



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**INDIAN IRRIGATION PROJECTS,
BUREAU OF INDIAN AFFAIRS**

**REPORT NO. 96-I-641
MARCH 1996**



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

MAR 29 1996

MEMORANDUM

TO: The Secretary

FROM: *Reid A. Lewis*
Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Indian Irrigation Projects, Bureau of Indian Affairs"
(No. 96-I-641)

Attached for your information is a copy of the subject final audit report.

For the Bureau of Indian Affairs irrigation projects that we reviewed, we found that the Bureau had not taken corrective actions to recover operation and maintenance charges of \$3 million owed to eight projects for fiscal years 1993 and 1994; collect reimbursable construction costs totaling \$7.7 million from the non-Indian landowners at five projects; and include reimbursable construction costs of about \$3.3 million in the repayment contracts for two irrigation projects. Specifically, our review noted that:

- Operation and maintenance rates for the projects were not based on the full cost of delivering water, including the cost of systematically rehabilitating and replacing project facilities and equipment. As such, project revenues have been insufficient to adequately maintain the projects, some of which have deteriorated to the point that the continued delivery of water is doubtful. In addition to not seeking regular rate increases to cover the full costs of delivering water, the Bureau did not adequately bill and collect currently owed operation and maintenance charges.

- Bureau offices have not negotiated repayment contracts, adjusted repayment rates, or followed other procedures necessary to collect the reimbursable construction debt from non-Indian landowners. As a result, an undetermined amount of the \$7.7 million construction debt at the projects reviewed may not be legally collectible because the Bureau has not complied with appropriate administrative procedures to legally apprise landowners of what they owe. We also confirmed that the Bureau was successfully collecting reimbursable construction costs for two additional projects and only a small portion of the reimbursable debt remained to be paid for these two projects.

We made 13 recommendations relating to the assessing, billing, and collecting of adequate operation and maintenance charges and reimbursable construction costs.

Based on a review of the Bureau's proposed actions and subsequent discussions with Bureau officials, we considered all of the 13 recommendations resolved but not implemented.

If you have any questions concerning this matter, please contact me or Ms. Judy Harrison, Assistant Inspector General for Audits, at (202) 208-5745.

Attachment



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL

Washington, D.C. 20240

MAR 29 1996

Memorandum

To: Assistant Secretary for Indian Affairs

From: Judy Harrison *Judy Harrison*
Assistant Inspector General for Audits

Subject: Final Audit Report on Indian Irrigation Projects, Bureau of Indian Affairs (No. 96-I-641)

We have completed a review of selected Bureau of Indian Affairs irrigation projects to determine whether the Bureau adequately assessed, billed, and collected operation and maintenance charges and identified and collected, in a timely manner, the reimbursable construction costs owed by non-Indians.

We found that the Bureau's area, agency, and project offices had not obtained all the operation and maintenance charges owed eight irrigation projects (Blackfeet, Crow, Fort Belknap, Fort Peck, Wind River, Colorado River, San Carlos, and Wapato). As of September 1994, delinquent operation and maintenance charges owed these projects totaled \$10.3 million, of which \$3 million had not been properly billed and collected for fiscal years 1993 and 1994, the period of our review. We also reviewed the collection of reimbursable construction costs for these eight projects and for the Fort Hall and Uintah Projects and found that, with the exception of the Fort Hall, Wapato, and Colorado River Projects, the Bureau had not collected about \$7.7 million of reimbursable construction costs from the non-Indian landowners and had not included an additional \$3.3 million in the repayment contracts for two projects. We had noted similar issues concerning the operation and maintenance and construction of Indian irrigation projects in two audit reports issued since 1988. In addition, in September 1995, we issued a separate audit report (No. 95-1-1402) on the Wapato Irrigation Project because of the severity of the Project's financial problems and the deteriorated state of Project facilities and equipment. Specifically, our current review disclosed that:

- Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering irrigation water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of project operation. Although the Code of Federal Regulations and the Bureau Manual required the assessment of full cost rates, these regulations

were general, and specific guidance had not been developed to indicate what costs should be included in the rates and how the costs should be developed. In addition to the insufficient rates, the oversight of the area offices was not adequate to ensure that agency and project offices properly prepared and mailed operation and maintenance bills to all landowners and water users, implemented required debt collection procedures, terminated water deliveries as required, and enforced the requirement for surety bonds or other security from lessees of Indian lands.

- Area, agency, and project offices had not collected reimbursable construction costs owed by non-Indian landowners in a timely manner at the Blackfeet, Crow, Fort Belknap, Fort Peck, Wind River, San Carlos, and Uintah Projects. Bureau regulations require that, unless otherwise determined by the Bureau, non-Indian landowners repay their per-acre share of reimbursable construction costs over a 40-year period. However, area, agency, and project offices had not negotiated repayment contracts, adjusted repayment rates, established ability-to-pay rates, or followed other administrative procedures necessary to apprise the landowners of their debt to ensure that the debt remained legally collectible. As a result, an undetermined amount of the construction debt may not be legally collectible, including over \$1.5 million of reimbursable construction costs owed on the Uintah Project that the Bureau was reviewing for possible cancellation.

- Reimbursable construction costs were collected for the Fort Hall and Wapato Irrigation Projects and were deferred for the Colorado River Irrigation Project because the land was still in trust status. Of the total reimbursable costs of \$4.3 million for the Wapato Project and \$2.1 million for the Fort Hall Project, only \$72,000 and \$2,000, respectively, remained to be paid. At the Wapato Project, personnel attributed the timely repayment to a provision in the water rights application that required landowners to repay a proportionate share of the reimbursable costs. At the Fort Hall Project, timely repayment was attributed to adherence to required collection procedures,

To correct the deficiencies noted, we made 13 recommendations relating to the computation of operation and maintenance rates to ensure the adequate maintenance of project facilities and equipment, compliance with Departmental billing and collection requirements, enforcement of bonding requirements, and collection of reimbursable construction debt.

The March 27, 1996, response (Appendix 5) to our draft report from the Assistant Secretary for Indian Affairs concurred with 11 of the report's 13 recommendations, partially concurred with 2 recommendations, and outlined actions needed to address the recommendations. The response also stated that the Bureau had recently initiated actions to address the problems identified. For example, in August 1995, the Bureau established the Power and Irrigation Reconciliation Team to review and reconcile construction and operation and maintenance account balances; review the adequacy of construction and operation and maintenance assessments; and ensure that all such costs were properly billed and collected for 3 Bureau power and 18 Bureau irrigation projects. In addition, the Bureau reported that construction cost balances have been reconciled for the Fort Hall, Pine River, and Uintah

Irrigation Projects, and similar reviews of construction and operation and maintenance account balances are either ongoing or scheduled at the remaining projects.

Based on the Bureau's response and subsequent discussions with Bureau officials, we consider the proposed actions sufficient to meet the intent of the recommendations. Accordingly, the 13 recommendations are classified as resolved but not implemented and will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. Therefore, no further response to the Office of Inspector General is required (Appendix 6).

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the cooperation of Bureau officials in the conduct of our audit.

CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	1
OBJECTIVE AND SCOPE	1
PRIOR AUDIT COVERAGE	2
FINDINGS AND RECOMMENDATIONS	4
A. PROJECT OPERATION AND MAINTENANCE CHARGES	4
B. REIMBURSEMENT OF CONSTRUCTION COSTS	12
APPENDICES	
1. CLASSIFICATION OF MONETARY AMOUNTS	19
2. ORGANIZATIONS VISITED OR CONTACTED	20
3. SUMMARY OF RECOMMENDATIONS AND CORRECTIVE ACTIONS FROM PRIOR REPORTS	21
4. REPORTS ON PHYSICAL CONDITION AND ESTIMATED REHABILITATION COSTS FOR PROJECTS REVIEWED	25
5. BUREAU OF INDIAN AFFAIRS RESPONSE	26
6. STATUS OF AUDIT REPORT RECOMMENDATIONS	35

INTRODUCTION

BACKGROUND

The Bureau of Indian Affairs irrigation program began in about 1884, when the Congress authorized funds for the general development of Indian irrigation projects. Primary justifications for constructing irrigation projects were to provide for economic development on many reservations and to meet Federal trust responsibilities or other legal obligations. The projects vary considerably in acreage and in the amount of land that is Indian owned; for example, about 99 percent of the land served by the Colorado River Irrigation Project is Indian owned, while only about 16 percent of land served by the Flathead Irrigation Project is Indian owned.

The Indian irrigation program is composed of two parts: (1) construction of projects and (2) operation and maintenance of the projects. The objective of the construction portion of the program is to develop water supplies for irrigable Indian lands, while the objective of the operation and maintenance portion of the program is to operate and maintain irrigation water delivery systems in a safe, economical, beneficial, and equitable manner. The Bureau has determined that for projects with lands capable of producing crops under sustained irrigation, landowners and water users, in accordance with Bureau policy, are to pay the full annual costs of operating and maintaining the projects. The Congress has, through legislation, prescribed whether the Federal construction investment in the projects is to be repaid by project beneficiaries. Owners of project lands in fee status,¹ primarily non-Indians, are required to repay their proportionate, per-acre share of reimbursable construction costs. However, the repayment of irrigation construction costs on trust lands is deferred as long as title to the land remains in trust status.

OBJECTIVE AND SCOPE

The objective of our audit was to determine whether the Bureau adequately: (1) assessed, billed, and collected operation and maintenance charges; and (2) identified and collected reimbursable construction costs owed by non-Indians. To accomplish our objective, we interviewed officials from various Bureau offices, the Department of the Interior's Office of the Solicitor, tribal council members of the Colorado River Indian Tribes, water user organizations, and the Southwest Indian Agricultural Association² concerning the financial and physical conditions of the projects. The locations we visited are listed in Appendix 2. We also reviewed

¹Unlike trust lands, for which title is held in trust for the Indians by the Federal Government, lands in fee status have unrestricted rights of disposition. These rights apply whether the fee status land is owned by tribal entities, individual Indians, groups of Indians, or non-Indians. In terms of the repayment obligation, fee status lands are considered to not be owned by Indians.

²The Southwest Indian Agricultural Association independently monitors about 37 large and small irrigation projects under the jurisdiction of the Phoenix Area Office.

laws and legislative histories; Congressional correspondence and hearings; Bureau policy and procedure manuals; Bureau correspondence; and available technical reports on the projects' physical conditions, some of which we verified by on-site visits. In addition, we reviewed Bureau and project budgeting and accounting records related to developing, assessing, billing, and collecting operation and maintenance and construction charges and land records related to leased and idle lands.

Our audit focused on Bureau and project activities for fiscal years 1993 and 1994 and for other periods as appropriate for 10 large projects.³ The audit was conducted from October 1994 through March 1995 in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of our audit, we reviewed the Bureau's system of internal controls and found weaknesses in the processes for developing, assessing, billing, and collecting operation and maintenance and construction charges for the projects and for enforcing surety bonds or other security requirements. We also reviewed the Department's Annual Statement and Report, required by the Federal Managers' Financial Integrity Act, for fiscal years 1992 through 1994 to determine whether any of the reported weaknesses were directly related to the scope of our audit. The reports cited long-standing material weaknesses in the Bureau's irrigation program and in debt collection practices, including the need to update regulations, policies, and procedures because the current guidance was insufficient to properly administer the Bureau's irrigation projects and debt collection functions.

PRIOR AUDIT COVERAGE

Since 1988, the Office of Inspector General has issued two audit reports that address issues involving the operation and maintenance and construction of Indian irrigation projects, many of which were applicable to the projects we reviewed for our current audit. The reports "Repayment of Investment in Indian Irrigation Projects, Bureau of Indian Affairs" (No. 89-38), issued in January 1989, and "Operation and Maintenance of Assessments of Indian Irrigation Projects, Bureau of Indian Affairs" (No. 88-42), issued in February 1988, concluded that the Bureau had not adequately and accurately assessed, billed, and collected project operation and maintenance charges or taken sufficient action to collect reimbursable, noninterest-bearing construction costs owed the Government. The reports made 26 recommendations. During our current audit, we found that while the Bureau had taken some corrective actions, 18 recommendations had not been fully implemented (see Appendix 3).

³In our evaluation of the Bureau's assessment, billing, and collection of operation and maintenance charges, we reviewed eight irrigation projects: Blackfeet, Crow, Fort Belknap, Fort Peck, Wind River, Colorado River, San Carlos, and Wapato. In our evaluation of the Bureau's identification and collection of the reimbursable construction costs owed by non-Indians, we reviewed these eight projects plus the Uintah and Fort Hall Irrigation Projects.

As part of this review, we also issued a separate report on the operation of the Wapato Irrigation Project (No. 95-I-1402), which questioned the Project's continued ability to deliver water because of deficiencies in assessing, billing, and collecting operation and maintenance charges. Further, at the Bureau's request, we attended a November 1994 meeting in Washington, D.C. and an April 1995 meeting in Albuquerque, New Mexico, to assist Bureau irrigation program and accounting personnel in revising Bureau irrigation policies and procedures. At the first meeting, we discussed the development of total estimated project operation and maintenance costs and the resultant operation and maintenance rates. At the second meeting, we discussed the proposed reconciliation of reimbursable construction debt, including the factors to consider in prioritizing the determination and collectibility of reimbursable construction costs and the need for reforms to prevent the recurrence of similar assessment, billing, and collection problems.

FINDINGS AND RECOMMENDATIONS

A. PROJECT OPERATION AND MAINTENANCE CHARGES

Bureau of Indian Affairs area, agency, and project offices did not adequately assess, bill, or collect operation and maintenance charges for eight irrigation projects. The Code of Federal Regulations and Departmental and Bureau Manuals provide guidelines for assessing, billing, and collecting operation and maintenance charges and for enforcing bonding or other security requirements. However, area and agency offices did not: (1) develop supplemental guidance to ensure that the assessment rates accurately reflected all costs necessary to properly operate and maintain project facilities and equipment; and (2) ensure compliance with existing policies and procedures for billing and collecting operation and maintenance charges and for enforcing security requirements. Although we could not determine the extent of the underassessments because the rates did not include all costs, we did find that total delinquent operation and maintenance charges for the eight projects were \$10.3 million, of which \$3 million had not been properly billed and collected for fiscal years 1993 and 1994. As a result, available revenues were not sufficient to properly maintain the projects, and several projects had deteriorated to the extent that reports have concluded that their continued ability to deliver water is in doubt. The deterioration on five projects was such that the tribes sought and received special construction appropriations totaling about \$6.2 million for repairs that should have been funded through operation and maintenance rates.

Rate Development Guidance

Title 25, Part 171, of the Code of Federal Regulations and the Bureau of Indian Affairs Manual (55 BIAM, Supplement 4) require that the Bureau establish operation and maintenance rates based on the full cost⁴ of delivering irrigation water and maintaining completed project facilities. However, these regulations are general, and neither the Bureau nor the area offices had developed guidance as to what types of costs should be included in the operation and maintenance rates and how cost estimates should be developed. As such, none of the eight projects that we reviewed had developed the data necessary to prepare accurate budget estimates of the full costs of current and future maintenance and equipment needs upon which to base an operation and maintenance rate. For example, Bureau personnel had not developed: (1) a comprehensive, current, and accurate inventory of project facilities

⁴Based on a 1985 field solicitor's opinion, and as used in this report, the full cost of operation and maintenance consists of "all operation, maintenance, and replacement type costs" brought about by the day-to-day operation . . . of an irrigation project" (June 26, 1985, memorandum from Phoenix Field Solicitor to the Bureau of Reclamation titled "Payment of CAP [Central Arizona Project] Operation, Maintenance, and Replacement Costs by Indian Entities"). Accordingly, full costs would include the orderly replacement of project facilities and equipment resulting from the normal use and deterioration of the project.

and equipment; (2) estimates of the current and future costs of maintaining and replacing facilities and equipment, including cost estimates for equipment ownership and contingencies, such as storm damage; and (3) plans and prioritized schedules for maintenance and rehabilitation work to ensure that facilities and equipment were properly maintained and replaced on a regular and systematic basis.

Instead, the projects' budgeted operation and maintenance costs included routine operating costs, such as wages, utilities, gasoline, and office equipment, but generally excluded the costs of needed maintenance and the orderly replacement of facilities and equipment resulting from the normal day-to-day use and deterioration of the project. In addition, we believe that project personnel did not seek regular increases to the existing operation and maintenance rates to account for inflation and other factors because of the perception that some irrigators would be reluctant to pay increased rates. Accordingly, maintenance was deferred or performed only on an exception basis whenever funds were available to the projects. The long-term effect of the maintenance deferral has been the continued deterioration of project facilities and equipment to the extent that the capability of the projects to provide water is in doubt. Reports available on the physical condition of the eight projects (see Appendix 4) concluded that the lack of operation and maintenance funds had contributed to the physical deterioration of the projects. Our site reviews of some projects confirmed the deterioration of the facilities and equipment noted in the reports, such as crumbling concrete structures, inoperative generators and pumping plants, and inadequate drainage systems. However, the Bureau had not required personnel at area, agency, and project offices to actively pursue the development of full-cost operation and maintenance rates and to seek periodic rate increases, as shown in the following examples:

- At the Wapato Irrigation Project, facilities had deteriorated to the point that a rate increase of 35 percent was implemented over 1991 and 1992 to allow the continued delivery of water. However, this increase did not include, in the rate computation, the cost for the orderly replacement of project facilities and equipment resulting from normal day-to-day use and deterioration. Further, the rates were not increased in fiscal years 1993 and 1994, even though the Portland Area Office and the Wapato Project Office were aware that costs were increasing and that Project facilities were deteriorating.

- Facilities of the Blackfeet and Crow Irrigation Projects were deteriorating, some to the extent that the continued delivery of water was questionable. In 1995, the Blackfeet Irrigation Project Office increased its rate by 38 percent (from \$8 to \$11), which was its first increase in 4 years. The Crow Irrigation Project Office has not increased its rate since 1991, when it increased rates by about 9 percent (from \$10.60 to \$11.60). However, these increases did not include the costs for the orderly replacement of project facilities and equipment resulting from normal use and deterioration.

- In 1993, the Colorado River Irrigation Project Office increased its operation and maintenance rate by 23 percent (from \$22 to \$27 per acre), the Project's first

increase in 11 years. The rate increase was implemented only after the Project was virtually without funds and after many items of equipment had exceeded their estimated lives and were in poor operating condition. However, this increase did not include the cost for the systematic replacement of the worn-out equipment.

Based on the available reports and on estimates from area office engineering staff, we concluded that rehabilitating the eight projects would cost at least an estimated \$163 million, as indexed through September 1994 (see Appendix 4). Five tribes have already independently sought and obtained irrigation construction appropriations from the Congress to rehabilitate their projects, which were severely deteriorated. Tribes serviced by the Fort Belknap, Crow, Fort Peck, and Wind River Irrigation Projects received and used \$3.7 million in Congressional construction appropriations to pay operation and maintenance costs that should have been funded by the beneficiaries. Also, in 1993, the Colorado River Indian Tribes used \$2.5 million of previously obtained construction appropriations to finance the development of an operations manual and a complete inventory of the facilities and equipment for the Colorado River Irrigation Project instead of using these funds for repairs. However, the Project Office did not use this inventory data in developing the 1993 rate increase. Without the development of full-cost rates, sufficient funds will not be available to properly maintain the projects and prevent the further deterioration of project infrastructures. We believe that the Bureau should develop and implement guidance that directs area, agency, and project office personnel to determine the full costs of delivering water, including developing cost estimates for the orderly replacement of project facilities and equipment.

Project Oversight

The Departmental Manual, Part 344, requires that debts due the Government be billed properly and promptly, which includes promptly notifying debtors in writing of the basis for their debt, the amount due, and the specified due date. Part 344 further requires that delinquent accounts be assessed interest, penalties, and administrative fees. The Debt Collection Act of 1982 (Public Law 97-365), the Code of Federal Regulations (Titles 4 and 25), and the Departmental Manual (Part 344, Chapters 2 and 3) provide guidance on debt collection, on termination of water deliveries, and on surety bonds. However, the Billings, Phoenix, and Portland Area Offices did not provide oversight sufficient to ensure that: (1) operation and maintenance bills were properly prepared and mailed; (2) debt collection procedures were implemented; (3) water deliveries were terminated as required; and (4) surety bonds or other security requirements were enforced.

Billing Practices. The project offices we reviewed did not: (1) maintain accurate and current land ownership and lease records; (2) bill idle Indian trust lands in compliance with Departmental regulations; and (3) consistently and accurately assess interest, penalties, and administrative fees on delinquent operation and maintenance amounts, as required by Departmental regulations, for the bills that were mailed. We found that agency and tribal realty personnel at the Wapato and

Colorado River Irrigation Projects did not routinely inform project personnel of changes in Indian land ownership and in lease information. We identified 680 cases in which Wapato Irrigation Project trust land records did not have the names and addresses of the current Indian owners and had not been updated, some for as many as 30 years. In 36 other cases, Wapato Irrigation Project personnel had not been informed of leases executed by agency and tribal realty personnel. As such, these leased lands were not billed operation and maintenance charges at the start of the irrigation season as required. This made the collection of these amounts difficult because crops were already planted and some water had already been provided.

During our review of billings for fiscal years 1993 and 1994 at the Colorado River and Wapato Irrigation Projects, we found bills representing operation and maintenance charges totaling \$61,682 and \$1,024,806, respectively, or about \$1.1 million, that had not been mailed to landowners of idle lands. The practice of not billing idle Indian trust lands was based on guidance contained in the Bureau Manual (55 BIAM, Supplement 4), which stated that when assessable Indian trust lands were idle and the collection of the assessments was “impossible” during the current irrigation season, bills “shall be prepared and kept on file.” No further action was required in those cases unless the land involved was eventually sold and the delinquent debt was paid from the proceeds of the sale. We noted, however, that this guidance did not conform to Departmental debt collection procedures, which require that due process be followed and that all debtors be promptly notified in writing of the basis for and the amount of their debt.

At six of the eight projects reviewed, interest, penalties, and administrative fees were not assessed consistently. For example, although the Billings Area Office had issued specific guidance instructing the projects to assess interest and penalties on delinquent accounts, the Blackfeet, Fort Peck, and Fort Belknap Irrigation Project Offices did not comply with these instructions. In addition, the Crow and Wind River Project Offices selectively assessed interest and penalties. Further, the Billings Area Office did not require assessments of administrative fees to recover the added expense to the Government of administering delinquent accounts. Similarly, the Colorado River Irrigation Project Office, under the Phoenix Area Office, only assessed interest charges selectively and did not assess penalty and administrative fees. Accordingly, the cost of collection actions for these six projects was borne primarily by the general taxpayers. Project personnel told us that imposing these administrative fees would hinder their collection of annual operation and maintenance charges, but they did not provide support for this statement.

We believe that the area offices should establish procedures which ensure that: (1) agency and tribal personnel provide project office personnel with up-to-date names and addresses of all landowners and lessees of project lands prior to the start of each irrigation season; (2) all bills are mailed in accordance with Departmental regulations; and (3) the bills include the appropriate charges for interest, penalties, and administrative fees. In our opinion, the offices, by not billing all appropriate charges and fees, provide an incentive to delay or withhold payment and place the financial burden on other project water users and the Federal taxpayers.

Debt Collection Procedures. We found that project and agency office personnel did not follow the debt collection procedures prescribed by Title 4, Parts 101 through 105, of the Code of Federal Regulations and Part 344 of the Departmental Manual to collect the approximately \$10.3 million of delinquent operation and maintenance charges for the eight projects reviewed. These procedures include: (1) reporting debts to consumer reporting agencies; (2) referring debts to commercial collection agencies; (3) liquidating available collateral; (4) collecting in installments; (5) requesting debtors' mailing addresses from records of the Internal Revenue Service; and (6) using an administrative offset against other monies owed by the Government to non-Indians, Indians, and tribes. In addition, the Phoenix and Portland Area Offices did not place holds on funds or withdraw funds from individual Indian money accounts to recover delinquent debts due the Government, as allowed by Title 25, Part 115.9, of the Code of Federal Regulations.

Overall, we found that area, agency, and project offices did not have formalized plans with target dates for collecting delinquent operation and maintenance charges owed the projects. Instead, collection efforts were generally limited to sending out three separate demand requests for payment, with no additional actions taken if payment was not received. As a result, we identified operation and maintenance billings totaling \$1.9 million for fiscal years 1993 and 1994 that were not collected. For example, at the Colorado River and Wapato Irrigation Projects, extended collection efforts were deferred, despite increasing operation and maintenance debt, until the projects were virtually without funds. For fiscal years 1993 and 1994, we identified \$1.1 million⁵ and \$80,000 in delinquent debt at the Wapato and the Colorado River Irrigation Projects, respectively. As of September 30, 1994, the total delinquent debt for both projects was about \$8 million. We did note, however, that although the cumulative operation and maintenance debt for the projects under the Billings Area Office increased by \$700,000, from \$1.8 million in 1992 to \$2.5 million by the end of fiscal year 1994, the Billings Area Office placed holds on individual Indian money accounts to collect delinquent operation charges from individual Indians. We believe that the use of the holds helped prevent further escalation of the debt because it restricted access to funds in the accounts until the charges were resolved.

We also noted that under Title 25 of the Code of Federal Regulations, projects can terminate water deliveries to lands for which there are delinquent operation and maintenance charges. For example, a Colorado River Irrigation Project employee stated that water deliveries were terminated to lands for which the appropriate operation and maintenance charges had not been paid. At the other projects, such as the Wapato and the Blackfeet Projects, we found that personnel were precluded from terminating water deliveries because of the physical layout and deteriorated

⁵This amount is exclusive of \$540,000 of delinquent debt that the Wapato Irrigation Project collected in 1993.

condition of the projects. However, we believe that as conditions allow, termination of water deliveries should be used as a mechanism for facilitating collection efforts.

In conclusion, we believe that the area offices should provide agency and project offices with the oversight, technical assistance, and support necessary to ensure that: (1) the collection of all delinquent operation and maintenance charges is aggressively pursued in a timely and consistent manner in accordance with Departmental debt collection requirements; and (2) the projects can continue to deliver water.

Requirements for Surety Bonds. Agency office realty personnel did not enforce the requirement for surety bonds or other securities when they leased Indian trust lands. Title 25, Part 162, of the Code of Federal Regulations states, in part, that unless otherwise provided by the Secretary, a satisfactory surety bond or other security is required in an amount that will reasonably ensure performance of contractual obligations under the lease. We found, however, that at six of the eight projects we reviewed, the appropriate agency realty personnel did not enforce the requirement for surety bonds or other securities, as shown in the following examples:

- The Blackfeet Agency had not enforced surety bonds or other security requirements, even though some lessees had not paid the required operation and maintenance charges on the Blackfeet Irrigation Project. Overall, we found that cumulative delinquent operation and maintenance charges from lessees totaled \$28,000, or 18 percent, of the Project's cumulative delinquent operation and maintenance debt of \$160,000 through 1994.

- The Colorado River Indian Tribes Realty Office also did not have a policy requiring surety bonds or other securities when leasing Colorado River Irrigation Project land, even though approximately 70 percent of the Project's 107,000 acres are leased. Project personnel told us that they require lessees to pay the proper operation and maintenance bill prior to receiving water. However, we found that of the \$1.4 million in total reported operation and maintenance debt through 1993, about \$221,000 was applicable to lessees.

- Realty personnel at the Yakima Agency had discontinued the use of surety bonds for the Wapato Irrigation Project in 1970 at the request of the Yakima Indian Nation. As a result, the Agency negotiated and renegotiated agricultural leases with lessees whose delinquent Project operation and maintenance charges were steadily increasing. Our review of a 1994 Bureau delinquency report on the Project disclosed that 313 lessees had accumulated delinquent operation and maintenance charges totaling \$875,000 for the 7-year period 1988 through 1994.

We understand that tribal and Bureau realty offices have been reluctant to enforce surety bonds or other security requirements, such as certificates of deposit, because of the costs associated with obtaining the surety bonds and the possible resultant financial impact on farmers and ranchers. These offices, however, do have the authority to modify leasing requirements to accept other collateral or security, such as letters of credit or certificates of deposit, which can minimize or eliminate the

costs to the lessees of Indian trust lands. The nonpayment of charges because of the lack of surety bonds or other collateral results in the following: a reduced ability of the projects to enforce contractual obligations, such as the payment of annual operation and maintenance charges; unintended subsidies to the lessees; deferred maintenance work on the projects; and increased debt on tribal and individual Indian trust lands.

For those projects having difficulty collecting from lessees, we believe that the agency and area offices should enforce the requirement for surety bonds or other securities and take immediate action against the bond in the event of nonpayment. In our opinion, these actions are necessary for the continued operation of the projects; the equitable treatment and protection of all project landowners, water users, and the Government and the prevention of additional debt accruing on Indian trust lands.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs require appropriate officials to:

1. Develop comprehensive and accurate inventories of project facilities and equipment for all projects with operation and maintenance rates. The inventories should include the location, age, physical condition, and estimated remaining useful life for each facility and piece of equipment.

2. Develop project budgets and assessment rates based on accurate estimates of the full costs of properly operating, maintaining, rehabilitating, and replacing the projects' facilities and equipment. Such estimates should include the costs for contingencies and the orderly replacement of project facilities and equipment. The area offices should provide the oversight and technical assistance necessary to ensure that the estimates are prepared properly and timely.

3. Prepare the guidance and provide the technical assistance necessary for the irrigation projects to establish and fund reserve accounts for financing the orderly replacement of project facilities and equipment.

4. Ensure that project offices comply with Departmental billing requirements. This will require that agency and project office personnel work together to update records to reflect the current names and addresses of all landowners and lessees and bill annual operation and maintenance charges to all landowners and water users.

5. Comply with Departmental debt collection procedures and develop formalized plans, with target dates, for collecting delinquent operation and maintenance charges owed the projects.

6. Coordinate with the tribes and agency officials to enforce the requirement for surety bonds or other securities and deny leases or renewal of leases to lessees who owe delinquent operation and maintenance charges.

7. Enforce, where possible, regulations on the termination of water deliveries to lands on which the landowners or lessees have not paid operation and maintenance charges.

Bureau of Indian Affairs Response and Office of Inspector General Reply

The March 27, 1996, response (Appendix 5) from the Assistant Secretary for Indian Affairs concurred with Recommendations 1, 4, 5, 6, and 7 and partially concurred with Recommendations 2 and 3. However, we consider the seven recommendations resolved but not implemented based on a review of the Bureau's proposed actions and subsequent discussions with Bureau officials from the Office of Trust Responsibilities, Division of Water and Land Resources the Office of Audit and Evaluation; and the Power and Irrigation Reconciliation Team (see Appendix 6).

Recommendations 2 and 3. Partial concurrence.

Bureau Response. While the Bureau partially concurred with both recommendations, it stated that it "cannot include capital improvements in its O&M [operation and maintenance] assessment" because "capital improvements to existing plant and equipment require Congressional authorization for construction rehabilitation and betterment, "

Office of Inspector General Reply. We used the term "capital improvements" in our discussion of operation and maintenance and in these two recommendations in the draft report to indicate those types of repairs that would have a useful life of more than 1 year and would be capitalized and depreciated rather than expensed in a commercial setting. We did not intend to recommend that the Bureau finance capital improvements through its operation and maintenance assessments. Accordingly, we have revised both recommendations and applicable sections of the report to eliminate the reference to capital improvements.

B. REIMBURSEMENT OF CONSTRUCTION COSTS

Of the 10 irrigation projects reviewed, we found that the Bureau of Indian Affairs was collecting reimbursable construction costs from non-Indian landowners on 2 projects but had not taken adequate action to recover reimbursable construction costs from non-Indian landowners in a timely manner for 7 projects. Repayment of reimbursable construction costs for the remaining Colorado River Irrigation Project was deferred because the land was still in trust status. Federal statutes and regulations and Bureau policies require that non-Indian landowners repay their share of the Federal investment in Indian irrigation projects within a reasonable time period, generally 40 years. However, for seven of the projects reviewed, the Bureau's area, agency, and project offices had not: (1) negotiated repayment contracts; (2) adjusted repayment rates; (3) established ability-to-pay rates; or (4) followed the procedures necessary to ensure that reimbursable construction costs remained legally collectible. As a result, we estimated that reimbursable construction costs of about \$8 million were not collected, of which an undetermined amount may not be legally collectible. In addition, about \$3 million had not been included in the repayment contracts for two projects.

Wapato and Fort Hall Irrigation Projects

The Wapato and Fort Hall Irrigation Project Offices continued to collect the reimbursable construction costs owed the Federal Government by the Project's non-Indian landowners. In our January 1989 report "Repayment of Investment in Indian Irrigation Projects, Bureau of Indian Affairs" (No. 89-38), we reported that these two projects were the only projects, out of the seven reviewed, that had collected reimbursable construction costs in a timely manner. We performed a limited review of the Wapato-Satus and Athtanum Units⁶ (the two major units of the Wapato Project) and reviewed the Bureau's 1995 report on the Fort Hall Unit⁷ (the largest unit of the Fort Hall Project) to ensure that project personnel were still billing, collecting, and accounting for reimbursable construction costs at the two projects in accordance with repayment requirements. Based on our limited review, we concluded that the costs were appropriately billed, collected, and accounted for. Further, we noted that the unpaid balance of reimbursable construction costs and the amount of delinquent construction receivables were insignificant in relation to construction cost repayment as follows:

⁶Final construction costs for the "Additional Works" Unit of the Wapato Project have not been determined by the Bureau, and reimbursable construction costs are not applicable to the Toppenish Simcoe Unit, since water is provided on a request and/or demand basis only and is billed at that time.

⁷The Project's Michaud Unit and Minor Units have not been formally designated as complete and assessed construction costs. However, almost all the lands served by these units are still in Indian ownership; thus, under the Leavitt Act of July 1, 1932, repayment of the Indian share of construction costs would be deferred as long as title to the land remains in Indian ownership.

<u>Project/Unit</u>	<u>Reimbursable Construction costs</u>	<u>Amount Repaid</u>	<u>Unpaid Balance</u>	<u>Amount Delinquent</u>
Wapato	\$4,311,055	\$4,239,009	\$72,046	\$10,279
Fort Hall	<u>2,111,961</u>	<u>2,109,837</u>	<u>2,124</u>	<u>50</u>
Total	<u>\$6,423,016</u>	<u>\$6,348,846</u>	<u>\$74,170</u>	<u>\$10,329</u>

The Wapato Project Office has been able to obtain timely repayment because the water rights applications of Project landowners included a provision requiring that landowners repay a proportionate share of the Project's reimbursable construction costs. Fort Hall Project Office personnel said that their success in collecting reimbursable construction costs was the result of following required collection procedures.

Remaining Projects

Bureau regulations and the Code of Federal Regulations (25 CFR 134.4) require non-Indian landowners to repay their per-acre share of reimbursable construction costs over 40 years unless the Bureau determines that the costs cannot be repaid and then adjusts, defers, or cancels these costs. In the absence of a repayment contract or other specific authority, the Bureau is required to determine the appropriate per-acre construction charge and to assess and collect the charge annually. However, the Blackfeet, Fort Belknap, Crow, Wind River, Uintah, San Carlos, and Fort Peck Irrigation Projects had not taken the appropriate action to collect reimbursable construction costs from non-Indian landowners in a timely manner. We addressed the issue of the inadequate recovery of the Federal investment in Indian irrigation projects in our December 1979 audit report "Review of the Repayment of the Federal Investment in Irrigation and Power Projects, Bureau of Indian Affairs" (No. W-BIA-9-78) and in our January 1989 Audit Report No. 89-38 (see Prior Audit Coverage section). In these reports, we recommended that the Bureau determine the reimbursable costs for each irrigation project from non-Indian landowners and take appropriate action to recover these costs in a timely manner. Although some of these deficiencies were reported up to 15 years ago, our recommended actions had not been fully implemented at the time of our current review. During our review of the Billings and Phoenix Area Offices, we found that problems continued to exist in the areas of repayment contracts, repayment rates, establishment of ability-to-pay rates, and compliance with required administrative procedures to ensure that reimbursable construction costs remained legally collectible.

Billings Area Office. The Billings Area Office had not negotiated repayment contracts or assessed and collected construction charges from non-Indian landowners on the Blackfeet, Fort Belknap, and Crow Irrigation Projects. In addition, the Area Office continued to assess non-Indian landowners on the Fort Peck Irrigation Project the same repayment rate of \$0.50 per acre established by the Secretary of the

Interior in 1920, pending completion of the project. Further, the Area Office had not adjusted repayment rates, as required, for the Wind River Irrigation Project for the additional \$423,000 of costs incurred by the Project since 1976. Our review of the reimbursable construction costs for the Blackfeet, Crow, and Fort Peck Irrigation Projects disclosed that following our 1979 audit report, the Area Office contracted for a study of the non-Indian landowners' ability to pay. The study, completed in 1985 and reported in our 1989 audit, recommended a nominal repayment rate of \$1 per acre for an interim period of 5 years for each project. However, the Area Office has not assessed this nominal rate, updated the repayment studies, or collected reimbursable construction costs. As a result, since the non-Indian landowners have not been legally apprised of their debt in accordance with appropriate administrative procedures, an undetermined portion of the debt maybe uncollectible.

Phoenix Area Office. The Phoenix Area Office had not ensured that the reimbursable construction costs applicable to non-Indian landowners in the Uintah Irrigation Project remained legally collectible, in part because the Project did not: (1) ensure that liens were recorded in the land patents when land was transferred from trust to fee status or in subsequent transfer documents; and (2) bill landowners for construction charges accruing since 1983. The filing of liens is necessary to extend the Government's rights to collect money damages, which are otherwise limited under the statute of limitations provided in Public Law 89-505. Based on these conditions and other administrative deficiencies, the Regional Solicitor, Intermountain Region, recommended, in a September 28, 1983, memorandum, that this debt be canceled. However, the recommended cancellation was never submitted to the Secretary or the Congress for approval. Bureau irrigation personnel informed us that the data were recently updated but were awaiting further review and analysis by the Bureau's Power and Irrigation Reconciliation Team before finalization and submittal to the Secretary. The current data propose that construction costs of about \$1.5 million accruing on non-Indian lands since 1956⁸ be canceled.

The Phoenix Area Office also had not adjusted the repayment obligation of the San Carlos Irrigation and Drainage District, as provided for in the 1988 amendment to the District's repayment contract. Under the amendment, the repayment amount can be adjusted every 5 years to reflect additional expenditures on the San Carlos Irrigation Project since September 30, 1984. However, the Area Office has not negotiated an adjustment to the District's repayment contract to include the District's approximately \$2.8 million share of the \$5.7 million investment in the Project since 1984. Accordingly, the \$2.8 million is not included in the amount the District has agreed to repay. Based on the District's average annual repayment of about \$59,400

⁸Reimbursable Federal funds expended on the Uintah Irrigation Project applicable to non-Indians prior to 1956 were either collected or canceled by various acts of the Congress.

a year and its maximum annual repayment of \$125,000⁹ per year, we estimate that the amount not included in the District's repayment base will increase the District's current repayment period by a range of 23 years to 48 years.¹⁰ These estimates are exclusive of any power revenues, which are used to assist in the repayment of the non-Indian irrigation debt after the power investment has been repaid. On the San Carlos Project, it is not expected that power revenues will be applied to the non-Indian irrigation debt until at least the year 2010.

In summary, we estimated that reimbursable construction costs totaling approximately \$7.7 million were not collected within a reasonable period of time for five projects and that costs totaling approximately \$3.3 million were not included in the repayment contracts for two projects. However, even if the repayment contracts for these two projects were adjusted to include these amounts, the repayment periods would be extended by up to an additional 48 years. The reimbursable construction costs are as follows:

CONSTRUCTION DEBT OF NON-INDIAN LANDOWNERS

<u>Area Office/Project</u>	<u>Projects With No or Minimal Repayment (Estimated Project Debt as of 9/30/94)</u>	<u>Projects With Debt Not in Repayment Base*</u>	<u>Estimated Repayment Period (In years)</u>
Billings			
Blackfeet	\$1,460,598		**
Fort Belknap	505,092		**
Fort Peck	3,342,824		612 to 679***
Crow	852,529		****
Wind River		\$422,995	43
Phoenix			
Uintah	1,529,996		
San Carlos		<u>2,848,464</u>	23 to 48
Total	<u>\$7,691,039</u>	<u>\$3,271,459</u>	

*Project repayment contracts or assessment rates have not been adjusted to reflect these amounts.

**As no costs are being collected, a repayment period cannot be calculated.

***The estimated repayment periods are 612 years and 679 years for the Project's Wiota Unit and Frazier Wolf Point Unit, respectively.

****With the exception of costs for the Willow Creek Storage Unit, which is one small feature of the Crow Project, no construction costs have been assessed or collected by the Project.

⁹The District's repayment rates as established in a 1947 amendment to the District's repayment contract range from \$12,500 to \$125,000 annually, depending on the amount of water in the San Carlos Reservoir as of March 1 of each year.

¹⁰The repayment period, based on the remaining reimbursable costs of approximately \$7.1 million incurred through September 30, 1984, is estimated to range from 57 to 120 years.

An undetermined amount of the \$7.7 million debt maybe uncollectible because the area offices did not follow the administrative procedures necessary to apprise the non-Indian landowners of their debt and thus ensure that the debt remained legally collectible. In addition, in cases where the statute of limitations applies, the likelihood of collection has been further reduced because the statute requires that action for money damages be brought within 6 years after the right to action accrues.

Recent Bureau Actions

As of April 1995, Bureau staff had completed the determination and reconciliation of construction cost balances for the Fort Hall, Pine River, and Uintah Irrigation Projects and the preliminary verification of operation and maintenance receivables for several other irrigation projects, and the Bureau was scheduling similar financial activities at other projects. In addition, the Bureau's Office of Trust Responsibilities was developing a plan for the reconciliation of irrigation and power project needs to resolve the material weakness identified in prior Office of Inspector General reports (see Appendix 3). We discussed the proposed scope of work on the projects with Bureau personnel at an April 1995 meeting in Albuquerque, New Mexico.

At the meeting, we suggested that the Bureau reprioritize the projects to be reviewed to minimize the costs and maximize the benefits to the Government. This could be accomplished by concentrating on the three power projects and other projects with repayment contracts in place, as these projects represented a large portion of the Government's investment and offered a better likelihood of collection rather than the projects proposed by the Bureau. We also suggested that, as appropriate, the proposed scope of work be modified to address several issues before fieldwork was undertaken, including the need for: (1) the preparation and proper approval of land classification reports that accurately represent current project land ownership; (2) the reclassification of lands classified as "temporarily nonassessable" to either presently assessable or permanently nonassessable, in accordance with regulations; (3) reviews of land records (such as fee patents and warranty deeds) at county recorders' offices for projects where repayment contracts do not exist to determine whether construction liens were properly recorded; and (4) consideration of the applicability of the statute of limitations on the collectibility of debt. We believe that accurate land classifications and related designation reports are essential to the proper allocation and assessment of construction costs. In this regard, area office officials informed us during our audit that possible deficiencies existed in the land classification report for at least one project and that a project completion report had not been prepared for at least one other project. We informed the Bureau at the Albuquerque meeting that these deficiencies must be addressed before construction costs can be properly allocated. Bureau officials generally agreed with our suggestions and concerns and modified their proposed plan to consider these areas.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs instruct appropriate officials to:

1. Assess and collect adequate repayment charges from non-Indian landowners on the Blackfeet, Fort Belknap, Fort Peck, and Crow Irrigation Projects either through negotiated repayment contracts or under the Bureau's authority to determine, assess, and collect construction costs if repayment contracts cannot be negotiated.

2. Adjust the existing repayment contract with Wind River Irrigation Project water users to ensure the timely recovery of their proportional share of the additional Federal investment in the Project since 1976.

3. Amend the repayment contract with the San Carlos Irrigation and Drainage District for its proportionate share of the additional Federal investment in the San Carlos Irrigation Project since September 30, 1984, and amend the repayment contract every 5 years thereafter, as provided for in the Bureau's 1988 agreement with the District.

4. Propose, to the San Carlos Irrigation and Drainage District, a change in the District's repayment rate to ensure that any additional investment in the Project after September 30, 1984, is recovered over a period not to exceed 40 years. If agreement cannot be reached, changes in project legislation should be proposed to require that additional investment in the Project be recovered over this period.

5. Prioritize the proposed determination of reimbursable construction costs for those projects with non-Indian landowners based on where it would be the most cost beneficial to the Government. Among the factors the Bureau should consider in evaluating projects are the amount of reimbursable construction costs involved; the existence of valid repayment contracts; and the existence of power components, revenues from which could help retire the projects' irrigation construction debt after the power component is repaid.

6. Ensure that project completion reports are prepared as necessary and that land designation reports for projects with non-Indian landowners are current and accurate before the Bureau attempts to determine the amount of reimbursable costs applicable to those projects.

Bureau of Indian Affairs Response and Office of Inspector General Reply

The March 27, 1996, response (Appendix 5) from the Assistant Secretary for Indian Affairs concurred with all six recommendations. We consider the six recommendations resolved but not implemented based on the Bureau's response and

subsequent discussions with Bureau officials from the Office of Trust Responsibilities, Division of Water and Land Resources; the Office of Audit and Evaluation; and the Power and Irrigation Reconciliation Team (see Appendix 6).

CLASSIFICATION OF MONETARY AMOUNTS

<u>Finding</u>	<u>Potential Additional Revenues</u>	<u>Underpaid Revenues</u>
	(Amounts in Millions)	
Operation and Maintenance		
Billings	\$1.1	
Collections	\$1.9	
Construction		
Reimbursable Costs	<u>\$7.7</u>	<u>\$3.3</u>
Total	<u>\$10.7</u>	<u>\$3.3</u>

ORGANIZATIONS VISITED OR CONTACTED

Organization	Location
U.S. Department of the Interior	
Bureau of Indian Affairs	
Headquarters Office	Washington, D.C.
Billings Area Office	Billings, Montana
Blackfeet Agency Office	Browning, Montana
Blackfeet Irrigation Project Office	Browning, Montana
Crow Agency Office	Hardin, Montana
Crow Irrigation Project	Hardin, Montana
Fort Belknap Agency Office	Harlem, Montana
Fort Belknap Irrigation Project Office	Harlem, Montana
Fort Peck Agency Office	Popular, Montana
Fort Peck Irrigation Project Office	Wolf Point, Montana
Wind River Agency*	Fort Washakie, Wyoming
Wind River Irrigation Project*	Fort Washakie, Wyoming
Phoenix Area Office	Phoenix, Arizona
Colorado River Agency Office	Parker, Arizona
Colorado River Irrigation Project Office	Posten, Arizona
San Carlos Irrigation Project Office	Coolidge, Arizona
Pima Agency	Sacaton, Arizona
Portland Area Office	Portland, Oregon
Yakima Agency Office	Toppenish, Washington
Wapato Irrigation Project Office	Wapato, Washington
Fort Hall Irrigation Project Office*	Fort Hall, Idaho
Irrigation and Power Liaison and Compliance Section*	Albuquerque, New Mexico
Water User Organizations	
Fort Peck Water Users Association	Wolf Point, Montana
Tribal Council Colorado River Indian Tribes	Parker, Arizona
Southwest Indian Agricultural Association	Parker, Arizona
Irrigation Committee of the Yakima Indian Nation	Toppenish, Washington
Yakima Reservation Irrigation District (non-Indian)	Yakima, Washington
Office of the Solicitor	
Regional Solicitor's Office	Portland, Oregon

*Contacted only.

SUMMARY OF RECOMMENDATIONS AND CORRECTIVE ACTIONS FROM PRIOR REPORTS

The status of the recommendations and corrective actions from Audit Reports 89-38 and 88-42 is as follows:

- The report "Repayment of Investment in Indian Irrigation Projects, Bureau of Indian Affairs" (No. 89-38), issued in January 1989, concluded that the Bureau had not taken sufficient action to enforce statutes and regulations requiring the collection of reimbursable construction costs from non-Indian landowners. In our current review, we found that none of the report's five recommendations had been fully implemented.

Recommendations	Status of Recommendations and Corrective Actions
1. Determine the appropriate reimbursable costs for each Bureau irrigation project with non-Indian landowners and either (a) establish annual assessment charges sufficient to recover reimbursable costs within 40 years or (b) establish, in accordance with existing statutes, repayment rates based on the landowners' ability to pay whenever it is demonstrated that the full assessment cannot be paid.	Partially implemented. Efforts are under way to determine the reimbursable costs for Bureau projects with non-Indian landowners. The Bureau has completed its analysis for three projects and estimated that its analysis for all projects will be completed by July 1999.
2. Amend the existing repayment contract with the San Carlos Irrigation and Drainage District to ensure timely recovery of its proportional share of the additional Federal investment in the San Carlos Irrigation Project since 1931. This amendment may require a change in legislation.	Partially implemented. The repayment contract with the San Carlos Irrigation and Drainage District has been amended to include additional construction expenditures through September 30, 1994. However, the repayment rates, which were established in 1947, were not changed.
3. Establish action plans, by individual project, to ensure that the foregoing recommendations are implemented within prescribed and reasonable periods of time.	Partially implemented. Plans have been established for 18 projects, and reviews have been completed at 3 projects. Estimated completion date is 1999.
4. Determine the reimbursable or nonreimbursable status of each irrigation project based on prior legislation and subsequent legal decisions. This action could result in one project having both reimbursable and nonreimbursable costs, depending upon the legal requirements in effect at the time the funds were appropriated.	Partially implemented. Efforts are under way to determine the reimbursable status of the Bureau's irrigation projects. Estimated completion date is 1999.
5. Reconcile and, if appropriate, adjust the Bureau's general ledger balances and/or the ledger accounts maintained by the projects.	Partially implemented. The Bureau has completed its analysis of reimbursable costs for three projects. The Bureau estimates that repayment balances for other projects with non-Indian landowners will be reconciled and ledger accounts adjusted by July 1999.

- The report "Operation and Maintenance Assessments of Indian Irrigation Projects, Bureau of Indian Affairs" (No. 88-42), issued in February 1988, concluded that the Bureau was not assessing, billing, and collecting operation and maintenance charges as required. The report contained 21 recommendations. Based on the Bureau's response, we considered all the recommendations resolved. However, in our current review, we found that 13 of the recommendations had not been fully implemented.

Recommendations	Status of Recommendations and Corrective Actions
1. Compute the assessment rate for the Wind River Irrigation Project in accordance with Title 25, Part 171, of the Code of Federal Regulations and the Bureau Manual (55 BIAM Supplement 4) and determine whether it is necessary to provide refunds to water users who overpaid their 1985 and 1986 assessments.	Partially implemented. The Project's operation and maintenance assessment rate determination procedures were modified to exclude estimated delinquencies as a cost factor. However, a decision has not been made concerning possible refunds to water users who overpaid their 1985 and 1986 assessments.
2. Reconcile the current Master File List Report of Acreage for the Wind River Irrigation Project with the 1964 redesignation report and assess any additional acreage determined to be assessable.	Not implemented. The Bureau expects to reevaluate the designation of Project lands in 1996.
3. Forward the operation and maintenance billings for recently deceased Indians to the appropriate probate officials for possible inclusion in the probate.	Partially implemented. At least six projects still do not forward operation and maintenance bills to the appropriate probate officials.
4. Bill multiple owners of all irrigated tracts of land or establish a point beyond which it is not cost effective to do so.	Partially implemented. The Bureau has not developed a national policy to establish an amount below which it is not cost effective to bill irrigators. However, the Bureau is presently developing the capability to bill multiple owners of Indian trust land and anticipates that this capability will be operational for the 1996 irrigation season at 10 of its irrigation projects.
5. Develop procedures to ensure that project personnel are promptly notified of all leases, especially those approved after the start of the irrigation season.	Partially implemented. Standard procedures have not been developed to require and ensure that agencies report all leases to the projects in a timely manner, but at least one agency does notify the Project of all leases.
6. Establish procedures to ensure that leased acreage data are verified and are reconciled with the assessed acreage shown on the operation and maintenance billings.	Not implemented. Procedures have not been developed to require that the agencies and related projects annually reconcile their records to ensure that all leased acreage is billed for operation and maintenance charges.

Recommendations (Cont.)

Status of Recommendations and
Corrective Actions (Cont.)

7. Establish billing and monitoring procedures to ensure that interest, penalty, and administrative charges are assessed on all delinquent accounts at the rates prescribed by regulations.

Partially implemented. The Bureau now notifies all projects in writing of what interest, penalties, and administrative charges to assess on delinquent operation and maintenance amounts for the upcoming irrigation season. In addition, the Bureau, through its National Irrigation Information and Management System, which generates irrigation operation and maintenance bills, has established procedures to ensure that interest, penalties, and administrative charges are assessed on delinquent accounts. The System will be operational at 10 projects for the 1996 irrigation season.

8. Ensure that all future irrigation operation and maintenance billings show delinquent amounts, plus applicable interest, penalty, and administrative charges, in addition to the amount of the current assessment.

Partially implemented. Under the Bureau's National Irrigation Information and Management System, delinquent amounts, plus applicable interest, penalties, and administrative charges, are shown separately from the amount of the current assessment. The System will be operational at 10 Bureau projects for the 1996 irrigation season.

9. Determine the authority for the Bureau's general policy of not assessing penalty charges to Indian landowners who have delinquent operation and maintenance accounts. If no authority exists, assess penalty charges on delinquent accounts except for those projects specifically exempted by legislation, court decree, or specific regulations.

Partially implemented. The Solicitor has determined that the Bureau and its projects should be assessing penalty charges to Indian landowners. All projects have been notified to assess interest, penalty, and administrative charges on delinquent amounts owed by Indian landowners. The assessment of these charges is being automated at 10 projects.

10. Enforce the requirement for a surety bond, or other security, to ensure payment/performance under the terms of the lease.

Partially implemented. Not all agencies have enforced the use of surety bonds or other security requirements.

11. Take prompt and decisive collection action against the lessor's bond for the nonpayment of irrigation operation and maintenance charges.

Partially implemented. Since surety bonds were not required at some projects, there was no security against which actions could be taken.

12. Correct the program problems affecting the general ledger accounts receivable balances.

Partially implemented. The Bureau's former accounting system was replaced by the Federal Financial System, which corrected the programming problem. Corrective action is under way or has been completed at 10 projects to ensure that all accounts receivable amounts are included in the general ledger accounts.

Recommendations (Cont.)

13. Reconcile the general ledger and project subsidiary records for irrigation operation and maintenance receivables and properly maintain the records thereafter.

**Status of Recommendations and
Corrective Actions (Cont.)**

Partially implemented. Work is under way at 10 projects to reconcile differences between the irrigation operation and maintenance receivables in the Bureau's general ledger accounts and the projects' subsidiary records. Estimated completion date for the Bureau's remaining projects is December 1996.

REPORTS ON PHYSICAL CONDITION AND ESTIMATED REHABILITATION COSTS FOR PROJECTS REVIEWED

Area Office/Project	Title and Source of Estimate	Estimated costs*
Billings		
Blackfeet	"Rehabilitation Needs, Blackfeet Irrigation Project, Blackfeet Indian Reservation, Montana," prepared by the Billings Area Office and Blackfeet Agency, January 1993.	\$4,369,935
Crow	Rehabilitation estimates supplied by engineering staff, Billings Area Office, 1994.	9,000,000
Fort Belknap	"Status Report With Cost Update and Funding Requirements for the Rehabilitation of the Fort Belknap Irrigation Project," prepared by Morrison-Mairlie/CSSA, July 1990.	21,122,905
Fort Peck	"Fort Peck Irrigation Project Condition Report, Fort Peck Indian Reservation, Montana," prepared by the Billings Area Office and Fort Peck Agency, February 1994.	3,969,795
Wind River	"Wind River Irrigation Project Assessment and Plan," prepared for the Eastern Shoshone and Northern Arapaho Tribes and the Wind River Agency by the Office of the Tribal Water Engineer and the Natural Resources Consulting Engineers, Inc., June 1994.	29,247,923
Phoenix		
Colorado River	"Rehabilitation and Betterment of the Colorado River Indian Reservation Irrigation Project, Arizona and California," prepared by the Phoenix Area Office, July 1991.	25,756,440
San Carlos	"Rehabilitation and Betterment Report for the San Carlos Irrigation Project (SCIP) - Joint Works, Arizona," prepared by the Phoenix Area Office, July 1993.	52,774,800**
Portland		
Wapato	Six reports as follows: (1) "Facilities and Operations Appraisal, Wapato Irrigation Project, Washington," prepared by the Bureau of Reclamation, 1976; (2) "Trip Report on Technical Assistance to the Wapato Irrigation Project," prepared by the Bureau of Indian Affairs, 1990; (3) "Assessment of Hydroelectric Generation and Transmission Facilities," prepared by the Bureau of Reclamation, 1990; (4) "Safety and Health Inspection of Wapato Irrigation Project," prepared by the Bureau of Indian Affairs, 1991; (5) "Water Conservation and Resource Enhancement Plan on the Yakima Indian Reservation Within the Wapato Irrigation Project," prepared by the Yakima Indian Nation, 1992; and (6) "Review of Operation and Maintenance Program, Examination Report, Wapato Irrigation Project," prepared by the Bureau of Indian Affairs, 1993.	16,864,407***
Total		<u>\$163,106,205</u>

*These costs represent report amounts indexed through September 1994 using the Bureau of Reclamation's Construction Cost Trends Index.

**The San Carlos Irrigation Project-Joint Works consists of facilities necessary to deliver water to the approximately 100,000 acres of land served by the Project. The \$52,774,800 includes both rehabilitation and betterment, as no separate breakdown of the costs was provided.

***cost of replacing electrical transmission facilities only.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 27 1996

Memorandum

To: Assistant Inspector General for Audits

From: Ada E. Deer *Ada E. Deer*
Assistant Secretary - Indian Affairs

Subject: OIG Draft Audit Report W-IN-BIA-002-94 - Indian Irrigation Projects

The subject audit evaluated whether the Bureau of Indian Affairs (Bureau) identified and collected reimbursable irrigation project construction costs owed by non-Indians and whether the Bureau assessed, billed, and collected annual operation and maintenance charges from landowners and water users. The report found that ten of the Bureau's irrigation projects had either not collected all the reimbursable construction costs due or had not collected adequate operation and maintenance (O & M) revenues.

Recommendations from the draft audit report reiterate recommendations from previous audits issued by the Office of Inspector General (OIG):

- Audit 88-42, "Operation and Maintenance Assessments of Indian Irrigation Projects, Bureau of Indian Affairs"
- Audit 89-38, "Repayment of Investment in Indian Irrigation Projects, Bureau of Indian Affairs"
- Audit 94-1-427, "Repayment of the Federal Investment in the Flathead Indian Irrigation Project, Bureau of Indian Affairs"
- Audit 95-1-1402, "Wapato Irrigation Project, Bureau of Indian Affairs"

The Bureau acknowledges that the repeated OIG audits of the irrigation program have provided the impetus for a comprehensive reevaluation of irrigation project management in the Bureau. As a direct result of these audits, the Power and Irrigation Reconciliation Team (PIRT) was established on August 12, 1995, by the Deputy Commissioner of Indian Affairs to verify and reconcile irrigation account balances, to update irrigation repayment contracts and rate schedules, and to ensure incorporation of geographic considerations and engineering requirements in rate setting algorithms for the irrigation projects subject to repayment requirements. While this is obviously a long term project, PIRT is committed to completing the following seven actions for all 18 irrigation projects.

Construction Repayment:

- **Reconcile construction repayment balances for each of the 18 irrigation projects.**
- **Ensure irrigation assessments are adequate to recover reimbursable construction costs.**

Operation and Maintenance:

- **Reconcile O & M receivable balances for each of the 18 irrigation projects.**
- **Ensure O & M assessments are adequate to fund plant and equipment maintenance and replacement to original design standards.**

Billing and Collections:

- **Bill for all construction repayment and O & M debt.**
- **Enforce all debt collection and debt management procedures authorized for irrigation projects.**
- **Ensure bill formats separately identify construction assessments, O & M assessments, delinquencies, and interest, penalties and administrative charges**

While each of the 13 recommendations contained in the subject audit is addressed, we believe it is possible to consolidate these recommendations and those from the prior irrigation audits into 7 recommendations. Attachment A displays the relationships between the recommendations from the previous audits and the subject draft report.

We recommend the following modifications or corrections to statements in the draft audit report:

- **Page 1, paragraph 2: “The *Bureau* has determined that for projects with lands capable of producing crops under sustained irrigation, landowners and water users are to pay the full annual costs of operating and maintaining the projects.”**

Comment: The Bureau does not arbitrarily determine whether water users pay O & M costs. Authority to assess maintenance costs for existing irrigation systems is codified under 25 U.S.C. 385 which authorizes the Secretary of the Interior to charge and collect for irrigation system maintenance. The Bureau, with public participation, has promulgated implementing regulations under 25 CFR Part 171 to define those lands subject to maintenance assessments and complies with those regulations for each rate setting event. Additional legislation (34 Stat. 1024; 39 Stat. 142; and 68 Stat. 1027) relate to the collection of charges on specific projects.

We recommend the sentence be reworded as follows: “On projects with lands capable of producing crops under sustained irrigation, landowners and water users are to pay. . .”

- **Page 7, paragraph 2:** “Instead, the projects’ budgeted operation and maintenance costs . . . generally excluded the costs of needed maintenance and capital improvements...”

Page 8, paragraph 2: “However, this increase did not include the cost for capital improvements to facilities.. “

Page 9, paragraph 1: “However, these increases did not include the costs for capital improvements to facilities and equipment.”

Page 18, Recommendation A.2: “Such costs should include the costs for capital improvements. ..”

Page 18, Recommendation A.3: “Prepare the guidance and provide the technical assistance necessary for the irrigation projects to establish and fund reserve accounts for financing capital improvements...”

Comment: The term “capital improvements” should be changed to “maintenance and replacement to design standards.” Capital improvements to existing plant and equipment require Congressional authorization for construction rehabilitation and betterment. O & M assessments are used to maintain and replace plant and equipment to the original design standards.

The Bureau’s responses to the 13 recommendations in the draft audit report are included below:

O & M Recommendations

Recommendation A.1: Develop comprehensive and accurate inventories of project facilities and equipment for all projects with operation and maintenance rates. The inventories should include the location, age, physical condition, and estimated remaining useful life for each facility and piece of equipment.

Response: The Bureau concurs. The PIRT Team will help each project manager inventory plant and capitalized equipment. Work tasks will include annotation of the location of plant features and capitalized equipment; definition of depreciation and service life factors; computation of remaining useful life, maintenance and replacement schedules, and budgeting methods to fund maintenance; and development of rate setting algorithms which will include provisions for plant and equipment maintenance and replacement. Project managers will ensure completion of inventories and continued maintenance of inventory records.

Responsible Official:

**Raymond L. Davis
PIRT Team Leader
and
Project Managers (see Attachment B)**

Due Date:

See Attachment C

Recommendation A.2: Develop project budgets and assessment rates based inaccurate estimates of the full costs of properly operating, maintaining, rehabilitating, and replacing the projects' facilities and equipment. Such estimates should include the costs for capital improvements, contingencies, and equipment replacement. The area offices should provide the oversight and technical assistance necessary to ensure that the estimates are prepared properly and timely.

Response: The Bureau partially concurs. To record the plant and equipment inventory and to support budgeting and rate setting for irrigation services, the Bureau will develop a real property and equipment accountability module in its National Irrigation Information and Management System (NIIMS). The real property module will:

- Identify and record plant and equipment assets.
- Record service life factors to:
 - a) plan plant and equipment maintenance and replacement,
 - b) set rates adequate to accumulate funds to finance the servicing, and
 - c) schedule staff and resources adequate to execute maintenance tasks.
- Recognize collections and allocate funds to capital reserves to finance maintenance and replacement efforts.

Responsible Official: John Williamson, Chief
Irrigation and Power Liaison
and Compliance Section

Due Date: December 1997

The Bureau's Office of Trust Responsibilities will work with the irrigation projects to establish a policy for defining the amount of contingency funds needed for each project.

Responsible Official: Ross Mooney, Acting Chief
Water and Land Resources Division

Due Date: December 1998

The Bureau cannot include capital improvements in its O & M assessments. As previously noted, capital improvements to existing plant and equipment require Congressional authorization for construction rehabilitation and betterment. O & M assessments are to maintain and replace plant and equipment to the original design standards.

Recommendation A.3: Prepare the guidance and provide the technical assistance necessary for the irrigation projects to establish and fund reserve accounts for financing capital improvements to project facilities and equipment.

Response: The Bureau partially concurs. In June 1996, the Bureau will publish a draft revised 25 CFR 171: Irrigation Operation and Maintenance, to promulgate the Bureau's authority to levy rates for irrigation services which are adequate to recover the total cost for system operations, including funding for contingencies.

To implement the rule, the Bureau will revise the BIA Manual to replace portions of the current 55 BIAM: Land Operations, which defines irrigation procedures, with 48 BIAM: Irrigation. The new 48 BIAM will define procedures for assessing and levying charges for irrigation services and for billing and collecting irrigation fees.

Responsible Official: Ross Mooney, Acting Chief
Division of Water and Land Resources

Due Date: June 1996

As the PIRT Team reconciles project balances and evaluates the assessment rates, they will recommend rates adequate to fund the reserve accounts.

Responsible Official: Raymond L. Davis
PIRT Team Leader

Due Date: See Attachment C

The Bureau cannot include capital improvements in its O & M assessments. As previously noted, capital improvements to existing plant and equipment require Congressional authorization for construction rehabilitation and betterment. O & M assessments are to maintain and replace plant and equipment to their original design standards.

Recommendation A.4: Ensure that project offices comply with Departmental billing requirements. This will require that agency and project office personnel work together to update records to reflect the current names and addresses of all landowners and lessees and bill annual operation and maintenance charges to all landowners and water users.

Response: The Bureau concurs. NIIMS is implemented and provides billing support to 10 of the Bureau's 18 irrigation projects and is scheduled for implementation at the remaining projects by December 1996. Every tract of land in a project is identified and assessed from the NIIMS billing module. In order to verify the names and addresses of Project landowners and lessees prior to generating bills, NIIMS generates a proof report which lists the tracts of land, identified by unit serial number, and the land owner, lessee or otherwise designated agent responsible for making payment for O & M assessments for that tract of land. NIIMS can support multiple heirship records to identify multiple owners who share interest in each tract of land. The report will be provided to project managers for verification prior to bill generation and mailing. The Bureau will develop an interface to automate verification of ownership records for the NIIMS database to each Area Office's land records database, where justified. If an interface is not possible, NIIMS will provide a proof data set of land ownership and lessees to support reconciliation of the datasets.

Responsible Official: John Williamson, Chief
Irrigation and Power Liaison
and Compliance Section

Due Date: December 1997

Recommendation A.5: Comply with Departmental debt collection procedures and develop formalized plans, with target dates, for collecting delinquent operation and maintenance charges owed the projects.

Response: The Bureau concurs. The Bureau will continue its efforts to collect delinquent assessments, surety bonds and promissory notes. The Office of Trust Responsibilities is currently negotiating an interagency agreement under which the Department of Treasury (Treasury) will provide debt collection services for delinquent irrigation assessments. The Bureau will submit a list of vendors responsible for payment of delinquent irrigation assessments to the Treasury to initiate delinquent debt collection actions.

In cases where individual Indian owners have not made payment, the Bureau will review the availability of funds in the owner's Individual Indian Money (IIM) account(s) and collect the delinquent fees from the owner's IIM account(s) in compliance with the Debt Collection Act of 1982 and using the procedures defined in 25 CFR 115.09 and 115.10.

Responsible Official: Project Managers (see Attachment B)

Due Date: See Attachment C

Recommendation A.6: Coordinate with the tribes and agency officials to enforce the requirement for surety bonds or other securities and deny leases or renewal of leases to lessees who owe delinquent operation and maintenance charges.

Response: The Bureau concurs. NIIMS will provide reports of leased lands with delinquent O & M assessments to lease managers. The Office of Trust Responsibilities will work closely with each Area's realty office to monitor leases to ensure no lease will be renewed with delinquent lessees.

Responsible Official: Project Managers and Area Realty
Officers (see Attachment B)

Due Date: See Attachment C

Recommendation A.7: Enforce, where possible, regulations on the termination of water deliveries to lands on which the landowners or lessees have not paid operation and maintenance charges.

Response: The Bureau concurs. NIIMS provides project managers reports of delinquent accounts along with an identifier for the delinquent tracts of land to support ready

identification of land which should be denied water. Project managers will ensure field crews execute orders to stop water deliveries where appropriate.

Responsible Official: Project Managers (see Attachment B)

Due Date: See Attachment C

Construction RePayment Recommendations

Recommendation B.1: Assess and collect adequate repayment charges from non-Indian landowners on the Blackfeet, Fort Belknap, Fort Peck, and Crow Irrigation Projects either through negotiated repayment contracts or under the Bureau's authority to determine, assess, and collect construction costs if repayment contracts cannot be negotiated.

Response: The Bureau concurs. PIRT's reconciliation schedule for the projects cited is:

<u>Irrigation Project</u>	<u>Start Date</u>	<u>Completion Date</u>
Blackfeet	06-01-96	02-28-97
Crow	07-01-96	03-20-97
Fort Belknap	06-01-96	02-28-97
Fort Peck	07-01-96	03-20-97

Responsible Official: Raymond L. Davis
PIRT Team Leader

The PIRT Team will verify each project's repayment balances and compute an amortization schedule sufficient to retire the construction debt during the time period designated in each project's authorizing legislation. The PIRT team will recommend the construction repayment schedules to the project managers for inclusion in their computation of irrigation rates. After each project is reconciled, the Bureau will evaluate whether recovery of construction debt is sufficient to justify the cost of reconciling the accounts.

Recommendation B.2: Adjust the existing repayment contract with Wind River Irrigation Project water users to ensure the timely recovery of their proportional share of the additional Federal investment in the Project since 1976.

Response: The Bureau concurs. PIRT's reconciliation of the Wind River Irrigation Project is scheduled for completion on January 30, 1997. The PIRT Team will verify Wind River's repayment balance and compute an amortization schedule sufficient to retire the construction debt during the time period designated in the Project's authorizing legislation. The PIRT team will recommend the construction repayment schedules to Wind River management for inclusion in their computation of irrigation rates.

Responsible Official: Raymond L. Davis
PIRT Team Leader

Recommendation B.3: Amend the repayment contract with the San Carlos Irrigation and Drainage District for its proportionate share of the additional Federal investment in the San Carlos Irrigation Project since September 30, 1984, and amend the repayment contract every 5 years thereafter, as provided for in the Bureau's 1988 agreement with the District.

Response: The Bureau concurs. PIRT's reconciliation of the San Carlos Irrigation and Drainage District is scheduled for completion on April 30, 1997. The PIRT Team will verify San Carlos's repayment balance serve as a basis for renegotiation of the Project's repayment contract.

Responsible Official: Raymond L. Davis
PIRT Team Leader

Recommendation B.4: Propose, to the San Carlos Irrigation and Drainage District, a change in the District's repayment rate to ensure that any additional investment in the Project after September 30, 1984, is recovered over a period not to exceed 40 years. If agreement cannot be reached, changes in project legislation should be proposed to require that additional investment in the Project be recovered over this period.

Response: The Bureau concurs. The PIRT Team will compute an appropriate amortization schedule to liquidate the Project's construction debt balances within the time periods provided for in the Project's authorizing legislation. Should the Project's current repayment assessments be inadequate, project managers will either levy repayment assessments adequate to liquidate the construction debt under existing authority or present to the Department of the Interior proposed legislation on authorizing the Bureau to levy adequate assessments.

Responsible Official: Project Managers (see Attachment B)

Due Date: December 1997

Recommendation B.5: Prioritize the proposed determination of reimbursable construction costs for those projects with non-Indian landowners based on where it would be the most cost beneficial to the Government. Among the factors the Bureau should consider in evaluating projects are the amount of reimbursable construction costs involved; the existence of valid repayment contracts; and the existence of power components, revenues from which could help retire the projects' irrigation construction debt after the power component is repaid.

Response: The Bureau concurs. Project reconciliation priorities were originally defined in the PIRT authorization and were rescheduled in the Project Leader's February 1996 report to the Office of Trust Responsibilities (see Attachment C), due to changes in management requirements. We request this recommendation be considered resolved.

Recommendation B.6: Ensure that project completion reports are prepared as necessary and that land designation reports for projects with non-Indian landowners are current and

accurate before the Bureau attempts to determine the amount of reimbursable costs applicable to those projects.

Response: The Bureau concurs. The PIRT Team will inventory the record of Project design specifications, land classifications, tract designations, assessability designations, and other geographic descriptors for inclusion in their reconciliation report for each Project. To the extent that geographic designations bear on whether costs are reimbursable, or, more importantly, whether costs are assessable, the PIRT Team will incorporate those designations in their verification of Project repayment balances.

Responsible Official: Raymond L. Davis
PIRT Team Leader

Schedule: See Attachment C

Since your office has already conducted extensive research to support the recommendations from this and previous irrigation audits, we request that you make copies of your work papers available to the PIRT Team to support their review of each project's accounts and operations. A member of the PIRT Team will contact your office as the PIRT Team initiates their review at each project site.

Attachments

[NOTE: ATTACHMENTS NOT INCLUDED BY OFFICE OF INSPECTOR GENERAL.]

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
1 through 13	Resolved; not implemented	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

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