

White Earth Reservation Business Committee
PO Box 418
White Earth, MN 56591

April 29, 2020

Re: Executive Summary following Audits/Investigations

Dear Esteemed Members of the White Earth RBC,

Below is a summary of the findings (Summary) of the audits/investigations performed throughout 2019. Please note that I write this in an attorney-client manner and this is work-product so this document is technically confidential. I understand that there may be a public interest for this information. If this summary is anticipated to be released, I must suggest the RBC balance the need to protect sensitive and potentially damaging information with the need to disclose this information publicly, or possibly consider releasing an unsearchable and redacted version after review. Any areas I feel are too sensitive to be released to the public will be flagged for redaction. Ultimately the decision to disclose all, none, or some of this Summary rests with the RBC.

Please note that any mention of actions taken by individuals is what the investigations have independently determined. To my knowledge, no individuals named in this summary have been criminally charged at the time of this Summary. Unless and until those individuals have been criminally charged and convicted, we cannot say that they committed a crime. The results of some of the investigations/audits were turned over to law enforcement for review of potential criminality.

Overall, you may notice similarities throughout the audits/investigations which include failure to supervise, failure to verify credentials, and failure to follow established policies and procedures to name a few. My recommendations are simple: 1) the RBC should take action to ensure that all White Earth tribal officials and employees follow established policies and procedures, including monitoring the compliance to the policies, 2) that there is a clear chain of command and supervision established at all levels of management for the purposes of accountability and consistency, and 3) that the credentials and qualifications employees and contractors are heavily scrutinized. Specific recommendations for each audit can be found in the associated sections below.

This summary will specifically address the following:

- Wipfli LLP's Forensic Analysis of Circle of Life Academy (COLA), specifically reviewing department policies and procedures, grant spending, NWEA test reporting, expenditure transactions related to school trips, incentive payments, email and GoogleDoc documents and selected accounting transactions for COLA for the 2017-2018 academic school year.
- Other Government Project's (OGP) investigation into the Central Minnesota Land Company, LLC, the Star Lake Project site, and associated individuals. Audit/investigation performed by the Other Government Project and legal review performed by attorney Mike Garbow of Garbow Law Office, P.A.

- Review of transfer of behavioral-health 3rd-party billing revenue to the Tribe's general fund. Audit performed by Eide Bailly and legal review performed by Vanya Hogen of Hogen Adams PLLC.

WIPFLI LLP'S FORENSIC ANALYSIS OF CIRCLE OF LIFE ACADEMY (COLA)

STATUS: Investigation completed to the extent of our resources. Wipfli LLP completed their analysis consistent with the scope of the Tribe's request. Unclear where the review for criminality is at with the BCA and/or FBI.

Remaining tasks on the COLA audit:

- Formally adopt all, none, or some of the recommendations outlined above.
- Follow up with BCA and FBI. The results of the review of this material by the BCA and FBI have not been determined. It is anticipated that we meet with Mr. Newhouse and Mr. Montgomery to determine whether there are elements of this investigation that meet the threshold of criminal activity.
- Maintain frequent contact with the BIE to verify that COLA is in good standing.
- Continue review and revision of the COLA Bylaws, with plans to implement them as soon as possible.

SUMMARY: The key findings from Wipfli's analysis showed that COLA administrators manipulated NWEA standardized testing results to make the results appear better than they actually were. There were "Data Walls" at the COLA that listed every student by their student number and provided a color-coded classification for whether the student was proficient or not. The NWEA Data was separated in five (5) categories/colors; Superintendent White's version was separated in four (4) categories/colors; the version reported to the Bureau of Indian Education (BIE) had three (3) categories/colors. Further, NWEA reported 186 students were tested in Fall 17-18 in Reading while the data wall only showed 168; in Fall 17-18, NWEA showed 186 students tested in Math while the data wall only showed 169. The data was inconsistent, with a student counted more than once in the same grade or students listed in one result but not appearing on the others corresponding record. The number of proficient students appeared exaggerated to the benefit of the school.¹ Proficiency ratings were assigned to 12th graders however NWEA indicated that status norms are only available through 11th grade.

Wipfli reports that there may have been (unconfirmed as of the time of this report) a sanction of COLA Superintendent White and there may be an ongoing investigation at the Bureau of Indian Education and in Washington DC relating to Superintendent White for his failure to report testing results. Additionally COLA staff reported that there were threats from BIE threatened to cut funding and grants to COLA based on failure to submit necessary financial reports to the BIE. Further information supporting these statements has not been received as of the date of this Summary.

¹ Beginning-of-Year (BOY) Reading: Reported 36% proficient, actual was 23.66%.

BOY Math: Reported 36% proficient, actual was 24.46%.

Middle-of-Year (MOY) Reading: Reported 27% proficient, actual was 19.89%.

MOY Math: reported 31% proficient, actual was 21.86%.

End-of-Year (EOY) Reading: reported 28% proficient, actual was 15.17%.

EOY Math: reported 37% proficient, actual was 16.76%.

Wipfli found that there were insufficient records to determine whether payments to COLA staff were for services actually provided by staff in addition to their standard duties. It appeared that there was no documentation which identified the purpose or supported the calculation and payment of bonuses/stipends to COLA staff. The Tribal Finance Division relied heavily on COLA to track and maintain records for pay in excess of normal wages. At that time, the Tribal Finance Division did not review coding and disbursements as that was viewed as the total responsibility of the Business Manager and the Superintendent at COLA.

Wipfli also determined that COLA did not have documented policies and procedures regarding its financial expenditures. In fact, no COLA policies or processes were identified or reported to exist by staff. Tribal finance policies (as outlined in the Accounting and Finance Manual) along with adequate internal controls were not in place nor were they enforced at COLA, and COLA finance staff failed to maintain reliable accounting and recording methods for expenditures. Not all COLA expenditures followed relevant Tribal policies including certain expenditures that did not have adequate documentation showing they were for the benefit of COLA or that goods/services were actually received.

The RBC did create a COLA school board however the process to be on the school board, the overall function of the school board, and the oversight authority as developed by the bylaws were either flawed or were manipulated by Superintendent White. The lack of this oversight authority allowed Superintendent White to exploit the Superintendent role and those who served on the school board by capitalizing the relations of those on the school board, as well as leveraging his relationships with individuals in the tribal government structure. As the bylaws were written at the time, any Superintendent would have complete responsibility and the ability to conduct all financial transactions for the school without oversight. There was a general perception that Superintendent White was viewed as being in charge of COLA and that if he requested funding for an expenditure, the Tribal Finance Division would provide the funds.

RECOMMENDATIONS: the RBC should consider developing the following policies and procedures, including developing procedures to implement the policies, training staff to following the policies, and monitoring the compliance to the policies.

1. Develop comprehensive policies and procedures addressing all key aspects of COLA's operations, including organizational structure, planning, budgeting, coordinating, reporting, and communication.
2. Develop and implement management oversight for COLA, including the COLA School Board, by revising its bylaws, to provide performance and financial oversight of school management, including periodic reports to the RBC on key performance indicators (ie – student achievement, school activities, financial performance, etc.).
 - a. In late 2019, White Earth Education Division Director Ronald Buckanaga provided the legal department with a draft of bylaws and in early 2020, current COLA Superintendent Jenna Leadbetter provided the legal department with another draft of bylaws.
3. COLA should develop and implement procedures to accurately report revenues, expenses, and assets, including periodic reconciliations and management review of key accounts.

4. Develop and implement adequate training so that key COLA staff understand the proper procedures to report student achievement and financial data to the appropriate tribal departments and governmental agencies.
5. Develop and implement procedures to accurately and securely administer and report on standardized testing to tribal and governmental agencies.
6. Develop, implement, train, and monitor compliance with policies related to adequate recordkeeping and reporting of items impacting financial reporting and monitoring.
7. Consider eliminating the use of cash for approved functions. Alternatives should be explored such as COLA using an organizational credit/purchasing card, or other policy directing and authorizing a process for COLA to secure, food, lodging, travel, etc.
8. Consider eliminating staff incentives explicitly tied to student performance, or adopt and implement an objectively measured system.
9. Consider eliminating the use of financial incentives for student and parent participation.

The results of investigation were turned over to Minnesota Attorney General Keith Ellison's office; Don Newhouse at the Bureau of Criminal Apprehension (BCA) and to Justin Montgomery at the Federal Bureau of Investigations (FBI). Attorney Veronica Newcomer attempted to contact the Associate Deputy Director of Tribally-Controlled Schools at the BIE to corroborate the information but there was no response.

OGP'S INVESTIGATION INTO THE CENTRAL MINNESOTA LAND COMPANY, LLC, THE STAR LAKE PROJECT SITE, AND ASSOCIATED INDIVIDUALS.

STATUS: Investigation completed to the extent of our resources. OGP completed their investigation consistent with the scope of the Tribe's request. Unclear where the investigation is at with the BCA and/or FBI. Insurance claim is initiated and status of claim is unknown at the time of this report. Status of arbitration between Great River Energy and the Tribe is also unknown at the time of this report.

Remaining tasks on the Star Lake Project audit:

- Formally adopt all, none, or some of the recommendations outlined above.
- Follow up with BCA and FBI. The results of the review of this material by the BCA and FBI have not been determined. It is anticipated that we meet with Mr. Newhouse and Mr. Montgomery to determine whether there are elements of this investigation that meet the threshold of criminal activity.
- Determine status of arbitration with GRE and follow it until resolution.
- Determine status of insurance claim submitted and follow it until resolution.

SUMMARY: The key finding from the OGP's investigation into the Central Minnesota Land Company, LLC, the Star Lake Project site, and associated individuals is that there is compelling evidence supporting the allegation that former White Earth Secretary-Treasurer Tara Mason, former White Earth Tribal Attorney Joe Plumer, former Shooting Star Casino General Manager William Marsh, and former Shooting Star Casino CFO Nicolas Valentine associated themselves together and, in their various capacities, are alleged to have committed wrongful acts that negligently caused the White Earth Nation to expend tribal funds (\$9,397,200.78) on the Star Lake Casino Project that had no chance of completion, and those wrongful acts were in violation of the MCT Revised Constitution and Bylaws, as well as White Earth Ordinance I-65.

The OGP investigation concluded that between July 2014 and May 2018, tribal funds were spent without proper oversight and without a properly approved business plan and budget in place for the Star Lake Project. The investigation determined that the Tribe paid much more than the appraised value for the property at Star Lake. Unfortunately the Tribe had an ill-conceived financing plan which involved Red-Horse Financial Group promoting a predatory lender despite the lender's prior federal charge and conviction for crimes related to bribing foreign officials, and despite the advice of Mr. Plumer recommending due diligence before continuing to explore a relationship with the predatory lender. It is also alleged that Ms. Red-Horse and former Secretary-Treasurer Mason submitted a request for a USDA loan, indicating the plan for the funds would go toward developing the land for housing, business, and general economic development (including a casino/hotel), and that none of the funds would to the construction of the casino/hotel, and the funds to repay the loan would come from sources other than casino/hotel revenue. The USDA loan request was rejected for vagueness and ultimately rejected because the proposed commercial buildings were a casino/hotel, which had recreational components.

Additionally, proper permits were not in place prior to the Tribe spending its resources on the project. It is alleged that the RBC was provided with inaccurate legal information regarding the newly-purchased land being used for the Star Lake Project and the ability to have that land placed into trust, as well as inaccurate information about using the existing trust land for use in building a casino outside the exterior boundaries of the White Earth Reservation. The OGP also found it problematic that accurate financial data regarding the upfront spending and the projected costs on the Star Lake Project were not provided to White Earth tribal membership. In August 2017, the Ottertail County Board of Commissioners determined that an Environmental Impact Statement (EIS) was needed before the Star Lake Project could move forward.

The OGP investigation determined that the land purchases for the Star Lake Project were done through a non-tribally-owned LLC (Central Minnesota Land Company, LLC) in violation of the White Earth LLC Code. The OGP also determined that Mr. Plumer and Mr. Marsh formed the Central Minnesota Land Company, LLC outside of the RBC resolution approval, and concluded that it was inappropriate to name Mr. Marsh as the sole owner/member of that LLC.

In 2016, the Tribe entered into an Electric Service Agreement and Memorandum of Understanding (MOU) which were the agreements of the Tribe and Lake Region Electric Company (LREC) and Great River Energy (GRE) to provide electricity to the Star Lake Project. In October 2018, Great River Energy sent the Tribe a letter and an invoice for \$1,172,194.50 as the Tribe terminated the project and GRE had no plans to extend its system in the area of the cancelled project. Arbitration was initiated to resolve the dispute between the Tribe and GRE.

In February 2019, OGP initiated an insurance claim with the Tribe's insurance provider a potential insurance claim for Tribal Officials Errors and Omissions Liability, indemnifying the Tribe against loss or expense arising out of a wrongful act committed by an "Assured" while acting in his/her capacity as a tribal council member, director, commissioner or board member, or officer and which results in a claim. In April 2020, additional information was provided to the

insurance claims examiner for further review and processing of the claim so the status of that claim is undetermined.

RECOMMENDATIONS: As stated above, the RBC should consider developing policies and procedures as it relates to large projects for the Tribe, including developing procedures to implement the policies, training staff to following the policies, and monitoring the compliance to the policies.

1. Ensure mechanisms are in place for oversight authority, including frequent updates regarding large projects (deferring to the RBC to determine what it considers to be large projects). In review of the summary submitted by OGP, it appears that there were several instances of “putting the cart before the horse,” possibly as a result of pushing a project too quickly with too many moving pieces.
2. Regarding specific projects, limit the amount of individuals who have decision-making authority and who are able to bind the Tribe into agreements/obligations. One way this could be accomplished is with a broad resolution at the beginning of the project outlining who specifically has authority to manage the project, whether they have the authority to bind the Tribe into agreements or sign documents, and designating how frequently the “project manager” must make a written report to the RBC about the status of the project and any foreseeable barriers to project completion.
3. RBC should provide clear direction to the project about the RBC’s expectations. If the RBC selects an RBC official(s) to spearhead a project, that decision should be clearly communicated from the RBC to the project group. This will avoid future conflict if there is ever a claim that the individual RBC official was acting in furtherance of their own self-interests versus in the interests of the Tribe as a whole.
4. Per the MCT Constitution, all expenditures of Reservations funds under control of the RBC shall (*must*) be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. It is recommended that the budget for a project also include an idea of funding that has yet to be secured. It is probably best practices to apply the same requirement to all expenditures of funds received from any source (state, federal, grant, etc.), not just Reservation funds under control of the RBC. This helps provide accountability, transparency, and consistency for the expenditures of all the funds under control of the RBC.

The results of the OGP investigation were also turned over to Don Newhouse at the Bureau of Criminal Apprehension (BCA) and to Justin Montgomery at the Federal Bureau of Investigations (FBI).

AUDIT AND REVIEW OF TRANSFER OF BEHAVIORAL-HEALTH 3RD-PARTY BILLING REVENUE TO THE TRIBE’S GENERAL FUND.

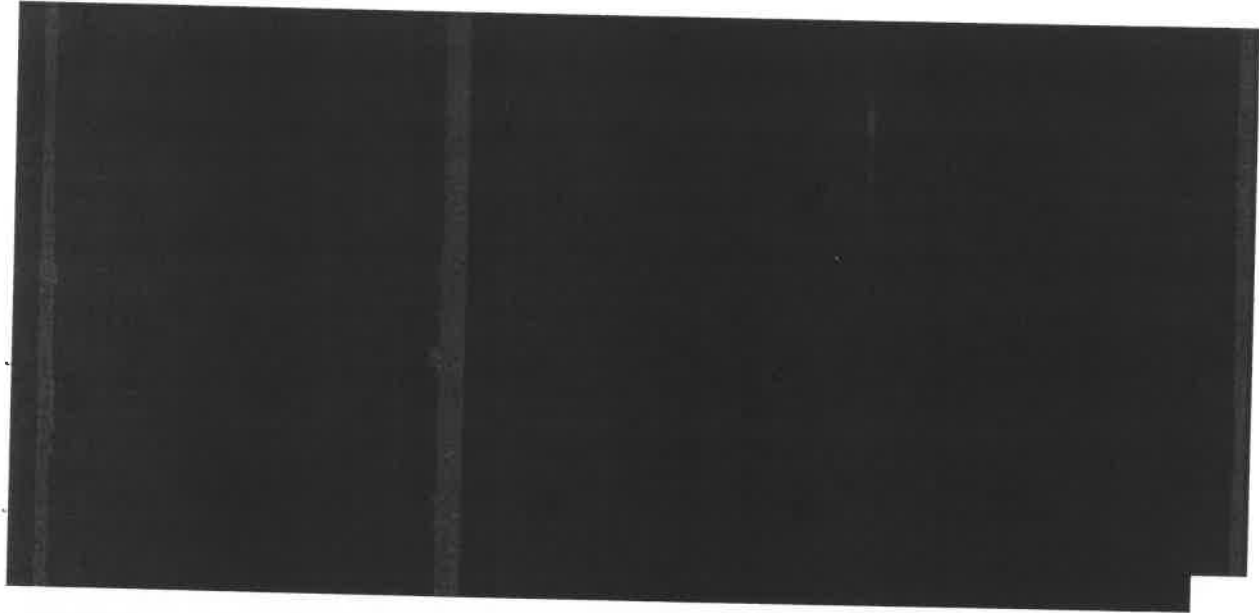
STATUS: Audit and review completed to the extent of our resources. Eide Bailly completed their forensic accounting examination consistent with the scope of the Tribe’s request. Attorney Vanya Hogen completed her legal review of the matter consistent with the scope of the Tribe’s request. Ms. Hogen submitted additional recommendations on March 26, 2020.

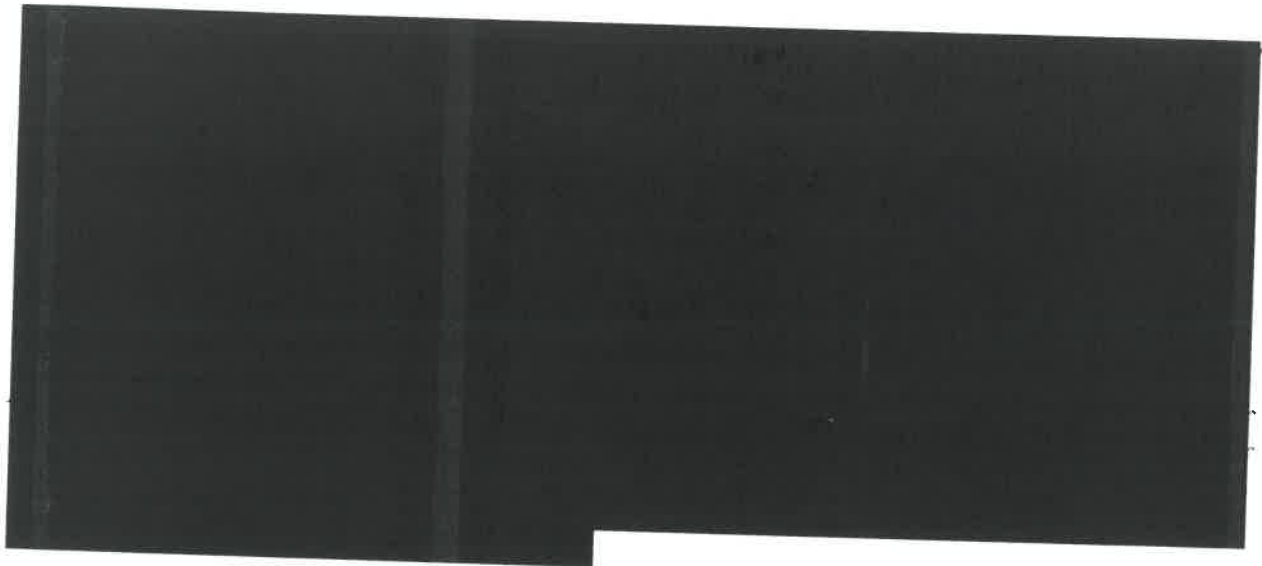
Remaining tasks on the Behavioral Health audit:

Executive Summary from White Earth Legal Department to Reservation Business Committee

- Follow up with IHS about how we move forward to address this situation.
- Determine status of insurance claim submitted and follow it until resolution.

SUMMARY: Eide Bailly's forensic accounting examination of White Earth's Behavioral Health Funds, specifically the examination of the treatment of revenues over expenditures within the Behavioral Health Fund during fiscal years 2010 through 2016, concluded that during fiscal years 2010 through 2015, the Behavioral Health programs reported a deficit totaling \$4,232,348.77, where Oshki Manidoo accounted for 78% of the deficit. For fiscal years 2010 through 2014, White Earth recorded transfers from the General Fund to cover Oshki Manidoo's losses. During fiscal year 2016, Behavioral Health implemented several new programs, which resulted in revenue exceeding expenditures by \$4,000,015.63, the majority of which was earned from the MOMS program. The surplus revenues earned by Behavioral Health in fiscal year 2016 were retained in the Tribe's General Fund as a way to "reimburse" the General Fund for covering Behavioral Health's deficits from fiscal year 2010 through 2015. This was done despite no accounting entries made from fiscal year 2010 through 2015 indicating a receivable or "due from" Behavioral Health to the General Fund. Former Behavioral Health Director Jeri Jasken issued a report regarding her concerns and repeated attempts to have the Tribe's Finance department transfer the surplus funds earned in 2016 to Behavioral Health from the General Fund. Ms. Jasken was of the opinion that keeping the surplus funds in the General Fund put the Tribe at risk to lose their ability to bill Medicare and Medicaid. Ms. Jasken provided a 2014 OIG alert to Tribes informing them that using reimbursements to cover General Fund deficits is improper. Eide Bailly's forensic accounting and summary were provided to attorney Vanya Hogen for legal review and conclusion about whether those Behavioral Health funds could be used to "repay" the Tribe's general fund.





RECOMMENDATIONS:

1. The RBC should designate an individual to reach out to IHS about ways to resolve a possible violation. That individual should provide regular updates to the RBC and associated directors about the status of resolving this matter. Ms. Hogen has offered to assist in the follow-up if needed.
2. Verify that all employees understand the scope and limitations of their individual authority. In this situation, it appears that it was a conflict of authorities where Mr. Omlid, in his capacity as the Chief Financial Officer, felt he was within his authority to proceed as he did and where Ms. Jasken felt it was within her authority to manage the funds as the director of Behavioral Health since the funds were to be used for health-related purposes.

As a reminder, my review of the information and subsequent recommendations are based on information available to me at the time of this Summary. Much of the information was gathered via independent investigation from the various entities the Tribe partnered with. Should additional information become available that may change the recommendations above, I am happy to supplement this Summary with respect to the newly available information and additional analysis.

Sincerely,

Veronica S. Newcomer
Tribal Attorney

