



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

AUDIT REPORT

**AGRICULTURAL LEASING
AND GRAZING ACTIVITIES,
FORT PECK AGENCY,
BUREAU OF INDIAN AFFAIRS**

**REPORT NO. 98-I-703
SEPTEMBER 1998**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

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AUDIT REPORT

Memorandum

To: Assistant Secretary for Indian Affairs
Special Trustee for American Indians

From: Robert J. Williams *Robert J. Williams*
Assistant Inspector General for Audits

Subject: Audit Report on Agricultural Leasing and Grazing Activities, Fort Peck Agency,
Bureau of Indian Affairs (No.98-I-703)

INTRODUCTION

This report presents the results of our audit of agricultural leasing and grazing activities by the Fort Peck Agency. The objective of the audit was to determine whether agricultural and pasture leases and grazing permits on the Fort Peck Indian Reservation were managed by the Agency in accordance with regulatory, lease, and permit requirements and whether farming and grazing revenues in special deposit (suspense) accounts had been distributed.

BACKGROUND

According to the Code of Federal Regulations (25 CFR 162 for leasing and 25 CFR 166 for grazing), the Bureau of Indian Affairs is responsible for approving leases and grazing permits for individually owned land¹ or tribal land held in trust that is negotiated by the landowners or their representatives. The Bureau may also grant leases on individually owned land on behalf of incompetent persons, orphaned minors, undetermined heirs of estates, landowners who have not been able to agree upon a lease or permit, landowners who have given the Secretary of the Interior written authority to execute leases or permits, and landowners whose whereabouts are unknown. The Code of Federal Regulations also states that leases and permits may be executed either through negotiation or advertising and that annual rents should provide for a fair annual return. Specifically, the Code states that (1) agricultural leases are not to exceed 5 years for dry-farming land and 10 years for

¹“Individually owned land” as used in the Code of Federal Regulations (25 CFR 162 for leasing and 25 CFR 166 for grazing) is defined as “land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.”

irrigable land but that, when lessees are required to make substantial improvement to the land for the production of specialized crops, leases can be made for 25 years and (2) grazing leases and range permits are not to exceed 5 years except when substantial development or improvement is required, in which case the maximum period is 10 years.

To improve the management, productivity, and use of Indian agricultural lands and resources, the Congress enacted the American Indian Agricultural Resource Management Act in December 1993. The Act states that the Secretary is to manage Indian agricultural lands to (1) protect and maintain the highest productive potential on the lands, (2) increase production and expand diversity on the lands, (3) manage lands consistent with integrated resource management plans, (4) enable Indians to maximize the potential benefits available to them by providing technical assistance, (5) develop Indian agricultural lands to promote self-sustaining communities, and (6) assist trust and restricted Indian landowners in leasing their land for a reasonable annual return consistent with prudent management and conservation practices. To meet these objectives, the Act requires that 10-year Indian agricultural resource management and monitoring plans be prepared and implemented for Indian agricultural lands “within three years of the initiation of activity to establish the plan.”

The Act stipulates that the management and monitoring plans be developed by tribes under self-determination contracts or self-governance compacts or by the Bureau if tribes choose not to contract or compact for the plans. The Act also required that the Bureau, by June 1994, contract with a non-Federal entity to conduct an independent assessment of Indian agricultural land management and practices, which is to include a comprehensive assessment of the improvement, funding, and development needs for all Indian agricultural lands. In addition, the Act required that the Bureau issue final regulations to implement the Act by December 1995. In June 1996, the Bureau issued proposed regulations; however, the regulations had not been finalized as of August 1998. Further, the Act changed many of the requirements specified in the Code of Federal Regulations. For example, the Act (1) authorizes the leasing of agricultural lands to the highest bidder at rates below the appraisal amount after “satisfactorily” advertising the leases when such action would be in the best interest of the landowner, (2) provides preference to Indian operators of agricultural leases when authorized by tribal resolution and when the landowner receives fair market value, (3) waives the requirement for bonds when authorized by tribal resolution and when other collateral is posted in lieu of bonds, and (4) extends the maximum lease term for dry-farming land from 5 to 10 years.

The Fort Peck Agency of the Bureau’s Billings Area Office in Billings, Montana, is responsible for leasing and grazing activities for the Assiniboine and Sioux Tribes on the Fort Peck Indian Reservation. The Reservation encompasses almost 2.1 million surface acres in northeastern Montana, including about 535,000 surface acres of allotted (individually owned) lands and 381,000 surface acres of tribal lands. The ownership interests in the allotted lands are severely fractionated.² The remainder of the Reservation’s lands are in fee status (owned without restrictions) and are not subject to the Bureau’s trust responsibility. Through

²Fractionated ownership has resulted because many Indians died without wills. As a result, over a period of generations, many allotments became jointly owned by hundreds of heirs.

September 30, 1996, the Fort Peck Agency performed all of the program functions related to agricultural (farm and pasture) leasing and grazing. However, effective October 1, 1996, the Assiniboine and Sioux Tribes assumed responsibility for the grazing program under an Indian self-determination contract except for fire protection related to grazing lands.

As of December 31, 1996, the Fort Peck Agency had administered 2,365 agricultural leases that consisted of about 180,500 acres of allotted lands and 169,400 acres of tribal lands. Annual rents for these leases totaled about \$3 million, of which \$1.75 million was applicable to allotted lands and \$1.25 million was applicable to tribal lands. The leases were all on a calendar year basis with 5-year terms, but all of the leases did not expire in the same year.

The Fort Peck Tribes administered 92 grazing range units³ under the self-determination contract as of December 31, 1996: 77 range units allocated by the Tribes to Tribal members and 15 range units advertised and made available to Indian and non-Indian ranchers. Grazing permits for these range units were issued for the 5-year period of January 1, 1993, through December 31, 1997. The 92 range units had annual grazing fees that totaled \$504,200, which consisted of \$262,700 applicable to 176,493 acres of allotted land and \$241,500 applicable to 183,031 acres of tribal land. The Billings Area Director established minimum grazing rates for the range units that were allocated to Tribal members.

The Fort Peck Agency had 15 staff assigned to the real estate services program, and 3 of the staff were responsible for all aspects of agricultural leasing. The fiscal year 1997 budget for the Agency's real estate services program was \$437,709.

SCOPE OF AUDIT

The audit was performed at the Billings Area Office and the Fort Peck Agency in Poplar, Montana. Our audit concentrated on leasing activities that occurred during calendar years 1993 through 1997; however, we expanded the scope in the area of our review of revenues in special deposit (suspense) accounts to determine whether lease rents and grazing fees were distributed to landowners regardless of when deposits were made. Because the grazing function was only recently assumed by the Fort Peck Tribes and a complete operating cycle had not occurred at the time of our review, we eliminated grazing from our audit scope. However, we did analyze the reasonableness of the Area Director's minimum grazing rates for allotted lands included in the range units.

Our audit was conducted 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 review, we assessed the Bureau's system of internal controls and found weaknesses related to reissuing expired leases and clearing special deposit

³A range unit is a tract of land designated as a management unit for administering grazing and may include tribal, allotted, fee, and/or Government lands that have been consolidated for grazing administration.

accounts. These weaknesses are addressed in the Results of Audit section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

We also reviewed the Department's Accountability Report for fiscal year 1996 to determine whether any of the reported weaknesses were directly related to the objective and scope of our audit. The Report cited long-standing material weaknesses in the Bureau's (1) management of trust funds, the responsibility for which has been transferred to the Office of the Special Trustee for American Indians; (2) debt collection practices; and (3) land records management. These weaknesses were considered in planning and conducting our review.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued an audit report during the past 5 years on agricultural leases and grazing permits administered by the Fort Peck Agency. However, in January 1998, the Office of Inspector General issued the audit report "Financial Statements for Fiscal Year 1996 for the Office of the Special Trustee for American Indians Tribal, Individual Indian Monies, and Other Special Trust Funds Managed by the Office of Trust Funds Management" (No. 98-I-206). The report presented the results of the audit of the statement of assets and trust fund balances and the statement of changes in trust fund balances for tribal, individual Indian monies, and other special trust funds as of and for the year ended September 30, 1996, performed by an independent certified public accounting firm. The report on internal controls stated that "the OTFM [Office of Trust Funds Management] and the Bureau continue to be hampered by a lack of adequate information systems to support various trust-related activities, including land inventory systems, lease management systems, ownership systems, accounts receivable and an adequate trust accounting system for IIM [Individual Indian Money]." The report identified three reportable conditions that impacted the scope of our audit: (1) suspense accounts were not analyzed; (2) policies and procedures regarding special deposit accounts were lacking and practices regarding these accounts were inconsistent; and (3) the system of policies and procedures for determining interest earnings for Individual Indian Monies accounts was inadequate, which adversely impacted the complete and timely distribution of funds to account holders. These identified conditions and the resultant recommendations were considered in the preparation of our current report.

RESULTS OF AUDIT

We found that the Fort Peck Agency generally managed agricultural and pasture leases on the Fort Peck Indian Reservation in accordance with applicable regulatory, lease, and permit requirements. Specifically, the Agency (1) identified lands that were suitable for leasing; (2) advertised, using sealed bidding procedures, those lands that were available for lease; (3) ensured that fair annual rents were realized based on competitive bids and negotiations; (4) made timely distributions of rents collected to Indian landowners; (5) assessed interest when rents were paid late; and (6) enforced bonding requirements stipulated in the leases. However, we also found that new leases were not usually approved or granted by their

effective date and that some lease rents and grazing fees which were deposited into special deposit accounts in the 1970s and 1980s had not been distributed to landowners.

Approved Leases

The Fort Peck Agency did not always approve new leases in a timely manner. The lease documents specify that annual rents are due in advance of the lease year and rents are delinquent if not paid within 30 days of the due date. The advertisement for the leases that expired on December 31, 1996, specified that at least 25 percent of the first year's rent was due at the time that the lease bid was submitted and that the remaining portion of the rent was due at the time the lease was executed and approved. We reviewed the Agency's lease logbook to determine the timeliness of approving new leases and found that 115 (31 percent) of the 371 farm and pasture leases which expired on December 31, 1996, were approved timely. Of the remaining 256 leases, 224 leases were approved and granted up to 195 days after the leases' effective dates, and 32 leases had not been granted at the time of our audit site visit in June 1997, or almost 6 months past the due date. Because Agency realty personnel stated that approving the larger dollar leases was their priority in awarding leases, we reviewed all 50 leases that had annual rents of \$3,000 or more (based on the Agency's universe of leases rents, we classified leases with annual rents in excess of \$3,000 as large dollar leases) which expired on December 31, 1996. We found that only half of these leases were approved and granted by the December 31 expiration date or within 30 days of the expiration date and that half of the leases, which had total annual rents of about \$125,000, were approved and granted from 34 to 161 days after the leases expired. Because the leases were not approved and granted in a timely manner, the landowners did not receive their rents timely.

According to Agency realty personnel, the Agency did not have sufficient realty staff to simultaneously approve and grant leases by January 1, 1997, and to collect and distribute lease rents on continuing leases. Agency realty personnel further stated that their work load priority was to distribute rents which had been collected for continuing leases before they processed new leases.

Special Deposit Accounts

While the Agency effectively distributed current lease rents and grazing fees deposited into special deposit accounts, it did not analyze older special deposit accounts to ensure that the account balances were correct and that funds in these accounts were properly distributed.⁷ The Code of Federal Regulations (25 CFR 114) specifies that special deposit accounts are to be used for the temporary deposit of funds which cannot be credited to specific accounts or readily distributed. However, we identified revenues of about \$164,100 that had accumulated in 56 special deposit accounts since the 1970s and 1980s.

⁷The Bureau is responsible for administering leases on tribal and individually owned lands. However, the Department's Office of the Special Trustee for American Indians is responsible for establishing proper controls and accountability for managing trust funds, including trust funds deposited in the Individual Indian Money accounts system, which includes special deposit accounts.

Our analysis of the 56 special deposit accounts disclosed that the accounts were established in the 1960s and 1970s and have had continuing balances since the 1970s. These accounts have been inactive (including the posting of any interest income earned) since 1988. However, the crediting of interest income to the accounts would significantly increase the \$164,100 balance. Personnel in the Billings Area and Fort Peck Agency Offices stated that the special deposit account balances for some of these 56 accounts were in error because entries for a distribution of funds by the Area Office during the mid-1980s were not posted to the affected special deposit accounts. However, neither the Area Office nor the Agency Office provided documentation to support this position. We believe that the Agency, in coordination with the Office of the Special Trustee for American Indians, should analyze these accounts to ensure that Indian landowners receive all funds which they are due.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs ensure that the Fort Peck Agency:

1. Initiates the lease renewal process in sufficient time to complete the approval process before the effective date of agricultural and pasture leases.

We recommend that the Assistant Secretary for Indian Affairs and the Special Trustee for American Indians ensure that the Fort Peck Agency:

2. Researches the 56 special deposit accounts which have old balances and updates the accounts for distributions that were made previously but not recorded. For amounts that have not been distributed, the owners should be identified, the interest should be computed and posted, and the funds should be distributed.

We recommend that the Special Trustee for American Indians:

3. Establish and implement procedures to periodically analyze and distribute, in a timely manner, funds that are in special deposit accounts.

Bureau of Indian Affairs Response and Office of Inspector General Reply

In the February 20, 1998, response (Appendix 1) to the draft report from the Assistant Secretary for Indian Affairs, the Bureau nonconcurred with Recommendation 1 and did not address Recommendations 2 and 3, stating that “authority in this area [special deposit accounts] is delegated to the Special Trustee [for American Indians].” Based on the Bureaus response, we have revised Recommendation 1 and request that the Bureau respond to the revised recommendation, which is unresolved (see Appendix 3). The Office of the Special Trustee for American Indians provided a response (Appendix 2) to Recommendations 2 and 3 (see section “Office of the Special Trustee for American Indians Response and Office of Inspector General Reply”). Based on the two responses, we have directed Recommendation 2 to the Assistant Secretary for Indian Affairs and the Special

Trustee for American Indians and Recommendation 3 to the Special Trustee for American Indians.

Recommendation 1. Nonconcurrence stated.

Bureau of Indian Affairs Response. The Bureau nonconcurred with the recommendation to approve agricultural and pasture leases in a timely manner, stating that "there is no prescribed time frame or legal deadline by which a lease agreement must be approved." Additionally, the Bureau stated that "there is no basis in statute or regulation for establishing 'timeliness. '" According to the Bureau, "There are various reasons why a new lease may not be in place upon the expiration [December 31] of a current lease and a number of these reasons are beyond the Bureau's control." Further, the Bureau stated that "the Agency's goal is to ensure that agricultural leases are processed by April so that ... pasture leases are approved prior to the May 1 turn out date."

Office of Inspector General Reply. Although Bureau regulations do not prescribe a specific time frame for approving agricultural leases, the Government Performance Results Act requires that agencies conduct processes in a businesslike manner. Regarding the "various reasons" as to why a new lease may not be in place when a current lease expires and the reasons that are "beyond the Bureau's control," we believe that some matters may be beyond the Bureau's control but that some may just take longer to complete than the Fort Peck Agency has allowed for in its leasing process. In this regard, the Bureau and the Agency should determine the amount of time necessary to complete the leasing process, establish an effective date for leases based on Agency-related conditions for beginning farming operations, and initiate the renewal process allowing sufficient time to complete actions by the effective date. Our report (No. 97-I-100) on the Colorado River Indian Tribes' management of agricultural leasing showed that the Tribes "initiated actions in a timely manner to ensure that expiring leases were reissued [approved] without a loss of revenue to the landowners. " Similarly, we believe that the suggested actions will provide the Bureau with the basis for measuring the Agency's performance for accomplishing its goal "that agricultural leases are processed by April" and also provide the individual landowners with a date when they can reasonably expect lease payments to begin. We have revised the recommendation to focus on the timing of initiating the lease renewal process and the establishment of a lease effective date.

Recommendations 2 and 3. Concurrence/nonconcurrence not stated.

Bureau of Indian Affairs Response. The Bureau noted that while the report acknowledged the Special Trustee's responsibility, "the recommendations were directed to" the Assistant Secretary for Indian Affairs rather than the Special Trustee for American Indians. The Bureau stated that while it has "every intention of working closely and cooperatively with the Special Trustee," it has not "address[ed] these two recommendations as authority in this area [special deposit accounts] is delegated to the Special Trustee." The Bureau requested that "the section on Special Deposit Accounts be eliminated from the report or included under Other Matters with appropriate reference to the financial statement audit report. "

Office of Inspector General Reply. As a result of the Bureau's response, we requested written comments to Recommendations 2 and 3 from the Office of the Special Trustee for American Indians, and we received a response on June 12, 1998. Based on the responses, we have addressed Recommendation 2 to both the Special Trustee and the Assistant Secretary because the Special Trustee is responsible for management of Indian trust assets, including special deposit accounts, and the Assistant Secretary, through the Bureau, controls many land and related records needed to research and update the special deposit accounts. Further, both organizations have expressed the willingness to work cooperatively to resolve the matter. We have addressed Recommendation 3 to the Special Trustee because the Special Trustee is responsible for establishing consistent written policies and procedures for trust fund management and accounting. We also added, to the Prior Audit Coverage section, reference to the January 1998 Office of Inspector General audit report "Financial Statements for Fiscal Year 1996 for the Office of the Special Trustee for American Indians Tribal, Individual Indian Monies, and Other Special Trust Funds Managed by the Office of Trust Funds Management" (No. 98-I-206) because the report discusses the overall weakness in accounting for individual Indian money accounts, including special deposit accounts. However, we did not, based on the financial statement audit of the trust funds, eliminate or move to an Other Matters section of the report our finding on special deposit accounts because our finding accurately describes a condition we identified at the Fort Peck Agency and because the High Level Implementation Plan of the Trust Management Improvement Project, which details Departmental actions to improve trust fund accounting, had not been issued or referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. This occurred because the Implementation Plan was not issued until July 1998, or 6 months after the report was issued.

In its response, the Bureau provided additional comments on the report as follows:

- Results of Audit. The Bureau disagreed with the our use of the words "issuing" and "reissuing" leases rather than "granting" or "approval" of leases, which it said were the terms used in the statutes and regulations. We have revised the report as appropriate to correct the terminology.

- Other Matters. The Bureau disagreed with the inclusion of the Other Matters section in our report concerning the establishment of the Area Director's reservation minimum acceptable grazing rate for all individually owned lands. The Bureau stated that "the minimum rate has to be established prior to the bidding" on the advertised range units. Therefore, according to the Bureau, it would not be possible to determine whether the minimum rate compares favorably to the bid rates until after the "bids are received." In addition, the Bureau stated:

There is a difference between a minimum acceptable bid for **any** range unit on the reservation and the highest bid that the **best** range unit may command. That distinction is not made in the report. Unallocated range units advertised for grazing permits represent a diminishing resource for non-tribal ranchers, and as such, command higher competitive prices which are not necessarily

indicative or representative of fair market values for the vast majority of the reservation lands.

We provided this information as other matters to inform management about a situation that we believe should be considered when determining fair annual return to allottees whose lands are included in allocated range units. However, since completion of our fieldwork, the General Accounting Office has initiated a review of the Bureau's appraisal process. In addition, the Trust Management Improvement Project includes a subproject to review the Bureau's appraisal program. Therefore, based on the Bureau's comments and the other comprehensive reviews, we have deleted the Other Matters section from the final report.

Office of the Special Trustee for American Indians Response and Office of Inspector General Reply

In the June 12, 1998, response (Appendix 2) to the draft report from the Deputy Special Trustee for Operations, Office of the Special Trustee for American Indians, the Office concurred with Recommendations 2 and 3. Based on the response, we consider Recommendations 2 and 3 resolved but not implemented. Accordingly, the unimplemented recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation (see Appendix 3).

Recommendation 2. Concurrence stated.

Office of the Special Trustee for American Indians Response. The Office stated that the "56 special deposit accounts have to be updated and distributed and [the Office] agrees to work in coordination with the Assistant Secretary - Indian Affairs, and the Bureau of Indian Affairs (BIA) field staff." According to the Office, Bureau of Indian Affairs realty field staff needs to research the 56 special deposit accounts as to ownership and distribution, and the Office of Trust Funds Management can then post the distribution and "perform the necessary interest calculations." The Office stated that "[t]he research and clearing of Special Deposit accounts has surfaced" as an issue in the Trust Management Improvement Project. The Office further stated, "A separate, joint OST/BIA [Office of the Special Trustee for American Indians and Bureau of Indian Affairs] effort, most likely on an Area by Area basis, is the likely approach."

Office of Inspector General Reply. We noted that the High Level Implementation Plan for the Trust Management Improvement Project includes four subprojects which will address the deficiencies with special deposit accounts: Office of the Special Trustee financial data cleanup, Bureau of Indian Affairs resource data cleanup, Bureau probate backlog, and Office of Hearings and Appeals probate backlog. Based on the subprojects included in the Implementation Plan, we consider the recommendation resolved.

We recognize that other audit reports, such as the audit of the Office of the Special Trustee's financial statements for trust funds for fiscal year 1996 (Report No. 98-I-206)' contain recommendations that address special deposit account balances, and we will coordinate with

the Assistant Secretary for Policy, Management and Budget to ensure a single tracking of implementation efforts on the basis of the Implementation Plan dated July 1998.

Recommendation 3. Concurrence stated.

Office of the Special Trustee for American Indians Response. The Office agreed to “work in coordination” with the Assistant Secretary for Indian Affairs and the Bureau on this recommendation, stating that it is taking “a national approach to this issue, rather than focusing on any single agency” and that it will “develop standardized policy and procedures for special deposit accounts. ”

Office of Inspector General Reply. Based on the response, we consider the recommendation resolved but not implemented.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting written responses to this report by November 9, 1998. The responses should provide the information requested in Appendix 3.

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

We appreciate the assistance of Bureau and Office personnel in the conduct of our audit.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

FEB 20 1998

Memorandum

To: Assistant Inspector General for Audits

From: Assistant Secretary - Indian Affairs *[Signature]*

Subject: Draft Audit Report. "Agricultural leasing Activities, Fort Peck Agency. Bureau of Indian Affairs" [Assignment No. C-IN-B IA-002-97(D)]

The subject audit reviewed agricultural leasing activities of the Fort Peck Agency of the Bureau of Indian Affairs (Bureau). This is one in a series of audits conducted on the Bureau's agricultural leasing activities. The audit found that generally, the Fort Peck Agency managed agricultural and pasture leases on the Fort Peck Indian Reservation in accordance with applicable regulatory, lease, and permit requirements. The audit found, however, that expiring leases were not usually "reissued" by the effective date and that some lease rents and grazing fees which were deposited into special deposit accounts in the 1970s and 1980s had not been distributed. Although grazing was eliminated from the scope of the audit because the Assiniboine and Sioux Tribes now operate the program, the audit took exception to the minimum grazing rates which were established for allotted lands included in the range units.

GENERAL COMMENTS

Two recommendations concerning special deposit accounts relate to responsibilities that were transferred from the Assistant Secretary - Indian Affairs to the Office of the Special Trustee for American Indians (OST) by a Secretarial Order issued in February 1996. While the report acknowledges this OST responsibility in a footnote on page 5, the recommendations were directed to this office rather than to the OST. Under the portion of this response headed "Special Deposit Accounts," we recommend that the entire section be eliminated from the report. If it is not eliminated, the report should be jointly issued to this office and to the OST. While we have every intention of working closely and cooperatively with the Special Trustee, we have not addressed these two recommendations as authority in this area is delegated to the Special Trustee.

PRIOR AUDIT COVERAGE

If the final audit includes the section on special deposit accounts, this section of the report should be revised to reflect the audit report issued by the Office of Inspector General on the Fiscal Year 1996 Financial Statements for the Office of the Special Trustee for American Indians. Report No. 98-I-206.

RESULTS OF AUDIT

Terminology introduced in this section and used throughout the report refers to “issuing” and “reissuing” leases rather than the “granting” or “approval” of leases which are the terms used in the statutes and regulations. The report should be revised by eliminating the terms “issuing” and “reissuing” which are accurate in conjunction with grazing permits, but not with agricultural leases.

While the *American Indian Agricultural Resource Management Act* (AIARMA) [§ 3 711 (a)(6)] authorizes the Secretary to “assist .. Indian landowners in leasing their agricultural lands,” the Bureau is only required to review and approve leases; the Bureau is permitted, but not required, to **grant** leases in certain specified instances. Although the Bureau has a general trust duty regarding land held in a restricted status, the following individuals and organizations may also grant leases, subject to approval of the Secretary: adults, other than those *non compos mentis*; adults on behalf of minor children; guardians, conservators or other fiduciaries; and tribes and tribal corporations.

EXPIRED LEASES

This section of the report reviews the timing of the Agency’s approval of new leases. The thrust of this report, and the others covering lease administration, is that there should be a new lease in place immediately upon the expiration of a current lease. In fact, there is no prescribed time frame or legal deadline by which a lease agreement must be approved. The Bureau’s practice of approving leases with terms beginning on January 1, regardless of the actual date on which the lease is granted or approved, has undoubtedly contributed to confusion in this area. There are various reasons why a new lease may not be in place upon the expiration of a current lease and a number of these reasons are beyond the Bureau’s control.

Of the 256 leases at the Fort Peck Agency that expired in 1996 for which replacement leases were not in place, more than half (138) were being negotiated either by the landowners or by the Tribe as the designated lessor. In these cases, the Bureau’s responsibility is limited to review and approval once the lease documents are presented. All of the other 118 leases were advertised for competitive bids during the August lease sale which required that bids be received by September 16. Bids were not received for all available parcels. Even when responsive bids are received, final approval may be delayed due to complications resulting from fractionated heirship, or unforeseen difficulties encountered by lessees in obtaining necessary financing or in meeting bonding requirements. While the Agency strives to process the leases as soon as possible, in terms of operational necessity, the Agency’s goal is to ensure that agricultural leases are processed by April so that lessees can meet the deadlines for submitting applications for Farm Services Agency programs and that pasture leases are approved prior to the May 1 turn out date.

The report states that “because the leases were not issued in a timely manner, the landowners did not receive their rents timely.” We request that this sentence be deleted from the report. The landowners are not due any rents until a lease has been approved. As noted previously in this response, there is no statutory or regulatory deadline for approval of a lease.

Recommendation 1: Reissue agricultural and pasture leases in a timely manner.

Response: In the report there is a rather arbitrary determination that leases are “timely” only if granted or approved within 30 days of the expiration of a prior lease. As stated earlier, there is no basis in statute or regulation for establishing “timeliness.” We request that the recommendation be revised to read as follows: “Revise the procedures for advertised leases granted under the Secretary’s authority so that the effective date of the lease coincides with the date the lease is actually granted by the Bureau.” If the recommendation is so revised, the Bureau concurs.

SPECIAL DEPOSIT ACCOUNTS

The report identifies 56 special deposit accounts containing book balances of \$ 164,000 at the Fort Peck Agency. According to the 1996 Financial Statements for the Office of the Special Trustee, Audit Report 98-I-206, Bureauwide there are more than 28,000 special deposit accounts within the Individual Indian Monies subsidiary ledger which show a total balance of approximately \$142 million. In addition, there is an unreconciled difference of about \$29 million between the IIM subsidiary ledger and the corresponding general ledger control account and an unreconciled difference of approximately \$35 million between the book balances of the trust accounts and the balances held by Treasury. That audit report goes into some detail regarding the numerous deficiencies in the special deposit accounts and also includes information as to the Special Trustee’s plans to address these issues.

The two paragraph coverage of special deposits as part of this audit report oversimplifies the issues involved. Furthermore, recommendations for corrective actions on special deposits and the OST responses are contained in the financial statement audit. It is inappropriate to track similar recommendations directed to special deposits in each of the leasing audits. We request that the section on Special Deposit Accounts be eliminated from the report or included under Other Matters with appropriate reference to the financial statement audit report.

OTHER MATTERS

Although the audit “did not evaluate the factors used to develop the appraisal” of a minimum acceptable grazing rental rate established pursuant to 25 CFR 166.13, and “found no apparent deficiencies in the appraisal performed.” the report appears to conclude that Bureau regulations should be revised so that tribal members who are allocated grazing rights are charged the same fee as the average rental rate realized for those units that were subject to competitive bidding. In support of this position, the report cites a portion of the AIARMA which provides a preference for Indian operators so long as the lessor receives fair market value. The provisions of AIARMA covering management objectives state that the Secretary is “to assist trust and restricted landowners in leasing their agricultural lands for **a reasonable rate of return**, consistent with prudent management and conservation practices, **and community goals as expressed in the tribal management plans and appropriate tribal ordinances.**” [Emphasis added.]

While the gross numbers cited in the report would lead one to believe that the allottees are losing large sums of money due to the minimum rate being lower than that which was realized through competitive bidding, on an individual landowner basis this is not likely the case. There are 4,403 individually owned trust tracts at Fort Peck, and about half of those would be included in one of the 92 designated range units. Due to fractionated ownership, 8,054 unique land owners represent over 67,000 ownership-interests. The audit report, in footnote 2, acknowledges that many tracts may be owned by hundreds of individuals. We realize that all ownership interests are not equal, but if they were, the “average” landowner would receive less than ten dollars more per year based upon the calculations in the report. Further, if instances exist where a landowner’s property is above average value, there are provisions contained in 25 CFR 166.13(c) that allow for a landowner to stipulate a rental rate above the Bureau’s minimum rate.

As the report notes, grazing fees were re-appraised as of September 4, 1997, by a qualified appraiser. The results of the appraisal indicate that grazing fees should be assessed between \$10 and \$12 per Animal Unit Month (AUM). Accordingly, the minimum grazing rate approved for the five-year period beginning January 1, 1998, was established at \$11.00 per AUM. At \$11.00 per AUM, the newly established rate is \$4.00, or 57 percent, above the \$7.00 fee established by the Tribe’s Executive Board for rents charged to tribal members for allocated grazing privileges on tribal lands. A local ranchers’ association, comprised exclusively of tribal members, has hired an independent appraiser to develop financial information in an effort to demonstrate that the recently established rate is too high. At the time of this response, the results of this undertaking are unknown.

The audit report questions whether the \$11.00 rate will compare favorably with rates established on the basis of competition. Since the minimum rate has to be established prior to the bidding, that question can never be satisfactorily answered until bids are received. There is a difference between a minimum acceptable bid for **any** range unit on the reservation and the highest bid that the **best** range unit may command. That distinction is not made in the report. Unallocated range units advertised for grazing permits represent a diminishing resource for non-tribal ranchers, and as such, command higher competitive prices which are not necessarily indicative or representative of fair market values for the vast majority of the reservation lands.

We appreciate the opportunity to comment on the draft report.

cc: Special Trustee for American Indians



United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Washington, D.C. 20240

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JUN 12 1998

Memorandum

To: Assistant Inspector General for Audits

From: Deputy Special Trustee for Operations *Thomas Thayer*

Subject: Draft Audit Report, "Agricultural Leasing and Grazing Activities, Fort Peck Agency, Bureau of Indian Affairs," January 1998 - Assignment Number C-liN-BIA-002-97(D)

Following are our responses to the above-mentioned audit with respect to recommendations 2 and 3.

Recommendation 2: "Researches, in coordination with the Office of the Special Trustee for American Indians, the 56 special deposit accounts which have old balances and updates the accounts for distributions that were previously made but not recorded. For amounts that have not been distributed, the owners should be identified, the interest should be computed and posted, and the funds should be distributed."

The Special Trustee concurs with the recommendation that these 56 special deposit accounts have to be updated and distributed and agrees to work in coordination with the Assistant Secretary - Indian Affairs, and the Bureau of Indian Affairs (BIA) field staff. The BIA Branch of Realty is typically in possession of the information needed to research the accounts as to ownership and final disposition, and the Office of Trust Funds Management (OTFM) posts the final distribution of these funds. Once the distribution instructions are received from BIA, OTFM can perform the necessary interest calculations.

The research and clearing of Special Deposit accounts has surfaced in the Trust Management Improvement Project, where some 26,000 special deposit accounts comprising over \$128 million have been identified. A separate, joint OST/BIA effort, most likely on an Area by Area basis, is the likely approach.

Recommendation 3: "Establishes and implements, in coordination with the Office of the Special Trustee for American Indians, procedures to periodically analyze and distribute, in a timely manner, funds that are in special deposit accounts."

The Special Trustee concurs with the recommendation, and agrees to work in coordination with the Assistant Secretary - Indian Affairs and BIA. The OST is taking a national approach to this issue, rather than focusing on any single agency. The OTFM Branch of Policy and Procedures, working in conjunction with the Trust Management Improvement Policies and Procedures Sub project, will develop standardized policy and procedures for special deposit accounts. This overall effort will be completed by September 2000.

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
1	Unresolved.	Provide a response to the revised recommendation. If concurrence is indicated, provide a plan identifying actions to be taken, including the target date and the title of the official responsible for implementation. If nonconcurrence is indicated, provide specific reasons for the nonconcurrence.
2 and 3	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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