



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS' SOUTHERN UTE AGENCY'S MANAGEMENT OF THE SOUTHERN UTE TRIBE'S ENERGY RESOURCES




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INSPECTOR GENERAL**
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Memorandum

To: Lawrence S. Roberts
Acting Assistant Secretary – Indian Affairs

Michael Black
Director, Bureau of Indian Affairs

From: Mary L. Kendall 
Deputy Inspector General

Subject: Final Evaluation Report – Bureau of Indian Affairs' Southern Ute Agency's
Management of the Southern Ute Indian Tribe's Energy Resources
Report No. CR-EV-BIA-0011-2014

This memorandum transmits the findings of our evaluation of the Bureau of Indian Affairs' (BIA) Southern Ute Agency's (Agency) management of the Southern Ute Indian Tribe's (Tribe) energy resources.

We offered seven recommendations to BIA to address issues identified in our draft report. In its response to the report, BIA concurred with all of our recommendations and stated that it is working to implement or close them (see Appendix 2). Based on this response, we consider the recommendations resolved but not implemented (see Appendix 3), and we will forward them to the Office of Policy, Management and Budget to track their implementation.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions about this report, please contact me at 202-208-5745.

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Results in Brief

Through its subsidiary energy companies, the Southern Ute Tribe (Tribe) conducts sizeable oil and gas activities in approximately 10 states and the Gulf of Mexico, as well as the Southern Ute Indian Reservation (Reservation). The Bureau of Indian Affairs' (BIA) Southern Ute Agency (Agency) reviews and approves oil and gas, as well as other mineral leases, on the Reservation. While successfully managing its own affairs and conducting complex business transactions both on and off the Reservation, the Tribe is subject to Federal laws and regulations requiring the Agency to review and approve basic energy transactions for trust lands.

Assessing the effectiveness of the Agency's oversight of the Tribe's energy resources, we found that the Agency is not effectively fulfilling its tribal energy-related obligations. As a result, the Tribe believes it has to fill the gap left by BIA and it is already performing many of the Agency's energy-related functions, informally, without being compensated. The Tribe has also reported a backlog of transactions, potential lost revenue, and poor records management by the Agency.

We also found that the Agency does not have an established energy branch. In addition, BIA does not have a plan for working with the Tribe to meet its energy-related needs. Further, Agency records are in poor condition and at risk of damage. Also, the Agency is not actively managing and monitoring a September 2014 corrective action plan to remedy significant records management deficiencies reported by the Office of the Special Trustee for American Indians.

During our review, we asked whether BIA and the Tribe were interested in exploring the possibility of the tribe assuming all energy-related functions. We also identified major challenges facing both BIA and the Tribe if the Tribe assumed these functions. These challenges prompted us to question the viability of a tribal energy resource agreement (TERA), created under the Indian Tribal Energy Development and Self-Determination Act.

While the Tribe's sophistication and extensive experience with oil and gas make it an ideal candidate for a TERA, the Tribe is concerned about some aspects of the regulations. Pending legislation, if enacted, could help alleviate some of the Tribe's concerns.

We make seven recommendations to strengthen BIA's management of energy-related activities for the Southern Ute Indian Tribe. To address the challenges associated with initiating energy self-determination for a tribe with sophisticated energy practices, we found that reviewing all viable options, including TERA, might be a useful starting point for this and other tribes.

Introduction

Objective

We assessed the effectiveness of the Bureau of Indian Affairs' (BIA) oversight of the energy resources of the Southern Ute Indian Tribe (Tribe). During the review, we narrowed our objective to determine if BIA and the Tribe were interested in the Tribe assuming all aspects of the energy-related functions. We also identified the major challenges associated with the Tribe assuming the energy-related functions facing both BIA and the Tribe.

Appendix 1 contains the details of the scope and methodology for this review.

Background

The Southern Ute Indian Reservation (Reservation) is located in southwestern Colorado and includes approximately 700,000 acres of land. The Reservation is complex and includes tribal trust, allotted, Federal, and State lands. Parts of the Reservation involve split estates in which non-Indians own the surface, but the Tribe owns the oil and gas or coal estates below the surface. In 1949, the Tribe began issuing leases under the direction of the Secretary of the Interior. Royalties collected on tribal leases totaled \$262 million for October 2010 through July 2014.

In 1980, the Tribal Council established its own energy department. After passage of the Indian Mineral Development Act of 1982, the Tribe negotiated mineral development agreements with oil and gas companies. In 1992, the Tribe started its own gas operating company, Red Willow Production Company. The Tribe began operating its own wells and received income including royalties and severance tax revenue. The Tribe is also the majority owner of Red Cedar Gathering Company, one of the main pipeline companies on the Reservation. The Tribe expanded operations off the Reservation and conducts large oil and gas activities in approximately 10 states and the Gulf of Mexico.

Although the Tribe has been successful in managing its own affairs and conducting complex business transactions both on and off the Reservation, the Tribe has not pursued a tribal energy resource agreement (TERA) and, therefore, Federal laws and regulations require that the Southern Ute Agency (Agency) review and approve basic energy transactions occurring on the Reservation's trust lands. This often delays processing of energy-related transactions, resulting in potential lost revenue for the Tribe. The Agency is responsible for supporting the Tribe's energy-related activities.

Title V of the Energy Policy Act of 2005 (Act), also known as the Indian Tribal Energy Development and Self-Determination Act, established the TERA program. The program is a mechanism for American Indian tribes to grant energy-related leases, enter into energy-related business agreements, and issue

rights-of-way for pipelines and electric transmission facilities without prior approval by the Secretary of the Interior. As a pre-condition, a tribe and the Secretary first agree to a TERA addressing the manner in which a tribe would process such energy-related agreements or instruments. Although this legislation passed in 2005, no tribe has entered a TERA as of the date of this report.

There have been several Congressional attempts to amend the Act. To date, none of the proposed amendments have become law. Congress is currently reviewing Senate Bill 209, Indian Tribal Energy Development and Self-Determination Act Amendments of 2015. This bill proposes changes that would simplify and expedite the TERA process. One of the most significant changes would allow a tribe to receive funding equal to the amount the Department spends to perform the same functions that a tribe would perform under TERA.

Another option for the Tribe to assume its energy functions is the modification of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act). The HEARTH Act authorizes the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring long-term leases by a tribe without the approval of the Secretary of the Interior.

Currently, leases for the exploration, development, or extraction of any mineral resources are excluded from being executed by a tribe without the approval of the Secretary under this Act. The HEARTH Act does allow a tribe to approve leases for activities such as wind, solar, and business purposes if the Department approves the tribal regulations, including an environmental review process but does not include mineral leases.

Findings

We found that the Bureau of Indian Affairs' (BIA) Southern Ute Agency (Agency) is not meeting the Southern Ute Tribe's (Tribe) energy-related needs, which has resulted in the Tribe filling in the gap left by BIA.

The Tribe informally performs energy functions that should be completed by the Agency. The Tribe has also reported a backlog of transactions, potential lost revenue, and poor records management by the Agency. We found that the Agency does not have an established energy branch and, until recently, has not filled positions with staff that have energy-related experience. In addition, BIA does not have a plan for working with the Tribe to meet its energy needs. Agency records are in poor condition and at risk of damage. Many of the steps agreed to in the September 2014 corrective action plan have not been addressed. This has caused the Tribe to lose confidence in the Agency.

During our review, we asked if BIA and the Tribe were interested in tribal management of all its energy-related functions. We also identified the major challenges both groups would face. These challenges prompted us to raise the question to BIA of the viability of tribal energy resource agreements (TERAs) and their impact on tribal self-determination.

BIA's Basic Fiduciary Duties

The Agency is not effectively meeting its fiduciary responsibilities regarding the Tribe's mineral leasing activities. Because of significant delays in document processing and the Agency's inadequate expertise, the Tribe has assumed some of the responsibilities for energy-related transactions. These delays affect the Tribe's financial interests. To compensate for these delays, the Tribe has tried to speed up the BIA review and approval process by performing underlying work that should normally be done by BIA; however, they have been performing these duties without an agreement, contract, or compact in place.

For example, the Tribe types lease terminations, communitization agreements, and grants of easements on BIA letterhead, assembles all the necessary documentation then submits it for BIA's final approval. According to an Office of Internal Evaluation and Assessment report, these issues expose Indian Affairs to potential liability since they are responsible to perform these duties to act in the best interests of the beneficiaries of trust lands and programs.

In an April 2013 memorandum, the manager of the Tribe's Department of Energy outlined a typical, routine delay created by the Agency. According to the manager, it took Agency staff 12 months to approve a routine right-of-way agreement. The Tribe submitted the document in April 2012, but the Agency did not approve the request until March 2013. As a result, the Tribe estimated that it suffered a loss of \$3 million.

In another example, on July 30, 2012, the Tribe submitted a request for the Agency to process and approve a proposed minerals agreement between the Tribe and Red Willow Production Company. Agency officials did not formally tell the Tribe that it determined the agreement to be legally insufficient until February 8, 2013, when it returned the agreement for revision. The Tribe chose to proceed with exploration and development of the resources without a BIA-approved lease agreement. The tribal attorney stated that the decision to reject the minerals agreement exemplified the manner in which BIA has performed its trust functions in recent years.

Recommendation

We recommend that BIA:

- I. Enter into a Memorandum of Understanding or another type of formal agreement with the Tribe that would better define the Tribe's role in performing work to support BIA's review and approval of the Tribe's mineral leasing activities.

Energy Management Issues

BIA receives assistance from the Bureau of Land Management and the Office of Natural Resources Revenue, but the Agency does not have an energy branch to handle energy-related transactions. With the Tribe's increasing development in the areas of energy and energy transactions, current staffing levels at the Agency cannot keep up with the volume of energy-related transactions submitted by the Tribe, resulting in delays.

In addition to the absence of an energy branch, we found that the Agency has had longstanding staffing issues. Without adequate staff, the Agency indicated that it could not provide all mandated services to tribal members in a timely manner.

On April 16, 2013, the Tribe's council chairman sent a letter to BIA's southwest regional director requesting an exemption from a hiring freeze for the Agency. The chairman described that it was vital to fill the vacant positions for the success of the Tribe and in a second letter, requested that a regional realty specialist be dedicated to the Agency on a full-time basis.

We specifically found that BIA—

- has hired staff without the necessary energy experience;
- is not providing energy training to staff and has not accepted tribal offers for energy-specific training;
- has had difficulty hiring staff; and

- does not have formal policies and procedures for the energy-related activities.

Agency staff indicated that they do not have any energy-related experience and have not been provided any training in this area. In addition, the Agency's last superintendent was a forester who had no energy-related experience. The current southwest regional director told us that the workload at the Agency is sufficient to warrant up to four additional realty positions and that an environmental protection specialist is also needed. The director stated, however, that the BIA budget does not support hiring additional staff.

BIA officials reported difficulty attracting qualified individuals to work at the Agency because it cannot compete with private industry salaries. We learned, however, that the BIA Great Plains Region requested approval to use a relocation incentive to hire a qualified candidate for a critical position. The region used provisions outlined in the Department's Personnel Bulletin No. 06-01, which applies to all bureaus and equivalent organizations within the Department, including BIA, and offers an important human resource flexibility to help recruit and retain highly qualified personnel through recruitment, relocation, and retention incentives.

The Agency also does not have energy-specific policies and procedures in place to guide its work. Agency staff stated that they would benefit from desk procedures and working standard operating procedures (SOPs) to assist in performing their day-to-day activities for the Tribe. The superintendent identified the need for SOPs, and stated that some procedures have been informally documented. BIA is addressing this issue by providing four oil and gas SOP training sessions for all realty positions at BIA agencies.

In May 2015, we learned at the exit conference that BIA is developing an energy service center in cooperation with BLM and ONRR. According to BIA, this service center will provide standardized energy training and operating procedures across BIA. We also learned that BIA hired a permanent superintendent with oil and gas experience.

Recommendations

We recommend that BIA:

2. Provide oil and gas leasing training for staff and consider accepting tribal offers for energy-specific training;
3. Collaborate with other tribal agencies for energy-specific expertise, training, and staffing for energy-related functions;
4. Actively recruit qualified energy staff by seeking authority to consider all incentives and hiring flexibilities such as recruitment bonuses, retention bonuses, relocation incentives, and special pay provisions; and
5. Develop and implement official, comprehensive, internal Agency policies and procedures that govern, guide, and regulate energy activities.

Records Management Deficiencies

The Agency has a longstanding problem with records management. Both the Agency and the Tribe use these records in the daily management of energy-related transactions such as oil and gas leases and rights-of-way, and serve as historical records of these transactions. The Agency records are in poor condition and at risk of damage. The Tribe is concerned about the condition of these records.

The Indian Affairs Records Management Policy and Procedures Manual¹ establishes procedures for developing a filing system to ensure that BIA efficiently maintains and uses Indian trust and general trust program records. It also requires that each BIA office establish and implement an economical and effective recordkeeping system by identifying the types of records, maintaining an effective filing system, safeguarding records by storing them appropriately in filing cabinets, and creating and maintaining a current file maintenance and disposition plan. We concluded that the Agency was not in compliance with any of these requirements.

In March 2009, regional realty staff visited the Agency to assess its records condition. They found stacks of records 4 to 5 feet high along every wall in several offices, as well as loose documents shoved into empty closets, desks, and cabinets. The realty staff met with the Office of the Special Trustee for American Indians (OST) to request assistance under OST's existing data quality and

¹ "Indian Affairs Records Management Policy and Procedures Manual", Chapter 2, Recordkeeping Requirements.

integrity contract with Chickasaw Nation Industries, Inc. (CNI) to clean up records and file loose documents. OST directed CNI to work at the Agency under regional realty staff supervision and the region and BIA provided additional funding. To deal with records management concerns, BIA and CNI agreed on a scope of work that focused on organizing and filing records as well as developing a documents inventory. CNI was not able to complete the original scope of work because of insufficient funds.

A 2014 OIG inspection report² also identified deficiencies with the Agency's record management practices and cited a 2009 internal report identifying deficiencies, including:

- inconsistent filing of real estate and general records;
- incorrectly recorded new property records;
- uncontrolled access to property records;
- incomplete and outdated rights-of-way files;
- unrecorded oil well surface structures in BIA's Trust Asset and Accounting Management System; and
- incomplete well files or not uniformly filed.

Further, the OIG report stated that the Agency had not corrected many of these issues. During an interview for the inspection, tribal officials stated that the Agency's oil and gas lease files were not in good condition, thus adding time to BIA's surface review. In our 2014 report, we recommended that BIA ensure that the 2009 report recommendations focusing on records management deficiencies at the Agency be implemented. This recommendation remains open, having been resolved but not implemented.

The Tribe is very concerned about the condition of the Agency records. During a recent site visit at the Agency in September 2014, we inspected the condition of the records and found that the Agency still did not have an effective recordkeeping system, even though the Agency and the Tribe use these records on a daily basis. Also, the Agency did not safeguard records by storing them in the appropriate filing cabinets. Specifically, we found—

- file boxes not appropriately labeled;
- loose documents stacked on top of file boxes;
- records not officially labeled or filed in separate folders and the box of records not appropriately catalogued;
- records located in a storage closet and not appropriately filed (see Figure 1); and
- maps stacked in a corner and not protected from potential damage (see Figure 2).

² "Records Management at Selected Bureau of Indian Affairs' Agency Offices" (No. CR-IS-BIA-0001-2014), dated January 31, 2014.



Figure 1. BIA records and other files are stored in a closet along with cleaning products and various office supplies. Source: OIG



Figure 2. Realty maps are stacked in a corner and are not properly labeled or protected.
Source: OIG

In May 2014, the Office of Trust Review and Audit (OTRA) assessed trust records management at the Agency. OTRA identified 31 findings in the Real Estate Services and Probate and Estate Services programs, some of which required immediate attention and corrective action. In addition, during this evaluation we found that records were still not appropriately filed and protected from potential damage, even after a third party had been hired to assist the Agency with records clean up.

OTRA and the Agency prepared a corrective action plan based on OTRA's findings. Our review of the corrective action plan revealed no established timetable or milestones. Further, during our interviews we learned that no one at the Agency is actively monitoring the progress of the corrective action plan although these records are critical for the Tribe and the Agency. During the exit conference, however, BIA informed us that the new superintendent was assigned as the responsible official and established a target date of September 30, 2015, to complete the corrective action plan.

Recommendations

We recommend that BIA:

6. Ensure that the corrective action plan is actively managed by the responsible official to meet the established milestones; and
7. Actively monitor and report to the Division of Internal Evaluation and Assessment on progress of the corrective action plan.

Exploring TERA: A Discussion of Obstacles

The Tribe's sophistication and extensive experience with oil and gas make it an ideal candidate for TERA, and potentially a model for other tribes. The Tribe is concerned about some aspects of the regulations; however, pending legislation, if enacted, could help alleviate some concerns. Even with answers to its questions, the Tribe offers no guarantee that it will choose to enter into a TERA. Nevertheless, current law³ preserves the Government's trust obligations even if the Tribe enters into a TERA.

TERA Regulations

Entering into a TERA also concerns the Tribe because of the uncertainty surrounding the negotiation and approval process for identifying Federal functions that could be delegated to the Tribe. The Tribe is also concerned about the potential public review of tribal projects and the loss of Government funding for functions assumed under TERA. According to the tribal attorney, the Tribe believes that the impact of existing Federal regulations on TERA is unclear.

In a September 2012 Office of Inspector General (OIG) report⁴, we discussed the development potential of TERAs and the reasons why none have been authorized since enactment of the law. Even today, no tribe has applied for a TERA. Tribal officials at various reservations expressed concerns regarding the increased and unreimbursed costs that tribes would incur after assuming functions formerly performed by BIA, increased tribal liability for failed oil and gas deals, and the complex regulatory process of implementing TERAs. In addition, only tribally owned leases are allowed to participate in a TERA, excluding those reservations with mostly individual or allotted ownership.

Our 2012 report recommended that the Assistant Secretary for Indian Affairs review and work with the Department and Congress to revise TERA statutes and regulations, if necessary, to enable Indian tribes to exercise self-determination over tribal oil and gas operations. In March 2015, Indian Affairs requested that we

³ 25 U.S.C. § 3504(e)(6); 25 C.F.R. § 224.40

⁴ "Oil and Gas Leasing in Indian Country: An Opportunity for Economic Development" (No. CR-EV-BIA-0001-2011), dated September 24, 2012.

close this recommendation because it is taking several actions to implement it, including: meeting with tribes that produce oil and gas to explore ways of improving TERA and other statutes aimed at advancing tribal self-determination in energy, business, and economic development matters; and revising an existing grant process to enhance tribal capacity and exercise tribal self-determination over oil and gas operations. This recommendation has been closed as of the date of this report.

Under the TERA regulations, a tribe cannot assume “inherently Federal functions.” While some commenters on the proposed regulations requested that the Secretary define “inherently Federal functions,” the Secretary declined to do so, stating that: “[u]nder the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, the Secretary determines inherently federal functions on a case-by-case basis.”⁵ The Tribe is hesitant to enter into a TERA until a clear definition of these functions is provided. It believes that this term potentially rendered the Act’s goal of fostering tribal decision-making and independence meaningless. According to the Federal Register Notice⁶ that finalized the TERA regulations, the application process could enable both parties to reach an agreement regarding the specific activities the tribe would assume under its TERA.

In addition, the Tribe fears that entering into a TERA would result in more of its records being released to the public with increased public scrutiny. A TERA informs the public of the environmental impacts of approved energy activities and allows for public comment. According to tribal leadership, these TERA requirements are unacceptable and open tribal decisions to outside input and potential criticism.

Further, funding is not provided to Indian tribes under the current TERA legislation, even though tribes contracting through TERA would be assuming duties and responsibilities typically carried out by the Federal Government. This contrasts with other contracts carried out by Indian tribes under the Indian Self-Determination and Education Assistance Act. The Tribe is already assisting with the Agency’s energy-related functions without being compensated.

Pending TERA Legislation and Testimony

Senate Bill 2132, introduced on March 13, 2014, proposed changes to the Energy Policy Act of 2005 to simplify and expedite the TERA process, while enhancing independent energy resource development on tribal lands. Specifically, it would: (1) provide technical assistance to help tribes plan and develop energy resources; (2) allow tribes to enter into energy-related tribal leases and business agreements, or grant rights-of-way in compliance with TERA; and (3) allow tribes to request

⁵ Tribal energy Resource Agreements under the Indian Tribal Energy Development and Self-Determination Act, 73 Fed. Reg. 12,808, 12,810 (Mar. 10, 2008).

⁶ Federal Register, Vol. 73, 12808 implemented the final regulations for TERAs.

the same amount of funds that the Secretary would have expended on energy activities that the tribe is performing, pursuant to a TERA.

A report from the Senate Committee (Committee) on Indian Affairs accompanied the bill and stated that Indian tribes have expressed concerns that the Federal laws governing tribal energy resource development are complex and often lead to significant cost, delay, and uncertainty for all parties. The report also states that these costs, delays, and uncertainties discourage development of tribal trust energy resources and drive development investments to private or non-tribal lands not subject to the same Federal laws.

The Committee held a legislative hearing for Senate Bill 2132 in April 2014. The Tribe's acting chairman testified in support of Senate Bill 2132 and urged its passage. He estimated that lost revenue in 2009 exceeded \$94 million in severance taxes and royalties, due to delays in applications for permits to drill and rights-of-way approved in tribal council resolutions but still waiting on BIA's approval. The Tribe believes that it is the best protector of its own resources and the best steward of its own destiny, provided that it has access to the appropriate resources. The Tribe also believes it has surpassed the Department's capabilities to provide advice on tribal business decisions.

Also testifying at the same time, the Assistant Secretary for Indian Affairs agreed that the Energy Policy Act of 2005 has not been successful, noting that the Department has not received any TERA applications. The Department has met with six tribes considering TERA since 2008, but only one had active oil and gas activity on its reservation and was considering TERA for further oil and gas development. The Assistant Secretary stated that the Department supported the overall goal of Senate Bill 2132 and several of its provisions, but wanted to work with the Committee to further improve the bill.

Senate Bill 2132 was not enacted. In January 2015, however, Senate Bill 209, Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, was announced as a reintroduction of Senate Bill 2132. Senate Bill 209 contains the same amendments as Senate Bill 2132, but excluded provisions that would have provided grants for alternative energy activities.

Inherently Federal Functions and TERA

According to the Tribe, the Department has been either unwilling or unable to clarify the potential scope of a TERA under current regulations. The Tribe requested an opinion from the Office of the Solicitor on the meaning of "inherently Federal functions" and has been waiting for this definition since fall of 2013. We learned that the Office of the Solicitor has considered defining "inherently federal." The project lost and regained momentum several times for a variety of reasons, including changes within both the Tribe and BIA. The issue has reportedly received recent attention from the Office of the Solicitor and BIA. Even if the terminology is defined, however, there is no guarantee that the Tribe

would choose to enter into a TERA because it fears absolving the BIA of its responsibilities. The Tribe is also deeply concerned about the condition of the Agency records.

Path Forward: Is TERA viable?

During our review, we focused on determining if BIA and the Tribe were interested in the Tribe assuming all aspects of the energy-related functions. We also identified the major challenges associated with assuming the energy-related functions facing both BIA and the Tribe.

The Tribe is sophisticated in its energy business activities, but BIA has had trouble meeting its needs. The Tribe initially expressed interest in a TERA, but subsequently stated that it considered this option as a “last resort” and preferred that the Agency perform its fiduciary responsibility to meet the Tribe’s mineral resource needs. Although the Tribe considers TERA as a last resort for exercising self-determination, it is also optimistic about pending legislation. To date, no tribe has entered into a TERA. Even though the Tribe is potentially an ideal candidate, the Tribe still has serious concerns about TERA. The Department does not consider TERA as a viable option and is not actively pursuing it. Congress is also considering revisions to this statute or legislation.

TERA is not the only option for tribes to exercise self-determination. Another option is modifying the HEARTH Act to include mineral leasing. Currently, the HEARTH Act allows a tribe to approve leases for activities such as wind, solar, and business purposes if the Department approves the tribal regulations, including an environmental review process. In an April 2014 hearing before the Senate Committee on Indian Affairs, the Assistant Secretary for Indian Affairs testified that the HEARTH Act has simplified the process for tribes to pursue wind, solar and biomass energy projects without Secretarial approval and stated that the HEARTH Act’s promotion of self-governance for surface leasing should include mineral development.

To address the challenges associated with initiating energy self-determination for a tribe with sophisticated energy practices, we found that reviewing all viable options, including TERA, might be a useful starting point for this and other tribes.

Conclusion and Recommendations

Conclusion

Throughout our evaluation we identified a number of issues, such as a nonexistent energy program, poor record keeping, and insufficient performance of fiduciary duties, that prevent the Bureau of Indian Affairs' (BIA) Southern Ute Agency (Agency) from effectively managing the Southern Ute Indian Tribe's (Tribe) energy resources. During the evaluation, we considered a tribal energy resource agreement (TERA) as a possible solution to the energy resource management challenges facing the Agency and the Tribe. We found, however, that due to various concerns, the Tribe is hesitant to apply for a TERA. In addition, the Department does not consider TERA as a viable option and is not actively pursuing it. Further, Congress is considering revisions to this regulation.

Despite this, we challenge the Department, BIA, and the Tribe to take these concerns into consideration and explore all options for energy independence as long-term solutions to their energy resource management issues.

Recommendations Summary

We recommend that BIA—

1. Enter into a Memorandum of Understanding or another type of formal agreement with the Tribe that would better define the Tribe's role in performing work to support BIA's review and approval of the Tribe's mineral leasing activities;

BIA Response: In response to our draft report, BIA concurred with this recommendation. BIA stated that it will work with the Tribe to develop a Memorandum of Understanding for real estate activities regarding energy-related actions or processes between the Agency and the Tribe's Department of Energy.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

2. Provide oil and gas leasing training for staff and consider accepting tribal offers for energy-specific training;

BIA Response: BIA concurred with this recommendation and plans to consider oil and gas leasing training for staff from external industry sources and internal BIA personnel. BIA also stated that it will work with the Tribe to schedule energy-specific training.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

3. Collaborate with other tribal agencies for energy-specific expertise, training, and staffing for energy-related functions;

BIA Response: BIA concurred with this recommendation and stated that it will continue to request assistance from other BIA agencies familiar with energy terminology and real estate transactions. After it hires key staff, BIA plans to work with the Tribe and the U.S. Department of Energy for additional training opportunities.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

4. Actively recruit qualified energy staff by seeking authority to consider all incentives and hiring flexibilities such as recruitment bonuses, retention bonuses, relocation incentives, and special pay provisions;

BIA Response: BIA concurred with this recommendation and reported that it has established, recruited, and filled a realty assistant position and a realty specialist position. BIA advertised and tentatively selected an additional realty specialist. In addition, BIA is recruiting a realty officer and is seeking to fill a current vacancy for an additional realty specialist. BIA plans to follow up with the Office of Human Capital Management regarding the process to obtain a cost of living adjustment.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

5. Develop and implement official, comprehensive internal Agency policies and procedures that govern, guide, and regulate energy activities;

BIA Response: BIA concurred with this recommendation and will review and update its existing policies regarding energy activities and real estate transactions. It will also ensure that its policies include a guide for regulated energy activities.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

6. Ensure that the corrective action plan is actively managed by the responsible official to meet the established milestones; and

BIA Response: BIA concurred with this recommendation and reported that it has completed 26 of the 31 corrective actions. The ongoing corrective actions are tied to an imaging project. To develop an organized filing system, BIA stated that it will create plans for records maintenance

and disposition in accordance with the Indian Affairs Records Management Manual.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

7. Actively monitor and report to the Division of Internal Evaluation and Assessment on progress of the corrective action plan.

BIA Response: BIA concurred with this recommendation and stated that it will provide weekly updates to the Division of Internal Evaluation and Assessment. These updates will include detailed information on completed corrective action tasks. The Regional Director will monitor the progress of the corrective action plan and established milestones.

OIG Comment: Based on BIA's response, we consider this recommendation resolved but not implemented.

Appendix I: Scope and Methodology

Scope

We evaluated the Bureau of Indian Affairs' (BIA) Southern Ute Agency's (Agency) management of energy resources on the Southern Ute Reservation. As part of this evaluation, we reviewed documents and records related to the Southern Ute Indian Tribe (Tribe), evaluated the Agency's record keeping policies, and considered the BIA's hiring plans.

A report prepared by BIA's Fort Duchesne Agency, which identified incomplete oil and gas rights-of-way contract files, as well as problems with well files, including applications for permits to drill brought to our attention the need to review how such files are managed. We observed improperly secured trust records during our onshore oil and gas permitting evaluation in 2013.

Methodology

We conducted this review from September 2014 through March 2015. During our review, we—

- reviewed relevant laws, regulations, policies and procedures related to the Agency's energy management program;
- examined prior reviews;
- reviewed and analyzed program data and documents; and
- observed the Agency's energy-related processes.

We also interviewed—

- Agency staff;
- U.S. Department of the Interior and BIA Southwest Region staff;
- BIA staff;
- Tribal Council members;
- tribal attorneys;
- tribal employees;
- Bureau of Land Management officials;
- Office of Internal Evaluation & Assessment officials; and
- Office of the Special Trustee for American Indians officials.

We visited or contacted the—

- BIA Southwest Region Office, Albuquerque, NM;
- BIA Southern Ute Agency Office, Ignacio, CO;
- BIA Headquarters, Washington, DC;
- Ft. Berthold Agency Office, New Town, ND;
- Great Plains Regional Office, Aberdeen, SD;

- BIA Office of Indian Energy and Economic Development, Lakewood, CO; and
- Bureau of Land Management officials, Durango, CO.

We conducted this evaluation in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

Appendix 2: Bureau of Indian Affairs' Response to Draft Report

The Bureau of Indian Affairs' response to our draft report follows on page 21.



United States Department of the Interior

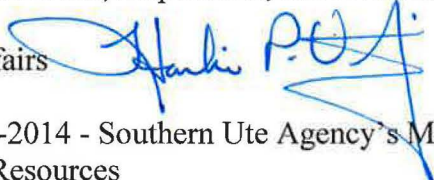
BUREAU OF INDIAN AFFAIRS

Washington, DC 20240

JAN - 6 2016

Memorandum

To: Kimberly Elmore
Assistant Inspector General for Audits, Inspections, and Evaluations

From: **ACTING** Director, Bureau of Indian Affairs 

Subject: Report No. CR-EV-BIA-0011-2014 - Southern Ute Agency's Management of the Southern Ute Tribe's Energy Resources

The Bureau of Indian Affairs appreciates the opportunity to comment on the Office of Inspector General (OIG) evaluation report on the Southern Ute Agency's Management of the Southern Ute Tribes Energy Resources. This memorandum provides the Bureau of Indian Affairs (BIA) response to the subject report. The BIA provides the following response to the report's recommendations.

Recommendation 1: *Enter into Memorandum of Understanding or another type of formal agreement with the Tribe that would better define the Tribe's role in performing work to support BIA's review and approval of the Tribe's mineral leasing activities.*

Indian Affairs concurs with Recommendation 1.

The BIA will work with the Tribe to develop a memorandum of understanding that provides for an intended common line of action between the BIA Southern Ute Agency, and the Southern Ute Tribe's Department of Energy for real estate activities involving energy related transactions or processes.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Recommendation 2: *Provide oil and gas leasing training for staff and consider accepting tribal offers for energy-specific training.*

Indian Affairs concurs with Recommendation 2.

The BIA will seek and consider oil and gas leasing training for staff from external industry sources and internal BIA personnel. Current staff have attended standard operating procedures (SOP) training offered during September 2015 at two locations; Farmington, NM, and Albuquerque, NM. Although the BIA Southern Ute Agency continues to experience hiring difficulties due to the cost of living in La Plata County, Colorado, the BIA will work with the Tribe to schedule energy training as additional staff is hired and ensure that existing staff continue to obtain training.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Recommendation 3: *Collaborate with other tribal Agencies for energy-specific expertise, training, and staffing for energy-related functions.*

Indian Affairs concurs with Recommendation 3.

The BIA has and will continue to request assistance from other BIA Agencies who are familiar with energy terminology related to real estate transactions. Once key staff is hired, BIA will work with the Tribe and the Department of Energy (DOE) for additional training opportunities.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Recommendation 4: *Actively recruit qualified energy staff by seeking authority to consider all incentive and hiring flexibilities such as recruitment bonuses, retention bonuses, relocation incentives, and special pay provisions.*

Indian Affairs concurs with Recommendation 4.

The BIA updated its organizational chart to reflect the staffing plan for the Branch of Real Estate Services. The BIA has established, recruited, and filled a Realty Assistant, and Realty Specialist position. An additional Realty Specialist position was advertised, and a tentative selection has been made. The BIA is working on recruiting a Realty Officer, and seeking to fill a current vacancy for an additional Realty Specialist. During discussions with the Southern Ute Tribal Council, the BIA provided status as to the staffing plan, and discussed the high cost of living and the lack of affordable housing. Lack of special pay provisions, cost of living, and housing issues are significant barriers to attracting quality candidates, recruitment, retention, and relocation. The BIA plans on following up with the Office of Human Capital Management to learn about the process for obtaining a cost of living adjustment.

Southern Ute Agency Branch of Real Estate Services			
Position #	Classification Title	Series and Grade	Status
M40420	Real Estate Services		
4200008	Realty Officer	GS-1170-12/13	vacant
4200009	Realty Specialist	GS-1170-11	**
4200013	Realty Specialist	GS-1170-09/11	vacant
4200016	Realty Specialist	GS-1170-05/07/09	vacant
4200010	Realty Assistant	GS-1170-05/06/07	Filled
4200012	Contact Representative	GS-0962-06	Filled

** Advertised closed 11/12/2015**

BIA Southern Ute Agency – Branch of Real Estate Services

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Recommendation 5: *Develop and implement official, comprehensive internal Agency policies and procedures that govern, guide, and regulate energy activities.*

Indian Affairs concurs with Recommendation 5.

The BIA has procedural handbooks used as a guide to the various real estate transactions. These manuals are housed on the Southern Ute Shared Directory and are available to all realty staff. The BIA will review and update these policies to ensure it includes a guide for regulated energy activities.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Recommendation 6: *Ensure that the corrective action plan is actively managed by the responsible official to meet the established milestones.*

Indian Affairs concurs with Recommendation 6.

The BIA Southern Ute Agency had several records reviews over the course of FY 2013 - 2014. From April through July 2013, the Director of Energy Audits with the Office of the Inspector General issued an Inspection Report on January 31, 2014. In April 2014, the BIA Records Management Specialist conducted an initial inspection, evaluation and assessment of general trust records. In May 2014, the Office of Trust Review and Audit conducted a review. The BIA Southern Ute Agency had begun to implement corrective actions relating to the various reports; each report overlapped in several findings. In a memorandum to the Director, Office of Trust Review and Audits, Office of the Special Trustee for American Indians, the BIA Southern Ute Agency provided an update to the corrective action. The BIA Southern Ute Agency provided reports on completed items for the months of February, April, and again in July 2015. The BIA has completed 26 of the 31 corrective actions. Corrective actions still ongoing are tied to the imaging project.

The BIA Southern Ute Agency will create Files Maintenance and Disposition Plans for all records in accordance with the Indian Affairs Records Management Manual (IARMM) to assist with developing an organized filing system.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

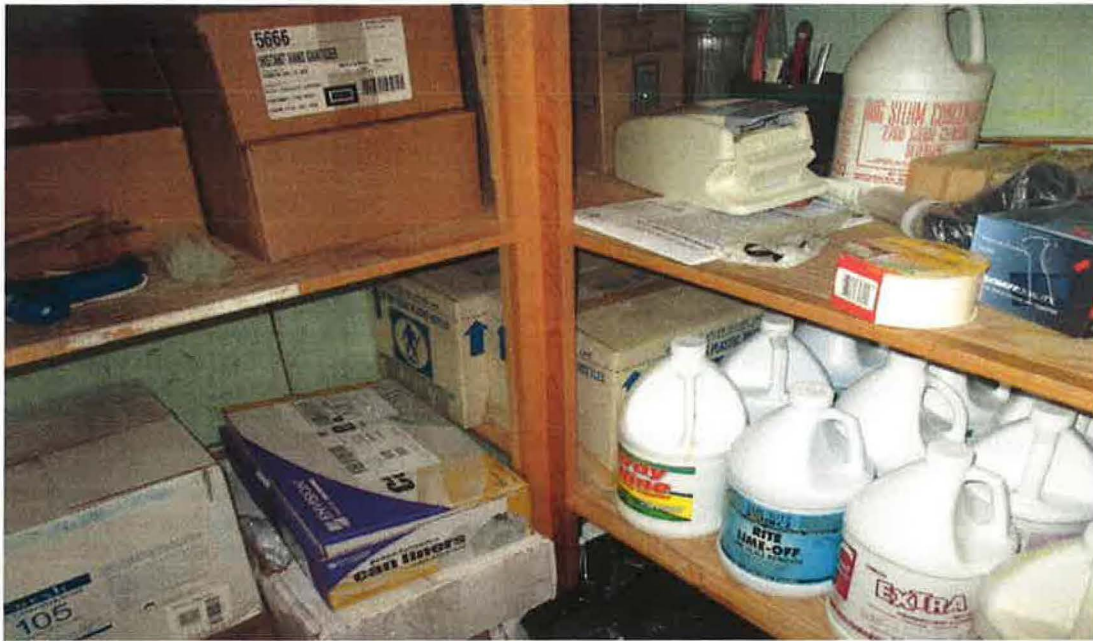


Figure 1. Records have been removed and only cleaning products and some office supplies with proper MSDS posted.



Figure 2. Downstairs Vault where maps were located



Figure 3. Realty Right of Way files have been reviewed and expired files have been removed and are awaiting inventory and imaging. All file cabinets have Privacy Act Notices.



Figure 4. Re-labeled files in accordance with IARMM.

The BIA completed background checks and has worked with the Tribe to conduct an imaging project of records. The beginning of Fiscal Year 2015, BIA entered into a contract with the Southern Ute Tribe for the purpose of imaging records that will be retired to the records center. The project includes tribal staff and their contractors working with the BIA Southern Ute Agency to inventory, scan and index records.

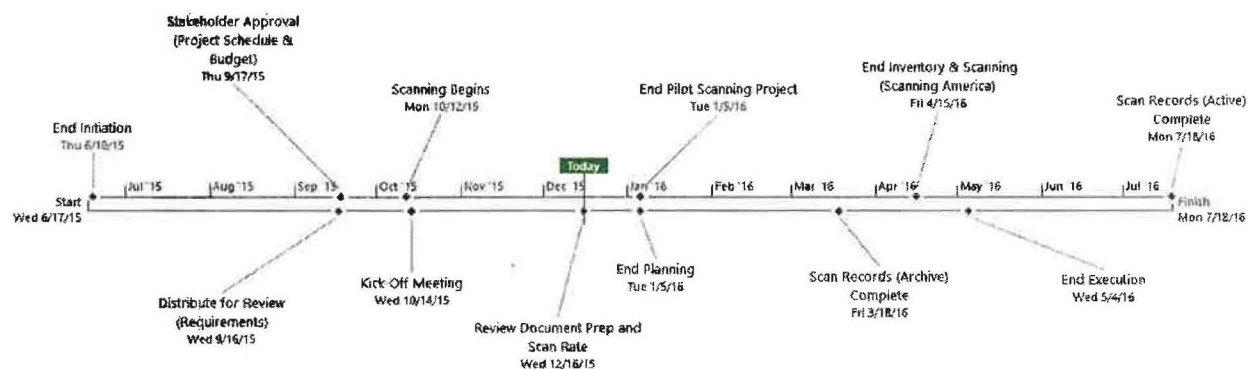


Figure 5. Project Schedule



Figure 6. Realty Maps and other maps have been imaged and the BIA is now waiting on instructions for proper labeling and approved move plan to transfer to records center.

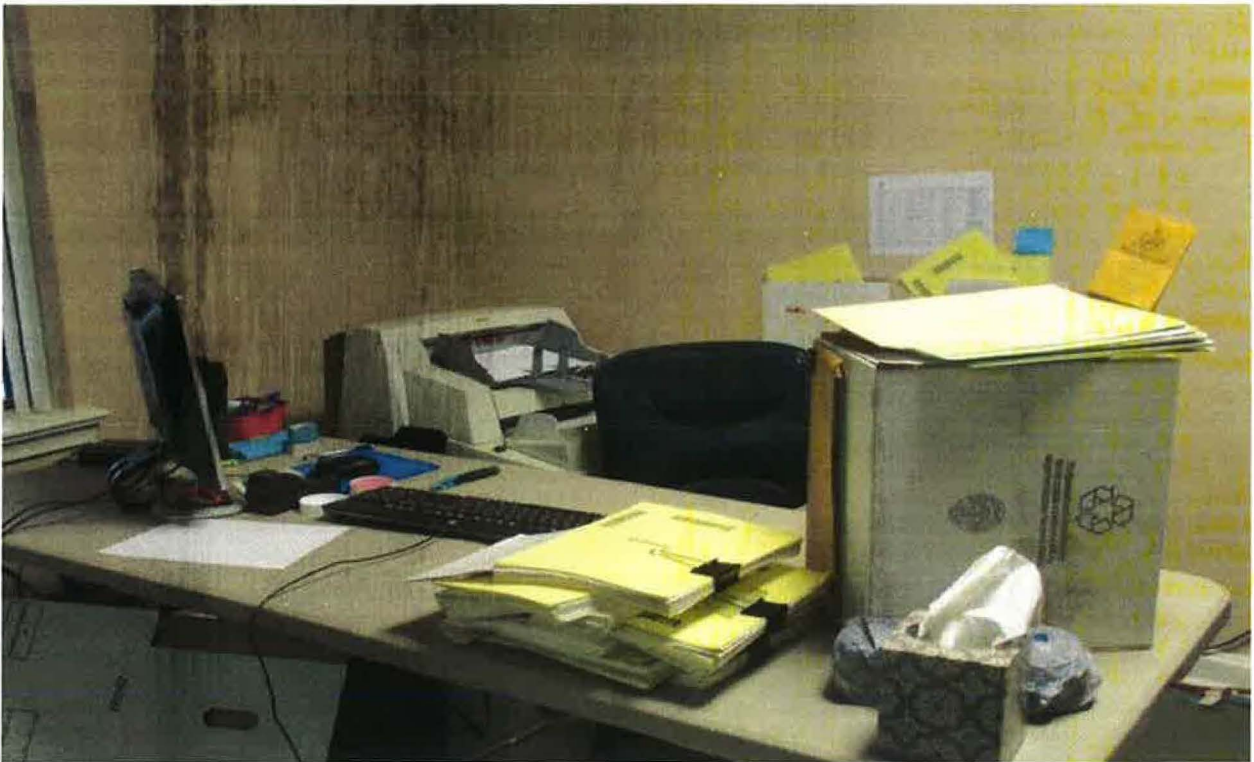


Figure 7. Scanning work area



Figure 8. Scanning area with large scanner.



Figure 9. Records that have been imaged and are waiting on completed move plans.



Figure 10. Records awaiting imaging

Recommendation 7: *Actively monitor and report to the Division of Internal Evaluation and Assessment on progress of the corrective action plan.* (Note: correction on the recommendation verbiage; instead of Office of Internal Evaluation and Review)

Indian Affairs concurs with Recommendation 7.

The BIA Southern Ute Agency Superintendent will provide weekly updates on the Corrective Action Plan to the Division of Internal Evaluation and Assessment. Weekly updates will consist of completed corrective action tasks with in-depth explanation. The Regional Director will actively monitor the progress of the Corrective Action Plan and established milestones for completion.

Responsible Official: Priscilla Bancroft, Superintendent, BIA Southern Ute Agency

Target Completion Date: July 29, 2016

Concluding comment: Looking ahead, as we address the challenges highlighted in the report, it is our intention to continue to foster ongoing collaboration between the BIA Southern Ute Agency and the Southern Ute Tribe.

Appendix 3: Status of Recommendations

In its response to our draft report, the Bureau of Indian Affairs concurred with our seven recommendations and stated that it was working to implement or close them. The response included target dates and an action official for each recommendation (see Appendix 2). We consider these recommendations resolved but not implemented.

Recommendations	Status	Action Required
I, 2, 3, 4, 5, 6, and 7	Resolved but not implemented	We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track their implementation.

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