

**Timothy M. Keller**  
State Auditor



**Sanjay Bhakta**, CPA, CGFM, CFE, CGMA  
Deputy State Auditor

**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

July 7, 2015

Via Email and Certified Mail

McKinley County Commissioners  
County Courthouse  
207 West Hill St.  
Gallup, NM 87301

Re: McKinley County Sheriff's Office Special Report

Dear Commissioners:

We enclose for your information signed copies of the finalized McKinley County Sheriff's Office (MCSO) Report on Applying Agreed-Upon Procedures for the period January 1, 2010 through December 31, 2014.

We received a referral related to problems at the MCSO and determined that grant reporting procedures were inadequate (Finding 2015-001) and reimbursements were claimed for activities which were not allowed (Findings 2015-002 and 2015-003). We also identified problems with time reporting and compliance with the Fair Labor Standards Act (Findings 2015-004 and 2015-005). Examples of specific concerns include:

- In fiscal year 2015, the County transferred \$425,000 from the Sheriff's fund to the General Fund to reimburse overtime costs incurred prior to June 30, 2013, but the supporting documentation was not maintained.
- Sheriff Deputies claimed overtime for DWI Task Force federal reimbursement, when they were working elsewhere such as at local high school athletic games and a high school prom.
- Sheriff Deputies frequently did not log any activity during a shift regardless of whether the time was reimbursable.

The OSA report follows a report from the National Highway Traffic Safety Administration Region 6 (NHTSA) that examined federal program funds awarded to McKinley County through the New Mexico Department of Transportation Traffic Safety Division. The report from NHTSA determined that \$173,432 of the expenditures claimed by MCSO were unallowable.

This letter is intended to identify our primary concerns and is not intended as a substitute for our Report or the Findings therein. We attach a copy of our Report which will be available on our website [www.osanm.org](http://www.osanm.org) after a five day waiting period.

**2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507**  
**Phone (505) 476-3800 \* Fax (505) 827-3512**  
**[www.osanm.org](http://www.osanm.org) \* 1-866-OSA-FRAUD**

We urge you to ensure that the internal controls at McKinley County, and particularly within the Sheriff's Office, are sufficient to ensure that the important and valuable government services the County provides continue without further disruption.

We appreciate the cooperation and responsiveness of McKinley County and the MCSO during this process. The agency response to all our findings can be found on page 19 of our report.

If you have questions, or need additional information regarding this communication, please do not hesitate to contact Kevin Sourisseau, CPA at [Kevin.Sourisseau@osa.state.nm.us](mailto:Kevin.Sourisseau@osa.state.nm.us) or 505-476-3820. Thank you for your assistance with these issues.

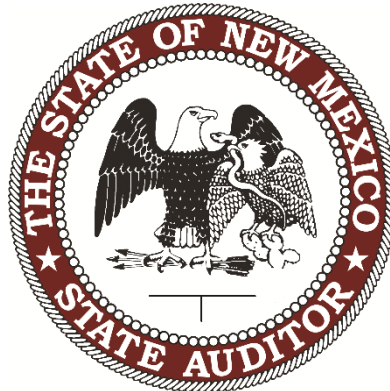
Sincerely,

A handwritten signature in cursive script that reads "Timothy Keller". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Timothy M. Keller  
State Auditor

# **OFFICE OF THE STATE AUDITOR**

**Timothy M Keller**



**McKinley County**

**McKinley County Sheriff's Office**

**Independent Accountant's Report on Applying Agreed-Upon Procedures**

**For the Period of January 1, 2010 thru December 31, 2014**

**McKinley County**

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**For the Period of January 1, 2010 thru December 31, 2014**

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**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

**Independent Accountant's Report on Applying Agreed-Upon Procedures**

Bill Lee, County Manager  
Carol Bowman-Muskett, Chairperson  
and Members of the Board of Commissioners  
McKinley County  
Ronald Silversmith, County Sheriff  
McKinley County Sheriff's Office  
207 West Hill St.  
Gallup, New Mexico 87301

We have performed the procedures detailed below for the McKinley County Sheriff's Office (MCSO) of McKinley County (County) for the period of January 1, 2010, thru December 31, 2014, solely to assist with respect to the County's DWI Program and the related internal controls over financial and grant reporting. The procedures were agreed to by the Board of Commissioners of the County through the New Mexico Office of the State Auditor (OSA). The County's management is responsible for its accounting records and the subject matter. This agreed upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

***Procedure:***

Determine if the McKinley County Sheriff's Office and assigned Deputies committed theft of time while assigned to shifts that are funded by the Minimum Penalties for Repeat Offenders for Driving While Intoxicated federal programs (DWI Programs), which include the following three programs: Driving While Intoxicated (DWI Task Force), Full Time Law

Enforcement DWI Officers (FTE), and Operation Driving While Intoxicated (ODWI). These are the three Federal grants utilized by the County under CFDA # 20.608 (DWI Programs) for the period of January 1, 2010 thru December 31, 2014.

OSA conducted a site visit to obtain the necessary supporting documentation and inquire of personnel associated with the grant management and reporting process. We obtained supporting documentation to test the time and related location for the Deputies associated with the DWI Programs to ensure compliance with the grant requirements.

From January 1, 2010 thru December 31, 2014, MCSO utilized the DWI Task Force Grant to pay for approximately \$288,000 in overtime for 37 Deputies and approximately \$401,000 in salaries, overtime, and related benefits for six Deputies who filled the role as Task Force Supervisor at various times during the timeframe. Of the 37 Deputies, the records for 12 Deputies were selected for review in addition to one of the six Task Force Supervisors.

***Results of Testwork:***

**Grant Reporting (See Finding 2015-001)**

During the time period, the County did not include the DWI Grant Funds on the fiscal year 2012 Schedule of Expenditures of Federal Awards (SEFA) which is required by OMB Circular A-133 to be included in the Annual Audit Report.

During the time period, the Office of Emergency Management monitored the grants for federal reporting purposes for fiscal years of 2010 through 2013. The Sheriff's Office took over the reporting for fiscal year 2014. Effective January 1, 2015, the Office of Emergency Management took over the federal reporting process for these grants during the transition to the new Sheriff's Administration.

The monthly claim reimbursement form for July 2014 included one 10-hour shift worked by a Deputy twice and one 8-hour shift for the same Deputy was not reported. This resulted in the claiming of 2 extra hours of overtime for the month. Additionally, the DWI Task Force files for the month of September 2011 indicate one Deputy worked five shifts of overtime for DWI Task Force, which were not reflected in the Deputy's Unit Status Inquiry Log. Per further review, it appears that the individual preparing the monthly Project Reimbursement Claim for Overtime form included DWI Task Force Shifts worked by another Deputy under the wrong Deputy's name.

Amounts paid for overtime for the DWI Task Force were paid out of the County's General Fund instead of out of the Sheriff's Fund. During the time period reviewed, the County did not track and reconcile the overtime amounts paid from the General Fund to the amounts claimed for the grant. Additionally, the County did not make the necessary adjustments to appropriately report the expenses under the grant in the general ledger. The overtime expenditures were appropriately included on the claims for reimbursement under the grant; however, the General Fund was never reimbursed for the overtime amounts paid, nor were these amounts tracked consistently. As a result, the Sheriff's

Fund accumulated in its fund balance, the reimbursements for overtime amounts paid from the General Fund. In fiscal year 2015, the County passed a resolution authorizing the transfer to the General Fund of \$425,000 for overtime paid prior to June 30, 2013, contained in the fund balance of the Sheriff's fund; however, the supporting documentation for this transfer was not maintained. Beginning in fiscal year 2015, the County implemented the process to periodically issue a check from the DWI Grant Fund to the General Fund to reimburse the General Fund for overtime amounts paid beginning with the amounts paid in fiscal year 2014 overtime. Based on the monthly claim reimbursement forms provided, the County reported approximately \$288,000 in overtime expenses from January 1, 2010, through December 31, 2014, and for the same period, approximately \$401,000 for salaries and benefits for the Task Force Supervisors.

For the time period between November 2012 and May 2013, the DWI Task Force Supervisor's salary and benefits were paid out of the FTE Grant Fund in the General Ledger, but reported on the claim reimbursement for the DWI Task Force Grant.

The National Highway Traffic Safety Administration Region 6 (NHTSA) performed a Management Review of federal programs for fiscal years 2011-2013, awarded to NM Department of Transportation Traffic Safety Division (NM DOT TSD) and selected sub-awards for local law enforcement agencies associated with these funds. In the report issued June 17, 2014, NHTSA reviewed two of the three DWI programs for McKinley County. As a result of this review, NHTSA determined \$173,431.98 of the expenditures claimed by MCSO for the two programs, \$162,170.44 for the FTE Program and \$11,261.54 for the DWI Task Force program respectively, were unallowable. Additionally, NM DOT TSD's response to the review indicates that the State will no longer utilize federal grant funding to fund the FTE program for local law enforcement agencies. Although the report was issued prior to the OSA site visit, County and MCSO employees indicated that they were not aware of a report having been issued; however, they were aware of some of the findings, and were no longer anticipating the receipt of future funding for the FTE program. The NM DOT TSD response to the Management Review indicates that of the \$173,431.98, NM DOT TSD has contested all but approximately \$11,900. NM DOT TSD covered the questioned costs from the Management Review by utilizing other state funding sources.

#### **Activities Not Allowed (See Findings 2015-002 and 2015-003)**

Per review of the Approved Overtime Forms submitted by the Deputies for each pay period in which overtime was worked and review of the Unit Status Inquiry Logs for the Deputies selected for review, there were several instances noted where Deputies logged overtime reported to DWI Task Force when they were actually at the local high school basketball games, working special events, or even at the high school prom. Review of the Unit Status Inquiry Logs also revealed that several of the Deputies spent significant amounts of time at the Sheriff's Office when they were signed up to work saturation patrol for DWI Task Force, or the Deputies would log significant amounts of time as "Busy" without a related location code. In each instance noted, no adjustment to the time reported for DWI Task Force was made.

Additionally, as a result of the National Highway Traffic Safety Administration Region 6's Management Review of NM DOT TSD and subrecipients of the Federally-funded highway safety program, it was noted that one Deputy's time was adjusted for time spent assisting the regular patrol while working overtime for DWI Task Force. Other Deputies were noted to have written "Assist with Patrol" on their Traffic Enforcement Activity Sheets; however, no adjustments to the time reported for the Task Force grant were noted. Additionally, it appears that the adjustment for time spent assisting with regular patrol was estimated and not based on the actual amount of time spent and supporting documentation to show how the adjustment amount was determined was not maintained.

### **Time Reporting Concerns**

Of the dates tested for each of the Deputies sampled, testwork revealed one Deputy reported four hours more overtime on his/her Approved Overtime Form than was actually worked per the Unit Status Inquiry Log resulting in a payment for services not rendered of approximately \$115. (See Finding 2015-004)

Two Deputies logged busy per their Unit Status Inquiry Logs but did not cite a related location or incident code for approximately 16 hours from five separate shifts for approximately \$450 at the respective overtime rates.

Testwork revealed multiple instances in which Deputies did not log any activity per the Unit Status Inquiry Logs for periods ranging from one to five hours during shift. It is concerning because the records lack sufficient information to determine whether the Deputies were in their assigned areas or not.

Additionally, it was noted that for shifts worked which were not DWI Task Force shifts, Deputies frequently did not log any activity. The Unit Status Inquiry Logs reviewed often indicate no other activity recorded between when the Deputy logged on shift and when the Deputy logged off shift eight to twelve hours later. Further, NHTSA recommended in the Management Review issued June 17, 2014, that each project agreement include baseline data for non-Federally funded enforcement to allow NHTSA to see if overtime enforcement increases the overall DWI productivity.

### **Compliance with the Fair Labor Standards Act (FLSA) (See Finding 2015-005)**

Upon review of the Approved Overtime Form for one of the Deputies' records selected for review, it was noted that a supervisor charged with approving payroll records made an adjustment to the amount of overtime worked for one Deputy to reduce the Deputy's overtime reported for the pay period below the maximum amount of overtime allowed by the Department's policy; however, the Deputy had already worked the hours and therefore was not paid for hours worked.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the agreed upon procedures. Accordingly, we do not express



such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of management of McKinley County, McKinley County Sheriff's Office, and the New Mexico State Auditor, and is not intended to be and should not be used by anyone other than these specified parties.

*Office of the State Auditor*

Office of the State Auditor

June 24, 2015

## McKinley County

### Schedule of Findings and Responses

For the Period of January 1, 2010 thru December 31, 2014

#### Schedule of Findings and Responses:

##### 2015-001 – Grant Reporting

###### Condition:

1. The County paid the overtime for the DWI Task Force Grant from the General Fund. Although the overtime amounts paid were reported on the monthly Project Reimbursement Claim forms submitted, the General Fund was not reimbursed timely for the overtime expenditures when the reimbursements were received and deposited into the Sheriff's Fund. The County proposed a transfer of \$425,000 with resolution number OCT-14-071, with approval from NM Department of Finance and Administration Local Government Division. This fiscal year 2015 resolution covered transfers from the Sheriff's Grant Fund to the General Fund for overtime worked from fiscal years 2010, 2011, 2012, and 2013 without adequate supporting documentation to substantiate the amount to be transferred. DWI Grant overtime amounts for fiscal year 2014 were not reimbursed to the General Fund until fiscal year 2015. Additionally, overtime paid from the General Fund and reported monthly for the DWI Task Force Grants amounted to approximately \$288,000 during the time frame reviewed.
2. The monthly Project Reimbursement Claim form for the month of July 2014, included one 10 hour shift worked by one Deputy twice and one 8 hour shift for the same Deputy was not reported. This resulted in the claiming of 2 extra hours of overtime for the month.
3. One Deputy worked a 10 hour overtime shift with an overtime rate of \$33.81 per hour for DWI Task Force on June 26, 2014. The hours and related pay for this shift were not reported with the monthly Project Reimbursement Claim form for the grant.
4. The DWI Task Force files for the month of September 2011 indicate one Deputy worked five shifts of overtime for DWI Task Force that were not reflected in the Deputy's Unit Status Inquiry Log. Per further review, these shifts were worked by a different Deputy; however, the shifts were reported under the wrong name on the monthly Project Reimbursement Claim form.
5. Additionally, there are several instances where the hours worked for a Deputy were reported for the wrong day as a result of the Deputy writing the wrong date on the Traffic Enforcement Overtime Activity Report.
6. The County did not include the expenditures associated with the DWI Programs under CFDA #20.608 on the fiscal year 2012 SEFA.
7. Although the DWI Programs were included in the fiscal year 2013 SEFA, the County did not report approximately \$125,000 to \$188,000 expended under CFDA #20.608 DWI Programs for fiscal year 2013 for the contractual services of the other law enforcement agencies involved with the DWI Task Force on the fiscal year 2013 SEFA.

## **2015-001 – Grant Reporting (continued)**

### **Criteria:**

Per the DWI Task Force Project Agreement with New Mexico Department of Transportation, Records and Audit, “the Grantee shall strictly account for all receipts and disbursements related to this agreement. The Grantee shall record costs incurred, services rendered and payment received, and shall maintain these financial records during the agreement and for five years after termination. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the State Auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the agreement and for five years after termination. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the Program, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty days of written notice.”

Per Section Four of the Project Agreement with New Mexico Department of Transportation, claims for reimbursement must be fully completed and submitted monthly with sufficient supporting documentation, as determined and approved by the Department. All documents must indicate that expenses have been paid and must be submitted monthly throughout the grant period even if there is no activity claimed during the month.

Per Section Four of the Project Agreement with New Mexico Department of Transportation, a final reimbursement claim must be received by the Department no later than thirty (30) days after the end date of this Agreement.

Per OMB Circular A-133, paragraph .300 - .300(d), the auditee shall:

- (a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.
- (b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.
- (c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

**2015-001 – Grant Reporting (continued)**

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with paragraph .310.

OMB Circular A-133 paragraph .310(b), requires that the auditee shall also prepare a Schedule of Expenditures of Federal Awards for the period covered by the auditee's financial statements.

**Effect:**

Inaccurate managing of federal grants could cause the loss of future awards or reduced proportion of future awards. In addition, the inaccurate managing of federal grants has also resulted in an accumulated fund balance in the Sheriff's fund.

In addition, federal expenditures reported on the SEFA could be inaccurate which could result in non-compliance. Non-compliance with Federal grant requirements could result in the following sanctions per OMB Circular A-133 paragraph .225: (a) withholding a percentage of Federal awards until the audit is completed satisfactorily; (b) withholding or disallowing overhead costs; (c) suspending Federal awards until the audit is conducted; or (d) terminating the Federal award.

**Cause:**

Due to the lack of internal controls over grant management, reconciliation of grant expenditures to grant reimbursements, and grant reporting.

In addition, during the timeframe reviewed, two different Departments of the County were responsible at different times for the grant management and reporting resulting in inconsistencies in reporting, tracking, and record keeping for the DWI Grants.

**Recommendation:**

Office of Emergency Management personnel responsible for Federal reporting of the DWI Task Force Grants and the appropriate personnel from the MCSO should work together to develop a policies and procedures and train personnel to accurately and consistently track overtime amounts and other expenditures of the grants and ensure that the General Fund is reimbursed timely for the overtime amounts expended. Additionally, the County should develop a process to accurately track Federal grant funds expended for timely and accurate reporting on the SEFA.

**Agency Response:**

*Agency response to element 1 of condition:*

McKinley County has established a process to reimburse the general fund from the grant(s) funds. McKinley County will reimburse the general fund from the grant(s) no less than quarterly. This practice has been established and placed in operation beginning with Fiscal Year 2015.

**2015-001 – Grant Reporting (continued)**

*Agency response to element 2 of condition:*

The McKinley County Sheriff's Office (MCSO) On Duty Supervisor for the day that the Deputy(s) work Grant overtime will verify and sign the activity sheet for the time worked. If it is a DWI Task Force grant, the activity sheet will be given to the Deputy and the Deputy shall turn in the verified activity sheet to the Task Force Supervisor. The Task Force Supervisor will double check and initial the paper work to make sure it is true and correct. Then that paperwork will be given to the MCSO Liaison who will also check and initial the documentation signifying that it is true and correct. Once the MCSO Liaison has verified the work, the MCSO Liaison will communicate/transmit the documentation to the Grant Specialist at the McKinley County Grant Department. The documentation shall be reviewed through Grant Department review processes. The final review for the County shall be made by the Finance Department.

*Agency response to element 3 of condition:*

The McKinley County Sheriff's Office (MCSO) On Duty Supervisor for the day that the Deputy(s) work Grant overtime will verify and sign the activity sheet for the time worked. If it is a DWI Task Force grant, the activity sheet will be given to the Deputy and the Deputy shall turn in the verified activity sheet to the Task Force Supervisor. The Task Force Supervisor will double check and initial the paper work to make sure it is true and correct. Then that paperwork will be given to the MCSO Liaison who will also check and initial the documentation signifying that it is true and correct. Once the MCSO Liaison has verified the work, the MCSO Liaison will communicate/transmit the documentation to the Grant Specialist at the McKinley County Grant Department. The documentation shall be reviewed through Grant Department review processes. The final review for the County shall be made by the Finance Department.

*Agency response to element 4 of condition:*

The McKinley County Sheriff's Office (MCSO) On Duty Supervisor for the day that the Deputy(s) work Grant overtime will verify and sign the activity sheet for the time worked. If it is a DWI Task Force grant, the activity sheet will be given to the Deputy and the Deputy shall turn in the verified activity sheet to the Task Force Supervisor. The Task Force Supervisor will double check and initial the paper work to make sure it is true and correct. Then that paperwork will be given to the MCSO Liaison who will also check and initial the documentation signifying that it is true and correct. Once the MCSO Liaison has verified the work, the MCSO Liaison will communicate/transmit the documentation to the Grant Specialist at the McKinley County Grant Department. The documentation shall be reviewed through Grant Department review processes. The final review for the County shall be made by the Finance Department.

*Agency response to element 5 of condition:*

The McKinley County Sheriff's Office (MCSO) On Duty Supervisor for the day that the Deputy(s) work Grant overtime will verify and sign the activity sheet for the time worked. If it is a DWI Task Force grant, the activity sheet will be given to the Deputy and the Deputy shall turn in the verified activity sheet to the Task Force Supervisor. The Task Force Supervisor will double check and initial the paper work to make sure it is true and

**2015-001 – Grant Reporting (continued)**

correct. Then that paperwork will be given to the MCSO Liaison who will also check and initial the documentation signifying that it is true and correct. Once the MCSO Liaison has verified the work, the MCSO Liaison will communicate /transmit the documentation to the Grant Specialist at the McKinley County Grant Department. The documentation shall be reviewed through Grant Department review processes. The final review for the County shall be made by the Finance Department.

*Agency response to element 6 of condition:*

The MCSO staff managing the federal funds at the time (FY-12) did not understand what a SEFA was or the process of a SEFA. The County has staff who understand what a SEFA is and what our responsibilities are according to the audit rule. This trained staff (Grants Department) will work with the MCSO to fully train the participants involved with the management of the DWI Grant on the SEFA and fulfilling our responsibilities. By Resolution DEC-14-095, the County Commission has required that Grants (including the DWI Task Force Grant) be reviewed quarterly and reconciled with the general ledger by the Grants Manger. This review includes the review of the SEFA.

*Agency response to element 7 of condition:*

MCSO Staff at that time did not know that some of the DWI Funding was federal and that it needed to be on the SEFA. The County has staff who understand what a SEFA is and what our responsibilities are according to the audit rule. This trained staff (Grants Department) will work with the MCSO to fully train the participants involved with the management of the DWI Grant on the SEFA and fulfilling our responsibilities. By Resolution DEC-14-095, the County Commission has required that Grants (including the DWI Task Force Grant) be reviewed quarterly and reconciled with the general ledger by the Grants Manger. This review includes the review of the SEFA.

**2015-002 – Activities Not Allowed – High School Games, Special Events, Prom**

**Condition:**

Of the 12 Deputies' and one Supervisor's records selected for review, six included approximately 43 hours of overtime for the activities including working security for Special Events, security at High School Games, and security at High School Prom, which are not considered allowable under the DWI Task Force Grants resulting in approximately \$1,340 of overtime pay.

**Criteria:**

Per the Project Agreement with New Mexico Department of Transportation and related guidance for the DWI Task Force Grant Funding "the majority of costs incurred from planning and conducting a saturation patrol should not extend beyond normal salary and benefits associated with daily law enforcement operations."

Per the DWI Task Force Project Agreement with New Mexico Department of Transportation Exhibit A, item 1(3), Funding will pay for salary and benefits for the task force supervisor position. Additionally item 3(4) Reimbursement, indicates that the Department will pay the Grantee for the following items: (1) overtime pay for officers conducting traffic safety enforcement and (2) Personal Services for one full-time McKinley County Sheriff's Office Supervisor.

National Highway Traffic Safety Administration (NHTSA) Region 6 Management Review of NM Department of Transportation Traffic Safety Division (NM DOT TSD) issued June 17, 2014, indicates that NHTSA does not consider collateral duties including assisting with patrol to be allowable.

NHTSA's definition of saturation patrols is patrols that involve an increased enforcement effort, targeting a specific area, to identify and arrest the impaired driver.

OMB Circular A-133 Section .300(b) requires that auditee maintain internal controls over federal programs that provides reasonable assurance that the auditee managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreement that could have a material effect on each of its federal program.

**Effect:**

Grant Oversight at State and/or Federal level could reduce future funding, require the County to pay back disallowed costs, place additional restrictions on County for grant management.

**Cause:**

Due to the lack of internal controls over grant management, reconciliation of grant expenditures to grant reimbursements, and grant reporting.

**2015-002 – Activities Not Allowed – High School Games, Special Events, Prom (continued)**

**Recommendation:**

Develop and encourage a system of internal controls to prevent and discourage abuse of the overtime reported for federal grants. Develop a system or method for Deputies to clearly indicate the amount of time spent on activities not allowed for the DWI Task Force Grant if it becomes necessary for the Deputies to assist with other calls. Have the Sheriff, Undersheriff, or their designee randomly show up at a Deputy's assigned and reported locations to verify that they are indeed performing their assigned duties.

**Agency Response:**

The overtime will be used and accounted for according to the grant agreement and its intended use only. Overtime will be verified by the MCSO on Duty Supervisor, the MCSO Task Force Supervisor and the MCSO Liaison.



**2015-003 – Activities Not Allowed – Assisting With Regular Patrol, Etc.**

**Condition:**

Of the 12 Deputies' and one Supervisor's records selected for review, seven included references on their overtime forms for assisting with activities not allowed including approximately 45 instances noted on dates tested for assisting with patrol, animal complaints, missing, and other non-DWI related calls. In addition, Deputies were logging significant amounts of time as busy without indicating location or nature/description of incident. Activity which was not considered allowable under the DWI Task Force Grants continued to be logged and reported to the grant after the NHTSA's Management Review of New Mexico Department of Transportation and the subrecipients of the grant funding resulted in the disallowance of overtime pay reported, but not considered allowable under the DWI Task Force Grants for these activities.

**Criteria:**

Per the Project Agreement with New Mexico Department of Transportation and related guidance for the DWI Task Force Grant Funding "the majority of costs incurred from planning and conducting a saturation patrol should not extend beyond normal salary and benefits associated with daily law enforcement operations."

Per the DWI Task Force Project Agreement with New Mexico Department of Transportation Exhibit A, item 1(3), Funding will pay for salary and benefits for the task force supervisor position. Additionally item 3(4) Reimbursement indicates that the Department will pay the Grantee for the following items: (1) overtime pay for officers conducting traffic safety enforcement and (2) Personal Services for one full-time McKinley County Sheriff's Office Supervisor.

National Highway Traffic Safety Administration (NHTSA) Region 6 Management Review of NM Department of Transportation Traffic Safety Division (NM DOT TSD) issued June 17, 2014, indicates that NHTSA does not consider collateral duties, including assisting with patrol, to be allowable.

NHTSA's definition of saturation patrols is patrols that involve an increased enforcement effort, targeting a specific area, to identify and arrest the impaired driver.

OMB Circular A-133 Section .300(b) requires that auditee maintain internal controls over federal programs that provides reasonable assurance that the auditee managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreement that could have a material effect on each of its federal program.

**2015-003 – Activities Not Allowed – Assisting With Regular Patrol, Etc. (continued)**

**Effect:**

The Grant Oversight at State and/or Federal level could reduce future funding and/or require the County to pay back disallowed costs and/or place additional restrictions on County for grant management.

**Cause:**

Due to the lack of internal controls over grant management, reconciliation of grant expenditures to grant reimbursements, and grant reporting.

**Recommendation:**

Develop and encourage a system of internal controls to prevent and discourage abuse of the overtime reported for federal grants. Develop a system or method for Deputies to clearly indicate the amount of time spent on activities not allowed for the DWI Task Force Grant if it becomes necessary for the Deputies to assist with other calls. Have the Sheriff, Undersheriff, or their designee randomly show up at a Deputy's assigned and reported locations to verify that they are indeed performing their assigned duties.

**Agency Response:**

The overtime will be used and accounted for according to the grant agreement and its intended use only. Overtime will be verified by the MCSO on Duty Supervisor, the MCSO Task Force Supervisor and the MCSO Liaison.

## **2015-004 - Time Reporting Concerns**

### **Condition:**

Of the 12 Deputies' and one Supervisor's records selected for review, one Deputy reported and was paid for four hours of overtime which per the Deputy's unit status log was not actually worked resulting in an overtime of wages of approximately \$115, for services not rendered.

### **Criteria:**

Per the DWI Task Force Project Agreement with New Mexico Department of Transportation, Records and Audit, "the Grantee shall strictly account for all receipts and disbursements related to this agreement. The Grantee shall record costs incurred, services rendered and payment received, and shall maintain these financial records during the agreement and for five years after termination. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the agreement and for five years after termination. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the Program, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty days of written notice."

Per Section Four of the Project Agreement with New Mexico Department of Transportation, claims for reimbursement must be fully completed and submitted monthly with sufficient supporting documentation, as determined and approved by the Department. All documents must indicate that expenses have been paid and must be submitted monthly throughout the grant period even if there is no activity claimed during the month.

OMB Circular A-133 Section .300(b) requires that auditee maintain internal controls over federal programs that provides reasonable assurance that the auditee managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreement that could have a material effect on each of its federal program.

### **Effect:**

The Grant Oversight at State and/or Federal level could reduce future funding and/or require the County to pay back disallowed costs and/or place additional restrictions on County for grant management.

**2015-004 - Time Reporting Concerns (continued)**

**Cause:**

Lack of internal controls over time reporting. Deputy submitted a timesheet which did not accurately reflect time worked and received approval from Shift Supervisor.

**Recommendation:**

MCSO should discourage inaccurate time reporting by Deputies and their Shift Supervisors and develop a process by which they can verify the accuracy of time reported.

**Agency Response:**

The Deputy(s) who work grant overtime will prepare a daily report that will include the NMDOT Activity Sheet and the MCSO Daily Activity Log. The MCSO DWI Task Force Supervisor and the MCSO Liaison will verify accuracy of the activity sheet and other overtime documents to insure they are true and correct. All MCSO Daily Activity Log sheets will be compared to the Metro (Gallup-McKinley County Metropolitan Dispatch Authority) unit status inquiry log. This comparison and verification will be completed by the MCSO Task Force Supervisor and the MCSO Liaison.

**2015-005 – Fair Labor Standards Act (FLSA) Compliance**

**Condition:**

Of the 12 Deputies' and one Supervisor's records selected for review, one Deputy was not paid for three and a half hours of overtime worked resulting in an underpayment of \$95.83 plus related benefits. Additionally, for this same pay period, the Deputy worked 52 hours of voluntary overtime which is in excess of the maximum of 50 hours allowed by policy.

**Criteria:**

FLSA requires that "Covered employees must be paid for all hours worked in a workweek. In General, "hours worked" includes all time an employee must be on duty, or on the employer's premises, or at any other prescribed place of work."

MCSO SOP 204.00 Policy requires "The Department shall compensate all employees for work performed beyond their normal work hours and ensure that off-duty/voluntary overtime is performed in a manner which provides for safe employee working conditions during their normal work hours."

MCSO SOP 204.04 (B) Employees shall not work more than fifty (50) hours of Off-duty/Voluntary Overtime within a pay period.

MCSO SOP 204.04 (E) Employees shall not work more than sixty-two (62) total hours of overtime during a pay period except under emergency conditions.

**Effect:**

MCSO violated FLSA by not paying the Deputy for 3.5 hours of overtime worked. Deputy did not adhere to Department policy regarding maximum amount of overtime hours worked both in total and for the voluntary overtime classification.

**Cause:**

Deputy and supervisors tasked with approving overtime were not monitoring the amount of overtime worked in a given pay period for compliance with Department policy prior to the Deputy working the overtime.

**Recommendation:**

Department Deputies and Supervisors approving overtime should monitor overtime worked by Deputies in a pay period for compliance with Department Policy prior to overtime being worked. Additionally, Supervisors should not be able to reduce hours worked by an employee after they have been worked.

**2015-005 – Fair Labor Standards Act (FLSA) Compliance (continued)**

**Agency Response:**

MCSO Liaison and shift supervisors will verify and ensure that the deputy will not go over 50 hours allowed of voluntary overtime per the internal Sheriff's SOP. If future violations occur, appropriate disciplinary action will be taken including training on the policy.

**McKinley County Corrective Action Plan in response to all findings**

The McKinley County Commission adopted Resolution No. DEC-14-095, on December 16<sup>th</sup>, 2014 which established the Grant Department and protocols for Grants Management. Internal controls and processes already adopted before this special audit have and will continue to address findings noted in this audit, including internal controls and segregation of duties. Therefore the findings attributed to issues found in this special audit such as lack of internal controls and segregation of duties has been accomplished.

The resolution has mandated that all grants be maintained in a centralized location and has established the McKinley County Grant Department as the centralized location. The Grant Department is able to monitor all fiduciary, compliance and associated grant documents in conjunction with the Finance Department. Therefore the findings attributed to issues found in this special audit such as lack of internal controls and segregation of duties has been accomplished.

The resolution also mandated that each department that has grant funding appoint a "Department Liaison" to work and communicate with the Grant Department on a regular basis (no less than monthly).

In addition internally, the Sheriff's department will immediately implement, procedures that include: the On Duty Shift Supervisor verifying the deputy's overtime worked via the NMDOT Activity Sheet and the MCSO Daily Activity Log; the review and verification of the DWI Taskforce Supervisor; the review and verification of the MCSO Liaison; and, the comparison of these documents to the Metro unit status inquiry logs. The McKinley County Sheriff's Office will and has implemented these steps as a "practice" and will by thirty (30) days after the public release of this special audit finalize the Standard Operating Procedures necessary to make this "practice" into written Policy.

## **McKinley County**

### **Exit Conference**

**For the Period of January 1, 2010 thru December 31, 2014**

#### **Exit Conference:**

On June 24, 2015, an exit conference was held with the following individuals to discuss the results of the agreed upon procedures and the contents of this report.

#### **McKinley County Sheriff's Office**

Ronald Silversmith, County Sheriff

#### **County of McKinley**

Carol Bowman-Muskett, Chairperson

Bill Lee, County Manager

Sara A. Keeler, Finance Director

Anthony L. Dimas Jr., Director, Office of Emergency Management, Grants and Contracts

Douglas W. Decker, County Attorney

#### **Office of the State Auditor**

Kevin Sourisseau, CPA, Special Investigations Division Director

Anna Williams, CPA, Audit Manager

Sara Specht, CFE, Audit Supervisor

Lisa Jennings, Audit Senior