

State of New York  
Office of the Inspector General



Investigation of Allegations of Misconduct  
by Former Executive Director Glenn LaFave  
and the Board of Directors  
of the Hudson River-Black River Regulating District

July 2011

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State Inspector General

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General's investigation determined that Glenn LaFave, while a Board member and Executive Director of the Hudson River-Black River Regulating District, abused and violated agency policy for personal benefit. Among other conduct, LaFave, supported by the Board, effectively appointed himself to a paid Regulating District position, raising ethical concerns. In addition, LaFave abused agency "flex" time and vacation buy-back policies to improperly receive payments totaling almost \$15,000. LaFave also violated state guidelines on agency vehicle use and used a Regulating District credit card for non-business purposes.

The Inspector General also found that the Regulating District's Board of Directors failed to ensure that the Regulating District operated in accordance with its own by-laws and state policies. In particular, the Board incurred unnecessary and excessive expenses related to its meetings. Further, the Board allowed LaFave to reside in Watertown while working regularly in Albany, resulting in more than \$45,000 in unnecessary travel expenses.

The Hudson River-Black River Regulating District is a public benefit corporation established to control water flow in the upper Hudson River basin and the Black River basin. The Black River Regulating District, which was established in 1919, and the Hudson River Regulating District, formed in 1922, were merged by the State Legislature in 1959 to create the current entity.

Lacking any professional expertise in engineering, soils or water management, LaFave, an elementary school teacher, was appointed to the Board of the Regulating District by then-Gov. George Pataki in 2000. In 2003, LaFave, as a Board member, "applied" to a subordinate, the Regulating District's Executive Director, and was hired as the District's Black River Area Administrator. LaFave's and the Board's actions secured LaFave paid employment with the District seemingly without having exercised proper prudence and in a manner which raises ethical concerns.

Following his appointment as the Regulating District's Executive Director in early 2006, LaFave abused new "flex" time and vacation buy-back policies which he had urged the Board to adopt. Between 2006 and 2009, LaFave systematically exploited the "flex" time provision, working less than a full day on at least 114 occasions, but never charging even an hour of vacation leave. On a 10-day trip to Vancouver in 2007 for which he charged no vacation time, LaFave claimed to have worked 15.5 hours but the Inspector General's investigators could account for no more than 56 minutes in cell phone calls that may or may not have been work related.

LaFave then exploited the vacation buy-back program by cashing in the vacation time he had improperly hoarded, collecting a total of \$14,875.53 to which he was not entitled. LaFave attempted to claim thousands of dollars more through the buy-back in 2009, but was prevented from doing so by other Regulating District employees and officials from the Governor's Office. Further, the Board improperly allowed LaFave to carry over vacation accruals from 2009 to 2010, contrary to guidelines from the Governor's Office.

LaFave also acted contrary to Governor's Office policy regarding the Regulating District's assignment and use of vehicles. To avoid a 2009 state directive to turn in state-owned cars as part of an effort to address the state's serious fiscal problems, LaFave first tried to avoid the state mandate and then claimed that he needed a car to respond to emergencies. Investigators found no evidence that LaFave ever responded to an emergency and, even if he had, he did not have the requisite skills to address an emergency involving the dams and other structures managed by the Regulating District. The Board allowed LaFave to keep his assigned automobile, and its Chairman at the time refused to address the issue even after being personally questioned about the car usage by the then-Assistant Secretary to the Governor for the Environment.

The Inspector General also determined that when he used his assigned vehicle, LaFave kept inadequate records of his use and failed to make a distinction between personal and business miles.

The Inspector General found that LaFave misused the Regulating District's credit card for personal purchases, including lunches and other items, filed faulty travel vouchers, and conducted work for the Thousand Islands Bridge Authority on Regulating District time. These improper expenses cost the Regulating District approximately \$6,630. LaFave also violated the direction of the Commission on Public Integrity and the directive of the Board when he failed to use accruals and document his absence from the District when he attended meetings of the Thousand Island Bridge Authority to ensure no conflict between the two entities.

The Inspector General determined that the Regulating District Board failed to fulfill its financial oversight obligations for the District, spent excessive amounts of money on its meals and lodging at meetings, and paid for guests to eat at District expense. The Inspector General found that the Board failed to consider the expense of permitting LaFave to maintain his official work station in Watertown for his convenience, rather than transferring him to Albany or Johnstown where the overwhelming majority of his work was located, resulting in unnecessary travel expenses in excess of \$45,000.

Further, the Inspector General determined that the Regulating District improperly reimbursed a Regulating District employee some \$465, without Board approval, for the employee's loss of personal property in violation of State Finance Law § 12(f).

LaFave retired from Regulating District service effective August 19, 2010, thereby precluding disciplinary action by the Regulating District against him. However, the Inspector General will provide a copy of this report to the Commission on Public Integrity for review. The Inspector General also will provide these findings to appropriate state and federal tax authorities regarding LaFave's vehicle use.

Finally, the Inspector General also is forwarding her findings to Governor Andrew M. Cuomo's Spending and Government Efficiency Commission, which is

examining the consolidation and elimination of certain public authorities in order to save money and improve efficiency.

## ALLEGATION AND BACKGROUND

On May 27, 2009, the Inspector General received a complaint that Hudson River-Black River Regulating District Executive Director Glenn LaFave allegedly took two weeks of vacation in August of 2007 and 2008 without charging leave. It was further alleged that LaFave received an improper benefit when he cashed in 150 hours of unused vacation leave at the end of each year. Finally, it was alleged that when a Regulating District employee's state-owned vehicle was broken into, LaFave inappropriately authorized reimbursement to the employee for the value of the stolen personal property. In addition, during the course of the investigation, the Inspector General uncovered information indicating other improper and questionable actions by LaFave and the Regulating District's Board of Directors.

### **The Hudson River-Black River Regulating District**

The Regulating District is a public benefit corporation established to control water flow in the upper Hudson River basin and the Black River basin.<sup>1</sup> The Black River Regulating District, established in 1919, and the Hudson River Regulating District, formed in 1922, were merged by the State Legislature in 1959 to create the current entity.

Regulation of water flow by the Regulating District serves to mitigate high flows, thereby preventing or alleviating flooding, and to augment low flows to improve water quality and facilitate hydroelectric generation. To control water flow, the Regulating District operates four dams in upstate New York including the Conklingville Dam, which created the Great Sacandaga Lake, the Stillwater Dam, and dams in Old Forge and at Sixth Lake.

The Regulating District is overseen by a seven-member Board of Directors whose members are appointed by the Governor for five-year terms.<sup>2</sup> At least three Board members must reside in the Hudson River area and at least three members must be residents of the Black River area. Board members receive no compensation, but are reimbursed for expenses incurred in the performance of their duties. Day-to-day management of the Regulating District is the responsibility of an Executive Director who is appointed by the Board and currently supervises approximately 18 staff assigned to offices in Albany, Watertown, and Mayfield. A small number of Regulating District employees are deployed at Regulating District-operated dams and reservoirs. LaFave served as Executive Director of the Regulating District from February 2006 until his retirement in August 2010.

The Regulating District derives revenue from several sources. In the Black River area, the Regulating District receives assessments from downstream hydroelectric generators. Around the Great Sacandaga Lake, the Regulating District collects user fees from lakefront property owners. In the Hudson River area, the Regulating District formerly obtained significant assessments from downstream hydroelectric producers. However, in 2000, these producers commenced a series of legal challenges to the assessments, and in 2008 the United States Court of Appeals for the District of Columbia ruled the assessments illegal, thereby reducing total Regulating District revenue from \$5,361,546 to \$1,094,353, a decrease of approximately 80 percent. This loss of funding forced the Regulating District to lay off employees, postpone capital improvement projects, and withhold required tax payments to local municipalities and school districts.<sup>3</sup>

The Board failed to anticipate the likelihood of the abolishment of its revenue from 2000 until, at least, 2010 despite ongoing legal action aimed directly at doing so. The Board continued to spend excessively, as will be more fully described in this report,

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<sup>1</sup> See generally Environmental Conservation Law (ECL) §15-2103.

<sup>2</sup> ECL §15-2137.

<sup>3</sup> The Regulating District is currently in litigation against Albany, Rensselaer, Saratoga, Washington and Warren counties regarding an assessment the Regulating District imposed to fund Hudson River area operating expenses based on the benefit of flood control.

despite the loss of a large proportion of its revenue. Deaf to alarms sounded by its counsel, Robert Leslie, and the intervention of the Governor's Office in an attempt to secure financing for the District through legislative enactments, the Board refused to engage in many of the austerity actions instituted by other state agencies in 2009 and 2010. In fact, then-Board Chairman Philip Klein ridiculed the suggestions made by the Governor's Office as merely reducing the number of pens and using less paper and not addressing the hundreds of thousands of dollars the District needed. When interviewed by the Inspector General, numerous Board members and executive staff members expressed the belief that the state would fund the Regulating District by alternative means.

### **Scope and Methodology**

The Inspector General's investigation covers the period 2006 through 2010. The Inspector General reviewed time and attendance records for LaFave and several other employees, cell phone records, minutes of meetings for the Regulating District, and Regulating District financial documents, including credit card statements, car usage reports, standard and travel vouchers, and cancelled checks. The Inspector General also interviewed numerous current and former Board members and employees of the Regulating District including its Chief Fiscal Officer, Richard Ferrara, and General Counsel, Robert Leslie. LaFave, the Executive Director of the Regulating District, refused to cooperate with the Inspector General's investigation and advised he would not answer questions pursuant to a subpoena.

## INSPECTOR GENERAL'S INVESTIGATION

### **While on Board, LaFave Obtained Paid Position at Regulating District**

The Inspector General determined that Glenn A. LaFave, who served in various capacities with the Regulating District for more than a decade, took a number of improper and questionable actions resulting in unwarranted financial benefit to himself at Regulating District expense. The Inspector General also found that the Regulating District's Board failed in its responsibilities to ensure that the Regulating District operated in accordance with applicable state rules and its own by-laws. LaFave's and the Board's actions also underscore the extensive latitude with which many public benefit corporations and authorities conduct business, their vulnerability to abuse, and the need for strengthened oversight.

LaFave's association with the Regulating District began in February 2000 when he was appointed to the Board by then-Governor George Pataki. Prior to his appointment and during his tenure as a Board member, LaFave held full-time employment as a public elementary school teacher in Dexter, New York, and worked part-time with the United States Department of Homeland Security as an Immigration Inspections Assistant in Alexandria Bay, New York. LaFave was elected the Board's Second Vice Chairman by other Board members in 2001 and 2002.

On September 8, 2003, LaFave resigned his Board seat and began paid employment with the Regulating District in Watertown as the Black River Area Administrator. LaFave had submitted his resume and a cover letter in July 2003 to William Loveless, then the Regulating District Executive Director, who was leading the search for a candidate to fill the vacant Administrator position. Loveless subsequently advised the Board that LaFave was his recommended candidate despite the fact that LaFave had no prior management experience and no technical knowledge in soils, water flow or engineering. LaFave's resignation from the Board occurred on the same date, September 8, 2003, as the Board's unanimous vote to hire LaFave. LaFave's resignation



letter, addressed to Loveless, stated, “It is necessary for me to resign as I will soon begin new employment that will not allow me to continue to serve on the Board.” Based on the timing of these events, it appears that LaFave knew he was going to be appointed at the time of his resignation.

LaFave’s transition from Regulating District Board member to a Regulating District senior staff position raises questions. As the Executive Director serves at the pleasure of the Board, LaFave was effectively applying for employment to a subordinate employee. This situation placed Loveless, as Executive Director, in the difficult position of reviewing a job application from a member of the Board to which he reported. Given these facts, LaFave’s conduct raises concerns that he might have secured unwarranted financial benefits for himself. State ethics rules prohibit public officers from engaging in transactions which appear to constitute self-dealing or create a conflict of interest.<sup>4</sup> LaFave’s and the Board’s actions appear not to have been guided by a necessary degree of prudence and a clear awareness that LaFave’s hiring under these unusual circumstances necessarily raised ethical issues.

### **LaFave Sought to Limit Communication Between Board and Staff**

In mid-2005, the position of Executive Director for the Regulating District became vacant. On August 29, 2005, the Board appointed LaFave to that position on an acting basis, and on February 6, 2006, made the appointment permanent. Numerous Board members admitted to the Inspector General that they considered no one other than LaFave for the position.

In a statement to the Board at the time of his appointment as the Regulating District’s Executive Director, LaFave asserted that his “motto” in the position would be “do the right thing,” and that in performing his duties he would keep in mind that

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<sup>4</sup> LaFave’s and the Board’s actions could implicate Public Officers Law §74(3)(d), (f), and (h).

“‘public’ is the most important word in ‘public benefit corporation.’”<sup>5</sup> From the start, however, his actions belied his words. As Executive Director, LaFave sought to strictly control communication between Regulating District staff and the Board. The investigation revealed that LaFave directed staff not to speak to Board members unless he was physically present, on the phone line, or copied on e-mails. Employees who failed to follow this directive were upbraided by LaFave and reminded that he could terminate their employment. This directive was resisted by Counsel Robert Leslie, who pointed out to LaFave that his professional obligation to the Board was distinct from his responsibilities as LaFave’s subordinate. As a result, according to Leslie, he often faced hostility from Board members, particularly those with close relationships with LaFave.

LaFave also instructed Board members not to speak to employees without his involvement. Most members acceded to LaFave’s request. Board member Ronald Pintuff admitted, “That’s been the problem with this district, is that the Board has been a puppet.” A few members resisted LaFave’s attempt to pull their strings. Board member John Bartow informed the Inspector General that he believed he could speak to staff whenever he chose, and that he did not take direction from LaFave, a subordinate. Bartow reported that he and Leslie knew each other from their prior employment at the New York State Department of State, and they spoke often without LaFave’s participation. According to Bartow, when LaFave learned that Bartow had spoken to Leslie or any other Regulating District employee without him, LaFave reiterated his policy, but Bartow continued to decline to obey.

In his interview with the Inspector General, Board member Michael Astafan recounted his first meeting with LaFave when LaFave instructed him in his duties as a member of the Board. According to Astafan, LaFave told him about the history of the Board, how and where the Board meetings were to be run, and LaFave’s rule that Board members were to communicate to staff only when LaFave was included in the conversation. Astafan explained:

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<sup>5</sup> LaFave is quoted from the minutes of the February 6, 2006, Board meeting.

I'm a board director, I'm his boss; I don't work for him, so ... I refused to follow his direction. If I wanted to talk to an employee about something, I did. But I found that the employees were so scared that if they talk outside of his parameters that they were going to be fired.

Other Board members, however, thought highly of LaFave. In their interviews with the Inspector General, these Board members said they believed that LaFave worked excessively long hours and was a loyal subordinate. On the other hand, nearly all the Regulating District staff interviewed said they worked in fear of incurring LaFave's anger, and as a result they were wary of bringing their concerns about him to the Board.

### **LaFave Exploited Changes in Regulating District Policies for Personal Benefit**

In December 2005 and May 2006, the Board implemented significant revisions to employment rules and benefit guidelines for the Regulating District's management staff. The Inspector General found that LaFave exploited and misused these changes, one of which the Board adopted at his specific urging, to obtain substantial financial benefits for himself.

Since 1999, the Regulating District has issued employment rules and benefit guidelines for executive staff. The rules have always cited a 37½ hour work week for all management employees, Monday through Friday, with a workday from 8:30 a.m. to 4:00 p.m.<sup>6</sup> Prior to LaFave's appointment as Acting Executive Director, management staff were eligible for equivalent time off for hours worked in excess of 37½ per week, up to 30 days of compensatory leave for use within the same calendar year. Cash payment for overtime also was permitted with approval of the Executive Director and upon resolution of the Board.<sup>7</sup>

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<sup>6</sup> This schedule fails to include a mandatory half-hour lunch for all employees required by New York State Labor Law. To the extent that employees take a half-hour for lunch, they would not be working the minimum 37½ work week established by Board policy.

<sup>7</sup> According to the Chief Financial Officer, no overtime payment has been made to management employees since 1999.

At its December 12, 2005 meeting, the Board revised executive staff rules and guidelines, effective January 1, 2006, to include a new provision for “flex” time. The new provision, endorsed by LaFave, recognized that management employees “are expected to voluntarily extend their workday without expectation of regular compensation to complete routine assignments,” and stated that employees are allowed to “flex” their work schedule to “accommodate workdays that must start significantly earlier or end significantly later than normal work hours.”<sup>8</sup> Importantly, while the “flex” policy permitted an employee to start earlier or later than the set work hours of 8:30 a.m. to 4:00 p.m., it included no provision for changing the number of hours anticipated to be worked on any given work day.

Five months later, on May 8, 2006, acting on a recommendation by newly appointed Executive Director LaFave, the Board for the first time adopted rules permitting a “buy-back” of unused vacation leave. The new policy permitted management employees to sell back, in December of each year, any unused vacation accruals in excess of 300 hours, without limit. In doing so, according to the meeting minutes, LaFave advised the Board, “There is no increase in benefits,” an assertion that was plainly untrue. In fact, in January of each year, Regulating District employees hired prior to 2005 (including LaFave) received 20 days, or 150 hours, of vacation time. Under the new policy, a management employee who began the year with 300 hours of accumulated vacation leave and used none of the new year’s leave during the ensuing 12 months now could receive a cash payment equivalent to as much as 20 days of pay – in effect, a year-end “bonus” potentially worth thousands of dollars.

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<sup>8</sup> Inexplicably, after asserting that management staff may not earn compensatory time, the policy permitted a compensatory day with Executive Director approval. This policy was both internally inconsistent and inconsistent with the state policy for Management/Confidential employees. Employees in state service at or over the equivalent grade of 23 do not receive overtime and do not receive compensatory time. All executive staff members at the Regulating District, including LaFave, were paid in salary ranges well in excess of state grade 23. The Inspector General was unable to find any employees who indicated on their time sheet that they used a compensatory day. LaFave, however, had two days on his time sheets during the regular work week where he failed to list any hours whatsoever. It can only be presumed that he approved a compensatory day for himself in these instances.

In comparison, Management/Confidential employees at state agencies have been permitted to participate in a vacation leave buy-back only when approved by the Division of the Budget. Due to the state's fiscal crisis, the Division of Budget has not approved a vacation leave buy-back since 2007. Even when it had been approved, the buy-back program for state agency Management/Confidential employees was substantially less generous than that offered by the Regulating District, only allowing employees to cash in a maximum of five days or 37.5 hours of vacation leave. The Regulating District's vacation buy-back program also exceeds the benefit offered by other New York State authorities. For example, the Thruway Authority also limits its buy-back to 37.5 hours for Management/Confidential employees. In rare circumstances the Thruway Authority allows its employees to cash in up to 75 hours of vacation leave.

The Inspector General's investigation revealed that LaFave exploited and misused the Regulating District's exceptionally generous vacation buy-back policy which, as described above, was implemented at his suggestion. By misusing the new "flex" time provision, LaFave avoided having to charge any of his vacation leave accruals for over three years, despite taking numerous vacations. Then, making use of the revised vacation buy-back provision, LaFave received cash payouts that totaled more than \$24,000.

### **LaFave Manipulated "Flex" Time in Violation of Time and Attendance Rules**

The Inspector General found that LaFave violated Regulating District time and attendance rules by misusing the Regulating District's "flex" time policy to avoid charging vacation leave. Even though the "flex" time policy included no provision for changing the number of hours to be worked on any given day, LaFave appears to have routinely misused "flex" time to work the hours he wanted in almost every pay period. For example, although he never once responded to a Regulating District-related emergency on a weekend, LaFave listed scores of hours on his time sheet indicating that he worked on weekends during his tenure as Executive Director. He also had a practice of claiming work hours on a holiday and adding those hours to the holiday credit to make it appear he worked even more hours. Further, on some work days LaFave claimed to

have worked as many as 15 hours or more. Thus, by claiming extra hours for alleged work on weekends, holidays, and normal work-days, LaFave unilaterally chose to work less hours than required by Regulating District policy on some days during the official work week, often on Mondays and Fridays, without charging leave credits. By use of these various ploys, LaFave did not charge a single hour of vacation leave from January 2006 through December 2009, despite being absent from work on more than 100 occasions.<sup>9</sup>

LaFave's misuse of "flex" time is most obvious with respect to his summer vacations. Every summer, LaFave requested time off for vacation by submitting a leave request to Pamela Beyor, the First Vice Chair of the Board, who, because she resided in Watertown, assumed responsibility for signing most of LaFave's time sheets and vacation requests. According to the testimony of several Regulating District staff and Board members, LaFave and his family took a vacation each summer. Corroborating this testimony, records reveal that LaFave requested leave for August 21-30, 2007, August 4-8, 2008, and several days in June and August 2009. Beyor approved the requests. However, as noted, LaFave did not charge vacation leave for any of these vacations.

For example, LaFave's requested leave for the period August 21-30, 2007 for a personal trip to Vancouver, Canada. The time sheets LaFave prepared for the two-week pay period which included the trip are reproduced below.

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<sup>9</sup> LaFave did charge a limited number of personal leave credits during these periods. It is important to note, however, that personal time has no cash value if unused and expires one year after issuance.

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT

Start \_\_\_\_\_ End \_\_\_\_\_

Management and Exempt Staff Time Sheet

Biweekly Period 08/09/07 08/22/07

Name Glenn A. LaFave

Location Black River Area Office

Date	Enter all time in HOURS					Total Hours (1)	Remarks
	Work/Holiday Credit	Vacation	Personal	(Leave Taken) Sick Bereavement			
08/09/07	9.50					9.50	
08/10/07	7.50					7.50	
08/11/07						0.00	Sat
08/12/07						0.00	Sun
08/13/07	8.50					8.50	
08/14/07	8.50					8.50	
08/15/07	9.50					9.50	
08/16/07	15.50					15.50	
08/17/07	2.50					2.50	
08/18/07	4.00					4.00	Sat
08/19/07	6.50					6.50	Sun
08/20/07	7.50					7.50	
08/21/07	1.00					1.00	
08/22/07	1.50					1.50	
Totals	82.00	0.00	0.00	0.00	0.00	82.00	

[1] Total Hours = time actually worked, + Holidays + Leave Taken

(a)	82.00	0.00	0.00	0.00	0.00	Column Totals - This Biweekly Period
(b)		450.00	37.50	414.50	37.50	Brought Forward from Last Biweekly Period from (d)
(c)		0.00	0.00	0.00	0.00	Leave Credits Earned
(d)		450.00	37.50	414.50	37.50	Total Available - Carry Forward to (b)

Signature *Glenn A. LaFave*

Approved *[Signature]*  
Audited by *MB*

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT

Start \_\_\_\_\_ End \_\_\_\_\_

Management and Exempt Staff Time Sheet

Biweekly Period 08/23/07 09/05/07

Name Glenn A. LaFave

Location Black River Area Office

Date	Work/Holiday Credit	Enter all time in HOURS (Leave Taken)				Total Hours (1)	Remarks
		Vacation	Personal	Sick	Bereavement		
08/23/07	4.00					4.00	
08/24/07	8.00					8.00	
08/25/07						0.00	Sat
08/26/07						0.00	Sun
08/27/07			7.50			7.50	
08/28/07	1.00		3.75			4.75	
08/29/07	8.00					8.00	
08/30/07	0.00					0.00	
08/31/07	7.50					7.50	
09/01/07	3.50					3.50	Sat
09/02/07	3.50					3.50	Sun
09/03/07	13.50					13.50	Labor Day and worked 6
09/04/07	6.50					6.50	
09/05/07	10.00					10.00	
Totals	65.50	0.00	11.25	0.00	0.00	76.75	

[1] Total Hours = time actually worked, + Holidays + Leave Taken

(a)	76.75	0.00	11.25	0.00	0.00	Column Totals - This Biweekly Period
(b)		450.00	37.50	414.50	37.50	Brought Forward from Last Biweekly Period from (d)
(c)		0.00	0.00	0.00	0.00	Leave Credits Earned
(d)		450.00	26.25	414.50	37.50	Total Available - Carry Forward to (1)

Signature

Glenn A. LaFave

Approved

[Signature]

Audited by

[Signature]

These time sheets reflect LaFave's exploitation of the "flex" time provision. Even outside of his claimed vacation period, LaFave purported to have worked 15.5 hours on Thursday, August 16, 2007, but only 2.5 hours on Friday, August 17. He then claimed 10.5 hours of work over the weekend. He also claimed six hours of work on Labor Day in addition to 7 1/2 hours of holiday leave, crediting himself with 13.5 hours of time on that day. Significantly, although the time sheets include a space for "remarks," LaFave was the only executive who failed to describe or explain his claimed weekend work hours.

During his 2007 August vacation period, according to his time sheets, LaFave worked 1 hour on August 21, 1.5 hours on August 22, 4 hours on August 23, 8 hours on



August 24, 1 hour on August 28, 8 hours on August 29, and no hours on August 30. He charged 7.5 hours of personal leave on August 27 and 3.75 hours of personal leave on August 28. He failed to charge any accruals on August 30, even though it was a Thursday.

The Inspector General determined that LaFave was out of the country from August 21 through at least August 28, 2007, traveling to Vancouver. It is believed that the air portion of the trip originated and terminated in Ontario, Canada. On August 21, LaFave made a nine-minute cell phone call from Ontario to an unknown telephone number. The Inspector General is unable to determine if this call was for work purposes, nor was the Inspector General able to ascertain any other work done by LaFave for his one hour of credited work on this day. On August 22, LaFave made three approximately two-minute cell phone calls from Vancouver. Two of the calls were made to the Regulating District's Watertown office, the other to an unknown cell phone. It is unclear whether the call to the cell number was work-related. The Inspector General could not ascertain any work done by LaFave for his one and a half hours of credited work time other than four minutes on the phone. On August 23, LaFave made two cell phone calls from Vancouver, a two-minute call to the Regulating District's Watertown office and a seven-minute call to an unknown number. The Inspector General was only able to account for two minutes of this workday while LaFave claimed four work hours. On August 24, LaFave claimed that he worked for eight hours, but he did not use his Regulating District cell phone, nor is it known what type of work he could conduct over 3,000 miles from his office. On August 27, LaFave used his cell phone for one call of approximately two minutes, originating in Vancouver. On August 27, for the first time, he also checked his voice mail; a call which lasted one minute. LaFave did not claim any work time on this day. On August 28, LaFave made three phone calls, originating in Ontario, totaling approximately 29 minutes. One of the calls was to the Regulating District's Albany office, one to the Watertown office, and one to the Mayfield office.

In summary, between August 21 and August 28, 2007, LaFave claimed that he worked 15.5 hours. Of that claimed work time, the Inspector General found that at most

56 minutes could be accounted for by way of LaFave's use of his cell phone (assuming all of his calls had a business purpose). Regulating District officials interviewed by the Inspector General about the vacation were unable to produce any record of work performed by LaFave during his trip, nor could the officials recall any such work.<sup>10</sup> The evidence strongly suggests that LaFave was not working for the 15.5 hours he claimed during his vacation.

Time sheet entries similar to the Vancouver vacation entries were made by LaFave for each period in which he requested vacation or leave. He never logged vacation time, he always showed at least some work hours on the requested day, and then "flexed" his time for the remainder of his schedule. LaFave gave himself credit for hours that he alleged to have worked on weekends or hours purportedly worked in excess of 7.5 hours on workdays to grant himself his requested time off. The Inspector General finds this conduct irregular and unacceptable for the chief executive officer of a state agency or authority. Moreover, he did not limit his "flex" time to weeks when he made vacation or leave requests. LaFave "flexed" his hours almost every pay period to work less than the required work shift on at least one day during the two-week period recorded on his time sheets. From July 2006 through August 2010 when he retired, LaFave worked fewer than 7.5 hours on 114 days for a total of 303.5 hours of time off during the work week.<sup>11</sup>

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<sup>10</sup> Although LaFave was issued a laptop computer during his tenure at the Regulating District, the Inspector General found no records to indicate whether or not he used it during the trip. Additionally, due to LaFave's refusal to cooperate with the Inspector General's investigation, the Inspector General was unable to question him about this matter.

<sup>11</sup> By reporting himself as working on days when he did not work, avoiding use of vacation and other leave, and thereby maximizing his vacation buy-back payments, LaFave not only inflated his compensation, but he also may have inflated his potential state pension benefits. As a member of the New York State Employees' Retirement System, LaFave's pension benefits are calculated using a formula based on his years of service and his final average salary. In determining years of service, a working day generally must be a minimum of six hours and members may earn credit for some categories of unused leave. Thus, by manipulating his hours and leave balance, LaFave may have earned credit in the pension system to which he was not entitled. Likewise, some members receive credit towards their final average salary for lump sum payments, such as unused vacation leave. Accordingly, the Employees' Retirement System may want to analyze whether LaFave's conduct resulted in an improper inflation of his potential pension benefits.

## **Board Failed to Monitor LaFave's Misuse of "Flex" Time**

The Inspector General found that the Board's oversight of LaFave's time and attendance was seriously deficient. Beyor, who served as LaFave's supervisor, said she was under the impression that LaFave never took a vacation. She stated that she trusted that his time sheets were accurate and that she never felt it necessary to confirm any of the information in the documents he submitted to her for approval. Beyor added that as she was aware of no deficiencies in LaFave's performance, she concluded that he was working as claimed. Beyor acknowledged that she did not retain copies of the documents she signed regarding LaFave's time and attendance. As a result, she said that she never compared a vacation request form to a completed time sheet, and that she probably "forgot" about a prior vacation request when she signed the applicable time sheet.<sup>12</sup>

Beyor's testimony also revealed that she was unaware, until the Inspector General reviewed LaFave's time sheets with her, of the extent of his use of "flex" time. More troubling, however, was that she did not understand the parameters of the "flex" time policy that she adopted as a Board member. After examining LaFave's time sheets for the period 2007 through 2009, Beyor stated that she believed that LaFave had been properly "flexing" his time. When asked specifically how LaFave could work nine hours in one day and one hour the next, without charging any leave accruals, Beyor replied, "Well, I would consider that 'flex.'" She added, "I will say that this organization has allowed this. And, it's, it's part of the culture, it's part of the policy, and is it odd? Yeah, but I don't think it's against the rules."

Later in her interview, Beyor stated, "I know exactly what's going on. He's using the policy to his full advantage." At the end of the interview, Beyor conceded, "I am a little surprised to see the breadth of data all laid out that there is zero or very little

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<sup>12</sup> Beyor also approved LaFave's car use logs. In doing so, she failed to compare the car logs to the time sheets. If she had, she would have noticed that the records demonstrate that LaFave used the car on days when he was not working.

vacation time over that whole period charged, that it worked out to be close to zero; I mean I can't say that I knew that before I came in here today.”

### **LaFave Takes Advantage of Regulating District's New Vacation Leave Buy-Back**

Starting in July of 2006, after the new vacation buy-back provision was implemented, evidence reflects that LaFave started to “flex” his time to avoid the use of vacation accruals. At the end of each year, LaFave submitted his allegedly unused vacation time to secure a year-end windfall.

The Inspector General found that LaFave cashed in 200 hours of vacation leave at the end of 2006, receiving \$9,179; 150 hours at the end of 2007 for \$7,435; and 150 hours at the end of 2008 for \$7,714. In total, LaFave received, in addition to his regular salary, \$24,328 in vacation leave buy-backs, far more than any other Regulating District employee.<sup>13</sup> The Inspector General determined that, of that amount, \$14,875.53 was directly attributable to LaFave's systematic failure to charge vacation leave when he was out of the office during regularly scheduled work hours.

LaFave's attempt to receive a vacation buy-back in 2009 was thwarted by Valerie Grey, then Director of State Operations and head of the Office of Taxpayer Accountability, who, as part of the efforts by Governor Paterson's administration to address the state's dire fiscal situation, was asking public authorities to conform to the practices mandated for most state agencies. On September 3, 2009, Grey issued an e-mail directive to Deputy Secretaries to the Governor advising them:

Some of you have mentioned some authorities are considering offering the vacation buy-back. They should not. Public authorities are asked to follow the general policies our state agencies are using. The vacation buy-back was NOT offered this year (typically notice of offering is made in late spring/early summer). The offering of the buy-back is at the

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<sup>13</sup> Only two other employees made use of the buy-back policy, and did so only once each. The Hudson River Area Administrator cashed in 363.5 hours in 2006, receiving \$11,673. An Engineers Assistant cashed in 33.75 hours in 2008 for \$987.

discretion of the Budget Director. Please be sure your agencies and public authorities understand this. Thanks! [Emphasis in original]<sup>14</sup>

This directive was communicated to the Regulating District. When LaFave applied for the vacation buy-back at the end of 2009, Richard Ferrara, the Regulating District's Chief Fiscal Officer, refused to sign the request form in light of the directive, and told LaFave that he would not sign the check.

In addition to the state's financial crisis, the Regulating District at this time was confronting the loss of some 80 percent of its revenues due to the court decision described above. Despite its precarious financial situation, the Board felt that it owed LaFave something for the vacation time it presumed he had legitimately accrued in 2009, but was stymied by Ferrara's refusal to sign the check and Leslie's opinion that Grey's directive applied to the Regulating District.

LaFave suggested a way out of the dilemma. He was scheduled to have surgery in 2010 and knew he would be out of work for an extended period. Therefore, he submitted to the Board a resolution allowing him to carry over his excess vacation leave into 2010. The Board adopted the resolution, despite opposition by Ferrara and Leslie. According to Leslie, Beyor complained that Leslie and Ferrara were trying to "steal from Glenn LaFave."

After the Board approved the resolution, Leslie wrote to both then Board Chairman Philip Klein and then Deputy Secretary to the Governor for the Environment, Peter Iwanowicz, expressing his opinion that the Board was acting improperly and that LaFave's conduct raised ethical concerns. Iwanowicz personally contacted Klein and asked that the Board reconsider its decision regarding the vacation rollover. According to

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<sup>14</sup> The Regulating District's vacation buy-back provision, which was part of formal agency policy by virtue of the Board's May 2006 action, was distinct from the vacation buy-back referenced in Grey's e-mail. As noted, the latter was offered to Management/Confidential employees statewide in 2007 and 2008 as part of the legislative pay bill passed for those years, subject to the Budget Director's approval, but, as Grey indicated, not offered in 2009. This distinction notwithstanding, Grey's e-mail requested authorities to refrain from vacation buy-backs.

Iwanowicz, Klein replied that the Board did not believe that Grey's directive applied to the Regulating District. However, Klein stated that the Board agreed not to honor its buy-back policy and merely allowed LaFave to carry over all his vacation leave, including those hours in excess of 300, into the next calendar year. Klein claimed that this compromise was "fair to Glenn LaFave."

LaFave had surgery in 2010 and used some of his vacation accruals. He also allegedly worked from his home, thereby maximizing his potential buy-back again. When LaFave retired in August 2010, he attempted to sell back all of his unused vacation leave. However, Ferrara again refused, and deducted the 150 hours carried over from 2009 from the payout.

When questioned by the Inspector General about LaFave's use of the vacation buy-back program, Beyor provided questionable testimony. Initially, Beyor claimed that while the Board adopted a policy allowing vacation buy-backs, no buy-backs actually occurred. Incredibly, she claimed that the Board was unaware that any such buy-backs were made, and that if any employee had received financial compensation from the sale of unused vacation leave, it was because Ferrara had acted outside his authority. Beyor continued to express this view until the Inspector General showed her three vacation buy-back requests submitted by LaFave, all bearing her signature. She then confirmed that she had signed the forms and conceded that she had approved the requests. The Inspector General is left to conclude that, regarding the vacation buy-backs, Ferrara behaved responsibly and Beyor failed to comport herself in a manner consistent with state policy.<sup>15</sup>

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<sup>15</sup> While her term had expired several months prior to her interview with the Inspector General, Beyor had remained on the Board pending her reappointment or the appointment of a new member. Shortly after her interview, Beyor was replaced when a new member was appointed to the Board.

## **Regulating District Vehicle Policy Was Contrary to Express State Budget Directive**

On September 18, 2009, the Division of the Budget (DOB) disseminated to state agencies and authorities, including the Regulating District, an updated policy on state vehicle acquisition, usage, and assignment which superseded an earlier September 2003 version. The revised DOB policy (Budget Policy and Reporting Manual, D-750) took effect immediately and included significant new provisions addressing in particular the assignment of agency vehicles to specific employees.

In a departure from previous policy that allowed agencies latitude in vehicle assignment, the new D-750 requirements established strict statewide limitations on how state vehicles were to be used, including the following:

Agencies may not dedicate cars to specific individuals *except in extraordinary circumstances* approved by the head of the agency and the appropriate Deputy Secretary, and the use of such car shall *strictly be for carrying out agency duties*. [Emphases supplied]

The new DOB policy also required agencies to revise their policies as necessary so as to “incorporate” the new rules on vehicle use.

At the time D-750 was issued, the Regulating District had assigned vehicles to seven staff members: LaFave, Chief Engineer Robert Foltan, Operations Engineer Mike Mosher, Black River Area Administrator Carol Wright, Hudson River Area Administrator Michael Clark, Assistant Engineer for the Hudson River Area John Hodgson, and Superintendent for the Black River Area Douglas Criss.

Contrary to D-750, the Regulating District did not obtain or seek approval from Iwanowicz in order to continue its existing vehicle assignment practices. Nonetheless, the Board of the Regulating District at its October 2009 meeting adopted a new vehicle use policy drafted by LaFave. LaFave used much of the language of the state policy, but included a rationalization for staff retention of their assigned vehicles declaring that because of the nature of the District’s business, staff members needed access to their

District vehicles “24/7/365.” The Board permitted every individual previously assigned a vehicle to continue that assignment and to continue commuting in the vehicles. Leslie objected to the new policy and raised a procedural defect in its passage to delay implementation of the policy.

After the October Board meeting, Ferrara reviewed the policy with his contact at DOB. According to the DOB contact, based on the Budget directive, the Regulating District had no basis to claim an “emergency response” exception to the policy. Ferrara and Leslie provided this information to the Board. The Board, however, at its January 2010 meeting, apparently disregarded this information and again adopted LaFave’s policy and allowed staff to retain their vehicles. According to Leslie, LaFave was tasked with submitting the new policy, and the request to continue individual vehicle assignments, to Iwanowicz in the Governor’s Office. Leslie claimed that LaFave never submitted the paperwork as required.

Despite the newly drafted Board policy that would allow him to continue use of an assigned vehicle, Foltan, the Regulating District’s Chief Engineer, surrendered his vehicle to the District effective December 31, 2009, and advised Chairman Klein that he was doing so. He also advised Klein that he thought the Regulating District’s new policy was wrong and inconsistent with what he believed was “the spirit” of the state’s objectives. Klein accepted Foltan’s decision, but took no further action.

Foltan advised the Inspector General that his decision displeased LaFave, who expressed concern that Foltan, without an assigned vehicle, would be unable to respond to emergency situations. According to Foltan, he explained to LaFave that he had access to a personal vehicle and that:

If an emergency where [sic] to arise, I believe it would more prudent to stay stationary, at home, in the Albany office, at SFO, etc., to facilitate emergency response, activation of emergency action plans, and communication with emergency response agencies. I believe it would be unwise to be moving in a vehicle for the first few hours of an emergency while I try to gather information, coordinate a response, and inform



emergency response agencies of the condition. Our personnel at each dam are well trained to make observations and relay their observations to me. And in fact, the emergency action plans for our facilities properly indicate that these personnel will make the necessary observations for me to properly determine the level of emergency response. The basis upon which I would declare an emergency condition at one of our facilities is fairly clear-cut, and I have no doubt that I would be able to make the appropriate declaration (“failure has occurred” or “failure is imminent”) of emergency condition based on observations made by personnel on site.

No one other than Foltan turned in their Regulating District vehicle until LaFave himself surrendered his upon his retirement in August 2010.

The Inspector General interviewed then-Chairman Klein about the vehicle policy and LaFave’s continued use of the vehicle. Klein saw no problem with LaFave continuing to use the car despite the new state-wide policy. Klein stated that it was his understanding that there was no place to park a vehicle at the Watertown office and that LaFave only lived a few miles from the office anyway. However, there are 19 regular parking spaces and two handicapped parking spaces directly in front of the building containing the Regulating District’s Watertown office. The building’s parking spaces share a larger parking area used by the offices of the Watertown Savings Bank. Furthermore, a state office building with adjacent parking facilities is located within a few blocks. Obviously, there was ample room for LaFave to park the vehicle. In fact, since Wright turned her vehicle into the pool, it has been parked in front of the building.

In addition, any claim that LaFave would need to respond to an emergency in-person seems meritless. First, in all his time in the Regulating District’s employ, no one remembers LaFave personally responding to any emergency. Moreover, LaFave is not qualified to make the assessments necessary to serve as a first responder to an emergency. The Regulating District’s professional engineers, and, according to Foltan, the trained field staff, have the expertise to make the appropriate observations. Foltan himself would make the ultimate decisions in the event of an emergency.

Then Hudson River Area Administrator and now Executive Director Michael Clark stated that he retained his car until after LaFave left because LaFave was angry with Foltan for turning in his car. According to Clark, LaFave stated that Foltan was “insubordinate, [and] was trying to torpedo the efforts to, for people to keep their vehicles.” Rather than suffer LaFave’s wrath, Clark kept his Regulating District assigned car. After Clark became the Acting Executive Director, one of his first acts was to submit a revised vehicle policy for Board approval and direct staff to surrender their cars. As of this date, only one employee has a Regulating District assigned vehicle at his home, Superintendent for the Black River Area Douglas Criss. This continued assignment, which was approved by Iwanowicz when the Regulating District finally submitted its plan, acknowledges the remote location of the facilities Criss services – his home is actually closer to the structures he works on in the Adirondacks than any Regulating District office with parking facilities. According to Clark, the arrangement is less expensive for the Regulating District.

### **LaFave’s “Working Lunches”**

State travel rules generally do not permit an employee to receive reimbursement for the cost of lunch while in travel status. Meals taken within the vicinity of an employee’s official work station are also not generally subject to reimbursement by the state. However, both rules have an exception. Additional meals may be permissible for employees in travel status at the discretion of an agency’s chief finance officer.<sup>16</sup> Meals within the vicinity of an employee’s work location also may be reimbursed upon a determination by the chief finance officer that the meal is in the best interests of the state.<sup>17</sup> At no time did anyone seek the approval of Ferrara for any working lunch or other meal in excess of the travel rules. Ferrara admitted that he was unaware that he had the authority to approve meals for employees either in or out of travel status, and stated that “working lunches” were a Regulating District practice that began prior to his employment. Ferrara advised the Inspector General that upon his review of accounts, the

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<sup>16</sup> 2 NYCRR §8.7(b)(3).

<sup>17</sup> 2 NYCRR §8.2(b)

instances of working lunches other than at Board meetings increased significantly under LaFave's tenure as Executive Director.

From January 2007 through May 2010, LaFave charged, or directed other Regulating District staff to charge, 87 "working lunches" not associated with Board meetings for himself and others using the Regulating District credit card or petty cash funds, at a total cost of \$4,210. Some of the lunches included Board members or other Regulating District employees, while many were with individuals unassociated with the Regulating District.<sup>18</sup> Many of the lunches were with Beyor, the Board member who served as LaFave's supervisor and whose private office is near the Regulating District's Watertown office. LaFave and Beyor shared lunch on 23 occasions at a cost to the Regulating District of \$706.18. Beyor advised the Inspector General that most of these lunches occurred when LaFave was submitting his time sheet to her for her signature.

Regulating District General Counsel Robert Leslie testified that soon after he began employment with the District in September 2008, he counseled LaFave about inappropriate meal charges on the District credit card. In his testimony, Leslie described a meeting with union representatives at which the District provided lunch. Leslie said that he advised LaFave, "It's not allowed, you're basically giving a gift to your employees or to whoever else you bring in, and oh, by the way, if we're negotiating with the union or about to start negotiating with the union, you're not going to give them anything that might influence their decision one way or the other." Further, according to Leslie, LaFave considered time spent at a meal as work time and he failed to deduct a required half-hour lunch when completing his time sheets. Leslie stated that when he

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<sup>18</sup> Black River Area Administrator Carol Wright, who worked in the Watertown office with LaFave, told the Inspector General that when she began her employment, the Regulating District maintained an account at Sam's Club with six memberships paid with agency funds. Wright said she canceled five of the six, but continued the membership that LaFave used for purchasing coffee, sugar, creamer and coffee-related items. Wright said she told LaFave that it was improper for the office to pay for his coffee, but he claimed that the office needed coffee in the event that they had visitors. Wright told the Inspector General that in the four years she had worked in the office, only five cups of coffee were served to visitors. According to Wright, LaFave was the only staff member in office who drank coffee, and it only was prepared on days he was present.

explained that this practice was also impermissible, LaFave replied that it “wasn’t changing.”

Regulating District Chief Fiscal Officer Richard Ferrara told the Inspector General that he also attended lunches at which the Regulating District paid for the meals for CSEA union representatives. According to Ferrara, the Regulating District and the union took turns buying each other lunch. However, the Inspector General was unable to identify a meeting involving the union and the Regulating District where the District did not purchase the lunch.

The Inspector General discussed the practice of working lunches with former Regulating District Board Chairman Philip Klein and current Chairman David Berkstresser. Klein testified that he was surprised by the number of LaFave’s lunch charges on the Regulating District credit card, particularly those lunches when he, Klein, was included on reimbursement documents submitted by LaFave. Other than a lunch with the Regulating District’s outside counsel at Jack’s Oyster House in Albany, Klein stated it was his understanding that when he and LaFave had lunch, they took turns paying with their own money. However, because no one, including Klein, ever reviewed LaFave’s Regulating District credit card use, Klein did not know that the lunches LaFave appeared to be charging to himself were actually charged to the Regulating District.

Berkstresser took offense when the Inspector General asked him about LaFave’s working lunches. He claimed that LaFave had an “expense account” and could charge lunch on the Regulating District so long as the meal served some business purpose. When the Inspector General asked if the Board reviewed credit card purchases by Regulating District employees, Berkstresser said that the Board as a whole did not examine them, but asserted that such a review should be conducted by the Board’s Finance Committee. Berkstresser then admitted that he was the Chairman of the Finance Committee and conceded that the committee never reviewed credit card purchases. When asked whether he thought he should review credit card purchases, Berkstresser replied, “I could. Should I? No.”

Berkstresser stated that Regulating District policy on paying for meals for non-District individuals was, “We don’t. The policy is ‘members only.’” Berkstresser opined that it would be improper for a District employee to take members of the press or public relations firms out to lunch on the District credit card. However, this is exactly what LaFave did. He took reporters from the Watertown newspaper and other media outlets, employees of public relations firms, and local law enforcement members out to lunch, all on the District’s credit card. However, because Berkstresser and the Finance Committee never reviewed credit card purchases, they were ignorant of LaFave’s breach of the so-called “members only” policy.

Ferrara also admitted that he did not review credit card purchases on a routine basis.<sup>19</sup> He had a clerk who made sure that a receipt was provided to the main office for every purchase and that the receipt indicated the business purpose of the purchase. Despite this alleged clerical review, the Inspector General found numerous questionable purchases where no receipt was attached, most of which had been submitted by LaFave. Other than allegedly ensuring that there was a receipt and a stated business purpose, the Finance Office undertook no review of the necessity or propriety of the charges and failed to present them to the Board or the Finance Committee for their review.

This is not the first time that the Inspector General has questioned the propriety of the Regulating District practice of paying for “working lunches.” In a 1993 report, the Inspector General discovered that executive staff improperly used Regulating District credit cards for “working lunches.” From 1990-1992, three executive level employees charged 63 “working lunches” to Regulating District credit cards at a cost of almost \$4,000. A recommendation in that report stated that the Regulating District should institute internal controls over the use of credit cards for these meals. The Board seems to have completely ignored this recommendation.

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<sup>19</sup> In addition to meals, LaFave also purchased flowers on the Regulating District credit card. While it appears that the flowers were for employees or Board members who were either ill or had lost a family member, the purchases were not properly chargeable to the Regulating District. If LaFave or other individuals, including members of the Board, wished to purchase flowers, they could have taken up a collection, rather than use Regulating District funds. The Inspector General’s review found at least six flower purchases costing \$251.67. The Regulating District should be reimbursed for this cost.

Moreover, the Board failed to oversee expenditures by District personnel. The Board is required to approve the District budget, but it did not review expenditures, not even its own. For example, according to the by-laws<sup>20</sup> of the Regulating District and the District's enabling legislation,<sup>21</sup> expenses for Board members must be reviewed by the Board and voted upon. Routinely, however, the only expense considered by the Board and voted on was mileage reimbursement. All hotel rooms, meals, and incidentals for Board meetings were placed on District credit cards by staff members. Not a single Board member or member of the Board's Finance Committee ever looked at a single credit card receipt or bill. No one was aware of the cost of meals at Board meetings or the various "working lunches" charged by LaFave, or the expense of hotel rooms and conference rooms in various locations. Several Board members claimed that they did not review credit card receipts for themselves or their subordinates because they were engaged in weightier issues regarding District finances, and one or two thought that review should have been undertaken by the Chief Financial Officer Richard Ferrara but they never directed such a review or asked whether such had been undertaken.<sup>22</sup>

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<sup>20</sup> The current by-laws of the District are located at: <http://www.hrbrd.com/pdf/bylaws.pdf>. The section regarding the requirement for the Board to approve its expenses is contained at Article III, section 2 and has been part of the by-laws, at least by addendum of the enabling legislation to the by-laws, since 1979. The requirement to review Board member expenses has been directly written into the by-laws since 2006. Additionally, the Board has maintained a series of reimbursement policies, going back to 1988, which requires it to approve Board member expenses before those expenses are reimbursed. Former Chairman Klein claimed that because the Board only reimbursed its members for mileage, it did not have to review other Board expenses, as those were paid by staff credit cards. This argument is belied by the by-laws and statutory mandate that all Board expenses be reviewed by the Board.

<sup>21</sup> The District's enabling legislation is located within the Environmental Conservation Law at §15-2101, et seq. The requirement for Board approval of its own expenses dates back to at least 1980 (although prior versions of the enabling legislation go back to 1915) and are contained at §15-2105(2).

<sup>22</sup> Ferrara, however, served at the pleasure of LaFave, whose use of the Regulating District credit card constituted the greatest abuse. LaFave intimidated Ferrara and refused to allow him to speak to Board members. The few times Ferrara opposed LaFave regarding disbursements, he was harangued by the Board. Ferrara also had no prior government experience before obtaining his position with the District and was unfamiliar with state procurement policies. While these facts do not excuse Ferrara from taking action regarding the waste of Regulating District funds, LaFave's intimidation of Ferrara and the Board's blind faith in LaFave appear to have been significant factors behind Ferrara's lack of action.

## **LaFave's Travel Voucher Abuse**

The Inspector General's investigation revealed that LaFave double-billed the state for the same meal expense on several occasions while traveling on Regulating District business, and in other instances submitted erroneous meal and travel reimbursement requests. As a result of these actions, which were not detected by the Regulating District's Finance Office, LaFave received improper or questionable travel-related expense reimbursements totaling approximately \$372.

Rules promulgated by the Office of the State Comptroller (OSC) govern travel by Regulating District employees. Among other expenses, the OSC travel rules address meals while an employee is in travel status. An employee is in travel status when he is 35 miles away from his residence and official work station. He is entitled to meals under two conditions. When he stays overnight, he is entitled to a dinner the night of the hotel stay and a breakfast the following morning. The maximum amount payable for these two meals is determined by the locale of the hotel and is referred to as a *per diem*. Under no circumstance is a traveler entitled to a lunch. A traveler may also be due a breakfast or a dinner depending on when he begins and concludes travel status. A breakfast may be claimed if the traveler is in travel status one hour or more before his normal start time and a dinner may be claimed if the traveler is in travel status two hours or more after his shift normally ends. If the traveler fails to provide a receipt for an extra meal with his travel voucher, the meal is "unreceipted" and may be reimbursed at a rate of \$5.00 for breakfast and \$12.00 for dinner. If the traveler provides a receipt, the extra meal is "receipted" and the traveler may claim the actual amount of the meal up to a maximum *pro rata* amount of the daily *per diem*.

The Inspector General identified three instances where LaFave charged the same meal on both his travel voucher and on the Regulating District's credit card. On November 15, 2007, LaFave used his Regulating District issued credit card to charge \$61.25 for dinner for Board member Arthur Eyre and himself in Albany. LaFave's written description for the charge indicated it was a "Working Dinner Conf. with Board

Member Art Eyre re SFO Interviews.” On December 19, 2007, LaFave submitted a travel voucher which included a dinner *per diem* reimbursement request of \$39.00 for the same meal. By failing to reduce his travel voucher to account for the dinner he previously had charged on the Regulating District credit card, LaFave received approximately \$30.00 to which he was not entitled.<sup>23</sup>

On June 8, 2008, LaFave used his Regulating District credit card to charge \$195.80 for dinner in Old Forge for six individuals including himself, Board members Philip Klein, Anne McDonald, and John Bartow, and former Board Member Art Eyre and his wife. LaFave’s written notation for the charge described it as “Dinner before Board meeting.” LaFave also submitted a travel voucher dated July 10, 2008 in which he also claimed reimbursement for a \$31 dinner *per diem* for the night of June 8, 2008. Again, LaFave failed to reduce his voucher request by the amount of his share of the previously charged dinner, thereby improperly obtaining reimbursement of \$32.63. One additional instance of double-billing for the same meal resulted in a minimal overpayment to LaFave of \$2.08.

The Inspector General also found that LaFave was improperly reimbursed an additional \$306.45 as a result of various errors in his travel vouchers. All of these travel vouchers were signed by LaFave and authorized by Beyor. With respect to five breakfasts and five dinners claimed on these vouchers, LaFave requested and received total reimbursements of \$234.55, despite submitting incomplete vouchers. On five occasions, LaFave improperly claimed a *per diem* for Albany County rather than Fulton County, and thus was overpaid \$10 for each occasion or \$50.00 total. In each instance, LaFave claimed he was working in Albany while he, in fact, stayed overnight in Johnstown. On a trip to Lowville, LaFave did not claim the state *per diem* rate, but charged a dinner and breakfast worth \$54.45, which is \$15.45 in excess of the applicable *per diem* of \$39.00. On a different trip to Lowville, LaFave again did not charge the state

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<sup>23</sup> This amount was calculated by dividing the \$61.25 dinner charge by two, the number of individuals who attended the dinner.



*per diem* rate, but charged a dinner and breakfast worth \$45.39, which is \$6.39 above the applicable *per diem*.

Inadequate oversight within the Regulating District contributed to LaFave's receipt of these unwarranted reimbursements. Travel vouchers and credit card charge vouchers were processed in different locations and at different times. LaFave's travel vouchers were prepared by his secretary in Watertown for his signature, and then submitted to Albany for payment. Standard vouchers for the credit card were prepared in Albany after receipt of the bills. A clerk in Watertown, not his secretary, collected LaFave's credit card receipts and forwarded them to Albany upon request from the finance office.

Ferrara acknowledged that his office failed to compare the travel vouchers to the standard vouchers to determine if there were duplicate charges. Moreover, finance office staff did not question the extra meals in those instances when LaFave failed to indicate a departure or return time on his vouchers.<sup>24</sup> The finance office also failed to correct the improper *per diem* rates that LaFave entered on vouchers.

### **LaFave's Service on the Thousand Islands Bridge Authority Board**

The Thousand Islands Bridge Authority (TIBA), a New York State public benefit corporation, operates a toll bridge system linking New York and Ontario, Canada, under a joint agreement with the Federal Bridge Corporation Limited of Canada. In 2009, when a vacancy occurred on TIBA's Board of Directors, TIBA approached LaFave about joining the Board.<sup>25</sup> Prior to accepting the offer, LaFave sought permission from the Board of the Regulating District and also requested a ruling from the New York State Commission on Public Integrity whether a conflict of interest existed between his

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<sup>24</sup> Routine processing of LaFave's reimbursement requests by the OSC also failed to note this deficiency.

<sup>25</sup> The seven-member Board consists of four U.S. citizens appointed by the Chairman of the Jefferson County (New York) Board of Legislators subject to that board's approval and three Canadian citizens. At the time of LaFave's appointment, TIBA's Executive Director was Robert G. Horr III, a longtime acquaintance of LaFave and one of the individuals LaFave used as a reference when he applied for the position of Black River Area Administrator in 2003.

proposed unpaid part-time service on TIBA's Board and his position as Regulating District Executive Director.

The Board of the Regulating District approved LaFave's request, finding, as stated in a September 15, 2009, resolution, that "the mission and geographical reach of the Hudson River – Black River Regulating District and the Thousand Islands Bridge Authority do not intersect," and noting that "LaFave has indicated that he will not utilize Regulating District resources in the performance of his duties before the TIBA including but not limited to Regulating District vehicles, cell phones, blackberries, pagers, paper, office equipment or personnel." In its opinion dated October 30, 2009, the Commission on Public Integrity, relying on documentation submitted by LaFave, also found no conflict of interest. Both the Regulating District's Board and the Commission on Public Integrity reminded LaFave of his obligation to recuse himself in the event that any matter arose involving both the Regulating District and TIBA.

The Inspector General found that during his employment with the Regulating District, LaFave attended 11 TIBA Board meetings. At a minimum, LaFave spent 3.5 hours traveling to and from each meeting, joining the Board members for an hour lunch prior to the meeting (paid for by TIBA), and attending the meeting. From his first meeting in August 2009 through the TIBA Board meeting held on March 18, 2010, LaFave did not charge any leave accruals to attend these meetings despite the fact that the meetings were held during Regulating District working hours. LaFave only charged accruals for his attendance at the meetings as of April 22, 2010, after the Inspector General had contacted LaFave for an interview as part of this investigation.<sup>26</sup>

The Inspector General calculated that LaFave spent more than 34 hours driving to and from TIBA meetings, eating lunch with Board members, and attending the meetings,

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<sup>26</sup> To the extent that he did charge accruals, he still failed to charge sufficient accruals to account for his time spent at the meetings on two of three occasions.

for which he did not charge his accruals.<sup>27</sup> The value of this time is approximately \$1,750. LaFave also used a Regulating District credit card to pay for a \$47.60 lunch with Horr, TIBA's Executive Director, on May 2, 2008, in Watertown. On the submitted receipt, LaFave claimed the meal was a "working lunch," although, as noted, the Regulating District and TIBA have no shared business. When the Inspector General raised this meal expense in his interview, former Regulating District Board Chairman Klein termed LaFave's action "stupid."

### **Location of LaFave's Official Work Station Did Not Serve the State's Best Interest**

State regulation provides the following regarding official work stations:

The official station of every employee shall be designated by the head of the agency. Such designation shall be in the best interests of the State and not for the convenience of any employee or to maximize travel expense reimbursement. Every designation of the official station of an employee shall be subject to review by the Comptroller. If any designation of an official station is found to be inconsistent with the provisions of this Part, a request for travel expense reimbursement based upon such an inconsistent designation may be disapproved by the Comptroller.<sup>28</sup>

LaFave was promoted to the position of Executive Director of the District in February 2006. According to various board members and staff, a large majority of the work of the Regulating District, some say as high as 85 percent, is in the Hudson River

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<sup>27</sup> The Inspector General's calculation utilized cell phone records and known meeting start times. (TIBA Board meeting minutes do not contain an end time.) Board meetings start at 1:00 p.m., but the Inspector General was advised that the Board has a lunch before every meeting from noon to 1:00 p.m. which LaFave regularly attended. According to MapQuest, the travel time between Watertown and Alexandria Bay, the usual location of the meetings, is approximately 30 minutes. The Inspector General used the half hour travel time, i.e., the trip commenced at 11:30 a.m., unless it had cell phone evidence of other conduct. LaFave used his Regulating District issued cell phone extensively. The Inspector General used these calls to track his travel between Watertown and Alexandria Bay. Therefore, to the extent LaFave made cell phone calls while traveling north outside of Watertown on the day of the meetings, the time of the first call was used to establish when LaFave left Watertown. Conversely, the time of the last cell phone call in the afternoon heading back to Watertown was used to establish when the meeting and travel associated with that meeting concluded.

<sup>28</sup> 2 NYRCC §8.2(a)(1).

area. Every Executive Director before and after LaFave has been assigned to the Regulating District's Executive offices in Albany; only LaFave maintained an official work station elsewhere. Because the work was in Albany, the designation of Watertown as his official workstation required that the Regulating District pay for his travel, every week, to and from Albany or the District's offices along the Great Sacandaga Lake near Johnstown. Driving time between Watertown and Albany is at least 3½ hours one way, depending on the route taken and the weather conditions.

From January 1, 2007, through May 11, 2010, LaFave spent 240 nights at a hotel in either Johnstown or Albany, apart from his attendance at Board meetings,<sup>29</sup> at a total cost to the District of \$33,757.52. During the same period, LaFave charged the District \$11,218.87 for meal *per diems* and miscellaneous meals associated with his travel to Johnstown and Albany. Additionally, although his daily round-trip commute between his office in Watertown and his home was approximately 13 miles, according to his travel logs, he put 84,209<sup>30</sup> miles on his assigned District vehicle from January 1, 2007 through April 30, 2010, an average of approximately 2,105 miles per month.

By way of comparison the former Executive Director Richard Lefebvre went to the Black River area five times, other than Board meetings, during his 21-month tenure

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<sup>29</sup> Regardless of his official station, LaFave would have been required to travel to attend the Board's 10 meetings each year. Whether he was stationed in Albany or Watertown would have no appreciable impact on the number of hotel nights he charged for Board meetings. Therefore, these trips are not included in the analysis of his travel. Also excluded from this analysis are trips that LaFave was required to take to Washington D.C. due to litigation against the Regulating District. These trips were business related and would have been taken whether he worked in Watertown or Albany.

<sup>30</sup> For several years, LaFave failed to list his daily mileage on his mileage logs. When he reported his car usage for personal income tax purposes, he used a valuation for his commuting that relied on the number of trips, not the mileage. As of 2008, at a minimum, this accounting method was improper. LaFave was provided with a new car in 2008, a Chevrolet Tahoe with a purchase price of \$27,378. Because of the value of the car, and LaFave's mixed usage for personal and business trips, the Annual Lease Value method had to be used to include the value (based on mileage) of the personal use on his W-2 for 2008, 2009 and 2010. To the extent that LaFave failed to distinguish between personal and business use in his logs, all miles must be included in the calculation of the benefit for income tax purposes. (For further explanation of substantiation requirements, see 26 USC §274 and 26 CFR §1.132-5.) The Inspector General will forward these documents to the New York State Department of Taxation and Finance for its review. Finally, the Inspector General notes that LaFave's last recorded odometer reading on December 29, 2009 on the Tahoe was 41250. On January 4, 2010, the next time that LaFave claimed to have used his vehicle, the first recorded odometer reading was 41451. There is a 251-mile discrepancy between these odometer readings which is not explained by the mileage logs.

with the District. Current Acting Director Clark plans to go to the Black River area once every other month, or less, depending on whether Board meetings are held in that locale.

The Inspector General interviewed three of the Board members who were on the Board at the time LaFave was promoted to the position of Executive Director about LaFave's official work station. Arthur Eyre recalled the Board promoting LaFave, but advised the Inspector General that he did not know who made the decision to allow LaFave to retain Watertown as his official station. Eyre estimated that approximately 85 percent of the work of the District was in the Hudson River area.

Beyor stated that it was a Board decision to keep LaFave assigned to Watertown. Beyor explained:

Obviously, he's from Watertown . . . He was willing to travel as needed to cover the Hudson area . . .we just decided that he's who we wanted, and part of, I wouldn't say it's a condition of employment, because there's no contract or anything, but as the Board offered him the position, we understood that he would stay in Watertown.

According to Beyor, no one asked LaFave to move, and she conceded that the location of his office was for LaFave's convenience. In an attempt to justify the Board's decision, Beyor compared LaFave working in Watertown to Lefebvre working in Albany. She conceded, however, that there was significantly more work to be done in the Hudson River area and that she had no idea how often Lefebvre traveled to Watertown.

Klein stated that it never crossed his mind to have LaFave move. Klein said:

He drove so many miles because of the fact that he lives in Watertown, and we have an office in Watertown. We have an office in Sacandaga, [and] we have an office in Albany. He was on the road all week, going from A to B to C to B to A again.

When asked why they didn't require LaFave to move to Albany, Klein reversed himself and stated, "It wasn't like he was taking a half a day off to commute." In fact, that is

exactly what LaFave was doing. It takes half a work day to travel between Watertown and Albany and half a day to travel back. LaFave did this almost every week while he was the Executive Director.

Rather than allow LaFave to travel back and forth between Watertown and the Hudson River area on a weekly basis, the Board could have required the use of telephone or video conferences for meetings or the mail to transfer documents. Even that, however, would have been a stop-gap measure. The appropriate course of action would have been to transfer LaFave to the Albany office and designate his official work station consistent with other Regulating District executive staff. It would not have been unreasonable for the Regulating District to pay for reasonable moving expenses.<sup>31</sup> However, the Board instead allowed LaFave to incur substantial hotel and meal charges at District expense. Additionally, the Board never reviewed LaFave's expenses to determine the cost to the District.

### **Cost of Board Meetings and Expenses of the Board**

The Board of the Regulating District meets approximately 10 times per year in various locations throughout the area served by the District. Board members and District staff travel to attend these meetings. According to several Board members, meeting sites are selected to allow members of the public from different areas to attend Board meetings and so that Board members can view Regulating District facilities. Meetings generally start at 10:00 a.m. and extend into the early afternoon.

According to the Regulating District's enabling legislation and its by-laws, "The members of the Board including the chairperson shall not receive a salary or other compensation, but shall receive all *necessary* expenses incurred in the performance of their duties." [emphasis added]<sup>32</sup> As the previously mentioned 1993 Inspector General report found, the Board held conferences and meetings without consideration of expense.

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<sup>31</sup> State agency employees who are transferred for the convenience of the state receive moving expenses up to a maximum of \$3,000. 9 NYCRR §154.

These meetings were held in resort locations, including Lake George and Alexandria Bay in the summer and Lake Placid in the winter, and family members and friends were permitted to attend at District expense. The report recommended that the Regulating District seek alternate meeting sites to minimize cost and seek reimbursement from family members and friends who attended Regulating District functions without charge. The Inspector General reviewed the current expenditures in light of the Regulating District's enabling legislation and the 1993 report.

In reviewing the cost for Board meetings, the Inspector General took into account public attendance at Board meetings throughout its operating area, and thus reviewed sign-in logs from the meetings. The meetings most heavily attended by the public occur in Johnstown; the least attended occurred in Lowville. The Johnstown meetings occur near the Great Sacandaga Lake and are easily accessible to the public. The Lowville meetings occur in a very sparsely populated area of the state and require extensive travel, the last approximately 10 miles of which cover dirt roads. Ironically, the least expensive meetings occur in Johnstown,<sup>33</sup> the most expensive at Lowville. Johnstown has several hotels which accept state rates and multiple food outlets, the Lowville area has only one hotel which does not accept state rates and purportedly houses the only acceptable eating facility. The average cost per meeting in Johnstown was \$461.04, the average cost per meeting in Lowville was \$1,307.82. The Lowville meeting was always held in the fall as several individuals associated with the meetings indicated that the timing of that meeting was to take advantage of the fall foliage.

At the Board meetings, the Board routinely provided meals to staff members and on occasion provided meals to guests. Neither practice is "necessary" for the Board to function. The Inspector General discussed this practice with Klein and specifically asked about a June 8, 2008, dinner in Old Forge that included LaFave, two Board members, and former Board member Arthur Eyre and his wife. The dinner expense of \$195.80 was

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<sup>32</sup> ECL §15-2105(2).

<sup>33</sup> According to various staff members, meetings held in Inlet are even less expensive because there are no hotel facilities within a reasonable distance, so everyone drives home afterwards.

charged to the District. Klein admitted that the expenditure was not necessary, but “it was a nice thing to do.” Klein also acknowledged the Board paid for dinner for former Board Chair Ann McDonald and her husband after she left the Board.

Even when the Board held its meetings in areas which provided state rate hotels, it sometimes spent significant sums on its meals or the meals of its staff. For example, on January 14, 2009, and again on October 13, 2009, at regularly scheduled Board meetings, the Board entertained itself with \$355.80 and \$269.50 lunches, respectively. The lunch in Latham for \$355.80 resulted in a cost per person of \$18.72. The \$269.50 lunch in Lowville resulted in a cost of \$26.95 per person. On December 19, 2008, the Regulating District took its Hudson River area staff and executive office staff to lunch at the Raindancer restaurant in Amsterdam at a cost of \$674.00, or \$30.64 per person.<sup>34</sup>

On April 6, 2009 and again on May 11, 2009, the District held 50<sup>th</sup> Anniversary parties to commemorate the founding of the Regulating District in both Johnstown and Watertown, respectively. The parties coincided with Board meetings that were scheduled for the following day. The Regulating District invited local politicians, former employees and Board members, and Department of Environmental Conservation officials. Fifty-seven people attended the April 6 Johnstown event and 85 people attended the May 11 Watertown event. The District collected \$20 each from some attendees, but 55 people attended the two parties without paying.<sup>35</sup> The cost of the parties to the Regulating District, after taking into account payments received, was \$2,770.85<sup>36</sup>, a cost of just under \$50 per person.<sup>37</sup>

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<sup>34</sup> This charge on the District credit card was made by Ferrara; both Ferrara and Leslie attended the luncheon. Although the overwhelming majority of charges for meals were made by LaFave, there were instances where Ferrara signed for large group meals at Board meetings or staff meetings.

<sup>35</sup> Two of the attendees at the Johnstown party were DEC employees, Elizabeth Lowe and Tom Hall. Neither paid. Lowe was allegedly the guest speaker at the event; the Inspector General was unable to determine any services provided by Hall. Lowe told investigators that she attended the party in her role as a DEC employee. As such, Lowe should not have accepted the meal gratuity and should have paid for her meal. Both Lowe and Hall should reimburse the District for the cost of the meal.

<sup>36</sup> This cost does not include the cost of a hotel room for Klein. Normally, he would not have stayed in a hotel to attend a meeting in Johnstown. Klein claimed that because the party went late into the evening, and he has night vision problems, he was unable to drive home. Klein also admitted that he and other attendees drank alcoholic beverages at the party, although he adamantly denied that the District paid for alcohol.



LaFave employed clerical staff, on overtime, to plan the parties and deliver cakes. The overtime compensation bill alone for the parties was \$634.71. Again, the Board apparently never reviewed any charges made to credit cards and thus was unaware of the cost of the parties that it threw for itself and its friends.

The cost of the aforementioned meals and the anniversary parties were not reasonable or necessary. By the spring of 2009, the Regulating District had lost over 80% of its funding in the Hudson River area and was seeking sources of funds to continue its economic viability. To use its limited reserves to fund a party seems unreasonable. To the extent that persons have been provided with meals that are inconsistent with the Regulating District's enabling legislation, those monies should be recouped by the Board.

### **Reimbursement for Stolen Personal Property**

On the evening of January 30, 2008, a Regulating District employee stayed overnight in Albany to attend a meeting. The employee stayed in a family residence and parked a Regulating District owned vehicle on the street nearby. During the night, someone smashed the window of the vehicle and stole personal property of the employee, including the key to the employee's personal car, a CD case, and 33 CDs, which had been left in plain view. Neither the employee nor the Regulating District filed an insurance claim for the loss of personal property, although a claim was filed for the damage to the vehicle.

The Regulating District does not have a policy regarding damaged or lost personal property. State Finance Law permits the payment to management employees for the loss of personal property to a maximum of \$350 only when the property is damaged in the

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<sup>37</sup> During its investigation, the Inspector General uncovered a bill for a party for the Thousand Islands Bridge Authority in 2010. The party took place at the Glen House Resort in Thousand Islands, Canada. The total for the party was \$9,074.14 probably in Canadian dollars. The bill for 90 people included charges for an open bar for \$1667.57 and 32 bottle of wine at \$27 each or \$864.00. The Inspector General is referring this matter to the Authorities Budget Office for review.

actual performance of work and when the employee is not at fault.<sup>38</sup> Similar provisions exist for members of the various collective bargaining units and are included in their collective bargaining agreements.<sup>39</sup>

Contrary to the original complaint in this investigation, Ferrara advised the Inspector General that he authorized the reimbursement for the employee's stolen personal property. Ferrara stated that he told LaFave of the employee's claim for reimbursement and LaFave approved the payment. Ferrara stated that he did not seek the Board's approval because he did not consider the expense large enough to require Board attention. Ferrara claimed that he was unaware of any limits on the amounts of reimbursement, whether policies or collective bargaining agreements referred to such reimbursements, or any conditions which would limit or prohibit reimbursement for the loss of personal property. Therefore, no analysis was conducted to determine whether the loss of the employee's CD collection or personal car key when the employee was driving a Regulating District vehicle was business related or predicated on the employee's own negligence. The District paid the employee \$20 for the CD case, \$200 for the CDs, and \$244.69 for a new key, totaling \$464.69. Not only was the employee reimbursed for the loss over the statutory maximum by \$114.69, but probably nothing should have been paid due to the employee's failure to properly secure personal property.

## FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Glenn LaFave and the Regulating District Board took action to secure LaFave paid employment with the District, seemingly without exercising proper prudence and in a manner which raises ethical concerns.

The Inspector General determined that LaFave improperly obtained payments in the amount of \$14,875.53 through his systematic abuse of the Regulating District's vacation buy-back provision.

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<sup>38</sup> State Finance Law § 8 (12-f).

The Inspector General determined that LaFave used Regulating District funds to improperly purchase meals and other items for himself and others in the amount of \$4,461.67.

The Inspector General determined that LaFave filed faulty travel vouchers resulting in an overbilling to the Regulating District in the amount of \$372.00.

The Inspector General determined that LaFave violated the directive of both the Commission on Public Integrity and the Regulating District Board by failing to take leave to attend meetings of the Thousand Islands Bridge Authority Board. This action not only resulted in an illegal payment of \$1750 in wages to pay for the time he spent at these meetings, but raised at least an appearance of impropriety concerning his actions.

The Inspector General determined that LaFave and the Regulating District Board failed to take appropriate measures in response to Budget Bulletin D-750 to limit the use of Regulating District vehicles to appropriate work related use. Additionally, LaFave failed to adequately record his personal use of his assigned vehicle thereby failing to properly account for the benefit on his personal income taxes.

The Inspector General determined that the Regulating District Board failed to adequately oversee its finances and expenditures to ensure that monies were spent only on reasonable and necessary expenses. In fact, the Board spent substantial sums on meals for itself, its staff, and, on some occasions, members of the public with no discernable benefit to the Regulating District.

The Inspector General determined that the Regulating District improperly paid an employee for the loss of personal property in violation of the State Finance Law. The

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<sup>39</sup> The CSEA operational provision may be found at [http://www.goer.state.ny.us/Labor\\_Relations/Contracts/Current/cseaosu/03art43.cfm](http://www.goer.state.ny.us/Labor_Relations/Contracts/Current/cseaosu/03art43.cfm).

Inspector General recommends that the Regulating District seek repayment from the employee in the amount of \$464.69.

The Inspector General further notes that the Regulating District Board failed to implement necessary internal controls after the Inspector General's 1993 report, and also failed to comply with its own enabling legislation and the State Finance Law. In light of these facts, the Inspector General requests that within 30 days the Regulating District provide the Inspector General with a plan of action to address the findings of this report.

The Inspector General will provide a copy of this report to the Commission on Public Integrity, as well as to the appropriate federal and state tax authorities.

The Inspector General is also forwarding these findings to Governor Andrew M. Cuomo's Spending and Government Efficiency (SAGE) Commission, which is examining the consolidation and elimination of some public authorities in order to save money and improve efficiency.

The response of the Hudson River-Black River Regulating District to the Inspector General's findings and recommendations is included as an appendix to this report.

## **APPENDIX**

The response by the Hudson River-Black River Regulating District to the Inspector General's report appears on the following pages.



**Board of Hudson River-Black River Regulating District**  
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-9491  
FAX (518) 432-2485

July 14, 2011

Honorable Eiken N. Biben  
State Inspector General  
Office of the State Inspector General  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223-1250

Re: NYS IG Report: "Investigation of Allegations of Misconduct by Former Executive Director Glenn LaFave and the Board of Directors of the Hudson River - Black River Regulating District"

Dear State Inspector General Biben:

Thank you for sharing a draft of the above referenced report with the Hudson River - Black River Regulating District ("Regulating District" or "HRBRRD") and allowing us an opportunity to respond. The Board would like to take this opportunity to thank you and your staff for conducting such a thorough investigation. We would also like to thank the Regulating District's staff for their role in bringing these matters to light.

The report describes the improprieties and ethical violations of the Regulating District's former Executive Director. Quite frankly, members of the Board and staff concur with the recommendation to advance such findings to the appropriate state and federal authorities. As a Board, we stand ready to assist the Commission on Public Integrity and/or the Joint Commission on Public Ethics to redress improperly obtained payments from Mr. LaFave. In short, we are pleased that justice will be served and that Mr. LaFave will be held accountable.

The Report also notes the facilitating role played by former Board Members and details lapses in oversight which could have identified Mr. LaFave's actions sooner. Rest assured that the Board will take the necessary steps to ameliorate the potential for a re-occurrence. The Regulating District acknowledges that adequate controls were not in place to guard against deliberate manipulation of time/attendance controls and travel/meals reimbursement guidelines. The Board has already taken action to ensure that monies are spent only on reasonable and

necessary expenses and acknowledges that some internal controls must be strengthened. Accordingly, the Regulating District is working to formalize significant additional safeguards already in place to restore the integrity of those processes.

The Regulating District must rely upon the integrity of the individuals appointed by the Governor to serve on the Board and those appointed by the Board to perform the duties bestowed upon them by the Regulating District. The Board will provide whatever support is necessary to insure that such transgressions are addressed. As noted, Mr. LaFave has elected to retire and the Governor has appointed a number of new Board Members; in fact most members on the Board are new since the inception of the Inspector General's investigation. The District will renew its effort to ensure each member carries forward an in-depth understanding of the fiduciary duties owed to the Regulating District and public by the HRBRRD staff and the Board Members themselves.

Mr. LaFave retired from the Regulating District effective August 19, 2010. Since that date, the Regulating District has undertaken a comprehensive review of the many policies and procedures adopted or modified during Mr. LaFave's tenure as the Regulating District's Executive Director. As noted, at Mr. Clark's insistence, the Board adopted a new HRBRRD Vehicle Use Policy mirroring the provisions imposed upon all agencies and public authorities by the Division of Budget's Budget Policy and Reporting Manual (BPRM) D-750 on State Vehicles; including a strict prohibition against commuting in a Regulating District vehicle. Pursuant to this new vehicle use policy, with the one approved exception noted in your report, the Regulating District no longer assigns vehicles to staff, including Management. Although not recommended in the Inspector General's report, the Regulating District has taken steps to reduce the size of its vehicle fleet. The Regulating District will undertake the formal adoption of the travel/meals reimbursement guidelines as promulgated by the Office of the State Comptroller. Whereas the Regulating District Board had expected compliance with such guidelines in the past, strict adherence will now be required.

The Regulating District Board is mindful of the state of the economy and the need for belt-tightening at all levels of government. To this end we pledge to avoid unnecessary expense no matter how small. The passage of the 50<sup>th</sup> and 90<sup>th</sup> year of operation of the whole Regulating District and the Black River area of the District respectively, provided the impetus for Mr. LaFave to gather a small group of local dignitaries to commemorate such anniversaries. In hindsight, and in light of the fiscal difficulties facing the District and the communities it serves, such expenditures, while modest and made in connection with regularly scheduled Board meetings, were inappropriate. A turnover of Board personnel and Mr. LaFave's departure will guard against any repeat of such mistakes.

The Regulating District has updated the HRBRRD Management/Exempt Employment Guidelines to more closely mirror the State's Management/Confidential employment agreements. The Employment Guideline changes eliminate language establishing bereavement leave and compensatory time, and reduce the vacation buy-back program to mirror similar programs offered to state employees. The Regulating District did not permit vacation buy-back for 2010.

The Regulating District has revised its By-Laws to clearly establish the Board Chair as the Agency Head and has adopted a Management Hiring Policy to demonstrate its commitment to eliminate "political affiliation" as a basis upon which to recruit, hire, train or promote. Now, armed with not only unfiltered information from staff but also the Inspector General's Report, I am personally reviewing the recommendations raised in that Report and will work with the Regulating District's uncompensated Board to prepare a plan for addressing all remaining policy shortcomings. The Regulating District's plan will include a directive to staff requiring the preparation of conforming policy amendments as recommended in the Inspector General's report.

It cannot be ignored that the balance of the Regulating District's professional and administrative staff, unlike Mr. LaFave, had no agenda or improper motivation and did not engage in any intentional wrongdoing. To the contrary, the staff has performed admirably throughout the pendency of this investigation. This despite Mr. LaFave's deliberate attempt to insulate the Board from staff concerns regarding his inability to address the dire nature of the Regulating District's finances, and his own improprieties. The Board appreciates the courage exhibited by staff members to bring these matters to the attention of the Inspector General, the Commission on Public Integrity and the Board. It is our failure as Board Members serving during his tenure to not recognize Mr. LaFave's effort to build a wall between staff and the Board; to the point where individuals felt such concerns could not be aired internally. This error has been corrected. The culture change wrought by these actions, and the Governor's recent appointments to the Board, have permitted the Regulating District Board to re-engage on substantive and strategic issues.

The Regulating District appreciates the opportunity to comment before the Inspector General's Report is finalized. Finally, I would like to make a special point to thank the Governor's staff during this trying time.

Sincerely,



David W. Berkstresser

HRBRRD Board Chair