

# CANYON LAND SPECIAL SERVICE DISTRICT

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Findings and Recommendations  
For the Period January 2011 through December 2015

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Report No. CLSSD-16-SP



## OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor  
Jeremy Walker, CPA, Manager



OFFICE OF THE  
STATE AUDITOR

**REPORT NO. CLSSD-16-SP**

April 11, 2017

Canyon Land Special Service District  
Administrative Control Board

Dear Board Members:

We have performed the procedures described below to certain aspects of internal control and compliance at Canyon Land Special Service District (Canyon Land) for the period January 2011 through December 2015, unless otherwise noted. The purpose of these procedures is to assist Canyon Land in evaluating internal controls and compliance with state laws.

- We reviewed compliance with certain laws by Canyon Land.
- We reviewed the compensation received by certain Kane County officials for either serving on the Canyon Land's board or contracting with Canyon Land.

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

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of Canyon Land during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please contact Jeremy Walker, Local Government Manager, at 801-538-1040 or [jeremywalker@utah.gov](mailto:jeremywalker@utah.gov).

*Office of the State Auditor*  
Office of the State Auditor

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## **BACKGROUND**

Canyon Land Special Service District (Canyon Land) was created on November 23, 2009 by the Kane County Commission (Resolution No. 2009-23). Canyon Land was authorized to provide drinking water, wastewater collection and treatment, and fire protection services to a private development. Currently, Canyon Land does not provide any services directly; however, it has entered into contracts to provide fire protection through another government agency and sewer services through a company affiliated with the private development. Members of Canyon Land's administrative control board (Board) are appointed by the Kane County Commission.

As noted in Finding No. 1 of this report, there is some disagreement among the State Auditor, Canyon Land personnel, and Kane County officials as to whether the entity referred to in this report as "Canyon Land" is operating as a special service district or a local district. The State Auditor considers Canyon Land to be a special service district, and the distinction between the two entities is explained below. Regardless of the legal form of Canyon Land, the findings contained herein are applicable to either type of entity.

Canyon Land legal counsel has indicated that Canyon Land was created to satisfy State Division of Water Quality (DWQ) Administrative Rule 317-3-1E, which requires a governmental entity to provide "sponsorship" for a sewer system that will serve multiple units under separate ownership. This sponsorship from a governmental entity is intended to ensure the continuation of services in the event of dissolution or abandonment by a separate owner of the sewer system. However, the sewer system, for which Canyon Land was created to provide "sponsorship," has never served units under separate ownership. We understand that the potential for future development and separate ownership exists, but still do not see a compelling reason to have created Canyon Land before the sewer system serves units under separate ownership. DWQ's requirement for the creation of Canyon Land to provide sponsorship for the sewer system has imposed a number of compliance requirements that may have unnecessarily complicated the delivery of sewer service to the private development.

*Utah Code* 17D-1, part 2, allows a county or municipality to create a special service district (SSD). SSDs are special-purpose local governments, meaning that they generally provide a single specific service, or a group of closely related services, to a defined geographical area. In Utah, SSD budgets vary widely—some SSDs have a few hundred dollars and others have many millions of dollars. SSDs operating with small budgets are required to comply with nearly all laws required of larger entities. However, small budgets generally do not justify employing permanent individuals to provide professional services, such as accounting and legal services. Small budgets may also make it difficult to hire professionals on a temporary or contract basis. As such, SSD board members often perform support that may be outside of their area of expertise.

State statute also allows for the creation of a local district (LD), which is similar to an SSD. One significant difference between LDs and SSDs is the oversight responsibility of the creating entity. When an SSD is created, the creating entity may function as the governing body or may appoint an administrative control board (board). The only powers that may be exercised by the board are those granted by the creating entity. Certain powers, such as the ability to tax, cannot be delegated to the board and must be imposed for an SSD by the creating entity. Also, a creating entity may

not grant powers it does not have. *Utah Code* 17D-1-301(4) provides that any power granted to a board may be “modified, limited, or revoked” at any time by the creating entity. Unlike SSDs, LDs do not rely on the creating entity to exercise powers, and powers cannot be unilaterally revoked by the creating entity.

## **FINDINGS AND RECOMMENDATIONS**

### **1. FAILURE TO CLEARLY IDENTIFY DISTRICT TYPE**

Kane County officials and Canyon Land’s attorney have questioned whether Canyon Land is an LD or SSD. As noted above, the distinction is important in order to determine the level of oversight to be exercised by the County and to determine which laws are applicable.

The confusion regarding Canyon Land is caused by its initial creation and subsequent transition to an SSD. The Lt. Governor’s Office issued a “Certificate of Creation” authorizing the creation of the Canyon Land Improvement District (an LD) on March 21, 2006. On November 23, 2009, the Lt. Governor’s Office issued a “Certificate of Creation” authorizing the creation of the Canyon Land Special Service District. A resolution passed by the Kane County Commission creating the Canyon Land Special Service District stated, “The Commission intends that the District created herein will replace the Canyon Land Improvement District.” Additionally, the July 28, 2009 Canyon Land Improvement District minutes state, “A motion was made by Trustee John Oberg and seconded by Trustee Homi Vazifdar to convert from Canyon Land Improvement District to Canyon Land Special Service District on December 31, 2009. The motion carried with all Trustees voting in favor.” Because the Canyon Land Improvement District governing body took official action to transition from an LD to an SSD, we have concluded, despite the confusion noted above, that Canyon Land Improvement District was replaced by Canyon Land Special Service District effective December 31, 2009.

#### **Recommendation:**

**We recommend that Canyon Land work with Kane County to dissolve the Canyon Land Improvement District or transfer operations to the Canyon Land Improvement District and dissolve the Canyon Land Special Service District to eliminate any future confusion.**

#### ***Public Official Compensation***

Canyon Land pays compensation to only two individuals — a board member who is also a Kane County commissioner and a contract accountant who is also the Kane County clerk/auditor. We have several concerns related to the compensation paid by Canyon Land, as noted in Findings No. 2 through 7 below.

## 2. **BOARD MEMBER CONTRACTING WITH DISTRICT IN VIOLATION OF LAW**

From January 2011 to December 2015, a Canyon Land board member contracted with Canyon Land to provide consulting services. *Utah Code* 17B-1-311 generally prohibits a board member from being employed by or contracting with an SSD for which he is a board member. An exception to this prohibition is found in *Utah Code* 17-B-1-311(4), which allows a board member to also be an employee of an SSD when fewer than 3,000 people live within 40 miles of the primary place of employment. However, this exception does not apply to Canyon Land because district board meetings are held in Kanab, and the district clerk has stated that district records are maintained at her home which is in Kanab which has more than 3,000 residents. Also because the board member lives in Kanab and, based upon invoices and meeting minutes, duties performed by this board member are at various locations, it does not appear necessary for a person to live within the boundaries of the district to perform these duties. Additionally, in order to apply this exception, the law requires a “reasonable public notice” for the opening of a position. Canyon Land has not provided evidence that such public notice has been given.

### **Recommendation:**

**We recommend that this board member either resign from his position on the Board or discontinue to contract with Canyon Land.**

## 3. **BOARD MEMBER COMPENSATION IN EXCESS OF LEGAL MAXIMUM**

In 2010, 2012, and 2014, one Canyon Land board member received \$7,500 (see Attachment A) annually for his service on the Board. *Utah Code* 17B-1-307 states that the maximum amount of annual compensation a board member may receive is \$5,000. The excess payments received during 2014 were the result of duplicate payments. The board member received two checks for \$2,500 each, both dated July 1, 2014 which cleared the bank on July 2, 2014 and July 31, 2014. These checks were signed by only the board member receiving the payment. Because of the checks were written the same day, were deposited within a short period of time and were signed by the board member it appears that he knowingly and willfully accepted a duplicate payment. This overpayment also indicates that the Canyon Land Board failed to effectively review payments before they were processed.

### **Recommendation:**

**We recommend that Canyon Land:**

- **Implement an effective review of payments before they are processed.**
- **Ensure that board member compensation does not exceed legal limits.**

**We also recommend that the board member repay the \$7,500 of excess compensation to Canyon Land and that the Kane County Attorney request an independent review to determine if the duplicate payment constitutes criminal activity.**

#### 4. **BOARD MEMBER RECEIVED IMPROPER OR DUPLICATE COMPENSATION**

We reviewed invoices from January 2011 to December 2015 paid by Canyon Land to a consulting company owned by the board member noted above. The following payments were improper:

- \$14,850 of the payments were for consulting services to Canyon Land. *Utah Code* 17B-1-311 generally prohibits board members from receiving compensation as a consultant while also serving on the board. Because this board member was also compensated \$30,000 (between \$5,000 and \$7,500 annually) for his service as a board member during this same period, the \$14,850 is considered an improper payment. (See Attachment B)
- \$4,725 of the payments were specifically for board member services, such as attendance at Canyon Land board meetings and board member training, for which the board member had already been compensated; therefore, the \$4,725 is considered a duplication of payment. (See Attachment C)
- \$9,127 of the payments were for services provided to a private development. These services related to resort operations, land development, and review of land use ordinances and their impact on the development. These services appear to be outside the scope of Canyon Land business and were, therefore, improper payments. (See Attachment D)
- \$4,650 of the payments were for services, such as water and roads, which are unrelated to services provided by Canyon Land and were, therefore, improper payments. (See Attachment E)

All Canyon Land checks to the board member's consulting company were single signature checks, signed only by this board member. In a small district where a limited number of people are available to review payments, all checks should be signed by someone other than the payee to ensure proper authorization. These overpayments indicate that Canyon Land's board failed to effectively review payments before they were processed.

#### **Recommendation:**

**We recommend that:**

- **Canyon Land implement an effective review of payments before they are processed to ensure they are appropriate, including ensuring that single-signature checks are signed by someone other than the payee.**
- **The board member reimburse Canyon Land for either the entire amount of board member compensation received (\$30,000) or the entire amount of consulting payments received (\$14,850).**
- **The board member also reimburse Canyon Land for various other duplicate and improper consulting payments received (\$18,502).**

**5. POSSIBLE EXCESSIVE COMPENSATION PAID TO BOARD MEMBER**

As noted above, this board member receives \$5,000 or more per year for his service as a board member. The meeting minutes indicate that the Board met only twice during 2015 and reflect minimal activity outside of the board meetings. Also, Canyon Land contracts with other entities to provide services and does not directly provide services itself. Therefore, for the two board meetings during 2015, the board member received \$2,500 per meeting for his service on the board. As such, the amount of compensation for this board member seems to significantly exceed the work provided.

**Recommendation:**

**We recommend that Canyon Land compensate all board members equitably (which compensation may be waived in whole or in part) with pay that is generally commensurate with the time commitment and expertise.**

**6. FAILURE TO USE COMPETITIVE BID PROCESS RESULTED IN OVERPAYING FOR ACCOUNTING SERVICES**

Canyon Land’s contract accountant, who is also the Kane County clerk/auditor, received over \$50,000 for services from 2011-2015. Of this amount, \$17,000 was for bonuses above the contracted amount. Meeting minutes provide little information regarding justification for the bonuses and since they are above amounts mutually agreed upon, they could be considered duplicate payments. The table below shows the number of transactions processed by the contract accountant and the amounts received for 2014 and 2015.

<b>Year</b>	<b>Deposits Made</b>	<b>Checks Written</b>	<b>Total Transactions</b>	<b>Annual Contract Accountant Compensation</b>	<b>Average Cost per Transaction</b>
2015	3	21	24	\$10,441.31	\$435.05
2014	2	24	26	\$11,494.31	\$442.09

With the average cost per transaction being between \$435 and \$442, the contract accountant’s compensation appears excessive. We recognize that the contract accountant also would participate in meetings; however, the meeting minutes indicate that the Board met only twice during 2015 and reflect minimal activity outside the board meetings.

The Canyon Land attorney has explained that the contract accountant’s services were not obtained through a competitive procurement process. A best practice would be to obtain professional services through a competitive procurement process to ensure that market rates are being paid. The excessive compensation indicates that the Board failed to effectively evaluate the amount of compensation paid to the contract accountant compared to the work she performs.



**Recommendation:**

**We recommend that the Canyon Land Board:**

- **Obtain professional services through an established competitive procurement process that considers both cost and qualifications.**
- **Avoid overpaying the contract accountant.**

**7. POTENTIAL CONFLICT BETWEEN PUBLIC DUTIES AND PERSONAL INTERESTS**

As noted in the Background section above, counties that create SSDs should provide them with professional resources to ensure the SSDs comply with the law. The Kane County clerk/auditor has provided accounting services to Canyon Land for a number of years and has received payment as an independent contractor. This type of arrangement could raise questions regarding whether the county clerk/auditor obtained this position with Canyon Land by virtue of her official capacity with the County.

Public officer and employee ethics laws generally allow public officials the same opportunities to acquire economic interests as all other citizens, as long as it does not interfere with the discharge of their public duties. However, *Utah Code* 17-16a-4(1)(b) prohibits a public official from using their position, "... to secure special privileges for the officer or for others...". Also, *Utah Code* 17-16a-8 requires certain disclosures by the public official when "Any personal interest of or investment ... creates a potential or actual conflict between the official's personal interests and [her] public duties...." We requested from Kane County all disclosure statements submitted by the clerk/auditor and were provided with two statements, one dated July 22, 2015 and another April 19, 2016. The law required disclosure statements prior to this time; nevertheless, the County did not use this information to establish oversight and ensure that the potential conflict did not interfere with public duties.

In order to protect public officers and employees from real or perceived conflicts of interest, Canyon Land should:

- Inquire with the County (creating entity) to determine if the County is willing or able to provide services, then pay the County directly for services its officers and employees provide.
- If the County is not willing or able to provide services, Canyon Land should go through a competitive procurement process to obtain the services. As noted in Finding No. 9 below, Canyon Land does not have a formal purchasing policy. A purchasing policy would have provided procedures for competitively procuring these professional services, allowing other qualified candidates the opportunity to be selected.

- Ensure that public officers or employees have disclosed personal interests that “...create a potential or actual conflict between the official’s personal interests and... public duties...” as required by law. The Board should examine the disclosed potential conflicts to ensure that any services provided by public officers or employees do not interfere with their public duties. For example, some services the county clerk/auditor provides to Canyon Land may fall within the scope of her responsibilities as county clerk/auditor. A clear distinction must be made regarding responsibilities that fall within the scope of county employment and those that do not.

**Recommendation:**

**We recommend that Canyon Land inquire with the County to determine if the County is able to provide needed professional services. If not, Canyon Land should obtain the services through an established competitive procurement process.**

*Noncompliance with State Laws and Rules*

**8. IMPROPER IMPOSITION OF PROPERTY TAX**

Canyon Land’s annual budget and financial report indicates that its revenue is generated from fees. However, since July 2009 the Board has annually adopted a rate that is applied to property values and charged and collected with property taxes making the “fee” seem much like a property tax. Utah Constitution Article XIII, Section 2 [Property Tax] describes property taxes as “...assessed at a uniform and equal rate in proportion to its [tangible property] fair market value.” Also, *Utah Code 59-2-101* – Property Tax Act defines property referred to in the act as, “property that is subject to assessment according to its value.” While Canyon Land may classify this revenue as a fee, we believe according to the state constitution and statute it is effectively a property tax. We noted the following noncompliance regarding this revenue:

- Canyon Land’s Board does not have the legal authority to levy a property tax or assessment. *Utah Code 17D-1-301(3)* requires this authority to remain with the Kane County Commission.
- In December of 2011, the Board adopted a rate of 0.002092 to pay for fire protection services; this rate is greater than the maximum rate allowed for such services. *Utah Code 17B-1-1002(d)* sets the maximum property tax rate that can be charged for sewer or fire protection services at 0.0008. According to June 2009 minutes, the Board had intended to charge a property tax to pay for fire protection services. However, when it discovered that the maximum rate allowed by law would not generate sufficient revenue to pay for the cost of fire protection services, the Board decided to call the rate a fee assessment rather than a tax. As stated above, *Utah Code 17D-1-301(3)* does not allow administrative control boards to levy a property tax or assessment.
- If Canyon Land had the authority to impose a property tax, it would have been required to publish public notice and hold a public hearing, but it did not. For example,

Canyon Land held hearings to increase the fee/rate on July 19, 2010 and December 22, 2011; although Canyon Land claims these were *public*, the hearings were held earlier than 6:00 pm which would be a violation of *Utah Code 17B-1-643(1)(b)*. Also, Canyon Land increased the fee/rate on the 2014 tax notice without timely notice. A public hearing was appropriately held on November 25, 2013 where a rate of 0.002176 was proposed to yield \$165,000 for 2014. However on July 25, 2014 the Board voted to increase the rate and budget (0.002394 to yield \$181,500) for 2014 without public notice or a hearing. The Board later held a public hearing on December 1, 2014 to ratify the change made in July of that year, but only after the revenue had already been assessed and collected with the property taxes in November of 2014.

This noncompliance indicates the Board's lack of understanding or disregard for the limits on their authority, as well as a lack of oversight by the County Commission and failure to make available to Canyon Land the expertise necessary to understand and comply with taxing requirements.

**Recommendation:**

**We recommend that the Canyon Land Board gain an understanding of their roles and limits on their authority and not impose taxes or assessments which they are not authorized to impose.**

**9. FAILURE TO ADOPT PURCHASING POLICY**

The Canyon Land Board has not formally adopted written purchasing policies in accordance with *Utah Code 17B-1-618*, which requires that "All purchases ... be made or incurred according to the purchasing procedures established by each district by resolution and only on an order or approval of the person or persons duly authorized." Without a purchasing policy, Canyon Land cannot legally procure goods and services.

Purchasing procedures should establish a competitive procurement process which safeguards money from waste or abuse. Formal written policies also facilitate continuity and the consistent application of internal controls over time. The term "internal controls" is used to describe processes put in place by the governing body, management, or others, to provide consistent and efficient operations, including reasonable assurance that funds will be properly safeguarded.

**Recommendation:**

**We recommend that the Canyon Land Board adopt formal written purchasing policies as required by *Utah Code 17B-1-618*.**

**10. FAILURE TO CONDUCT SEWER OPERATIONS IN COMPLIANCE WITH SPONSORSHIP MANDATE**

As noted in the Background section above, Canyon Land was created to satisfy State Division of Water Quality (DWQ) Administrative Rule 317-3-1E, which requires a governmental entity to provide “sponsorship” for a sewer system that will serve units under separate ownership.

The following minimum characteristics would indicate Canyon Land’s sponsorship of the sewer system:

- Setting of connection and/or user fees
- Budgeted revenues and expenditures for sewer operations
- Providing for the billing and collection of user fees
- Payment to contracted operator of system
- Ability to continue operation of sewer system if private sewer owner ceases operation

Canyon Land does not currently perform any of the characteristics of sponsorship noted above except for the setting of connection and user fees.

**Recommendation:**

**If Canyon Land exists to provide sewer services, we recommend that the Canyon Land Board provide sponsorship of the sewer system in a manner that complies with DWQ rules.**

## Amounts paid for board member services\*

Check Date	Description in memo field on check	Amount
5/10/2010	(Name of Member) Board Service	\$ 2,500.00
7/9/2010	2nd Half Board	\$ 2,500.00
8/25/2010	Board July-Dec 2010	\$ 2,500.00
2/11/2011	Board Service 1st half yr	\$ 2,500.00
7/9/2011	2nd 1/2 yr	\$ 2,500.00
1/2/2012	BLANK	\$ 2,500.00
6/20/2012	2nd half board	\$ 2,500.00
12/8/2012	2013 1st half	\$ 2,500.00
7/1/2013	2nd half 2013 board ser	\$ 2,500.00
12/3/2013	Board Service	\$ 2,500.00
7/1/2014	Board Service	\$ 2,500.00
7/1/2014	Board Service	\$ 2,500.00
12/15/2014	Board Member fee	\$ 2,500.00
7/1/2015	2nd half Board	\$ 2,500.00
12/8/2015	Board Service	\$ 2,500.00
		<u>\$ 37,500.00</u>

\* All information from this schedule is taken from images of cleared checks included with the entity bank statements.

**Amounts billed for consulting services related to Canyon Land;  
however, these services may be board member duties.\***

Invoice Date	Description	Hours	Fee	Total
3/24/2011	Greenhaven Fire and Glen Canyon CID Response times for mutual aid	5	\$ 375	\$ 375.00
7/8/2011	Greenhaven Fire and Glen Canyon CID 911 Coordination - Cory Johnston	2	\$ 150	\$ 150.00
7/8/2011	Water Treatment Plant w/ Mike Gardner	5	\$ 375	\$ 375.00
10/12/2011	Greenhaven Fire Service Coordination - Cory Johnston	5	\$ 375	\$ 375.00
10/12/2011	Water Treatment Plant w/ DEQ	2	\$ 150	\$ 150.00
12/26/2011	Waste Water Treatment Training Coordination State of Utah/Mike Gardner & Operator	6	\$ 450	\$ 450.00
12/26/2011	Greenhaven Fire Service Coordination - Cory Johnston	6	\$ 450	\$ 450.00
3/20/2012	Greenhaven Fire Service Coordination - Cory Johnston	5	\$ 375	\$ 375.00
3/20/2012	CLD/Amangiri waste water treatment & new villas	4	\$ 300	\$ 300.00
6/23/2012	Greenhaven Fire Service Response & 911 Page to Dispatch - Cory Johnston	2	\$ 150	\$ 150.00
6/23/2012	CLD/Waste Water Treatment Plant & Flood Damage to Landscape	4	\$ 300	\$ 300.00
6/23/2012	Kane County Bldg Department - Flood Damage to Water Treatment and roads	1	\$ 75	\$ 75.00
9/22/2012	Greenhaven Fire Department & Service Response - Cory Johnston	5	\$ 375	\$ 375.00
9/22/2012	CLD/Waste Water Treatment Plant meet with Operator Post High Rain Events	5	\$ 375	\$ 375.00
12/8/2012	Greenhaven Fire Service Coordination - Cory Johnston	5	\$ 375	\$ 375.00
12/8/2012	Ambulance Response & Service Affecting Amangiri Customers w/ S. Pandya	3	\$ 225	\$ 225.00
3/31/2013	Emergency Response Impacts on Amangiri Resort Jade McBride & Sherri Pandya	2	\$ 150	\$ 150.00
3/31/2013	Fire Response and EMT Availability to Amangiri	3	\$ 225	\$ 225.00
3/31/2013	Fire Response and EMT Availability to Amangiri	6	\$ 450	\$ 450.00
7/1/2013	Emergency Response Impacts on Amangiri Resort Stewart Willoby & Sherri Pandya	3	\$ 225	\$ 225.00
7/1/2013	Fire Response and EMT Responses with Amangiri's Gen Mgr.	5	\$ 375	\$ 375.00
12/23/2013	Emergency Dispatch Impacts on CLCID Tracy Glover & Stewart Willoby	4	\$ 300	\$ 300.00
12/23/2013	Fire and EMT Responses Capibilities Jade McBride w/ Big Water Fire	6	\$ 450	\$ 450.00
12/23/2013	State of Utah Water Quality Requirements for Waste Water	2	\$ 150	\$ 150.00
3/28/2014	Fire and EMT Capacity RFQ & RFP Big Water	6	\$ 450	\$ 450.00
3/28/2014	Fire and EMT Capacities - Greenhaven w/ Corry Shoppman	1	\$ 75	\$ 75.00
3/28/2014	Fire and EMT Capacities - CLCID w/ Joe Decker	2	\$ 150	\$ 150.00
April- June 2014	Fire and EMT Capacities - CLCID w/ Joe Decker	3	\$ 225	\$ 225.00
April- June 2014	Fire and EMT Capacity RFQ & RFP Drafting	4	\$ 300	\$ 300.00
April- June 2014	Fire and EMT Capacity RFQ & RFP Big Water	4	\$ 300	\$ 300.00
April- June 2014	Fire and EMT Capacities - Greenhaven w/ John Altide	4	\$ 300	\$ 300.00
9/21/2014	Fire and EMT Capacities - Big Water - Pat Horning	2	\$ 150	\$ 150.00
9/21/2014	Fire and EMT Capacities - Greenhaven w/ John Altide	6	\$ 450	\$ 450.00
9/21/2014	Fire and EMT Requirements - CLCID Cory Johnston	6	\$ 450	\$ 450.00
9/21/2014	RFP Receipt and Analysis	4	\$ 300	\$ 300.00
9/21/2014	Kane County Hospital - Ambulance & EMT Service Big Water	2	\$ 150	\$ 150.00
9/21/2014	Fire and EMT Capacities - Big Water - David Smucker	2	\$ 150	\$ 150.00
9/21/2014	RFP Receipt and Analysis	3	\$ 225	\$ 225.00
9/21/2014	Fire Proposals - Greenhaven & Big Water	5	\$ 375	\$ 375.00
9/21/2014	Meet with Big Water Town Council - Fire Bid	5	\$ 375	\$ 375.00
9/21/2014	Big Water EMT Response Service to CLD	2	\$ 150	\$ 150.00
9/21/2014	Kane County Hospital & Big Water EMT Service - CLD	3	\$ 225	\$ 225.00
12/15/2014	Fire and EMT Capacities - Greenhaven w/ John Altide - Phone	1	\$ 75	\$ 75.00
12/15/2014	Fire and EMT Capacities - Big Water - Fire Cheif and Mayor Smucker	3	\$ 225	\$ 225.00
12/15/2014	Kane County Hospital & Big Water EMT Service - CLD Stewart Wallaby	2	\$ 150	\$ 150.00
12/15/2014	Kane County Hospital - Ambulance & EMT Service Big Water (estimated)	5	\$ 375	\$ 375.00
4/9/2015	Kane County Hospital - Ambulance & EMT Service Big Water	5	\$ 375	\$ 375.00
4/9/2015	Kane County Hospital & Big Water EMT Service - CLD Sherrie	2	\$ 150	\$ 150.00
4/9/2015	Fire and EMT Capacities - Greenhaven w/ John Altide	5	\$ 375	\$ 375.00
7/1/2015	Big Water Follow-Up to EM and Service to the Resort	5	\$ 375	\$ 375.00
7/1/2015	Big Water EMT Service - Resort/Hospital	2	\$ 150	\$ 150.00
12/8/2015	Greenhaven EMT and Services for Amangiri - Altide	6	\$ 450	\$ 450.00
12/8/2015	Kane County Hospital - Greenhaven EMT Service - CLD Sherrie	2	\$ 150	\$ 150.00
				<b><u>\$ 14,850.00</u></b>

\* All information from this schedule is taken from invoices submitted by the Canyon Land board member.

## Amounts billed for board member-related duties \*

Invoice Date	Description	Hours	Fee	Travel/ Misc.	Total
7/8/2011	Utah SSD Board member mandatory Training	5	\$ 375	\$ -	\$ 375.00
7/8/2011	CLDCID Board Meeting	2	\$ 150	\$ -	\$ 150.00
10/12/2011	CLDCID Board Meeting Prep	1	\$ 75	\$ -	\$ 75.00
10/12/2011	CLDCID Oerations w/ Craig Smith	2	\$ 150	\$ -	\$ 150.00
10/12/2011	CLDCID Board Meeting	2	\$ 150	\$ -	\$ 150.00
12/26/2011	Admin Draft Minute Review	1	\$ 75	\$ -	\$ 75.00
12/26/2011	CLDCID Board Meeting Prep	1	\$ 75	\$ -	\$ 75.00
12/26/2011	CLDCID Board Meeting Prep	1	\$ 75	\$ -	\$ 75.00
12/26/2011	CLDCID Board Meeting	1	\$ 75	\$ -	\$ 75.00
6/23/2012	Administration Coordination with Craig & Karla	2	\$ 150	\$ -	\$ 150.00
9/22/2012	Administration Coordination with Craig & Karla	4	\$ 300	\$ -	\$ 300.00
12/8/2012	Admin Draft Minutes & Budget Review	2	\$ 150	\$ -	\$ 150.00
12/8/2012	CLDCID Board Meeting Prep	2	\$ 150	\$ -	\$ 150.00
12/8/2012	CLDCID Board Meeting	1	\$ 75	\$ -	\$ 75.00
7/1/2013	State of Utah training for CID & SSD's	12	\$ 900	\$ -	\$ 900.00
9/4/2013	CLCID meeting w. Craig Smith & BOD mtg	7	\$ 525	\$ -	\$ 525.00
9/4/2013	Open Meeting & Sunshine Law Training	2	\$ 150	\$ -	\$ 150.00
12/23/2013	CLCID meeting w. Craig Smith & BOD mtg	3	\$ 225	\$ -	\$ 225.00
9/21/2014	CLDCID Board Meeting	3	\$ 225	\$ -	\$ 225.00
12/15/2014	CLDCID Board Mtg	3	\$ 225	\$ -	\$ 225.00
12/8/2015	CLDCID Board Mtg	3	\$ 225	\$ -	\$ 225.00
12/8/2015	CLDCID Board Mtg	3	\$ 225	\$ -	\$ 225.00
					<u>\$ 4,725.00</u>

\* All information from this schedule is taken from invoices submitted by the Canyon Land board member.

**Amounts billed for services likely provided to Amangiri Resort rather than Canyon Land;  
thus, these services were likely outside the scope of Canyon Land business. \***

Invoice Date	Description	Hours	Fee	Travel/ Misc.	Total
3/24/2011	Kane County Land Use Ordinance - Impacts on Canyon Equity/Gary Smith	2	\$ 150	\$ -	\$ 150.00
3/24/2011	Kane County Land Use Ordinance - Impacts on Canyon Equity & Impress Account/Gary Smith	2	\$ 150	\$ -	\$ 150.00
3/24/2011	Kane County Land Use Ordinance Revision - PNZ Commission I Impacts to Canyon Equity	3	\$ 225	\$ -	\$ 225.00
3/24/2011	Kane County Land Use Ordinance Revision - PNZ Commission I Impacts to Canyon Equity	2	\$ 150	\$ -	\$ 150.00
3/24/2011	Kane County - Canyon Equity Impress Account Clarifications Coordination/Shannon McBride	2	\$ 150	\$ -	\$ 150.00
7/8/2011	Kane County - Final Canyon Equity Impress Account Coordination/Shannon McBride	1	\$ 75	\$ -	\$ 75.00
12/26/2011	CLDCID Operations SITLA New Land Exchange w/Craig Smith	6	\$ 450	\$ 79.37	\$ 529.37
12/26/2011	CLD Platt Review w/ Recorder for Craig	4	\$ 300	\$ -	\$ 300.00
3/20/2012	CLD Deed Search w/ Recorder's Office	2	\$ 150	\$ -	\$ 150.00
6/23/2012	Impress Account - Release & Coordination Craig Smith & John Olberg	1	\$ 75	\$ -	\$ 75.00
3/31/2013	Blue Pools Wash Area - SITLA Addition to Canyon land CID Craig, Shannon & Recorder	5	\$ 375	\$ -	\$ 375.00
3/31/2013	SITLA Addition to Canyon land CID Land Area as per Craig	2	\$ 150	\$ -	\$ 150.00
3/31/2013	SITLA Addition to Canyon land CID Land Area addition to Platt	4	\$ 300	\$ 22.38	\$ 322.38
7/1/2013	Blue Pools Area - SITLA Addition to Canyon land CID Plat Finalization	3	\$ 225	\$ -	\$ 225.00
7/1/2013	SITLA Plat Filing w/ Recorder's office	1	\$ 75	\$ -	\$ 75.00
7/1/2013	SITLA Exchange & Doc filing w/ Recorder's office	4	\$ 300	\$ 65.00	\$ 365.00
9/4/2013	SITLA Land Area recordation per Craig	3	\$ 225	\$ -	\$ 225.00
9/4/2013	SITLA Addition to Canyon land CID Platt Recordation	2	\$ 150	\$ 26.58	\$ 176.58
9/4/2013	SITLA Addition to Canyon land CID Platt Recordation	3	\$ 225	\$ 145.00	\$ 370.00
9/4/2013	Red Tail Aviation Amangiri Resort Jade McBride	2	\$ 150	\$ -	\$ 150.00
9/4/2013	Red Tail Aviation Amangiri Resort Mark Francis	2	\$ 150	\$ -	\$ 150.00
9/4/2013	Red Tail Aviation Amangiri Resort Jade McBride	2	\$ 150	\$ -	\$ 150.00
12/23/2013	Red Tail Aviation Amangiri Resort Jade McBride - Wind Sock Equipment	3	\$ 225	\$ -	\$ 225.00
12/23/2013	Red Tail Aviation Amangiri Resort Mark Francis County Road Condition	2	\$ 150	\$ -	\$ 150.00
3/28/2014	Red Tail Aviation Amangiri Resort Coordination	2	\$ 150	\$ -	\$ 150.00
3/28/2014	Meeting with Amangiri GM and Staff	6	\$ 450	\$ 87.36	\$ 537.36
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Dave Phipps	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Craig Smith	3	\$ 225	\$ -	\$ 225.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Craig Smith	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Karla (Various)	3	\$ 225	\$ -	\$ 225.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Craig Smith	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Mark Francis	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Jade McBride	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Larkspur Road Use by Amangiri - Red Tail Aviation Amangiri GM	1	\$ 75	\$ -	\$ 75.00
9/21/2014	Larkspur Road Use by Amangiri - Dave Phipps & Craig Smith	3	\$ 225	\$ -	\$ 225.00
12/15/2014	Larkspur Road Use by Amangiri - Dave Phipps & Craig Smith	3	\$ 225	\$ -	\$ 225.00
12/15/2014	Larkspur Road Use by Amangiri - Dave Phipps	4	\$ 300	\$ 77.28	\$ 377.28
12/15/2014	Amangiri EMT Response Requirements/Jade McBride	4	\$ 300	\$ 76.72	\$ 376.72
4/9/2015	John Olberg - Amangiri & County Services	6	\$ 450	\$ 72.24	\$ 522.24
12/8/2015	Craig Smith Canyon Land Operations and Future Program Growth	5	\$ 375	\$ -	\$ 375.00
					\$ 9,126.93

\* All information from this schedule is taken from invoices submitted by the Canyon Land board member.



**Amounts billed for services that are unrelated to services provided by Canyon Land \***

<b>Invoice Date</b>	<b>Description</b>	<b>Hours</b>	<b>Fee</b>	<b>Travel/ Misc.</b>	<b>Total</b>
12/23/2013	Kane County & CEBA Meeting with Amangiri Staff	5	\$ 375	\$ -	\$ 375.00
3/28/2014	State of Utah Drinking Water Standards	2	\$ 150	\$ -	\$ 150.00
3/28/2014	Red Tail Aviation Amangiri Resport Mark Francis 2014 Season	3	\$ 225	\$ -	\$ 225.00
3/28/2014	Craig Smith Community Development and Renewal Agency	3	\$ 225	\$ -	\$ 225.00
3/28/2014	Craig Smith Community Development and Renewal Agency	4	\$ 300	\$ -	\$ 300.00
April- June 2014	Craig Smith Community Development and Renewal Agency (various)	5	\$ 375	\$ -	\$ 375.00
April- June 2014	Craig Smith Community Development and Renewal Agency	2	\$ 150	\$ -	\$ 150.00
April- June 2014	Craig Smith Community Development and Renewal Agency	3	\$ 225	\$ -	\$ 225.00
9/21/2014	Craig Smith Community Development and Renewal Agency	3	\$ 225	\$ -	\$ 225.00
9/21/2014	Larkspur Road Use by Short Field Aircraft - Dave Phipps & Craig Smith	2	\$ 150	\$ -	\$ 150.00
12/15/2014	Craig Smith Community Development and Renewal Agency	2	\$ 150	\$ -	\$ 150.00
12/15/2014	Larkspur Road Use Short Field Aircraft - Dave Phipps & Craig Smith	3	\$ 225	\$ -	\$ 225.00
12/15/2014	Larkspur Road Use Short Field Aircraft - Canyon Equity	2	\$ 150	\$ -	\$ 150.00
4/9/2015	Larkspur Road Use Short Field Aircraft - Canyon Equity	3	\$ 225	\$ -	\$ 225.00
4/9/2015	Craig Smith Community Development and Garkane Transmission	4	\$ 300	\$ -	\$ 300.00
7/1/2015	Larkspur Road Use Short Field Aircraft - Canyon Equity	2	\$ 150	\$ -	\$ 150.00
7/1/2015	Craig Smith Community Development and Garkane Infrastructure	3	\$ 225	\$ -	\$ 225.00
7/1/2015	Craig Smith Community Development and Garkane Infrastructure	3	\$ 225	\$ -	\$ 225.00
7/1/2015	South Central Communications Fiber/Internet	2	\$ 150	\$ -	\$ 150.00
7/1/2015	South Central Communications Fiber/Internet	2	\$ 150	\$ -	\$ 150.00
12/8/2015	Craig Smith Community Development Phase II Infrastructure	4	\$ 300	\$ -	\$ 300.00
					<u>\$ 4,650.00</u>

\* All information from this schedule is taken from invoices submitted by the Canyon Land board member.



OFFICE OF THE  
**STATE AUDITOR**

**AUDITOR'S CONCLUDING REMARKS**

Canyon Land's response indicates its continued misunderstanding of laws related to the operation of a local or special service district. Their response also fails to acknowledge significant matters noted in the report. We continue to have serious concerns with its oversight and operations.

**Response from  
Canyon Land Special Service District**

**April 10, 2017**

**Responses by Canyon Land Improvement District to State Auditor Report CCID-16-SP-B**

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**Response to Finding No. 1 (Failure to Clearly Identify District Type)**

The Canyon Land County Improvement District was created in March 2006 and the District's name was later changed to Canyon Land Improvement District ("CLID") to comply with a new law prohibiting the use of the word "county" in the name of a local district. In 2009, Bill Bernard, then Deputy County Attorney for Kane County, believed (incorrectly, in CLID's opinion) that only a special service district could legally provide sewer service. Thus, a special service district was created to provide sewer service to the same geographic area as the District. Shortly after the beginning of the process of creating the special service district, Mr. Bernard took time off to campaign for the Kane County Attorney position; he did not win the primary for that election, and later left Kane County after suing over the primary ballot results. CLID believed at that time, and continues to believe, that an improvement district is legally able to provide sewer service within its boundaries. At the time the special service district was created, the private property owners served by CLID simply believed that, if necessary, rather than engage in a dispute with Mr. Bernard, and through him vicariously with Kane County, which created CLID, it would be better to create a special service district to provide the same services. However, when Mr. Bernard left the County Attorney's Office the issue became moot and the transfer of responsibility for sewer and fire protection service to the new special service district became unnecessary. To the best of CLID's knowledge, the special service district was never activated nor took any actions beyond appointing the CLID board as the initial members to the administrative control board. Since that time, the special service district has not held public meetings, has not received or held funds, and new administrative control board members were not appointed upon expiration of the members' initial terms. At all times, CLID has been the functioning entity and providing services within its boundaries.

Although CLID remains the operating entity, CLID recognizes that the special service district should be formally dissolved to avoid any confusion. CLID has begun working with Kane County to dissolve the special service district and expects to complete that process in the next few months.

**Response to Finding No. 2 (Board Member Contracting with District in Violation of Law)**

CLID acknowledges that it may not employ a member of the CLID Board of Trustees and that the exception discussed in the report is inapplicable to CLID. CLID did not employ a CLID Trustee as stated by the Auditor's report. Rather, CLID contracted with a limited liability company owned by a CLID Trustee after full disclosure by that trustee of all real or potential conflicts of interest created by such an arrangement. This is not prohibited by statute. Although the consulting arrangement criticized by the Auditor's report was approved in compliance with applicable laws and CLID policies and is completely legal, CLID has nonetheless discontinued the arrangement at the urging of the State Auditor. In the future, CLID will not engage the services of this company so long as a CLID Trustee holds any ownership interest in the company.

### **Response to Finding No. 3 (Board Member Compensation in Excess of Legal Maximum)**

CLID acknowledges that a Trustee received two duplicate payments in the period in question; however, CLID disagrees with the Auditor's conclusion about the third allegedly duplicate payment. To clarify, Attachment A referenced in the paragraph above covers the six and one half years of service by the Trustee in question (beginning with the first half of 2010 through the first half of 2016), which represents thirteen half-year periods. As shown on Attachment A, the particular trustee received fifteen payments, or two duplicate payments.

CLID and the Trustee are cooperating, assuring that the inadvertent overpayment is repaid. To correct the erroneous payment in 2010, the board member in question has already foregone compensation in the amount of \$2,500 for service on the CLID Board of Trustees for the second half of 2016. To correct the erroneous payment in 2015, the board member has agreed to either reimburse CLID for the erroneous payment or to forego compensation for the first half of 2017 to offset the other erroneous payment. Thus repayment will be completed in less than three months.

As noted previously, CLID is in the process of reviewing and improving its internal controls to avoid a similar error in the future. CLID has also instituted a policy of making trustee compensation payments at the end of the period for which the compensation is being paid and noting on each check the period for which the compensation is paid.

Finally, CLID asserts that the Auditor's implication of any sort of criminal intent or liability is wholly unfounded, unjustifiably inflammatory, and inappropriate for an audit report that should be based on actual evidence. CLID will aggressively defend against any allegations of criminal wrongdoing.

### **Response to Finding No. 4 (Board Member Received Improper or Duplicate Compensation)**

CLID respectfully disagrees in large part with the Auditor's findings allegations of improper compensation. As noted in CLID's response to Finding No. 2, above, CLID contracted with a company owned by a CLID Trustee in full compliance with applicable laws and CLID policies. As such, the significant majority of the payments that the Auditor identifies as "improper" are, in fact, legitimate payments made for services received by CLID and are neither duplicative nor improper. CLID has provided the Auditor with documentation of and information about these payments.

CLID undertook a detailed review of all expenditures in response to the draft findings from the Auditor and has identified several improper payments. CLID has identified payments to the company in question totaling \$3,525 specifically for Trustee services. CLID has also identified payments totaling \$975 that were for services provided directly to a private developer within the

CLID boundaries and that should not have been paid by CLID. The other payments identified by the Auditor in Finding No. 4 were found to be proper, appropriate, and legal.

CLID will require that the consulting company repay the amounts identified as improper payments. The company in question has agreed to do so.

#### **Response to Finding No. 5 (Possible Excessive Compensation Paid to Board Member)**

CLID will compensate all members of the Board of Trustees equally, even though several of the Trustees, much like President Trump, do not desire to be compensated for their service. CLID also notes that members of the Board of Trustees are appointed by Kane County for their knowledge, judgment, and expertise that are necessary to effectively lead CLID and they are compensated accordingly. The amount of compensation paid to CLID Trustees was set in compliance with, and remains in compliance with, applicable statutes.

#### **Response to Finding No. 6 (Failure to Use Competitive Bid Process Resulted in Overpaying for Accounting Services)**

CLID is a small improvement district with no full-time employees; as such and since CLID is required by statute to appoint a district clerk to maintain financial and other records for the district according to Utah Code § 17B-1-632, CLID determined that accounting services would be most efficiently provided by the appointed and statutorily-required District Clerk. In addition to writing checks and making deposits, the District Clerk prepares annual budgets, administers a significant number of CLID internal controls, receives and processes district mail, provides the principal place of business for the district, attends all district board meetings, keeps and maintains records of the district, and serves as the district's records officer in addition to a variety of other responsibilities that are necessary to operate a district without full time employees or dedicated office space. As such, CLID believes that the compensation provided to the District Clerk has been reasonable and fully justifiable.

CLID is seeking a new District Clerk as the current clerk has expressed an intention to resign. CLID issued a request for proposals in accordance with the CLID purchasing policy and applicable Utah law seeking an individual or firm to provide accounting and administrative services to CLID. CLID is in the process of negotiating a contract with the person who submitted the best proposal. If negotiations are successful, that person will be appointed as District Clerk and handle the administration of CLID. All expenditures or compensation will be paid pursuant to written agreements.

### **Response to Finding No. 7 (Potential Conflict between Public Duties and Personal Interests)**

CLID will discuss with Kane County the feasibility of using Kane County employees to provide accounting and other professional services. However, CLID notes that it is not aware of any provision in Utah law that obligates or even authorizes the County to provide such services.

### **Response to Finding No. 8 (Improper Imposition of Property Tax)**

In the future, CLID will collect the fees directly from the property owners within CLID's boundaries rather than allowing those fees to be collected by Kane County along with property taxes, even though using the County collection process is more efficient and less costly for CLID. As suggested by the State Auditor, CLID will also evaluate the formula used to calculate such fees so as to avoid any possibility that CLID's fees could be misconstrued as a property tax.

### **Response to Finding No. 9 (Failure to Adopt Purchasing Policy)**

CLID has since adopted a formal, written purchasing policy incorporating suggestions from the State Auditor. CLID is also performing a review of its internal controls surrounding expenditures, check signing, and general segregation of duties.

### **Response to Finding No. 10 (Failure to Conduct Sewer Operations in Compliance with Sponsorship Mandate)**

DWQ Administrative Rule 317-3-1E states, in relevant part:

*A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.*

No further details are provided as to what "sponsorship" entails. The characteristics listed above by the Auditor appear to be merely the "legal opinion" of the Auditor as those characteristics are not found in any statute, DWQ, rule or other publication. Per discussions between CLID and DWQ, CLID understands "sponsorship" as requiring that a public entity provide a financial and operational backstop to ensure that the sewer system remains operational. CLID is currently working to obtain the contractual right to take over operations of the sewer system in the event that the private contractor currently operating the system fails to perform.