

WEST VIRGINIA LEGISLATURE
Legislative Post Audit Division

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Denny Rhodes
Director

January 12, 2015

The Honorable Jeffrey V. Kessler, President
West Virginia State Senate
Post Audits Sub-Committee, Co-Chair
Room 227 M, Building 1
State Capitol Complex
Charleston, WV 25306

The Honorable Timothy R. Miley, Speaker
West Virginia House of Delegates
Post Audits Sub-Committee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, West Virginia

Re: Hatfield McCoy Regional Recreation Authority

Dear Mr. President and Mr. Speaker:

The Post Audit Division is currently conducting an audit of the Hatfield McCoy Regional Recreation Authority as a spending unit of state government. In our letter to the sub-committee on November 18th 2014, it was determined by Attorneys with Legislative Services that HMRRA is indeed a state agency and should be operating as such.

Although this review is ongoing, we have found several areas in which this Authority has consistently ignored state law regarding the handling and use of public funds. In short, the Authority has conducted its business as if these laws do not apply to that organization.

SUMMARY

We have made these determinations regarding the Hatfield McCoy Regional Recreation Authority (HMRRA):

- HMRRA has received over eight million in State and Federal funding since 2010;

- HMRRRA violated Article 6, Section 38 of the WV State Constitution and awarded bonuses to full time employees. Bonuses budgeted to employees in 2013 alone totaled over eighty-nine thousand dollars;
- The Post Audit Division has received information bringing into question the propriety of some of the employment practices of HMRRRA. There has been no avenue for independent review of these claims. Since HMRRRA is a state agency, the state grievance procedure applies and the Public Employees Grievance Board is a proper forum for resolution of employee allegations.
- HMRRRA has procured almost ten million dollars in purchases since 2001 that, under state purchasing laws, should have been processed through the WV Purchasing Division.

DETAIL

These determinations are based upon the following information, including records of HMRRRA's purchases and expenditures, as well as statutory and constitutional authorities.

1. HMRRRA Has Received Over \$8.3 million in Federal and State Funds Since 2010

HMRRRA's revenue mainly consists of a combination of revenues from federal sources, state sources, various grants, sales from merchandise, and sales from permits (permits in which riders pay to ride the trails). HMRRRA classifies all moneys received as revenue. Over the past five years, HMRRRA has collected over \$18 million of revenue, from various sources. This, accompanied with inadequate documentation in the QuickBooks accounting software HMRRRA uses to account for operations, makes it impossible to identify state money from federal moneys or revenues from sales and operations once it is placed in HMRRRA's bank account. This issue is further complicated by HMRRRA not being a spending unit in WV OASIS or WV FIMS.

Table 1 displays a detailed list compiled from information provided to us by HMRRRA, of federal and state funding received by HMRRRA since 2010:

Table 1	
HMRRA Federal & State Funding by Vendor 2010 - 2014	
Vendor	Amount
WV Division of Highways	\$1,612,647.75
Coal Heritage Hwy Authority	451.00
US Department of Homeland Security	358,345.05
WV Development Office	1,137,450.00
WV Division of Culture & History	23,525.00
WV Division of Tourism	210,503.36
WV State Auditor's Office – WV P-Card Rebate	5,015,555.70
Total	\$8,358,477.86

2. **HMRRA Awarded \$220,547 in Payroll Bonuses to Full Time Employees (2011 – 2013)**

HMRRA has bypassed state law by awarding full time employees bonuses. These bonuses are compiled from “Operating Revenues” for the year. This Operating Revenue includes all money received by HMRRA, including grant money, federal money, and state money. This equates to HMRRA awarding employees bonuses based from, in part, by state and federal moneys received during the year.

The following tables display the amount of pay budgeted for HMRRA employees as well as their bonuses for the fiscal year ending June 30, 2011, 2012, and 2013:

**Table 2
Employee Salaries and Bonuses 2011**

Employee Title	Base Salary	Bonuses	Bonus % of Total Compensation	Total Compensation
Executive Director	\$100,900	\$15,000	12.94%	\$115,900
Deputy Executive Director	\$50,960	\$4,316	7.81%	\$55,276
Office & HR Manager	\$37,440	\$4,316	10.34%	\$41,756
Heavy Equipment Supervisor	\$32,240	\$1,338	3.98%	\$33,578
Trail Maintenance Supervisor	\$32,240	\$1,338	3.98%	\$33,578
Director of Marketing	\$32,240	\$4,300	11.77%	\$36,540
Equipment Operator	\$31,200	\$1,338	4.11%	\$32,538
Equipment Operator	\$31,200	\$1,338	4.11%	\$32,538
Chief Ranger	\$29,120	\$1,338	4.39%	\$30,458
Director of Permit & Retail	\$28,080	\$11,152	28.43%	\$39,232
Ranger-Sergeant	\$27,040	\$1,338	4.71%	\$28,378
Ranger	\$24,960	\$0	0.00%	\$24,960
Ranger	\$24,960	\$0	0.00%	\$24,960
Ranger	\$24,960	\$0	0.00%	\$24,960
Retail Center Manager	\$24,960	\$11,152	30.88%	\$36,112
Marketing Assistant	\$20,800	\$1,338	6.04%	\$22,138
Totals	\$553,300	\$59,602	9.72%	\$612,902

**Table 3
Employee Salaries and Bonuses 2012**

Employee Title	Base Salary	Bonuses	Bonus % of Total Compensation	Total Compensation
Executive Director	\$104,400	\$16,173	13.41%	\$120,573
Deputy Director	\$57,000	\$8,086	12.42%	\$65,086
Office & Human Resource Manager	\$40,000	\$8,086	16.82%	\$48,086
Director of Marketing	\$40,000	\$8,086	16.82%	\$48,086
Heavy Equipment Manager	\$32,240	\$4,043	11.14%	\$36,283
Trail Maintenance Manager	\$32,240	\$4,043	11.14%	\$36,283
Equipment Operator	\$31,200	\$2,022	6.09%	\$33,222
Equipment Operator	\$31,200	\$2,022	6.09%	\$33,222
Chief Ranger	\$29,120	\$4,043	12.19%	\$33,163
Retail Sales Manager	\$28,080	\$4,043	12.59%	\$32,123
Ranger Lieutenant	\$28,080	\$2,022	6.72%	\$30,102
Ranger -- Sergeant	\$27,040	\$2,022	6.96%	\$29,062
Retail Center Manager	\$24,960	\$4,043	13.94%	\$29,003
Ranger	\$24,960	\$2,022	7.49%	\$26,982
Ranger	\$24,960	\$2,022	7.49%	\$26,982
Marketing Assistant	\$20,800	\$2,022	8.86%	\$22,822
Totals	\$576,280	\$74,800	9.72%	\$651,080

**Table 4
Employee Salaries and Bonuses 2013**

Employee Title	Base Salary	Bonuses	Bonus % of Total Compensation	Total Compensation
Executive Director	\$108,100	\$18,135	14.37%	\$126,235
Deputy Director	\$60,000	\$9,068	13.13%	\$69,068
Office & Human Resource Manager	\$43,000	\$9,068	17.42%	\$52,068
Director of Marketing	\$43,000	\$9,068	17.42%	\$52,068
Heavy Equipment Manager	\$33,280	\$4,534	11.99%	\$37,814
Trail Maintenance Manager	\$33,280	\$4,534	11.99%	\$37,814
Equipment Operator	\$32,240	\$2,267	6.57%	\$34,507
Equipment Operator	\$32,240	\$2,267	6.57%	\$34,507
Equipment Operator	\$32,240	\$2,267	6.57%	\$34,507
Chief Ranger	\$30,160	\$4,534	13.07%	\$34,694
Retail Center Manager	\$30,000	\$4,534	13.13%	\$34,534
Ranger Lieutenant	\$29,120	\$2,267	7.22%	\$31,387
Ranger -- Sergeant	\$28,080	\$2,267	7.47%	\$30,347
Ranger -- Sergeant	\$28,080	\$2,267	7.47%	\$30,347
Retail Sales Consultant	\$26,000	\$2,267	8.02%	\$28,267
Marketing Assistant	\$26,000	\$2,267	8.02%	\$28,267
Ranger	\$26,000	\$2,267	8.02%	\$28,267
Administrative Assistant	\$20,800	\$2,267	9.83%	\$23,067
Totals	\$661,620	\$86,145	11.52%	\$747,765

3. HMRRA Should Be Subject to State Grievance Laws

The Post Audit Division has received information bringing into question the propriety of some of the employment practices of HMRRA. This information includes allegations of discriminatory treatment of similarly-situated employees, favoritism based upon personal relationships, and disciplinary action without an appeal, including at least three employee terminations. Since it is outside the scope of the Division's review, the Post Audit Division has not attempted to determine the actual facts of these situations.

In a letter to the Subcommittee on November 18, 2014, it was determined that HMRRA is a state agency. Therefore, according to Legislative Services attorneys HMRRA and its employees would be subject to the state grievance procedure for public employees. If HMRRA were not to participate in this process, then the only forum available for the resolution of employees would be civil actions in Circuit Court. Such actions tend to be more lengthy and more expensive. In some circumstances, there would be the possibility of an award of punitive damages that is not contemplated by the state Grievance Procedure.

Ultimately, the resolution of HMRRA employee grievances, including whether the Grievance Board has jurisdiction to decide the claims, must be left to the Public Employees Grievance Board.

4. HMRRA Made Almost \$10 million of Purchases in its History That May Have Fallen Under State Purchasing

The state purchasing law set forth in the West Virginia State Purchasing Division Handbook, Section 3.2, states that

Amounts spent with vendors are viewed comprehensively. State agencies should continuously monitor their expenditures with vendors to ensure that the total amount spent with a given vendor, within any 12-month period, does not exceed a bid threshold without the proper level of documentation and bidding. Agencies must indicate "not to exceed" an amount of \$25,000, which will allow the State Auditor's Office to determine if the involvement of the Purchasing Division and Attorney General's Office is required

Since 2001, HMRRA has entered into multiple purchases that may fall under the Purchasing Division's authority. A total of almost \$10 million of expenditures and purchases may have been processed under the WV Purchasing Division. Instead, HMRRA was the sole overseer of these transactions.

The \$10 million dollars in purchases and expenditures subsequently have been subject to possibly less stringent controls than would have been imposed had they been overseen by the WV State Purchasing Division. This has the potential to increase risk of improper contract monitoring, prevention of inner dealings on purchases and contracts, inadequate bidding processes, and lack of proper record keeping procedures.

The following table is a detailed list compiled from information provided to us by HMRRA, of the transactions we have identified as falling under the authority of WV State Purchasing Division Handbook, Section 3.2 and may have subsequently been processed by the WV State Purchasing Division:

Table 5		
Expenditures over \$25,000 in a 12-month period (2001 – 2014)		
Vendor	Year	Amount
Barker's Hardware Co.	2008	\$28,337.27
Bobcat of Advantage Valley	2002	\$28,290.00
Center for Economic Options, Inc.	2009	\$42,951.74
Chartis Primary Claims	2010	\$69,429.41
City Insurance Agency	2004	\$38,880.46
City Insurance Agency	2005	\$110,096.18
City Insurance Agency	2006	\$33,568.20
City Insurance Agency	2007	\$119,344.04
City Insurance Agency	2008	\$113,815.00
City Insurance Agency	2009	\$121,295.88
City Insurance Agency	2010	\$129,291.83
City Insurance Agency	2011	\$123,234.33
City Insurance Agency	2012	\$127,649.48
City Insurance Agency	2013	\$135,437.07
City Insurance Agency	2014	\$136,245.84
Clear Fork Consulting, Inc.	2011	\$29,012.76
Clear Fork Consulting, Inc.	2012	\$33,220.12
Clear Fork Consulting, Inc.	2013	\$33,608.05
Clear Fork Consulting, Inc.	2014	\$36,630.18
Cole Motor Company	2004	\$61,292.68
Danville Lumber Company	2007	\$26,014.24
Danville Lumber Company	2008	\$26,264.88
Dirt Trax Television	2008	\$50,000.00
Dirt Trax Television	2010	\$50,000.00
Dirt Trax Television	2011	\$57,500.00
Dirt Trax Television	2012	\$26,500.00
Dirt Trax Television	2013	\$30,000.00
Dirt Trax Television	2014	\$30,000.00
Domino Printing	2003	\$28,419.50
Domino Printing	2004	\$37,420.00
Domino Printing	2005	\$43,115.00
Domino Printing	2006	\$61,681.00
Domino Printing	2007	\$87,053.00
Domino Printing	2008	\$140,165.73

Table 5 (Continued)

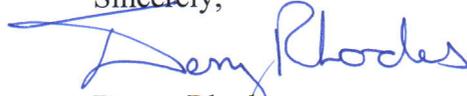
Domino Printing	2009	\$153,278.20
Domino Printing	2010	\$149,122.70
Domino Printing	2011	\$162,370.05
Domino Printing	2012	\$115,319.30
Domino Printing	2013	\$163,965.46
Domino Printing	2014	\$35,685.20
Dunbar Printing Company	2004	\$31,770.23
Dunbar Printing Company	2005	\$27,265.43
Dunbar Printing Company	2008	\$25,809.90
E. L. Robinson	2006	\$26,880.00
Ehlert Publishing Group, Inc.	2004	\$32,306.66
Ellis Lumber Supply	2011	\$68,806.48
Family Tees & Sweats	2010	\$36,745.05
Fisher's ATV World, Ltd.	2008	\$55,000.00
Fisher's ATV World, Ltd.	2009	\$100,000.00
Fisher's ATV World, Ltd.	2010	\$100,245.00
Fisher's ATV World, Ltd.	2011	\$110,000.00
Fisher's ATV World, Ltd.	2012	\$55,400.00
Fisher's ATV World, Ltd.	2014	\$30,000.00
Gibbons & Kawash	2009	\$27,074.98
Gibbons & Kawash	2010	\$34,562.04
Gibbons & Kawash	2011	\$29,225.82
Gibbons & Kawash	2012	\$33,784.77
Halo	2012	\$31,710.99
Halo	2013	\$28,345.88
Heritage Equipment, Inc.	2007	\$78,473.00
Hi Torque Publications	2008	\$27,563.00
Howard Persinger, Jr. L.C.	2001	\$36,758.04
Integrated Resources, Inc.	2010	\$146,219.94
Integrated Resources, Inc.	2011	\$293,536.47
Integrated Resources, Inc.	2012	\$236,449.38
Integrated Resources, Inc.	2013	\$245,192.15
Integrated Resources, Inc.	2014	\$184,391.36
JAW Excavating, LLC	2007	\$28,755.00
Ken & Coy Rock, Inc.	2004	\$78,851.00
Lee Wayne Corporation	2006	\$26,502.92
Lee Wayne Corporation	2008	\$38,118.56
Lee Wayne Corporation	2009	\$26,758.61
Lee Wayne Corporation	2010	\$35,362.13
Leslie Equipment	2005	\$106,247.73
Leslie Equipment	2009	\$28,519.33

Table 5 (Continued)

Marshall University Research Corporation	2006	\$45,000.00
Marshall University Research Corporation	2007	\$25,850.00
Marshall University Research Corporation	2008	\$30,000.00
Marshall University Research Corporation	2009	\$30,000.00
Marshall University Research Corporation	2010	\$40,000.00
Marshall University Research Corporation	2011	\$40,000.00
Marshall University Research Corporation	2013	\$168,343.94
Marshall University Research Corporation	2014	\$58,624.56
Martin Marietta Materials	2013	\$30,831.84
Mountain Heart Community Services, Inc.	2010	\$25,991.00
Mythology LLC	2009	\$30,500.00
On The Trail, LLC. Co.	2010	\$25,000.00
On The Trail, LLC. Co.	2011	\$57,000.00
On The Trail, LLC. Co.	2012	\$25,000.00
Pounding Mill Quarry Corporation	2007	\$29,663.79
Premium Financing Specialists, Inc.	2004	\$35,805.84
Premium Financing Specialists, Inc.	2005	\$26,913.25
Premium Financing Specialists, Inc.	2006	\$64,915.32
Progressity Development Solutions	2008	\$32,277.50
Progressity Development Solutions	2009	\$31,376.65
Progressity Development Solutions	2010	\$26,161.80
Progressity Development Solutions	2011	\$37,953.79
Quantum Construction Services, Inc.	2004	\$51,979.00
Recreation Solutions	2004	\$50,459.27
Rita Mall LLC	2011	\$36,000.00
Ron Schara Productions	2011	\$50,000.00
Ron Schara Productions	2012	\$25,000.04
Ron Schara Productions	2013	\$25,830.24
Ron Schara Productions	2014	\$26,250.00
Screen Graphics	2002	\$39,492.52
Screen Graphics	2003	\$28,992.34
Screen Graphics	2004	\$34,102.49
Screen Graphics	2006	\$27,772.45
Screen Graphics	2010	\$40,540.44
Screen Graphics	2013	\$33,851.02
Securemark Decal Corp.	2008	\$27,382.60
Shaffer & Shaffer, PLLC	2005	\$68,533.61
Shaffer & Shaffer, PLLC	2006	\$37,647.15
Shaffer & Shaffer, PLLC	2007	\$36,615.99
Shaffer & Shaffer, PLLC	2008	\$28,289.86
Shaffer & Shaffer, PLLC	2009	\$44,175.25

Table 5 (Continued)		
Shaffer & Shaffer, PLLC	2010	\$36,103.10
Shaffer & Shaffer, PLLC	2013	\$53,840.74
Shaffer & Shaffer, PLLC	2014	\$31,539.84
Speedway	2005	\$28,054.92
Speedway	2007	\$30,770.22
Stephens Auto Center	2006	\$97,411.00
Stephens Auto Center	2007	\$212,872.00
Stephens Auto Center	2010	\$41,712.00
Stephens Auto Center	2012	\$92,844.46
Stephens Auto Center	2013	\$41,157.25
Steptoe & Johnson	2003	\$33,125.94
Strategic Advantage Marketing	2009	\$37,762.39
Sutter Equipment Co.	2001	\$72,215.00
Terradon Communications	2009	\$35,894.29
Terradon Communications	2010	\$41,808.92
Thornhill Ford-Lincoln	2014	\$401,484.92
Tipsy Inc.	2013	\$30,761.51
Tucker Rocky Distributing	2011	\$31,352.22
Tucker Rocky Distributing	2013	\$28,671.66
Upton Construction, Inc.	2014	\$268,000.00
Walker Machinery	2007	\$213,837.50
Walker Machinery	2008	\$55,758.97
Walker Machinery	2010	\$143,463.54
Walker Machinery	2012	\$71,616.63
Walker Machinery	2013	\$223,377.99
Walker Machinery	2014	\$476,979.90
Total		\$9,990,677.09

The Office of the Legislative Auditor will continue to audit the operations and records of HMRRA, and also attempt to establish if the records kept by HMRRA are auditable, since records have not been maintained in the State's financial management system. Future reports will be delivered to the Post Audit sub-committee during the 2015 interim.

Sincerely,

 Denny Rhodes

- c: Mr. Jeffrey T. Lusk, Executive Director, HMRRA
 Mr. Jason Pizatella, Acting Secretary, Department of Administration
 Ms. Robin Perdue, Director, West Virginia Public Employees Grievance Board