



COMPTROLLER'S INVESTIGATIVE REPORT

South Fork Utility District

April 7, 2022

Jason E. Mumpower
Comptroller of the Treasury



DIVISION OF INVESTIGATIONS



JASON E. MUMPOWER
Comptroller

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South Fork Utility District Board of Commissioners
2800 Highway 421 #5
Bristol, TN 37620

South Fork Utility District Board Officials:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the South Fork Utility District, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 2nd Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason E. Mumpower", is written over a faint, larger version of the signature.

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

South Fork Utility District (Holston Utility District & South Bristol-Weaver Pike Utility District)

The Office of the Comptroller of the Treasury investigated allegations of malfeasance related to the South Fork Utility District. The investigation was limited to selected records for the period May 14, 2018, through June 30, 2021. The results of the investigation were communicated with the Office of the District Attorney General of the 2nd Judicial District.

BACKGROUND



The South Fork Utility District (SFUD) in Bristol, Tennessee, was created in August 2020 by the merger of the Holston Utility District (HUD) and the South Bristol-Weaver Pike Utility District (SBWPUD). SFUD provides water service to approximately 3,400 customers in Sullivan County. It is governed by a five-person board of commissioners who are appointed to four-year terms by the Sullivan County Mayor. Day-to-day operations are managed by the district manager.

HUD and SBWPUD were each governed by a separate three-person board of commissioners. HUD and SBWPUD hired a former HUD commissioner (resigned April 29, 2018), who operated his own construction companies as their contracted district manager effective May 14, 2018,

and August 9, 2018, respectively. According to board minutes, by September 2018, both HUD and SBWPUD moved into the same office building owned by the district manager, hired, and shared employees, and used the district manager's construction companies for most repair and maintenance services. On April 3, 2020, SBWPUD hired the district manager as a full-time salaried employee. On August 4, 2020, the Sullivan County Mayor approved the merger of HUD and SBWPUD to form the SFUD, and the district manager continued as a full-time salaried employee of the newly formed SFUD.

Utility districts in Tennessee are governed under the authority of district policy, state law, and federal law. Section 12-4-101(a)(1), *Tennessee Code Annotated*, states:

“It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any...utility district ... shall or may be interested, to be directly interested in any such contract. “Directly interested” means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.”

In addition, Section 12-4-102, *Tennessee Code Annotated*, provides a potential civil penalty for unlawful interest including the forfeit of all pay and compensation, dismissal from office, and becoming ineligible for the same or similar position for 10 years.

RESULTS OF INVESTIGATION

1. THE DISTRICTS MADE QUESTIONABLE PAYMENTS TO THE DISTRICT MANAGER AND HIS COMPANIES RESULTING IN POTENTIAL CONFLICTS OF INTEREST

For the period May 14, 2018, through June 30, 2021, the three districts paid the district manager, or companies in which he had an ownership interest at least \$1,672,875.47 as shown in the following table:

Summary of Payments to District Manager and His Companies								
Pay Type	Calendar Year							Total
	2018		2019		2020		2021	
	SBWPUD	HUD	SBWPUD	HUD	SBWPUD	HUD	SFUD	
<i>District Manager Companies</i>								
Construction Company 1	234,150.00	83,676.00	533,505.00	64,950.00	49,900.75	16,800.00	-	982,981.75
Construction Company 2	30,144.58	-	71,472.46	995.55	116,130.00	-	100,000.00	318,742.59
Company - Property Lease	5,348.96	9,951.31	11,768.98	16,234.95	3,375.00	4,875.00	-	51,554.20
Gas Station	2,918.28	3,889.21	3,545.76	5,753.73	1,264.90	5,612.81	1,785.59	24,770.28
<i>District Manager Direct Payments</i>								
Salary	-	-	-	-	94,000.00	-	65,000.00	159,000.00
Consultant Fees	4,800.00	6,650.00	22,000.00	15,400.00	8,000.00	5,600.00	-	62,450.00
Reimbursements	11,620.74	18,692.45	5,846.26	4,338.58	11,077.06	1,003.08	3,648.48	56,226.65
District Projects	5,950.00	11,200.00	-	-	-	-	-	17,150.00
Total	294,932.56	134,058.97	648,138.46	107,672.81	283,747.71	33,890.89	170,434.07	1,672,875.47

SFUD was formed on August 4, 2020, but continued to use the SBWPUD bank accounts. Therefore, the SBWPUD amounts above for 2020 were partially SFUD disbursements.

Investigators noted the following questionable payments to the district manager or his companies and related potential conflicts of interest:

A. Repair and Maintenance Services

The district manager supervised HUD and SBWPUD work performed by Construction Company 1, in which he maintained an ownership interest; therefore, he potentially violated the state’s conflict of interest statute, Section 12-4-101(a)(1), *Tennessee Code Annotated*. Prior to the district manager becoming a full-time employee in April 2020, HUD and SBWPUD contracted with the district manager to perform repair and maintenance services. The two districts made at least 107 payments to the district manager or Construction Company 1 during the period for these services totaling \$994,181.75. Investigators found no supporting documentation for \$247,911 of these payments and insufficient detail of work performed on most invoices that were provided (**Refer to Exhibit 1**); therefore, investigators could not determine the extent of work performed or the legitimacy of payments made for these services. In addition, the contracts between the districts and Construction Company 1 required written service requests prior to the initiation of each project. According to the district manager and board presidents, written service requests were not obtained.

Exhibit 1

SALESPERSON	P.O. NUMBER	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
					Due on receipt

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	DRAW ON TURNER ROAD		\$ 30,000.00
SUBTOTAL			30,000.00

Construction Company 1 invoice provided to SBWPUD for payment. As shown, the invoice does not have sufficient support for payment of \$30,000.

B. Truck Purchases

On June 29, 2019, SBWPUD purchased two new 3/4-ton diesel trucks for \$114,663.50. On July 11, 2019, the SBWPUD board authorized the district manager to purchase one of the trucks by paying “...\$10,000 a month till the truck purchased for him is paid off.” Investigators found three invoices from Construction Company 1 on which truck payments for \$5,000 to \$10,000 were deducted from payments due (**Refer to Exhibit 2**). The district manager’s purchase of this truck is questionable due to the following:

- The SBWPUD board approved an unallowable loan to the district manager for this truck because the district manager would pay no sales tax or interest for his personal use of district funds. Section 7-82-113, *Tennessee Code Annotated*, states “All expenditures of money made by a utility district must be made for a lawful district purpose.”
- The truck title and registration remained in the name of SBWPUD (SFUD after the merger), and it is currently an asset of SFUD; therefore, it is unclear why the district manager made payments on the truck and whether SBWPUD or SFUD ever refunded these payments.
- SBWPUD and SFUD have paid the insurance premiums on the truck since its initial purchase.
- Investigators could not determine if the district manager used the truck for personal use or if any personal use was properly reported by the district manager for tax purposes.

Exhibit 2

SALESPERSON	P.O. NUMBER	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
					Due on receipt
QUANTITY	DESCRIPTION			UNIT PRICE	TOTAL
	LABOR HOURS FOR SEPTEMBER 2017				\$ 11,200
	LESS ■■■ TRUCK PYMT				- \$ 5,000
SUBTOTAL					\$ 6,200

Construction Company 1 invoice provided to SBWPUD for payment. As shown, the invoice does not have sufficient support for labor hours worked, and a truck payment of \$5,000 was deducted from the total. SBWPUD paid \$6,200 to Construction Company 1 on 9/27/2019 (it appears the invoiced labor was for September 2019, not 2017).

C. Consulting Fees

For the period May 2018 through April 2020, SBWPUD and HUD entered consultant contracts with and paid monthly consultant fees to the district manager totaling at least \$62,450 (SBWPUD - \$34,800; HUD - \$27,650). According to the contracts, the district manager was to be paid monthly consultant fees (SBWPUD - \$2,000; HUD - \$1,400) for services including “utility manager/consultant.” The district manager received these payments for acting as the utility manager in addition to entering contracts with the districts for repairs and maintenance services and lease of office space; therefore, the district manager potentially violated the state’s conflict of interest statute, Section 12-4-101(a)(1), *Tennessee Code Annotated*.

D. Reimbursements

The districts paid reimbursements totaling at least \$77,674.76 to the district manager (\$27,437.75) and Construction Company 2 (\$50,237.01) without sufficient supporting documentation. Many of these reimbursements were originally paid by the district manager or his company by credit cards, and credit card statements were used as support for the payment instead of invoices or receipts. Because invoices and receipts were not maintained, supporting details of each payment were not available, and investigators could not determine if these reimbursements were appropriate.

E. Vehicle and Equipment Purchases

SBWPUD and SFUD purchased equipment from Construction Company 2 after the district manager became a full-time employee, which resulted in a potential conflict of interest. For the period March 13, 2020, through April 14, 2021, SBWPUD and SFUD made at least ten payments to Construction Company 2 for used vehicles and equipment totaling \$216,130. Nine of these payments totaling \$189,747 occurred after the district manager became a full-time employee on April 3, 2020. Vehicle and equipment purchases included a dump truck, a commercial truck with box, excavators, and other smaller equipment. Section 12-4-114(a)(2)(C), *Tennessee Code Annotated*, states that “No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that...The employee, the employee’s spouse, or any member of the employee’s immediate family has a pecuniary interest arising from the procurement transaction.” Conflicts of interest increase the risk of abuse and undue influence by individuals involved with procurement transactions.

F. Salary and Rent

For the period May 2018 through April 2020, SBWPUD and HUD entered lease contracts with and paid monthly rent to a company owned by the district manager for use of office space. The district manager directly benefited from the lease contracts and rent payments totaling at least \$47,328 resulting in a potential violation of the state’s conflict of interest statute, Section 12-4-101(a)(1), *Tennessee Code Annotated*.

Beginning April 2020, SBWPUD and SFUD paid the district manager a salary, and the districts continued to use the office space owned by the district manager's company but stopped paying monthly rent. The district manager's salary and the districts' use of office space after the district manager became a full-time employee is questionable due to the following:

- SBWPUD and SFUD did not enter into a written employment agreement with the district manager detailing pay, responsibilities, or benefits. In addition, board minutes do not note an approval of this salary. Initially, the district manager was paid a salary of \$2,300 per week, but this changed to \$2,500 per week beginning May 2020. This \$2,500 weekly pay is equivalent to an annual salary of \$130,000. Without a written employment agreement, investigators cannot determine if the pay and benefits to the district manager are appropriate or if a portion of the salary is for rental payment of the district's office space.
- SBWPUD, HUD, and SFUD did not enter into a new lease agreement with the district manager's company detailing the use of office space or payment terms after the district manager became a full-time employee or after the creation of SFUD. Because the districts no longer paid rent, and there was no new lease agreement, investigators could not determine if a portion of the district manager's salary was paid in lieu of rent, which results in a potential continued conflict of interest per Section 12-4-101(a)(1), *Tennessee Code Annotated*. In addition, Section 12-4-114(a)(1) *Tennessee Code Annotated*, states that "No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract, except as provided in this section, or as otherwise allowed by law." The lack of a valid lease agreement creates liability and stability risks. Conflicts of interest increase the risk of abuse and undue influence by individuals involved with contractual transactions.

G. Gas Station and Fuel Purchases

The districts made fuel purchases from a gas station owned by the district manager totaling \$6,222.37 after he became a full-time employee of the districts, which resulted in potential conflicts of interest. Beginning July 2018, the districts purchased most of their fuel on account from the district manager's gas station, and the gas station billed the districts periodically detailing the employee purchaser and amount of fuel purchased. On April 3, 2020, the district manager became a full-time employee, and the districts continued to purchase fuel from the district manager's gas station until April 2021. Section 12-4-114(a)(2)(C), *Tennessee Code Annotated*, states that "No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that... The employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction." Conflicts of interest increase the risk of abuse and undue influence by individuals involved with procurement transactions.

2. HUD PAID ELECTRIC BILLS FOR THE DISTRICT MANAGER’S RESTAURANT TOTALING \$9,667.38

For the period April 3, 2019, through March 3, 2021, HUD paid the electric bills for a meter used by the district manager’s restaurant totaling \$9,667.38. The district manager’s restaurant is operated from the same building used as the districts’ office, which is also owned by the district manager. According to the district manager, a former district employee initiated an automatic recurring HUD draft payment on this account without his knowledge; therefore, he was unaware of HUD paying for his personal business’s electric bill. Investigators determined a former district employee initiated the draft payments for this meter but could not establish if the district manager instructed the employee to initiate the drafts.

3. THE DISTRICTS PAID HEALTH INSURANCE PREMIUMS FOR THE DISTRICT MANAGER AS A CONTRACTOR TOTALING AT LEAST \$5,256.53

For the period February 2019, through March 2020, the district manager worked as a contractor for the districts, and the districts paid his health insurance benefits totaling at least \$5,256.53. Generally, contracted employees do not receive benefits unless authorized by the district board of commissioners, and investigators found no board authorization for payment of these premiums. According to the district manager, he was unaware of being on the health insurance policy; however, multiple district commissioners signed checks to pay employee premiums and were aware of his health insurance benefits. Investigators could not determine if the district manager properly reported these benefits for tax purposes.

4. THE DISTRICTS PAID TWO DISTRICT COMMISSIONERS FOR WORK PERFORMED CREATING POTENTIAL CONFLICTS OF INTEREST

The districts paid two district commissioners for work performed on a building construction project and the maintenance and repair of district vehicles, which resulted in potential conflicts of interest. The following potential conflicts of interest were noted by investigators:

- On July 9, 2018, a new commissioner was elected to the HUD board. In January and February 2019, SBWPUD paid the HUD commissioner \$18,800 for masonry work performed on the garage building used by both districts. The HUD commissioner told investigators he felt this was not a conflict of interest because he was paid by SBWPUD.
- On April 8, 2019, a new commissioner was elected to the HUD board. This commissioner continued to serve as a SFUD commissioner after the creation of the SFUD in August 2020. HUD, SBWPUD, and SFUD paid this commissioner at least \$10,185.08 between May 2019 and December 10, 2020, for the maintenance and repair of district vehicles. This commissioner told investigators he resigned from the SFUD board after the December 10, 2020, board meeting when he realized the payments he received from the districts while serving as a commissioner could be a conflict of interest.

These payments to district commissioners created potential conflicts of interest as defined by Section 12-4-101(a)(1), *Tennessee Code Annotated*. In addition, Section 12-4-114(a)(1), *Tennessee Code Annotated*, states, “No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract, except as provided in this section, or as otherwise allowed by law.”

5. THE DISTRICT MANAGER SUPERVISED CONSTRUCTION PROJECTS ON PROPERTY HE HAD AN OWNERSHIP INTEREST

The district manager supervised construction projects paid by the districts on property in which he had an ownership interest; therefore, he potentially violated the state’s conflict of interest statute, Section 12-4-101(a)(1), *Tennessee Code Annotated*. In addition, the districts did not properly bid one of the projects, the construction of a 5,000 square foot garage. Although the districts did not authorize a purchasing policy detailing bid requirements until March 2021, Section 12-3-1212, *Tennessee Code Annotated*, requires competitive sealed bids for these types of disbursements over \$25,000. Conflicts of interest and the lack of sealed bids for projects and purchases increases risks for fraud, waste, and abuse. The construction projects are detailed below:

- For the period January through May 2019, SBWPUD paid at least \$99,245.85 to build a 5,000 square foot garage (**Refer to Exhibit 3**) on the district manager’s property adjacent to the district office. This project was not bid. According to the district manager, he also contributed his personal funds to the project, but he does not have supporting documentation detailing his personal contributions. On January 10, 2019, SBWPUD and the district manager signed a 20-year lease at \$1 annually for SBWPUD to use 700 square feet of the garage. Investigators determined the districts (and currently SFUD) used approximately half of the garage space, and the district manager used approximately half of the garage space for his personal business.

Exhibit 3



The garage constructed on the district manager’s property adjacent to the district office.

- For the period May 14, 2018, through June 30, 2021, the districts paid at least \$21,670.75 for various projects to remodel district offices owned by the district manager. At least \$14,834.56 of these costs were paid to the district manager or a company in which he had an ownership interest.

6. THE DISTRICTS DID NOT BID NEW METER PURCHASES

For the period May 2018, through February 2019, SBWPUD and HUD purchased 2,300 new water meters totaling \$343,850 (\$149.50 each). Although these purchases exceeded the required bid limit, the water meter purchases were not bid. The districts did not authorize a purchasing policy detailing bid requirements until March 2021; however, Section 12-3-1212, *Tennessee Code Annotated*, requires competitive sealed bids for these types of disbursements over \$25,000. The lack of sealed bids for projects and purchases increases risks for fraud, waste, and abuse.

7. THE DISTRICTS DID NOT OBTAIN SUPPORTING DOCUMENTATION FOR PAYMENTS TO THE CERTIFIED OPERATOR

On May 14, 2018, the HUD board approved hiring a new certified operator. SBWPUD and SFUD also made payments to the certified operator. For the period May 14, 2018, through June 30, 2021, the districts paid the certified operator at least \$36,400 as a contractor with no signed contract or invoices detailing responsibilities or payment terms. The lack of supporting documentation for disbursements increases risks for fraud, waste, and abuse.

INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

Our investigation revealed internal control and compliance deficiencies, some of which contributed to questionable transactions and conflicts of interest without prompt detection. These deficiencies included:

Deficiency 1: The district boards did not establish and adopt an internal control manual or formal written purchasing policies

The district boards did not establish and adopt an internal control manual or formal written purchasing policies, including purchasing provisions for bids, conflicts of interest, or record retention until March 11, 2021. Section 9-2-102, *Tennessee Code Annotated*, requires utility districts to establish, document, and implement internal controls. The lack of an internal control manual and formal written purchasing policies increases risks for fraud, waste, and abuse.

Deficiency 2: The district boards did not establish and adopt formal written personnel policies

The district boards did not establish and adopt formal written personnel policies detailing employee holidays, leave, overtime, and benefits. Therefore, investigators could not determine the appropriateness of employee holiday, leave, and overtime pay, or district paid employee benefits. The lack of formal written personnel policies increases risks for fraud, waste, and abuse.

Deficiency 3: The districts did not maintain supporting documentation for numerous disbursements

The districts did not maintain supporting documentation for numerous disbursements including payments to the district manager or his companies for repairs, maintenance, reimbursements, and payments to the certified operator. Without supporting documentation, investigators could not determine if these disbursements were strictly for the benefit of the district. Requiring supporting documentation such as invoices or receipts allows district officials to verify all disbursements are proper.

Deficiency 4: SBWPUD and SFUD did not enter into a new lease or employment agreement with the district manager

SBWPUD and SFUD did not enter into a new lease agreement after the district manager became a full-time employee and again after the creation of SFUD. In addition, SBWPUD and SFUD did not enter into an employment agreement with the district manager detailing appropriate pay and benefits. Since the districts stopped paying rent to the district manager's company when he became a full-time employee, and there was no new lease or employment agreement, it is unclear if a portion of the district manager's salary was a payment in lieu of rent. If a portion of his salary was in lieu of rent, that would result in a potential conflict of interest. The lack of a newly executed lease between SFUD and the district manager's company creates liability and stability risks for SFUD, and when combined with the lack of the district manager's employment agreement, creates a potential conflict of interest for the district manager.

Deficiency 5: The district boards did not properly review bank and financial statements for questionable transactions

The district boards did not properly review bank and financial statements for questionable transactions, including HUD payments to the electric company for a meter used by the district manager's restaurant. The lack of review of bank and financial statements by the board increases risks for fraud, waste, and abuse.

Deficiency 6: District commissioners for each district did not file annual written statements for training

Although it appears district commissioners for each district attended required training and continuing education courses, district commissioners did not certify training and continuing education courses by filing an annual written statement with their district as required. Section 7-

82-308(f)(4), *Tennessee Code Annotated*, requires that “each utility district commissioner shall certify by January 31 of each year the training and continuing education courses attended during the prior calendar year by filing an annual written statement with the utility district on a form developed by the comptroller. Each annual statement shall identify the date of each course attended, its subject matter, location, sponsor, and the hours attended for each course and shall include a certificate of attendance for each course listed on the annual statement.” The failure to file annual written statements for training increases the risk of district commissioners failing to meet training requirements.

SFUD officials indicated that they have corrected or intend to correct these deficiencies.
