

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM
COMMENTS AND OBSERVATIONS**

I. FINANCIAL STATEMENTS

1. **The validity of the Property, Plant and Equipment account amounting to P14.74B as of December 31, 2011 could not be ascertained due to non-reconciliation of the Accounting and Property records and non-submission of inventory reports on January 31, 2012.**

CORPORATE OFFICE

LAND

- a. **The reported amount of the Land account of P12,814,439,167.62 as of December 31, 2011 is of doubtful validity due to unreconciled records of the Accounting and Property Management Departments.**

On January 4, 2012, Management created an inventory team (committee) per Office Order No. 2012-008 to conduct a joint physical inventory of land and land rights with the following objectives:

1. To validate the veracity of records of lands and land rights of the System
2. To recommend for the entry/dropping of parcel/s of land if necessary
3. To determine the principal and predominant use of the land.

The actual/physical inventory of the land owned by the Agency started on February 6, 2012 and ended on April 15, 2012. Said Inventory Report of Lands and Land Rights of the Metropolitan Waterworks and Sewerage System were verified, validated and individually plotted by the Inventory Committee in accordance with approved technical descriptions of each lot providing the classification of lands according to its use as shown below:

<u>TITLE - CLASSIFICATION</u>	<u>NO. OF LOTS</u>	<u>AREA (m²)</u>
I. Watershed	197	49,772,526.06
II. Balara Complex	13	752,300.70
III. IPO-Novaliches Road	50	375,074.00
IV. Not-in-Service (Idle lands)	69	2,027,421.65
V. Joint Venture	78	1,271,109.00
VI. MWSI	252	374,579.13
VII. MWC	113	787,106.03
Total	772	55,360,116.57
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As of December 31, 2011, the Land account showed a book balance of P12.814B for a total area of 74,559,925.83 square meters. However, the Property Management Department (PMD) which maintains records of land titles and other deeds of

conveyances reported an area of 55,360,116.57 square meters, resulting in a discrepancy of 19,199,809.26 square meters.

Management conducted the inventory of land titles in February to April 2012 but no reconciliation was conducted between the accounting and property records. In the absence of such reconciliation, there is no way to establish the validity and accuracy of the Land recorded in the books.

We recommended that Management reconcile the records of the Accounting with the PMD to arrive at a valid and accurate amount of the land owned by MWSS.

Management explained that an inventory of MWSS land and land rights was conducted jointly by the Property Management and Finance Departments pursuant to Office Order No. 2012-008. The Physical Inventory Report submitted by the Committee is a reconciled records of MWSS land and land rights.

b. Out of 772 lots listed in PMD inventory, there are 109 lots, with a total area of 273 hectares or 2,726,219.11 square meters, that have no land titles:

Land classification	No. of Lots	Area(m ²)
Watershed	9	1,872,989.06
IPO-Novaliches Road	28	258,445.00
Joint Venture	22	443,899.00
MWSI	22	28,905.05
MWCI	28	121,981.00
Total	109	2,726,219.11
	=====	=====

Management should facilitate the processing of the titles of these lots to ensure the transfer of ownership to MWSS.

Management disclosed that the petition for administrative titling of certain parcel of land thru Proclamation Patent filed more that three (3) years ago is still pending at the Land Management Bureau-DENR. There are also petitions pending at the Court for the judicial registration of certain unregistered parcels of land.

c. Various lots remained idle or unutilized resulting to undue loss to the Agency.

Twenty (20) lots containing 273,076.65 square meters located in various areas had been idle as follows:

- 1) A vacant lot inside the Loyola Retreat House compound in Angono, Rizal containing an area of 16,300 square meters was acquired for the construction of the proposed Angono Reservoir Project which did not materialize;
- 2) Two (2) adjacent lots with a total area of 57,110 square meters located at Rainbow Village, Barangay San Isidro, Angono, Rizal acquired for the construction of the proposed Laguna Lake Water Treatment Plant had been occupied by informal settlers (squatters)

- 3) Ten (10) lots in Antipolo City with an area of 178,414 square meters
- 4) Seven (7) lots in Metro Manila with a total area of 21,252.65 square meters

MWSS incurred expenses for the maintenance and security of these idle lots and has to pay for its real taxes.

Management should maximize the use of idle lots especially those ten (10) lots in Antipolo and the seven (7) lots in Metro Manila. Management should also exert extra effort to evict the unauthorized settlers in Angono, Rizal.

Management explained that the parcels of lands are intended for certain projects which were held in abeyance due to financial constraint. Being a government property, the same shall be used only for public purposes. With reference to the payment of real property taxes, a case is now pending before the Supreme Court to settle the exemption privileges of the MWSS.

d. Various lots are recommended for dropping from the MWSS book of accounts by the Inventory Committee due to the following reasons:

- a) lots being occupied by military camp, Barangay Hall, Government Elementary and High School
- b) lots with abandoned pipeline
- c) lots overlapping with private properties when plotted through their tie lines
- d) lots for conversion into socialized housing covered by Executive / Proclamation Orders

GENERAL AND ADMINISTRATIVE EQUIPMENT (GAE)

e. The validity of reported amount of the General and Administrative Equipment account of P1,752,674,361.78 as of December 31, 2011 is of doubtful validity due to non-reconciliation of the Accounting and Property records and non submission of inventory reports on January 31, 2012.

“Section 490 of the Government Accounting and Auditing Manual (GAAM) Volume 1 provides that:

“Chiefs of Agencies are required to take a physical inventory of all the equipment and supplies belonging to their respective offices at least once a year and the same shall be made and submitted to the Auditor not later than January 31 of each year, unless extended by the Chairman, Commission On Audit, upon prior request of the chief of agency concerned. A committee of two or more employees designated by the chief of agency, including the property officer or custodian, depending on the extent of property accountability in a particular agency should be in charge of inventory taking, to be witnessed by a representative of the Agency Auditor.”

Contrary to the above-cited provisions, the System was not able to submit the Physical Inventory Report on January 31, 2012 which prevented this office from verifying if there are discrepancies between the physical inventory reports and the accounting records.

Management submitted unsigned advance copies of the 2011 Physical Inventory of MWSS General Administrative Equipment (GAEs) turned over to Manila Water Company Inc. (MWCI) in the total amount of P74,395,479.15 and to Maynilad Water Services Inc. (MWSI) in the total amount of P116,721,761.95 for a total GAEs turned over to the two Concessionaires of P191,117,241.10. Meanwhile, reported book balance of Property, Plant and Equipment amounted to P1,752,674,361.78 showing a difference of P1,561,557,120.68 that still has to be accounted for. Due to the delay in the submission of the required inventory reports, reconciliation of the Accounting and Property records could not be undertaken as of this date.

Management should conduct the physical inventory of all property and equipment not later than the last quarter of each year so that reconciliation with the book balance can be made not later than January 31 of the succeeding year.

MOTOR VEHICLES

- f. The net book balance of the Motor Vehicle Account (241) in the amount of P18,091,140.78 is not reliable due to discrepancies noted between physical inventory list and the book balance resulting in the misstatement of the Motor Vehicle account and other related accounts at year end.**

Comparison of Inventory List submitted by the Property Management Division and Accounting Department records showed that all the vehicles that are duly turned over and/or owned by MWSS with an undetermined amount listed per PMD are not recorded in the books of MWSS. Meanwhile fourteen (14) items out of the fifteen (15) motor vehicles included in the accounting schedule are not included in the PMD Inventory List. Moreover, the Accounting records showed that motor vehicles with an acquisition cost of P328,338,176.84 but with a net book value of P17,054,841.65 are still subject for reconciliation. Considering the huge discrepancies, the balances of the Motor Vehicles and other related accounts such as depreciation expense and accumulated depreciation are misstated as of December 31, 2011.

It is recommended that Management take extra effort of reconciling the discrepancies noted in the Accounting and Property Management records by taking up any unrecorded assets in the books in order to arrive at the correct balance of the Motor Vehicle account and other related accounts at year end.

Management explained that the huge discrepancies between the book balance and physical inventory maybe attributed to the partial submission of physical inventory list which do not include motor vehicles assigned to the two (2) concessionaires, unserviceable units and others. The Finance and Property Management Departments are now in close coordination with both concessionaires to submit all the data required to complete the physical inventory of motor vehicles.

g. Several vehicles being used by MWSS are not registered under its name and others do not bear government plates contrary to the provision of COA Circular No. 75-6 and 77-6C.

The PMD Inventory showed a total of forty-three (43) motor vehicles, wherein seven (7) still belong to the AWUIAP Phase 2 Project (Construction in Process), fifteen (15) vehicles are already registered under the name of MWSS, while the ownership of the remaining twenty-one (21) vehicles has not been transferred to MWSS and therefore have not been converted to government plates (red plates). Of the fifteen (15) vehicles registered under the name of MWSS, four (4) vehicles are not converted to government plates contrary to the regulations on the proper use of government vehicles.

One of the reasons why government owned motor vehicles are required to have government plates is to prevent/discourage misuse of the said vehicles. For this purpose, COA Circular No. 75-6 dated November 7, 1975 re: V. Regulations in the Proper Use of Government Vehicles specifically requires the use of government plates by government owned vehicles:

“(4) Use of Government Plates –

All government motor vehicles shall bear government plates only. In case of bureaus, offices and agencies maintaining funds for intelligence purposes, the heads of such bureaus, offices or agencies are hereby requested to submit a list of security vehicles which may be added to the existing list of vehicles exempt from using government plates. Only the President, however, can authorize additional exemptions.”

Management is also reminded of COA Circular No. 77-6C dated January 24, 1977 which reiterates COA Circular No. 75-6 “... that even those vehicles of government owned and/or controlled corporations whether performing government or proprietary functions shall be issued government or RP plates without prejudice to the LTC collecting the registration fees depending upon the provisions of their respective charter.”

Moreover, one (1) serviceable Nissan Power Eagle vehicle with Plate No. UCD-941 registered under the name of Go Tong Electrical Supply Co. Inc. has an encumbrance noted in its Certificate of Registration.

Management must immediately facilitate the transfer of ownership of these motor vehicles to MWSS and convert them to the required government plates (red plates). Verify the reason for the encumbrance noted in the Certificate of Registration of Nissan Power Eagle vehicle with Plate No. UCD-941 and take appropriate action.

h. The Inventory list of motor vehicles submitted by PMD includes an undetermined amount of twelve (12) unserviceable motor vehicles that are eligible for disposal.

Out of 12 vehicles found to be unserviceable, only five (5) have Certificates of Registration under the name of MWSS. Considering the provision on the disposal of unserviceable vehicles, Management should take into consideration the following rules and regulations:

Section 79 of PD 1445 states that:

“When government property has become unserviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefore, be inspected by the head of agency or his duly authorized representative in the presence of the auditor concerned and, if found to be valueless or unsalable, it may be destroyed in their presence. If found to be valuable, it may be sold at public auction to the highest bidder under the supervision of the proper committee on award or similar body in the presence of the auditor concerned or other duly authorized representative of the Commission xxx.”

Section 501 of Government Accounting and Auditing Manual provides that:

“The full and sole authority and responsibility for the divestment or disposal of property and other assets owned by government-owned and/or-controlled corporations and their subsidiaries shall be lodged in the heads of government-owned or controlled corporations and their subsidiaries conformably to their respective corporate charters or articles of incorporation, who shall constitute the appropriate committee or body to undertake the same.”

We recommended that Management take immediate action to facilitate the appraisal and disposal of these unserviceable motor vehicles in line with PD 1445. As these unserviceable vehicles are stored in open storage, they are exposed to the elements and its continuous exposure thereof would further deteriorate its value.

Management may choose to adopt any of the five (5) modes of disposal appropriate for this kind, such as public auction, sale thru negotiation, barter, transfer to other government agencies, and destruction or condemnation (if valueless).

REGULATORY OFFICE

- i. Accuracy of the reported net book value of the Property, Plant and Equipment (PPE) totalling P158,804,793.89 as of December 31, 2011 could not be established due to the absence of periodic physical inventory and the non-reconciliation of the Accounting and Property records.**

Section 490 of the Government Accounting and Auditing Manual Volume I states:

“Inventories of supplies, materials and equipment.-Physical stock-taking is an indispensable procedure for checking the integrity of property custodianship. In all cases, the physical inventory-taking which is required semi-annually or annually should be regarded with importance.

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Chief of agencies are required to take a physical inventory of all the equipment and supplies belonging to their respective offices at least once a year, unless otherwise determined by the COA Chairman in specific cases. Such inventory shall be made as of December 31 on General Form 41 (A) (Appendix 12), and submitted to the Auditor not later than

January 31 of each year, unless extended by the Chairman, Commission on Audit, upon prior request of the chief of agency concerned. When the exigencies of the service permit, the taking of inventory should be in the charge of a committee of two or more employees designated by the chief of agency, including the property officer or custodian, depending on the extent of property accountability in a particular agency, to be witnessed by a representative of the Agency Auditor.”

Verification showed that no complete physical inventory was conducted for the following property and equipment of MWSS-RO totalling P158,804,793.89:

Account Name	Acquisition Cost	Accumulated Depreciation	Balance
Office Buildings	P2,925,095.64	P2,925,015.64	P80.00
Office Equipment	1,553,914.22	1,515,232.17	38,682.05*
Furniture & Fixtures	4,659,429.72	4,186,477.31	472,952.41
IT Equipment & Software	131,775,325.18	63,527,103.90	68,248,221.28*
Library Books	693,572.26	693,552.26	20.00
Communication Equipment	2,232,660.24	2,232,611.24	49.00
Medical, Dental & Lab Equipment	21,110.00	21,108.00	2.00
Sports Equipment	377,918.75	276,069.27	101,849.48
Technical & Scientific Equipment	3,395,486.20	3,006,503.69	388,982.51*
Other Machineries & Equipment	2,670,507.68	2,592,911.44	77,596.24*
Motor Vehicles	8,499,774.00	8,499,744.00	30.00*
TOTAL	158,804,793.89	89,476,328.92	69,328,464.97

*Partial result of physical inventory in 2011 was submitted only on May 29, 2012.

Physical inventory taking is an indispensable procedure for checking the integrity of property custodianship. Since no physical inventory of the assets of the agency and its non-reconciliation with accounting records, the reliability of the Plant Property and Equipment account balances is doubtful. The failure of MWSS-RO to submit the Inventory Report prevented this office from verifying if there are discrepancies between the physical inventory reports and the accounting records.

We recommended that Management conduct periodic physical inventory of all PPE to ascertain their existence and monitor the whereabouts and actual conditions; and comply with Government Auditing Rules and Regulations on the submission of physical inventory report to COA not later than January 31 of each year.

- 2. Various assets and liability accounts amounting to P370.83M and P473.86M, respectively, are still subject for verification/reconciliation as indicated in the Trial Balance. The balances therefore are of doubtful validity and accuracy that could overstate or understate the assets and liabilities accounts at year end.**

Review of the trial balance as of December 31, 2011 showed sixteen (16) asset accounts and thirty-four (34) liability accounts which remained unreconciled at year end. Extracted from the trial balance are the following accounts with huge unreconciled amounts:

Account Title	Account Code	Amount	Remarks indicated in the Trial Balance
Advances to Contractors-Mobilization	181-01-99	180,490,304.98	For reconciliation
Advances to Contractors-Prepaid Material Cost	181-02	10,309,890.78	For reconciliation
Other Assets-Construction, Materials and Hardware	290-02-01-99	96,861,591.76	For reconciliation
Other Assets-MLD	290-03-02-99	25,312,014.64	For reconciliation
Other Assets-for reconciliation	290-99	38,983,084.28	For reconciliation
Accounts Payable-MOOE	401-01-99	90,147,138.13	For verification/reconciliation
Due to Officers and Employees- Unclaimed Gratuity/Terminal Leave Pay	403-03-99	43,482,289.51	For verification
Guaranty Deposits Payable	426-01	170,633,522.90	For reconciliation
Other Payables-Retention from Various Contractors	439-01-99	107,460,953.67	For reconciliation
Other Deferred Credits to Income-Others	455-01-05-99	52,335,469.73	For reconciliation

Over the years, these various accounts remained unreconciled, affecting the reliability of the financial statements that are being prepared to provide information about the actual financial position and performance of MWSS.

We recommended that Management exert effort in reconciling these accounts to avoid further misstatement of assets and liability accounts in order to present fairly the financial condition of the agency.

Management explained that they created the Task Force-Book Clean-up per Office Order No. 2012-001 which will focus on the reconciliation of all accounts to resolve the negative issues and findings and avoid the misstatement of assets and liability accounts. Management committed to have the adjustments in 2012 for the clean-up of books.

- The discrepancy noted in prior year between the General Ledger balance and the supporting schedule of the account Due to Operating Units – Regulatory Office in the amount of P32M remained unreconciled. Likewise, the difference between the reciprocal accounts of MWSS Corporate and Regulatory Offices increased from P157M in CY 2010 to P358M in CY 2011 despite repeated recommendations for its immediate reconciliation.**

An analysis of the Due to Operating Units – Regulatory Office account disclosed a discrepancy of P31,958,193.13 between the General Ledger balance of Due to Operating Units – Regulatory Office (RO) of P522,060,484.91 and the Supporting Schedule balance of Due to Regulatory Office of P554,018,678.04. Based on the Schedule, the discrepancy consists of expenses advanced by the Corporate Office (CO) for CYs 2007 to 2009 in the total amount of P29,055,977.24 that was offset against remittances to Regulatory Office and an unaccounted difference of P2,902,215.89 that needed further reconciliation. The discrepancy remained unreconciled although this was already cited in last year's Annual Audit Report.

On the other hand, verification against records of MWSS-Regulatory Office revealed that the reciprocal accounts of the two offices remained unreconciled as of this date despite repeated audit observation on this condition. As of December 31, 2011, the account Due to Operating Units – Regulatory Office of MWSS- Corporate Office is

P522,060,484.91, while the account Due from Corporate Office/Home Office of MWSS-Regulatory Office is P880,330,340.51 or a difference of P358,269,855.60. The discrepancies may have resulted from the setting up and offsetting of charges made to reciprocal accounts without proper coordination between the CO and RO. Management of MWSS-CO and RO committed to create a team that would reconcile the accounts. However, verification disclosed that both CO and RO have not formally authorized and convened the groups that would reconcile these reciprocal accounts.

We reiterated our previous recommendations that Management:

- a. Immediately reconcile the discrepancies between the reciprocal accounts to come up with the valid and reliable balances in the books of both the CO and the RO. Thereafter, a periodic reconciliation of these accounts should be made and see to it that the balances are always reconciled. Management should ensure that only legitimate and authorized shared expenses are recorded against RO.
- b. Make representations with the MWSS Board of Trustees to formulate a written policy on the type and nature of charges to be made on these reciprocal accounts. Management should ensure that actual charges to these accounts should be approved/acknowledged as valid claims by the authorized official/s of the concerned offices; and
- c. Reconcile the balance of the controlling account in the General Ledger with the total balance per supporting Schedule to record the correct balance of the Payable account.

Management came up with the position that Regulatory Office be provided with their annual budget for administrative expenditure in accordance with the provision of the Concessionaire Agreement under Article 11.2. The Board resolution is expected to be passed in the 3rd quarter of this year. Reconciliation had been done by both parties and will finally be resolved as soon as they obtain the said board resolution.

4. The reported Cash in Bank-Local Currency and Other Investments and Marketable Securities - BTR Special Reserve Fund (SRF) accounts are overstated by P18.91M due to unreconciled amounts with various banks.

The MWSS-CO maintains its local currency accounts consisting of savings, current, time deposit and other investments at the Land Bank of the Philippines, Philippine National Bank, Development Bank of the Philippines and Bureau of Treasury.

Verification of records showed that as of December 31, 2011, the Cash in Bank-Local Currency and Other Investments and Marketable Securities - BTR SRF accounts have a balance of P1,613,497,396.39. However, comparison of book balances against the results of confirmation from the different MWSS depository banks disclosed that there were discrepancies noted between the book and bank balances resulting in the net overstatement of the recorded cash and Other Investments and Marketable Securities in the amount of P18,906,382.98, thereby casting doubt on the accuracy of these accounts at year end. The net overstatement is mainly due to unrecorded checks, deposits, debit/credit memoranda, excessive recording of interest income and other reconciling items in the cash maintained with PNB and DBP and Special Reserve Fund with the Bureau of the Treasury as follows:

BANK ACCOUNT	OVER/(UNDERSTATED)
CURRENT ACCOUNT	
LBP-Katipunan Branch-Main Fund	(19,966.56)
LBP-Katipunan Branch-Corp. Office	(6,419.59)
PNB-MWSS Branch- MPLP	803,000.00
SAVINGS ACCOUNT	
DBP-Makati Branch	3,305,332.33
LBP-Intramuros Branch-Special Acct. BTR	95,793.93
LBP-UP Diliman Branch	3,852.26
PNB-MWSS Branch-COLA Loan	17,866.56
PNB-MWSS Branch-Raw Water	(1,038.73)
COMBO ACCOUNT	
PNB-MWSS Branch-Corp. Office (Residual)	(1,680,600.87)
PNB-MWSS Branch-Main Fund (RA1616)	(1,577,053.45)
LOCAL CURRENCY- TIME DEPOSITS	
Development Bank of the Philippines	(0.22)
Land Bank of the Philippines	(44,863.40)
PNB-MWSS Branch	(229,412.93)
OTHER INVESTMENTS AND MARKETABLE SECURITIES	
Bureau of Treasury (Special Reserve Fund)	18,239,893.65
TOTAL	18,906,382.98

We recommended Management to reconcile the recorded Cash in Bank – Local Currency and Other Investments and Marketable Securities - BTR SRF accounts with the confirmed balances of the banks and prepare the necessary adjustments to arrive at the correct year end balances for their fair presentation in the Financial Statements.

- Loans Payable – Domestic and Foreign accounts of MWSS-CO and RO were revalued at year end using the FOREX closing rates on December 29, 2011 instead of the closing rates on December 31, 2011 thereby resulting in the overstatement of Liability and Loss on FOREX account as of December 31, 2011 by at least P50.89M. On the other hand, the corresponding Accrued Interest amounting to P220,129.49 was not recorded in the books of MWSS-RO for the fourth (4th) quarter of CY 2011. Moreover, all Foreign Currency Savings Account of MWSS-CO in the aggregate amount of P1.60M were not revalued at year end resulting in the net overstatement of Cash and Loss on FOREX as of December 31, 2011 by P212,868.24.**

International Accounting Standards (IAS 21) requires recording foreign currency monetary amounts at closing rate at each reporting date. On December 31, 2011, the valuation of Philippine Peso is P43.919 as prescribed by the Bangko Sentral ng Pilipinas Treasury Department Reference Exchange Rate Bulletin closing prices.

MWSS-CO

The Loans Payable – Domestic and Foreign accounts of MWSS-CO in the aggregate amount of P11,050,062,846.88 were revalued at year end using the FOREX closing rates on December 29, 2011 of P43.928 instead of the closing rates of P43.919 on December 31, 2011 resulting in the overstatement of Liability and Loss on FOREX account by at least P50,880,494.95.

Considering that the FOREX closing rates used are higher than the rates as of December 31, 2011, the Loans Payable account was overstated and the corresponding Loss on FOREX (Account 681) was overstated at year end by at least P50,880,494.95.

On the other hand, review of the trial balance and subsidiary ledgers as of December 31, 2011 showed that the following foreign currency cash accounts were not revalued as of December 31, 2011 resulting in a net overstatement of P212,868.24 of the cash account (116 account) and understatement of Loss on FOREX (681 account) at year end:

Account Title	Account Code	In Dollar	Balance per Book	FOREX Rate	Amount per Revaluation	Overstatement / (Understatement)
Bangko Sentral ng Pilipinas (BSP) managed by BTR	116-05-SA 01085295	\$294.73	228,608.66	P43.919	12,944.25	215,664.41
Land Bank of the Philippines-Katipunan Branch-Main Fund	116-05-SA 1464-0008-91	\$27,003.93	1,183,678.28	P43.919	1,185,985.60	(2,307.32)
PNB-MWSS – Main Fund	116-05-SA 244-702234-9	\$4,236.66	185,581.02	P43.919	186,069.87	(488.85)
TOTAL			1,597,867.96		1,384,999.72	212,868.24

Based on the subsidiary ledgers, the revaluation for Bangko Sentral ng Pilipinas cash account was done only on February 29, 2012 per JEV# 2012-02-1297 using the foreign exchange rate of P43.928 instead of P43.919.

MWSS-RO

The exchange rate of P43.919 as of December 31, 2011 was applied by the Bureau of Treasury in converting the outstanding balance of the IBRD Loan contracted by the Republic of the Philippines on May 15, 1999 to implement Part A of the Water District Development Project by MWSS which is P43,214,419.34. In contrast, the MWSS-RO used the conversion rate as of December 29, 2011 of P43.928 to 1 US\$ resulting in recording the Loans Payable-Long-Term at P43,223,274.96 or an overstatement of P8,855.62.

Further, verification showed that accrued interest in the amount of \$5,012.17 or P220,129.49 for the period September 15 to December 31, 2011 was not recognized in the books as of December 31, 2011. Thus, the Foreign Loans Payable of MWSS-RO is understated in the net amount of P211,273.87.

We recommended that necessary adjustments should be made for the recording of accrued interest and revaluation of the foreign currency cash and loans payable

accounts using the closing rates prescribed by the Bangko Sentral ng Pilipinas as of December 31, 2011 in order to present fairly the assets, liabilities and income of the agency at year end.

Management committed to adjust the difference noted due to application of incorrect foreign exchange rates in CY 2012.

6. Various expenses incurred in CY 2010 in the total amount of P104,687.57 were charged to current year's expenses resulting in overstatement of expenses and understatement of income for the year 2011.

The following expenses were incurred in CY 2010 by MWSS-RO but were recognized and recorded in the books as operating expenses of CY 2011:

Date	DV No.	Check No.	Particulars	Account Name/Code	Amount
Various	033-02/11	429432	Reimbursement of medical expenses	759	21,030.65
Various	035-02/11	429441	-do-	759	45,000.00
Dec.30, 2010	041-02/11	429444	Laboratory analysis	759	9,360.00
Jul-Aug.2010	061-02/11	429458	Security Services	797	14,345.00
Various	077-02/11	429467	Catering Services	783	11,510.00
Various	113-031/11	429490	Cellphone Expenses	773	3,441.92
TOTAL					104,687.57

Paragraph 25 of Philippine Accounting Standards (PAS 1) states that, except for cash flow information, an entity shall prepare financial statements using the accrual basis of accounting. The effects of transactions and other events are recognized when they occur and they are recorded and reported in the periods to which they relate.

The recording of prior year expenses in the books as current expenses has the effect of overstating the CY 2011 expenses and understating the income for the period. The prior year expenses should have been charged to Prior Years' Adjustments/Retained Earnings.

Necessary adjustment should be made to correct the accounts.

Management prepared the necessary adjustments in May 2012.

7. The abnormal balances in the Office Supply Inventory-Cell cards by P24,929.76 and Accounts Payable totalling P6.96M impaired the reliability of the financial statements of MWSS-RO as of December 31, 2011.

Verification of the Financial Statements of MWSS-RO for CY 2011, showed abnormal balances in Office Supply Inventory-Cell cards and Accounts Payable as shown in the following table:

Account Name	Account Code	Debit	Credit
Office Supply Inventory-Cell cards	155-4		24,929.76
A/P Vouchers Payable	401-1	5,869,381.44	
Due to BIR-VAT Professionals	412-3	104.66	
Due to BIR-Final VAT Withheld	412-5	21,143.39	
Due to GSIS-State Insurance	413-3	461.70	
Due to PAG-IBIG-Employees Loans	414-3	748.75	
Due to PHILHEALTH - Gov't. Share	415-1	25,835.00	
Due to OF-WF Gov't. Share	424-1	243,249.71	
Due to OF-WF Empl. Loans	424-3	562,349.75	
Due to OF-WF Empl. Ins.	424-3 INS	34,810.43	
Due to OF-Coop Capital	424-6	200,859.00	
TOTAL		6,958,943.83	24,929.76

These debit balances of Accounts Payable at the end of the year are indicative of overpayments of expenses or goods already delivered and/or services already rendered. It also indicates non set-up of payable and corresponding expense. On the other hand, credit balances in Office Supply Inventory-Cell cards indicate over issuance of Office Supply-Cell cards or non recording/erroneous recording of cell cards purchases.

Under the New Government Accounting System (NGAS), a liability shall be set up as "Accounts Payable" or the appropriate liability account only upon receipt of goods and/or rendition of the services. In the matching principle, the payable account for all expenses shall be recognized at the end of the period when expenses are already incurred although not yet paid.

In view thereof, we recommended that Management analyze the Accounts Payable and Office Supply Inventory-Cell cards that have abnormal balances and take immediate action to correct the deficiencies noted.

Management informed that they are still in the process of analyzing and preparing the necessary adjusting entries.

II. COMPLIANCE AND FINANCIAL CONTROLS

8. **The Corporate Operating Budget (COB) for the Calendar Year 2011 of MWSS-RO totalling P217.99M was not submitted during the year for review and approval of the President, through the Department of Budget and Management (DBM), contrary to Executive Orders No 518 and 292, series of 1979 and 1987, respectively. It was submitted to DBM only on May 18, 2012 and still waiting for its confirmation.**

The MWSS Board of Trustees approved the Corporate Operating Budget (COB) of MWSS-RO for CY 2011 on April 13, 2011 per Resolution No. 2011-035 and confirmed on May 26, 2011.

However, the COB was not submitted to the Department of Budget and Management during the year for its review and approval contrary to Section 6, Part II of Executive Orders No. 518, dated January 23, 1979, quoted as follows:

“Each government-owned or controlled corporations shall prepare an operating budget consisting of (1) estimates of revenue, (2) estimates of expenditure, and (3) estimates of borrowings. The expenditure estimates shall cover current operating and capital expenditures. The operating budget of each government owned or controlled corporation shall be prepared following such procedure and guidelines as may be determined by the President/Prime Minister. **They shall be prepared prior to the beginning of the fiscal year and recommended by the Government Board of the Corporation, for consideration and final approval of the President/Prime Minister.**”

Likewise, Section 19, Chapter 3, Book VI of Executive Order No. 292, Series of 1987 provides that :

“internal operating budgets of government-owned or controlled corporations shall be approved by their respective governing boards in accordance with a budget calendar and format as may be approved by the President: **Provided, that such budgets shall be subject to review and approval as part of the budget process in cases where national government budgetary support is needed, in terms of (a) capital or equity inputs, (b) operating contributions to support specific activities undertaken by the institution as part of its regular functions, and (c) guarantee of the national government for obligations or contracts entered into by the corporations:** provided, further, that the submission of interim financial statements may be required by the Secretary.” (Underscoring supplied)

In line with this provision, Management was reminded of Section 43, Chapter 5, Book VI of Executive Order No. 292, Series of 1987 that stated “xxx Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein,

and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.”

MWSS-RO does not require national budgetary support in the form of direct outlays from the national government. However, because of its foreign loan that required sovereign guarantee from the government, it still depends on the national budget support.

In view of the foregoing findings/observations, we recommended that management should submit annually the BOT-approved COB to the DBM before its budget execution. Otherwise, all payments made without the requisite approval of the President, through the DBM, may be considered illegal.

We were informed by the DBM that the CY 2011 COB of MWSS-RO was submitted to the DBM only on May 18, 2012, after the execution of the COB and the CY 2011 COB was confirmed by the DBM on July 17, 2012.

9. **The payment of Welfare Fund in CY 2011 was disallowed by the Department of Budget and Management (DBM) as it was devoid of approval from the Office of the President. The MWSS Board of Trustees, through its Board Resolutions, approved the gradual increase in the System’s share of the Welfare Fund from 5% to 35% without the required approval or confirmation from the Office of the President resulting in the over-incurrence of expenses from CYs 1999 to 2011.**

MWSS-Corporate Office

The Employee Savings and Welfare Fund was established on July 1, 1991 by virtue of Board Resolution No. 92-91 which shall consist of contributions from the regular employees and the MWSS at 5% of the standardized basic salary. MWSS released the amount of P15M as initial contribution to the Fund chargeable to the 1991 Budget. All expenses necessary in the administration of the fund shall be borne by the MWSS within the first two (2) years of operation.

On August 26, 1999, Board Resolution No. 164-99 was passed increasing the government share from 5% to 10% effective January 1999 and MWSS appropriated an amount of P755,700.60 for the purpose. However, the Department of Budget and Management (DBM) disapproved this particular increase for lack of approval/confirmation from the Office of the President. COA then issued AOM No. 2002 CO-019, dated August 30, 2002 citing the reason for the DBM’s disapproval of the increase.

In CYs 2005 to 2006, the government share gradually increased from 10% to 20% which still lacked the prior approval/confirmation from the Office of the President.

In CY 2010, government share was again increased from 20% to 35% effective January 2009 per approved Board Resolution No. 2010-009, dated January 14, 2010. However, based on the DBM-Approved Corporate Operating Budget (COB) for CY 2011, this provision for the Welfare Fund, also known as Provident Fund, was disapproved by the DBM for lack of legal basis. DBM remarked that the provident fund was authorized through Board Resolutions without approval or confirmation from the Office of the

President. For CY 2011, MWSS-CO paid a total of P16,290,957.98 for payment of Welfare Fund.

MWSS-Regulatory Office

The MWSS-Regulatory Office Employees Savings and Welfare Plan was established pursuant to the Collective Negotiation Agreement (CNA) approved under Board Resolution No. 320-2002, dated November 19, 2002 with the following objectives:

1. To provide savings mechanism, financial relief to members through the extension of economic benefit and financial assistance in case of emergency or other important needs;
2. To provide supplementary benefits upon retirement, disability or separation from the service, including payment to beneficiaries in the event of death of a member; and
3. To enhance employees welfare and motivate them to achieve higher productivity, thus, ensure continuous operation and implementation of the policies and objectives of the System's existence.

The Fund consists of the following:

- a. Member's Contribution – each member authorized the MWSS-RO to deduct monthly from his salary a sum equivalent to 5% of his basic salary, and
- b. MWSS-RO Contribution – the Office agreed to pay to the Fund as its monthly contribution an amount equivalent to 5% of each member's monthly basic salary.

Verification of the remittance of the contribution of MWSS-RO to the Fund showed that its contribution for whole year 2011 was advanced by MWSS-RO in January 2011 under PNB Check No. 4070 dated January 19, 2011 in the amount of ₱9,260,000.00 based on the computation of the Chief Corporate Accountant as follows:

Employees Total Monthly Basic Salary	₱ 1,957,970.00
RO's Share to the Welfare Fund (35%)	685,289.50
RO's Share January – June 2011	4,111,737.00
July – December 2011	5,139,671.25
Total System's Share for CY 2011	9,251,408.25
Rounded-off amount	₱ 9,260,000.00

However, the correct amount that corresponds to the MWSS-RO contribution was only ₱8,126,867.63 for CY 2011 resulting in the overpayment of ₱1,133,132.37 paid in advance to MWSS-RO Welfare Fund System.

Likewise, it was observed that the government share gradually increased from 5% to 35% (per MWSS Board Resolution Nos. 92-91, 164-99, 2005-105, 2006-021 and 2010-009) without the required approval or confirmation from the Office of the President of the Philippines as required by the DBM when it disapproved the provision for the Welfare Fund (Provident Fund) in the 2011 COB for lack of approval/confirmation from the Office of the President.

We recommended Management to obtain the post-facto approval/confirmation from the Office of the President for the increase of the government share as required by the Department of Budget and Management. Otherwise, the MWSS Board of Trustees and Agency officials who authorized the increase in government share shall be held liable for allowing the increase despite disapproval by the DBM.

RO Management commented that they shall work for the approval from the Office of the President of any increase in the government share in the Welfare Fund to ensure compliance with the DBM requirement.

10. MWSS-CO continued to incur various allowances and benefits for CY 2011 in the total amount of P6.39M that are not in accordance with the DBM-Approved Corporate Operating Budget of MWSS resulting in an over-incurrence of expenses by P5.88M.

The proposed budget submitted by MWSS to DBM for Meal Allowance, Productivity Incentive Allowance and Honorarium/Per Diem totalled P19,913,291 but the amount approved by DBM is only P504,000 leaving a variance of P19,409,291. The reasons cited by DBM for the variance are explicitly disclosed in the DBM-Approved Budget. However, Management still continued granting these benefits to its officials and employees.

Verification of records showed that MWSS incurred the following allowances and benefits for the period January 1 to December 31, 2011 in the aggregate amount of P6,387,725 as follows:

ALLOWANCE/ BENEFIT	DBM- APPROVED COB	EXPENSES PER FINANCIAL STATEMENT	OVER- INCURRENCE
Meal Allowance	54,000.00	4,236,325.00	(4,182,325.00)
Productivity Incentive Allowance	270,000.00	1,230,000.00	(960,000.00)
Honorarium/ Per Diem	180,000.00	921,400.00	(741,400.00)
TOTAL	504,000.00	6,387,725.00	(5,883,725.00)

The total expenses incurred for the above-mentioned allowances and benefits amounting to P6,387,725 is over and above the DBM-approved budget of P504,000 resulting in an over-incurrence of P5,883,725.

This observation had been the subject of our Audit Observation Memoranda which were included in our Annual Audit Reports and the corresponding Notices of Disallowance were already issued in previous years.

We recommended that Management's disbursements pertinent to allowances/benefits granted to its officials and employees should be in conformity with the budget approved by DBM.

Management commented that the various allowances and benefits were granted prior to R.A. 6758 (SSL). R.A. 6758 did not repeal the MWSS charter (RA 6234) nor the authority of the Board to continue granting benefits to its employees. The general law (SSL) has to yield to the special law (MWSS Charter).

The said benefits are authorized under Exhibit "F" of the Concessionaire Agreement which contains the official imprimatur of the Secretary of the Public Works and Highways, an alter ego of the President of the Philippines. By the doctrine of qualified agency, the approval of the Secretary of PWH carries with it the approval of the President of the Philippines.

As to the per diem of the members of the Board of Trustees, Management submitted a request to the Office of the President for the approval/confirmation for the increase in the payment of BOT per diem pursuant to Section 9 & 10 of EO No. 24.

With regards to Management's comment that the general law shall yield to the special law, CGS - Cluster B Decision No. 2011-007 dated June 30, 2011 is quoted as follows:

"Appellant also contends that the MWSS Charter, being a special law cannot be repealed by the SSL, which is a general law. Assuming for the sake of argument that the SSL is a general law, the intent of the said law, which can be gleaned in the rationale thereof, is to make it applicable to all classes of agencies including those created under special charters. The MWSS Charter's provision on the authority of the Board of trustees to fix the salary and benefits of its employees is a general provision when it comes to salaries and benefits of MWSS. On the other hand, we find that Sections 12 and 16 of the SSL are special provisions when it comes to salaries and allowances of government employees which are applicable to all kinds of agencies and are therefore the controlling provisions.xxx

As to the applicability of the Concession Agreement (CA), which appellant contends is the working framework relative to the privatization of MWSS, COA under COA LAO Corporate (LAO-C) Decision No. 2002-001 dated September 3, 2002, ruled that the allowances and benefits enumerated in the said CA are intended for the protection and benefit of former MWSS employees who were hired by the concessionaires upon privatization of MWSS. The Concession Agreement sought to avoid the diminution of benefits already received by the pre-privatization employees of MWSS.

As such, this Office agrees with the then COA LAO Decision that the CA is meant for employees of the Concessionaire which are formerly MWSS employees xxx”

11. MWSS Officials and employees were paid Rice Allowance, Anniversary Bonus and Longevity Pay in the amount of P10.80M for CY 2011 without the required approval or confirmation from the Office of the President as disclosed in the DBM-Approved Corporate Operating Budget of MWSS. Meanwhile, Anniversary Bonus was given, although year 2011 was not a milestone year for MWSS.

Verification of records showed that the officials and employees of MWSS were paid Rice Allowance, Anniversary Bonus and Longevity Pay for the period January 1 to December 31, 2011 in the aggregate amount of P10,797,622.47 as follows:

Rice Allowance	P 2,671,788.69
Anniversary Bonus	3,251,736.50
Longevity pay	4,874,097.28
Total	P 10,797,622.47

Review of the DBM-Approved Corporate Operating Budget for CY 2011 showed that the above-mentioned remunerations have no legal basis since there was no approval or confirmation from the Office of the President for the grant of these allowances. Nevertheless, MWSS Management continued the payment using Board Resolutions as basis for the disbursement of funds.

It is also noteworthy to mention that the Anniversary Bonus in the amount of P3.5M was included in the Excess Provision of the DBM-Approved Corporate Operating Budget since CY 2011 is not a milestone year for the MWSS. As provided under Administrative Order No. 263 dated March 28, 1996 and National Budget Circular No. 452, dated May 20, 1996, anniversary bonus is granted to government employees on the occasion of its milestone anniversary which refers to the 15th Anniversary and to every fifth year thereafter (Section 2.4 of AO No. 263).

Further, the observation on illegal or excess payment of allowances was already cited in previous AARs.

Management should discontinue the grant of Rice Allowance, Anniversary Bonus and Longevity Pay for lack of legal basis particularly the approval or confirmation from the Office of the President for the disbursement of these allowances as prescribed in the DBM-approved budget for CY 2011.

Management justified receipt of the allowances with the issuance of the following Board Resolutions:

Rice allowance-

- BR# 144-93 (Act of Magnanimity)

- BR# 152-98 (to alleviate the plight of employees)
- BR# 2007-134 (CNA)

Anniversary Bonus- Concessionaire Agreement

- BR# 88-86
- BR# 216-87
- BR# 26-94
- BR# 2005-049
- BR# 2007-002

Longevity Pay –

- BR# 14-72 & 113-94

However, the subject benefits were all granted pursuant only to Board Resolutions without the requisite approval from the Office of the President as required under Section 2 of PD 985 which states that:

“Provided, that notwithstanding a standardized salary established for all employees, additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies.”

- 12. Despite previous disallowances, the MWSS-CO continued to grant Representation and Transportation Allowance (RATA) to Officials and employees of MWSS in excess of DBM authorized rates and positions. Moreover, DBM allowed the payment of RATA only in the amount of P1.95M for CY 2011 but RATA paid during the year totalled P9.49M or an excess of P7.54M.**

Verification of records showed that the officials and employees of MWSS were paid RATA for the period January 1 to December 31, 2011 in the amount of P9,487,003.95 as follows:

Representation Allowance	P 8,987,842.35
Transportation Allowance	499,161.60
Total	<u><u>P 9,487,003.95</u></u>

It was noted that Management continued to pay RATA equivalent to 40% of basic salary to officials and employees who were not incumbents and were not receiving RATA as of July 1, 1989. The Supreme Court had ruled in the case of Philippine Ports Authority vs. COA (214 SCRA 653), that LOI 97 which provides RATA equivalent to 40% of basic salary shall apply only to officials who were incumbents and were receiving RATA as of July 1, 1989. It stressed that the giving of RATA to officials hired after July 1, 1989 will be tantamount to the conferment of additional financial incentives which is no longer allowed under Section 16 of R.A. 6758. They are entitled to receive RATA at the rates authorized under the General Appropriations Act (GAA) using the GAA rates as basis for the payment of RATA.

MWSS employees whose positions are below Salary Grade (SG) 24 and whose positions are not among those mentioned in the GAA were also paid RATA based on LOI 97. Following the ruling in PPA vs. COA, payment of RATA shall be in accordance with the provisions of the GAA but only if their positions are among those mentioned therein. The GAA allows RATA only to Division Chiefs and above or those positions with SG-24 and above.

Moreover, for CY 2011, DBM approved the payment of RATA for MWSS officials in the total amount of P1,951,000 whereas the actual RATA incurred during the year totalled P9,487,003.95 or an excess payment of RATA by P7,536,003.95, computed as follows:

Amount of RATA allowed by DBM	P1,951,000.00
RATA paid during the year	<u>9,487,003.95</u>
Excess payment of RATA	(7,536,003.95)
	=====

Based on DBM-Approved COB of MWSS for CY 2011, RATA of Governing Board is not allowed inasmuch as Section 12 of E.O. No. 24 provides that all necessary expenses of members of the Board of Trustees to attend Board and other meetings and discharge their official duties shall be paid directly by the GOCC. On the other hand, RATA of MWSS officials of P9.9M was not allowed as this amount pertains to excess provision for positions not entitled to RATA.

This is a reiteration of last year's audit observation and Notices of Disallowances were already issued for these audit findings.

We recommended that Management should adhere to the DBM-authorized RATA rates as stated in the General Appropriations Act (GAA) and limit the grant of RATA to MWSS officials who are entitled to receive these allowances.

Management replied that there are legal bases for the grant of 40% RATA not only to incumbents as of July 1989 but also to those hired thereafter. RATA was granted by virtue of LOI 97 dated August 1979 which is a special law and therefore cannot be repealed by RA 6758 (Salary Standardization Law) which is a law of general application.

The position that only those hired before 1989 shall be entitled to RATA equivalent to 40% is contrary to the ruling of the high court in the case of Irene Cruz, Lilia M. Cruz, et. al. vs. COA, CGR No. 134740 dated October 23, 2001, which held that the date of hiring of an employee cannot be considered as a substantial distinction. The employees, based on the title or position they were holding, were exposed to the same type of work, regardless of the date they were hired. The entitlement of MWSS employees to RATA has already been resolved by the courts: Pedro Aguilar et. al. vs. MWSS (CC No. Q-91-8964) in favor of the petitioners.

However, we invoke COA Decision No. 2009-072 dated Sept. 1, 2009 which rules that:

“The newly-hired employees did not acquire any right over the 40 percent RATA then enjoyed by the retired MWSS employees pursuant to LOI No. 97 as they are not incumbents referred to under RA 6758. This issue has been squarely addressed in PPA vs. COA, *supra* where

the Supreme Court classified the petitioners into two categories. The first category officials were incumbents as of July 1, 1989 and more importantly, they were receiving the RATA provided by LOI No. 97 as of July 1, 1989 while the second category officials were incumbents as of July 1, 1989 but were not receiving said RATA as of July 1, 1989. The court ruled thusly:

“We therefore adjudge that these second category officials may not avail themselves of the RATA under LOI No. 97. Their RATA shall be paid in accordance with the provisions of the annual General Appropriations Acts, if their positions are among those mentioned therein.”

Records show that no one among the thirty (30) persons held liable under the ND belonged to the first category of incumbents and at the same time recipient of the forty percent RATA provided by LOI No. 97 as of July 1, 1989. Thus, following the ruling in the PPA case, whatever payment of RATA shall be in accordance with the provisions of the GAA but only if their positions are among those mentioned therein. Section 41 of the 2000 GAA allowed RATA only to Division Chiefs and above or those positions with salary grade 24 and above.”

13. Hazard Pay amounting to P1,854,700.25 was paid to MWSS officials and employees for CY 2011 contrary to Section 3.0 of DBM Budget Circular No. 2005-4 dated July 13, 2005. Likewise, DBM annually rules that Hazard Pay of MWSS has no legal basis.

Verification of records showed that the officials and employees of MWSS-CO and RO were paid Hazard Pay for the period January 1 to December 31, 2011 in the amount of P1,367,320.25 and P487,380, respectively, despite the fact that MWSS office, located at MWSS Compound, Old Balara, Quezon City, is neither a strife-torn or embattled area nor exposed to harmful elements or situations as required under Section 3.0 of DBM Budget Circular No. 2005-4.

Section 3.1.1 and 3.1.2 of Section 3.0 on the Rules and Regulations on Hazard Duty Pay (HDP) under DBM Budget Circular No. 2005-4 states:

“3.1 Heads of government agencies may grant HDP to their personnel at the following rates without the need for approval by the Department of Budget and Management (DBM), provided that the following conditions are met:

3.1.1 The personnel were actually assigned to, and performing their duties and responsibilities in, strife-torn or embattled areas xxx:

3.1.2 The areas of assignment have been determined and certified by the Secretary of National Defense or by his authorized representative as strife-torn or embattled areas.”

Since the MWSS office does not fall under any of the areas enumerated in the above-mentioned regulations and no certification from the Secretary of National Defense was

issued, the payment of Hazard Pay has no legal basis. Moreover, the payment of hazard pay was ruled by DBM as without legal basis pursuant to DBM-approved COBs for CY 2010-2011.

This observation had been the subject of our Audit Observation Memoranda which were included in our Annual Audit Reports and Notices of Disallowance were already issued in previous years.

Management should discontinue the grant and cause the refund of the payment of Hazard Pay to its officials and employees since not all MWSS employees perform their duties in strife-torn or embattled areas and their lives are not directly exposed to harmful elements or situations that endanger life or health.

For MWSS employees who are directly exposed to harmful elements or situations that endanger life or health, Management could grant the hazard pay to their employees provided all the conditions set forth under DBM Budget Circular No. 2005-4 are met. The claimant should also submit a copy of a Special Order from the Administrator covering the assignment to hazardous areas and a Certification by the Secretary of Department of Health, Department of National Defense or Director of the Philippine Institute of Volcanology and Seismology that the place of assignment/travel is a strife-torn/embattled area or with volcanic activity and/or eruption.

Management commented that Hazard Pay was granted to its officials and employees way back in 1996 per Board Resolution No. 72-96 dated April 24, 1996 pursuant to a certification dated April 23, 1996 issued by Dr. Carmencita Noriega-Reodica, then Secretary of Health. Said allowance is likewise included under Exhibit F of the CA dated Feb. 27, 1997 and became effective on August 1, 1997 as existing benefits to MWSS officials and employees. The disallowance of the hazard pay would violate the principle of non diminution of benefits to MWSS employees as stipulated in the CA.

We reiterate our position that the payment of Hazard Pay requires the recommendation of the Department Head and approval of the Secretary of Budget and Management. The budget for the payment of Hazard Pay of MWSS for CY 2011 was not approved by the DBM. The certification issued by the Secretary of Health is valid only on the year it was issued.

- 14. There were deficiencies noted on some of the provisions of the Memorandum of Agreement (MOA) for the operation of La Mesa Resort Zone (La Mesa Ecopark). Moreover, the 40% share in the net income generated from La Mesa Ecopark was not recorded in the books of MWSS pursuant to Section 11 of the MOA among the parties involved.**

The MWSS, seeing the need to rehabilitate the La Mesa Watershed, relocated the informal settler families (ISF) living inside the watershed. The removal of the ISF paved the way for MWSS to execute a formal contract/agreement with a Non-Government Organization (NGO), ABS-CBN Foundation Inc. (AFI), thru a Memorandum of Understanding (MOU) to reforest and protect the La Mesa Watershed for a period of fifteen (15) years starting on November 23, 2001 when the contract was signed.

On April 12, 2005 a Memorandum of Agreement (MOA) by and among the MWSS, Local Government of Quezon City (LGQC) and AFI was executed relative to the operation of the La Mesa Resort Zone or the La Mesa Ecopark.

Under Section 11 of the MOA, the profit sharing of the parties involved in the La Mesa Ecopark operations shall be as follows:

1. MWSS - 40 % of net income
2. AFI - 30 % of net income
3. LGQC - 30 % of net income

a) There were deficiencies noted on some of the provisions of the Memorandum of Agreement for the operation of La Mesa Resort Zone (La Mesa Ecopark).

Review of the MOU dated November 23, 2001 and MOA (undated) executed by MWSS with ABS-CBN Foundation Inc. (AFI) and the Local Government of Quezon City disclosed the following deficiencies noted on some of its provisions:

1. The MOU and the MOA contain conflicting provision relative to the Environmental Trust Fund (ETF). Section 1 of the MOA provides for the creation at La Mesa Resort Zone – Executive Committee (LMRZ-EC) composed of two (2) representatives each from MWSS, AFI, and LGQC. The Committee shall take the stewardship of the Environmental Trust Fund (ETF) under the control of the MWSS Board of Trustees (BOT) and under the supervision of the La Mesa Executive Board (LMEB). However, under Section 1.a.v of Article IV of the MOU– Management and Operations Framework– the LMEB shall take stewardship and control of the ETF.

We recommended that the MWSS Board of Trustees should clearly designate the stewardship and control of the Environmental Trust Fund to either LMEB or the LMRZ-EC.

2. Section 1.2 of the MOA provides also that the LMRZ-EC will be tasked to approve and supervise the implementation of the La Mesa Resort Framework Plan and all pertinent programs and plans relative to the operation of the La Mesa Resort Zone. However, no committee was formed since the inception of the contract.

We recommended the creation of the LMRZ-EC that will formulate policies regarding the LMRZ aside from other functions and responsibilities stated in the MOA. Upon creation, members of said body should convene regularly to address and assess the operations and concern of the LMRZ/La Mesa Ecopark.

3. Section 6 of MOA requires that all funds generated from the operation of the LMRZ should be deposited under Special Account – Environmental Trust Fund (ETF) – to be opened in the name of the three (3) contracting parties MWSS, AFI and LGQC, and any/all transactions or withdrawal involving the ETF shall be considered approved if signed and approved by at least two (2) official representatives/signatories of either MWSS and AFI, or MWSS and LGQC, who shall be appointed by the respective parties. However, documents showed that all accounts were opened in the name of AFI only and not in the name of the three (3) contracting parties and transactions/withdrawals were made without the consent of MWSS.

We recommended compliance with the provisions of Section 6 of the MOA in order to maintain sound internal controls by opening an account in the name of the three (3) contracting parties. All transactions shall be authorized with the consent of MWSS representative.

4. Section 22 of the MOA mentioned four (4) requisites for the Agreement to be effective. The MOA shall be :

1. Signed by the parties
2. Approved by proper authorities
3. Reviewed by the Office of the Government Corporate Council (OGCC)
Ratified by the LGQC Sanggunian.

Requisites number two (2) and four (4) were not complied. There was no MWSS Resolution approving the MOA as per certification by the Board Secretariat of MWSS. Also, the contract was not ratified by the LGQC Sanggunian as confirmed by Mr. Francisco Mallillin to IAD Manager Bienvenido A. Sarmiento based on the report of Virgilio P. Matel, Officer-in-Charge of the Internal Audit Department during that time.

MWSS should require the post facto approval and ratification of the MOA to enable the Agreement to be fully effective. Otherwise, the MOA could be considered null and void.

5. In managing and operating the La Mesa Ecopark, AFI deduct 15% from the gross revenue thereof as management fees. However, no supporting document was presented to show approval by either the MWSS Board of Trustees or La Mesa Executive Board on the 15% management fee being charged by the AFI. Furthermore, with AFI charging another 15% management fee on gross revenue over and above the existing profit-sharing of 40:30:30, 40% as MWSS share, 30% each for AFI and LGQC, it would now appear that AFI has a greater share in the revenues and income derived from the operations of the La Mesa Resort Zone.

Seek the approval of the 15% management fee being charged by the AFI from the MWSS Board in order to comply with Section 1.1 of the MOA.

b) The 40% share in the net income generated from La Mesa Ecopark operation (La Mesa Resort Zone) was not recorded in the books of the MWSS pursuant to Section 11 of the MOA among the parties involved.

Section 11 of the MOA requires that Financial Report shall be prepared and submitted by the AFI to the La Mesa Executive Board (LMEB) from its initial operation ending June 30, 2005 and the annual financial report thereafter and the income shall be distributed among the parties accordingly.

However, the AFI failed to submit the annual financial report as required in the MOA. Finally, on November 5, 2009 the Internal Audit Department (IAD) of MWSS received the audited Financial Statements of La Mesa Ecopark/Watershed Operation covering the period 2004 to June 30, 2009 or a period of five (5) years. Listed below are the summary of revenues and expenses for the years ending December 31:

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>30-Jun-09</u>	<u>Total</u>
Revenue	9,135,846	26,608,500	31,280,265	28,673,420	28,427,142	22,045,256	146,170,429
Direct Exp	6,871,631	15,275,842	11,692,372	3,374,657	2,552,642	2,338,136	42,105,280
Oper. Exp	990,231	9,034,482	17,400,484	17,513,220	23,529,284	13,912,852	82,380,553
Oper. Inc.	1,273,984	2,298,176	2,187,409	7,785,543	2,345,216	5,794,268	21,684,596
Other Income	<u>1,459</u>	<u>34,323</u>	<u>76,715</u>	<u>64</u>	<u>280,352</u>	<u>30,262</u>	<u>423,175</u>
Net Income	<u>1,275,443</u>	<u>2,332,499</u>	<u>2,264,124</u>	<u>7,785,607</u>	<u>2,625,568</u>	<u>5,824,530</u>	<u>22,107,771</u>

Included in the direct expenses is the 15% management fee charged by the AFI amounting to P20,555,187 for five and a half years from the period 2005 to June 30, 2009, whereas the 40% share of MWSS on the net income after tax has not been remitted as of today. Based on the audited Financial Statements of the La Mesa Ecopark, the total income for the period 2005 to June 2009 was P20,832,328, hence the share of MWSS should be P8,332,931.20 subject to income tax.

We recommended that Management require the AFI to submit the Annual Financial Report and remit the corresponding share of income to the MWSS. The books of account of the La Mesa Ecopark should be made available to the duly authorized representative of MWSS as required under Section 12 of the MOA.

15. There were deficiencies noted in the hiring of Consultants in CY 2011.

a) Consultants were hired despite moratorium on the hiring of new casuals/contractual, including personnel on consultancy/emergency/ job order basis in all government agencies whose Rationalization Plan has not been approved as provided under Section 7 of Executive Order No. 366 and Section 13 of its Implementing Rules and Regulations.

DBM Circular Letter No. 2009-13, dated December 18, 2009 was issued to reiterate the continuing moratorium on the filling of vacant regular/permanent/itemized positions by Department/Agencies/GOCCs/GFIs of the Executive Branch and the hiring of new casuals/contractual, including personnel on consultancy basis, while their respective Rationalization Plan has not been approved. This is consistent with Section 7 of Executive Order No. 366 and Section 13 of its Implementing Rules and Regulations.

Based on available documents and information, MWSS is still developing its new Rationalization Plan (RatPlan). In fact, one of the consultants hired by MWSS was tasked to do the preparatory work for the development of the new RatPlan of MWSS.

Management commented that the prohibition on non-hiring of contractual employees or renewal of contracts of contractual personnel pursuant to Section 13 of Executive Order No. 366, refers to contractual appointment which is issued to a person who shall undertake specific work or job for a limited period not to exceed one year. The appointing authority shall indicate the inclusive period covered by the appointment or

purposes of crediting services. (MC No. 38, S. 1993 II (5) as amended by CSC Resolution No. 95-0588).

Management also clarified that what is covered by the prohibition on non-hiring and non-renewal under Section 7 of E.O. No. 366 and Section 13 of the IRR, contemplates contractual and casual appointments where there exists an employer-employee relationship, and not contract of services in the context of consultancy---absent employer-employee relationship.

Be that as it may, many of the consultants referred to in the AOM were hired even before the conceptualization of the RATPLAN was seriously considered by Management. There is no concept yet of the RATPLAN being organized and formulated nor the same was submitted to the DBM or the Office of the President for approval hence, the phrase "including personnel on consultancy bases, while their respective Rationalization Plan (RP) has not yet been approved" (1.1 of the DBM Circular Letter No. 2009-13 dated December 18, 2009) contemplates a situation where a RATPLAN was already devised and organized as per mandate of the E.O. No. 366 and already submitted to the DBM or to the Office of the President for approval.

Otherwise stated, there is already an imminent functional RATPLAN. The prohibition or moratorium on the hiring of casuals/contractual including personnel on consultancy will set in only in-between the time from the submission of the RATPLAN and the time when approved by the President.

Finally, Management explained that this is not the case obtaining in the context of the RATPLAN adverted to in the AOM simply because there is no embodiment yet or organized RATPLAN pursuant to E.O. No. 366.

COA invokes DBM Circular Letter No. 2009-13 issued on December 18, 2009 which specifically reiterates the continuing moratorium in the hiring of new casuals/contractual, including personnel on consultancy basis while the Rationalization Plan (RATPLAN) has not yet been approved. Based on such provision, the hiring of personnel on consultancy basis is included in the moratorium and pertains not only to appointments where there exists an employer-employee relationship. Moreover, it is clear that the moratorium prevails when the Rationalization Plan is not yet approved contrary to what management said that it will set in only in-between the time from the submission of the RATPLAN and the time when approved by the President.

b) The procurement of the consultancy services was done without public bidding as required under RA 9184.

Section 2 of the Revised IRR of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, dated July 22, 2003 provides that it is the policy of the government that procurement of infrastructure projects, goods and consulting services shall be competitive and transparent and therefore shall go through public bidding. Likewise, Section 10 of said IRR requires that all procurement shall be done through competitive bidding, except as provided for in Article XVI of RA 9184.

Review of Consultancy Services account of MWSS-CO for CY 2011 showed several payments for the services of consultants for various activities. Based on documents

made available to COA, the hiring of consultants were not done through competitive bidding contrary to Section 10 of the IRR of RA 9184.

Section 48.1 of IRR of RA 9184 provides that the procuring entity may resort to any of the alternative methods of procurement provided in the IRR but the procuring entity shall ensure that the most advantageous price of the Government is obtained. Section 53.f of the same IRR also provides that:

“Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with technically, legally and financially capable supplier, contractor or consultant only in the following cases: xxx

f) In the case of individual consultants hired to do work that is (i) highly technical or proprietary, or (ii) primarily confidential or policy determining where trust and confidence are the primary consideration for the hiring of the consultant”xxx

Based on the review of Contract and Accomplishment Reports of the hired consultants, their work could not be considered highly technical, proprietary, primarily confidential or policy determining where trust and confidence are the primary consideration for their hiring. Services rendered include legal support services, retrieval of the Customers’ Master File from the Computer Main Frame to Personal Computer, website applications, water roadmap development and strategic management process. These duties and responsibilities duplicate the functions of the MWSS personnel assigned at the Legal Services Department, Corplan Department, Operations Department, Finance Department among others. As such, the hiring of the consultants without the benefit of public bidding is not justifiable. The requirement that the System obtained the most advantageous price is not assured in hiring these consultants.

Management agreed that as a general rule, the procurement of services shall be done through competitive bidding except as provided in Rule XVI of the IRR of RA No. 9184.

Management resorted to other means of procuring consultancy services, rather than public bidding, to address its immediate concerns and urgent needs in the different areas of operations.

Management had justified the hiring of the consultants by citing Section 53.f of the IRR of RA No. 9184 which provides:

“In the case of individual consultants hired to do work (I) highly technical or propriety; (II) primarily confidential or policy-determining, where the trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, that the term of the individual consultants shall, at the most, be on six (6) month basis, renewal at the option of the appointing head of the Procuring entity, but in no case shall exceed the term of the latter.”

The said consultants whose names appear in the Annexes of the AOM were hired by Management based primarily on trust and confidence.

The observation that the services performed by the consultants virtually duplicates the functions of MWSS personnel assigned at the Legal Services Department, CORPLAN Department, Operations and Finance Departments, is not in keeping with the primacy of trust and confidence principle.

Further, one or two aspects of the job done by the consultants as mentioned in the AOM are not definitive enough or yardstick to consider such as not highly technical, primarily confidential or policy-determining. It cannot be defined as such in one sweeping declaration or serve to bolster such categorization.

Be that as it may, one aspect of the job is not defining and all encompassing to determine whether it is highly technical, primarily confidential or policy-determining. Even the Supreme Court was hard-put in defining highly technical, primarily confidential or policy-determining but more prone to consider it on a case to case bases.

The degree of difficulty of defining whether the task is primarily confidential, highly technical or policy-determining is best enunciated in the case: Civil Service Commission and Philippine Amusement and Gaming Corporation, petitioners versus Rafael M. Salas, respondent [G.R. No. 123708 June 19, 1997], citing the case of Piñero, et al. versus Hechanova, et al.

By and large, the job of consultants should be viewed in its holistic concept rather than on a piecemeal basis with the thought in mind that the essence or primacy consideration of hiring of these consultants being the trust and confidence reposed on them by the Management.

The audit team considers/accepts that the hiring of consultants can be procured through negotiated contract where trust and confidence are the primacy consideration for the hiring of the consultant. However, it was indicated in Management's Comments that under Supreme Court Decision No. GR 123708 there was a question raised by Senator Tolentino and we quote "But in positions that involved both confidential matters and matters which are routine, who is going to determine whether it is primarily confidential?" Senator Tañada replied that at the first instance, "it is the *appointing power* that determines that. In case of *conflict* then it is the *court* that determines whether the position is primarily confidential or not."

c) There are available MWSS personnel who can perform the designated duties and responsibilities of the hired consultants, negating the necessity of hiring.

Evaluation of the duties and responsibilities of the hired consultants and their Accomplishment Reports revealed the following:

1. Included in the list of consultants are lawyers who were hired as Legal Consultants/Advisers without prior approval of the Government Corporate Counsel and the written concurrence of COA as required under COA Circular No. 95-011 dated December 4, 1995. Moreover, the Legal Services Department of MWSS is being manned by lawyers whose functions are to provide advise on the legal implications of

policies and the performance of legal service in the Corporation. The services of the Legal Adviser/ Consultants are deemed duplication of the functions of the Legal Services Department.

2. The hiring of consultant for doing the preparatory work in the development of the New Rationalization Plan is not consistent with the provisions of the Implementing Rules and Regulations of RA 366 (Strategic Review of the Operations and Organizations of the Executive Branch). The IRR provides for the creation of a Change Management Team (CMT) within the agency who shall conduct the strategic review of its operation and organization. The CMT shall have at least one (1) representative of the agency's accredited union sitting in as member. This is the team that should have undertaken the duties and responsibilities of the hired consultants whose services rendered may be deemed unnecessary.

3. Review of the duties and responsibilities performed by the consultants as specified in their Contract for Consultancy Services showed that there were consultants who are performing ordinary functions which can be provided by the regular staff of the MWSS. In particular are the Website Applications, Retrieval of Customers' Master File from the Computer Main Frame to Personal Computer and Review of Vision, Mission Statements and Key Results Areas of MWSS. There may be regular staff of the MWSS who can handle technical matters like Water Roadmap Development, Geographic Information Systems of MWSS Properties if these tasks are assigned to them.

4. There were consultants hired in the field of Finance, Control and Management (FCM). This is contrary to Section 32 of PD 1445 which states that no government agency shall enter into any contract with any private person or firm for services to undertake studies and services relating to government auditing, accounting and related services unless the proposed contract is first submitted to COA to enable it to determine if it has the resources to undertake such studies or services.

5. It was also noted that one of the functions of a consultant is the retrieval, cleansing, determination and segregation of Guaranty Deposit. However the Financial Statements of MWSS as of December 31, 2011 showed that the Guaranty Deposit account is still subject for further reconciliation/ verification. This is the subject of the issued AOM No. CO-11-06 dated May 7, 2012.

Management claimed that consultants hired in the field of Finance, Control and Management is not contrary to Section 32 of PD 1445.

The consultants were hired not to undertake studies and services relating to government auditing including services to conduct for a fee, seminars, or workshops for government personnel on topics pertaining to auditing, but to review the overall operating framework of MWSS.

The issue on the preparatory work in the development of the RATPLAN done by a consultant is different from the creation of CMT, the latter being already the component of the whole RATPLAN, which is no longer preparatory but essential ingredient of the entire RATPLAN.

This is now moot and academic since Management shifted to reorganization under RA 6656.

Management also explained that the processes of retrieval, cleansing determination and segregation of Guarantee Deposit Account are phases of the job done by the consultant. Whether the product or output of the work done is subject for further reconciliation/verification is but a normal process to validate the output which is beyond the control of the consultant.

d) Payments of consultancy fees were approved by the MWSS Board of Trustees only on October 25, 2011 after the actual services were rendered. In one instance, no contract was executed for services rendered and paid.

MWSS Board Resolution Nos. 2011-054 and 2011-055, both dated October 25, 2011 approved and affirmed the payment of consultancy fees for actual services rendered by the hired consultants. The approval and affirmation was made after the actual services were rendered. Further, review of consultancy contracts showed that there were several instances that the contracts were executed after the services were already rendered which is not the norm in hiring the services of a private person or entity. It was also noted that no contract was executed for the services rendered by Atty. Emmanuel Caparas for the period February to May 2011.

Management explained that the action taken by the MWSS Board of Trustees approving and affirming the payment of consultancy fees for actual services rendered by the hired consultants is legal and valid---based on the principles of *quantum meruit* and *solutio indebiti*.

If ever there were contracts after the services were already rendered, it could be due to inadvertence and good faith. Management had already instituted corrective measures to obviate repetition of such administrative lapse.

The team accepts that the Board Resolution approved and affirmed the payments of consultancy fees based on the principles of *quantum meruit* and *solutio indebiti*. The audit observation merely pointed out that the norm in hiring and paying the services of consultants were not followed.

It is recommended that henceforth MWSS should strictly adhere to prevailing rules and regulations on the hiring of consultants.

- 16. The procurement of private health insurance in the aggregate amount of P3.06M by MWSS-CO and RO from Medicaid Philippines, Inc. covering the period March 18, 2011 to March 17, 2012 is contrary to COA Resolution No. 2005-001 dated February 3, 2005.**

COA Resolution No. 2005-001 dated February 3, 2005 stated that:

“The procurement of private health insurance by any agency or instrumentality of the government is an irregular expenditure and constitutes unnecessary use of public funds which cannot be countenanced by this Commission.”

It further stated that: “violation of this Resolution shall cause the disallowance of the corresponding disbursement of funds and the heads of the agencies or instrumentalities

involved including the government owned and/or controlled corporations and those officials participating therein shall be held personally liable therefore.”

Contrary to this provision, MWSS-CO and RO procured private health insurance from Medicaid Philippines, Inc. covering the period March 18, 2011 to March 17, 2012 in the amount of P1,667,481.36 and P1,389,177, respectively.

The abovementioned COA Resolution laid down the rationale behind the prohibition from securing health care insurance from Private Insurance Agencies, as follows:

“WHEREAS, under existing Civil Service Law, rules and regulations, it is prescribed that there shall be a health program in the government aimed at improving the working conditions of the employees;

WHEREAS, such program is provided thru the Philippine Health Insurance Corporation which is the government arm for insuring the availability of funds to extend hospitalization and sickness benefits to public officials and employees;

WHEREAS, procurement of another health insurance by government agencies from private health insurance companies is a disbursement of public funds for the same purpose and must be viewed as a form of additional allowance and compensation;

WHEREAS, by constitutional mandate, no elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law (Section 8, Article IX-B, 1987 Constitution);”

In view of the foregoing findings/observations, we recommended that Management should comply strictly with COA Resolution No. 2005-001 dated February 3, 2005 that prohibits securing health care insurance from Private Insurance Agencies.

Management justified the procurement of private health insurance from Medicaid Philippines, Inc. as a necessary expenditure in compliance with Memorandum Circular No. 33, Series of 1997 of the Civil Service Commission, considering that MWSS-CO and RO do not have provision for medical staff in its existing plantilla of positions and the abolition of their medical clinic in CY 1997.

17. Procurement of MWSS-RO equipment and supplies approximately amounting to P2.93M were undertaken without the Annual Procurement Plan (APP) as required under Section 7 of RA 9184 otherwise known as “Government Procurement Reform Act.”

Section 7.1 of RA 9184 states that:

“xxx No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly

budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR.”

Review of the procurement activities of MWSS-RO disclosed that its procurements for CY 2011 were undertaken not in accordance with an approved Annual Procurement Plan (APP) contrary to the above quoted provisions of RA 9184. Copies of the MWSS-RO Annual Procurement Plan (APP) for CY 2011 and its Board Approval were requested. However, as of this date, there was no approved APP furnished to this office. Meanwhile, procurement of equipment, office supplies, IT supplies worth P2,926,908.69 were undertaken which is not in accordance with the approved APP.

In view of the above findings, we recommended that Management comply strictly with Section 7.1 of RA 9184. No procurement should be undertaken unless it is in accordance with the approved APP of MWSS-RO.

18. **Renewal of the Security and Janitorial Services contracts entered into by the MWSS-RO with Top Star Protective Security Corporation and Laging Qlean Janitorial Services for the period January 1, 2003 to December 2011 are not in accordance with Section 5.0 of the Guidelines on the Procurement of Security and Janitorial Services as Annex A of Government Procurement Policy Board (GPPB) Resolution No. 24-2007 dated September 28, 2007, implementing Republic Act 9184.**

Records showed that sometime in 2002, MWSS-RO conducted a public bidding for procurement of security services. On October 24, 2002, the MWSS-RO, represented by its former Chief Regulator, entered into an agreement with Top Star Protective Security Corporation represented by Col. Felimon S. Agustin (Ret.) ***“to secure and protect the MWSS-RO Premises, Personnel and its properties located at the 3rd Floor, Engineering Building, MWSS Complex, Katipunan Road, Balara, Quezon City.”***

Item 9 of the contract stated that the “contract shall be in full force on 02 November 2002 to 31 December 2002 xxx.”

The contract, further provided that “This Agreement may be renewed by the parties subject to compliance with the requirement of Executive Order No. 301 series of 1987 and other laws on renewal of contracts for public service.”

Quoted hereunder is Item C.9 of the contract, to wit:

“xxx In case this Agreement was not renewed as provided in the preceding sentence, this Contract is automatically renewed on a month to month basis until such time that MWSS-RO has properly acted in accordance with law, regarding the procurement of security services.”

From January 1, 2003 to December 31, 2011, no document would show that the agreement was renewed after the lapse of the contract period and that no public bidding was conducted for the provision of security services as RA 9184 required. As the agreement was not renewed, then the contract was deemed automatically renewed on a month-to-month basis for the period January 1, 2003 to December 31, 2011.

Meanwhile, records also showed that sometime in 2003, MWSS-RO, represented by its former Chief Regulator entered into an agreement with Laging Qlean Janitorial Services, represented by Placido O. Urbanes, Jr. for the provision of janitorial services, messengerial services and other services . This contract was procured thru negotiated contract.

Quoted hereunder is Item 6 of the contract, to wit:

“The agreement called for under this Contract shall in full force and effect for a period of six (6) months, commencing on July 1, 2003 unless sooner terminated by the FIRST PARTY (MWSS-RO) as provided hereunder. This Agreement may be renewed subject to compliance with the requirement of Executive Order No. 301, series of 1987 and other laws on renewal of contracts for public service. In case this Agreement was not renewed as provided in the preceding sentence, this Contract is automatically renewed on a **month-to-month** basis until such time that **FIRST PARTY** has properly acted in accordance with the law, regarding the procurement of Janitorial Services.”

From January 1, 2004 to December 31, 2011, no document would show that the agreement was renewed after the lapse of six (6) months and that no public bidding was conducted for the provision of the janitorial, messengerial and other services as RA 9184 required. As the agreement was not renewed, then the contract was deemed automatically renewed on a month-to-month basis for the period January 1, 2004 to December 31, 2011.

The automatic renewal of the contracts for security and janitorial services on a month to month basis for a period of more than three (3) years was contrary to the Guidelines on the Procurement of Security and Janitorial Services prescribed as Annex A of the GPPB Resolution No. 24-2007 dated September 28, 2007, implementing Republic Act No. 9184 which provides, as follows:

“5.0 MULTI-YEAR CONTRACTS

Procuring entities may enter into multi-year contracts, but not to exceed three (3) years, in the procurement of security and janitorial services, xxx”

In view of the foregoing findings/observations, we recommended that Management should:

1. Comply strictly with the provisions of Annex A prescribing the Guidelines on the Procurement of Security xxx Services approved by the GPPB under its Resolution No. 24-2007 dated September 28, 2007;
2. Procure security services in accordance with RA 9184, particularly thru public bidding; and
3. Submit justification why the disbursement of public funds contrary to the provisions of Annex A of the GPPB Resolution No. 24-2007 implementing RA 9184 should not be disallowed in audit.

- 19. The BOT-approved budget of MWSS-RO did not include allocation for stipends/allowances of trainees under the Government Internship Program. However, the trainees hired by MWSS-RO in CY 2011 were paid stipend/allowances totalling P514,453.75 out of the amount budgeted for MOOE Training Expenses-Seminars/Workshops/ Conferences.**

Section 4.1 of the PD 1445 otherwise known as the Government Auditing Code of the Philippines states that:

“No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.”

Under Section 4 of RA 6234 as amended (An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes), the Board of Trustees of MWSS was vested with the following specific powers and duties, among others:

“(b) To adopt an annual and supplemental budget of receipts and expenditures of the System according to its requirements”

Pursuant thereto, the MWSS Board of Trustees passed Resolution No. 2011-035 approving the Corporate Operating Budget (COB) of MWSS - Regulatory Office (MWSS-RO) for CY 2011.

Review of the COB of the MWSS-RO approved by its Board of Trustees showed that no amount was set aside for the payment of the trainees’ stipends/allowances under its Government Internship Program (GIP). Verification disclosed that the amount expended for the GIP stipends/ allowances in the total amount of P514,453.75 was charged against the amount allocated for Training Expenses-Seminars/Workshops/ Conference contrary to the abovementioned Section 4.1 of PD 1445.

The account Training Expenses was described in the NGAS as expenses for participation/attendance in training, conventions and seminars/workshops. It also includes expenses incurred related to training, such as payment of honoraria to lecturers, handouts, supplies and materials used, meals and snacks. Based on the aforesaid description, stipends/allowances for internship are not properly chargeable to Training Expenses account.

In view of the foregoing findings/observations, we recommended that Management should:

1. Stop using the amount reserved for Training Expenses - Seminars/ Workshops/ Conferences for paying the stipends/allowances of trainees under the GIP.
2. Make representation with the Board of Trustees to provide specific budget for the stipends/allowances of the GIP trainees.

Management informed that said account will be appropriately corrected.

20. Three (3) members of the Board of Trustees were reimbursed expenses for medical/executive check-ups totalling ₱141,695.56 contrary to Executive Order No. 24 dated February 20, 2011.

Executive Order (EO) No. 7 was issued on September 8, 2010 by the Office of the President entitled “Directing the Rationalization of the Compensation and Position Classification System in Government-Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and For Other Purposes.”

Section 10 thereof states that:

“Suspension of All Allowances, Bonuses, and Incentives for Members of the Board of Directors/Trustees. – The grant of allowances, bonuses, incentive, and other perks to members of the board of directors/trustees of GOCCs and GFIs, except reasonable per diems, is hereby suspended for until December 31, 2010, pending the issuance of new policies and guidelines on the compensation of the board members.”

Subsequently, on February 10, 2011, Executive Order No. 24 was issued entitled “Prescribing Rules to Govern the Compensation of Members of the Board of Directors/Trustees in GOCCs including GFIs.”

Section 12 of this Executive Order provides that:

“Reimbursable Expenses – All necessary expenses of members of the Board of Directors/Trustees to attend Board and other meetings and discharge their official duties shall be paid directly by the GOCC. However, when due only to the exigency of the service and subject to the submission of receipts, it is necessary for members of the Board of Directors/Trustees to advance the same, they may be reimbursed but only for the following items incurred in the performance of official functions subject to budgeting, accounting, and auditing rules and regulations:

- a) Transportation expenses in going to and from the place of meetings;
- b) Travel expenses during official travel;
- c) Communication expenses; and
- d) Meals during business meetings.

Under Section 13, the Board of Directors/Trustees of all Chartered GOCCs, whether or not covered by the Salary Standardization Law are directed to comply with the provisions contained in the EO “*to govern the compensation and reimbursable expenses of the members of the Board of Directors/Trustees in their respective corporations.*”

Review of the expenses charged to accounts Other Professional Services-ECU/Medical and Drugs and Medicine Expenses showed that three (3) members of the Board of Trustees were reimbursed expenses for medical/executive check-ups totaling ₱141,695.56, contrary to the above cited EO.

Section 14 of the said EO provided for the penalties, to quote:

“Non-compliance with any of the provisions of this EO shall be considered insubordination or neglect of duty and such other administrative offenses as may be warranted and shall be dealt with accordingly.”

In view of the foregoing audit observations, we recommended the following:

1. Comply strictly with the provisions of Executive Order No. 24 dated February 10, 2011 and stop the practice of reimbursing expenses not contemplated under Section 12 of EO No. 24;
2. Require the concerned members of the Board of Trustees to adhere to the provisions of the regulations in reimbursable expenses specifically Section 15 of EO No. 24.

Management committed that they will adhere with the provisions of EO No. 24.

21. Payment of Cellphone bills to Smart Telecommunications, Inc. from January to December 2011 included SMS and voice calls worth P34,380.46 sent/placed to International telephone numbers in foreign countries where MWSS-RO do not have direct official business dealings.

Section 4 (2) of PD 1445 states that:

“Government funds or property shall be spent or used solely for public purposes.”

Review of the payments made to Smart Telecommunications, Inc. covering cellphone bills from January to December 2011 showed that P34,380.46 worth of SMS and voice calls were sent/made to International telephone numbers where MWSS-RO do not have official business dealings. Ordinarily, business transactions of MWSS-RO are confined within the country, particularly, in the Metro Manila area only.

Thus, SMS and voice calls sent/made to international telephone numbers are deemed personal in nature and payments thereof are contrary to the abovementioned provision of PD 1445.

In view of the foregoing finding/observation, we recommended Management to comply strictly with Section 4 (2) of PD 1445 and submit justification/evidences proving that the SMS and voice calls were sent or made for official purpose/s. Otherwise, require all concerned officers and employees to refund the amount paid by MWSS-RO to Smart Telecommunications, Inc. covering their SMS and voice calls sent/made to international telephone numbers.

Management informed that their cellphone subscriptions are fixed at amounts ranging from P2,500 to P5,000 per month whether used or not. They committed to revisit their policy on granting limits on the use of cellphones by their officials and possibly renegotiate with the service provider for a lower monthly limit.

22. Some MWSS-RO personnel who went on official travels to various parts of the country did not prepare or submit duly accomplished and approved Itinerary of Travel before their scheduled trips. Likewise, after their travel they did not submit the Certificate of Travel Completed.

Travels and assignments of government personnel shall cover only those that are urgent and extremely necessary and will involve minimum expenditure and are beneficial to the agency concerned and/or the country (Executive Order Nos. 248 & 298 dated May 29, 1995 and March 23, 2004, respectively). Likewise, COA Circular Nos. 92-389 dated November 3, 1992 and 96-004 dated April 19, 1996 were issued as guidelines in implementing the prescribed regulations and new rates of allowances for official local and foreign travels of government personnel. Official local travels shall be treated and accounted for as cash advances. As such, cash advance voucher for official local travel shall be supported by the following:

- a. Travel Orders properly approved in accordance with Section 5 of EO 248, as amended; and
- b. Itinerary of Travel detailing the transportation expenses and travel expenses to be incurred as basis for determining the amount of cash advance.

The cash advance for travel shall be liquidated by the official/employee concerned strictly within 30 days after his return to his official station as required under Section 16 of EO 248. The official/employee concerned shall draw a liquidation voucher to be supported by the following:

- a. Certificate of travel completed;
- b. Plane, boat or bus tickets covering actual transportation fare;
- c. Certification of the head of the agency as to the absolute necessity of the expenses together with the corresponding bills and receipts if the expenses incurred for official local travel exceeds the prescribed rate per day;
- d. Hotel room/lodging bills with official receipts if the travel allowance being claimed includes the hotel room/lodging rate; and
- e. Certificate of appearance or a copy of the report on the accomplishment of the purpose of the travel duly noted by the agency head or his authorized representative.

Audit of the Travelling Expense – Local (Account Code: 751-2) showed that some MWSS-RO officers and employees did not prepare/submit duly accomplished and approved itinerary of travel detailing the transportation expenses to be incurred as approved by the claimant's immediate supervisor as well as the certificate of travel completed after their official trip.

It was also noted that liquidation/reimbursement vouchers included official receipts for meals and lodging/hotel bills. However, as there were no Itinerary of Travel submitted, it could not be ascertained whether the employee claimed only the authorized travel expenses of ₱800.00 per day or were reimbursed actual travel expenses in excess of the prescribed rate. As required under Sec. 4 of EO 298, claims for reimbursement of

actual travel expenses in excess of the authorized travel expenses of ₱800.00 per day may be allowed upon certification by the head of agency concerned that such expenses were absolutely necessary in the performance of an assignment, and presentation of bills and receipts.

In view of the foregoing findings/observations, we recommended Management to:

1. Comply strictly with Executive Order No. 248 dated May 29, 1995 as amended by 298 dated March 23, 2004 and COA Circular Nos. 92-389 dated November 3, 1992 and 96-004 dated April 19, 1996 regarding travel documentations before and after the travel; and
2. In case, actual travel expenses exceed the authorized travel expenses of ₱800.00 per day, submit the certification by the Chief Regulator that the excess travel expenses are absolutely necessary in the performance of an assignment.

Management commented that although they prepare Itinerary of Travel, some data are incomplete and they assured that RO shall comply with the existing travel rules and regulations and ensure submission of complete travel documents to COA.

- 23. The Collecting Officer in charge of collections of MWSS-RO, a Cashiering function, was at the same time the Cashier/Treasurer of MWSS-RO Multi-purpose Cooperative contrary to Section 67 of the Government Accounting and Auditing Manual (GAAM). He, likewise, holds incompatible positions as Collecting Officer in charge of the collections of MWSS-RO (Cashiering Function) and at the same time as Finance Officer in charge of Bank Reconciliation Statement preparation/review (Accounting Function).**

It is provided under Section 67 of GAAM that-

“Government cashiers are prohibited from holding positions as cashier or treasurer of savings and loan associations or any other association or organization.”

Review of the financial operation of MWSS-RO revealed that a Collecting Officer in charge of the collections of the said office (Cashiering Function) was designated as cashier/treasurer of MWSS-RO Multi-Purpose Cooperative contrary to the above stated provisions.

It is in the interest of sound internal control that designated personnel handling cash receipts would not perform the same function in other entities to avoid conflict of interest and possible misuse of government funds.

Moreover, the same employee also holds incompatible positions as Collecting Officer in charge of the collections of MWSS-RO (Cashiering Function) and at the same time as Finance Officer in charge of Bank Reconciliation Statement preparation/review (Accounting Function).

In view of the above findings, it is recommended that:

1. Management strictly comply with Section 67 of the Government Accounting and Auditing Manual; and
2. Management segregate the Cashiering and Accounting functions to reduce the possible risk of error or fraud. There is a need to assign the two functions to two responsible employees.

Management commented that they will adhere to the provision of Section 67 of the General Accounting and Auditing Manual and recommend for the replacement of the collecting officer as Treasurer of the Multi-Purpose Cooperative. They also recognized the need to segregate the cashiering and accounting functions, but they have difficulty complying with the recommendation in view of the limited number of Finance personnel.

24. Summary of Unsettled Suspensions, disallowances and charges, NDs and NCs issued prior to 2010

Notices of Disallowances (NDs) were issued in the year 2000 disallowing in audit the payment of Mid-Year Financial Assistance, Year-end Financial Assistance, Bigay Pala Anniversary Bonus, Productivity incentive Bonus, Medical Allowance and RATA amounting to P8,740,837.56. These disallowances were affirmed under COA Decision No. 2009-072 dated September 1, 2009. The System has moved for reconsideration of the above cited decision on the ground that is contrary to facts, laws and jurisprudence. The resolution of the motion is pending with the COA Commission Proper.

NDs were issued in 2010 to disallow in audit the payment of the following 2009 transactions: a) allowances, bonuses and other benefits amounting to P150.28M, b) hazard pay amounting to P991,800; and c) Extraordinary Expenses paid in excess of GAA rates amounting to P3,436,568.25. The NDs were appealed by both MWSS CO and RO in 2011, however, the appeals were denied by the Director, Cluster B, Corporate Government Sector per CGS Cluster B Decision Nos. 2011-007 and 2012-002 dated June 30, 2011 and June 19, 2012, respectively.

Notice of Suspension (NS) was issued on cash withdrawals amounting to P35,361,133.40 suspending them in audit because these transactions were not substantiated. The requested submission of supporting documents such as Disbursement Vouchers and paid checks was required. The period within which to comply with the requirements had already prescribed. However, the Fraud Audit Team of COA informed the MWSS-COA Team that they have audit jurisdiction over these transactions, hence they issued ND No. 2012-01-(05-08)-MWSS (amended) dated March 15, 2012.

No NDs were issued for illegal payments made in CY 2011 as there is a pending fraud audit being conducted by COA Fraud Audit Investigation Office on alleged irregularities in the disbursement of funds of MWSS for CY 2005 to June 2010.

GENDER AND DEVELOPMENT

25. **No Annual GAD Plans and Programs for CY 2011 were prepared and submitted by MWSS-CO and RO to the National Commission on the Role of Filipino Women (NCRFW), now Philippine Commission for Women (PCW), for review and endorsement to the Department of Budget and Management (DBM). Moreover, Management did not allocate at least 5% of the total budget required under the 2011 General Appropriations Act (GAA) for GAD activities. Lastly, RO's GAD budget for the year, as approved by the MWSS Board of Trustees, was not actually utilized for GAD related activities.**

Executive Order (E.O.) No. 273, dated September 8, 1995 approved and adopted in the Philippine Plan for Gender-Responsive Development, Joint Circular No. 2004-1, dated April 5, 2004 of the DBM, National Economic Development Authority (NEDA) and NCRFW, now PCW, provided the guidelines for the preparation of the annual GAD Plan and Budget and accomplishment report to implement the section on programs/activities/projects related to GAD as embodied in the GAA. Section 5.1 of said Joint Circular states that:

“Agencies shall submit their annual GAD plans and budgets to the NCRFW for review and endorsement prior to the submission of the agency budget proposal. The DBM shall return to the agencies their annual GAD plans and budgets if they do not have the endorsements of the NCRFW.”

Pursuant to the 2011 GAA, agencies were tasked to formulate a GAD Plan and to implement the same by utilizing at least five percent (5%) of their total budget appropriations.

Verification showed that for the year 2011, Management did not approve and submit their annual GAD Plan and Budget to the PCW for review and endorsement prior to the submission of the agency budget and proposal to the DBM contrary to the aforementioned joint circular.

Moreover, the MWSS-CO's 2011 DBM-approved COB did not provide for at least 5% of the total budget to be utilized for GAD related activities during the year. For a total COB of P9,647,630,000, Management allotted only P4,785,655 or .05% of its budget which is short of the 5% requirement under GAD rules. Likewise, MWSS-RO's 2011 COB, which was approved by the MWSS Board of Trustees, did not provide for at least 5% of the total budget to be utilized for GAD related activities during the year.

For CY 2011, Management disbursed a total amount of P525,993.10 charged to the Extraordinary Expense account (883) for their GAD assessment and team building at Canyon Cove Residential Beach Resort in Nasugbu, Batangas on June 16-17, 2011 and for their Physical and Mental Fitness Program. In the absence of an approved GAD Plan, management still conducted these activities based on Office Order No. 2011-065 encouraging the employees to attend the activity in order to ensure a positive and pro-active working environment on the affectivity of GAD projects and take corrective action and turn negative attitude into positive performance.

Out of the amount allotted for MWSS-RO's Extraordinary Expenses-GAD/ Cultural (Account Code 883-3), ₱108,300.00 was utilized by management's GAD Sub-Committee to purchase thirty eight (38) syringes of HPV Vaccine (Gardasil) for MWSS-RO male employees. This is clearly not GAD related activity thus, the desired objectives of GAD under the Joint Circular No. 2004-1 dated April 5, 2004 were not achieved/accomplished.

Other GAD unrelated expenses charged against GAD budget included reimbursement of expenses for the celebration of the 11th Anniversary of Civil Service Commission, MWSS-RO 14th Anniversary and MWSS-RO Christmas Party for a total of ₱233,167.00.

In view thereof, we reiterate our last year's recommendation that management should strictly comply with the requirements set forth under Joint Circular No. 2004-1 and the provision of the GAA.

SPECIAL AUDIT

A Special Audit Team was created under COA Office Order No. 2010-504 and 2010-679 dated July 29, 2010 and October 15, 2010, respectively, to conduct Special/Fraud Audit Investigation on the alleged irregularities in the disbursement of funds of the MWSS from Calendar year 2005 until June 30, 2010.

Subsequently on January 19, 2011, a Special Audit Team was created under COA Office Order No. 2011-036 to compose the Commission On Audit Group for the Joint Investigation Team with the Office of the Ombudsman (OMB) to conduct the joint audit of the MWSS. The preparation of the Special Audit Report is still on-going as of July 16, 2012.