

ST. MARY PARISH
CONSOLIDATED GRAVITY DRAINAGE
DISTRICT NO. 2



INVESTIGATIVE AUDIT
MAY 13, 2015

**LOUISIANA LEGISLATIVE AUDITOR
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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

May 13, 2015

**MR. LEE DRAGNA, CHAIRMAN,
AND BOARD OF COMMISSIONERS OF THE
ST. MARY PARISH CONSOLIDATED
GRAVITY DRAINAGE DISTRICT NO. 2**

Morgan City, Louisiana

We have audited certain transactions of the St. Mary Parish Consolidated Gravity Drainage District No. 2. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of allegations we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations, as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 16th Judicial District of Louisiana, the U.S. Attorney for the Western District of Louisiana, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

SMPCGDD2 2015

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EXECUTIVE SUMMARY

Improper Contractual Arrangement and Improper Payments

Peter Businelle, St. Mary Parish Consolidated Gravity Drainage District No. 2 (District) maintenance supervisor, used his position to improperly direct public funds totaling \$2,582,115 to himself while doing business as PAB Welding Service from January 2009 through November 2013. These payments were for maintenance and improvement jobs allegedly performed at District properties with little to no verification of work necessity, completeness, or rate appropriateness. As such, some of these payments may have been for services and/or materials that were not provided, unnecessary, or at inflated prices. By using his position at the District to direct public funds to himself, and by billing the District for services that were not performed, unnecessary, and/or at inflated prices, Mr. Businelle may have violated state and federal laws.

Improper Payments to Former Board Chairman

Mr. Businelle made payments to former Board Chairman Carl Kraemer totaling at least \$42,833 from February 2009 through February 2013. By making payments to Mr. Kraemer, Mr. Businelle may have violated state law. In addition, by receiving payments from a District employee/contractor, Mr. Kraemer may have violated state law.

Lack of Board Governance

The District board failed to create, adopt, maintain and/or file the appropriate written policies and procedures, public meeting procedures, required tax forms, fiscal controls and/or other records to properly govern District affairs and safeguard public funds. By failing to safeguard public funds, board members may have violated state law.

Missing District Equipment

Tools and equipment totaling at least \$10,990 were purchased with District funds from November 11, 2009, through January 22, 2013, but are not in the District's possession.

BACKGROUND AND METHODOLOGY

The St. Mary Parish Consolidated Gravity Drainage District No. 2 (District) is a political subdivision of the state created by the St. Mary Parish Council pursuant to Louisiana Revised Statute (La. R.S.) 38:1841, et seq. In accordance with La. R.S. 38:1803(A)(1), the District is empowered to drain lands by the construction, maintenance, and operation of gravity and/or forced drainage facilities, including drains, drainage canals, ditches, pumps, pumping plants, dikes, levees, and other related works. The District is governed by a five-member board appointed by the St. Mary Parish Council. Members of the board serve four-year terms. Carl Kraemer served as District president from November 12, 1997, until he resigned on April 1, 2013.

The District is responsible for nine separate pumping stations and several drainage ways. Seven of these stations are within the City of Morgan City (City) incorporated limits. The City and District have entered into a cooperative endeavor agreement for the maintenance of the drainage ways, levees, and other aspects of the drainage system within the City limits.

This audit was initiated after the Louisiana Legislative Auditor received a letter from the 16th Judicial District Attorney's office stating that it, in its capacity as the District's legal counsel, received allegations that an independent contractor may have misappropriated District funds. The procedures performed during this audit consisted of:

- (1) interviewing District and City employees and other persons, as appropriate;
- (2) examining selected documents and records;
- (3) gathering documents from external parties; and
- (4) reviewing applicable state and federal laws and regulations.

FINDINGS AND RECOMMENDATIONS

Improper Contractual Arrangement and Improper Payments

Peter Businelle, St. Mary Parish Consolidated Gravity Drainage District No. 2 (District) maintenance supervisor, used his position to improperly direct public funds totaling \$2,582,115 to himself while doing business as PAB Welding Service (PAB) from January 2009 through November 2013. These payments were for maintenance and improvement jobs allegedly performed at District properties with little to no verification of work necessity, completeness, or rate appropriateness. As such, some of these payments may have been for services and/or materials that were not provided, unnecessary, or at inflated prices. By using his position at the District to direct public funds to himself, and by billing the District for services that were not performed, unnecessary, and/or at inflated prices, Mr. Businelle may have violated state and federal laws.^{1,2,3,4,5,6,7}

Mr. Businelle was employed by the District to serve as its maintenance supervisor and lead pumper, for which he was paid \$64,625 (an average of \$12,925 per year) during the audit period (January 2009 through September 2013). Although the District did not maintain employment records for Mr. Businelle, according to former Board Chairman Carl Kraemer and Mr. Businelle, Mr. Businelle has been employed by the District since its inception in 1997. Mr. Businelle reported directly to the District's board and was responsible for maintaining the District's pumping stations and drainage ways. This included inspecting the stations and drainage ways weekly, handling all emergencies and problems, reporting conditions and events to the board, and managing work performed at the District. Mr. Businelle also dispatched District pumper employees to the stations and had signature authority on District purchase accounts. Mr. Businelle acted in this capacity without a written employment agreement or a job description. Mr. Businelle was issued 1099-MISC tax forms for these wages, as well as payments he received through his unincorporated business, PAB Welding Service.

In addition to wages for his service as maintenance supervisor and lead pumper, the District paid Mr. Businelle, through PAB, \$2,582,115 from January 2009 through November 2013 (an average of \$516,423 per year) for services and materials relating to grass cutting, building maintenance and repairs, pump system maintenance and repairs, levee maintenance and repairs, and drainage way maintenance and repairs.^A According to Mr. Businelle, he, through PAB, received nearly all of the District's maintenance and improvement jobs and sometimes performed emergency or urgent jobs before discussing them with the board.

The District provided very little oversight of Mr. Businelle in his roles as employee and contractor. According to Mr. Businelle, the individuals on the board did not have the mechanical or technical knowledge to oversee his work and did not require him to provide cost estimates before he performed the work. A review of board records confirmed that the board routinely failed to obtain bids or quotes prior to work being performed. Because Mr. Businelle was

^A Fifty-nine (59) payments were made directly to PAB; one payment was issued to the LWCC (Louisiana Workers' Compensation Corporation) on PAB's behalf.

responsible for nearly all aspects of these transactions and had very little to no supervision, he was able to do the following:

- *Drainage way maintenance* - PAB received District payments totaling \$1,372,547 to perform various jobs to maintain the drainage ways within the District from January 2009 through November 2013 (an average of \$274,509 per fiscal year). A review of the invoices associated with these payments revealed the following:
 - During the fiscal year following the termination of Mr. Businelle's relationship with the District, the complete District drainage way maintenance costs totaled only \$17,692 (a 93.6% decrease from the previous five years' average costs).
 - PAB received payments totaling \$100,715 for supposedly applying herbicide to water vegetation when, according to representatives from the Louisiana Department of Agriculture, Mr. Businelle/PAB did not have the required license to do so.⁸ According to these representatives, Mr. Businelle was licensed to spray herbicide on a private basis until March 3, 2009, but has never been commercially licensed to spray herbicide.
 - PAB received payments totaling \$194,930 for physically removing water vegetation which, according to LSU Ag Center Professor and Coordinator Dearl E. Sanders, Ph.D., would have been unnecessary if herbicides were being used to control water vegetation.
- *Safe rooms* - PAB received \$32,700 from the District for constructing two safe rooms at pump stations 1 and 5 (\$14,700 and \$18,000, respectively) in November 2010. Current District management contends that neither of these stations has a safe room that conforms to FEMA regulations. A review of District records and board minutes indicates that no bids or quotes were received and that no board motions were made regarding construction of safe rooms during this period. Former board members acknowledge that none of the District's pump stations have safe rooms. Stations 1 and 5 have had small rooms added to their structures for which the following observations were made: the concrete block wall structures contained numerous cracks and holes; roof structures were composed of open rafters with a single layer of aluminum or composite material; and neither room contained electrical or lighting fixtures, HVAC or ventilation systems, sanitary or clean water facilities, emergency provisions or supplies, or communication equipment.
- *Electric pump* - The District paid PAB \$41,900 for a new electric pump at station 1 in February 2011. Prior to the pump being installed, the District received bids from PAB and another vendor for \$29,000 and \$32,000, respectively. According to the board meeting minutes, both bids included

installation; the board accepted the lower of the two bids (PAB's). PAB subsequently invoiced the District \$29,200 for this electric pump and an additional \$12,000 for pump installation, which the District paid. We were unable to find anyone at the District who could explain this discrepancy. Mr. Businelle made contradictory statements regarding this additional charge. First, he stated that the \$12,000 was for installation. However, after reading the board meeting minutes, Mr. Businelle indicated that the extra charge was for removing the old pump. Mr. Businelle also stated that the pump cost him \$29,000, but his personal bank records indicate that he purchased the pump for \$22,500.

- *Grass cutting* - PAB received District payments totaling \$100,300 for cutting grass, cleaning, and other minor maintenance tasks at the pumping stations from April 2009 through September 2013. Mr. Businelle charged the District between \$100 and \$400 for labor and, in some cases, equipment, for each station each time he allegedly performed this task. It should be noted that Mr. Businelle purchased nearly \$6,000 worth of yard equipment and supplies on the District's store accounts during this period. In addition, Mr. Businelle charged for one station that had no grass and was surrounded by limestone.

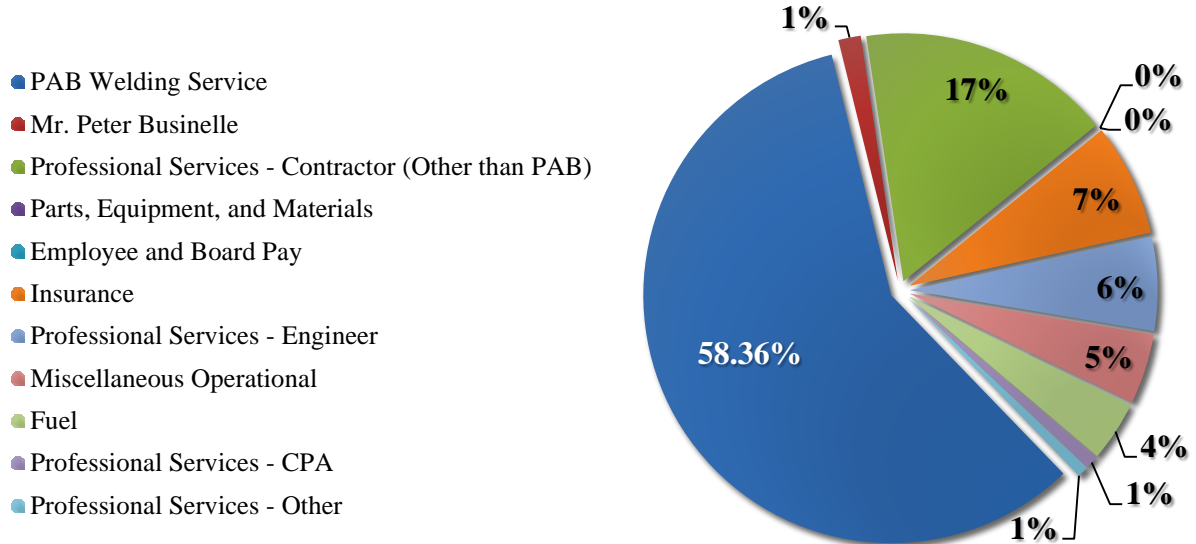
According to current and former board members, the only grass the District is responsible for are the small areas directly surrounding some of the stations. The City of Morgan City (City) currently maintains these areas at no cost to the District. According to City public works representatives, three City laborers working 45 minutes can maintain these areas (for a total of 2 hours and 15 minutes of labor time). Assuming it takes three labor hours at a labor cost of \$20 per hour (the current labor rate paid by the District), the District should have paid approximately \$43,680 to maintain these areas. If so, Mr. Businelle appears to have inflated his services by approximately \$56,620 or 56%. In addition, according to a City Public Works representative, the City was asked to cut the grass on numerous occasions during Mr. Businelle's employment because it was not being adequately maintained by the District.

- *Levee Maintenance* - PAB received District payments totaling \$86,458 for cleaning and clearing levees for which, according to current District management, the District was not responsible from December 2009 through November 2013. The Cooperative Endeavor Agreement between the District and the City states that the City is responsible for grass cutting on all drainage ditches outside the District's servitudes (the actual drainage ways). This would indicate that any maintenance outside of the actual water ways would have been the responsibility of the City.

Due to a lack of adequate records, financial controls, or supervision, we were not able to determine the appropriateness of the remaining \$948,210 paid to Mr. Businelle through PAB.

Nearly 60% of all expenditures made by the District during this period were paid to Mr. Businelle. The following chart illustrates the composition of all District expenditures.

**Total District Expenditures
January 2009 through November 2013**



Although Mr. Businelle, through PAB, received public funds totaling \$2,582,115, his business and personal bank records indicate that PAB incurred only \$100,111 in expenses directly related to District work. According to Mr. Businelle, many of his District-related expenses were paid in cash. Our review of PAB bank accounts (from the two banks that Mr. Businelle stated were the only banking institutions he used) indicated that cash withdrawals from all PAB accounts totaled only \$204,381, which suggests that Mr. Businelle spent no more than \$304,492 on District-related jobs, and he compensated himself approximately \$2,277,623 (88%) for work he performed for the District.

By using his position at the District to direct public funds to himself, and by billing the District for services that were not performed, unnecessary, and/or at inflated prices, Mr. Businelle may have violated state and federal laws.^{1,2,3,4,5,6,7}

Improper Payments to Former Board Chairman

District employee/contractor Peter Businelle made payments to former Board Chairman Carl Kraemer totaling at least \$42,833 from February 2009 through February 2013. By making payments to Mr. Kraemer, Mr. Businelle may have violated state law.^{9,10} In addition, by receiving payments from a District employee/contractor, Mr. Kraemer may have violated state law.^{9,10}

Mr. Businelle issued 11 checks from his personal bank accounts that were payable to Carl Kraemer or “Cash” (all of which were endorsed by Mr. Kraemer) totaling \$42,833. Although Mr. Kraemer and Mr. Businelle initially stated that they had no dealings with each other outside of District business, once they were presented the checks, they revised their statements and acknowledged that Mr. Businelle purchased items such as a boat, cherry picker, and cement mixer from Mr. Kraemer. When both were asked to provide evidence that the purchases took place (such as bills-of-sale, titles, registrations, etc.), Mr. Businelle and Mr. Kraemer were unable to provide records substantiating these alleged transactions or any explanation for the remaining payments.

It should be noted that Mr. Businelle commonly made notations in the *For* field on the checks; however, none of these notations supported the transactions they claimed took place. In addition, many of these notations indicated that the payments were for “inspections.” When asked about this, Mr. Businelle stated that Mr. Kraemer had not done any inspections for him; the notes were there to “help him with his taxes.”

Lack of Board Governance

The former District board failed to create, adopt, maintain, and/or file the appropriate written policies and procedures, public meeting procedures, required tax forms, fiscal controls, and/or other records to properly govern District affairs and safeguard public funds. By failing to safeguard public funds, board members may have violated state law.³

The District collected \$4,054,918 in ad valorem taxes during this period but failed to adequately govern the District’s operations. During this period Carl Kraemer, Ray Autrey, Tommy Longman, Daniel Wilson, and Harrel Wilson were board members. According to District records and current management, the former District board did not adequately govern District matters. During the course of our fieldwork, we noted the following:

- The former District board did not file required IRS 941 tax forms for three consecutive years (2011, 2012, and 2013).
- The former District board did not create or adopt written policies and procedures.

- The former District board did not properly supervise District employees and contractors but relied heavily upon Mr. Businelle to manage District operations, which allowed him to improperly direct public funds to himself.
- The former District board did not develop and implement adequate fiscal controls. For example, board members routinely signed blank checks at board meetings. By signing blank checks, board members did not properly oversee or verify which vendors were actually paid or the appropriateness of the amounts paid.
- The former District board did not obtain bids on public works projects as required by public bid laws.
- The former District board held meetings without proper notice and did not comply with open meetings laws.
- The former District board did not obtain ethics training and had very little knowledge of the laws regarding public funds and entities.

Missing District Equipment

Tools and equipment totaling at least \$10,990 were purchased with District funds from November 11, 2009, through January 22, 2013, but are not in the District's possession. We identified 42 individual pieces of equipment and/or tools that were purchased by the District from three store purchase accounts which are missing. The records for these purchases indicate that for 35 of these items, Peter Businelle was the receiver of the items and Carl Kraemer was the receiver of three of the items. These items include eight air conditioning units, a pressure washer, five lawn mowers, seven trimmers, three chainsaws, and several other types of yard equipment and tools.

In addition, the District's new management noted several other items as missing in March 2014 and determined that they were in the possession of Mr. Businelle. Mr. Businelle terminated his employment in September 2013 (six months earlier), but these items remained in his possession until District management requested them, at which point they were returned. By possessing this equipment, Mr. Businelle may have violated state law.¹¹

Recommendations

We recommend that the District seek legal advice to determine the appropriate actions to be taken, including recovering funds related to excessive payments to Mr. Businelle. District management should also develop and implement detailed policies and procedures to ensure that all employment and contractual arrangements are proper; all employees and board members are properly trained regarding state ethics and governmental laws; all assets are properly recorded and accounted for; and all board meetings are held in accordance with state law. Contractual arrangement policies should provide guidance for the proper procurement of contracted services

to ensure the District receives equivalent services for amounts expended and should, at a minimum:

- (1) comply with the State Ethics Code (La. R.S. Title 42) and prohibit contracting with District employees;
- (2) require the implementation and monitoring of controls to ensure services are necessary;
- (3) ensure that all laws (La. R.S. Title 38) pertaining to contracts and public bids are followed;
- (4) ensure that contracts and related documentation are maintained in an organized manner and in a central location;
- (5) ensure that all payments are made in accordance with the terms and conditions of the contract;
- (6) ensure payments for services meet all contractual requirements prior to payment;
- (7) require proper review of invoices to ensure each payment has a legitimate public purpose as required by the Louisiana Constitution;
- (8) require detailed invoices and documentation of the business purpose for all expenditures; and
- (9) require board approval of all contracts over a specified limit.

LEGAL PROVISIONS

¹ **La. R.S. 14:140** states, “Public contract fraud is committed when any public officer or employee shall use his power or position as such officer or employee to secure any expenditure of public funds to himself, or to any partnership to which he is a member, or to any corporation of which he is an officer, stockholder, or director.”

² **La. R.S. 14:67(A)** states, “Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.”

³ **La. R.S. 14:134** states, “Malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.”

⁴ **18 U.S.C. §1956(1)** states, “Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity— (A) (i) with the intent to promote the carrying on of specified unlawful activity; or (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or (B) knowing that the transaction is designed in whole or in part— (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law.”

⁵ **26 U.S.C. §7201** states, “Any person who willfully attempts in any manner to evade any tax imposed by the Internal Revenue Code or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony.”

⁶ **La. R.S 42:1113** states, “No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant’s immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.”

⁷ **La. R.S 42:1461(A)** states, “Officials, whether elected or appointed, by the act of accepting such office assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property or other thing of value belonging to the public entity in which they hold office.”

⁸ **La. R.S 3:3242(A)** states, “No person shall apply or supervise the application of any restricted use pesticide as a commercial applicator unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. The commissioner shall establish categories and subcategories for certification in different areas of commercial application and shall establish specific standards for each category and subcategory. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards. Commercial applicators may supervise the ground application of restricted use pesticides within the commercial applicator’s certification by competent uncertified individuals who are under the direct supervision of the commercial applicator. Commercial applicators shall not supervise the aerial application of any pesticide by any uncertified person.”

⁹ **La. R.S 14:118(A)** states, “Public bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any public officer, public employee, or person in a position of public authority with the intent to influence his conduct in relation to his position, employment, or duty. The acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value, under such circumstances, by any public officer, public employee, or person in a position of public authority shall also constitute public bribery.”

¹⁰ **La. R.S 14:141 (A)** states, “Splitting of profits, fees or commissions means the giving, offering to give, receiving or offering to receive, directly or indirectly, anything of apparent present or prospective value by or to a public officer or public employee or to any fund or fiduciary existing for the benefit of or use by such public officer or employee, when such value is derived from any agreement or contract to which the state or any subdivision thereof is a party.”

¹¹ **La. R.S. 14:68** states, “Unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other’s consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently.”

APPENDIX A

Management's Response



St. Mary Parish Consolidated Gravity Drainage District # 2
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April 30, 2015

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
c/o Ms. Kimberley Jones
P.O. Box 94397
1600 North Third Street
Baton Rouge, Louisiana 70804-9397

Re: St. Mary Parish Consolidated Gravity Drainage District #2
Response to Investigative Audit Report by Louisiana Legislative Auditor

Dear Mr. Purpera:

On behalf of the current Board of Commissioners (“Current Board”) of the St. Mary Parish Consolidated Gravity Drainage District #2 (“District”), I want to thank the Louisiana Legislative Auditor (“Legislative Auditor”) for conducting an investigative audit into activities performed by the District’s prior board of commissioners (“Prior Board”) and staff during the period of time between January 2009 and September 2013 (the “Audit”). I also want to thank each of the Legislative Auditor’s staff who invested a significant amount of time to conduct the Audit and produce a professional and thorough report.

It is important to note that the Current Board, acting at the direction of the 16th Judicial District Attorney’s Office, contacted the Legislative Auditor for assistance in reconciling certain matters related to activities conducted by the Prior Board and staff of the District. No allegations or findings in the Audit relate to any acts or omissions of any commissioner sitting on the Current Board. The Current Board, staff and contracted professionals do, however, take these matters very seriously and will cooperate with all agencies having jurisdiction over the findings of the Audit and to recover any improperly paid public funds.

The Current Board and its staff will use the Legislative Auditor’s findings of the Audit and recommendations to better improve the District’s operations, handling of its finances and compliance with state laws, federal regulations and applicable program requirements. Since being appointed, the Current Board has systemically taken steps to promote transparency in its operations, tighten internal controls,

minimize risks, and adopt best practices, policies and procedures. Specifically, the Current Board has taken the following actions:

- Hired an administrative professional to manage the District's day-to-day office affairs and administrative functions.
- Engaged the certified public accounting firm of Darnall, Sikes, Gardes & Frederick to handle its financial matters.
- Engaged the law firm of Coats Rose Yale Ryman and Lee as special counsel to advise the Current Board on board governance, develop certain policies and procedures, advise on compliance with Louisiana public bid laws, ethics, state and federal program requirements, perform contract negotiations and assist with intergovernmental relations.
- Adopted Bylaws.
- Created sub-committees of the Current Board to review contracted professional service providers' invoices and payments.
- Entered into intergovernmental cooperative endeavor agreements for support and assistance.

With respect to the specific recommendations of the Legislative Auditor, the Current Board will, among other actions, make every effort to implement the following in a timely manner:

- attend a minimum of one (1) hour of education and training on the Code of Governmental Ethics during each calendar year;
- adopt, implement and monitor internal controls to ensure the necessity of services for a public purpose are provided to the District;
- adopt, implement and adhere to a procurement policy that is compliant with Louisiana Public Bid Laws, *La. Rev. Stat. Ann. §38:2212, et. seq.*, and its exceptions;
- maintain a centralized file system and document retention policy;
- adopt, implement and maintain an asset management system for District owned assets;
- adopt, implement and monitor levels of authority policies concerning third party agreements; and
- adopt, implement and monitor, through subcommittees of the Current Board, policies concerning the reviews of third party invoices to ensure services were provided in accordance with contractual terms, proper supporting documentation is attached to ensure payments are for legitimate public purposes.

Thank you for allowing this Current Board the opportunity to respond to the Audit. Be assured, the Current Board will continuously evaluate our internal policies, procedures and systems to promote transparencies and efficiencies in its operations to better serve and protect the health and welfare of the citizens of St. Mary Parish.

Sincerely yours,



Lee A. Dragna
President