



# Town of Ripley

## Water District Financial Condition and Legal Services

### Report of Examination

Period Covered:

January 1, 2012 — November 27, 2013

2014M-15



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

September 2014

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Ripley, entitled Water District Financial Condition and Legal Services. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*



## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

The Town of Ripley (Town) is located in Chautauqua County and has approximately 2,400 residents as of the 2010 census. The Town is governed by an elected Town Board (Board) which consists of a Supervisor and four Board members. The Board is responsible for the general management and control of the Town's financial affairs including establishing water rates and preparing the annual budget. The Town provides services to its residents, including street maintenance, snow removal, water, sewer, lighting, fire protection and general government support. General fund appropriations for the 2013 fiscal year totaled \$681,205, which were funded primarily through real property taxes, sales tax and State aid.

#### **Scope and Objectives**

The objectives of our audit were to evaluate the financial condition of Water District 1 and determine if the Board complied with adopted resolutions regarding legal services during the period January 1, 2012 through November 27, 2013. We expanded the scope of our audit back to November 15, 2007 for our financial condition review of Water District 1. Our audit addressed the following related questions:

- Did the Board adopt realistic budgets and appropriately allocate operating activity and capital costs among users of Water District 1?
- Did the Town bill for legal services provided to other municipalities in accordance with the Board's adopted resolutions?

#### **Audit Results**

The Board did not properly allocate operating costs between District 1 and District 2. If costs were allocated in accordance with regulations, District 1 would have had a \$30,963 deficit. In addition, the Board's adopted budgets for District 1 were unreasonable, resulting in annual operating deficits and declining surplus.

The Board approved two extensions to District 1 without ensuring that the Town complied with all legal requirements, and the Board did not properly allocate project costs to benefited properties, which contributed to the declining financial condition of District 1. Finally, the Board has not adopted a multiyear financial plan to address the water districts' future financial needs.

The Board also did not comply with one of its own resolutions when it failed to bill other municipalities for legal services provided to the municipalities by the Town's Attorney. As a result, the Town forfeited between \$3,000 and \$6,000 in revenues.

### **Comments of Town Officials**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they have taken or plan to take corrective action. Appendix B includes our comments on issues raised in the Town's response letter.

# Introduction

## Background

The Town of Ripley (Town) is located in Chautauqua County and has approximately 2,400 residents as of the 2010 census. The Town is governed by an elected Town Board (Board) which consists of a Supervisor and four council members. The Board is responsible for the general management and control of the Town's financial affairs, including establishing water rates and preparing the annual budget. The Town provides services to its residents, including street maintenance, snow removal, water, sewer, lighting, fire protection and general government support. General fund appropriations for the 2013 fiscal year totaled \$681,205, which were funded primarily through real property taxes, sales tax and State aid.

The Board is responsible for overseeing the Town's operations and finances, including adopting the annual budget and approving water rates, and ensuring that Town operations are adequately funded. The Town has two water districts (District 1 and 2) that generated water revenues totaling \$572,496 from 2008 through 2012. District 1 has approximately 550 customers who use approximately 19 million gallons of water annually, and District 2 has approximately 50 customers who use approximately 2 million gallons of water annually. District 1 appropriations for the 2013 fiscal year totaled \$150,817 and District 2 appropriations totaled \$41,379, which were funded primarily with metered water sales and fixed charges.

The Town Attorney retired at the end of 2012. In January 2013, the Board appointed the retired Attorney as the Town's Attorney with an annual salary of \$30,000, which was the maximum amount that this individual could earn while still being able to collect full retirement benefits from the New York State and Local Retirement System (NYSLRS).

## Objectives

The objectives of our audit were to evaluate the financial condition of District 1 and determine if the Board ensured compliance with its adopted resolutions regarding legal services. Our audit addressed the following related questions:

- Did the Board adopt realistic budgets and appropriately allocate operating activity and capital costs among users of District 1?
- Did the Town bill for legal services provided to other municipalities in accordance with the Board's adopted resolutions?

**Scope and  
Methodology**

We examined various financial records and reports and reviewed adopted resolutions regarding legal services for the period January 1, 2012 through November 27, 2013. We expanded the scope of our audit back to November 15, 2007 for our financial condition review of District 1.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

**Comments of  
Town Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they have taken or plan to take corrective action. Appendix B includes our comments on issues raised in the Town's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

# Water District 1

The Board is responsible for the financial planning and management necessary to maintain the water districts' financial health. The Board must adequately monitor the districts' financial operations and ensure that appropriate actions are taken to properly account for district activity and maintain the districts' financial stability. These activities include adopting budgets with realistic estimates of revenues and expenditures and adopting appropriate user charges. In addition, having a long-term financial plan would allow Town officials to make more informed decisions based on future needs.

The Board did not properly allocate operating costs between District 1 and District 2. If costs were allocated in accordance with regulations, District 1 would have had a \$30,963 deficit. In addition, the Board's adopted budgets for District 1 were unreasonable, resulting in annual operating deficits and declining surplus. The Board approved two extensions to District 1 without ensuring that the Town complied with all legal requirements, and the Board did not properly allocate project costs to benefited properties, which contributed to the declining financial condition of District 1. Finally, the Board has not adopted a multiyear financial plan to address the water districts' future financial needs.

## Allocating Operating Activity

The Board should allocate water district operating costs on an equitable basis to property owners residing within each district. Also, the Board must ensure that resources are adequate to cover the expenses of each separate district. Board members must ensure that there is an adequate process in place to prepare, adopt and amend water district budgets based on reasonably accurate assessments of resources that can be used to fund appropriations. When estimating budgeted revenues, the Board should use historical data, such as prior years' actual results of operations, to guide them in determining whether revenues and expenditures are reasonable.

According to District 2 regulations, District 2's metered sales revenue are to be transferred to District 1, which will pay all operating and maintenance expenditures for both districts. However, the regulations also stipulate that District 2 will retain all ready-to-serve charges,<sup>1</sup>

<sup>1</sup> User charges are typically part of a district's rate schedule and are billed only to users of the system (those who are connected to the system and are using water) and can include charges based on metered sales or a ready-to-serve charge (a flat billing rate). However, in this instance, all property owners within each district pay the ready-to-serve charge whether or not they are connected to the Town's water lines. The charge is based on the availability of the water lines located on the properties. To charge all users, whether connected or not, the Town should authorize an assessment on the real property tax bills.



interest and connection fees paid by property owners located within District 2. According to Town officials, the Board's expectation is for metered sales revenue to fund operation and maintenance costs while ready-to-serve charges will be used to fund capital needs. Town officials also told us that the Board intended connection fees to stay within respective districts and be used to fund capital costs. Although user charges are an appropriate method to fund capital costs of a water district, connection fees are administrative fees imposed to pay for the cost of connecting a property within the district to the water system and may not be used to fund capital costs of a district.

Town officials did not use their regulations as a guide for allocating operating costs between the two districts. Instead of transferring all District 2 metered sales revenue to District 1, Town officials told us that they typically allocated 10 percent of total metered sales and ready-to-serve charges to District 2. However, Town officials have not established procedures for determining the actual operating costs of each district and did not provide any explanation as to how they determined that 10 percent was an equitable allocation percentage. To properly allocate costs, the Town should identify the actual costs or reasonably estimate them for each district. District 2 could then remit monies to District 1 to pay its share of the expenses, or each district could pay its respective costs directly. However, without procedures in place to determine or allocate costs, residents in either district could be paying an inequitable share of operating costs.

According to Town records, District 1's unexpended surplus as of December 31, 2012 totaled \$35, and District 2's unexpended surplus totaled \$42,662. Had the Town allocated the revenues and expenditures between the districts according to District 2 regulations for the 2007 through 2012 fiscal years, operating losses for District 1 would have totaled \$85,115 rather than the recorded \$58,327.<sup>2</sup> Therefore, District 1 would not have had a \$35 surplus; instead, it would have had a deficit of \$30,963<sup>3</sup> as of the end of the 2012 fiscal year. Also, District 2 would have had a surplus of \$69,450 as of December 31, 2012.

We also compared the 2013 budget for District 1 with actual results through September 30, 2013 and then projected the results through year end. We found District 1 continues to have insufficient revenues to fund operations and estimate that District 1 will experience another operating deficit in 2013 totaling approximately \$22,000, which would further increase District 1's deficit to approximately \$53,000. Town officials told us that a contributing factor for previous poor

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<sup>2</sup> Although operating and maintenance costs should be based on actual costs or a reasonable estimate of those costs, and Town officials did not adopt a method for identifying or allocating costs between the districts, we prepared our calculations according to the regulations in place.

<sup>3</sup> This deficit included a 2008 accrual adjustment of \$4,210.

revenue estimates occurred because the Board relied on the water supervisor's revenue estimates<sup>4</sup> that erroneously included unpaid water rents that were re-levied on the tax roll as an additional revenue source, in effect counting them twice.

We also found that the 2013 budgeted metered sales for District 1 were based on 22 million gallons, when District 1's actual 2012 metered sales were based on approximately 19 million gallons of usage. This equates to overestimated metered sales of approximately \$10,000. If the Town does not increase District 1 water user rates to provide sufficient revenues for operations and/or establish district assessments, District 1's financial flexibility can become impaired, which may result in cash flow problems as well.

## **Budgeting**

To properly fund water district operations, the Board should determine the annual cost of operations and maintenance for each district, along with anticipated future repairs and improvements. Based on that information, the Board should revise water rates and charges within the respective districts, if necessary, to generate sufficient revenues to properly fund operations and provide for necessary improvements to the districts' infrastructure. Water rates and charges may be increased by Board action at any time during the fiscal year, as needed. Assessments, if applicable, would be included in the annual budgeting process.

Although Town officials indicated that they review budget status reports that identified revenue shortfalls, the Board had not increased water user rates since 2004. During our review of the Board's adopted 2014 budget, we found that the Board had increased the estimated amount of metered sales<sup>5</sup> from \$83,718 in 2013 to \$88,563 in 2014. According to the Town Supervisor, this estimated amount reflects a 22 percent increase in water user rates<sup>6</sup> and is based on approximately 21 million gallons of usage.

## **Allocating Extension Costs**

According to New York State Town Law, after a water district is established, "a town may construct, maintain, extend, repair and regulate water works, wells, reservoirs or basins for the purpose of supplying the inhabitants of any water district in such town, with pure and wholesome water." Although Town Law authorizes the sale of excess water from a water district to users located outside of the water district's boundaries, these outside users must construct water lines that connect to the existing lines at the edge of the district's

<sup>4</sup> The water supervisor is responsible for providing budget estimates to the Town Supervisor.

<sup>5</sup> For District 1 and 2 combined

<sup>6</sup> From \$3.45 to \$4.20 per 1,000 gallons, effective January 2014

boundaries.<sup>7</sup> If a town wants to provide water service to properties located outside of a water district by constructing water lines, it must first establish a new district or extend the boundaries of an existing water district prior to constructing water lines outside of the existing water district boundaries. Also, Town Law requires the property owners within an extension to pay for the entire cost of construction. There is no authority for a town to construct pipes outside of a water district's boundaries for the purposes of supplying and selling water to private outside users, whether or not the outside users reimburse the town for construction costs.

In 2012, two property owners approached the Town to request water line extensions to their properties, saying they were willing to pay a portion of the material costs. One extension was located within District 1's existing boundaries, and the other was located outside of the District's boundaries. Town officials approved the projects believing they would ultimately benefit the Town, because one of the lines would be extended 200 feet beyond the owner's property line to improve an adjoining property as a "shovel-ready site" for future development. However, the Board did not extend the boundaries of District 1 to include the property of the owner who resided outside of the District's existing boundaries. The Board also did not establish a new water district.

The Board obligated District 1 customers to pay 25 percent of the material costs<sup>8</sup> and the entire amount of the construction costs. The property owners were contractually obligated to pay \$20,725 toward the project. One property owner paid the Town \$7,000 after installation, with the remaining \$7,000 to be paid within the following five years. The other property owner is obligated to pay \$6,725 within five years after installation.

However, the Town did not anticipate \$9,925 for engineering fees. Also, material costs were approximately \$7,000 greater than expected. Further, the Town initially under-calculated the materials cost for one of the property owners by \$2,000.

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<sup>7</sup> A developer or other private party may install water lines that connect to the district's system to provide water outside of the district, with the private party responsible for ownership and maintenance of these lines. Also, a town may construct lines within a district for the sale of excess water outside of the district.

<sup>8</sup> The Town purchased materials for an extension of 1,000 feet, but the property owner was responsible for paying for materials for only 800 feet.

The Town borrowed \$50,000<sup>9</sup> for the project, allocating \$25,000 to each of the extensions. Projects costs, including labor, totaled \$55,798, which included material costs totaling \$37,940. The Town's contracts with each property owner indicated that material costs beyond those initially estimated could be added by amendment to the contracts, as negotiated by the Town and the property owners. However, the Town did not exercise this option with either property owner, ultimately under-charging the property owners by approximately \$7,000 for their share of the materials. In total, these two extensions will cost District 1 property owners approximately \$35,000 and contribute to District 1's declining financial position.

Town officials told us they believed their approach to financing the construction of these water extensions allows for the recovery of higher levels of private investment in its infrastructure. However, because Town Law requires the property owners within an extension to pay for the entire cost of construction, the Town's approach is contrary to Town Law. Town officials were concerned that there was opposition to the new water lines from property owners which would have their parcels improved by a water line, but who were unwilling to pay for the improvement. However, the Board could have created a new district on a benefit basis where the property owners whose lots fronted on the water line, but did not connect to the water line, could have been charged a token amount if it were not arbitrary and capricious. As it presently stands, such lots pay nothing, nor will they, unless the Town establishes a water district or an extension.

## **Multiyear Financial Plan**

Planning for water district operations and capital asset needs on a multiyear basis allows Town officials to identify developing revenue and expenditure trends, set long-term priorities and goals and avoid large fluctuations in water user rates. It also allows Town officials to assess the effect and merits of alternative approaches to address financial issues such as increasing operation and maintenance expenditures, infrastructure needs and changes to service levels provided to residents.

The Board has not adopted any long-term plans for the Town's water districts. We also found that, while ready-to-serve charges were intended for capital costs, the Town has not reserved these moneys for that purpose. Rather, the Board has used these revenues to finance operating costs. For example, although the Town established a capital reserve in District 1, its balance of \$5,150 as of December 31, 2012 has remained virtually unchanged since December 31, 2009.

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<sup>9</sup> The bond resolution, dated June 14, 2012, included a maximum cost of \$100,000. In June 2013, the Town redeemed \$15,000 of the \$50,000 in debt originally issued.

This lack of long-term planning limits the Board's ability to assess the effects of significant increases in fixed costs, such as debt payments, and can have an impact on the Town's flexibility in addressing budgetary expenditures. When considering the declining fiscal health of District 1, it becomes even more important for the Board to develop a multiyear plan to ensure that water district operations will be properly funded should an unforeseen event occur.

## **Recommendations**

1. The Board should establish an equitable method for allocating costs between the two water districts and then follow the established regulations.
2. The Board should adopt realistic water budget estimates for revenues and expenditures based on properly allocated historical data and current trends.
3. The Board should review the water rates and charges annually and revise them, if necessary, to generate sufficient revenue to cover expenditures and take into consideration future repairs and improvements that may be necessary for each district.
4. The Board should bill the property owners to whom the water lines were extended for any unpaid share of costs.
5. The Town should consider whether it may be appropriate to establish an extension or a new district to include properties fronting a water line.
6. The Board should review its procedures for imposing the ready-to-serve charge on all property within the districts, including properties that are not connected to the water system. Assuming that the districts have been established on a benefit basis, the Town may impose a flat fee on all property within the districts as an assessment on the annual tax bill.
7. The Board should review its procedures relating to connection fees to ensure that these fees are collected to pay for the costs of connecting buildings to the water system and not to fund capital expenses.
8. The Board should develop a multiyear financial plan to establish clear goals and objectives for funding the water districts' long-term operating and capital needs. The Board and Town officials should frequently monitor and update the plan to ensure that its decisions are based on the most accurate and up-to-date financial information.

## Legal Services

When the Board adopts resolutions, it should ensure that any successive Board action complies with its adopted resolutions. When local governments agree to share services, the governing body of each participant should enter into a written agreement that defines the rights and responsibilities of each party and includes appropriate procedures to help ensure the long-term success of shared services.

In January 2013, the Board adopted a resolution appointing a Town Attorney (Attorney) at an annual salary of \$30,000. The resolution also states that the appointed Attorney would continue to work for other municipal employers and would be responsible for maintaining a record of hours attributed to this work and reporting them to the Supervisor on a monthly basis. The Town would bill the other municipalities for the Attorney's services at a rate of \$60 per hour, and the amount received from other municipalities would be considered Town revenue.

However, the Board did not enter into inter-municipal agreements with any of the other municipalities that the Attorney provided legal services to in 2013 or expected to provide legal services to in the future. Therefore, there are no written agreements to establish the contract period between the Town and the other municipalities, describe the services to be provided or document the basis for determining the Town's entitlement to payments from the other municipalities.

Moreover, the Attorney has not provided any information to the Supervisor regarding billable hours, even though both individuals indicated that the Attorney provided services to other municipalities in 2013.<sup>10</sup> Both individuals also told us that the Attorney was completing several projects for additional municipalities in 2013, but the Town would not be charging those municipalities for the Attorney's services.

In written correspondence, the Supervisor stated, "We did originally anticipate the possibility of various shared service arrangements with other communities that he would serve especially in the area of joint Town of Ripley projects with other communities, specifically our community redevelopment/demolition projects which we planned to undertake but which at this point are still all pending. In this

<sup>10</sup> One of the municipalities we contacted told us that the Town's Attorney provided it with legal services in 2013, but it was unable to provide us with the number of hours that the Attorney worked on these projects.

area we thought that his services would benefit not only Ripley but other communities and in this regard cost sharing for his services would be appropriate.” It further states, “We continue to review our ongoing projects that involve the Town Attorney and will negotiate appropriate inter-municipal agreements when appropriate in order to ensure fairness for our Town.” However, we interviewed three Board members and none of them expected the Town to bill other municipalities for legal services provided by the Attorney.

The Attorney told us at the beginning of our audit that he had tracked the hours that he had worked for other municipalities, but he had not submitted his records to the Supervisor. He indicated that the number of hours were “somewhere between 50 and 100.” That being the case, we calculated that the Town has lost between \$3,000 and \$6,000 in revenue that has not been billed to other municipalities. It is unclear why the Attorney did not advise the Board to enter into inter-municipal agreements for this purpose, or why the Town did not bill the municipalities for the Attorney’s services.

Until the Board clearly defines the intent of its resolution regarding billing other municipalities for work performed by the Attorney, taxpayers will not have a clear understanding of what the Board intended, and the Town will ultimately lose additional revenue.

## **Recommendations**

9. The Board should ensure its intentions are clearly defined in its resolutions and take action in accordance with its resolutions.
10. The Board should enter into inter-municipal agreements with any municipality for which services are to be provided or shared.



**APPENDIX A**

**RESPONSE FROM TOWN OFFICIALS**

The Town officials' response to this audit can be found on the following pages.



# The Town of Ripley

14 North State Street, PO Box 352

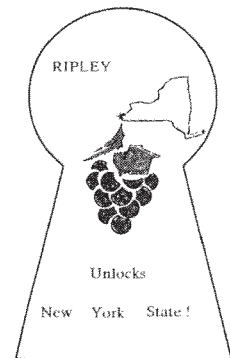
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July 9 2014

Office of the State Comptroller  
Robert Meller, Chief Examiner  
295 Main Street, Suite 1032  
Buffalo NY 14203-2510

Dear Mr. Meller,

The Town of Ripley is in receipt of the Office of the State Comptroller's audit of the Town of Ripley for the period of January 1, 2012 through November 27, 2013. We are writing to provide you with our reaction to the findings contained in your report, and will submit our Corrective Action Plan at a later date.

The Office of the State Comptroller's audit focused on the operations and financial condition of the Town of Ripley's Water District and legal services. The Town agrees with and appreciates the auditor's findings regarding the procedures utilized in the allocation of operating activity and capital costs among the water district users. In response to this the town has already implemented new procedures & purchased a new water/sewer billing software program. In addition, the Town acknowledges that there were some errors made in regards to the passage & implementation of the resolutions for the two water district extensions mentioned on page 10 and 11. We also agree with your recommendations regarding budgeting and multi-year capital planning and will address those and other issues further in our Corrective Action Plan.

However, there is some disagreement with the comments from the auditor concerning the allocation of waterline extensions costs. Previously the Town Supervisor had provided to the Auditor an outline of the Town's position on its authority regarding water facility expansions along Route 20 W and West Sidehill Road within the Town of Ripley. That letter continues to reflect the position of the Town of Ripley and we include it in its entirety here as a response to the comments on Page 10 & 11 specifically as to the conclusions and/or factual assertions of the last paragraph of that section. Additionally it should be noted that the draft report's comments did not consider the implications of the status of undeveloped properties in these particular extension areas which may be accorded Ag district standing which significantly limits the Town's ability to levy charges that are at least theoretically suggested in the draft report. As a result the Town continues to hold to its original conclusion that its approach to these expansions:

See  
Note 1  
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1. Provides additional new customers to help with District #1 costs
2. Provides significant potential for development which will also provide additional financial resources for assistance to District #1
3. Provides a means of providing equitable treatment of any and all additional customer tie-ins prior to the formal extension or creation of new water districts which we would note will set the financial framework for new or additional customers which might lead to some limitation for the equitable treatment of all customers whether existing or future.
4. The Town prevented a situation where land owners would make alternative plans and investments in private facilities which would thereafter limit their involvement in future public infrastructures expansions or result in the waste of their private assets which would have been previously invested in their own facilities. We would note that while our initial discussions have resulted in a discussion with our on-site auditors as one in which we continue to disagree over the particular instances here we would urge a reconsideration of this matter by the Department on the basis that it is very common that there are alternatives or exceptions on a great number of matters which otherwise appear to be set in statute which are in fact the subject of differing approaches given the variety of statutory resources and there subsequent application and interpretation as in this instance by both the courts and the Comptroller's office itself.

In regards to the matter of legal services for other municipalities the town believes that there was no revenue lost in the legal work on the projects the auditor identified. The town attorney has stated that he was merely finishing up outstanding projects and would not have billed the municipalities directly for that work. The Town notes the initial comments of Page 13 and agrees with the review relating to the area of shared services. The Town notes that while the information noted on page 13 the Comptroller's rendition does not mention several relevant and in this situation overwhelming facts which lend a significantly different impression and prospective conclusion to the information provided on Page 13.

These facts are as follows and represent information that the Town believes was either provided directly to the Comptroller's representatives or which were clearly understood by them:

1. The nature of the Town Attorney's service to the Town is part-time in nature. The Town did not anticipate having any exclusive right to the Attorney's service nor control over his provision of service to other clients or employers of any nature subject to the limitations that may apply in the case of post-retirement employment by members of the State Retirement System.
2. It was anticipated that the Town would receive service as needed which would likely approximate those provided by the Town Attorney over his tenure with the Town which often approached and even exceeded 1,000 hours per year. For calendar year 2013 total hours approached that 1,000 hour total. This represented a savings of tens of thousands of dollars to the Town during calendar 2013 which was anticipated by the Town and Town Board members as a courtesy provided by the Town Attorney which included similar courtesies to other municipal employees wherein much more limited service and hours were to be provided as a courtesy by the Town Attorney.

3. We believe that the Comptroller's representative was advised by both the Town Attorney as well as others that the intent of the Town Attorney was to provide all prior employers with some benefit of free services by himself over the course of 2013 and indeed to the point of those discussions there have been some 50-100 hours provided to other communities which indeed were provided at no cost to them. These were not even designated as potentially billable verses non-billable hours as it was his intention to ensure that some post-retirement benefit was provided to his employers. In this regard the Town Attorney is certainly free to provide assistance to any client, employer or individual in any fashion and on whatever basis save for those municipal entities which would be prohibited from paying him in excess of the Town's salary. The Comptroller's representative was able to confirm the fact that no other revenues were paid to the Town Attorney by any other community.
4. The confusion and perhaps misconceptions in this regard relate to the Town's anticipation that there were likely to be other inter-municipal projects which would require the service of the Town Attorney to be made available for other communities' use which would result in the need for an inter-municipal agreement as noted by the report and an appropriate payment to the Town of Ripley by the other community for the value of those services provided. As an example the Town anticipated the initiation of a number of significant derelict structure demolition or remediation projects to require the service of the Town Attorney during 2013 and beyond. To date those other projects have not been initiated and are still in the preliminary discussion phase. These anticipated projects were discussed with the Comptroller's representative as part of the inter-municipal effort to deal with dangerous and derelict structures in a variety of Chautauqua County communities. The Town anticipates that as these projects develop in the future there will be appropriate opportunities to establish this inter-municipal relationship as we anticipate the need for the Town Attorney's service to be utilized by other communities. Additional inter-municipal projects also involve the development of public water and sewer projects that may be joint ventures with other villages and/or towns and might similarly provide opportunities for inter-municipal cooperation that would involve the provision of service by the Town Attorney to the partnering community. In instances such as these or other comparable undertakings the Town would anticipate the initiation of appropriate inter-municipal agreements providing for the payment to the Town for service rendered by the Town Attorney to any other community.

In conclusion the Town agrees that future clarification will be needed however it will be needed given an understanding of what the actual potential and reality of shared services that would involve the Town Attorney's time and effort which would legitimately be the province of Town charge backs. Thus based on the above the Town disagrees with the conclusion reached on Page 14 of the initial draft relating to an allegation of lost revenue since as has been noted above there was no basis upon which to assume that there were legitimate revenues to be had nor were there any identifiable inter-municipal projects which would necessitate the appropriate inter-municipal agreement which would call for the Attorney's service or shared service with subsequent

See  
Note 6  
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payments to the Town of Ripley. It appears that it unfortunately was not understood or acknowledged of the other facts and circumstances as were outlined above which then resulted in these initial observations. The Town is now in a position to understand more clearly what opportunities may provide the option for the Attorney to provide service to other communities or for there to be other shared services in the future and thus future board resolutions will be able to clearly define these facts and circumstances as they develop.

In the future the town will ensure that it has clearly defined resolutions and inter-municipal agreements for legal services.

Once again, we are thankful for the recommendations made in the audit report, and detailed responses will be forthcoming in our Corrective Action Plan.

Sincerely,

Douglas Bowen  
Town Supervisor



The Town of Ripley is an equal opportunity provider and employee To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Washington, DC 20250-9410, or call (202) 720-5964 (Voice or TDD)

## APPENDIX B

### OSC COMMENTS ON THE TOWN'S RESPONSE

#### Note 1

Agricultural lands may be included within the boundaries of a special district, although such land typically cannot be developed. Charges for district assessments are generally limited to the homestead and any structure receiving service from the water system.

#### Note 2

A new water district or an extension would also garner new customers, and all property subject to district assessments within the district or extension would pay their proportionate share of the capital cost of the new construction. The provisions of Town Law Section 202(5) indicates that the expense of any extension to a district shall include all construction costs and may include some of the capital cost of the original district (Town Law section 202(1) indicates that the expense of the establishment of a district shall include all construction costs).

#### Note 3

This expanded potential would also exist with the establishment of an extension or a district, and, with this establishment, the Town would have the appropriate process for charging the costs of the improvement to benefited properties.

#### Note 4

Property owners in the Town's original districts are paying the capital costs of their own system – including the costs not being paid by property owners whose properties front on a water line but did not participate in paying any capital costs – while also subsidizing the capital cost of extending pipes to serve outside users.

#### Note 5

The Town points out that property owners might have made alternative plans for other water systems if the Town had not acted to install lines. That may be true. However, under Town Law property owners may actively choose whether or not they want public water. Owners may petition the Town Board (Article 12) to provide public water, or request a referendum on the issue (Article 12-A) after notice and a public hearing. When those procedures are followed, the will of the majority of the property owners is evident. The Town also may serve outside users within a contractual arrangement, as long as those outside users pay the costs associated with serving them.

The Town refers to different interpretations of law or methodologies for charging for the provision of water. The basic mechanism for funding special districts, including extensions, is indicated in Article 12 and 12-A of Town Law. Also, the State Legislature indicated that the methodology for raising



district expenses may not be superseded by local enactments (Municipal Home Rule Law Section 10(1)(ii)(d)(3)). The Town set forth reasons for extending water service to new customers. However, none of these reasons would have prevented the Town from properly establishing an extension or new district. While the methodology for charging for special districts is limited to the statutory authority set forth in Town Law Articles 12 and 12-A, the Town could, as an alternative, consider establishing a water improvement area after following the procedures set forth in Town Law Article 12-C, which would give the Town greater flexibility in imposing costs.

#### Note 6

The Town had adopted a resolution appointing the Town Attorney at an annual salary, providing that the Attorney would continue to work for other municipalities and that the Town would bill the other municipalities for services rendered. The resolution also provided that these charges would be treated as revenue to the Town.

The Town's letter indicates that the nature of the Attorney's services to the Town were part-time, and that he would still serve other clients, possibly on a pro bono basis. In that case it is not clear why the Town has any involvement in the Attorney's engagements by the other local governments. If the resolution adopted by the Town Board does not reflect the actual terms of the engagement of the town Attorney, the Town, in the future, should adopt a resolution which does not raise these issues.

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: justice court, town clerk, tax collection, supervisor's records and reports, claims processing, procurement, cash receipts and disbursements and payroll.

During the initial assessment, we interviewed appropriate Town officials, performed tests of transactions and reviewed pertinent documents, such as Town policies, Board minutes and financial records and reports. After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft or professional misconduct. We then decided on the reported objectives and scope by selecting for audit the areas most at risk. We selected Water District 1's financial condition and legal services.

To accomplish the objectives of the audit and obtain valid audit evidence, our procedures included the following steps:

#### **Water District 1's Financial Condition**

- We reviewed Board minutes to determine how and on what basis the current water user rates were established.
- We interviewed appropriate officials regarding the establishment of water user rates and to gain an understanding of the budget development process for the water districts.
- We analyzed budgeted and actual revenues and expenditures for fiscal years 2008 through 2012 to determine if the estimates were realistic.
- We calculated operating deficits/surpluses for fiscal years 2008 through 2012.
- We analyzed the fund balance as of December 31, 2012.
- We projected 2013 revenues and expenditures and estimated the operating surplus/deficit and fund balance for District 1 as of December 31, 2013, using information provided through September 30, 2013.
- We interviewed appropriate officials to determine if the Board had established a multiyear financial plan for the water districts.
- We interviewed officials and reviewed contracts, Board minutes and other related documents related to the 2012 District 1 extensions.

- We reviewed the regulations regarding District 2 and determined what impact they had on District 1. We discussed the regulations with appropriate officials to gain an understanding of their interpretation of the regulations.

#### Legal Services

- We reviewed Board minutes and adopted resolutions pertaining to legal services during our audit period.
- We interviewed appropriate officials including the Supervisor, Board members and the Town's Attorney.
- We requested documented hours and related billings regarding legal services provided to other municipalities.
- We contacted two municipalities to obtain information regarding legal services performed by the Town's Attorney during our audit period.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



## **APPENDIX D**

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