

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

FINANCIAL STATEMENTS EXAMINATION REPORT

OF

FALLING WATERS CONSERVANCY DISTRICT

PORTER COUNTY, INDIANA

January 1, 2008 to December 31, 2011



**FILED**  
02/14/2013



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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Financial Clerk	Karen M. Giesler	03-25-09 to 12-31-12
Chairman of the Board of Directors	Anthony C. Floramo Peter E. Gutierrez, M.D. Marko Sowa (Interim)	01-01-08 to 03-01-09 03-02-09 to 08-31-12 09-01-12 to 12-31-12
Court-Appointed Receiver	James A. Federoff	02-02-10 to 12-31-12



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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE FALLING WATERS CONSERVANCY DISTRICT,  
PORTER COUNTY, INDIANA

We have examined the accompanying financial statements of the Falling Waters Conservancy District (District), for the period of January 1, 2008 to December 31, 2011. The financial statements are the responsibility of the District's management. Our responsibility is to express an opinion on the financial statements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial statements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

As discussed in Note 1, the District prepares its financial statements on the prescribed basis of accounting that demonstrates compliance with the reporting requirements established by the State Board of Accounts as allowed by state statute (IC 5-11-1-6), which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The effects on the financial statements of the variances between these regulatory accounting practices and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material. The basis noted above is a different basis than that used in the prior period.

In our opinion, because of the matter discussed in the preceding paragraph, the financial statements referred to above do not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position and results of operations of the District for the period of January 1, 2008 to December 31, 2011.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position and results of operations of the District for the period of January 1, 2008 to December 31, 2011, on the basis of accounting described in Note 1.

Our examination was conducted for the purpose of forming an opinion on the District's financial statements. The Combining Schedules of Receipts, Disbursements, and Cash and Investment Balances – Regulatory Basis, Schedule of Payables and Receivables, Schedule of Leases and Debt, and Schedule of Capital Assets, as listed in the Table of Contents, are presented for additional analysis and are not required parts of the financial statements. They have not been subjected to the examination procedures applied to the financial statements and, accordingly, we express no opinion on them.

The District's response to the Examination Results and Comments identified in our examination is described in the accompanying section of the report entitled Official Response. We did not examine the District's response and, accordingly, we express no opinion on it.

STATE BOARD OF ACCOUNTS

November 27, 2012

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## FINANCIAL STATEMENTS

The financial statements and accompanying notes were prepared and/or approved by management of the District. The financial statements and notes are presented as intended by the District.

FALLING WATERS CONSERVANCY DISTRICT  
STATEMENT OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES -  
REGULATORY BASIS  
For The Year Ended December 31, 2008

Fund	Cash and Investments 01-01-08	Receipts	Disbursements	Cash and Investments 12-31-08
General/Operating	\$ 1,319	\$ 107,514	\$ 109,042	\$ (209)
Bond and Interest	195,874	449,755	551,265	94,364
Debt Service Reserve	866,176	238,163	518,854	585,485
Wastewater Expense	1,606	7	-	1,613
Improvement Fund	<u>538</u>	<u>8</u>	<u>-</u>	<u>546</u>
Totals	<u>\$ 1,065,513</u>	<u>\$ 795,447</u>	<u>\$ 1,179,161</u>	<u>\$ 681,799</u>

The notes to the financial statements are an integral part of this statement.

FALLING WATERS CONSERVANCY DISTRICT  
STATEMENT OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES -  
REGULATORY BASIS  
For The Year Ended December 31, 2009

Fund	Cash and Investments 01-01-09	Receipts	Disbursements	Cash and Investments 12-31-09
General/Operating	\$ (209)	\$ 242,450	\$ 235,273	\$ 6,968
Water	-	202,018	146,297	55,721
Bond and Interest	94,364	801,170	705,140	190,394
Debt Service Reserve	585,485	448	476,105	109,828
Wastewater Expense	1,613	2	-	1,615
Improvement Fund	546	-	-	546
Exceptional Benefits Tax	-	16,137	16,137	-
Totals	<u>\$ 681,799</u>	<u>\$ 1,262,225</u>	<u>\$ 1,578,952</u>	<u>\$ 365,072</u>

The notes to the financial statements are an integral part of this statement.

FALLING WATERS CONSERVANCY DISTRICT  
STATEMENT OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES -  
REGULATORY BASIS  
For The Year Ended December 31, 2010

Fund	Cash and Investments 01-01-10	Receipts	Disbursements	Cash and Investments 12-31-10
General/Operating	\$ 6,968	\$ 621,525	\$ 323,312	\$ 305,181
Water	55,721	-	55,721	-
Bond and Interest	190,394	124,388	308,833	5,949
Debt Service Reserve	109,828	84	49,616	60,296
Wastewater Expense	1,615	2	-	1,617
Improvement Fund	546	1	-	547
Savings	-	40,079	23,000	17,079
Storm Water	-	8,149	8,077	72
Totals	<u>\$ 365,072</u>	<u>\$ 794,228</u>	<u>\$ 768,559</u>	<u>\$ 390,741</u>

The notes to the financial statements are an integral part of this statement.

FALLING WATERS CONSERVANCY DISTRICT  
STATEMENT OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES -  
REGULATORY BASIS  
For The Year Ended December 31, 2011

Fund	Cash and Investments 01-01-11	Receipts	Disbursements	Cash and Investments 12-31-11
General/Operating	\$ 305,181	\$ 931,450	\$ 1,141,325	\$ 95,306
Pump Replacement Fund	-	16,832	-	16,832
Bond and Interest	5,949	3	-	5,952
Debt Service Reserve	60,296	350,057	209,750	200,603
Wastewater Expense	1,617	1	-	1,618
Improvement Fund	547	-	-	547
Savings	17,079	470,269	458,418	28,930
Storm Water	72	11,508	5,705	5,875
Totals	<u>\$ 390,741</u>	<u>\$ 1,780,120</u>	<u>\$ 1,815,198</u>	<u>\$ 355,663</u>

The notes to the financial statements are an integral part of this statement.

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS

**Note 1. Summary of Significant Accounting Policies**

*A. Reporting Entity*

The District was established under the laws of the State of Indiana. The District operates under an elected governing board.

The accompanying financial statements present the financial information for the District.

*B. Basis of Accounting*

The financial statements are reported on a regulatory basis of accounting prescribed by the State Board of Accounts in accordance with state statute (IC 5-11-1-6), which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. Receipts are recorded when received and disbursements are recorded when paid.

The regulatory basis of accounting differs from accounting principles generally accepted in the United States of America in that receipts are recognized when received in cash, rather than when earned, and disbursements are recognized when paid, rather than when a liability is incurred.

*C. Cash and Investments*

Investments are stated at cost. Any changes in fair value of the investments are reported as receipts in the year of the sale of the investment.

*D. Receipts*

Receipts are presented in the aggregate on the face of the financial statements. The aggregate receipts include the following sources:

Taxes which can include one or more of the following: property taxes, certified shares (local option tax), property tax replacement credit (local option tax), county option income tax, county economic development income tax, boat and trailer excise tax, county adjusted gross income tax, and other taxes such as the Exceptional Benefits Tax set by the District.

Charges for services which can include, but are not limited to the following: sewage use charges, tap on fees, late payment penalties, reconnection fees, and storm water management fees.

Other receipts which include amounts received from various sources which can include, but are not limited to the following: net proceeds from borrowings; interfund loan activity; and transfers authorized by statute, ordinance, resolution or court order.

*E. Disbursements*

Disbursements are presented in the aggregate on the face of the financial statements. The aggregate disbursements include the following uses:

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
(Continued)

Supplies which includes articles and commodities that are entirely consumed and materially altered when used and/or show rapid depreciation after use for a short period of time. Examples of supplies include office supplies, operating supplies, and repair and maintenance supplies.

Other services and charges which include, but are not limited to: professional services, communication and transportation, printing and advertising, insurance, utility services, repairs and maintenance, and rental charges.

Debt service principal and interest which include fixed obligations resulting from financial transactions previously entered into by the District. It includes all expenditures for the reduction of the principal and interest of the District's general obligation indebtedness.

Other disbursements which include, but are not limited to the following: interfund loan payments, loans made to other funds, internal service disbursements, and transfers out that are authorized by statute, ordinance, resolution, or court order.

*F. Interfund Transfers*

The District may, from time to time, transfer money from one fund to another. These transfers, if any, are included as a part of the receipts and disbursements of the affected funds and as a part of total receipts and disbursements. The transfers are used for cash flow purposes as provided by various statutory provisions.

*G. Fund Accounting*

Separate funds are established, maintained, and reported by the District. Each fund is used to account for money received from and used for specific sources and uses as determined by various regulations. Restrictions on some funds are set by statute while other funds are internally restricted by the District. The money accounted for in a specific fund may only be available for use for certain, legally restricted purposes. Additionally, some funds are used to account for assets held by the District in a trustee capacity as an agent of individuals, private organizations, other funds, or other governmental units and therefore the funds cannot be used for any expenditures of the unit itself.

**Note 2. Exceptional Benefits Taxes**

The Indiana Conservancy Act contains provisions for imposition of "exceptional benefits taxes" to be assessed in equal amounts based on the benefits realized by each real estate parcel within the boundaries of the District. The District established Exceptional Benefits Taxes at an annual rate of \$1,753 per lot for the calendar years 2008 through 2010 based upon the value added to each building site from implementation of the Court approved district plan which included construction of a sanitary sewer collection and treatment system, drinking water distribution system and storm water management system. The rate was modified to \$2,206 per lot commencing with the real estate property tax bills payable in 2011.

Exceptional Benefits taxes established by court order are collected by the County Treasurer and are scheduled to be distributed to the District in June and December; however, situations can arise which would delay the distributions. Taxes may be paid in two equal installments which normally become delinquent if not paid by May 10 and November 10, respectively.

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
(Continued)

**Note 3. *Deposits and Investments***

Deposits, made in accordance with state statute (IC 5-13), with financial institutions in the State of Indiana at year end should be entirely insured by the Federal Depository Insurance Corporation or by the Indiana Public Deposit Insurance Fund. This includes any deposit accounts issued or offered by a qualifying financial institution.

State statutes authorize the District to invest in securities including, but not limited to, federal government securities, repurchase agreements, and certain money market mutual funds. Certain other statutory restrictions apply to all investments made by local governmental units.

**Note 4. *Risk Management***

The District may be exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; and natural disasters.

These risks can be mitigated through the purchase of insurance, establishment of a self-insurance fund, and/or participation in a risk pool. The purchase of insurance transfers the risk to an independent third party. The establishment of a self-insurance fund allows the District to set aside money for claim settlements. The self-insurance fund would be included in the financial statements. The purpose of participation in a risk pool is to provide a medium for the funding and administration of the risks.

**Note 5. *Summary and Status of Court Receivership Proceedings***

- A. A receivership was created for Falling Waters Conservancy District ("FWCD") by Porter Circuit Court ("Circuit Court"), by the entry of an agreed order dated February 2, 2010 in Cause No. 64C01-0911-PL-11430 (the "Receivership"). James A. Federoff ("Federoff") was appointed as Receiver by virtue of that order.
- B. By virtue of the Bankruptcy Stipulation (as defined in Note 7. C.), Federoff agreed to resign as Receiver. (See Note 7 for discussion of the FPI Bankruptcy.)
- C. On June 4, 2012, U.S Bank National Association, as Trustee ("US Bank") filed a motion to substitute Craig W. Wrathell ("Wrathell") of Orlando, Florida as Receiver of FWCD. Pursuant to a subsequent request by US Bank under the Bankruptcy Stipulation, on September 12, 2012, Federoff filed a motion to accept his resignation as Receiver.
- D. On September 13, 2012, the FWCD Board (the "Board") filed a motion to deny US Bank's motion to substitute Wrathell as Receiver, and to terminate the Receivership. The stated bases for such motion are the absence of proper statutory or other legal grounds for a receivership of FWCD, and the lack of need for a receiver.
- E. Circuit Court conducted a hearing on the motion to substitute Wrathell as Receiver on September 17, 2012, and took the motion under advisement pending submission of a proposed order for such substitution. To date, Circuit Court has not yet acted on such motion, and Federoff continues to serve as Receiver.

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
(Continued)

- F. A hearing has been scheduled for December 4, 2012, on the Board's motion to terminate the Receivership. It is anticipated such hearing will be rescheduled to another date, to allow the motion to be heard by the regular Circuit Court judge.

**Note 6. Background Facts and Information/FWCD Taxes**

- A. It was determined by Federoff that there are only 398 platted lots ("Lots") in Falling Waters Subdivision (the "Subdivision"), not 407 Lots that were stated as existing, in the Bond (as defined in Note 8. A.A) and related documents.
- B. In 2010 and prior years, the Auditor of Porter County, Indiana (the "Auditor") inadvertently included Outlots in the Subdivision owned by FWCD, which are part of FWCD's storm water management system, as being subject to payment of property tax to the County. The Receiver worked with the Auditor's Office to correct such error, and to credit the past assessment of property taxes to FWCD Outlots.
- C. Prior to 2008, each Lot was subject to payment of a special benefits tax ("SBT") to FWCD, which was an ad valorem tax assessed based on the value of each Lot. Effective January 1, 2008, each Lot then became subject to payment to FWCD of an exceptional benefits tax ("EBT") of \$1,753 per year, payable in two installments of \$876.50 each, at the same time as property taxes are payable. Also effective January 1, 2010, each "buildable" Lot was obligated to pay an annual storm water management fee of \$84 (the "Storm water Fee"). Effective January 1, 2011, the annual EBT was increased to \$2,206, and the Storm water Fee was rescinded, because it had been included in the increased amount of the annual EBT.
- D. In 2010, it was believed Floramo Partners, Inc. ("FPI") owned 272 Lots in the Subdivision (the "FPI Lots"). In 2010, the Treasurer of Porter County, Indiana (the "Treasurer") certified FPI was delinquent in payment of SBT for years prior to 2008 in the sum of \$58,721.10, and the sum of \$1,534,710.67 for delinquent EBT and penalty, with regard to the FPI Lots.
- E. The FPI Lots were included in the tax sale scheduled by the Auditor and the Treasurer for October 20, 2010, but the tax sale of the FPI Lots was stayed by the filing of the FPI Bankruptcy (as defined in Note 7).
- F. In addition to the delinquent EBT stated above, FPI has not paid any EBT for the years 2011 and 2012. Although the amount due by FPI for delinquent EBT and statutory penalty for the FPI Lots in 2011 and 2012 has not been certified by the Treasurer, the Receiver believes the total due is approximately \$1,320,070.

**Note 7. Summary and Status of FPI Bankruptcy Proceedings**

- A. On October 19, 2010, FPI filed Chapter 11 bankruptcy proceedings in Case No. 10-24886 (the "FPI Bankruptcy") in the U.S. Bankruptcy Court for the Northern District of Indiana (the "Bankruptcy Court"). Subsequently, the Receiver, the County, and US Bank each filed a motion for relief with the Bankruptcy Court to allow them to proceed with a tax sale of the FPI Lots. A hearing on the motions for relief was held, but then adjourned to allow the parties to mediate a settlement of the claims related to FPI's nonpayment of EBT and County property taxes.

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
(Continued)

- B. The Receiver, on behalf of FWCD, filed a claim against FPI in the FPI Bankruptcy for the delinquent SBT and EBT, and corresponding penalties, for delinquent Storm water Fees, for sewer connection or "tap-on" fees improperly collected or paid to FPI from the sales of Lots to third parties, and for other monies owing FWCD (the "FWCD Claim"). The FWCD Claim remains pending.
- C. As the result of a mediation conducted by the Bankruptcy Court, on January 13, 2011, a Stipulation (the "Bankruptcy Stipulation") was entered into by the Receiver, US Bank, FPI, the Treasurer and Porter County Indiana (collectively, the "County"), and First Bank ("First Bank"). The Bankruptcy Stipulation subsequently was approved by the Bankruptcy Court. Under the Bankruptcy Stipulation, Allstate Insurance Company ("Allstate"), which is the sole holder of the Bond, is to form a special purpose entity (the "SPE") to purchase and obtain title to the FPI Lots by means of a sale conducted by the Bankruptcy Court under §363 of the U.S. Bankruptcy Code (the "363 Sale"). However, the 363 Sale still has not been conducted, and title to the FPI Lots remains vested in FPI.
- D. In the Bankruptcy Stipulation, the parties also agreed the EBT due for the FPI Lots could be deferred under certain, stated conditions, until the FPI Lots are sold. However, Circuit Court, not the Bankruptcy Court, has jurisdiction to change requirements regarding the EBT. Before any such deferral can occur, proceedings would have to be filed with Circuit Court requesting the deferral, a hearing in open court would have to be held, and Circuit Court would have to enter an order authorizing the deferral.
- E. All state court proceedings filed against FPI continue to be stayed by the FPI Bankruptcy.

**Note 8. Status of Bond**

- A. US Bank is acting as the successor Trustee under the Trust Indenture dated August 1, 2005 (the "Bond"). Allstate is the sole holder of the Bond.
- B. Counsel for US Bank stated that as of January 1, 2011, there remained due under the Bond unpaid principal of \$30,000, accrued interest of \$867,374.13, and interest draws from the Debt Service Reserve of \$684,161.19. Subsequently, various payments were made in 2011 and 2012 by the Receiver to US Bank, from distributions of EBT collected by the Treasurer for Lots owned by others.
- C. During the period of the Receivership, it appears US Bank used most of the tax distributions paid by the Receiver to US Bank, to pay fees of outside counsel of US Bank, and US Bank's trustee fees. Although the Receiver made subsequent requests, US Bank has not confirmed the amount of the accrued interest currently owed by FWCD under the Bond, which cannot be determined with certainty because of use of the tax distributions by US Bank to pay such the fees. The Receiver believes additional principal of \$145,000 is due under the Bond for 2012.
- D. Since FPI has not paid the EBT due for 2008 – 2012 for the FPI Lots (which comprise in excess of 68 percent of the Lots in the Subdivision), and US Bank has used much of the tax distributions paid by the Receiver, to pay trustee and outside counsel fees, the Receiver has not had sufficient funds to pay in full the principal and interest required under the Bond.

FALLING WATERS CONSERVANCY DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
(Continued)

- E. An additional tax distribution from the 2012 tax sale of a Lot, and from the collection of the second installment of 2012 EBT, is expected to be made by the Auditor sometime in mid-December 2012. Once that tax distribution is received, the Receiver will make an additional payment to US Bank to apply against the Bond debt.

**Note 9. Other Pending Litigation**

In addition to the FPI Bankruptcy, the following are the only other pending proceedings in which FWCD is a party, all of which proceedings are subject to the automatic stay in the FPI Bankruptcy:

- A. Proceedings filed by First Bank in Porter Superior Court under Cause No. 64D01-1003-MF-2813, to foreclose its mortgage on the FPI Lots.
- B. Proceedings filed by First Bank in Porter Circuit Court under Cause No. 64C01-1010-PL-10631, objecting to the tax sale in 2010 of the FPI Lots.
- C. Proceedings filed by First Bank in Porter Circuit Court under Cause No. 64C01-1110-MI-9714, objecting to the tax sale in 2011 of the FPI Lots.

**Note 10. Facilities Owned and Operated by FWCD.**

- A. Although the original order establishing FWCD included the ability to provide potable water service for the Lots in the Subdivision, the water facilities originally constructed by FPI, as developer of the Subdivision, were conveyed by FPI to FWCD, and then by FWCD to Indiana American Water Company ("IAWC") in 2008. Further, IAWC always has provided potable water service for the Lots in the Subdivision.
- B. Since 2008, the only infrastructure owned by FWCD has been a sanitary sewage system and a storm water management system.

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## SUPPLEMENTARY INFORMATION – UNAUDITED

For additional financial information, the District's Annual Reports for 2009 and 2010 can be found on the Indiana Transparency Portal website: [www.in.gov/itp/annual\\_reports/](http://www.in.gov/itp/annual_reports/).

For additional financial information, the District's Annual Report information for 2011 can be found on the Gateway website: <https://gateway.ifionline.org/>.

Differences may be noted between the financial information presented in the financial statements contained in this report and the financial information presented in the Annual Reports of the District which are referenced above. These differences, if any, are due to adjustments made to the financial information during the course of the examination. This is a common occurrence in any financial statement examination. The financial information presented in this report is examined information, and the accuracy of such information can be determined by reading the opinion given in the Independent Accountant's Report.

The supplementary information presented was prepared and/or approved by management of the District. It is presented as intended by the District.

FALLING WATERS CONSERVANCY DISTRICT  
 COMBINING SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND  
 CASH AND INVESTMENT BALANCES - REGULATORY BASIS  
 For The Year Ended December 31, 2008

	General/ Operating	Bond and Interest	Debt Service Reserve	Wastewater Expense	Improvement Fund	Totals
Cash and investments - beginning	\$ 1,319	\$ 195,874	\$ 866,176	\$ 1,606	\$ 538	\$ 1,065,513
Receipts:						
Taxes	-	99,925	228,225	-	-	328,150
Charges for services	29,400	-	-	-	-	29,400
Other receipts	78,114	349,830	9,938	7	8	437,897
Total receipts	107,514	449,755	238,163	7	8	795,447
Disbursements:						
Other services and charges	36,178	6,174	10,870	-	-	53,222
Other disbursements	72,864	-	349,300	-	-	422,164
Debt Service:						
Bond principal	-	5,000	-	-	-	5,000
Bond interest	-	540,091	158,684	-	-	698,775
Total disbursements	109,042	551,265	518,854	-	-	1,179,161
Excess (deficiency) of receipts over disbursements	(1,528)	(101,510)	(280,691)	7	8	(383,714)
Cash and investments - ending	\$ (209)	\$ 94,364	\$ 585,485	\$ 1,613	\$ 546	\$ 681,799

FALLING WATERS CONSERVANCY DISTRICT  
 COMBINING SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND  
 CASH AND INVESTMENT BALANCES - REGULATORY BASIS  
 For The Year Ended December 31, 2009

	General/ Operating	Water	Bond and Interest	Debt Service Reserve	Wastewater Expense	Improvement Fund	Exceptional Benefits Tax	Totals
Cash and investments - beginning	\$ (209)	\$ -	\$ 94,364	\$ 585,485	\$ 1,613	\$ 546	\$ -	\$ 681,799
Receipts:								
Taxes	165,246	116,658	-	-	-	-	16,137	298,041
Charges for services	64,996	-	-	-	-	-	-	64,996
Other receipts	12,208	85,360	801,170	448	2	-	-	899,188
Total receipts	<u>242,450</u>	<u>202,018</u>	<u>801,170</u>	<u>448</u>	<u>2</u>	<u>-</u>	<u>16,137</u>	<u>1,262,225</u>
Disbursements:								
Other services and charges	68,922	20,613	1,715	70,874	-	-	-	162,124
Other disbursements	166,351	125,684	-	405,231	-	-	16,137	713,403
Debt Service:								
Bond principal	-	-	5,000	-	-	-	-	5,000
Bond interest	-	-	698,425	-	-	-	-	698,425
Total disbursements	<u>235,273</u>	<u>146,297</u>	<u>705,140</u>	<u>476,105</u>	<u>-</u>	<u>-</u>	<u>16,137</u>	<u>1,578,952</u>
Excess (deficiency) of receipts over disbursements	<u>7,177</u>	<u>55,721</u>	<u>96,030</u>	<u>(475,657)</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>(316,727)</u>
Cash and investments - ending	<u>\$ 6,968</u>	<u>\$ 55,721</u>	<u>\$ 190,394</u>	<u>\$ 109,828</u>	<u>\$ 1,615</u>	<u>\$ 546</u>	<u>\$ -</u>	<u>\$ 365,072</u>

FALLING WATERS CONSERVANCY DISTRICT  
 COMBINING SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND  
 CASH AND INVESTMENT BALANCES - REGULATORY BASIS  
 For The Year Ended December 31, 2010

	General/ Operating	Water	Bond and Interest	Debt Service Reserve	Wastewater Expense	Improvement Fund	Savings	Storm Water	Totals
Cash and investments - beginning	\$ 6,968	\$ 55,721	\$ 190,394	\$ 109,828	\$ 1,615	\$ 546	\$ -	\$ -	\$ 365,072
Receipts:									
Taxes	436,808	-	124,356	-	-	-	-	-	561,164
Charges for services	80,878	-	-	-	-	-	-	8,149	89,027
Other receipts	103,839	-	32	84	2	1	40,079	-	144,037
Total receipts	621,525	-	124,388	84	2	1	40,079	8,149	794,228
Disbursements:									
Other services and charges	149,017	-	128,832	49,616	-	-	-	1,352	328,817
Other disbursements	174,295	55,721	-	-	-	-	23,000	6,725	259,741
Debt Service:									
Bond interest	-	-	180,001	-	-	-	-	-	180,001
Total disbursements	323,312	55,721	308,833	49,616	-	-	23,000	8,077	768,559
Excess (deficiency) of receipts over disbursements	298,213	(55,721)	(184,445)	(49,532)	2	1	17,079	72	25,669
Cash and investments - ending	\$ 305,181	\$ -	\$ 5,949	\$ 60,296	\$ 1,617	\$ 547	\$ 17,079	\$ 72	\$ 390,741

FALLING WATERS CONSERVANCY DISTRICT  
 COMBINING SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND  
 CASH AND INVESTMENT BALANCES - REGULATORY BASIS  
 For The Year Ended December 31, 2011

	General/ Operating	Pump Replacement Fund	Bond and Interest	Debt Service Reserve	Wastewater Expense	Improvement Fund	Savings	Storm Water	Totals
Cash and investments - beginning	\$ 305,181	\$ -	\$ 5,949	\$ 60,296	\$ 1,617	\$ 547	\$ 17,079	\$ 72	\$ 390,741
Receipts:									
Taxes	331,164	-	-	-	-	-	-	-	331,164
Charges for services	139,199	-	-	-	-	-	-	252	139,451
Other receipts	<u>461,087</u>	<u>16,832</u>	<u>3</u>	<u>350,057</u>	<u>1</u>	<u>-</u>	<u>470,269</u>	<u>11,256</u>	<u>1,309,505</u>
Total receipts	<u>931,450</u>	<u>16,832</u>	<u>3</u>	<u>350,057</u>	<u>1</u>	<u>-</u>	<u>470,269</u>	<u>11,508</u>	<u>1,780,120</u>
Disbursements:									
Supplies	230	-	-	-	-	-	-	-	230
Other services and charges	310,424	-	-	209,750	-	-	-	-	520,174
Other disbursements	<u>830,671</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>458,418</u>	<u>5,705</u>	<u>1,294,794</u>
Total disbursements	<u>1,141,325</u>	<u>-</u>	<u>-</u>	<u>209,750</u>	<u>-</u>	<u>-</u>	<u>458,418</u>	<u>5,705</u>	<u>1,815,198</u>
Excess (deficiency) of receipts over disbursements	<u>(209,875)</u>	<u>16,832</u>	<u>3</u>	<u>140,307</u>	<u>1</u>	<u>-</u>	<u>11,851</u>	<u>5,803</u>	<u>(35,078)</u>
Cash and investments - ending	<u>\$ 95,306</u>	<u>\$ 16,832</u>	<u>\$ 5,952</u>	<u>\$ 200,603</u>	<u>\$ 1,618</u>	<u>\$ 547</u>	<u>\$ 28,930</u>	<u>\$ 5,875</u>	<u>\$ 355,663</u>

FALLING WATERS CONSERVANCY DISTRICT  
SCHEDULE OF PAYABLES AND RECEIVABLES  
December 31, 2011

<u>Government or Enterprise</u>	<u>Accounts Payable</u>	<u>Accounts Receivable</u>
Governmental activities	<u>\$ 17,111</u>	<u>\$ 9,943</u>

FALLING WATERS CONSERVANCY DISTRICT  
SCHEDULE OF LEASES AND DEBT  
December 31, 2011

Description of Debt		Ending Principal Balance	Principal and Interest Due Within One Year
Type	Purpose		
Governmental activities:			
General obligation bonds	Wastewater Treatment Facilities	\$ 9,975,000	\$ 841,150
Totals		<u>\$ 9,975,000</u>	<u>\$ 841,150</u>

See Note 8 for additional information concerning principal and interest due.

FALLING WATERS CONSERVANCY DISTRICT  
SCHEDULE OF CAPITAL ASSETS  
December 31, 2011

Capital assets are reported at actual or estimated historical cost based on appraisals or deflated current replacement cost. Contributed or donated assets are reported at estimated fair value at the time received.

	<u>Ending Balance</u>
Governmental activities:	
Land	\$ 1,600,000
Infrastructure	1,752,187
Buildings	1,850,000
Improvements other than buildings	1,200,000
Machinery, equipment, and vehicles	<u>102,500</u>
Total capital assets	<u>\$ 6,504,687</u>

FALLING WATERS CONSERVANCY DISTRICT  
EXAMINATION RESULTS AND COMMENTS

***EVENTS OF DEFAULT***

On September 22, 2009, the District was notified by the Trustee under the Bond Resolution that they were in default under the terms of the Bond Indenture. The notice listed three failures of the District to comply with the provisions of the Bond Indenture:

1. The District failed to deposit amounts to the Bond and Interest Fund. In March 2009, The District received \$83,412.82 from Indiana American Water Company (IAWC) under a recapture agreement whereby IAWC would refund the District a specified amount for each connection to the water system infrastructure. According to the attorney for the Trustee and the legal advice requested by the District of two additional attorneys, the District was required to transfer this amount to the Bond and Interest Fund.
2. The District has failed to provide the full payment of amounts due on the bonds and failed to maintain Funds held under the Indenture at required levels. The District has maintained the Debt Service Reserve Fund at amounts significantly below the Reserve Requirement since January 2, 2008.
3. The District failed to assure timely collection of the Special Benefits Taxes. The Special Benefits Tax was an additional real estate tax based on assessed valuation and billed and collected by the County Auditor and Treasurer. Due to circumstances beyond the District's control, the County did not bill and collect the Special Benefits Taxes in the time period that would allow bond and interest payments to be made when due.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

***ADDITIONAL COSTS DUE TO DEFAULT***

Due to the District's default pursuant to the Bond Indenture, additional legal and professional costs were incurred. The Trustee for the Bond Indenture incurred legal fees of \$453,507.98 which were paid by the District from their Bond and Interest and Debt Service Reserve Funds for the period January 1, 2008 to October 31, 2012. The Trustee filed an application with the Court for the appointment of a Receiver to take possession of the District and to protect, operate and manage the District. The Court appointed a Receiver on February 2, 2010. Additional costs incurred for the Receiver of \$444,709.81 were paid from District's Bond and Interest, Debt Service Reserve, and General Operating Funds for the period February 2, 2010 to October 31, 2012.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Every effort should be made by the governmental unit to avoid unreasonable or excessive costs. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

FALLING WATERS CONSERVANCY DISTRICT  
EXAMINATION RESULTS AND COMMENTS  
(Continued)

**DELINQUENT BOND PRINCIPAL AND INTEREST**

Due to default, tax receipts forwarded to the Bond Trustee have not been credited to payment of bond principal or interest. Per section 9.10 Application of Moneys After Default - The District covenants that if an Event of Default shall happen and shall not have been remedied, the Trustee shall apply moneys, securities, and funds on deposit in the Funds and Accounts pursuant to Article VII or received by the Trustee pursuant to any right given or action taken under the provisions of this section as follows and in the following order:

- (a) To the payment of the reasonable and proper charges, expenses, and liabilities of the Trustee, the Bond Registrar and any paying agent, including the expenses of outside counsel of the Trustee, Bond Registrar and any paying agent and the payment of Administrative Expenses owed to the District or the Consultant.
- (b) To the payment of principal and interest then due on the bonds as follows:
  - (1) First, to the payment to the persons entitled thereto of all interest then due and payable on the Bonds in the order of maturity of such installments; and
  - (2) Second, to the payment to the persons entitled thereto of the unpaid installments of principal of any of the Bonds which have become due in order of the maturity of such installments.

The District is delinquent in their bond principal and interest payments, not including interest accruing on the unpaid amounts, as follows:

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Totals</u>
Bond Principal Due	\$ 5,000.00	\$ 25,000.00	\$ 145,000.00	\$ 175,000.00
Bond Interest Due	698,075.00	697,025.00	691,075.00	2,086,175.00
Interest Paid	<u>(180,000.87)</u>	<u>-</u>	<u>-</u>	<u>(180,000.87)</u>
Interest Due - Unpaid	<u>518,074.13</u>	<u>697,025.00</u>	<u>691,075.00</u>	<u>1,726,173.26</u>
Total Bond Principal and Interest Unpaid	<u>\$523,074.13</u>	<u>\$722,025.00</u>	<u>\$836,075.00</u>	<u>\$2,081,174.13</u>

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10

FALLING WATERS CONSERVANCY DISTRICT  
EXIT CONFERENCE

The contents of this report were discussed on November 27, 2012 with James A. Federoff, Court-Appointed Receiver; Marko Sowa, Interim Chairman of the Board of Directors; and Karen M. Giesler, Financial Clerk. The Official Response has been made a part of this report and may be found on pages 28 through 30.



FEDEROFF KUCHMAY LLP  
LEGAL COUNSEL

December 19, 2012

*Via Email & 1<sup>st</sup> Class U.S. Mail*

Bruce A. Hartman  
CPA, State Examiner  
Indiana State Board of Accounts  
302 West Washington Street, Room E418  
Indianapolis, IN 46204-2765

Re: Falling Waters Conservancy District Audit Response

Dear Ms. Hartman:

This correspondence is sent to you in my capacity as the court-appointed Receiver of Falling Waters Conservancy District ("the District"). You recently completed your audit of the District's books and records for the period of January 1, 2008 through December 31, 2011. As the result of the exit conference you conducted on November 27, 2012, I have opted to file an official response to the draft Examination Results and Comments you delivered to us at the exit conference (the "Results Report"), a copy of which is enclosed for reference. Please consider this correspondence as that response. Please also note the headings of the numbered following items correspond to the same items in the Results Report.

1. **EVENTS OF DEFAULT.** In this section of the Results Report, three reasons for the default under the Bond Indenture are listed. My comments regarding them follow:

a. The first reason relates to a payment of \$83,412.82 received by the District in March, 2009 from Indiana American Water Company ("IAWC"), under a recapture agreement that provides for certain payments to be made when the owners of lots ("Lots") in Falling Waters Subdivision (the "Subdivision") make connection to the water mains owned by IAWC, to provide their respective Lots with potable water service. After Porter Circuit Court ("Circuit Court") authorized the creation of the receivership for the District (the "Receivership"), those funds were used to pay operational expenses of the District and administrative expenses of the Receivership, which have priority over payment of the Bond Indenture.

b. The second reason for the Bond Indenture default stated in the Results Report is that the District failed to fully pay the amounts due under the Bond Indenture, and failed to maintain the required Debt Service Fund. The following are the three apparent, primary reasons why these defaults occurred:

i. Floramo Partners, Inc. ("FPI") was the original developer of the Subdivision. Until 2009, Anthony Floramo ("Floramo") acted both as a principal of FPI, and as the chairman of the District. It is believed Floramo was primarily responsible for the District's operations, and with compliance with the Bond Indenture and all pertinent District ordinances

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and governmental laws and regulations. Since 2010, FPI is believed to have owned approximately 272 of the 396 total Lots in the Subdivision (the "FPI Lots"). Since 2008, FPI has not paid any exceptional benefits tax ("EBT") on the FPI Lots. As indicated in proposed, supplemental audit notes I previously provided to you, the approximate amount of the unpaid EBT due for the FPI Lots through 2012 is estimated at \$2,854,780. Collection of the delinquent EBT for the FPI Lots has been stayed since October, 2010 by the automatic stay imposed by law as the result of the filing of Chapter 11 bankruptcy proceedings by FPI. With only a few exceptions, the current owners of the other Lots in the Subdivision, who occupy those Lots, have at all material times, paid the EBT due for their respective Lots on a regular and timely basis. It has been those residents that have funded the payment of the fees of the Bond Trustee and its outside legal counsel, and the administrative expenses of the Receivership.

ii. As noted in the Results Report, a majority of the EBT collected and distributed by the Auditor of Porter County, Indiana (the "Auditor") to the District have gone to pay the fees of the Bond Trustee and its outside counsel, and the administrative expenses of the Receivership. The remainder of the EBT distributed to the District by the Auditor has been used to make payments toward the Bond Indenture obligation, and to pay operational expenses of the District. Had the EBT due for the FPI Lots been paid when due since 2008, there never would have been a default by the District under the Bond Indenture, since there would have been more than adequate funds to pay the operational expenses of the District and the obligations due under the Bond Indenture, which consequently would have obviated the need for the Receivership.

iii. Additionally, there previously was a \$1,000,000 irrevocable, stand by letter of credit (the "LOC") that was given by FPI to the Bond Trustee, payable at sight, in the event of nonpayment of capital charges due under the Bond Indenture. To the Receiver's knowledge, payment under the LOC was never demanded by the Bond Trustee, even though there was a default in payment of the capital charges due, which failure has not been explained.

c. The third reason stated in the Results Report for the District's default under the Bond Indenture is that the District failed to timely collect Special Benefits Taxes ("SBT"). Effective January 1, 2008, the District changed the methodology of taxing or assessing the Lots from SBT, which is an ad valorem tax based on assessed value of the Lots, to EBT, which is a fixed tax or assessment, uniform as to all the Lots. The reason for the change from SBT to EBT was because most of the Lots were unimproved, and the relatively low valuation of the Lots caused the amounts collected from SBT to be inadequate to pay the District's obligations under the Bond Indenture and the District's operational expenses. Accordingly, during the audit period (January 1, 2008 – December 31, 2011) EBT was used by the District to fund its operations and obligations, rather than SBT.

## **2. ADDITIONAL COSTS DUE TO DEFAULT.**

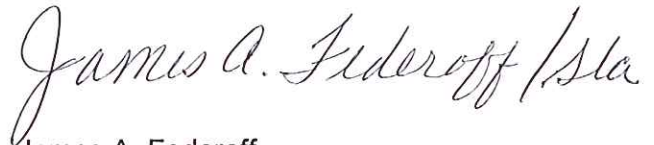
a. The Results Report states that the substantial legal, professional, and trustee fees referenced were incurred because of the District's default under the Bond Indenture. However, as noted above, the default was the direct result of the nonpayment by FPI of the EBT due for the FPI Lots. Furthermore, the District is prevented by the stay in the FPI bankruptcy proceedings from enforcing the collection of the delinquent EBT.

b. The Bond Trustee has filed a motion to substitute a person that owns and operates a management company based in Orlando, Florida, as receiver for the District. To reduce the potential for continuing, substantial legal and other professional fees, two board members of the District, who also are Freeholders, filed a motion to terminate the Receivership with Circuit Court, which is anticipated to be heard in February, 2013.

3. **DELINQUENT BOND PRINCIPAL AND INTEREST.** See Section 1 above for comments that also apply to this section of the Results Report.

Very truly yours,

FEDEROFF KUCHMAY LLP

A handwritten signature in cursive script that reads "James A. Federoff /sla".

James A. Federoff  
[jaf@federoff-law.com](mailto:jaf@federoff-law.com)

JAF/sla

Enclosure

cc: David L. Hollenbeck, Esq. (via email)(w/enclosure)  
Falling Waters Conservancy District Board (via email)(w/enclosure)