



OFFICE OF THE
STATE AUDITOR

October 15, 2018

Emery County Commission
75 East Main
PO Box 629
Castle Dale, Utah 84513

Dear Commissioners:

We have completed a limited review of Emery County's (County) distribution of Federal Mineral Lease monies. Our findings and recommendations related to this matter are as follows:

Condition

Emery County may be at risk of a reduction in Federal payment in lieu of tax (PILT) for the amount of funds passed to the Local Building Authority (LBA).

Criteria

Audit Alert 2016-04 (see attached) provides guidance on maintaining separation between a County and District created for the purpose of receiving mineral lease monies. The purpose of this separation is to avoid a reduction of the annual federal PILT payment received by the County. Two tests are provided 1) Political Independence and 2) Financial Independence. This guidance is based in part on a 1988 legal opinion from the Associate Solicitor of the Department of the Interior and its interpretation (see attached).

Cause

Emery County adopted Resolution 12-20-2016A allowing for the distribution of mineral lease funds to various special service districts within the County and the Local Building Authority (LBA). The LBA is a blended component unit of the County whose primary function is building and financing projects for the County. The governing body of the LBA is made up of the three County Commissioners.

Effect

The desired allocation of funds by the County to the districts and LBA could have been achieved by passing other funds not under the same requirements as Federal mineral lease funds to the LBA. Although it appears that the County has not committed an illegal act or inappropriately limited the funding of the districts receiving mineral lease monies, the current allocation methodology could lead the federal government to limit the amount

of Federal PILT received by the County for the amount of mineral lease funds allocated to the County, LBA or any entity that fails the political and financial independence tests.

Recommendations

We recommend the county evaluate its distribution methodology for mineral lease funds received by the district which are based off production and surface leases (received through UDOT). We also recommend the County evaluate the contractual agreements between the County and these districts as indicated in Audit Alert 2016-04.

We appreciate your efforts and those of your staff. If you have any questions, please feel free to contact Seth Oveson, Local Government Supervisor, at 435-572-0440 or soveson@utah.gov.

Office of the State Auditor

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cc: Brenda Tuttle, Clerk/Auditor



OFFICE OF THE
UTAH STATE AUDITOR

Auditor Alert – 2016-4

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

Date: July 26, 2016

Purpose:

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

Background:

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

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

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

Guidance:

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

Political Independence

The following should be considered in establishing political independence:

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

Financial Independence

The following should be considered in establishing financial independence:

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

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

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



Board of Commissioners
Lynn Sitterud-Paul Cowley-Kent Wilson
75 East Main Street • P.O. Box 629 • Castle Dale, Utah 84513

October 10, 2018

Seth Oveson
Supervisor, Local Government Division
Office of the State Auditor

This letter is in response to the letter from your office dated September 10, 2018 concerning the distribution of Federal mineral Lease monies.

Emery County has reviewed the current mineral lease distribution resolutions and is preparing new resolutions to make sure Emery County is in compliance with Federal PILT distribution requirements. Emery County will also go back and review prior distributions and see if the County needs to redistribute monies that have previously been distributed to the Local Building Authority to ensure compliance.

Please let us know if you have further questions,
Thank You,

A handwritten signature in blue ink, appearing to read "Kent Wilson".

Kent Wilson
Emery County Commissioner