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

AUDIT REPORT

AGRICULTURAL LEASING AND GRAZING ACTIVITIES, ROSEBUD AGENCY, BUREAU OF INDIAN AFFAIRS

REPORT NO. 99-I-123
DECEMBER 1998

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

DEC - 7 1998

MEMORANDUM

TO: The Secretary

FROM: Eljay B. Bowron
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Agricultural Leasing and Grazing Activities, Rosebud Agency, Bureau of Indian Affairs" (No. 99-I-123)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether agricultural and pasture leases and grazing permits on the Rosebud Sioux Indian Reservation were managed by the Rosebud Agency in accordance with regulatory, lease, and permit requirements and whether farming and grazing revenues in special deposit (suspense) accounts had been distributed.

We found that the Agency generally managed agricultural and pasture leases on the Reservation in accordance with applicable regulatory, lease, and permit requirements. Specifically, the Agency (1) advertised, using sealed bidding procedures, those lands that were available for leases and permits; (2) initiated actions in a timely manner to ensure that lease renewals were approved without a loss of revenue to the landowners; (3) usually made timely distributions of rents and fees collected to Indian landowners; and (4) enforced bonding requirements stipulated in the leases. However, we also found that some lease rents, grazing fees, and related interest which were deposited into special deposit accounts in the 1980s and 1990s had not been distributed to landowners.

This report did not contain any recommendations because the deficiencies identified are covered by 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. Implementation of the Plan will be monitored by the Assistant Secretary for Policy, Management and Budget.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Assistant Inspector General for Audits, at (202) 208-4252.

Attachment

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

DEC - 7 1998

AUDIT REPORT

Memorandum

To: Assistant Secretary for Indian Affairs

From: Robert J. Williams
Assistant Inspector General for Audits

Subject: Audit Report on Agricultural Leasing and Grazing Activities, Rosebud Agency, Bureau of Indian Affairs (No. 99-I-123)

INTRODUCTION

This report presents the results of our audit of agricultural and grazing activities of the Bureau of Indian Affairs Rosebud Agency. The objective of the audit was to determine whether the Agency adequately managed agricultural leases and grazing permits for the Rosebud Sioux Tribe and individual Indian landowners on the Rosebud Sioux Indian Reservation.

BACKGROUND

According to the Code of Federal Regulations (25 CFR 162 for leasing and 166 for grazing), the Bureau of Indian Affairs is responsible for approving leases and grazing permits for individually owned land and tribal land held in trust that are negotiated by the landowners or their representatives. The Bureau may also grant leases or permits 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 advertisement 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 irrigable land but that, when lessees are required to make substantial improvements to the land for the production of specialized crops, leases can be approved for 25 years and (2) grazing permits are not to exceed 5 years except when substantial development or improvement is required, in which case the maximum period "shall be" 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 achieve the following objectives: (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 the 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 requires 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 was to include a comprehensive assessment of the improvement, funding, and development needs for all Indian agricultural lands. However, the Bureau had not contracted for the assessment as of August 1998. In addition, the Act required the Bureau to 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 received fair market value, (3) waives the requirement for bonds when authorized by tribal resolution and when other collateral was posted in lieu of bonds, and (4) extends the maximum lease term for dry-farming land from 5 to 10 years.

The Rosebud Agency of the Bureau's Aberdeen Area Office is responsible for leasing and grazing activities for the Rosebud Sioux Tribe and individual Indian landowners on the Rosebud Sioux Indian Reservation. The Reservation encompasses about 879,000 acres in South Dakota, which consists of about 406,000 acres of individual Indian-owned lands, about 472,000 acres of tribal lands, and about 700 acres of Government lands. The ownership interests in the individual Indian-owned lands are severely fractionated.[1] As of December 31, 1996, the Agency administered 1,835 agricultural leases that encompassed about 331,000

[1]Fractionated 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.

acres of farm and pasture lands which had annual lease rents totaling about $1.8 million and administered 208 grazing permits that encompassed about 439,000 acres of pasture lands which had annual grazing fees totaling about $1.4 million.

The Rosebud Agency had nine individuals assigned to the real estate services program and seven individuals assigned to the land operations program. The work load of realty and land operations staff included the following administrative duties: (1) approving leases and issuing permits; (2) collecting rents and fees, forwarding collections for deposit, and distributing lease rents and permit fees; (3) ensuring compliance with the terms of the leases and permits; (4) processing land acquisitions and disposals; and (5) processing probates.

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. The Secretary's authority for the management of trust funds was delegated to the Assistant Secretary for Indian Affairs in the Departmental Manual (109 DM 8) and was redelegated to the Bureau's Aberdeen Area Director in the Bureau of Indian Affairs Manual (10 BIAM, Bulletin 13). 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. However, the Office of the Special Trustee for American Indians was authorized by the American Indian Trust Fund Management Reform Act of 1994 to provide more effective management of and accountability for the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians. Further, on February 9, 1996, Secretarial Order No. 3197 was issued to establish the Office of the Special Trustee for American Indians 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

The audit was performed at the Rosebud Agency offices in Mission and Rosebud, South Dakota. During the audit, we also contacted Bureau officials from the Division of Real Estate Services in Washington, D.C., and the Aberdeen Area Office. Our audit focused on agricultural leasing and grazing permit activities that occurred during calendar years 1996 and 1997. However, we expanded the scope of our review to include revenues in special deposit (suspense) accounts to determine whether agricultural lease rents and grazing fees were distributed to landowners. In addition, in testing the timeliness of disbursements made to landowners, we did not attempt to validate or test any specific disbursement transactions to determine whether funds were paid to the proper landowners because of long-standing problems associated with the Bureau's land title records system and its Integrated Records Management System land ownership subsystem.

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 clearing special deposit accounts. This weakness is 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 Reports on Accountability for fiscal years 1996 and 1997, which include information required by the Federal Managers' Financial Integrity Act of 1982, to determine whether any reported weaknesses were directly related to the objective and scope of our audit. The reports cited long-standing material weaknesses in the Bureau's management of trust funds, the responsibility for which has been transferred to the Office of the Special Trustee for American Indians; the Bureau's debt collection practices; and the Bureau's 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 managed by the Rosebud 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, which was performed by an independent certified public accounting firm, 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. The report on internal controls stated that the 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 Money accounts was inadequate, which adversely impacted the complete and timely distribution of funds to account holders. The conditions identified and the resultant recommendations were considered in the preparation of our current report.

RESULTS OF AUDIT

We found that the Rosebud Agency generally managed agricultural and pasture leases on the Rosebud Sioux Indian Reservation in accordance with applicable regulatory, lease, and permit requirements. Specifically, the Agency (1) advertised, using sealed bidding procedures, those lands that were available for leases and permits; (2) initiated actions in a timely manner to ensure that lease renewals were approved without a loss of revenue to the landowners; (3) usually made timely distributions of rents and fees collected to Indian landowners; and (4) enforced bonding requirements stipulated in the leases. However, we also found that some lease rents, grazing fees, and related interest which were deposited into special deposit accounts in the 1980s and 1990s had not been distributed to landowners.[2]

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. The Code further states that the interest earned on principal in special deposit accounts is to be distributed with the related principal. At February 28, 1997, the Agency had 599 special deposit accounts, with balances totaling about $577,000, that consisted of undistributed agricultural lease rents and grazing fees and accrued interest. Based on our analysis of 142 special deposit accounts, with balances totaling about $493,000, we found that the rents and fees and related interest deposited had not been distributed to landowners as follows:

Year Deposited	Revenues Not Distributed	Interest Not Distributed	Total
1997	$26,159	$13,849	$40,008
1996	57,279	30,153	87,432
1995	4,887	27,730	32,617
1994	22,382	25,485	47,867
Prior to 1994	156,591	128,324	284,915
Total	$267,298	$225,541	$492,839

The Agency's realty and land operations staff were responsible for ensuring that funds in the special deposit accounts, including interest earned, 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 personnel resources to

[2]The Bureau is responsible for administering leases and permits on individually owned land and tribal land held in trust. However, the Department's Office of the Special Trustee for American Indians is 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.

analyze special deposit account balances and land ownership records to properly distribute these funds. Consequently, landowners were not provided the funds to which they were legally entitled.

The January 1998 Office of Inspector General audit report 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.[3] The report made four recommendations to correct special deposit account deficiencies similar to those that we identified during our current review. The recommendations related to performing an analysis of accounts (Recommendation 20); establishing policies and procedures for using special deposit accounts (Recommendation 24); establishing an adequate system, policies, and procedures for determining interest earned for Individual Indian Money account holders (Recommendation 25); and establishing controls to verify that items are cleared (Recommendation 7). Based on the actions outlined in 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 in the special deposit accounts that we identified during this review. 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 implementation of the Plan will be monitored by the Assistant Secretary for Policy, Management and Budget. Therefore, we have made no recommendations in our current report with respect to these issues.

Since this report does not contain any recommendations, a response is not required.

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 personnel in the conduct of our audit.

cc: Special Trustee for American Indians

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[3]The report defined a "reportable condition" as a matter relating to significant deficiencies in the design or operation of the 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.

ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO THE OFFICE OF INSPECTOR GENERAL

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