Office of the Inspector General (Division of Acquisition and Management Operations, Department of the Interior), 9-22-1997, Memorandum from Wilma A. Lewis, Inspector General, to the Secretary of the Interior, re: Audit Report on Judgment Funds Awarded to the Navajo Nation (Report No. 97-I-1168). Available online.

Report No. 97-I-1168

Title: Audit Report on Judgment Funds Awarded to the Navajo Nation

Date: September 22, 1997

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United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MEMORANDUM

TO: The Secretary

FROM: Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Judgment Funds Awarded to the Navajo Nation" (No. 97-I-1168)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether: (1) the Bureau of Indian Affairs distributed judgment award funds in accordance with plans or legislation authorizing the use of such tinds and (2) the Navajo Nation used judgment award funds for the purposes specified in the plans or by legislation.

We concluded that the Navajo Nation used the funds from the three judgment awards reviewed for the purposes specified in the respective approved use and distribution plans. However, the Bureau improperly distributed judgment awards funds of $5.9 million for Dockets 229 ($1.9 million from the interest account) and 353 ($4 million from the principal amount). The use and distribution plan for Docket 353 specified that the principal funds were to be held in trust and invested and that only the interest income accrued on the invested funds was to be disbursed for specified uses. As a result of the improper distribution of fund principal, the Office of Trust Funds Management estimated that interest income of about $2.5 million was not earned by the Navajo Nation because $4 million was not held in trust and invested as required by the use and distribution plans. Consequently, the Navajo Nation did not receive this interest income to fund local projects and programs.

The improper disbursements occurred because those personnel at the Bureaus Navajo Area Office who were responsible for reviewing and approving disbursements at the Area Office did not suflticiently analyze the use and distribution plan requirements and did not ensure that disbursements were made in accordance with these requirements. In addition, the Bureau's trust fund management systems did not have sufficient automated controls to prevent disbursements from accounts that should have been restricted.

Based on the response from the Special Trustee for American Indians, we considered the report's one recommendation resolved but not implemented.

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

C-IN-BIA-008-96(C)

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

AUDIT REPORT

Memorandum

To: Special Trustee for American Indians

From: Robert J. Williams
Assistant Inspector General for Audits

Subject: Audit Report on Judgment Funds Awarded to the Navajo Nation
(No. 97-I-1168)

INTRODUCTION

This report presents the results of our audit of judgment funds awarded to the Navajo Nation. This report is the third of four audit reports that we plan to issue on judgment funds awarded to Indian tribes. The objective of the audit was to determine whether: (1) the Bureau of Indian Affairs distributed judgment award funds in accordance with plans or legislation authorizing the use of such funds and (2) the Navajo Nation used judgment award funds for the purposes specified in the plans or by legislation.

BACKGROUND

The Navajo Nation received four judgment awards, totaling $69.8 million, during 1966 through 1989 as follows:

On November 10, 1966, the U.S. Court of Claims approved a settlement award of $500,195 on behalf of the Navajo Nation in Docket 49692. The award was compensation for a 1942 lease that allowed the United States to remove helium gas from the reservation and a 1945 agreement that allowed the United States to control helium reserves. On May 29, 1967, funds were appropriated for the judgment award. The use and distribution plan for the award became effective on November 17, 1975, and the plan specified that the funds awarded to the Nation, including accrued interest less attorney's fees and litigation expenses, were to be used for scholarship and education purposes. In fiscal years 1993 through 1995, the Bureau distributed interest earned on the judgment award funds of about $1.9 million to the Navajo Nation for Docket 49692.

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- On September 18, 1981, the U.S. Court of Claims approved a settlement award of $14.8 million on behalf of the Navajo Nation in Docket 229. The award was compensation for 17.2 million acres of land that was ceded to the United States under a treaty of 1868. On October 23, 198 1, funds were appropriated for the judgment award. The use and distribution plan for the judgment award became effective on December 12,1982, and the plan specified that $10 million plus all interest income accrued was to be transferred to the Navajo Scholarship Trust Fund and the remainder of the funds was to be used by the Navajo Nation for land acquisition. The interest earned from the Navajo Scholarship Trust Fund was to be used to provide educational assistance to tribal members. In fiscal years 1993 through 1995, the Bureau distributed judgment award funds of about $9.3 million to the Navajo Nation for Docket 229.

$32.5 On January 13, 1987, the U.S. Court of Claims approved a settlement award of
million on behalf of the Navajo Nation in Dockets 69, 299, 256-69, 377-70, and 588.83L. The award was compensation for a claim that the Government had not: (1) properly handled tribal money; (2) earned adequate interest; (3) effectively managed tribal land, mineral, timber, and grazing resources; and (4) fulfilled certain provisions of a treaty of 1868. On February 27,1987, funds were appropriated for the judgment award. The use and distribution plan for the judgment award became effective on June 11,1988, and the plan specified that the funds were to be transferred to the Navajo Nation to be managed in accordance with an investment plan that required 5 percent of the interest earned annually to be reinvested and 95 percent of the interest earned annually to be used for general, social, and economic programs of the Navajo Nation. In fiscal years 1993 through 1995, the Bureau distributed interest earned on the judgment award funds of about $4.8 million to the Navajo Nation for these dockets.

*The Indian Monies, Proceeds of Labor account was established by the Congress for the deposit of miscellaneous revenues derived from the sale of goods or services by the Bureau; gross receipts f leases;
fees for the use of Federal lands, facilities, and property; and revenues from other Bureau acti

including
gross receipts financed by appropriated funds.

*The use and distribution
was to be reinvested.

plan for Docket 353 did not specify an amount or percentage of interest income that

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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 managing trust funds was delegated to the Assistant Secretary for Indian Affairs (Part 109.8 of the Departmental Manual) and was redelegated to the Bureau's Navajo Area Director (10 Bureau of Indian Affairs Manual, Bulletin 13). Since 1989, the Bureau's Office of Trust Funds Management has been responsible for overseeing some of the financial trust service functions, which include investing, distributing, and accounting for trust funds. 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 Office of Trust Funds Management and other financial trust service functions fi-om the Bureau to the Office of the Special Trustee. On January 3 1, 1997, the Office of the Special Trustee transferred the authority to manage and invest these judgment award funds to the Navajo Nation. The transfer was made under the authority of the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-4 12).

SCOPE OF AUDIT

Our audit was conducted during September 1996 through January 1997 and included visits to the Office of Trust Funds Management in Albuquerque, New Mexico, and to the Navajo Nation in Window Rock, Arizona. Our audit focused on funds disbursed to the Navajo Nation in fiscal years 1993 through 1995. However, in some instances, we expanded our audit scope to cover prior year distributions and subsequent year expenditures to satisfy the objective of our audit. We limited our audit of judgment award funds to the three judgment awards, totaling $37,300,195, settled under Dockets 49692,229, and 353. At the beginning of our audit, the Navajo Nation was in the process of assuming authority from the Bureau for the management ofjudgment award funds for Dockets 69,299,256-69,377.70, and 5880 83L under the separate authority contained in the approved use and distribution plan for the funds. In that regard, the use and distribution plan specified that all of the responsibility of the United States for these judgment award funds would cease at the time of transfer. As such, we excluded the distribution of these funds from our audit. 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.

We also reviewed the Secretary's Annual Statement and Report to the President and the Congress, which is required by the Federal Managers' Financial Integrity Act, for fiscal years 1993, 1994, and 1995 and determined that for each of those years, the Secretary reported material weaknesses in the management of tribal trust funds. The report for fiscal year 1995 stated: "The Bureau's management of trust funds lacks effective management controls, dependable systems, and reliable management information. Tribal and individual accounts lack credibility and have never been reconciled in the entire history of the trust fund." We did not make any recommendations related to Bureau controls over fund distributions because the Navajo Nation is managing all of its judgment award funds.

PRIOR AUDIT COVERAGE

Neither the General Accounting Office nor the Office of Inspector General has issued a report in the past 5 years concerning judgment funds awarded to the Navajo Nation. Further, the last single audit of the Navajo Nation's judgment award funds, which was for the fiscal year ended March 31, 1995, did not identify any adverse conditions related to judgment award funds.

RESULTS OF AUDIT

We concluded that the Navajo Nation used the funds from the three judgment awards reviewed for the purposes specified in the respective approved use and distribution plans. Specifically, the Navajo Nation used funds from the judgment awards: (1) from Docket 49692 for scholarships and educational assistance purposes; (2) from Docket 229 for educational assistance and land acquisition; and (3) from Docket 353 to finance local projects

and programs. In addition, the Bureau distributed judgment award funds for Docket 49692 according to the use and distribution plan. However, the Bureau improperly distributed judgment awards funds of $5.9 million for Dockets 229 and 353.

In April 1987, the Bureau improperly distributed $1.9 million from the interest account for the Navajo Scholarship Trust Fund to the Navajo Nation from Docket 229. The distribution

caused a $1.9 million overdraft in the interest account. In August 1987, the Bureau improperly distributed $4 million fi-om the principal amount of the judgment award of $19.8 million that was held in trust for Docket 353. The $4 million distribution consisted of a disbursement of $1.9 million to eliminate the overdraft in the interest account of the Navajo Scholarship Trust Fund and a disbursement of $2.1 million to the interest component of the trust fund account for Docket 353 for subsequent distribution to the Navajo Nation. However, the use and distribution plan for Docket 353 specified that the principal funds were to be held in trust and invested and that only the interest income accrued on the invested funds was to be disbursed for specified uses. As a result of the improper distribution of fund

principal, the Office of Trust Funds Management estimated that interest income of about $2.5 million was not earned by the Navajo Nation because $4 million was not held in trust and invested as required by the use and distribution plans. Consequently, the Navajo Nation did not receive this interest income to fund local projects and programs.

The improper disbursements occurred because those personnel at the Bureau's Navajo Area Office who were responsible for reviewing and approving disbursements at the Area Office did not sufficiently analyze the use and distribution plan requirements and did not ens-ure that disbursements were made in accordance with these requirements. In addition, the Bureau's trust fund management systems did not have sufficient automated controls to prevent disbursements from accounts that should have been restricted.

Part 85 of the Bureau of Indian Affairs Manual, approved in September 1994, contains Bureauwide policy and procedures for the loss of trust funds. Specifically, Section 1.1 of the Manual requires the Bureau to: (1) provide timely notification to tribal, Alaska Native

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entities, and individual Indian trust fund account holders of all account losses attributable to the Bureau's error and (2) ensure reimbursement of all losses in principal, earned interest, and/or accrued interest if applicable. In addition, as required by the American Indian Trust Fund Management Reform Act of 1994, the Secretary issued a report in December 1996 that proposed settlement options to resolve disputed tribal trust fund account balances. This report identified the general approach the Secretary is contemplating for resolving disputed account balances and included specific recommendations to resolve known errors. This report also stated that the Department plans to further solicit tribal views on various settlement options and plans to finalize recommendations in April 1997 for resolving disputed tribal trust fund account balances.

In a January 3 1, 1997, letter to the President of the Navajo Nation, the Director of the Office of Trust Funds Management stated that recent reconciliation efforts by the Office of Inspector General, U.S. Department of the Interior, in coordination with the Office of Trust Funds Management, had shown that the existing judgment award fund balances for Docket 353 were not at required levels. The Director also stated, "Although the underlying bases for these transfers are outside the scope and intent of this letter, it is recommended that the principal account, as well as its corresponding interest account, be made whole from the funds to which the erroneous transfers were made." In addition, the Director stated, "The Office of Trust Funds Management has not made any adjustments for these erroneous transfers. "

Recommendation

We recommend that the Special Trustee for American Indians ensure that the $4 million in principal and the appropriate amount of interest income that was lost on the principal are credited to the Navajo Nation's accounts for Docket 353 in accordance with the Secretary's final settlement process for resolving disputed tribal trust fund account balances.

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

In the July 30, 1997, response (Appendix 1) Corn the Office of the Special Trustee for American Indians, the Office indicated concurrence with the recommendation, stating"that any adjustments to correct improperly distributed judgment award funds will be addressed

in the Secretary's final settlement process for resolving disputed tribal trust fund account balances." The Office of the Special Trustee also stated that the Office of the Solicitor was finalizing the settlement process and had been informed of the improper disbursements from the Navajo Nation's accounts for Docket 353. The Office of the Special Trustee also stated that in order to prevent future improper distributions of trust funds, the Office of Trust Funds Management had implemented procedures to monitor compliance with public laws and to place an administrative hold on an account to prevent distribution below a certain amount.

Based on the response from the Office of the Special Trustee, additional information is required for the recommendation (see Appendix 2).

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In accordance with the Departmental Manual (360 DM 5.3), we are requesting your written response to this report by October 24, 1997. The response should provide the information requested in Appendix 2. 1

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, actions taken to implement audit recommendations, and identification of each sip&ant recommendation on which corrective action has not been taken.

We appreciate the assistance of personnel from the Office of the Special Trustee for American Indians and the Navajo Nation in the conduct of our audit.

APPENDIX 1
Page 1 of 2

United States Department of the Interior

OFFICE OF

THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

Paul iM. Homan
Special Trustee
for American Indians

Telephone: (202) 208-4866
FaX: (202) 208-7545

Memorandum

To .
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From:

Subject:

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Assistant Inspector Generai /f' r Audits
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Attention: Mr. Robert J. WI ams

Special Trustee for Ame

Draft Audit Report on Funds Awarded to the Navajo Nation
(Assignment No. C-IN-BIA-008-96(C))

This is the Office of the Special Trustee's (OST) response to the Draft Audit Report on Judgement Funds awarded to the Navajo Nation dated May 14, 1997.

In regard to the alleged improper disbursements from the Navajo Nation accounts for Docket 353, the Director, Office of Trust Funds Management (OTFM) stated at the April 7, 1997 exit conference, that any adjustments to correct improperly

distributed judgement award funds will be addressed in the Secretary's final settlement process for resolving disputed tribal trust fund account balances. Although this transaction was not revealed in the reconciliation process, the event did occur within the twenty year period and therefore the issue will be reviewed at the appropriate time. The Office of the Solicitor is in the process of finalizing the settlement process and has been informed of this issue.

This audit exception occurred prior to OTFM having authority for tribal disbursements. Since that time, the OTFM has undergone significant organizational changes. The American Indian Trust Fund Management Reform Act of 1994 established the OST. Subsequently, the Secretary of Interior by Secretarial Order 3197, dated February 9, 1996 transferred line authority for both Headquarters and Field staff and administrative authority for disbursements from the Bureau of Indian Affairs to this office. OTFM has an ongoing project that is updating and standardizing policy and procedures. Currently the following procedures are in place:

1. The disbursement procedures involve a review process to ensure the disbursement request is in compliance with the public law. There are two levels of compliance checks: one at the Area level by the Area Trust Accountant and one at the OTFM Headquarters Office by the Customer Relations Specialists.

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APPENDIX 1
Page 2 of 2

2. An additional control in the OMNI Trust System is the administrative hold that can be placed on the corpus to prevent distribution below a certain amount. Currently, the Customer Relations Specialists are initiating appropriate holds as the accounts are reviewed.

For future follow up on settlement issue(s), the offices listed below may be contacted for the status:

Office of the Solicitor
Attention: Mr. Dave Moran
`I 849 C St. Mail Stop 6456
Washington, DC 20240

Office of the Special Trustee
Attention: Mr. Joe Christie
505 Marquette NW Suite 1000
Albuquerque, NM 87 102

Telephone No: (202) 208-436 1

(505) 248-5735

If you have any questions on this matter, please contact Douglas A. Lords, Deputy Director OTFM, at (505) 248-5723, or Sarah Yepa, Acting Chief, Division of Quality Assurance, at (505) 248-5711.

APPENDIX 1
Page 2 of 2

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Telephone No: (202) 208-436 1

(505) 248-5735

If you have any questions on this matter, please contact Douglas A. Lords, Deputy

Director OTFM, at (505) 248-5723, or Sarah Yepa, Acting Chief, Division of Quality Assurance, at (505) 248-5711.

APPENDIX 2

STATUS OF AUDIT REPORT RECOMMENDATION

Finding/
Recommendation
Reference

Status Action Required

1

Management concurs;
additional information
needed.

Provide a target date for implementing
the recommendation.

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ILLEGAL OR WASTEFUL ACTMTIES
SHOULD BE REPORTED TO
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