

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature



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# **A Review of the Pearl River Valley Water Supply District**

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The Pearl River Valley Water Supply District (PRVWSD) manages all aspects of the Ross Barnett Reservoir, including leasing of commercial and residential property and providing recreational opportunities. PEER analyzed the district's governance, authority, and responsibilities; how demands on the district have changed over time; and whether the district has exercised due diligence in managing its resources.

In 1985, the Hinds County Chancery Court issued an order requiring the district to charge its residents additional fees (beyond their rental payments as lessees) for services such as fire or police protection. Although circumstances that gave rise to the order have changed and the number of residents and demand for services have greatly increased, the district's board is limited by the court order in the types of services that it can provide. Also, due to the composition of the district's board and the method by which board members are appointed, the district is insulated from addressing residents' concerns and residents have a limited voice in the board's decisionmaking processes.

Concerning management of the district's resources, the PRVWSD's Board of Directors has not exercised prudent stewardship of public funds because it:

- has approved expenditures of the district's funds for items that may not benefit the entire district or the public;
- has not fulfilled its responsibility as an employer to address the taxability of an employee's fringe benefits; and,
- does not have a policy limiting how often board members may be paid per diem and for what purposes.

Concerning the district's process for developing the Lost Rabbit property, the PRVWSD Board of Directors' lack of a policy restricting consultants from participating in or competing for development contracts creates an appearance that the process by which persons and firms compete for development contracts is not open and competitive.

**October 19, 2004**

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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On October 19, 2004, the PEER Committee authorized release of the report entitled **A Review of the Pearl River Valley Water Supply District.**

A handwritten signature in black ink, appearing to be "L. Posey", written over a horizontal line.

Senator Lynn Posey, Chair

**This report does not recommend increased funding or additional staff.**



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# A Review of the Pearl River Valley Water Supply District

## Executive Summary

### Introduction

PEER analyzed the governance, authority, and responsibilities of the Pearl River Valley Water Supply District (PRVWSD), how demands on the district have changed over time, and whether the district has exercised due diligence in managing its resources. The review included analyses of accountability for the district's resources, performance measurement, and contracting. The overall purpose was to identify areas for potential improvement in accountability systems and, where necessary, modification of law.

### Background

The PRVWSD manages and controls the Ross Barnett Reservoir, a forty-five-mile-long body of water near Jackson that widens to 3.5 miles at its broadest point and includes 105 miles of shoreline. The district's member counties are Hinds, Madison, Rankin, Scott, and Leake. The district's project area is defined as the physical location of the reservoir, dam, and related facilities and includes an area of one-quarter mile from the shoreline of the reservoir at high water.

PRVWSD's purposes include:

- providing a water supply for the City of Jackson and to the district's residents;
- maintaining the reservoir dam and monitoring water quality;
- providing law enforcement patrol of the reservoir and its facilities;
- cooperating with other agencies to provide flood mitigation;
- managing over 12,400 acres of forest lands;
- leasing reservoir property for residential and commercial development; and,
- providing recreational opportunities.

The district's fourteen-member board approves plans and projects for the district. The board uses a committee system and a staff of 101 to manage its business.

The district is a special fund agency that does not receive any state general funds. Its operations consist of both governmental and business type operations. The governmental operations, which encompass the management of the reservoir and district lands, are funded primarily through lease rentals (from residential and commercial leaseholders), campground fees, and timber sales.

## The District's Accountability to Residents

The PRVWSD Board of Directors is limited in the types of services that it can provide to residents by restrictions placed by the Hinds County Chancery Court in 1985. Due to the composition of the district's board and the method by which board members are appointed, the district is insulated from addressing residents' concerns and residents have a limited voice in the board's decisionmaking processes. Also, the district does not require its divisions to report performance measurement data that could be used to set policy for the district and inform the residents of progress toward measurable goals.

### Limits on the District's Provision of Services to Residents

In 1982, complainants in the case of *Hinds County v. Pearl River Valley Water Supply District* objected to the district's expenditure of public funds derived from the City of Jackson and the district's five member counties to finance services to private residents leasing property from the district. The court's final order in 1985 required the district to apply funds received from the ad valorem tax levied on the district's member counties solely to pay the costs of the bonds issued for the reservoir. The order prevents the district from providing services such as police and fire protection to residents unless residents pay charges or assessments other than their ordinary annual lease payments.

The bonds for the construction of the reservoir were paid in 1992 and the district no longer collects tax revenue from member counties. The number of residents living on district property has grown to approximately 12,000 to 15,000 people, resulting in a greater demand for services than existed in 1982. However, under the confines of the court order, the board does not have an alternative to providing services to the community other than to charge a fee for each additional service.

## **Residents' Representation on the District's Board of Directors**

Currently, the law provides for only one district resident to serve on the PRVWSD Board of Directors. While the district's board is accountable to all member counties of the district, those residents living near the reservoir are more directly affected by the decisions of the board. However, there is little access to the decisionmaking process for those most affected by its outcome.

## **Method of Appointing Members of the Board of Directors**

The process utilized to appoint members to the PRVWSD Board of Directors allows only limited input from residents of the district. Under the current appointment structure, a resident aggrieved by the board's actions could petition the appointed membership or their appointing authorities, but would not necessarily find among these members a sufficient number of appointees who share similar interests regarding the needs of the reservoir's residential community.

## **Terms of Office for Board Members**

The district's board members who are appointed by county boards of supervisors do not have clearly defined terms of office. This practice does not comply with state law, which sets terms of all officers not otherwise provided for in statute at four years. In the absence of a specified term of appointment, board members can serve for extended periods without the county board of supervisors determining whether the appointee is serving in the best interest of the county.

## **Lack of Performance Measure Reporting**

The district does not require its divisions to report performance measurement data that could be used to set policy for the district and inform the residents of progress toward measurable goals. Although the district's staff provides reports to the board on a periodic basis to inform the board of the staff's activity and service delivery, most of the data provided to the board is descriptive and does not include analysis of how effective the district is in providing programs and services.

## Limited Review of the District's Expenditures

The PRVWSD Board of Directors has not exercised prudent stewardship of public funds because it:

- has approved expenditures of the district's funds for items that may not benefit the entire district or the public;
- has not fulfilled its responsibility as an employer to address the taxability of an employee's fringe benefits; and,
- does not have a policy limiting how often board members may be paid per diem and for what purposes.

### Recent Renovations of the General Manager's District-Owned Residence

Recent renovations of the General Manager's district-owned house included \$12,200 for ceramic and porcelain tile. The district also spent \$925 for landscaping and household items such as flower pots and a tape measure.

When public entities renovate public property, they should ensure that renovation costs are reasonable and necessary. Residents of the PRVWSD might question whether renovations that include ceramic and porcelain tile at \$17 per square foot or purchasing landscaping and household items (that should be the personal responsibility of the General Manager) constitute reasonable and necessary expenditures of public funds.

### Unnecessary Travel Expenditures

The district could have avoided at least \$3,700 in travel expenditures by requiring the General Manager to make more economical choices regarding mode of transportation and type of lodging for district business trips. This is money that could have been expended on district projects that would benefit the entire district, its residents, and the public.

### Failure to Fulfill Its Responsibility as an Employer Regarding Taxability of Employee Benefits

The Pearl River Valley Water Supply District provides its General Manager with a compensation package that includes use of a district-owned house, a vehicle, and utilities (including telephone, electricity, natural gas, garbage service, and lawn care). The PRVWSD's General

Manager's estimated FY 2005 compensation package totals \$136,228. Under Internal Revenue Service regulations, these benefits must meet certain tests in order to be excluded from the individual's taxable income.

Based on PEER's interpretation of the Internal Revenue Code provisions and Treasury regulations, the housing that PRVWSD provides to the General Manager does not meet the tests set forth in 26 USC Section 119 to qualify as non-taxable housing. Because PEER believes that the value of the housing the district has provided to the General Manager is taxable and the district has not reported this amount as income or withheld taxes on this amount, the General Manager could be liable for unpaid taxes on unreported income and the district and General Manager could be subject to interest and penalties.

Also, based on PEER's interpretation of Internal Revenue Code provisions and Treasury regulations, the vehicle that PRVWSD provides to the General Manager does not qualify as a non-personal use vehicle and would be a taxable fringe benefit under the Internal Revenue Code. Because PEER believes that the value of the vehicle the district has provided to the General Manager is taxable and the district has not reported this amount as income or withheld taxes on this amount, the General Manager could be liable for unpaid taxes on unreported income and the district and General Manager could be subject to interest and penalties.

## **Lack of a Policy Addressing Board Members' Per Diem Payments**

The district's board does not have a policy addressing how often the board and committees will meet and for what purposes. In addition to regularly scheduled and special called meetings, members of the district's board have made frequent visits to the district's office or property for which they have been paid per diem. As a result, the district has incurred costs for per diem that might not have been necessary, expending residents' funds that could have been used to benefit the district's residents and the public.

## **The District's Process for Developing the Lost Rabbit Property**

**The PRVWSD Board of Directors' lack of a policy restricting consultants from participating in or competing for development contracts creates an appearance that the process by which persons and firms compete for development contracts is not open and competitive.**

The Lost Rabbit property, approximately 260 acres located on the western shore of the reservoir in Madison County, is one of the few remaining large tracts of undeveloped district land near the Jackson metro area. For many years

the district received inquiries from developers interested in the property as a residential development. The PRVWSD Board decided not to develop the property as residential, but as an Executive Learning Center.

After PRVWSD unsuccessfully attempted to develop the Lost Rabbit property as an Executive Learning Center, the board hired a consultant to acquire additional information regarding the proposed project and to meet with local college representatives regarding their potential involvement in developing the property as an Executive Learning Center. The district later abandoned its initial development plan and pursued development of the property as a traditional neighborhood development.

The consultant hired by the district became involved with The Neopolis Corporation, the firm ultimately selected by the district to develop Lost Rabbit. While PEER is not certain that the consultant used information obtained while working for the district to assist Neopolis in the preparation of its proposal, the possibility exists that such occurred. The PRVWSD Board did not have a policy in place that would require that the district's contractors disclose any interests they might have in development firms or that they not become interested in any firm that might subsequently bid on matters that were the subjects of the contractor's work at PRVWSD.

## Recommendations

1. In view of impending development opportunities, the PRVWSD should study its district-wide needs and report to the Legislature and the PEER Committee how it intends to improve both facilities and services used by residents of the district and the general public. Considerations should include, but should not be limited to, expanded services to residents such as garbage collection and mosquito control, improvements to recreational facilities, and other infrastructure the district would consider a prudent investment. Such report should be completed as soon as possible but no later than December 1, 2005. The Legislature should study the recommendations and suggestions in the report and consider whether to expand the district's statutory authority to direct additional expenditures in these areas. In the event that the Legislature does not consider the proposals to be prudent investments of resources, it should consider requiring that all district revenue and fund balances be deposited to the general fund of the state, and that the PRVWSD operate as a general fund agency.
2. The Mississippi Legislature should amend MISS. CODE ANN. Section 51-9-1 (1972) concerning the

Pearl River Industrial Commission to require that the three names submitted by the board of supervisors to the Governor be the names of persons who reside on and are holders of residential leases from PRVWSD in Madison County. This would provide additional representation for residents of the district.

3. The Pearl River Valley Water Supply District should create and utilize an advisory board comprised of district residents. The board could include representatives of homeowners' associations from neighborhoods located on district property. The advisory board could provide resident input to committees of the board of directors regarding district development and other key issues affecting residents.
4. The Legislature should amend MISS. CODE ANN. Section 51-9-107 (1972) to require that appointees of the boards of supervisors shall hold terms for four years.
5. The PRVWSD Board of Directors should require other divisions to follow the lead of the Parks and Recreation Division by reporting measures of performance and progress toward measurable goals. Program performance measures should demonstrate what the service outputs are, what the expected quality levels are for these outputs, and what productivity is expected from expended staff resources and funds.
6. In the future, when making improvements to district-owned residences, the PRVWSD should only expend funds for fixtures.
7. The PRVWSD should review its practice of providing the General Manager with both a vehicle and reimbursement for mileage and should provide only the most economical mode of transportation.
8. The PRVWSD should immediately begin reporting to the Internal Revenue Service and the State Tax Commission all of the General Manager's taxable compensation as income and make appropriate withholdings for income tax and FICA.
9. The PRVWSD Board of Directors should adopt a policy restricting payment of per diem of board members to attending regular and special called meetings or for services rendered by individuals for activities that have been approved by the board as a whole.
10. The PRVWSD Board of Directors should refrain from working exclusively with one developer prior to public advertisement of a request for proposals for

the lease of district property or from developing an RFP incorporating the proposal of a specific developer. The board should take steps including, but not limited to, openly advertising for developers or contacting multiple developers to whom the board can communicate its proposed vision for the use of a specific parcel of property. The district should advertise an RFP that is specific to the board's vision for the use of the property, but that does not favor one developer.

11. To safeguard against appearances of impropriety, the PRVWSD Board of Directors should establish a policy requiring that its consultants disclose any interests they might have in development firms and further require that contractors agree not to become interested in any firm that may subsequently bid on any matters that were the subjects of the contractor's work.

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# A Review of the Pearl River Valley Water Supply District

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## Introduction

### Authority

The PEER Committee reviewed the Pearl River Valley Water Supply District (PRVWSD). PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a “cycle review,” which is not driven by specific complaints or allegations of misconduct.

### Scope and Purpose

In conducting this review, PEER analyzed the governance, authority, and responsibilities of the PRVWSD, how demands on the district have changed over time, and whether the district has exercised due diligence in managing its resources. The review included analyses of accountability for the district’s resources, performance measurement, and contracting. The overall purpose was to identify areas for potential improvement in accountability systems and, where necessary, modification of law.

### Method

In conducting this review, PEER:

- reviewed state laws regarding PRVWSD and other relevant state laws and the board’s rules, regulations, policies, and procedures;
- reviewed certain provisions of the Internal Revenue Code and U. S. Treasury regulations;
- reviewed meeting minutes of the district’s board and its committees;
- interviewed the district’s board members and personnel;

- interviewed U. S. Army Corps of Engineers personnel;
- surveyed area municipal and private water suppliers and the Mississippi Rural Water Association;
- interviewed personnel of the Mississippi Department of Environmental Quality's Office of Pollution Control;
- interviewed personnel of the Mississippi Department of Health's Division of Water Supply; and,
- analyzed the district's records and financial information.

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# Background

## History and Description of the District

In 1956, the Pearl River Industrial Commission, as defined in MISS. CODE ANN. Section 51-9-5 et seq. (1972), was authorized to:

*... (survey) the region bordering the Pearl River, to investigate the possibilities of developing such areas from an industrial, irrigational, and recreational standpoint, to attract new industries, and to conserve available water for irrigational and industrial purposes.*

As directed in statute, the commission conducted a preliminary study to determine the feasibility of constructing a dam and reservoir in the basin of the Pearl River.

**Hinds, Madison, Rankin, Scott, and Leake counties opted to become members of the Pearl River Valley Water Supply District.**

Following the study, the commission, acting under the legislative mandate of MISS. CODE ANN. Section 51-9-109 through 51-9-119 (1972), petitioned the Chancery Court for the First Judicial District of Hinds County to organize and establish the district in accordance with the provisions of Chapter 197, *Laws of 1958*. This process was part of a comprehensive plan established by the Legislature for determining whether a need existed for creating a district and empowering such to acquire the necessary land to establish the reservoir. The court, after giving notice and joining as parties the State Board of Water Commissioners and the boards of supervisors within the proposed district, as required by statute, heard evidence of the feasibility of the project and the public necessity for the project. Following a finding of public necessity, the court then ordered elections in each county within the proposed district to allow the electorate the opportunity to approve or disapprove membership in the district. Ultimately, the counties of Hinds, Madison, Rankin, Scott, and Leake opted to become members of the district. Thereby, the district was created in accordance with law.

**The reservoir is 45 miles long, 3.5 miles wide at its broadest point, and includes 105 miles of shoreline.**

Following its creation, the district was empowered to impound the river and acquire land through negotiation or condemnation necessary to carry out the legislative purposes set out in the above-cited act.

Completed in 1965, the forty-five-mile-long Ross Barnett Reservoir widens to 3.5 miles at its broadest point and includes 105 miles of shoreline. The district's project area is defined as the physical location of the reservoir, dam,

and related facilities and includes an area within one mile from the shoreline of the reservoir at high water. Exhibit 1, page 5, shows a map of the district and the reservoir.

Currently the district provides a variety of services to residents of the district, the City of Jackson, and the general public, such as:

- provides a water supply for the City of Jackson and to district residents;
- maintains the reservoir dam and monitors water quality;
- provides law enforcement patrol of the reservoir and its facilities;
- cooperates with other agencies to provide flood mitigation;
- manages over 12,400 acres of forest lands;
- leases reservoir property for residential and commercial development; and,
- provides recreational opportunities.

## Composition of Board of Directors

A board of directors approves plans and projects for the Pearl River Valley Water Supply District. (See Exhibit 2, page 6, for a list of the current members of the district's board, their representation, and date of appointment.)

**The district's board members represent the five counties that the district serves and four state agencies.**

The board members represent the five counties that the district serves in central Mississippi and four state agencies. MISS. CODE ANN. Section 51-9-107 (1972) requires that the fourteen-member board be composed of the following:

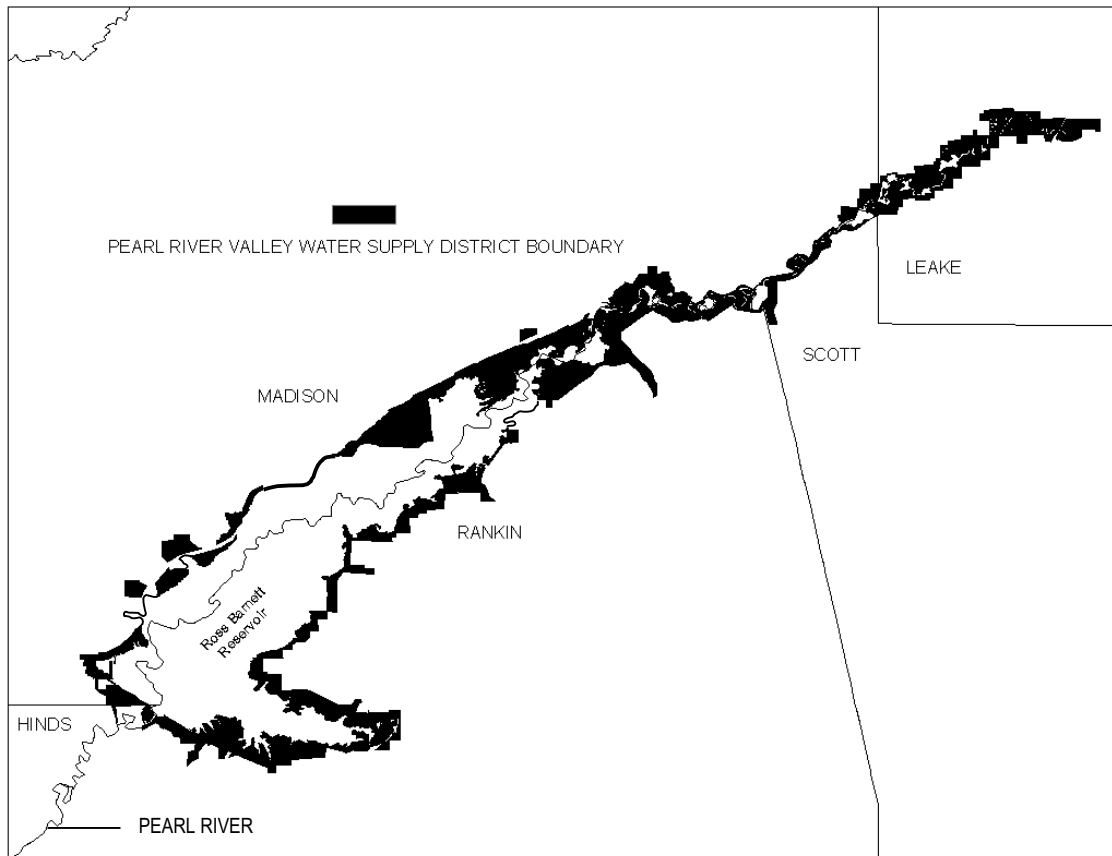
- five members appointed by district member counties' boards of supervisors (Hinds, Leake, Madison, Rankin, and Scott counties each have one member);
- four members, one from each of the following state agencies: Department of Environmental Quality; Forestry Commission; Department of Health; and Department of Wildlife, Fisheries, and Parks; and,
- five members of the Pearl River Industrial Commission, one from each of the five counties within the district.<sup>1</sup>

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<sup>1</sup> Members of the Pearl River Industrial Commission are appointed by the Governor from a list of nominees submitted by the board of supervisors of each county. According to MISS. CODE ANN. Section 51-9-1 (1972), nominees submitted by Rankin County must reside on or hold a residential lease from the district. Any member of the commission who represents a county that is a member of the district also serves on the district's board.

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## Exhibit 1: Location of Pearl River Valley Water Supply District and Ross Barnett Reservoir



SOURCE: PRVWSD

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The district's board uses a committee system to manage its business, utilizing the following primary committees:

- Shoreline Development--manages issues related to residential and commercial development on district property;
- Parks Policy--discusses issues related to the district's recreation facilities and programs;
- Audit Committee--meets quarterly to review the district's finances; also sets fees and meets with auditors regarding annual audit; and,
- Executive--manages issues related to policy and procedure of the board, staff, etc.

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**Exhibit 2: PRVSD Board of Directors (As of June 2004)**

<b>Board Member</b>	<b>Representation</b>	<b>Appointed By</b>	<b>Date of Appointment</b>
Jim Carraway	Rankin County	Board of Supervisors	April 2004
Walter Crapps	Scott County	Board of Supervisors	August 2000
Phillip Crosby	Leake County	Board of Supervisors	November 2003
Samuel Mitchell	Hinds County	Board of Supervisors	May 2004
Charles Porter	Madison County	Board of Supervisors	January 2004
Billy Cook	Pearl River Industrial Commission (Leake County)	Governor	February 2001
W. C. Gorden	Pearl River Industrial Commission (Hinds County)	Governor	February 2001
Gene McGee	Pearl River Industrial Commission (Madison County)	Governor	May 1996
Vernard Murrell	Pearl River Industrial Commission (Scott County)	Governor	May 1992
Bill Stevens	Pearl River Industrial Commission (Rankin County)	Governor	March 1992
Stephen Adcock	Department of Wildlife, Fisheries, and Parks	Executive Director (approved by Commission on Wildlife, Fisheries, and Parks)	September 2001
Charles Chisolm	Department of Environmental Quality	Commission on Environmental Quality	May 2002
James Sledge, Jr.	Forestry Commission	Forestry Commission	September 1991
Mary Kim Smith	Department of Health	Board of Health	August 1999

SOURCE: PRVSD

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Typically, issues up for approval or consideration by the board are presented to an appropriate committee for initial discussion. The committee then makes a recommendation to the full board if it sees fit to do so. All business approved in committee is presented to the full board for approval.

The Shoreline Development and Parks Policy committees handle the bulk of the work of the board and meet on a monthly basis. Other committees meet on an as-needed basis.

### Statutory Powers and Purposes

MISS. CODE ANN. Section 51-9-103 (1972) defines the legislative determination and declaration of policy for the district:

*It is hereby declared, as a matter of legislative determination, that the waterways and surface waters of the state are among its basic resources, that the overflow and surface waters of the state have not heretofore been conserved to realize their full beneficial use, that the preservation, conservation, storage, and control of such waters are necessary to insure an adequate, sanitary water supply at all times, to promote the balanced economic development of the state, and to aid in flood control, conservation and development of state forests, irrigation of lands needing irrigation, and pollution abatement. It is further determined and declared that the preservation, conservation, storage, and control of the waters of the Pearl River and its tributaries and its overflow waters for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes, for recreational uses, for flood control, timber development, irrigation, and pollution abatement are, as a matter of public policy, for the general welfare of the entire people of the state.*

Also, although not part of its original enabling legislation, the district received law enforcement authority from the Legislature in 1978 (MISS. CODE ANN. Section 51-9-175 [1972]).

The following sections provide an overview of each of these powers and purposes.

#### ***Providing a Water Supply***

**The district operates four water distribution and wastewater collection systems in Rankin and Madison counties.**

The district is responsible for managing the Ross Barnett Reservoir as a primary water supply source for the district's property and the City of Jackson. In order to ensure the viability of the reservoir as a water supply, the district maintains the reservoir dam and monitors water quality in cooperation with the Department of Environmental Quality and the Department of Health. The district operates four water distribution and wastewater collection systems in Rankin and Madison counties. The

systems include eleven water supply wells, six storage tanks, sewer lift stations and water distribution and wastewater collection lines.

### ***Managing Forestlands***

**The district has developed a comprehensive Forest Resource Management Plan that addresses management of over 12,400 acres of forested land.**

The district has a Timber Management and Marketing Agreement with the Forestry Commission, through which the commission is vested with general supervision of all forested land. (MISS. CODE ANN. Section 49-19-3 [1972] mandates that the Mississippi Forestry Commission manage all state-owned forestland.) Through a joint effort with the Forestry Commission, the district has developed a comprehensive Forest Resource Management Plan that addresses management of over 12,400 acres of forested land in Leake, Madison, Rankin, and Scott counties. In the plan, the Forestry Commission and the district considered factors such as water quality protection, wildlife enhancement, outdoor recreation, and timber production and scheduled activities designed to improve the district's forestlands.

### ***Providing Recreational Opportunities***

**The district operates six parks and five campgrounds, boat launches, fishing piers, marinas, and a system of walking and biking trails.**

The district operates eleven major recreation areas--six parks and five campgrounds--located throughout the district. Additional district recreation facilities include boat launches, fishing piers, marinas, and a system of walking and biking trails. These facilities are generally designed to complement and provide access to the reservoir, which provides recreation to users from a large service area, in addition to those residents who live and work in the immediate reservoir area.

The five campground areas--Coal Bluff, Goshen Springs, Timberlake, Leake County, and Low Head Dam--offer recreational vehicle sites providing water, electricity, and sewer service and feature amenities such as swimming pools, playgrounds, comfort stations, and laundry facilities. The district has also developed six major parks: Brown's Landing, Coal Bluff, Leake County Water Park, Lakeshore, Old Trace, and Pelahatchie Shore. These parks provide picnic tables, grills, pavilions, playground areas, boat ramps, and comfort stations.

**The district estimates that 2.5 million visitors utilize the reservoir and the district's recreational facilities each year.**

The district estimates that 2.5 million visitors utilize the reservoir and the district's recreational facilities each year. The district has developed a Recreation Master Plan to address the recreation needs of the district area and the population groups utilizing its recreation facilities. The district is using the plan to guide the growth and further development of recreation facilities.



### ***Utilizing Flood Mitigation Practices***

**The Ross Barnett Reservoir was not designed for flood control, but utilizes flood mitigation practices to reduce flooding downstream.**

Although MISS. CODE ANN. Section 51-9-121 (1972) empowers the district “to prevent or aid in the prevention of damage to person or property from the waters of the Pearl River or any of its tributaries,” the Ross Barnett Reservoir was not designed for flood control (see Conflicts Among the District’s Purposes, page 10). Therefore, PRVWSD utilizes flood mitigation practices to reduce flooding downstream from the reservoir. PRVWSD partners with the United States Army Corps of Engineers, United States Geological Service, and the National Weather Service to monitor rainfall and water levels using a computer model. The district utilizes information gathered from devices measuring rainfall and stream levels that the computer model analyzes to predict the inflow of water into the reservoir. The computer model allows PRVWSD staff to determine whether the floodgates need to be opened or closed to ensure the proper water level at the reservoir.

**The district chooses not to lower water levels significantly because of the potential effect on residential and commercial property and the negative impact on recreational uses.**

The main obstacle that limits the reservoir’s use in flood control is that the reservoir drainage area is much larger than its storage area. The reservoir is only able to store one inch of rainfall runoff before it reaches its maximum storage level. Although the district periodically lowers water levels to account for increases due to winter and spring rains, the district chooses not to lower water levels significantly because of the potential effect on residential and commercial property and the negative impact on recreational uses.

### ***Promoting Economic Development***

**The district promotes economic development within the five-county area primarily through leasing property for residential or commercial development.**

The district promotes economic development within the five-county area primarily through leasing property for residential or commercial development. To establish a continuing revenue flow after discontinuance of ad valorem taxes and to satisfy an agreement with the City of Jackson, the district began shoreline development and leasing of lands in 1964, when the district first leased land for a private yacht club and two separate marina sites. The district began leasing land for shoreline residential areas during 1965, with the first offerings being individual home lots. Until 1979 the district handled the development aspects of the leases, such as the division of parcels and installing utilities, streets, and other infrastructure. In 1979 the district began leasing tracts of land, rather than individual residential lots, to private land developers.

## ***Enforcing Laws***

**The primary function for the reservoir patrol is to provide law enforcement protection for district-operated recreation facilities.**

As noted above, although law enforcement responsibilities were not included in the creation of the district, the Legislature authorized law enforcement through the Pearl River Valley Water Supply District Reservoir Patrol Officer Law in 1978. MISS. CODE ANN. Section 51-9-175 (1972) empowers the district to appoint and commission reservoir patrol officers who must meet all educational and training requirements of the Mississippi Law Enforcement Officers' Training Academy.

Reservoir patrol officers have the authority to enforce all municipal, county, district, and state laws on the district's property. The primary function for the reservoir patrol is to provide law enforcement protection for district-operated recreation facilities, which include campgrounds, parks, boat launches, and fishing areas.

The reservoir patrol cooperates with local law enforcement agencies to provide law enforcement services on district property. On commercial and residential leased property, counties and municipalities have jurisdictional preference. However, local law enforcement agencies defer to the reservoir patrol to respond to calls for service as needed. Patrol officers are also responsible for patrolling the Ross Barnett Reservoir and work closely with the Department of Wildlife, Fisheries, and Parks to enforce boating and fishing regulations.

## **Conflicts Among the District's Purposes**

An issue that the district has faced in years since its creation is the fact that its enabling legislation (Title 51, Chapter 9 of the MISSISSIPPI CODE) lists flood control as one of its multiple purposes (see Statutory Powers and Purposes, page 7). However, engineering documents for the design and construction of the reservoir did not incorporate this directive and state that the reservoir was built for recreation and as a water supply source (two of its other statutory purposes). Thus the reservoir was not designed for flood control.

**The reservoir is only able to store one inch of rainfall runoff before it reaches its maximum storage level.**

The chief obstacle that limits the reservoir's use in flood control is that the reservoir drainage area is much larger than its storage area. The district has chosen to maintain the reservoir at 296 feet above sea level, which was the level specified in the original design. Maximum capacity for the reservoir is 300 feet above sea level. The reservoir is only able to store one inch of rainfall runoff before it reaches its maximum storage level.

Over the years, due to increased residential and commercial development and limitations with flood control capabilities, PRVWSD has focused on recreational

and water supply uses rather than flood control. Yet flood control is a factor in the district's residential, commercial, and recreational development because of how these properties are affected by the reservoir's water level. Although the district periodically lowers the reservoir's water levels to account for seasonal rains, the district chooses not to lower water levels significantly because of the potential effect on residential and commercial property, and recreational uses. Yet heavy rains can quickly flood shoreline areas because of the reservoir's limited storage capacity.

**Flood control is a factor in the district's residential, commercial, and recreational development because of how these properties are affected by the reservoir's water level.**

Because of the growth in residential and commercial development on the district's property, the reservoir area is now a highly desirable residential and commercial location in the Jackson metro area. While residential and commercial development of district property affects the amount of land available for forestlands and recreational facilities, it most significantly impacts the options available to utilize the reservoir for flood mitigation, due to the district's decision to maintain the water level at 296 feet above sea level.

## Organization and Staffing

The district accomplishes its responsibilities through an appointed General Manager who is responsible for the district's personnel. The General Manager oversees an administrative assistant and ninety-nine other employees in four divisions:

- The District Engineer Division is responsible for forest management, water and sewer operations, building inspection, spillway control tower operation, and construction and maintenance functions. The District Engineer Division staff consists of forty-three employees.
- The Parks and Recreation Division consists of parks operations and horticulture and grounds management. The division, under the supervision of the Parks Administrator, is responsible for the management of the district's recreational facilities, wildlife preservation efforts, landscaping, and general grounds beautification. This division includes thirty-seven employees.
- The Reservoir Patrol Division is in charge of law enforcement on the district's property. The division cooperates with state and local law enforcement agencies in providing law enforcement and protection services. Eleven employees make up this division.
- The Bureau of Finance and Personnel is responsible for all financial and staffing functions for the district. The division's eight employees manage the district's leases,

lease changes, water payments, and plan and manage the district's budget.

Exhibit 3, page 13, shows the current staff organization of the Pearl River Valley Water Supply District.

## Revenues and Expenditures

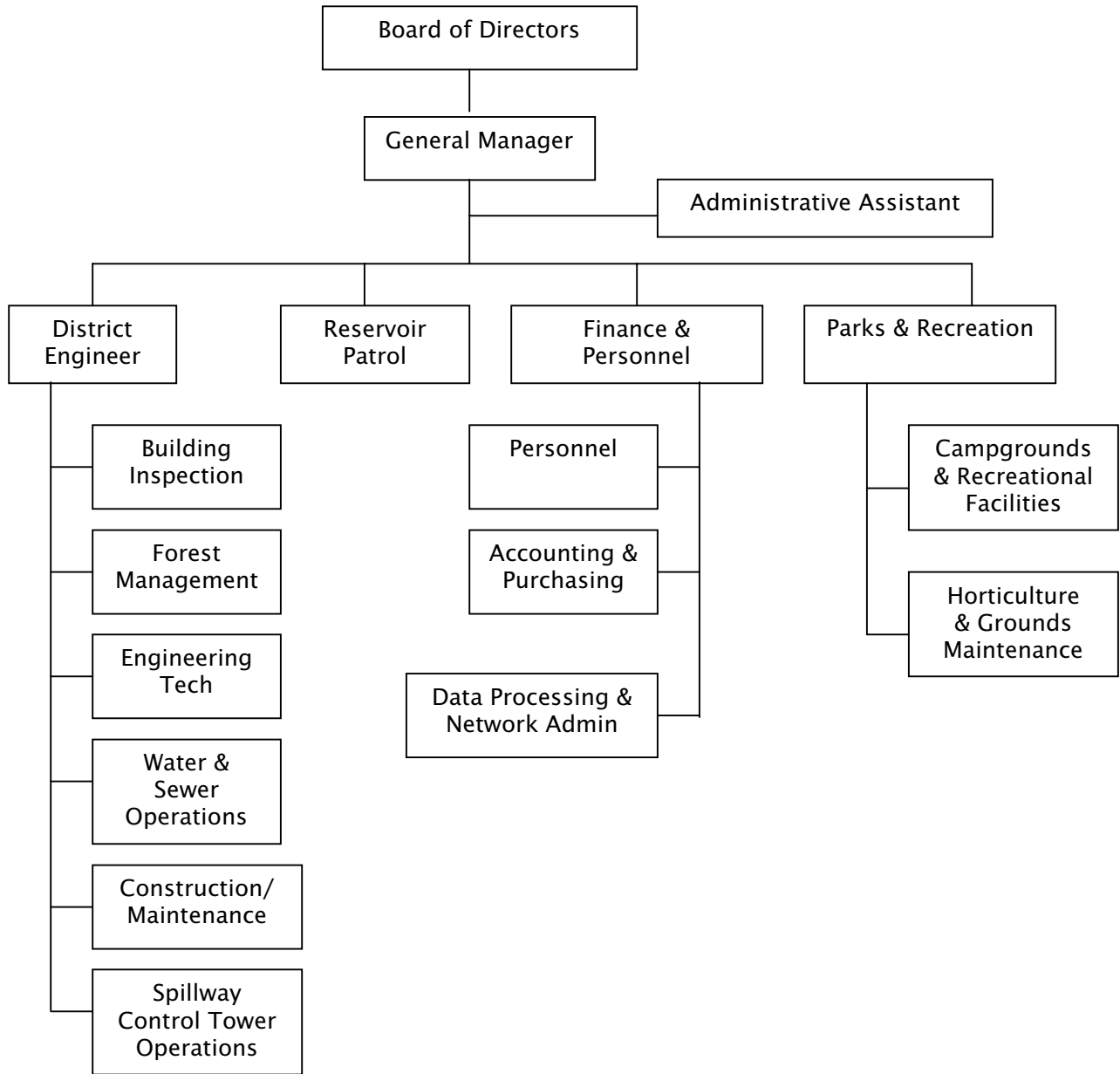
**The Pearl River Valley Water Supply District is a special fund agency that does not receive any state general funds.**

The Pearl River Valley Water Supply District is a special fund agency that does not receive any state general funds. The district's operations consist of governmental and business type operations.

The governmental operations are funded primarily through lease rentals (from residential and commercial leaseholders), campground fees, and timber sales (see Exhibit 4, page 14). The governmental operations encompass the management of the reservoir and district lands.

The district's business type operations are primarily funded through water sales and sewer charges and relate to the operation and maintenance of the water and sewer systems.

**Exhibit 3: FY 2004 Organization Chart for Pearl River Valley Water Supply District**



SOURCE: PRVWSD

**Exhibit 4: PRVWSD's Governmental Operations, FY 2000 through FY 2003: Revenues, Expenditures, and Cash Balances<sup>†</sup>**

<b>Category</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
<i>Revenues</i>				
Lease Rentals	\$2,696,504	\$2,719,677	\$2,888,810	\$2,944,382
Campground Fees	967,063	1,042,597	1,161,497	1,160,940
Other*	502,444	486,484	1,011,824 <sup>^</sup>	1,293,450 <sup>^^</sup>
<b>Total Revenues</b>	<b>\$4,166,011</b>	<b>\$4,248,758</b>	<b>\$5,062,131</b>	<b>\$5,398,772</b>
<i>Expenditures</i>				
Salaries, Wages, Fringe Benefits	\$2,103,859	\$2,171,153	\$2,329,060	\$2,561,484
Contractual Services	1,237,080	1,455,862	1,633,076	1,844,083
Other**	515,793	428,037	432,452	1,608,142 <sup>#</sup>
<b>Total Transfers and Expenditures</b>	<b>\$3,856,732</b>	<b>\$4,055,052</b>	<b>\$4,394,588</b>	<b>\$6,013,709</b>
<i>Revenues Over/(Under) Expenditures</i>	\$309,279	\$193,706	\$667,543	(\$614,937)
<i>Fiscal Year-End Cash Balance<sup># #</sup></i>	\$1,148,331	\$1,111,379	\$1,653,387	\$1,256,855

<sup>†</sup> Excludes capital projects, debt service, and interfund transfers.

\* Includes timber sales, interest on investments, building permit fees, and recording fees.

\*\* Includes travel, commodities, and equipment.

<sup>^</sup> Includes \$460,000 for land sold to Rankin County Schools for an elementary school building site.

<sup>^^</sup> Includes \$502,536 in proceeds from timber sales.

<sup>#</sup> Increase was due to equipment purchases and special projects.

<sup># #</sup> Cash balances as reported on the district's audited financial statements. Cash balance will not reconcile to the difference in revenues and expenditures due to accounting considerations.

SOURCE: PEER analysis of PRVWSD's audited financial statements.

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# The District's Accountability to Residents

The PRVWSD Board of Directors is limited in the types of services that it can provide to residents by restrictions placed by the Hinds County Chancery Court in 1985. Due to the composition of the district's board and the method by which board members are appointed, the district is insulated from addressing residents' concerns and residents have a limited voice in the board's decisionmaking processes. Also, the district does not require its divisions to report performance measurement data that could be used to set policy for the district and inform the residents of progress toward measurable goals.

As a government entity, the Pearl River Valley Water Supply District was created to provide a range of services to those counties included in the district. The district has evolved into a distinct community functioning similarly to a municipality. However, the district has not been held accountable to a constituency.

## Limits on the District's Provision of Services to Residents

*The PRVWSD Board of Directors is limited in the types of services that it can provide to residents by restrictions placed by the Hinds County Chancery Court in 1985.*

**Complainants in the case of *Hinds County v. Pearl River Valley Water Supply District* objected to the district's expenditure of public funds derived from the City of Jackson and the district's five member counties to finance services to private residents leasing property from the district.**

Operating under a final judgment issued by the Hinds County Chancery Court, the district is limited in how it can provide services to residents. Complainants in the case of *Hinds County v. Pearl River Valley Water Supply District* objected to the district's expenditure of public funds derived from the City of Jackson and the district's five member counties to finance services to private residents leasing property from the district.

At the time of the case (1982), approximately 5,000 residents were living on district property in subdivisions located in Rankin County and the district was providing a wide range of services to these residents. To fund these services, the district was subsidizing water and sewer expenses, constructing roads, providing trash collection, and providing police and fire protection services with a percentage of revenues derived from taxes collected to pay the bond debt associated with constructing the reservoir. The Hinds County Chancery Court found this practice to be in violation of MISS. CODE ANN. Section 51-9-131 (1972), requiring the district to apply the funds received from the two mill ad valorem tax levied on the district's member counties solely to pay the principal, interest, and other costs of the bonds issued.

**The court order required the district to apply the funds received from the two mill ad valorem tax levied on the district's member counties solely to pay the principal, interest, and other costs of the bonds issued to construct the reservoir.**

The final judgment in 1985 ordered the district to develop and implement an accounting and budgetary system that identified all direct and indirect costs incurred by the district in providing services to the lessees. The order also stated that the district should terminate any services to residential and commercial leaseholders unless the district had implemented a method by which it could recover and defray all costs associated with services that had been previously provided such as police and fire protection, garbage collection, and road construction. The district was directed to recover associated costs through charges or assessments to be paid by its residents, other than their ordinary annual lease payments, or from contributions from other political subdivisions, not to include proceeds from any tax levy required by MISS. CODE ANN. Section 51-9-131 or Section 51-9-139 (1972). The order prevents the district from providing services such as police and fire protection to residents at no additional cost above rental payments made by lessees to the district.

**The bonds for the construction of the reservoir were paid in 1992 and the district no longer collects tax revenue from the counties.**

The bonds for the construction of the reservoir were paid in 1992 and the district no longer collects tax revenue from Hinds, Leake, Madison, Rankin, and Scott counties. Based on these facts, the original condition that was present when the suit was filed has changed. Currently, lease payments and payments for water services are the primary sources of revenue for the district, funding all statutorily directed activities (see Statutory Powers and Purposes, page 7).

The number of residents living on district property has grown to approximately 12,000 to 15,000 people, resulting in an established community and a greater demand for services than existed in 1982. Under the current confines of the court order, the board does not have an alternative to providing services to the community other than to charge a fee for each additional service.

## **Residents' Representation on the District's Board of Directors**

***The law provides for only one district resident to serve on the PRVWSD Board of Directors.***

**Due to the composition of the PRVWSD Board of Directors, the Madison and Rankin areas (with approximately 12,000-15,000 residents) have a limited voice in the actions of the board.**

The district's property that is leased for commercial and residential development is located in Madison and Rankin counties. There are approximately 5,000 residential and commercial leaseholders located in these counties, with 12,000 to 15,000 residents living on district property. While the board has fourteen members, MISS. CODE ANN. Section 51-9-1 (1972) requires that one Rankin County appointee be a leaseholder of or reside on the district's property.



While the district's board of directors is accountable to all member counties of the district, those residents living near the reservoir are more directly affected by the decisions of the board. As a result of the district's development strategy, the district has, in effect, created a unique community functioning similarly to an incorporated municipality. However, due to the composition of the board of directors, that community has a severely limited voice in the actions of the board. There is little access to the decisionmaking process for those most affected by its outcome.

## Method of Appointing Members of the Board of Directors

*The process utilized to appoint members to the PRVWSD Board of Directors allows only limited input from residents of the district.*

As noted on page 4, MISS. CODE ANN. Section 51-9-107 (1972) requires that the fourteen members of the district's board be appointed as follows:

- five members are appointed by county boards of supervisors (one member each from Hinds, Leake, Madison, Rankin, and Scott counties);
- four members are appointed by the governing boards or executive director of the following state agencies: Department of Environmental Quality; Forestry Commission; Department of Health; and Department of Wildlife, Fisheries, and Parks; and,
- five members are the members of the Pearl River Industrial Commission that represent the five counties within the district. Members of the Pearl River Industrial Commission are appointed by the Governor from a list of nominees submitted by the board of supervisors of each county.

**Appointees who are not residents of the district may not share the same concerns about development, traffic, and safety as would individuals who reside within the boundaries of the district.**

This membership structure, while technically accountable to the appointing authorities, may not be attuned to the concerns of a growing constituency--the persons who reside at the reservoir. Appointees who are not residents of the district may not share the same concerns about development, traffic, safety, and other public concerns as would individuals who reside within the boundaries of the district.

Under the current appointment structure, a resident aggrieved by the board's actions could petition the appointed membership or their appointing authorities, but would not necessarily find among these members a sufficient number of appointees who share similar interests regarding the needs of the reservoir's residential community.

Although the district's lease payments from residents comprise a significant portion of its operating budget, the board's current structure limits the voice of residents in the district's operations and in decisions that directly affect residents' quality of life.

## Terms of Office for Board Members

*The district's board members who are appointed by county boards of supervisors do not have clearly defined terms of office. This practice does not comply with state law, which sets terms of all officers not otherwise provided for in statute at four years.*

MISS. CODE ANN. Section 51-9-107 (1972), which specifies the composition and method of appointment of the PRVWSD Board's membership, does not specify terms of office for board members. The district's practice has been that members appointed by the boards of supervisors have served at the will and pleasure of the respective board of supervisors, with no set term of office. However, this practice does not comply with the state constitution or with other provisions in the MISSISSIPPI CODE.

Section 20 of the MISSISSIPPI CONSTITUTION requires elected or appointed officials to serve for some specified period:

*No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period.*

Additionally, MISS. CODE ANN. Section 25-1-1 (1972) provides that the term of office of all officers not otherwise provided for by law shall be four years and until a successor shall be duly qualified.

**In the absence of a specified term of appointment, appointing authorities may fail to reevaluate appointees and the service they are providing to the constituency represented.**

In the absence of a specified term of appointment, appointing authorities may fail to reevaluate appointees and the service they are providing to the constituency represented. This practice could result in board members serving for extended periods without the county board of supervisors determining whether the appointee is serving in the best interest of the county. Also, under a defined term of office, members might feel freer to act independently to fulfill their duties without the prospect of arbitrary removal.

In the case of the PRVWSD Board, Hinds County appointed a board member in 1979 who continued to serve on the board until May 2004. According to minutes of the Hinds County Board of Supervisors, the board of supervisors had not brought up the board member's reappointment for consideration. By not reconsidering the board member's

appointment, an evaluation of the board member's service was never addressed by the county. It should also be noted that failing to officially reappoint the board member or reconsider the appointment prevented input of county officials that came into office due to turnover on the Hinds County Board of Supervisors over the approximately twenty-five years since initial appointment.

## Lack of Performance Measure Reporting

***The district does not require its divisions to report performance measurement data that could be used to set policy for the district and inform the residents of progress toward measurable goals.***

Although the district's staff provides reports to the board on a periodic basis to inform the board of the staff's activity and service delivery, most of the data provided to the board is descriptive and does not include analysis of how effective the district is in providing programs and services. For example, the Reservoir Patrol Division submits a monthly activity report to the board that includes a summary of general activity, the number of houseboat inspections, a list of crimes reported, and a list of tickets issued by patrol officers. These reports do not provide any analysis of increases or decreases in activity, arrests, citations, or inspections over a given period, nor do they measure the level of patrol activity compared to the previous year or quarter.

**By requiring the staff to utilize data collected related to water service, lease management, and reservoir patrol, the district could measure how effectively it is providing services to customers and residents.**

The exception to this type of reporting is a recent document prepared by the district's Parks and Recreation Division. For Fiscal Year 2004, the division completed a comprehensive performance report to the board addressing campground user fee revenues, campground occupancy levels, and user survey data. The report provides analysis of collected data, tracking revenues and occupancy over time and in comparison to performance in previous years. This type of analysis could be useful in evaluating the use of district recreational facilities and in determining where needs for expanded service exist, as well as what facilities and programs are not being utilized. The survey data analyzed by staff also expresses to the board the priorities and interests of facility users.

Performance measurement of a program should be based on the relationship between program inputs, outputs, efficiency, and effectiveness. Program success is delivering enough output of service at a sufficient level of quality, with quality defined as responsiveness, timeliness, service availability, customer satisfaction, and absence of error. Program performance measures should demonstrate what the service outputs are, what the expected quality levels are for these outputs, and what productivity is expected from expended staff resources and dollars. Well-designed performance measures would

also show whether continuous improvement is being made in terms of efficiency and effectiveness.

Although the district currently submits performance indicators and measures to the Legislature as part of the budget request process, the staff's periodic reports to the district's board do not address many of these measures. By requiring the staff to utilize data collected related to water service, lease management, and reservoir patrol, the district could measure how effectively it is providing services to customers and residents. If the staff provided the board with reports including analysis of the activity observed over a specified period, the board could become aware of how effectively and efficiently the district's business is being managed. Reports of district performance could also be useful in communicating with residents and customers on specific service areas. Providing performance information to the board and making that information available to the public would enhance the district's relationship with residents.

Board members and district management should seek to use staff time and the district's funds as efficiently as possible to provide high quality services at reasonable costs. Utilizing performance measurement data would help the district's board members and staff make better decisions. It would also enable board members to know where the district is headed and when it has reached its goals.

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# Limited Review of the District's Expenditures

The PRVWSD Board of Directors has not exercised prudent stewardship of public funds because it:

- has approved expenditures of the district's funds for items that may not benefit the entire district or the public;
- has not fulfilled its responsibility as an employer to address the taxability of an employee's fringe benefits; and,
- does not have a policy limiting how often board members may be paid per diem and for what purposes.

To evaluate the district's use of its resources, PEER conducted a limited review of the district's expenditures for FY 2003 and FY 2004 (through April 2004), including renovations of district-owned residences, board members' per diem and travel, staff members' travel, and the General Manager's compensation.

PEER found that the district's board has approved expenditures for items that may not benefit the entire district or the public (e.g., at least \$3,700 in unnecessary travel expenditures), has not properly addressed the taxability of one employee's benefits, and has not issued a policy regarding how often the board and its committees will meet and for what purposes.

## Recent Renovations of the General Manager's District-Owned Residence

***Recent renovations of the General Manager's district-owned house included \$12,200 for ceramic and porcelain tile. The district also spent \$925 for landscaping and household items such as flower pots and a tape measure.***

According to district officials, the General Manager's district-owned residence had not been renovated from the time of its construction in 1981 until FY 2002. Although PEER did not review FY 2002 renovation expenditures, during FY 2003 and through April of FY 2004, the district spent approximately \$31,000 on renovations of the General Manager's district-owned residence. The recent renovation included paint, fixtures, mirrors, electrical supplies, floor surface kits, air conditioning, plumbing, and ceramic and porcelain tile.

The district obtained two bids for the tile. One bid was \$12,200 and the second bid was \$13,627. A building consultant hired by the district to review the tile purchase described the tile chosen by the General Manager as "rather pricey" and suggested obtaining additional bids for

other tile that was available in a wide range of prices. He also suggested two other companies from which the district could obtain prices.

**When public entities renovate public property, they should ensure that renovation costs are reasonable and necessary.**

PEER attempted to contact the two companies that were suggested by the consultant to inquire about prices for comparable tile. Representatives at one of the companies were not available for comment. Representatives at the second company quoted \$6,750, including labor, for a high-quality ceramic tile for the same amount of square footage (750 square feet). However, the district chose to pay \$12,200 for ceramic and porcelain tile at a cost of approximately \$17 per square foot.

Also during this period the district spent an additional \$925 on the General Manager's residence for landscaping and household items such as flowers, flower pots, potting soil, a garden hose, a tape measure, and an outside garbage can.

PEER did not evaluate the need for renovation of the General Manager's residence. However, when public entities renovate public property, they should ensure that renovation costs are reasonable and necessary. Residents of the PRVWSD might question whether renovations that include ceramic and porcelain tile at \$17 per square foot or purchasing landscaping and household items (that should be the personal responsibility of the General Manager) constitute reasonable and necessary expenditures of public funds.

## Unnecessary Travel Expenditures

*The district could have avoided at least \$3,700 in travel expenditures by requiring the General Manager to make more economical choices regarding mode of transportation and type of lodging for district business trips.*

**Because PRVWSD does not require board members and staff to make the most economical transportation or lodging choices, the district is not following prudent financial management principles in expending public funds.**

During FY 2003 and through April of FY 2004, the General Manager made thirty-five trips related to district business. Twenty-nine of the trips were in the Jackson metro area, two trips were in-state trips, and four trips were outside of Mississippi and were related to touring projects in association with the planned Lost Rabbit development (see discussion of Lost Rabbit on pages 35 through 41). PEER reviewed PRVWSD's travel expenditures for this period and determined that the district could have avoided at least \$3,700 in travel expenditures, while making the same trips and accomplishing the same purposes, by requiring the General Manager and then-president of the PRVWSD Board to make more economical choices regarding mode of transportation and type of lodging.

## Use of Personal Vehicle for Business Travel vs. Use of District-Provided Vehicle

*Although PRVWSD provides the General Manager with a vehicle, during FY 2003 and through April of FY 2004, he frequently used his personal vehicle for out-of-state business trips, incurring approximately \$2,500 in mileage reimbursement.*

**By frequently using his personal vehicle for district business, the General Manager calls into question the need for PRVWSD to provide him with a district-owned vehicle.**

PRVWSD provides the General Manager with a vehicle to use for district business. However, during FY 2003 and through April of FY 2004, the General Manager frequently used his personal vehicle for district business, including trips to Tennessee, Florida, and North Carolina. For the period noted above, the General Manager received a total of approximately \$2,500 in mileage reimbursement from the district for approximately 7,000 miles driven in his personal vehicle. By requiring the General Manager to use the district-owned vehicle and purchasing gasoline for that vehicle, PRVWSD could have avoided approximately \$400 in travel costs. This is money that could have been used to benefit the entire district, its residents, and the public.

Reasons for public bodies to purchase an agency vehicle include providing a more economical mode of transportation and reducing wear and tear on staff members' personal vehicles. By frequently using his personal vehicle for district business, the General Manager calls into question the need for PRVWSD to provide him with a district-owned vehicle.

## Traveling in Two Personal Vehicles and Receiving Mileage Reimbursement vs. Traveling in One Vehicle

*On three occasions when both the General Manager and the district board's president made the same business trip at the same time, they traveled in two separate personal vehicles and both received mileage reimbursement.*

On the following three business trips, the General Manager and then-president of the PRVWSD Board traveled to the same location at the same time to tour projects similar to the planned Lost Rabbit development. They traveled in two personal vehicles, with both individuals receiving mileage reimbursement.

- In July 2002, both traveled to Birmingham, Alabama, and Seaside, Florida. Mileage reimbursement for the two vehicles totaled \$693.43.
- Over the Labor Day weekend in 2002, both traveled to Asheville, North Carolina. Mileage reimbursement for the two vehicles totaled \$982.21.

- From December 26, 2002, through December 31, 2002, both traveled to Tallahassee, Celebration, and Naples, Florida. Mileage reimbursement for the two vehicles totaled \$1,526.43.

If PRVWSD's Board had required the General Manager and the board's President to travel in one personal vehicle or in the district's vehicle on these trips, the district could have avoided from \$1,600 to \$1,800 in travel costs. This is money that could have been used to benefit the entire district, its residents, and the public.

## **Staying in Luxury Hotels vs. Staying in Moderately Priced Business Hotels**

*On two of these three business trips, the General Manager and then-President of the PRVWSD Board chose to stay in luxury hotels with rates far exceeding those of nationally recognized business hotel chains.*

While in Asheville, North Carolina, over Labor Day weekend in 2002, the General Manager and then-President of the PRVWSD Board stayed at the Inn on Biltmore Estate. The total bill for the two rooms for two nights was \$1,483.25, an average of \$370.81 per room per night. For a comparable period, nationally recognized business hotel chains in Asheville offered rooms ranging in price from \$109.89 to \$132.09, including tax.

**By staying in more moderately priced business hotels, the district could have avoided at least \$1,700 in lodging expenditures for these two trips.**

While in Naples, Florida, over the Christmas/New Year's Day holiday in 2002, the General Manager and then-President of the PRVWSD Board stayed at The Inn on Fifth. The total bill for the two rooms for two nights was \$1,308.00, an average of \$327.00 per room per night. For a comparable period, nationally recognized business hotel chains in Naples offered rooms ranging in price from \$103.77 to \$140.61.

By staying in more moderately priced business hotels, the district could have avoided at least \$1,700 in lodging expenditures for these two trips. This is money that could have been used to benefit the entire district, its residents, and the public.

## **Conclusion on Unnecessary Travel Expenditures**

The situations listed above are not illegal. However, because PRVWSD does not require board members and staff to use the most economical mode of transportation or to choose moderately priced lodging when traveling for business purposes, the district is not following prudent financial management principles in expending public funds.



By making more prudent choices for travel in the above examples, the district could have saved at least \$3,700 in travel expenditures while accomplishing the same purposes. These travel expenditures represent funds derived from residents' lease payments to the district. These funds could have been better expended on district projects that would benefit the entire district, its residents, and the public.

## The Board's Failure to Fulfill Its Responsibility as an Employer Regarding Taxability of Employee Benefits

*PRVWSD's Board of Directors has not properly addressed the taxability of the General Manager's district-provided housing and vehicle. As a result, based on PEER's interpretation of the Internal Revenue Code and Treasury regulations, the General Manager could be liable for unpaid taxes on unreported income and the district's board and the General Manager could be subject to interest and penalties.*

As part of the evaluation of the district's use of its resources, PEER reviewed the compensation package that the Pearl River Valley Water Supply District provides to its General Manager.

The PRVWSD's General Manager's estimated FY 2005 compensation package totals approximately \$136,228.

The district provides its General Manager with a compensation package that includes use of a district-owned house (including recent renovations), vehicle, and utilities (including telephone, electricity, natural gas, garbage service, and lawn care). The PRVWSD's General Manager's estimated FY 2005 compensation package totals approximately \$136,228, as shown in Exhibit 5, page 26.

## The District's Provision of Housing and a Vehicle to the General Manager

### *Housing*

In April 1980, the PRVWSD board began requiring that the General Manager live in the district's residence in order to be more readily available.

As shown in Exhibit 5, page 26, PRVWSD's compensation package for the district's General Manager includes a residence. The district provides a house for the General Manager because, after the flood of 1979, the district's board thought that it would be prudent to have the General Manager living in closer proximity to the district's headquarters at the reservoir. Thus on April 11, 1980, the PRVWSD board entered into its minutes that the General Manager was to be required to live in the district's residence in order to be more readily available.

In addition to enabling the General Manager to be more readily available, by providing this housing the district's board provides a benefit that could serve as an incentive in

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**Exhibit 5: Estimated Value of PRVWSD General Manager's FY 2005 Compensation Package**

<b>Item</b>	<b>FY 2005 Value</b>
Salary <sup>®</sup>	\$98,278
Housing*	24,000
Vehicle**	5,350
Utilities***	5,000
Lawn Care	3,600
<b>Total</b>	<b>\$136,228</b>

<sup>®</sup>This salary amount does not include fringe benefits paid by the employer, such as retirement, FICA, or health insurance.

\* According to PRVWSD officials, the General Manager's residence was constructed in 1981, has approximately 2,800 square feet, and is insured for \$275,000. PEER computed housing value based on estimated rental value as determined by reservoir area realtors for houses of similar size and age located in the reservoir area. Area realtors estimated the fair rental value to be \$2,000 monthly.

\*\* PEER computed vehicle value based on annual lease value as determined by using Internal Revenue Service Publication 15-B based on the vehicle's state contract price. The district provides the General Manager with a 2001 Ford Crown Victoria.

\*\*\*PEER computed the value of the General Manager's FY 2005 utilities by averaging actual FY 2003 expenses and annualized FY 2004 expenses for telephone service, electricity, natural gas, and waste management charges.

SOURCE: PEER analysis of PRVWSD information and PEER research.

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retaining the present General Manager or in recruiting individuals for that position in the future should the need arise. The financial benefit to the General Manager is significant, being approximately \$24,000 in FY 2005 as explained in Exhibit 5, page 26.

### ***Vehicle***

As noted in Exhibit 5, page 26, the district also provides the General Manager with a 2001 Ford Crown Victoria automobile for business use. As explained in the exhibit, PEER estimates the annual financial benefit of the vehicle to the General Manager for FY 2005 to be \$5,350.

## The District's Tax-Related Responsibilities as an Employer

Because the district provides housing and a vehicle to the General Manager and these constitute a financial benefit to that individual, as an employer it is the district's responsibility to either (a) ensure that the housing and vehicle meet requirements of the Internal Revenue Code as excludable from taxation in order for their value to be excludable from the General Manager's taxable income; or (b) report the value of the housing and vehicle annually as income and withhold taxes on that amount. However, the district has done neither.

It is the General Manager's responsibility as an employee to know whether his benefits are taxable and whether sufficient taxes have been withheld.

## Criteria for Exclusion of Employer-Provided Housing and Vehicle from Taxable Income

### *Housing*

Concerning the exclusion of employer-provided housing from taxation, 26 USC Section 119 and Treasury Regulation Section 1.119 state:

*The value of lodging furnished to an employee by the employer shall be excluded from the employee's gross income if three tests are met:*

- 1. The lodging is furnished on the **business premises of the employer,***
- 2. The lodging is furnished **for the convenience of the employer,***
- 3. The employee is required to accept such lodging **as a condition of his employment.***

***[PEER emphasis added]***

Regarding the definitions of the above terms, IRS Publication 15-B states that lodging furnished on the **business premises** means the employee's place of work.

**Section 119 of the Internal Revenue Code requires that all three housing tests be satisfied in order for employer-provided housing to be non-taxable.**

Publication 15-B also states that lodging **for the convenience of the employer** is satisfied if the lodging is provided for a substantial business reason other than to provide the employee with additional benefits. **Condition of employment** is defined by Section 119 of 26 USC to mean that the employee is required to accept the lodging in order to enable the employee to properly perform the duties of employment.

26 USC Section 119 also requires that all three housing tests be satisfied in order for employer-provided housing to be non-taxable. Otherwise, such lodging is subject to employment taxes and must be reported as income on Form W-2.

## ***Vehicle***

**Examples of qualified non-personal use vehicles (i.e., that are not taxable) include clearly marked police and fire vehicles, ambulances, and school buses.**

Treasury Regulation Section 1.61-21 sets conditions under which employer-provided vehicles are a taxable fringe benefit. Concerning the exclusion of employer-provided vehicles from taxation, IRS Publication 15-B notes that *qualified* non-personal use vehicles are not taxable. Qualified non-personal use vehicles are vehicles that are not likely to be used more than minimally for personal purposes because of their design. Examples of qualified non-personal use vehicles include clearly marked police and fire vehicles, ambulances, and school buses.

If *not* a qualified non-personal use vehicle, the fair market value of the vehicle is taxable. IRS Publication 15-B lists three potential methods for determining the amount taxable for employer-provided vehicles:

- cents per mile rule;
- commuting rule; and,
- annual lease value.

To be able to utilize the **cents per mile** rule in determining the taxable amount, the vehicle in question must have a fair market value of less than \$15,400. Under the **commuting** rule, the value of the vehicle is determined by multiplying each one-way commute by \$1.50. Under the **annual lease value** rule, the taxable amount is the vehicle's annual lease value less the portion of the vehicle's use that was related to business use of the vehicle.

The value of vehicles that are not "qualified non-personal vehicles" should be reported by the employer as taxable income.

## The District's Failure to Comply with Laws Regarding Taxability of Certain Benefits

### *Housing*

*Based on PEER's interpretation of Internal Revenue Code provisions and Treasury regulations, the housing that PRVWSD provides to the General Manager does not meet the tests set forth in 26 USC Section 119 to qualify as non-taxable housing.*

As noted on page 27, all three tests cited from 26 USC Section 119 above must be properly satisfied for lodging provided to an employee to be excluded from income reported to the IRS. Otherwise, such lodging is subject to employment taxes and must be reported on Form W-2. As shown below, PEER does not believe that the housing that the district provides to the General Manager meets the business premises test necessary to qualify for exclusion from taxability.

- *PEER does not believe that the General Manager's district-provided housing meets the legal requirements for "on the business premises."*

To be on the business premises, the residence must:

- constitute an integral part of the business property. See *Bob Jones University*, infra at 670 F. 2d. 176;
- be where the employee performs a significant portion of his duties. See *Adams v. United States*, infra; and,
- be where the employer carries on a substantial portion of its business activities. See *United States Junior Chamber of Commerce v. United States*, 334 F. 2d 660 (Ct. Cl, 1964).

PEER contends that the General Manager's residence does not meet the "on the business premises" test because the manager does not carry out a substantial portion of the employer's business at the residence. Additionally, having an office in the residence or occasionally performing district business in the residence would not cause the residence to be considered the General Manager's place of work.

In contrast, the district also provides housing to the managers of the Timberlake Campground and the Goshen Springs Campground in Rankin County, Coal Bluff in Scott County, and Leake County Campground in Leake County. These managers' residences are located on the business premises

(the campgrounds) and therefore meet the “on the business premises” test, as the personnel carry out a substantial portion of their work at these sites.

- *Whether the General Manager’s district-provided housing meets the tests of being provided **at the convenience of the employer and as a condition of employment** is debatable.*

These two tests are essentially the same and are satisfied if the employee is required to accept the housing in order to enable him properly to perform the duties of his employment. (See IRS Rev. Rul 68-354, 1968-2 CB, 80.)

While the district’s board requires the General Manager to live at the district-provided residence (as noted on page 25), it is possible that the IRS could question whether the housing is provided “for the convenience of the employer.” According to 26 USC Section 119, housing provided “for the convenience of the employer” means that the lodging is provided for a substantial business reason other than to provide the employee with additional benefits.

As noted above in the discussion of the business premises test, PEER has no basis to doubt that the provision of housing to campground managers qualifies under 26 USC Section 119 as being excludable from income. Here again, it is clear that the campground employees are required to live on the grounds and the convenience of the employer and that they must be available at the campground to oversee the operations of the campgrounds and to address any emergencies that might arise there.

As noted above, 26 USC Section 119 requires that all three housing tests be satisfied in order for employer-provided housing to be non-taxable. PEER contends that the facts and circumstances associated with the district-provided housing do not satisfy the business premises test. Thus, based on PEER’s analysis, the General Manager’s district-provided housing could be taxable and should have been reported to the IRS as taxable income. The district did not do so.

An attorney representing the General Manager has offered a defense to PEER’s conclusion regarding the taxability of the General Manager’s district-provided housing and vehicle. (See the Appendix to this report, page 45, for the argument of the General Manager’s attorney and PEER’s legal analysis of the argument.) In his defense against PEER’s conclusion that the value of his district-provided housing is taxable, the General Manager’s attorney notes

that the residence meets the housing tests of 26 USC Section 119 in part because the General Manager's residence "is designed as a command and control center for PRVWSD the on the [sic] Rankin County side of the reservoir and is equipped with specialized equipment necessary for the Manager to fulfill his duties." As discussed in the Appendix (page 45), PEER could find no evidence that the house functions or was ever intended to function as a command and control facility for the reservoir and thus fails to meet the tests for being on the employer's premises.

*Because PEER believes that the value of the housing the district has provided to the General Manager is taxable and the district has not reported this amount as income or withheld taxes on this amount, the General Manager could be liable for unpaid taxes on unreported income and the district and General Manager could be subject to interest and penalties.*

PEER believes that the housing that the district provides to the General Manager does not meet requirements of the Internal Revenue Code as non-taxable housing. The district has not treated the General Manager's housing as taxable income for the last eleven years and therefore has not withheld taxes from his compensation on this amount. Thus the district has exposed itself and the General Manager to possible tax liability.

**PEER estimates the value of the General Manager's housing for 2002 through 2004 to be \$68,000.**

The Internal Revenue Service could determine that the district is subject to interest and penalties for not withholding and remitting taxes on the General Manager's housing benefit on a timely basis. The IRS could also find the General Manager liable for federal and state taxes on the value of the district-provided housing for the current year and previous years, as well as interest and penalties. Due to the unknown amount of taxes involved, the varying annual interest rates, and the complicated methods used by the Internal Revenue Service for calculating penalties, PEER cannot venture a reasonable estimate of the amount of interest and penalties that could be assessed by the IRS and the State Tax Commission against the district and the General Manager. However, based on local realtors' estimates, the fair market rental value of the General's Manager's district-provided housing since he began employment with the district in August 1993 until the end of FY 2004 is approximately \$190,000. Absent of fraud, the IRS may assess taxes within three years of the date a return is filed. Under this statute of limitations, PEER estimates the value of the housing for 2002 through 2004 to be \$68,000.

In addition to income taxes, the General Manager and PRVWSD could be liable for Social Security taxes at a 6.2% tax rate and Medicare taxes at a 1.45% tax rate on the value of previous years' housing. Because the General Manager's salary exceeds the 2004 annual Social Security wage base

of \$87,000, the General Manager and PRVWSD would only be liable for the Medicare taxes for the value of the housing in 2004.

PEER notes that the matters discussed above constitute a reasoned analysis of the possible tax liability of the district and General Manager. Ultimately, determinations of liability are within the authority of the judiciary.

### **Vehicle**

*Based on PEER's interpretation of Internal Revenue Code provisions and Treasury regulations (specifically, Treasury Regulation 1.61-21), the vehicle that PRVWSD provides to the General Manager does not qualify as a non-personal use vehicle and would be a taxable fringe benefit under the Internal Revenue Code.*

As noted previously, the General Manager has received the benefit of a district-owned vehicle since August 1993 through his position with the district. Under Treasury regulations, this benefit must meet certain criteria in order to be excluded from the individual's taxable income.

The IRS requires that for the value of a publicly owned vehicle not to be taxable, the vehicle must be a qualified non-personal use vehicle. The General Manager's district-owned vehicle is a 2001 Ford Crown Victoria sedan with only the minimum identifying markings required by law and therefore does not fall within the definition of a qualified non-personal use vehicle as stated in IRS Publication 15-B.

*Because PEER believes that the value of the vehicle the district has provided to the General Manager is taxable and the district has not reported this amount as income or withheld taxes on this amount, the General Manager could be liable for unpaid taxes on unreported income and the district and General Manager could be subject to interest and penalties.*

PEER believes that the vehicle that the district provides to the General Manager does not meet requirements of the Internal Revenue Code as being excludable from taxable income. The district has not treated the General Manager's vehicle as taxable income for the last eleven years and therefore has not withheld taxes from his compensation on this amount. Thus the district has exposed itself and the General Manager to possible tax liability.

The Internal Revenue Service could determine that the district is subject to interest and penalties for not withholding and remitting taxes on the General Manager's district-provided vehicle on a timely basis. The IRS could also find the General Manager liable for taxes on the value of the district-provided vehicle for the current year and previous years, as well as interest and penalties.



**The district has not maintained the necessary records with which to determine the taxable value of the General Manager's district-provided vehicle.**

Due to the unknown amount of taxes involved, the varying annual interest rates, and the complicated methods used by the Internal Revenue Service for calculating penalties, PEER cannot venture a reasonable estimate of the amount of interest and penalties that could be assessed by the IRS and the State Tax Commission against the district and the General Manager. This is compounded by the fact that the district has not maintained the necessary records with which to determine the taxable value of the General Manager's district-provided vehicle. (See the three potential methods for determining the amount taxable for employer-provided vehicles, page 28.)

In the case of the General Manager's district-owned vehicle, the **cents per mile** rule would not be applicable in the determination of the amount taxable because the value of the vehicle exceeds the \$15,400 ceiling established by the IRS in order for the cents per mile rule to be utilized.

Therefore, the taxable value of the vehicle would be determined by either the commuting rule or the annual lease value rule. PEER could not calculate the taxable value of the General Manager's vehicle under either of these rules because the district has not maintained the necessary records with which to calculate the taxable value. Use of the **commuting rule** would require maintaining a log of the number of the General Manager's one-way commutes and use of the **annual lease value rule** would require maintaining travel logs relating to business use of the vehicle. The district has not maintained either type of record.

In reviewing the General Manager's attorney's letter (see Appendix, page 45), PEER notes that he asserts that, at worst, the General Manager would be governed by the commuting rule requiring that an amount of \$1.50 per one-way commute be applied to the value of the automobile. The argument hinges on the allegation that the house is part of the business premises of the district. As noted previously, PEER contends that the house provided by the district to the General Manager is not on the business premises of the district and that the General Manager may be subject to taxes for the benefit of the vehicle for commuting.

In Treasury Regulation Section 1.61-21 (k), the Internal Revenue Service requires under the commuting rule that the employer establish a written policy under which the employee does not use the vehicle for personal use, other than *di minimis* use. The district does not have such a written policy.

Should the Internal Revenue Service wish to pursue this matter, it would make the determination of how to calculate the taxable amount in the absence of the necessary records.

## Lack of a Policy Addressing Board Members' Per Diem Payments

*The district's board does not have a policy addressing how often the board and committees will meet and for what purposes.*

According to MISS. CODE ANN. Section 51-9-107 (1972), members of the PRVWSD Board are to receive \$40 per day (per diem) for meetings involving the district's business. Typically, the full board meets once a month. The Shoreline Development and Parks Policy committees normally meet on a monthly basis and the Executive and Audit committees meet on an as-needed basis.

**In addition to regularly scheduled and special called meetings, members of the district's board have made frequent visits to the district's office or property for which they have been paid per diem.**

In addition to regularly scheduled and special called meetings, members of the district's board have made frequent visits to the district's office or property for which they have been paid per diem. During FY 2003 and through April of FY 2004, PRVWSD paid the fourteen board members a total of \$37,400 in per diem. Within this amount, two board members (the former President and current President of the board) received \$16,080 in per diem, or 43% of total per diem payments. Each of these two board members averaged nine "meetings" per month during this period, with monthly per diem payments averaging \$360. These figures do not include mileage reimbursement to attend meetings.

**During FY 2003 and through April of FY 2004, two board members received a total of \$16,080 in per diem.**

The reason for this situation is that the board does not have a formal, written policy specifying the number of days board members may meet and receive per diem and mileage reimbursement. The effect is that board members have been allowed to determine the number of meetings and set their own compensation. The district has incurred costs for per diem that might not have been necessary, expending residents' funds that could have been used to benefit the district's residents and the public.

**The district has incurred costs for per diem that might not have been necessary, expending residents' funds that could have been used to benefit the district's residents and the public.**

The PRVWSD Board makes legally binding decisions only when acting as a body speaking through its minutes, not through the actions of individual board members. PEER understands that the district board's president may have more detailed involvement in the affairs of the district than do other board members. However, a board of directors functions in a policymaking capacity and is not meant to be involved in day-to-day management activity. The frequency of meetings by board presidents suggests that their involvement in district affairs is on a daily basis. While the board's oversight of staff is a proper, advisable board activity, it should be conducted through regular board meetings and not through ad hoc visits by individual board members. As the agent of the board, the district's General Manager should be responsible for day-to-day management of staff and district operations.

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# The District's Process for Developing the Lost Rabbit Property

The PRVWSD Board of Directors' lack of a policy restricting consultants from participating in or competing for development contracts creates an appearance that the process by which persons and firms compete for development contracts is not open and competitive.

## Initial Attempts to Develop Lost Rabbit Property

*After PRVWSD unsuccessfully attempted to develop the Lost Rabbit property as an Executive Learning Center, the board hired a consultant to acquire additional information regarding the proposed project and to meet with local college representatives regarding their potential involvement in developing the property as an Executive Learning Center.*

Lost Rabbit includes approximately 260 acres located on the western shore of the reservoir in Madison County.

The Lost Rabbit property, approximately 260 acres located on the western shore of the reservoir in Madison County, is one of the few remaining large tracts of undeveloped district land near the Jackson metro area. In 1986, the PRVWSD Board decided to develop the property as an Executive Learning Center.

After unsuccessfully attempting to locate a developer for the property as an Executive Learning Center, the board decided to hire a consultant to acquire specific information regarding the development of the property (see page 36).

## Pursuing Development of Lost Rabbit as a Traditional Neighborhood Development

*The district abandoned its initial development plan and pursued development of the property as a traditional neighborhood development.*

Because a developer was not located for the property as an Executive Learning Center, the PRVWSD Board and staff began to discuss the concept of making Lost Rabbit a traditional neighborhood development. A traditional neighborhood development (TND), a community with a diverse range of housing and jobs, generally includes an interconnected network of streets and blocks, a neighborhood center, a mix of uses and housing types, and a compact form of pedestrian-oriented design with an emphasis on quality civic spaces.

The General Manager presented the concept of the traditional neighborhood development to the Shoreline Development Committee and the board and described what was being done in traditional neighborhood developments such as Seaside, Florida, and Mt. Laurel, Alabama. The committee and board approved the concept and decided to proceed with developing the property as a traditional neighborhood development. Members of the board and staff traveled to traditional neighborhood developments in Florida, Alabama, and North Carolina to research the design and development concept.

## Chronology of Events

Exhibit 6, page 37, contains a timeline of the events surrounding the hiring of the district's consultant and the awarding of the contract to a firm to develop the Lost Rabbit property as a traditional neighborhood development.

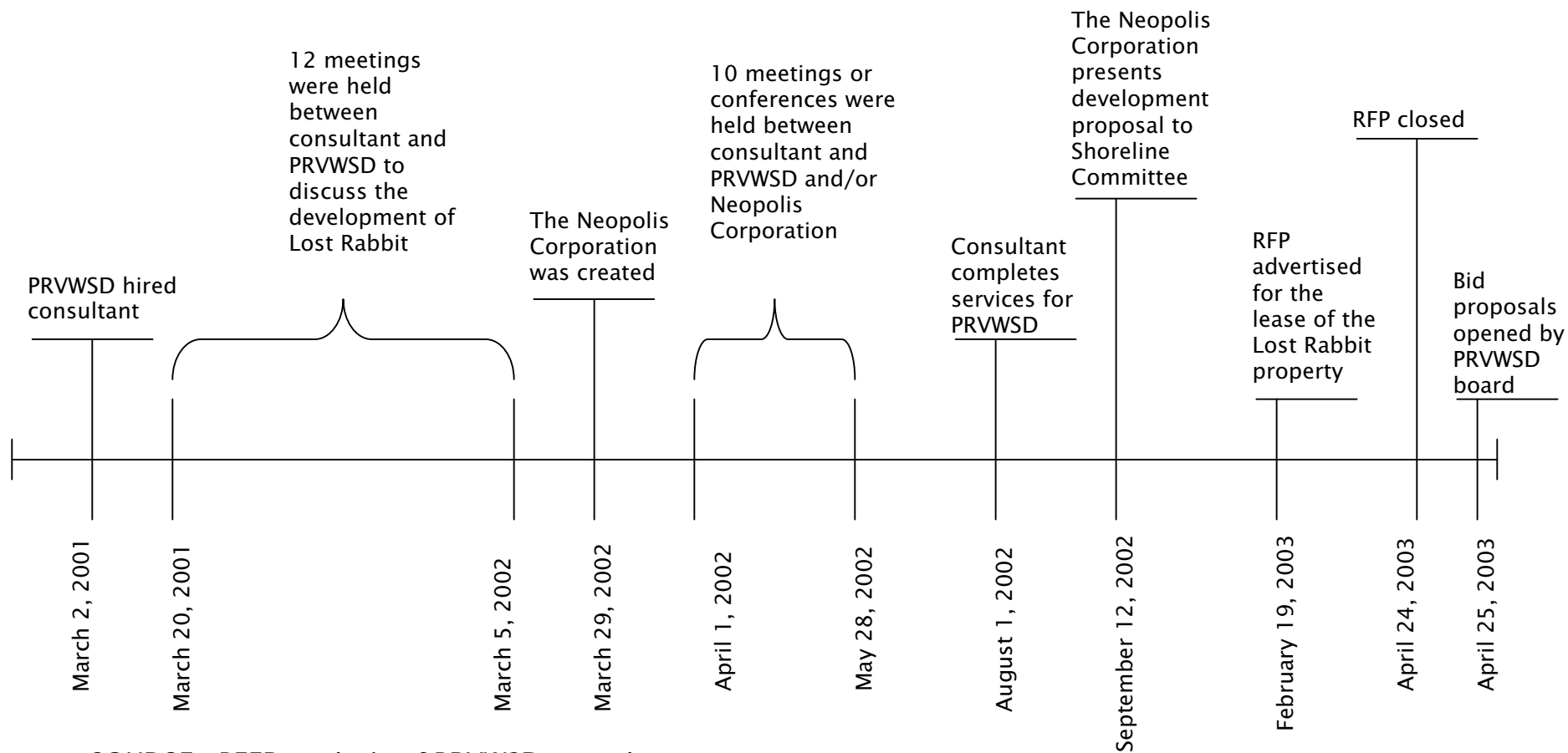
The district hired a consultant to acquire information on behalf of the district in order to assist the district in locating a developer for the property in March 2001. The district paid the consultant a total of \$6,891 for his services in assisting the district in finding a developer for the Lost Rabbit property.

The district did not secure a potential developer for the property as an Executive Learning Center between March 2001 and February 2002, prior to the board's decision to change its vision for the development of the Lost Rabbit property. In February 2002, through an informal conversation between the consultant and a local utility infrastructure investor and developer who was considering possible locations for a traditional neighborhood development, the idea of developing Lost Rabbit as a TND began to evolve. Following the consultant's conversations with the developer regarding the Lost Rabbit property, the consultant introduced the developer to PRVWSD's staff. The developer then presented the traditional neighborhood development concept to the district's staff and the board for consideration.

In March 2002, the developer, introduced to the district's staff as being interested in developing Lost Rabbit as a TND, formed the Neopolis Corporation. Beginning in April 2002, the consultant coordinated and facilitated meetings between the district staff and representatives of The Neopolis Corporation.

In a letter dated August 1, 2002, the consultant notified the district that the need for his services had concluded and submitted a final billing statement for services rendered. At this time the consultant also notified the district that The Neopolis Corporation had "requested his

**Exhibit 6: Timeline of Events Regarding Hiring of Consultant and Awarding of Contract to The Neopolis Corporation for Development of the Lost Rabbit Property**



SOURCE: PEER analysis of PRVWSD records.

services in connection with the contemplated development at Lost Rabbit” and that he had agreed to represent the developers if the district had no objection. The district staff communicated to the consultant that the board had no objection.

In February 2003, the district advertised the request for proposals for the lease of the Lost Rabbit property.

In April 2003 the Neopolis Corporation created Lost Rabbit Development, LLC, for the purpose of developing the Lost Rabbit property. The Neopolis Corporation held 100 percent ownership of Lost Rabbit Development, LLC, at the time it was created and when the bid proposal was submitted to PRVWSD. In documents submitted to the PRVWSD Board of Directors for consideration with Lost Rabbit Development’s proposal for lease of the Lost Rabbit property, the consultant is listed as a 20.315% owner of The Neopolis Corporation, which wholly owned Lost Rabbit Development, LLC, at the time the bid proposal was submitted.

In a letter to PEER, the board’s president stated that he was not aware of the consultant’s ownership interest in The Neopolis Corporation and Lost Rabbit Development, LLC, prior to the submittal of the bid proposal.

The request for proposals (RFP) was published on February 19, 2003, and closed on April 24, 2003. The RFP was open to the public for a period of approximately nine weeks.

## The District’s Request for Proposals Process

***Because the PRVWSD board and staff considered one firm’s development proposal for the Lost Rabbit property, then wrote the RFP to incorporate the plans presented by that firm, the district’s request for proposals process was not fair to all potential developers.***

According to district staff, in most cases when the district advertises an RFP for a property lease, a developer has already approached the district regarding a specific parcel of land and proposed that the land be used for a specific commercial or residential function. Through this process, the board determines whether the proposed land use meets the board’s vision and land use requirements; if so, the board advertises the request for proposals for a sixty-day period. District staff have stated that, in many cases, once the board is receptive to a developer’s proposal, the RFP is written to incorporate the plans presented by the developer. In most cases, only the original interested developer (and, on occasion, one other developer) submits a conforming bid. Once bid(s) are submitted, the board approves the bid proposal and both parties sign a lease agreement for the property.

**By advertising the RFP and opening the bid process for only nine weeks, potential developers other than Lost Rabbit Development were significantly handicapped in submitting a conforming bid for the lease on the Lost Rabbit property.**

In the case of the Lost Rabbit development, district staff and board members had first met with the eventual developers of Lost Rabbit in February 2002. A yearlong process of planning and architectural design meetings occurred before the project was opened to bid in February 2003, during which time The Neopolis Corporation also made a presentation to the Shoreline Development Committee. By making an informal proposal to the committee, the firm was able to incorporate the district's conceptual plan for developing Lost Rabbit in the design of the proposal.

By advertising the RFP and opening the bid process for only nine weeks, potential developers other than Lost Rabbit Development were significantly handicapped in submitting a conforming bid for the lease on the Lost Rabbit property. As evidenced by the numerous meetings held between The Neopolis Corporation and the district, it is an unrealistic prospect that any other developer could have prepared and submitted a conforming bid within the nine-week period. Lost Rabbit Development was the only developer to submit a bid for the property.

**The method used by PRVWSD to select a developer and the period of time that the bid process was open in effect excluded any other firms from the process.**

PEER believes that the district's custom of meeting with a developer prior to writing an RFP, then tailoring the RFP to incorporate the plans presented by the developer, weakens the validity of the request for proposals process and gives an unfair advantage to a single firm. The intent of such a process should be to provide an opportunity for several firms to propose developments that could meet the district's needs at the highest and best use of the property. The method used by PRVWSD to select a developer and the period of time that the bid process was open in effect excluded any other firms from the process.

## **Relationship of the Consultant to the Firm Awarded the Contract**

***The consultant hired by the district became involved with The Neopolis Corporation, the firm ultimately selected by the district to develop Lost Rabbit.***

During his service as a contractor to the PRVWSD, a consultant provided services regarding the development of the Lost Rabbit property. Subsequent to his termination of his relationship with the district, the bid proposal submitted by Lost Rabbit Development, LLC, for the development of the Lost Rabbit property listed the consultant as a 20.315% owner of The Neopolis Corporation. The Neopolis Corporation held 100 percent ownership of Lost Rabbit Development, LLC, the firm that ultimately won the contract to develop Lost Rabbit. According to the consultant, he acquired ownership interest in The Neopolis Corporation in March 2003, seven

months after completing his services as a contractor for the PRVWSD in August 2002.

**While PEER has no evidence that he used information obtained while working for the district to assist Neopolis in the preparation of its proposal, the possibility exists that such could occur.**

While PEER has no evidence that he used information obtained while working for the district to assist Neopolis in the preparation of its proposal, the possibility exists that such could occur. As discussed in the following section, the PRVWSD Board did not have a policy in place that would require that the district's contractors disclose any interests they might have in development firms or that they not become interested in any firm that might subsequently bid on matters that were the subjects of the contractor's work at PRVWSD.

## Lack of a "Revolving Door" Policy

***The board's lack of a "revolving door" policy creates an appearance that the district's process of contractor selection is not open and competitive.***

"Revolving door" policies protect the interests of the agency and the public at large by providing assurances that persons will not leave the service of a public entity and take valuable inside information on the needs and expectations of an agency to a private firm, thereby giving that firm an advantage over competitors.

In Mississippi, state law would clearly bar public officers or employees from certain post-employment or service activities that would create advantage for a new employer. MISS. CODE ANN. Section 25-4-105 (3) (e) (1972) provides:

*(3) No public servant shall. . .*

*(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.*

Further, Section 25-4-105 (5) also places restrictions on persons who are employees of public bodies. This subsection provides:

*(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if*



*the information has not been communicated to the public or is not public information.*

These provisions make clear the state's policy that its officers or employees may not use information they obtain in the course of working on particular matters in public service in private employment after conclusion of their public service.

**To safeguard against appearances of impropriety, public agencies should establish policies that safeguard the integrity of processes by which public entities do business with the general public.**

PEER notes that the consultant was a contractor whose activities fall outside the scope of these provisions. But while the activities of the consultant are not within the scope of the above-cited provisions, the activities of a contractor could also raise concerns about the openness and competitiveness of processes just as could the activities of an employee or officer.

To safeguard against appearances of impropriety, public agencies should establish policies that safeguard the integrity of processes by which public entities do business with the general public. Regarding contractors, these policies should require that consultants disclose any interests they might have in development firms and further require that contractors agree not to become interested in any firm that may subsequently bid on any matters that were the subjects of the contractor's work. Further, such entities should make clear that any contract entered into in violation of such a policy would be void.

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## Recommendations

1. In view of impending development opportunities, the PRVWSD should study its district-wide needs and report to the Legislature and the PEER Committee how it intends to improve both facilities and services used by residents of the district and the general public. Considerations should include, but should not be limited to, expanded services to residents such as garbage collection and mosquito control, improvements to recreational facilities, and other infrastructure the district would consider a prudent investment. Such report should be completed as soon as possible but no later than December 1, 2005. The Legislature should study the recommendations and suggestions in the report and consider whether to expand the district's statutory authority to direct additional expenditures in these areas. In the event that the Legislature does not consider the proposals to be prudent investments of resources, it should consider requiring that all district revenue and fund balances be deposited to the general fund of the state, and that the PRVWSD operate as a general fund agency.
2. The Mississippi Legislature should amend MISS. CODE ANN. Section 51-9-1 (1972) concerning the Pearl River Industrial Commission to require that the three names submitted by the board of supervisors to the Governor be the names of persons who reside on and are holders of residential leases from PRVWSD in Madison County. This would provide additional representation for residents of the district.
3. The Pearl River Valley Water Supply District should create and utilize an advisory board comprised of district residents. The board could include representatives of homeowners' associations from neighborhoods located on district property. The advisory board could provide resident input to committees of the board of directors regarding district development and other key issues affecting residents.
4. The Legislature should amend MISS. CODE ANN. Section 51-9-107 (1972) to require that appointees of the boards of supervisors shall hold terms for four years.
5. The PRVWSD Board of Directors should require other divisions to follow the lead of the Parks and

Recreation Division by reporting measures of performance and progress toward measurable goals. Program performance measures should demonstrate what the service outputs are, what the expected quality levels are for these outputs, and what productivity is expected from expended staff resources and funds.

6. In the future, when making improvements to district-owned residences, the PRVWSD should only expend funds for fixtures.
7. The PRVWSD should review its practice of providing the General Manager with both a vehicle and reimbursement for mileage and should provide only the most economical mode of transportation.
8. The PRVWSD should immediately begin reporting to the Internal Revenue Service and the State Tax Commission all of the General Manager's taxable compensation as income and make appropriate withholdings for income tax and FICA.
9. The PRVWSD Board of Directors should adopt a policy restricting payment of per diem of board members to attending regular and special called meetings or for services rendered by individuals for activities that have been approved by the board as a whole.
10. The PRVWSD Board of Directors should refrain from working exclusively with one developer prior to public advertisement of a request for proposals for the lease of district property or from developing an RFP incorporating the proposal of a specific developer. The board should take steps including, but not limited to, openly advertising for developers or contacting multiple developers to whom the board can communicate its proposed vision for the use of a specific parcel of property. The district should advertise an RFP that is specific to the board's vision for the use of the property, but that does not favor one developer.
11. To safeguard against appearances of impropriety, the PRVWSD Board of Directors should establish a policy requiring that its consultants disclose any interests they might have in development firms and further require that contractors agree not to become interested in any firm that may subsequently bid on any matters that were the subjects of the contractor's work.



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## Appendix: Legal Analysis of the Taxability of the General Manager's Use of the District-Provided House and Vehicle

On August 31, 2004, an attorney representing the General Manager of the Pearl River Valley Water Supply District provided PEER with a document offering a defense to PEER's conclusion regarding the taxability of the General Manager's agency-provided housing and automobile. (See pages 25 through 33 of this report.)

The attorney noted that the housing was not taxable because the district required the General Manager to live on its premises, the decision to require the General Manager to live there was at the convenience of the employer, and the residence was on the premises of the employer. The attorney also noted that the vehicle would at most constitute a tax liability of the manager of \$1.50 per one-way commute for personal usage under Treasury regulations.

The first section of this appendix contains the complete argument of the General Manager's attorney in the letter to PEER dated August 31, 2004. The second section of the appendix contains PEER's legal analysis of the General Manager's position as stated in the letter.

YOUNG WILLIAMS PA.

Attorneys at Law

2000 AmSouth Plaza

Jackson, Mississippi 39201

Post Office Box 23059

Jackson, Mississippi 39225-3059

Telephone 601.948.6136

Fax 601.355.6136

www.youngwilliams.com

August 31, 2004

**VIA HAND DELIVERY**

Joint Committee on Performance  
Evaluation and Expenditure Review  
Woolfolk State Office Building  
Jackson, MS 39201

Ladies and Gentlemen:

I represent Ken Griffin, the General Manager of the *Pearl River Valley Water Supply District* ("PRVWSD"). He has asked that I comment on his behalf regarding those portions of your study of the PRVWSD dealing with the taxability of his use of PRVWSD's residence in Rankin County, Mississippi and his use of the automobile which the PRVWSD also provides in connection with his employment.

**USE OF RESIDENCE:**

The taxability of the use of the residence is governed by Section 119 of the Internal Revenue Code, 26 USCA § 119. Whether or not Mr. Griffin should pay taxes on the use of this residence is a fact based inquiry. The Internal Revenue Service ("IRS") Regulations establish the applicable tests for taxability of the use of this residence. Section 1.119-1(b) of the Regulations provides that the value of lodging furnished to an employee by an employer is excludable from the employee's gross income if three tests are met:

- (1) The lodging is furnished on the business premises of the employer;
- (2) The lodging is furnished for the convenience of the employer; and
- (3) The employ is required to accept such lodging as a condition of employment.

Treas. Reg. § 1.119-1(b).

Attached is a copy of a portion of the Minutes of the PRVWSD for April 11, 1980. The relevant portion of those Minutes is as follows:

- Erin S. Christ
- J. Wesley Daughdrill, Jr.
- Sean Wesley Ellis
- Stephen E. Gardner
- Don H. Goode
- Paul B. Henderson
- Robert L. Holladay, Jr.
- Jay M. Kilpatrick
- John Sanford McDavid
- Lisa Binder Milner
- James H. Neeld, III
- James H. Neeld, IV
- Robert E. Sanders
- Robert L. Wells
- E. Stephen Williams
- James Leon Young

J. Will Young,  
1906-1996

Tony Carlisle,  
Administrator

August 31, 2004

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“Mr. Brown, reporting for the Executive Committee which met earlier this morning, stated that because of several recent emergencies, such as floods, bomb threat, etc., the Executive Committee recommended that the Board proceed to construct a Manager’s residence on a site retained by the PRVWSD some years ago for a purpose such as this. A motion was introduced by Mr. Walker, seconded by Mr. Howell, that authority be granted to proceed to construct a Manager’s residence as recommended, and hereafter, **provide that residence therein be made a requirement of the Manager’s position, in order that he may be more readily available at all times.**”

The IRS discussed two of these three requirements in an Information Letter issued December 29, 2000. The Information Letter along with a statement of the purpose of an IRS Information Letter is enclosed. The letter states that:

“Section 1.119-1(b) of the regulations provides that the value of lodging furnished to an employee by the employer is excludable from the employee's gross income if three tests are met:

- (1) The lodging is furnished on the business premises of the employer;
- (2) The lodging is furnished for the convenience of the employer; and
- (3) The employee is required to accept such lodging as a condition of employment.

With respect to the ‘convenience of the employer’ and the ‘condition of employment’ tests, the courts have held that they are essentially the same. See e.g., Bob Jones University v. United States, 670 F.2d 167 (Ct. Cl. 1982); Benninghoff v. Commissioner, 71 T.C. 216, 218 (1978), aff’d per curiam, 614 F.2d 398 (5th Cir. 1980). These tests are satisfied if the employee is required to accept the lodging in order to enable him properly to perform the duties of his employment. Lodging will be regarded as provided to enable the employee properly to perform the duties of his employment **when, for example, the lodging is furnished because the employee is required to be available for duty at all times or** because the employee could not perform the services required of him unless he is furnished such lodging. Lodging provided in order to ensure that the employee is available for duty at all times and/or because it is necessary to enable the employee to perform the services required of him will also be regarded

August 31, 2004  
Page 3

as provided for a substantial noncompensatory business reason. See e.g. Rev. Rul. 68-354, 1968-2 C.B. 60.” Emphasis added.

It is plainly evident that the PRVWSD’s arrangement with Mr. Griffin meets the above tests.

The only other test to be met is that the lodging be furnished on the business premises of the employer. The case of Adams v. United States, discusses what constitutes the business premises of the employer. 585 F.2d 1060 (Ct. Cl. 1978). In Adams, the Court held that a residence was the business premises of the employer even though the employee had an office at another site.

“The phrase, then, is not to be limited to the business compound or headquarters of the employer. Rather, the emphasis \*1066 must be upon the place where the employee's duties are to be performed. See Comm'r. of Internal Revenue v. Anderson, 371 F.2d 59, 64 (6th Cir.1966), cert. denied 387 U.S. 906, 87 S.Ct. 1687, 18 L.Ed.2d 623 (1967). In United States Junior Chamber of Commerce v. United States, 334 F.2d at 664-65, 167 Ct.Cl. at 400, the court stated, ‘We think that the business premises of Section 119 means premises of the employer on which the duties of the employee are to be performed.’ The phrase has also been construed to mean either (1) living quarters that constitute an integral part of the business property, or (2) premises on which the company carries on some substantial segment of its business activities. Gordon S. Dole, 43 T.C. 697, 707 (1965), aff’d per curiam, 351 F.2d 308 (1st Cir.1965).

In United States Junior Chamber of Commerce, supra, the taxpayer-president had an office in the employer-owned ‘White House’ which he used at night for the conduct of business meetings. In addition, he used his residence for business entertainment purposes. The court held that, because of these two factors, the White House constituted a part of the business premises of the employer, though not physically contiguous to headquarters. In this case plaintiff, although he had an office at the employer's headquarters, worked in his residence in the evenings and on weekends, had business meetings and performed required business telephone calls from there which could not be made during normal business hours, and conducted regular business entertaining in the residence. In this sense plaintiff’s residence was a part of the business premises of his employer, for it was a ‘premises on which the duties of the employee are to be performed”, United States Junior Chamber of Commerce v. United States 334 F.2d at 664-65, 167



August 31, 2004

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Ct.Cl. at 400, and a 'premises on which the company carries on some of its business activities.' Gordon S. Dole, 43 T.C. at 707.

"Interpretations of the phrase which are limited to the geographic contiguity of the premises or to questions of the quantum of business activities on the premises are to restrictive." Id.

Attached hereto is a description by Mr. Griffin of the duties he performs from the PRVWSD residence. A review of these duties in the context of the standard applied in the Adams makes it clear that the Manager's residence is on the PRVWSD's business premises.

Additionally, there is no requirement that there be no alternative housing nearby. In Caratan v. Commissioner of Internal Revenue, there was available housing within a 10 minute drive. 442 F. 2d 606 (1971). The Court, however, held that:

It is not necessary to show that the duties would be impossible to perform without such lodging being available. The regulation presumes that, if the employee must be available for duty at all times, the lodging is, practically speaking, indispensable to the proper discharge of his duties. Id.

The Caratan Court goes on to explain that:

In light of the specific language of Treas. Reg. § 1.119-1(b), it does not appear that the mere availability of nearby housing, so heavily relied upon by the Tax Court, was intended to require a different result. The language of the regulation which pertains to the feasibility of performance without the furnished housing (i.e., 'because the employee could not perform the services required of him unless he is furnished such lodging') is joined disjunctively ('or') with the phrase concerning the requirement that the employee be available at all times. If the regulation intended that an employee whose duties required constant availability also must have no access to feasible alternative housing, the two phrases would have been joined conjunctively ('and').

The Manager's residence is designed as a command and control center for PRVWSD the on the Rankin County side of the reservoir and is equipped with specialized equipment necessary for the Manager to fulfill his duties. It would be impractical to set up a manager's personal residence in this fashion, regardless of other available housing or locations, as the equipment

August 31, 2004

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would have to be moved each time the manager changed or a manager changed personal residences. This is a business judgment that should be left to the PRVWSD.

For Mississippi State income tax purposes, Regulation 303, Employee Benefits, a copy of which is attached, only requires that the employee be required to accept such lodging on the business premises of his employer as a condition of his employment. As explained above, the PRVWSD's arrangement with Mr. Griffin clearly meets this test.

Additionally, it appears that PEER conducted an investigation of the use of and taxability of the home in 1998. As evidence of this, I am enclosing a draft copy of the letter to Max K. Arinder, Ph.D., Executive Director, Joint Committee on Performance and Evaluation and Expenditure Review, in which Earl Walker, Jr., the then President of the PRVWSD described the use of the residence. To my knowledge no report was issued at that time questioning the taxability of the residence.

#### **USE OF VEHICLE:**

With regard to the use of the vehicle, Mr. Griffin does not use the vehicle personal use. Mr. Griffin's traveling back and forth between the two business premises of the PRVWSD should not be characterized as commuting. Mr. Griffin's only use of the vehicle is for traveling between PRVWSD facilities and projects in the morning and the evening and he constantly stops for inspections, checking on projects and other business purposes while traveling between the PRVWSD residence and office. However, even if the automobile was determined to be used for commuting purposes, the *Commuting Valuation Rule* set forth in the regulations would require that the only value attributed to the commute be \$1.50 per one-way commute.

Additionally, this PRVWSD has been audited each year since its creation and neither of the issues concerning the automobile nor the residence have ever been questioned by the auditors.

I apologize for the length of this response, however, as you can see the determination of the taxability of the residence and the use of the automobile are fact intensive inquiries. I wanted to make sure that you have all the facts prior to issuing the final report.

If there is any question concerning the taxability of these benefits, resolution of this could be finally determined by obtaining a private letter ruling from the Internal Revenue Service.

August 31, 2004  
Page 6

Thank you for your consideration. If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul B. Henderson". The signature is written in black ink and is positioned above the printed name.

Paul B. Henderson

PBH:tdb  
Enclosures

Regular Meeting - P. R. V. W. S. D.  
Page 7

April 11, 1980

specifications. Whereupon, a motion by Mr. P. L. Hughes, seconded by Mr. T. W. Cleveland, directed that this recommendation be approved, and a copy of the accepted bid be included in "Exhibits to Minutes" file, thereby becoming a portion of these minutes. MOTION CARRIED.

Mr. Moak requested permission to advertise for a dragline, specifying either new or slightly used, which would include a new warranty. Whereupon, a motion was entered by Mr. P. L. Hughes, seconded by Mr. Howard Walker, that the Manager be authorized to advertise for a dragline, as requested. MOTION CARRIED.

A request from the Pearl River Basin Development District for this District's participation in a flood study project, which includes mapping the floodplain, then came on for consideration. After a short discussion, a motion was made by Mr. E. J. Keller, seconded by Mr. Earl Walker, that the following resolution be hereby approved and adopted:

"RESOLUTION COMMITTING THE PEARL RIVER VALLEY  
WATER SUPPLY DISTRICT TO PARTICIPATE IN AND  
FINANCIALLY SUPPORT FLOOD PROTECTION STUDIES  
IN THE PEARL RIVER BASIN

"WHEREAS, the Pearl River Basin Development District has undertaken to perform certain engineering studies on the flood problems in the Pearl River Basin; and

"WHEREAS, it is in the best interest of the people of the Pearl River Basin to develop as much scientific information on the flooding problems in the Basin in order to work effectively with the United States Army Corps of Engineers; and

"WHEREAS, it is in the best interest of the people of the Pearl River Basin for officials to act from an authoritative and informed point of view; and

"WHEREAS, the following cities, towns and districts are furnishing the following amounts in the prosecution of these studies:

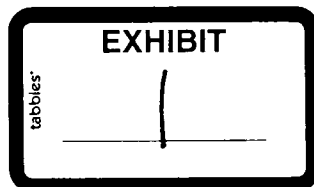
Pearl River Basin Development District	\$169,321
Hinds-Rankin Levee District	20,000
City of Richland	10,000
Town of Flowood	10,000
City of Pearl	5,000
City of Jackson	25,000
Town of Monticello	5,000
City of Columbia	5,000

"WHEREAS, the PEARL RIVER VALLEY WATER SUPPLY DISTRICT has been requested to contribute \$20,000.00 in financial support of the cost of such studies;

"NOW, THEREFORE, BE IT RESOLVED that the PEARL RIVER VALLEY WATER SUPPLY DISTRICT does hereby agree to support, endorse and participate fully in said flood studies and to contribute \$20,000.00 in financial support of the cost of such studies, provided that the cities, towns and districts listed above contribute the respective amounts herein stated."

MOTION CARRIED.

Mr. Brown, reporting for the Executive Committee which met earlier this morning, stated that because of several recent emergencies, such as floods, bomb threat, etc., the Executive Committee recommended that the Board proceed to construct a Manager's residence on a site retained by the District some years ago for a purpose such as this. A motion was introduced by Mr. Walker, seconded by Mr. Howell, that authority be granted to proceed to construct a Manager's residence as recommended, and hereafter, provide that residence therein be made a requirement of the Manager's position, in order that he may be more readily available at all times. MOTION CARRIED.



Regular Meeting - P. R. V. W. S. D.  
Page 8

April 11, 1980

Following a recommendation from the Executive Committee to that effect, a motion was introduced by Mr. Fred Rogers, seconded by Mr. Howard Walker, that in accordance with the Board's previous Statement of Policy, adopted December 14, 1979, the Manager be instructed to begin to raise the level of the Reservoir, insofar as hydrological and meteorological conditions permit, at such time as to provide the normal pool elevation of 297 for the summer months on or about May 1, 1980. MOTION CARRIED.

Briefly reporting on the sewer interceptor system serving Rankin and Madison County, Mr. Moak stated that Rankin County was moving along very well, but the Madison County facility was being held up because the City of Madison had not as yet executed a contract agreement with the City of Jackson, who is the implementing agency. He expressed the hope that some progress had been made in recent meetings on this problem.

In a report on progress at Timberlake campground, Mr. Moak said the building and pool will be finished in a week to ten days and when the pool is finished and fenced, the monthly renters can move into the campground.

Mr. S. C. Ellis stated he felt the camping rates set at the last meeting needed to be reopened for consideration. Following some discussion, a motion was introduced by Mr. P. L. Hughes, seconded by Mr. Fred Rogers, that the rates set for Timberlake Campground be reconsidered. MOTION CARRIED.

A motion was then introduced by Mr. T. W. Cleveland, seconded by Mr. P. L. Hughes, that the monthly rates for permanent camp sites at Timberlake remain at \$80.00 monthly. MOTION CARRIED. Mr. Keller voted "NO" to this motion.

A motion was introduced by Mr. S. C. Ellis, seconded by Mr. P. L. Hughes, that the RV and tent sites be reduced to \$6.00 and \$4.00 per day respectively, with a \$2.00 reduction for Senior Citizens to apply in each case.

Following some discussion on the advisability of seasonal rates, Mr. Ellis requested that his motion be withdrawn and introduced a substitute motion that the daily rates adopted at the last Board meeting (RV site \$8.00 per day; Tent site \$5.00 per day, with a Senior Citizen's discount of \$2.00 on each) be effective April through September of each year, and October through March these rates be reduced to RV site \$5.00 per day; Tent site \$3.00 per day, with a Senior Citizens discount of \$2.00 on each. Mr. Hughes accepted the withdrawal of the original motion and seconded the substitute motion. SUBSTITUTE MOTION CARRIED. Mr. Cleveland voted "NO" to this motion.

A motion by Mr. Howard Walker, seconded by Mr. E. J. Keller, directed that the Board go into Executive Session at this point. MOTION CARRIED.

Chairman Brown then appointed the following committee to be responsible for construction of the Manager's residence:

Mr. E. J. Keller, Chairman  
Mr. T. W. Cleveland  
Mr. Joe D. Brown

It was determined that existing work forces be used as much as possible, subcontracting various phases of construction, in order to lower costs.

The Manager reported that several months ago the Board approved retaining the Engineering firm of Simons, Li & Associates, Inc. to develop a mathematical model of the District's watershed area and prepare a complete management scheme at an estimated cost of \$30,000. He said to select a computer system and set up hardware locally, however, could mean an additional \$10-20,000 expenditure, which he felt might be much more advantageous than transmitting the data to Simons, Li & Associates to run the model and check results, transmitting them back to the District. However, before any decision is made on this, Mr. Moak suggested taking Dr. Simons' proposal to the National Weather Service in Slidell, Louisiana to determine how anything the District might do would tie into their efforts. This suggestion met with general approval.

Westlaw.

IRS INFO 2000-0298  
 IRS INFO 2000-0298, 2000 WL 33961689 (IRS INFO)

Page 1

## Internal Revenue Service (I.R.S.)

## Information Letter

Issue: December 29, 2000  
 October 25, 2000

Section 119 -- Meals or Lodging Furnished for Convenience of Employer (Excluded v. Not Excluded)

119.00-00 Meals or Lodging Furnished for Convenience of Employer (Excluded v. Not Excluded)

119.01-00 Employees

119.05-00 Qualified Campus Lodging

CC:TE/GE:EOEG:ET2

COR-115310-00

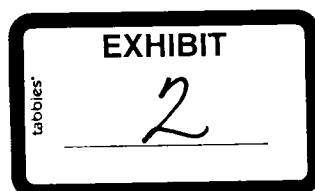
Dear \*\*\*:

This responds to your request for general information on the issue of whether lodging provided by \*\*\* to an individual who performs groundskeeping duties at a rural field station owned by the University is excludable from that individual's gross income under section 119 of the Internal Revenue Code (the "Code").

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2000-1, 2000-1 I.R.B. 4, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. We have enclosed a copy of Revenue Procedure 2000-1 for your reference. In the event that you decide to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2000-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope will be helpful to you.

According to the information you provided, the University has an agreement with

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an individual to perform groundskeeping duties at a rural field station owned by the University. The groundskeeper is required to live on the premises located at the field station. The agreement specifies that in return for providing groundskeeping services, the groundskeeper is provided housing and utilities valued at \$393 per month, and is permitted to use a barn and pasture, valued at \$50 per month. The groundskeeper receives no other remuneration for the services provided.

Section 61 of the Internal Revenue Code (the "Code") provides that, except as otherwise provided, gross income means all income from whatever source derived, including fringe benefits such as employer-provided housing.

Section 1.61-2(d)(3) of the Income Tax Regulations (the "Regulations") provides that the value of living quarters that an employee receives in addition to the employee's salary constitutes gross income unless it is furnished for the convenience of the employer and meets the conditions specified in section 119 of the Code and the regulations thereunder.

Section 1.61-21(a)(2) of the regulations provides that to the extent a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A of the Code, that section shall govern the treatment of the fringe benefit. Examples of excludable fringe benefits include meals or lodging furnished to an employee for the convenience of the employer under Code section 119.

Section 119(a)(2) of the Code provides that there shall be excluded from the gross income of an employee the value of any lodging furnished to the employee, the employee's spouse, or any of the employee's dependents by or on behalf of the employer for the convenience of the employer, but only if the employee is required to accept such lodging on the business premises of the employer as a condition of employment.

Section 1.119-1(b) of the regulations provides that the value of lodging furnished to an employee by the employer is excludable from the employee's gross income if three tests are met:

- (1) The lodging is furnished on the business premises of the employer;
- (2) The lodging is furnished for the convenience of the employer; and
- (3) The employee is required to accept such lodging as a condition of employment.

With respect to the "convenience of the employer" and the "condition of employment" tests, the courts have held that they are essentially the same. See e.g., *Bob Jones University v. United States*, 670 F.2d at 167 (Ct. Cl. 1982); *Benninghoff v. Commissioner*, 71 T.C. 216, 218 (1978), *aff'd per curiam*, 614 F.2d 398 (5th Cir. 1980). These tests are satisfied if the employee is required to accept the lodging in order to enable him properly to perform the duties of his employment. Lodging will be regarded as provided to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required of him unless he is furnished such lodging. Lodging provided in order to ensure that the employee is available for duty at all times and/or because it is necessary to enable the

IRS INFO 2000-0298  
IRS INFO 2000-0298, 2000 WL 33961689 (IRS INFO)

Page 3

employee to perform the services required of him will also be regarded as provided for a substantial noncompensatory business reason. See e.g. Rev. Rul. 68-354, 1968-2 C.B. 60.

If the three tests above are not met, Code section 119(d) provides another alternative for exclusion from gross income of the value of "qualified campus lodging" furnished to an employee of an educational institution. Pursuant to section 119(d)(3), the term "qualified campus lodging" means lodging to which subsection (a) of section 119 does not apply (i.e., lodging which does not meet the three tests above), which is located on, or in the proximity of, a campus of the educational institution, and which is furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

Pursuant to section 119(d)(2), the fair market value of the qualified campus lodging provided to an employee of an educational institution will not be treated as income to the employee, provided that the employee pays rent for such lodging in an amount that equals or exceeds five percent of the fair market value of the lodging. If the employee does not pay rent of at least five percent of the appraised value he or she receives taxable income in the amount of the difference between the rent paid, and the lesser of five percent of the fair market value of the lodging or the average rental paid by individuals not affiliated with the institution for lodging provided by the institution that is comparable to that provided the employee.

The attorney assigned to this matter is Lynne Camillo (Badge # 50-01066). She can be reached at (202) 622-6040.

Sincerely,

Jerry E. Holmes

Chief, Employment Tax Branch 2

Office of the Associate Chief Counsel (Tax Exempt and Government Entities)

IRS INFO 2000-0298, 2000 WL 33961689 (IRS INFO)

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T-10155 Information letters issued by IRS in response to taxpayer's request for general information.  
Analysis (FTC)

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**Federal Tax Coordinator 2d**

## **¶T-10155. Information letters issued by IRS in response to taxpayer's request for general information.**

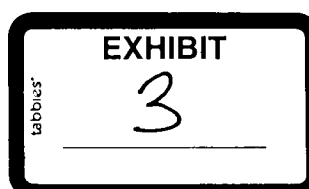
An information letter is a statement issued either by the Associate Office or by a director ( ¶ T-9801 ) that merely calls attention to a well established interpretation or principle of tax law (including a tax treaty) without applying it to any specific set of facts. Such a letter may be issued in response to a taxpayer's request for general information or where the taxpayer's request for a determination letter or ruling fails to meet all applicable requirements and IRS believes general information will help the taxpayer. <sup>24</sup> An information letter is advisory only and has no binding effect on IRS. <sup>25</sup>

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<sup>24</sup>. Reg § 601.201(a)(5) Rev Proc 2004-1 , Sec. 2.04 , 2004-1 IRB 1 .

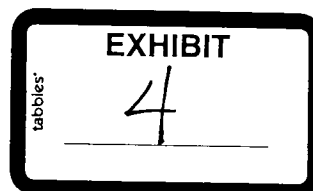
<sup>25</sup>. Rev Proc 2004-1 , Sec. 2.04 , 2004-1 IRB 1 .

END OF DOCUMENT - © Copyright 2004 RIA. All rights reserved.



Paul, As per your request, things I do from the District house in managing the District:  
(note: the Board requires the District General Manager to be a Professional Engineer registered in Mississippi)

- Take after-hours telephone calls from leaseholders, county supervisors, legislators, from the District Spillway Control Tower, the Reservoir Patrol, District maintenance manager, District engineering staff, District campground managers, and other District staff. I provide direction and supervision in resolution of problems. In the course of responding this sometime includes my traveling in the District car to a District facility or site to inspect the problem and/or supervise the work.
- In case of a dam failure or other emergency, the house is set-up to be an command post on the other side of the Pearl River from the District Main Office. A radio is installed that allows me to communicate with all District employees and all District facilities. Therefore, when phone problems occur and occasionally as a test of the system, I use the District radio system installed in the house to communicate with District employees and facilities.
- Almost every day of the year, I travel after hours to visit District facilities, respond to complaints, or make inspections. I use the District car or my bicycle frequently to make these inspections and occasionally use the District boat or my kayak, if the distance is short. Approximately ten years ago, the District Board of Directors voted to add boat house to District house. This allows for storage of the District boat which provides me quick water access to District facilities and properties, plus provides an alternative means of travel in case of emergencies.
- Through use of a District computer and software I can access the Spillway Control Tower to control the ten Spillway Control gates and control the Supervisory Control and Data Acquisition System (SCADA). The District Board voted to add this computer and software to the District house approximately four years ago. Approximately ten years ago, the District initiated addition installation of the SCADA in the tower to increase reliability for the District's four water systems that serve approximately 16,000 people. They did this after three successive incidents in which there was no water available for any of the homes in the District's south Madison area communities (e.g. Tavern Hills, Roses Bluff, etc.). By accessing the SCADA from the District computer located at the District house, I am able to control virtually all aspects of the District's ten water supply wells and six water tanks.
- Since the SCADA also controls the major sewer lift stations in the District's four sewer systems, through the District computer at the District house I can control the major sewer lift stations in case of emergency.



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REGULATIONS - INCOME TAX

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**REG. 303. EMPLOYEE BENEFITS.**

A taxpayer may exclude from gross income compensation which is received by an employee under a worker's compensation act, for personal injuries or sickness incurred in the course of employment. The exclusion also applies to compensation which is paid under a worker's compensation act to the survivor or survivors of a deceased employee. However, the exclusion does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement occurs from an occupational injury or sickness. Amounts received as compensation for a nonoccupational injury or sickness, and also, amounts received as compensation for an occupational injury or sickness in excess of the amount provided in the applicable worker's compensation act are also not subject to the exclusion.

A taxpayer may exclude from gross income the amount of any damages received under a suit or settlement of a claim on account of personal injuries or sickness.

A taxpayer may exclude from gross income the amounts received through accident or health insurance for personal injuries or sickness to the extent that such amounts are not attributable to contributions of the employer which are not includible in the gross income of the employee, or are not paid by the employer. Therefore, if an employee received compensation for personal injuries or sickness from an accident or health insurance policy which the worker purchased or from a fund maintained exclusively by employee contributions, the amounts received are excluded from gross income.

Amounts received by employees under employer--financed accident and health plans may be excluded from gross income if such amounts are paid to reimburse the taxpayer for expenses incurred for medical care of the taxpayer, spouse and dependents or to reimburse the employee for medical care and payments for permanent injury or loss of bodily function.

The gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse or his dependents.

Gross income of an employee, his spouse or his dependents, does not include amounts contributed by an employer on behalf of an employee, his spouse or his dependents under a qualified group legal services plan; or the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan to, or with respect to, an employee, his spouse or his dependents. This benefit is found in Section 120 of the Internal Revenue Code.

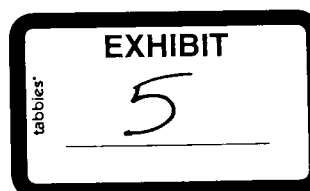
Nontaxable benefits under Section 125 of the Internal Revenue Code referred to as "Cafeteria Plans" are also excludable for Mississippi Income Tax purposes to the extent allowed by the IRC.

Mississippi also recognizes Section 129 of the Internal Revenue Code pertaining to Dependent Care Assistance Plans and Section 127 of the Internal Revenue Code pertaining to Employer Provided Educational Assistance Plans. The benefits mentioned above under IRC Sections 120, 125, 127 and 129 are not subject to Mississippi Withholding.

The value of any meals or lodging furnished to an employee, his spouse or any of his dependents by or on behalf of his employer for the convenience of the employer may be excluded from gross income of an employee but only if in the case of meals, the meals are furnished on the business premises of the employer, or in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

The rental value of a dwelling furnished to a minister of the gospel is exempt from tax as is a rental allowance to the extent that the allowance is used to rent or provide a home. This includes the portion of a retired minister's pension designated as a rental allowance by the national governing body of a religious denomination having complete control over the retirement fund. The exemption also applies to the rental value of a residence furnished to a retired minister (but not the minister's spouse).

January 14, 1988



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REGULATIONS - INCOME TAX

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**REG. 1102. WITHHOLDING -- WAGES DEFINED.**

**(A) In General.**

(1) The term "wages" means all remuneration for services performed by an employee for his employer unless specifically excepted under Code Section 27-7-303(j).

(2) The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

**(B) Certain specific items.**

(1) **Pensions and retirement pay.** In general, pensions and retired pay are wages subject to withholding. However, no withholding is required with respect to amounts paid to an employee upon retirement which are not taxable as annuities under the provisions of Section 27-7-15 nor upon annuities, the income from which is specifically exempt by statute, or regulations with respect thereto. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages. Amounts received as retirement pay for service in the Armed Forces of the United States are not subject to withholding. Amounts received as disability benefits by veterans of the armed forces are not subject to withholding.

(2) **Traveling and other expenses.** Amounts paid specifically - either as advances or reimbursements - for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(3) **Vacation allowance.** Amounts of so-called "vacation allowances" paid to an employee constitutes wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages subject to withholding.

(4) **Dismissal payments.** Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages subject to withholding regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments.

(5) **Deductions by employer from remuneration of an employee.** Any amount deducted by an employer from the remuneration of a employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made.

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**REGULATIONS - INCOME TAX**

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(6) **Payment by an employer of employee's tax, or employee's contribution under a state law.** The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required for an employee under a state unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including federal and state income taxes.

(7) **Value of meals and lodging.** The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee.

(8) **Facilities or privileges.** Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.

(9) **Tips or gratuities.** Tips or gratuities paid directly to an employee by a customer of an employer are subject to withholding.

(10) **Fees paid a public official.**

(a) Authorized fees paid to public officials such as notaries public, clerks of court, sheriffs, etc. for services rendered in the performances of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials of government, or by a government, or by a government agency or instrumentality, are subject to withholding.

(b) Amounts paid to precinct workers for services performed at election booths in state, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

(c) Supplemental wage payments. If supplemental wages, such as bonuses, commissions, or overtime, are paid at the same time as regular wages, the income tax to be withheld should be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year. However, if income tax has been withheld from the employee's regular wages, the employer may withhold from the supplemental wages as if no exemption had been claimed.

January 14, 1988

{PRVWSD letterhead}

November 11, 1998

Hand Delivery  
and U.S. Mail

Max K. Arinder, Ph.D.  
Executive Director  
Joint Committee on Performance and Evaluation  
and Expenditure Review  
Professional Building  
222 North President Street  
Jackson, MS 39201

Dear Dr. Arinder:

The Pearl River Valley Water Supply District provides compensation and benefits to its General Manager, Ken Griffin, Ph.D. P.E. as follows:

1. Base salary of \$61,000.00 plus fringe benefits as authorized by Chapter 3, Title 5, Mississippi Code of 1972 as amended, and other relevant statutes.
2. Following the Easter flood in 1979, the Board of Directors of the District at their April 1980 meeting authorized construction of a manager's residence on lot 19 of Arrowhead Subdivision, a lot previously reserved for that purpose. Occupancy of this residence was made a requirement of the General Manager's position, because the Board wanted a command post on the Madison County side and an alternate command post on the Rankin county side at the residence of the General Manager to deal with situations where travel and communications may be disrupted. Since 1980 the District has continually required the General Manager to live in this residence. The District furnishes utilities and maintenance for the residence and grounds. The residence is covered under the district's general property insurance policy. The General Manager

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Max K. Arinder, Ph.D.  
November 9, 1998  
Page 2

provides from his own funds a homeowner's policy covering his personal belongings and protecting him from personal liability. He also pays any long distance personal calls and housekeeping expenses from his own funds.

3. The General Manager uses an automobile properly identified as property of the District for official travel, including travel between the residence and other places where his duties are performed.

Mr. Griffin was offered the position as General Manager by the Board of Directors on June 11, 1993. Mr. Griffin became General on August 13, 1993. We attach extracts from the minutes of the April 1980 and June 1993 meetings of the Board of Directors of the District relating to construction of the residence and requirement that the district's General Manager live there and the employment of Mr. Griffin on these conditions.

We also attach a listing of FY 1998 and FY 1999 (to date) expenditures paid to the district's professional contractors. The Attorney General has annually approved the employment of lawyers at a rate of \$110.00 per hour. The employment of other firms is approved by the Personnel Board if required.

Please call if you have further questions. We are always happy to work with PEER and the Legislature.

Sincerely,

Earl Walker, Jr.  
President, Pearl River Valley Water Supply District

EW Jr/kp

Max K. Arinder, Ph.D.  
November 9, 1998  
Page 3

Enclosures

cc: Ken Griffin, Ph.D. P.E.

bcc: John Hampton Stennis, (w/enclosures)  
Jim Tohill, (w/enclosures)

Draft



## Taxability of the General Manager's Housing

### *The General Manager's Reasoning*

PEER staff concurs with the General Manager's attorney's recitation of applicable law. As noted on page 27 of this report, for employer-provided housing to be excludable from the employee's income, the housing must meet the following standards:

- the employee must be required to reside in the provided housing;
- the requirement must be for the convenience of the employer; and,
- the residence must be on the employer's business premises.

In contending that the General Manager complies with these requirements, the General Manager's attorney noted the following in his letter to PEER dated August 31, 2004 (page 49 of this report):

*The manager's residence is designed as a command and control center for the PRVWSD the on the [sic] Rankin County side of the reservoir and is equipped with specialized equipment necessary for the manager to fulfill his duties. . . .*

PEER sought information to test the accuracy of this contention. Obviously if the facility were planned and used as a command post for the reservoir, the General Manager's position would carry some weight with respect to the issue of income taxation of the residence's value.

### *PEER's Analysis of the General Manager's Contentions*

In evaluating the accuracy of the above-quoted statement, PEER sought the following information:

- copies of plans established by the district to operate all or part of the reservoir from the General Manager's home in cases of emergency or other conditions;
- copies of inventory lists of specialized equipment that might be housed at the General Manager's residence to enable him to manage the affairs of the reservoir;

- evidence of computer acquisitions that would allow the General Manager to operate the reservoir gates from a site other than the control tower;
- copies of blueprints of the house that could establish if, in fact, any design features were built into the house that might support the position that the house was “*designed as a command and control center;*” and,
- evidence of the district’s original purpose in providing the General Manager with housing.

*Plans to Operate the Reservoir from the Residence*--On September 1, 2004, PEER requested information from the district’s office regarding any plans the district might have developed for operating the district from the General Manager’s house. Undoubtedly, an agency would have devised such plans in the event that it ever intended the house to be a command and control center to supplement or substitute for other facilities commonly used for such purposes. The district’s staff PEER consulted noted that there was no such plan. The district does have a water systems emergency plan. This plan makes no reference to the General Manager’s house as a command and control center for the district or any part thereof. Additionally, the district’s staff informed PEER that the General Manager’s house has not been used as a site for staff meetings or functions. Years ago, some political gatherings occurred there, but none have been recently hosted at the house.

*Specialized Equipment for Command/Control Capability*--On September 1, 2004, PEER also sought inventory information from the district and the State Auditor’s Office to determine what specialized equipment might have been purchased to achieve the end of making the residence a command and control center. PEER determined that there is a radio system allocated to the house; however, no emergency generator is assigned to the house. This would tend to limit severely the utility of the house to function as a command and control center for any portion of the reservoir.

*Computer Systems for Command/Control Capability*--On September 3, 2004, PEER obtained information on computer systems maintained at the General Manager’s house. In theory, a system could be installed that could control the operations of the spillway from the house. In discussing this matter with the district’s staff, PEER learned that while the General Manager could log in to the computer at the control tower to control operations at the spillway, personnel at the control tower would have to allow such control to take place. (Three other PRVWSD staff members in addition to the General Manager also have the capability to log in and request permission to take control of spillway operations.) If a fire or other accident occurred at the control tower, the General

Manager could not regulate the flow of water from his house. Such a condition is at odds with any contention that the house is a command center for the reservoir. Additionally, PEER learned that until four years ago, the house provided to the General Manager lacked a computer terminal, a contention that is at odds with the assertion that the house was designed to be a command center for the reservoir.

*Blueprints Showing Design Features for Command/Control Capability*--On September 3, 2004, PEER obtained copies of the blueprints for the house provided to the General Manager to determine whether any special features were built in that would support the argument that the house was designed as a command facility. PEER notes that the house does contain a 13' X 15' room designated as an office; however, such would not make the office the reservoir's command center as alleged in the General Manager's argument.

*Original Purpose in Providing Housing*--In conducting fieldwork on this project, PEER learned that the board's original decision to house the director in a district-owned house was to place the General Manager's residence closer to the offices of the reservoir. At the time of this decision, no mention was made of using the house as a command center for the reservoir. This decision was made subsequent to the 1979 flood when the district's board thought that it would be prudent to have the General Manager living in closer proximity to the district's headquarters.

### ***PEER's Conclusion Regarding Taxability of the General Manager's Housing***

PEER notes that the determination of tax liability in these cases hinges on the peculiar facts presented by each case. The following explains why PEER believes that the assertion made by the General Manager's attorney is not correct and that the General Manager's housing is likely to be subject to taxation.

PEER believes that the housing fails to meet the requirement that the housing be on the business premises of the employer; see 26 USC Section 119. The General Manager's attorney correctly notes that the requirement permits an employee to live in employer-provided housing without tax liability so long as the employer provides it and a substantial portion of the work done by the employee is conducted at the residence. Business premises issues hinge on the facts of each given case and require a common-sense approach; see *Adams v. United States* 585 F. 2d. 1060 (CtCl, 1978). See also *Bob Jones University v. United States*, 670 f. 2d 167 (Ct Cl, 1982) and *Winchell v. United States*, 564 F. Supp 161 (D. Neb, 1983) Aff'd 725 F. 2d 689 8 Cir, 1983). In general, courts apply a test with the

following elements to determine whether a house is on the employer's business premises. To pass the test, a residence must:

- constitute an integral part of the business property; see *Bob Jones University*, supra at 670 F. 2d. 176.
- be where the employee performs a significant portion of his duties; see *Adams*, supra.
- be where the employer carries on a substantial portion of its business activities; see *United States Junior Chamber of Commerce v. United States*, 334 F. 2d 660 (Ct.Cl, 1964).

As noted above, PEER found no evidence that the employee carries out a significant portion of his duties at the house or that a substantial part of the employer's business is even contemplated to be carried out at the house. The discussion above shows that the district has never planned for use of the house as a command center and carries out no staff activities there. Further, the technology installed in the house would not be able to control the operations of the reservoir in the event of an emergency necessitating control over the flow of water if the spillway tower were in some way disabled. The lack of a generator assigned to the house makes clear that in the event of a power failure, the most the General Manager could do would be operate any battery-operated equipment on hand until the batteries went dead.

For such reasons, PEER staff believes that the General Manager's house was never intended to be a command facility for the reservoir, does not function as a command facility for the reservoir, and fails to meet the tests for being on the employer's premises. While it is entirely possible that the General Manager occasionally takes work home or conducts telephone business at his in-house office, such activities do not promote the employer-provided house to the level of being on the business premises of the employer. (See *Winchell v. United States*, supra.)

## **Taxability of the General Manager's Vehicle**

In reviewing the General Manager's attorney's letter, PEER notes that he asserts that, at worst, the General Manager would be governed by the commuting rule requiring that an amount of \$1.50 per one-way commute be applied to the value of the automobile. The argument hinges on the allegation that the house is part of the business premises of the district. As noted previously, PEER contends that the house provided by the district to the General Manager is not on the business premises of the district and that the

General Manager may be subject to taxes for the benefit of the vehicle for commuting.

The Internal Revenue Service requires under the commuting rule that the employer establishes a written policy under which the employee does not use the vehicle for personal use, other than *de minimis* use; see Treasury Regulation Section 1.61-21 (k). The district does not have such a written policy. If the district continues to provide its General Manager with an automobile, it should consider applying stringent rules to the use of the vehicle. Such would go far toward ensuring better accountability.



# Agency Response

August 31, 2004

Joint Committee on Performance  
Evaluation and Expenditure Review  
Woolfolk State Office Building  
Jackson, Mississippi 39201

HAND DELIVER

Ladies and Gentlemen:

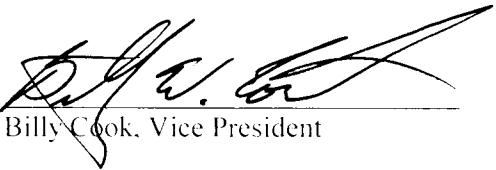
Thank you for the opportunity to respond to your study entitled *A Review of the Pearl River Valley Water Supply District* ("PRVWSD") which analyzes the governance, authority and responsibilities of PRVWSD. Your stated overall purpose is "...to identify areas for potential improvement in accountability systems and, where necessary, modification of law." PRVWSD staff appreciates the professional manner and personal consideration extended by the PEER Committee staff during the course of its factual investigations.

Your recommendations for requirements incorporating performance and progress toward measurable goals are consistent with the Board's direction to evaluate, on an ongoing basis, the services PRVWSD provides to the public and its leaseholders to insure the expenditures. Additionally, the policy recommendations are in line with the Board's proposed response to changing demands on Board members and staff and the need to limit Board involvement in the day to day activities of PRVWSD.

To the extent that your recommendations include changes in current law, PRVWSD defers to the Mississippi Legislature for discussion and consideration of the proposed changes. With regard to current law and regulations, PRVWSD intends, as it always has, to comply with such laws and regulations as interpreted by PRVWSD and its professional consultants.

Overall, your recommendations are very helpful and provide a useful tool for the Board as it continues the process of reevaluating the most effective methods of carrying out its legislatively created missions with limited resources in a rapidly changing environment.

Respectfully submitted,  
Pearl River Valley Water Supply District

By:   
Billy Cook, Vice President





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Ted Booth, General Counsel

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