



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

ADVISORY REPORT

**AGRICULTURAL LEASING ACTIVITIES,
PIMA AGENCY,
BUREAU OF INDIAN AFFAIRS**

**REPORT NO. 99-I-803
SEPTEMBER 1999**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

SEP 28 1999

ADVISORY 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: Advisory Report on Agricultural Leasing Activities, Pima Agency,
Bureau of Indian Affairs (No. 99-I-803)

INTRODUCTION

This report presents the results of our review of agricultural leasing activities of the Bureau of Indian Affairs Pima Agency in Sacaton, Arizona. The objective of the audit was to determine whether the Agency adequately managed agricultural leases for the Gila River Indian Reservation in accordance with regulatory and lease requirements. In addition, we determined whether farming revenues in special deposit (suspense) accounts had been distributed to the landowners.

BACKGROUND

According to the Code of Federal Regulations (25 CFR 162), the Bureau of Indian Affairs is responsible for approving leases of individually owned land¹ and tribal land held in trust that are negotiated by the landowners or their representatives. The Code also states that leases may be executed either through negotiation or advertising and that annual rents should provide for a fair annual return. The Code further states that agricultural leases are not to exceed 5 years for dry farming land and 10 years for irrigable land but may be approved for 25 years when the lessees are required to make substantial improvements to the land for the production of specialized crops.

¹ "Individually owned land" is defined in the Code of Federal Regulations 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."

The Pima Agency is responsible for leasing activities on the Gila River Indian Reservation, which encompasses about 374,000 acres of land in Maricopa and Pinal Counties in Arizona. Approximately 280,000 acres are tribal lands and 94,000 acres are allotted (individually owned) lands. The ownership interests in the allotted lands are severely fractionated.² According to the Bureau, the 94,000 acres of allotted lands included 5,424 separate tracts in which 7,305 individuals had ownership interests. As of December 31, 1996, the Agency administered 180 agricultural lease units on the Gila River Indian Reservation encompassing about 26,000 acres of farm land, which had annual rents totaling about \$2.1 million. According to the terms of the leases, rents are due on January 1 of each year and are delinquent if not paid within 30 days. Leases approved by the Agency expire on December 31, but all leases do not expire in the same year.

The Secretary of the Interior has been designated as the trustee of funds held in trust by the Government for the benefit of Indian tribes and individual Indians. On October 26, 1989, Secretarial Order No. 3137 was issued to establish the Office of Trust Funds Management within the Bureau of Indian Affairs. The Office of Trust Funds Management was responsible for providing oversight of some of the financial trust service functions, which included collecting, investing, distributing, and accounting for the trust funds. On February 9, 1996, Secretarial Order No. 3197 was issued to establish the Office of the Special Trustee for American Indians, as authorized by the American Indian Trust Fund Management Reform Act of 1994, and to transfer the Bureau's Office of Trust Funds Management and other financial trust service functions to the Office of the Special Trustee.

SCOPE OF REVIEW

The review was performed at the Phoenix Area Office and the Pima Agency and focused on lease activities that occurred in 1996 and 1997 (through March 13). However, we expanded the scope of our review to include revenues in special deposit accounts to determine whether agricultural lease rents and other lease revenues were properly distributed to landowners.

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 Agency's system of internal controls for administering its agricultural leases and found weaknesses related to approving negotiated leases timely, complying with interest assessment and bonding requirements in lease provisions, pursuing collections of delinquent rents, distributing rental collections timely, and clearing special deposit accounts.

We also reviewed the Department of the Interior's Accountability Reports for fiscal years 1996 and 1997 to determine whether any reported weaknesses were directly related to the

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

objective and scope of our audit. The two reports cited long-standing material weaknesses in the Bureau's (1) management of trust funds, the responsibility for which has now 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 at the Pima Agency.

DISCUSSION

Agricultural leasing activities on the Gila River Indian Reservation were not managed adequately. Specifically, the Pima Agency did not (1) approve leases timely, resulting in delays in landowners receiving their rental payments; (2) enforce lease bonding requirements to protect the landowners' interests; (3) assess and collect interest on late rental payments; and (4) distribute agricultural lease rents to landowners timely. These conditions occurred because the Agency did not have sufficient controls and/or procedures to ensure that the realty staff complied with all leasing and regulatory requirements in a timely manner; the lessee, Tribe, and individual landowners did not provide necessary leasing-related information to the Agency in a timely manner; and, according to Bureau officials, inadequate funding and a reduction in staff for agricultural programs adversely impacted the Agency's realty program. In addition, we found that revenues and related interest earnings of approximately \$1.4 million from agricultural lease rents and from other sources that were deposited into special deposit accounts since the 1960s had not been distributed to landowners.

Expired Leases

We found that the Agency did not always approve negotiated agricultural leases in a timely manner, which occurred, in part, because lessees and landowners did not always negotiate new agricultural leases in a timely manner. Although farming operations continued after the leases expired, annual rental payments were not made timely and were based on expired rates that would have been subject to revision under new agreements. Specifically, we found the following:

- The Agency had not approved the new negotiated leases as of March 1997 to replace eight leases that had expired on December 31, 1994, and three leases that had expired on December 31, 1995. Although farming operations continued on these units by farmers who negotiated the new leases, annual lease payments totaling about \$42,000 due on January 1, 1996, were made 3 1/2 months (eight leases) and 7 1/2 months (three leases) late. Furthermore, distribution of these payments to the landowners was delayed from 4 to 9 months.

-The Agency did not approve new leases for 34 leases that expired on December 31, 1995, until 2 to 14 months after the expiration date because lessees and landowners did not complete the negotiation process in a timely manner. As a result, rents totaling \$234,000 for 21 of the new leases were not paid until 2 to 12 months after the leases expired.

- The Agency had not approved new leases as of March 1997 to replace 32 leases that had expired on December 31, 1996, because lessees and landowners did not complete the negotiation process in a timely manner.

Several factors contributed to these delays, including controls that were inadequate to ensure that the Agency (1) initiated the renewal process, (2) requested the Phoenix Area Office to conduct appraisals, and (3) provided ownership information to prospective lessees in a timely manner. In addition, Area Office appraisals, tribal resolutions, owner consent forms, and negotiated leases were not completed and submitted to the Agency in a timely manner. According to Bureau personnel, these delays occurred because of insufficient Bureau personnel to perform, conduct, and/or monitor these activities. Without formal lease documents, the Agency could not adequately administer the agricultural lease units that lessees continued to farm after the leases had expired. In addition, without a lease, the Agency could not enforce the payment of rents or distribute any rental payments that were made voluntarily.

In response to our reports on agricultural leasing activities at the Fort Peck Agency (No. 98-I-703) and the Fort Berthold Agency (No. 99-I-102), the Bureau stated that those agencies would initiate the lease renewal process much earlier in an attempt to complete the lease approval process before current leases expire. We believe that the Assistant Secretary for Indian Affairs should ensure that similar action is taken at the Pima Agency and throughout the Bureau.

Bonding

The Agency had not enforced its bonding requirements. The Code of Federal Regulations (25 CFR 162.5(c)) states that "unless otherwise provided by the Secretary," a surety bond is required to be provided "in an amount that will reasonably assure performance of the contractual obligations under the lease," including the payment of annual rents. The bonding requirement was incorporated by the Agency into the agricultural leases as a standard provision.

Based on our review of the Agency's files for 25 agricultural leases, we determined that all 25 leases contained the standard provision requiring the lessees to post bonds to ensure rental payment and lease compliance. However, none of the lessees had posted the required bonds with the Agency, and none of the lease files contained documentation showing that a determination had been made to waive the requirement. Accordingly, we believe that the Assistant Secretary for Indian Affairs should ensure that the Agency enforces the bonding requirement.

Assessing and Collecting Interest

The Agency did not assess or collect interest on late payments of agricultural lease rents. Agricultural lease provisions specify that rents are due on January 1 of each year. According to the lease provisions, the lessee is required to pay rents without any formal notification from the Agency and is allowed a 30-day grace period from the date rent is due before interest on late rent payments is assessed. The Departmental Manual (344 DM 2.1) requires agencies to take aggressive actions, including issuing progressively stronger demand letters, to collect delinquent debts. We found that the Agency generally waited for lessees to pay rents that were past due rather than initiate collection efforts or assess interest. Although we found that most lessees eventually made their rental payments, the Agency did not assess or collect interest of about \$28,700 for the landowners.

Rental Distributions

The Agency did not distribute agricultural lease rents to landowners in a timely manner. Based on our analysis of collection and distribution data for rents that were collected and deposited into special deposit accounts during 1995 and 1996, we determined that the Agency took an average of 116 days, with a range of 8 to 333 days, from collection to distribution of 1996 rents and an average of 101 days, with a range of 20 to 255 days, from collection to distribution of 1995 rents.

We also found that the Agency did not distribute all revenues and related interest earnings from agricultural lease rents and from other sources which had been deposited into special deposit accounts.³ The Code of Federal Regulations (25 CFR 114) states that special deposit accounts are to be used for the temporary deposit of funds which cannot be credited to specific accounts or readily distributed. The Code further states that the interest earned on principal in special deposit accounts is to be distributed with the related principal. We identified undistributed revenues and accrued interest of approximately \$1.4 million that were in special deposit accounts from 1 to 34 years which had not been distributed. This amount consisted of \$1.2 million of agricultural lease rents and accrued interest that had accumulated in 58 special deposit accounts from 1963 through 1991, \$119,000 of rents and accrued interest from subleases awarded for space at the Gila River Indian Community Memorial Airfield that had accumulated in nine special deposit accounts from 1993 through 1996, \$60,000 of pipeline right-of-way payments and accrued interest that had accumulated in a special deposit account since March 1996, and \$22,000 of deposits and accrued interest from a housing grant and other sources that had accumulated in special deposit accounts from 1963 through 1990.

³The Bureau is responsible for administering leases and permits on tribal and individually owned land. However, since February 1996, the Department's Office of the Special Trustee for American Indians has been responsible for establishing proper controls for managing trust funds, including trust funds deposited in the Individual Indian Money accounts system, which includes special deposit accounts.

The Agency's realty staff were responsible for ensuring that funds in the special deposit accounts were distributed to landowners. However, the Agency did not have procedures to ensure that funds in special deposit accounts were analyzed and distributed, and the Agency did not dedicate sufficient resources to analyze special deposit account balances and land ownership records that were more than 1 year old to properly distribute these funds.

Corrective Actions

The Bureau has initiated several actions to address deficiencies related to approving leases of individually owned land and tribal land held in trust and collecting revenues from those leases as follows:

-The January 1998 Office of Inspector General audit report (No. 98-I-206) on the Office of the Special Trustee's financial statements for fiscal year 1996 identified significant deficiencies relating to "reportable conditions" for special deposit accounts.⁴ The report contained four recommendations to correct special deposit account deficiencies similar to those identified by our current review. The recommendations related to performing an analysis of special deposit accounts; establishing policies and procedures for using special deposit accounts; establishing an adequate system, policies, and procedures for determining interest earned for Individual Indian Money account holders; and establishing controls to verify that items are cleared from these accounts. Based on the actions outlined in the Office of the Special Trustee's response to the January 1998 report, we considered these recommendations resolved but not implemented. We believe that implementation of these recommendations will correct the deficiencies related to assessing and collecting interest, rental revenue distributions, and special deposit accounts which we identified during our current review at the Pima Agency. In addition, the deficiencies identified in the January 1998 report have been incorporated into subproject plans of the High Level Implementation Plan for the Trust Management Improvement Project approved by the Secretary of the Interior on July 31, 1998.

-The June 1999 General Accounting Office audit report (No. GAO/RCED-99-165) on rent appraisals of Indian land stated that the Bureau relied primarily on appraisals to ensure that Indian land was leased for a fair annual rental. However, the Bureau had not defined fair annual rental and did not have a clear policy on how that amount should be determined. The report recognized the Bureau's ongoing efforts to review and revise its appraisal program. The report contained two recommendations to improve the timeliness of appraisals. The recommendations related to (1) developing a clear policy on how fair annual rental can be estimated using other methods in addition to appraisals and (2) establishing consistent standards and guidelines for applying lease valuation methods. The Assistant Secretary for Indian Affairs response to the draft report indicated that actions to correct the deficiencies

⁴The report defined a "reportable condition" as a matter relating to significant deficiencies in the design or operation of internal control structure that, in the auditors' judgment, could adversely affect the Office of Trust Funds Management's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

had been incorporated into the appraisal subproject plan of the High Level Implementation Plan for the Trust Management Improvement Project.

Based on the Bureau's and the Office of the Special Trustee's actions, we have not made any recommendations to address the specific deficiencies (expired leases, bonding, assessing and collecting interest, and rental distributions) in this report. However, we will evaluate the actions taken by the Bureau and the Office to correct these deficiencies, including the bonding issue, during audits of the Bureau and Office planned for fiscal year 2000. Since this report does not contain any recommendations, a response is not required.

Section 5(a) of the Inspector General Act (Public Law 95-452, as amended) requires the Office of Inspector General to list this report in its semiannual report to the Congress.

We appreciate the assistance of Bureau personnel in the conduct of our review.

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