Metropolitan Water Reclamation District of Greater Chicago

Office of the Independent Inspector General

"[T]o detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government."

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Metropolitan Water Reclamation District of Greater Chicago

Quarterly Report
3rd Quarter 2020

October 15, 2020

OFFICE OF THE INDEPENDENT INSPECTOR GENERAL
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October 15, 2020

Transmittal via electronic mail

Honorable Kari K. Steele
and Honorable Members of the Metropolitan
Water Reclamation District of Greater Chicago
Board of Commissioners
100 East Erie Street
Chicago, Illinois 60601

Re: Independent Inspector General Quarterly Report (3rd Qtr. 2020)

Dear President Steele and Members of the Board of Commissioners:

As you know, on April 18, 2019 the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago (MWRD) adopted Ordinance O19-003 entitled Office of the Independent Inspector General (MWRD OIIG Ordinance) that has been designed to promote integrity and efficiency in government and provide independent oversight of the MWRD. Additionally, an Intergovernmental Agreement between the County of Cook and MWRD became effective by full execution of the parties on May 17, 2019 (Sec. II. Term of Agreement) thereby authorizing the OIIG to initiate operations relating to the MWRD. This quarterly report is written in accordance with Section 2-287 of the MWRD OIIG Ordinance to apprise you of the activities of this office during the time period beginning July 1, 2020 through September 30, 2020.[1]

OIIG Case Activity

In connection with the number of complaints received by the OIIG, please be aware we have received a total of 11 new complaints during this reporting period. This number also includes those matters resulting from the exercise of my own initiative (MWRD OIIG Ordinance Section Two (citing Cook County Code, Sec. 2-284(2)). Two OIIG investigations have been opened and nine OIIG case inquiries have been initiated during this reporting period while a total of 23 OIIG

[1] In accordance with the MWRD OIIG Ordinance, this office reports quarterly the number of investigations initiated and concluded during the subject time period along with other relevant data concerning the activities of the office. Quarterly reports also set forth OIIG recommendations for remedial or other action following the completion of an investigation and track whether recommendations were adopted in whole or in part or otherwise not implemented by the MWRD. Finally, quarterly reports also describe miscellaneous activities of the OIIG that may be of interest to MWRD officials, employees, contractors and members of the public.

case inquiries remain pending at the present time.[2] One matter was referred to management or other enforcement or prosecutorial agencies for further consideration. The OIIG currently has four matters under investigation and one investigation open beyond 180 days of the issuance of this report. Finally, please also note that a number of program reviews are scheduled to be released in the coming quarter including the Cyber Security Program Review and Aspirational Goals in Contracting Review.

OIIG Summary Reports

During the 3rd Quarter of 2020, the OIIG issued five summary reports on MWRD matters. The following provides a general description of the matters and states whether OIIG recommendations for remediation or discipline have been adopted. Specific identifying information is being withheld in accordance with the OIIG Ordinance where appropriate.[3]

IIG20-0127. The OIIG opened this case after receiving information that a Commissioner's Aide ("Aide A") was driving an MWRD vehicle assigned to the Commissioner for whom he worked (Commissioner A) late on a Sunday evening when he became involved in an accident. The OIIG opened an inquiry to determine whether the use of the vehicle and the ensuing MWRD response to the crash were consistent with MWRD policies.

The preponderance of the evidence developed by the investigation demonstrates that, following the accident, the MWRD, including Aide A, did follow established protocols for filing a police report, reporting the accident through the chain of command and cooperating with the leasing company as it sought to resolve the matter. Further, Commissioner A terminated Aide A upon recognizing that Aide A's use of the vehicle was unauthorized. Commissioner A and Aide A both advised this office that the Commissioner had directed Aide A not to use the vehicle for personal reasons. Aide A acknowledged to Commissioner A and to OIIG Investigators that his use of the vehicle during the weekend in question was for personal reasons and thus unauthorized.

While the original allegations were not sustained, our investigation revealed four important considerations upon which we made recommendations. First, we believe that the MWRD Administrative Procedure 3.1.0., in its current form, could be construed to permit personal use of a Class One vehicle by a Commissioner's Aide. The Procedure specifies that all Class One vehicles "are authorized for use in all District and personal travel." The Procedure, clearly

[2] Upon receipt of a complaint, a triage/screening process of each complaint is undertaken. In order to streamline the OIIG process and maximize the number of complaints that will be subject to review, if a complaint is not initially opened as a formal investigation, it may also be reviewed as an "OIIG inquiry." This level of review involves a determination of corroborating evidence before opening a formal investigation. When the initial review reveals information warranting the opening of a formal investigation, the matter is upgraded to an "OIIG Investigation." Conversely, if additional information is developed to warrant the closing of the OIIG inquiry, the matter will be closed without further inquiry.

[3] The OIIG issues a Quarterly Report relating to the MWRD separate from the one it issues for other government agencies under its jurisdiction. The Quarterly Reports for MWRD matters can be found at https://www.cookcountyil.gov/service/metropolitan-water-reclamation-district-greater-chicago.

intended to provide Commissioners with the taxable benefit of a vehicle for which personal use is permitted, does not expressly exclude other drivers from personal use. Thus, in the instant case, had Commissioner A previously permitted his Aides to use his Class One vehicle for personal reasons, the MWRD could be compromised in the event of an accident taking place during an Aide's personal use of the vehicle.

Second, the circumstances surrounding whether Aide A was duly authorized to use the vehicle each time he used it are unclear. Aide A has asserted he used a particular authorization memo to utilize the vehicle on weekends. The MWRD Administrative Services Section has reported it has no such authorization memos regarding Aide A. The MWRD Police Officers corroborated that such a memo is to be used in these circumstances, but they recalled repeated instances where Aides, including Aide A, collected vehicles without such a memo. Moreover, statements from MWRD Police Officers suggest that MWRD Police were aware and at times concerned that Aide A did not have the required authorization memo but nonetheless permitted him to take the vehicle.

Third, the vehicle use log implemented by Commissioner A appears to be the result not of an MWRD requirement but the Commissioner's desire to track mileage in order to comply with tax law. For the purposes of this investigation, we have not delved into the practices of other Commissioners' offices but are seeking to make a recommendation for all Commissioners' offices to adopt the same practice of logging all use of Class One vehicles.

Fourth, the log used by Commissioner A disclosed use of the vehicle to attend at least one political fundraiser.

Based upon all of the foregoing, we recommended that the MWRD:

1. Consider the risk of liability associated with the circumstances where a Commissioner permits an Aide to operate the Class One vehicle assigned to the Commissioner;
2. Modify Administrative Procedure 3.1.0.I.C.2.a. to require a specific documentary procedure for Commissioners to authorize Aides to operate Class One vehicles and that such authorization exclude independent personal use by Aides;
3. Modify Administrative Procedure 3.1.0.I.C.2.a. to require detailed vehicle use logs for Class One vehicles;
4. Inform Commissioners and their Aides that the MWRD Ethics Ordinance prohibits the use of any MWRD resources, including Class One vehicles, in support of prohibited political purposes as defined by the Ordinance;
5. Maintain the current course of legal action seeking reimbursement from Aide A.

These recommendations are currently pending.

IIG20-0382. The OIIG initiated this investigation after receiving a complaint alleging that there is an institutional custom at the MWRD Calumet Water Reclamation Plant ("Calumet") of disregarding mask protocols required as a precaution against the spread of COVID-19. During the investigation, OIIG investigators reviewed communications from Human Resources and an MWRD Executive Director. OIIG Investigators also conducted two separate site checks at Calumet.

The preponderance of the evidence developed during the course of this investigation failed to support the existence of an institutional custom or practice to disregard the wearing of face masks as a precaution against the spread of COVID-19 at the Calumet facility. The visit to the various areas of the plant by OIIG investigators yielded observations that plant staff were largely compliant with the MWRD directives regarding COVID-19. On one site visit, however, the OIIG did observe several persons believed to be employees sitting or sleeping in vehicles in parking areas. Accordingly, the OIIG recommended that the MWRD Executive Director instruct the Calumet Plant Manager to take notice of individuals sleeping in vehicles and ensure that the employees are on an authorized break and that sleeping on site is not otherwise a violation of policy or relevant collective bargaining agreements. This recommendation is currently pending.

IIG19-0320. In 2019, the OIIG received a communication expressing concern that the MWRD may not be prepared to properly and efficiently respond to a major disaster or a flu pandemic. The OIIG initiated this matter to review the MWRD's emergency response program. During our review, we interviewed key MWRD personnel familiar with the emergency response program, including a member of the MWRD Board of Commissioners, the Executive Director, the Risk Manager, Director of Maintenance & Operations, an Assistant Director of Maintenance & Operations, and three Water Reclamation Plant Managers. We also reviewed the MWRD's Emergency Response Plans, emergency procedures manuals for Water Reclamation Plants, training and practice drills documentation and the *President's Council on Integrity and Efficiency, IG Guide to Evaluating Agency Emergency Preparedness* (Nov. 2006)(incorporating the *National Response Plan*).

The primary goal for this review was to confirm the existence of emergency plans and assess whether these plans met the standards recommended by the *President's Council on Integrity and Efficiency, IG Guide to Evaluating Agency Emergency Preparedness* and the National Incident Management System's ("NIMS") *National Response Plan*. We also sought to determine whether key MWRD personnel were aware of such plans and whether they have been trained to implement them. Accordingly, the OIIG applied limited auditing procedures and investigative techniques to assess the MWRD emergency response program. Below are specific findings and corresponding recommendations based on our review:

1. We noted that the MWRD's Emergency Response Plans did not contain all the provisions found in the federal standards established for emergency response plans. The OIIG review revealed that the MWRD met 30 of the 33 recommended standards (90.9%) stated in the NIMS checklist related to its Emergency Operations Plan. We also noted that the MWRD met 26 of the 29 recommended standards (89.7%) stated in the NIMS checklist established

for the MWRD's Business Continuity Plan. The OIIG recommended that the MWRD Executive Director ensures that senior management review these omitted provisions and formally document whether these items should or should not apply to the MWRD's emergency response plans.

2. Our review revealed that 9 of the 16 MWRD Incident Management Team Members (staff) did not fulfill their Federal Emergency Management Agency ("FEMA") training obligations prior to an OIIG confirmation request made in March 2020. The MWRD should create a policy that imposes an obligation upon personnel to complete the FEMA training within a reasonable timeframe after joining the MWRD.

3. OIIG investigators received statements from MWRD senior management that it is a challenge to maintain a current contact list for the Emergency Response Plans. We recommended that the MWRD follow a suggestion from a senior manager and make the contact list "live" as a cloud-based contact directory.

4. The OIIG received and reviewed memoranda from the Executive Director that was addressed to the Board of Commissioners in connection with transmitting updated Emergency Response Plans on an annual basis. Senior management, however, does not appear before the Board to explain the contents or provide updates in person. The OIIG recommended that the Board consider an annual Board Meeting agenda item be added to apprise the Board and ensure the emergency response program is prioritized throughout the MWRD.

5. We recommended a heightened attention to employee training, practice drills and exercises, and the reconciliation of the Emergency Response Plans (District-wide versus facilities).

6. During our review, we learned that the Risk Manager was tasked with an enormous responsibility for creating an emergency response program and the subsequent training for the entire MWRD. Although the Risk Manager obtained input from other MWRD personnel, the Risk Manager was ultimately responsible for the creation, implementation, and continued monitoring of the emergency response plans. We recommended that the MWRD consider the assignment of additional staff to support the Risk Manager in fulfilling these responsibilities. Such additional support could be dedicated to training, monitoring, and unifying the numerous plant specific emergency response plans discussed above.

7. Our review revealed that the MWRD does not conduct formal New Employee Orientation training related to its emergency response program. This training is a provision contained in the MWRD's emergency response plans. We recommended that Human Resources coordinate its efforts with the Risk Manager to formulate materials to address this issue.

8. The MWRD should consider procuring and implementing Emergency Management software. The State of Illinois, City of Chicago and Cook County government currently use emergency management software called the "WebEOC." We were told that this is relatively inexpensive cloud-based software that enables organizations to streamline the creation and execution of practice drills and exercises, emergency response plans and subsequent updates, and real time communication internally and externally to coordinate emergency responses including requests for supplies and equipment.

These recommendations are currently pending. Please note that the results of our review were previously issued in a public statement which can be found on our website.

IIG20-0074. In this case, an MWRD employee, alleged that during a retirement celebration at the MWRD she was subjected to unwelcome physical contact by another employee. Specifically, the complainant alleged that the subject employee gave her an unsolicited "bear-hug" and a kiss on her cheek at the event. These allegations raise the possibility that the subject employee engaged in sexual harassment.

During the investigation, we found that the witness recollections varied to some degree. The complainant recalled a hug and kiss at the dessert table while another witness recalled a hug and kiss taking place at the elevator. For her part, the subject employee did not recall hugging the complainant, but allows it could have occurred in accordance with her cultural traditions but denies kissing anyone. Therefore, the preponderance of the evidence establishes that the subject employee initiated physical contact that, at a minimum, involved a hug with the complainant and others in connection with a retirement celebration taking place in a conference room of the MWRD.

The preponderance of the evidence developed by the investigation does not, however, support the conclusion that the allegation rises to the level of sexual harassment. The governing policy in this case is the MWRD Administrative Procedures Manual - Human Resources 10.5.0. (Anti-Harassment). The policy defines sexual harassment as any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Per the policy, the phrase "working environment" is not limited to a physical location where an employee is assigned to perform his or her duties and does not require an employment relationship. The MWRD Harassment policy, 10.5.0, A (1)(e), states that sexual harassment in violation of the policy includes but is not limited to making undesired physical contact of a sexual nature (such as touching, embracing or pinching) or impeding another's movements in a deliberate manner or crowding an employee due to their sex.

Although the preponderance of evidence developed in this matter demonstrated that the conduct complained of was unwelcome, there was insufficient evidence to establish that submission to the conduct was made explicitly or implicitly to a term or condition of employment or that submission to the hug was used as a basis for employment decisions affecting the complainant. Further, the evidence did not establish that the isolated conduct was pervasive with respect to the complainant or had the purpose or effect of unreasonably interfering with complainant's work performance or creating what amounted to an intimidating, hostile, or offensive working environment.

However, the physical contact by the subject employee was unwelcome and is therefore problematic in the workplace. Courts have considered this type of conduct (hugging in the workplace), and the results represent risks for employers. The Ninth Circuit Court of Appeals has recently determined that a reasonable juror could conclude that hugging female employees, while shaking the hand of male employees, constitutes sexual harassment. *Zetwick v. County of Yolo*, No. 14-17341 (9th Cir. Feb. 23, 2017). Likewise, the Eleventh Circuit Court of Appeals has held the repeated workplace hugs by a manager of a grocery store became offensive over time and constituted sexual harassment. *Zetwick v. County of Yolo*, 208 F.3d 1290, 1293 (11th Cir. 2000). While hugging in the workplace is neither sexual nor inappropriate *per se*, it can be perceived as sexual conduct and, when taking place between employees in a hierarchal environment, can lead to employees feeling pressure to accept unwanted hugs. To be sure, the conduct in question was unwelcome. This is precisely how a hostile work environment can develop.

Although the evidence did not support a finding of sexual harassment, we recommended that the subject employee be counseled and admonished to avoid physical contact that has an unwelcome effect and could lead to a violation of the Anti-Harassment Policy. Additionally, we recommended that the subject employee receive additional training in this area.

The OIIG recommendations are currently pending.

IIG19-0281. The OIIG received a complaint alleging that the MWRD failed to appropriately accept settlement funds from a design consultant after the MWRD discovered defects in the work resulting in total replacement. This allegation raised the possibility of employee negligence.

According to MWRD records, on April 1, 2015, a senior civil engineer from the MWRD sent the contractor an email stating that the "the upper cross hatch replacement at the Upper Des Plaines Control Structures has cracked, spalled and generally deteriorated." The senior civil engineer stated that "the Contractor was required under the contract to inspect their workmanship and perform any corrective actions necessary and/or repair all defects in the work that are found." On April 14, 2015, the contractor responded that they performed the work "in accordance with the contract documents" and that the cracks are "design related and as such not covered under the Contractor's Guarantee." On May 28, 2015, an Assistant Director of Engineering asked the Contractor for a quote to repair the structures and, on June 29, 2015, the Contractor provided an estimate of $149,400.55 to repair the work. The Director of Engineering advised the Contractor

that she approved the proposal to do the work. On July 23, 2015, the Director of Engineering "Director" sent a letter to the President for the Design Consultant stating that "the upper waterstop placement does not provide concrete coverage in all directions, as required per the manufacturer's specifications. . . which led to cracked and spalled concrete." The letter, which had been signed and initialed by the Managing Civil Engineer, further stated that she believed the Design Consultant's errors and omissions policy would cover this error and that the MWRD was prepared to make a claim, but that the MWRD would accept a settlement to resolve the matter. The Board approved the change order in the amount of $149,400.55 on August 6, 2015. In the transmittal letter for the agenda item, the Director said that "the design had been revised to prevent further damage" and that "the change order is in compliance with the Illinois Criminal Code since the changes if due to the circumstances not reasonably foreseeable at the time the contract was signed." On August 27, 2015, the President for the Design Consultant sent a letter to the Director stating that the Consultant believed this was not a design error, but the result of "an unforeseen outcome that [the Consultant], an experienced contractor, and the District had not experienced in the past." The Design Consultant further stated that notwithstanding their belief and "[b]ecause [they] value the relationship [they] have with the District," they offered to resolve the matter for $65,000 and further apprised the District that the total amount to repair the cracking "is below [Consultant's] deductible for [their] Professional Liability Insurance." The file did not reveal any additional correspondence following the Design Consultant's settlement offer.

According to the Managing Civil Engineer, the MWRD Project Manager prepared a draft letter accepting the settlement offer which never was issued. The Managing Civil Engineer could not recall if he spoke to the MWRD Director directly, but later learned that she decided not to pursue the settlement. He recalled the Director stating that MWRD also makes mistakes, the percentage of changes was very low (less than 5%, the industry standard) and, as such, would be considered a good project. The Managing Civil Engineer said that the Legal Department is not typically involved in change orders or reimbursements. His department only consults the Legal Department if litigation seems likely.

According to the Project Manager, no one told him why MWRD was not going to collect the settlement and he was embarrassed that MWRD did not follow through with it. The Design Consultant's President contacted the Project Manager months later and thanked him for not pursuing the claim as the Design Consultant's insurance policy deductible had been high enough that the Consultant would have had to pay the settlement out of pocket.

According to the Design Consultant President, the error was "almost like an unforeseen condition and I wasn't sure we should pay for anything but because the MWRD was such a good client over the years I offered 50%." The Design Consultant President believed that the Design Consultant had used this particular waterstop technology before and since this particular project. The Design Consultant President also said that no one from the Design Consultant was on site during the waterstop installation to verify whether installation was according to design because the seal was under concrete and not visible. The Design Consultant President further opined that clients sometimes want to pass every bit of risk to the Design Consultant which is unreasonable given that clients benefit from the project for years to come in comparison to the Design

Consultant's small project fee. The Design Consultant President said that he advises clients that mistakes and unforeseen circumstances do happen and that while 3-5% in change orders is an industry standard, the Design Consultant averages far lower - approximately 1%

The evidence developed in the investigation failed to support a finding of employee negligence. Local, State and Federal agencies may provide contract contingencies on design and construction contracts and typically implement rules and a process determining risk allocation. For example, Section 36.608 of the Federal Acquisition Regulation, "Liability for Government costs resulting from design errors or deficiencies" provides:

> Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from error and deficiencies in designs furnished under its contract.

The underlying concerns associated with the design in question do not appear to be real when considering the waterstop manufacturer's representations concerning application and installation of the product. However, notwithstanding, this investigation revealed that the MWRD may assume the risk and bear all of the costs for design contracts on the premise that errors are acceptable as long as the overages fall within the 5% industry standard for change orders. This view has developed in apparent disregard of the nature of the design condition itself.

Additionally, the evidence also revealed the determination to seek reimbursement from the Design Consultant was handled entirely by the engineers in the Design Department without input from the Legal Department or the Director of Procurement and Materials Management. This practice does not comport with standard government processes as technical personnel should not be drafting demand letters, assessing legal culpability or engaging in settlement discussions without legal or procurement support. Again, Section 36.608 of the Federal Acquisition Regulation states:

> [W]hen a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable.

Although the allegation was not sustained, we make the following recommendations:

1. The MWRD should establish a policy setting forth criteria to be considered when reviewing change orders and that such criteria and justification should be documented and also approved by the Director of Procurement and Materials Management. As referenced above, we do not believe that the suggested criteria adopt a "no fault" baseline of 5% before when considering error or omission;

2. The MWRD should adopt a procedure incorporating Procurement and/or the Law Department when assessing legal culpability, engaging in settlement discussions or preparing demand letters. In accordance with this recommendation, MWRD should create a minimum errors and omissions threshold and process for dispute resolutions. (*See, e.g.,* 8-4 of Bureau of Design and Environment Manual, Illinois Department of Transportation.)

These recommendations are currently pending.

Outstanding OIIG Recommendations

In addition to the new cases being reported this quarter, the OIIG has followed up on outstanding recommendations for which no response was received at the time of our last quarterly report. Under the OIIG Ordinance, responses from management are required within 45 days of an OIIG recommendation or after a grant of an additional 30-day extension (if applicable) to respond to recommendations. Below is an update on these outstanding recommendations.

From the 2nd Quarter 2020

IIG20-0238. The OIIG initiated this investigation after developing information that the MWRD, in response to the Coronavirus COVID-19 pandemic, had implemented a policy to provide additional compensation in the form of either overtime or compensatory time to its unrepresented (*i.e.*, non-union) employees. Initial information disclosed that employees who are normally *Fair Labor Standards Act* (FLSA) exempt and whose salaries are among the highest in the MWRD were earning sometimes in excess of 20 hours of compensatory time for each week worked.

The current Business Continuity Plan ("BCP") was approved by the Executive Director on December 1, 2019. The BCP, initially implemented in 2016, is revised annually and makes use of a Revision Control Table which apprises the reader of any changes in the current year. The 2018 BCP did not contain provisions regarding additional compensation during a pandemic to unrepresented employees. The December 1, 2019 BCP listed the following changes:

> Updated contact information throughout; added location detail in Table 9 for Command Centers and Alternate Facilities; revised Section 6 Pandemic/Public Health Emergencies; updated guidance in Section 10 External Communications; removed Appendix C: Key External Contacts (now found in the Crisis Communication Plan); added content to Appendix E: Pandemic/Influenza.

Section 6, dealing with pandemic, offers a detailed continuum of escalating MWRD responses associated with the catastrophic effects of a pandemic. Specifically, different MWRD responses are triggered with increasing "call-off" rates associated with greater numbers of employees who have fallen ill and cannot come to work. The first steps are triggered when the call-off rate exceeds 17%, or the normal daily call-off rate for the MWRD. The ensuing steps are

associated with call-off rates of 20%, 25%, 30% and 35%. When the call-off rate exceeds 35%, a host of responses are triggered, including a declaration of emergency, the activation of the Emergency Operations Center, minimum staffing, MWRD messaging, work locations, social distancing, vaccinations, time tracking, accommodations for extended shifts, compensation, quarantine and monitoring absenteeism. Within this response to a call-off rate exceeding 35%, the BCP states: "It is assumed that the duration of the emergency plan for a pandemic may be 12 to 18 months."

Page 19 of the BCP addresses compensation as follows: "For a partial, full-day, or extended (e.g., week-long) closing or move to minimum staffing (collectively referred to as "Closing"), the leave and pay practices listed below will be applied. For closings that are longer than one-week, other guidelines may be established." The relevant leave and pay practices in this section state as follows: "Nonexempt employees who are designated essential personnel are compensated at a premium (one-and-one-half times the employees' regular pay rate) for the entire emergency-closing period. Exempt essential employees may be granted compensatory time off for hours worked during the emergency-closing period."

OIIG interviews of MWRD staff yielded that the pandemic compensation terms introduced in the current BCP did not arise from any one person at the MWRD but rather were terms in previous drafts of other similar documents. Evidence developed during the investigation showed that the MWRD drafted crisis response plans in 2006 and 2009 which included these compensation terms. MWRD staff, in compiling the current BCP, incorporated those compensation terms from the 2006 and 2009 crisis response plans so as to continue to make the BCP as comprehensive a plan as possible in 2019. This office has reviewed those archival documents and confirmed the compensation terms therein.

Through reviews of MWRD Board records and interviews with MWRD staff, it appears the December 1, 2019 BCP was distributed to Board members in hard copy and was also made available in electronic format via the MWRD employee portal. The Board did not vote to approve or otherwise ratify the document.

On Tuesday, March 17, 2020, the MWRD Human Resources Department advised MWRD employees that new compensation procedures were being implemented for employees TAM 17 and above as follows:

Employees in Pay Grades TAM 17 – 18

> Employees who are directed to report to work at a District facility or other location that is part of the District's service area should clock in and out as usual. These employees shall be compensated at 1-1/2 times their hourly rate for all hours worked. If these employees only work a partial workday, these employees will be coded 0017a – Employee Benefit for any regularly scheduled hours not worked during their scheduled workday.

Employees in Pay Grades TAM 19 and above

> Employees who are directed to report to work at a District facility or other location that is part of the District's service area should clock in and out as usual. These employees will be compensated one-half hour of compensatory time for each hour worked. If these employees only work a partial workday, these employees will be coded 0017a – Employee Benefit for any regularly scheduled hours not worked during their scheduled workday.

On April 17, 2020 the MWRD Human Resources Department advised MWRD employees that the Pandemic Compensation Plan would cease on April 20, 2020 following the MWRD's successful transition to remote working for its various departments.

In our interviews with MWRD employees and review of financial records, this office determined that the pandemic compensation policy implemented on March 17, 2020 was not automatically applied to eligible employees but rather required a manual entry to code the time of the employee. Thus, the policy was applied if the eligible employee requested application of the policy. Our review of the use of the policy yielded the following observations:

1. There existed wide variation in application for compensatory time by eligible TAM 19 and above employees who worked at MWRD facilities after March 17, 2020. Some employees requested the compensatory time and others did not.

2. Following the March 17, 2020 implementation, the Executive Director requested all Director level employees (who are included in the "TAM 19 and above" classification) to report to work at the MWRD until further notice. After approximately two weeks, the Executive Director advised the Directors to use their best judgement in determining whether to work remotely or at the MWRD.

3. The greatest expense to the MWRD in managing the pandemic arises from compensatory time (which carries a dollar value reflected in the MWRD's financial statements) and premium pay rates associated with all classes of employees including both the bargaining units and the aforementioned TAM 17-19 and above employees. Specifically, for all groups combined, the MWRD accrued approximately $3,800,000.00 in payroll liability during the period of implementation due in large part to approximately 47,000 hours of compensatory time awarded to both represented and non-represented employees. Although we calculate that the compensatory time awarded to TAM 19 and above employees at one point totaled 839 hours and is thus a small portion of that hourly total, it is significant nonetheless given that the higher rates of pay for those TAM 19 and above employees mean those 839 compensatory hours have a greater average hourly fiscal impact to the MWRD.

4. Beginning in April, several non-represented TAM 19 and above staff who had accrued substantial compensatory time as a result of the pandemic compensation policy (with some

earning over 80 hours of compensatory in time in approximately one month) sought to, and did, relinquish the accumulated compensatory time.

5. By mid-April the MWRD leadership realized that the financial impact of the pandemic compensation policy and related terms in collective bargaining agreements was not sustainable. The MWRD thereafter terminated the pandemic compensation policy for unrepresented employees and engaged the various bargaining units in discussions regarding how to address the growing financial impact.

Based on our investigation, we made several findings and conclusions.[4] First, it is clear in the BCP that the MWRD expected a pandemic to present in a manner that caused increasing employee absence over time triggering greater responses as the effects of the pandemic became more severe. The BCP, like most people in 2020, did not anticipate a pandemic which would result in preemptive orders from state and local government for all persons to shelter in place for an extended period. Thus, when those orders arrived, the highest call-off rates specified in the BCP, and the ensuing policies triggered thereunder, went into effect immediately. However, this was not because of widespread debilitating illness within the ranks of the MWRD and the general public but part of the broader strategy to "flatten the curve."

Second, we found that the pandemic compensation protocols in the BCP related to unrepresented employees constituted waste. We found this to be the case given that the majority of such employees were able to work substantially from home, were able to rotate days or shifts with other employees to minimize the number of employees at the MWRD and/or utilize office configurations which enable them to socially distance while in the office as opposed to represented employees who work at the reclamation plants.

Third, while it did receive a copy of the BCP prior to the pandemic, the Board of Commissioners was not otherwise asked to approve or ratify its contents. This was significant considering the financial implications within the BCP regarding pandemic compensation. We believe Board approval to be less necessary concerning the strictly operational provisions of the BCP, but where the BCP permitted significant *ad hoc* modifications to the compensation packages of the most highly compensated MWRD employees, we concluded prior Board approval would

[4] We recognize that very few organizations were fully prepared to embrace the realities of working through this pandemic. Every institution has had to make critically important decisions not methodically or cautiously but during a compressed timeframe and alongside incomplete or evolving public health information. With that in mind, we wish to make clear that our recommendations are based primarily on the actions of the MWRD prior to the pandemic, specifically the terms of the BCP and the manner by which the MWRD advised the Board of those terms. In the course of our investigation, we have specifically sought to avoid making assessments about why particular employees worked remotely or worked at the MWRD and why some employees requested application of the official policy where others did not. We thus have declined to delve into whether employees receiving the pandemic compensation had no alternative to working from the MWRD, preferred to work at the MWRD, were incentivized by the pandemic compensation or worked at the MWRD for some other reason.

have been a more prudent course, particularly given that the BCP itself contemplated a pandemic would last 12 to 18 months.

Based on our findings, we recommended the MWRD strike from its BCP the provisions granting pandemic compensation to unrepresented employees. Should the MWRD wish to retain a pandemic compensation schedule for unrepresented employees, we recommended the following:

1. The MWRD Board vote whether to approve the pandemic compensation schedule for unrepresented employees;

2. The compensation schedule for unrepresented employees be subject to a recordkeeping requirement requiring a written directive whenever an employee is required to work from an MWRD facility and detailing the basis for such directive that the work be performed at an MWRD facility.

The MWRD responded that it is in the process of adopting the recommendations in the OIIG report as it drafts the 2021 version of the Business Continuity Plan and will, per the OIIG recommendations, present the Plan to the Board when completed.

From the 1st Quarter 2020

IIG19-0485. The OIIG initiated this investigation after developing information suggesting that the Commissioners' Aides were engaged in an established custom of routinely failing to swipe their credentials at the Main Office Building ("MOB") police desk when entering the building. This alleged custom was in contrast to all other MWRD employees, each of whom were required to swipe their credentials upon entry to the building. Moreover, additional information developed through a review of MWRD system data revealed that the Commissioners' Aides were not included in standard timekeeping data. Accordingly, this review was initiated to assess the manner in which timekeeping is performed with regard to Commissioners' Aides, whether it represents a best practice for the MWRD and whether an operational objective exists to support their exclusion from swiping upon entry into the MOB.

OIIG investigators interviewed an accounting manager regarding the MWRD timekeeping swipe system. She stated the system was implemented in 2014 and is in use by all MWRD employees "except the second floor." When asked for clarification, the accounting manager stated that "second floor" referred to Commissioners and their Aides. The accounting manager stated that she had never received any information defending the practice and that historically she recalled a former MWRD Executive Director rejected suggestions that Commissioner Aides use the timekeeping system saying "don't even bring that to the second floor." The accounting manager stated in recent years an audit was performed by her department culminating in a recommendation to the MWRD Audit Committee that Commissioner Aides follow standard timekeeping practices.

Investigators interviewed a second accounting manager who stated that the Commissioners' Aides do not use the electronic timekeeping system to swipe in and out for work

each day. Rather, the Aides complete a handwritten daily time sheet which is to be signed by the Commissioner in whose office the Aide works. Those daily handwritten timesheets are submitted to his department where the information is entered, by hand, into the timekeeping system. The accounting manager stated this process is not efficient and that if the Aides were to use the electronic timekeeping system in place it would simplify matters significantly because his staff seldom receives all the timesheets in a timely manner. Because there is time pressure associated with processing payroll to meet deadlines every pay period, his staff dedicates considerable time contacting Commissioners' offices to obtain the timesheets in order to timely process payroll. Because those offices do not always respond quickly, employees from the Comptroller's office have to physically walk to the Commissioners' offices to locate the Aides and the outstanding timesheets. The accounting manager estimated an additional 10 hours per week is spent by his department obtaining and administering the handwritten timekeeping sheets. The accounting manager also noted that this time excludes the time spent by employees who answer inquiries from Commissioners' Aides regarding their available benefit time because it is not maintained in the electronic timekeeping system; rather, his department is forced to track their benefit time manually.

Investigators asked the Chief of Police to provide the rationale for the identification swipe console at the front doors of the two MWRD buildings on Erie Street. The Chief stated there are two purposes: (1) to verify that the person entering is an MWRD employee or contractor and (2) to enable the MWRD Police to be aware of who is physically present in the building. The Chief stated that the exceptions to this requirement are MWRD Commissioners, their staff and MWRD Police. When asked why the exceptions exist for the Commissioners' staff, the Chief stated "it's understood. I'm not sure why – it's always been that way."

The MWRD Telecommuting Agreement, required under the Administrative Procedures Manual, Section 10.9.0, is a detailed packet including a statement of conditions required for a telecommuting agreement, an employee questionnaire and approval sections by three layers of management: the employee's supervisor, the Chief of Human Resources and the Executive Director. This office reviewed the log of requests for (and subsequent approvals or denials of) Telecommuting Agreements at the MWRD since 2010. No Commissioner Aides are mentioned as having requested or subsequently received a Telecommuting Agreement.

A review of timekeeping materials for Commissioner Aides revealed the Aides use daily time sheets on which they record their arrival and departure times at the MWRD. The time sheet contains a list of codes for use in coding time, including telecommuting, working offsite, disability, personal leave, overtime, vacation, suspension and others. There is a signature line for the Commissioners' approval of the recorded time. In reviewing several months of such documents, this office made the following observations:

1. Several Aides' time was coded for telecommuting.
2. Leave is not consistently coded among Aides. For example, on days adjacent to MWRD holidays such as December 26 or December 31, for some Aides who were not present their time was coded as "0029 – Optional Holiday" whereas other Aides' time was coded as "0030 – Holiday" or "0060 – Vacation."

3. Some Commissioner authorization signatures are supplied via rubber stamp.
4. With very few exceptions, Aides supply the same clock-in and clock-out times each day (8:45 a.m. – 4:30 p.m.).

OIIG investigators reviewed the February 26, 2018 audit recommendations to which one of the accounting managers referred in her interview. The MWRD Audit culminated in findings that documented inefficiencies and lack of compliance with established mandates of the MWRD. When assessing the impact of the failure to include Aides in electronic timekeeping systems in favor of paper timesheets, the auditors stated the following:

> Using paper timesheets for Aides misaligns action with Board established policies and goals. The TA system improves efficiency, transparency and accuracy in payroll processing and provides stronger internal controls in attendance tracking District policy becomes action with administrative procedures. Using paper timesheets for Aides also results in inconsistent application of written procedures. Aides are employees of the District and all non-represented employees are required to use the TA system for clocking in and out per administrative procedure 10.24.0…. Expending resources on paper timesheet processing is not defensible in the context of District policy, values and goals as reflected in the appropriation ordinance and Strategic Business Plan. Under public scrutiny, undocumented exemption of Board appointed employees from an administrative procedure that increases efficiency, mitigates fraud risk, and strengthens alignment with stated values and goals, may undermine public trust and confidence in District governance.

We concurred with the audit recommendations and have identified no valid operational rationale to support the deviation from the established practices of the MWRD involving timekeeping and entry swipes by Commissioner Aides. To the contrary, there appear to be several negative consequences triggered by the current custom, including operational waste and the daily potential for inaccurate time recordation. Finally, the disparate application of MWRD policy to Commissioners' Aides creates the appearance that Commissioner Aides are being favored without operational justification due to their status as political appointees.

Based on all of the foregoing, we made the following recommendations:

(1) MWRD should incorporate Commissioner Aides into the electronic timekeeping system and require their compliance with MWRD Administrative Procedures Manual.

(2) The Commissioners' offices should become fully compliant with the MWRD telecommuting policy as outlined in Administrative Procedure 10.9.0.

(3) The MWRD should cease the practice of excluding Aides from swiping their credentials at the MOB secure access points as such exemption serves only to foster a

culture that the Aides need not be subject to normal security and timekeeping requirements.

The MWRD adopted the OIIG recommendations.

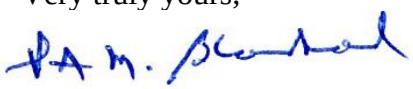
Miscellaneous OIIG Activity

Please be advised that OIIG operations have continued during the quarantine period. We have significantly increased use of technology to continue to meet the mandate set forth in the MWRD OIIG Ordinance by adopting protocols for the conduct of witness interviews on-line, daily on-line supervisor conferences and document management on-line through the OIIG case management system. Additionally, like many other offices, we have integrated Microsoft Teams into our daily activities. We will continue to operate using these practices as required and maintain one person on-site at the main office building in the coming weeks.

Conclusion

Thank you for your time and consideration to these issues. Should you have any questions or wish to discuss this report further, please do not hesitate to contact me.

Very truly yours,



Patrick M. Blanchard
Independent Inspector General

cc: Mr. Brian Perkovich, Executive Director
Ms. Susan T. Morakalis, General Counsel