basin Consistent With State Standards

On December 6, 1999, the County Commission acting as the governing board of the Jordanelle SSD, enacted Resolution 99-15. The resolution provides that "the standard amount of water required for each Equivalent Residential Unit in the Jordanelle Special Service District shall be .9 acre feet annually." Since enactment of Resolution 99-15, developers previously supplying only .8 acre feet per ERU, have been required to donate an additional .1 acre foot per ERU. This information was provided to the County Commission by the Jordanelle SSD manager.

In light of Resolution 99-15, the "parade of horrors" explained in the audit report–water requirements below engineer recommendations, water shortfalls at build out, and appearance of bias–are interesting, but will not occur.

Response to Recommendations in Chapter V

1. Completed.

2. Agree, if necessary in the future.

CHAPTER VI
TIMBER LAKES SSD ALLEGATIONS UNFOUNDED

No Operating Funds Were Misappropriated

No operating funds were misappropriated. The County is gratified by this finding. Perhaps those making such allegations should confirm the facts before damaging the reputation of an innocent person.

Timber Lakes SSD Requested That Its Employees Become County Employees

The County Commission does not act as the governing board of the Timber Lakes SSD. The Timber Lakes Board requested that its employees become county employees. The County accommodated this request. With the advantage of hindsight, the auditor has made meritorious suggestions for improvement which should be considered by the board.

Response to Recommendations in Chapter VI

1. The County encourages the Timber Lakes Board to consider this recommendation.

2. The County encourages the Timber Lakes Board to consider this recommendation.

3. The County encourages the Timber Lakes Board to consider this recommendation.

CHAPTER VII
NOTES REGARDING ALLEGATIONS WHICH WERE NOT FULLY ADDRESSED

General Response

Because the auditor addressed the Chapter VII allegations "in a limited fashion," it is difficult for the County to respond. The County simply reaffirms that under the present County Commission, SSD expenditures and operations are closely managed.

Former County Attorney Could Represent SSD's Without Conflict of Interest

Like other rural counties, Wasatch County for many years permitted the elected county attorney to maintain a private law practice. This policy allowed the former County Attorney to represent private clients, including SSD's. Today, the current County Attorney holds a full-time position and does not represent SSD's.