



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

IMPROVEMENTS NEEDED IN THE BUREAU OF RECLAMATION'S OVERSIGHT OF TRIBAL RURAL WATER PROJECTS



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Memorandum

JUL 31 2017

To: Alan Mikkelsen
Acting Commissioner, Bureau of Reclamation

From: Mary L. Kendall *Mary L. Kendall*
Deputy Inspector General

Subject: Final Evaluation Report – Improvements Needed in the Bureau of Reclamation’s Oversight of Tribal Rural Water Projects
Report No. 2016-WR-026

This memorandum transmits our final report detailing our evaluation of the Bureau of Reclamation’s (USBR’s) oversight of its construction projects for tribal rural water supply. We include five recommendations in our report that, if implemented, will help USBR improve its oversight of these construction projects.

Based on USBR’s June 2, 2017 response to our draft report, we consider one recommendation partially resolved but not implemented, three recommendations resolved but not implemented, and one recommendation resolved and implemented. We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track 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.

A response to this report is not required. We request, however, that USBR provide the Assistant Secretary for Policy, Management and Budget additional information regarding its specific plans to implement Recommendation 1 and support for its implementation of Recommendations 2 through 5.

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

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Results in Brief

We evaluated the Bureau of Reclamation's (USBR's) oversight of its construction projects to supply water to American Indian tribes in rural areas. We found that USBR could improve oversight of these construction projects by tracking physical completion percentages, establishing individual project completion dates, standardizing oversight and documentation, and submitting a complete annual funding agreement to Congress.

Because USBR does not track physical completion percentages and does not have target construction completion dates, it cannot ensure timely completion of its rural water supply projects. These factors can also make it difficult for USBR to identify when it should take over a project from a tribe. This could lead to the initial project beneficiaries not receiving all services as intended. In addition, projects cost more the longer they take to complete. For example, USBR estimated the U.S. Government would potentially save \$2.5 billion by completing projects by 2035 versus 2065.

Further, USBR does not have policies and procedures establishing adequate levels of oversight and documentation. Without these policies and procedures, there is a risk for project delay and mismanagement.

Finally, USBR is submitting incomplete annual funding agreements. By doing this, USBR is not providing a complete and accurate picture to Congress of the total funding needed to accomplish the construction activities listed on the annual funding agreement. This makes it difficult for Congress to make informed decisions and circumvents the congressional oversight process.

We include five recommendations to help USBR improve oversight and accountability of its tribal rural water supply construction projects. USBR concurred or partially concurred with all of our recommendations and is taking action to address them.

Introduction

Objective

Our objective was to—

- evaluate how the Bureau of Reclamation (USBR) can improve oversight of its Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975), rural water supply construction projects to ensure timely completion; and
- determine if USBR’s oversight is performed and consistently documented.

See Appendix 1 for the scope and methodology of our review and Appendix 2 for prior audit coverage.

Background

In 1975, Congress passed Pub. L. No. 93-638, which provides for maximum participation of American Indian tribes in Federal programs and services designated for American Indians. For agreements with tribes implemented under Pub. L. No. 93-638, USBR has substantially less oversight authority than for traditional contracts awarded under the Federal Acquisition Regulation.

Pub. L. No. 93-638 allows for self-determination contracts (Title I) and self-governance compacts (Title IV). Monitoring for Title I contracts is limited to one site visit for each contract, unless the tribe agrees on additional visits, the contract qualifies as a construction contract, or the appropriate official has reasonable cause to believe that contract performance is seriously deficient. To qualify as a construction contract, the contract must provide the tribe direct responsibility for construction activities that go beyond construction planning and management services. Construction contract oversight is generally limited to one site visit per month unless the tribe agrees on extra visits. Federal oversight of Title IV construction projects is generally limited to what the U.S. Department of the Interior (DOI) and the tribe negotiate in the annual funding agreement.

USBR’s Great Plains Region administers all of the ongoing USBR construction projects for tribal rural water supply. It has agreements with nine American Indian tribes (eight tribes with Title I contracts and one tribe with a Title IV compact) for multiple projects implemented under Pub. L. No. 93-638; one of these projects is complete (see Appendix 3).

In its October 2014 rural water activities assessment report,¹ USBR estimated that at a funding level of \$50 million annually for project construction, the remaining

¹ “Assessment of Reclamation’s Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Communities in the Western United States,” USBR, October 7, 2014.

projects would not be completed until well after 2065 with a total Federal investment over the lifetime of these projects of approximately \$5.8 billion.² USBR further estimated that all remaining projects could potentially be completed by 2035 if funding was increased to \$162 million annually with a total Federal investment of about \$3.3 billion (see Figure 1).

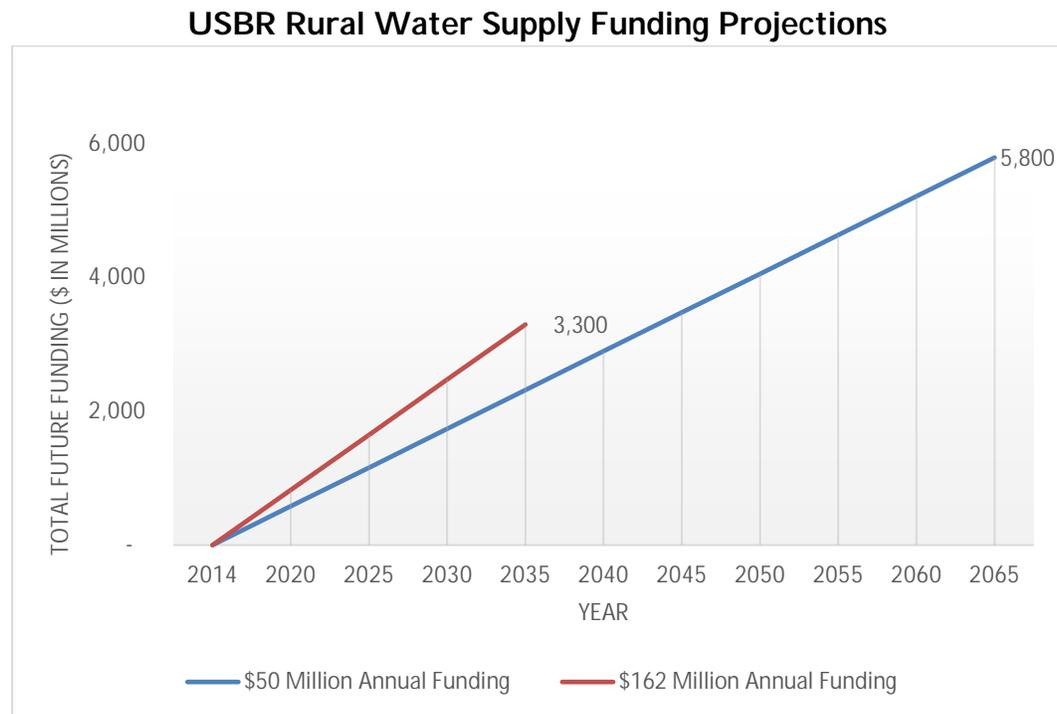


Figure 1: The difference in overall cost and time to complete the remaining rural water supply projects based on funding level. USBR provided the data used to build this chart.

As indicated above, Pub. L. No. 93-638 and the Code of Federal Regulations (C.F.R.),³ purposefully limit USBR’s oversight ability to further tribal self-determination and autonomy. The statute and regulations also provide that Title I contracts “shall be liberally construed for the benefit of the tribes or tribal organizations.” When USBR declines to enter a Title I contract with a tribe, it must give the tribe a detailed explanation as to why and provide technical assistance to help the tribe enter into the contract.

Under both Title I and Title IV, USBR may reassume⁴ a contract or compact. For example, USBR can conduct a nonemergency reassumption under Title I based on (1) a violation of rights or endangerment of health, safety, or welfare of any person or (2) gross negligence or mismanagement in the handling or use of

² Includes \$4 million in funding through 2065 and \$1.8 million of future funding required after 2065.

³ 25 C.F.R. parts 900 (Title I) and 1000 (Title IV).

⁴ Reassumption of a contract means the rescission, in whole or in part, of a tribe’s contract and assuming or reassuming control or operation of the contracted program by the Secretary of the Interior without consent of the Indian tribe or tribal organization.

contract funds, trust funds, trust lands, or interests in trust lands under the contract. As with declining a Title I contract, a nonemergency reassumption also requires DOI to provide, if requested, technical assistance and advice to help the tribe correct the deficiencies and re-enter into the contract.

Findings

USBR can improve its oversight of Pub. L. No. 93-638 construction projects for supplying water to rural areas by tracking physical completion percentages, establishing individual project completion dates, standardizing oversight and documentation, and submitting a complete annual funding agreement to Congress for Title IV tribes. Currently, USBR tracks project completion by the amount of funds expended, does not have target completion dates for individual projects, does not provide adequate requirements for oversight and documentation, and sends an annual funding agreement with Title IV tribes to Congress without a budget that reflects estimated costs.

Physical Project Completion Not Tracked

USBR does not track the physical completion of the tribal rural water projects in a manner that ensures reasonable progress has been made in any given period. According to USBR officials, instead of tracking physical completion of the projects, USBR relies solely on the percentage of funds expended to track progress toward completion. As such, USBR does not know the true, overall status of a project, creating the risk of exhausting Federal funding prior to project completion and making it difficult for USBR to determine when it should reassume a contract.

According to 25 C.F.R. § 900.130(c)(7), tribes must provide the Secretary of the Interior with progress and financial status reports for Title I construction projects. The regulations do not specifically require the reports to include overall physical percentage of project completion, but this information would aid USBR in determining a project's overall progress. If negotiated into the annual funding agreement, tribes that have Title IV construction projects must provide the Secretary with brief progress reports and financial status reports; 25 C.F.R. § 1000.243(d) states that these brief progress reports and financial status reports may include the percentage of the work completed, as well as a report of funds expended during the reporting period and cumulatively for the project. As with Title I construction projects, negotiating the requirement to track overall percentage of physical project completion into the annual funding agreement would aid USBR in determining a project's progress.

The importance of having percentage of completion data is stated in 2 C.F.R. § 200.328, which states: "for the most part, onsite technical inspections and certified percentages of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction." While we recognize this section of 2 C.F.R. does not directly apply to contracts implemented under Pub. L. No. 93-638, it represents a best practice that would help USBR hold all parties accountable in a manner that appropriately relates the amount of funds expended to the amount of physical progress made toward completion.

As discussed above, a Federal agency may reassume a Title I contract based on certain types of gross negligence or mismanagement of funds. USBR's decision not to track a project's physical completion results in the potential for insufficient documentation to exercise its reassumption rights. This in turn reduces USBR's ability to ensure the protection of trust resources and appropriate delivery of the services covered by the contract and to hold the tribes accountable under these provisions.

In its October 7, 2016 response to our Notice of Potential Findings and Recommendations (NPF) regarding project completion tracking, USBR stated that because tribes have the authority to set the priorities for construction, USBR's decision to track financial completion as opposed to physical completion was a more predictable measure of progress. Furthermore, the awarding officer's technical representatives stated that tracking physical completion would be difficult due to annual funding fluctuations.

In addition, USBR reasoned that tracking financial completion makes more sense because project component costs, for example the cost of a water treatment plant, could represent a small percentage of actual physical completion of a water system but represent a significant portion of a project's total funding. USBR's reasoning for tracking only financial completion, however, highlights the need for it to track both the financial and physical completion of a project. Because tribes establish project construction priorities and project component costs could substantially reduce a project's available funding level, it is critical for USBR to be able to substantiate that reasonable construction progress has been made in relation to the funds expended. Furthermore, tracking both financial and physical completion would aid USBR in determining and proving the necessity of contract reassumption.

Recommendation

We recommend that USBR:

1. Track both the physical and financial completion percentages for tribal rural water supply projects.

Target Completion Dates Not Formally Established

USBR has not formally established completion dates for each project. In the October 2014 rural water activities assessment report, USBR referenced an overall estimate of 2035 for completion of all tribal rural water projects based on annual funding of \$162 million but did not identify completion dates for individual projects.

According to 25 C.F.R. §§ 900.125 and 900.127, a tribe's Title I construction contract proposal must contain a contract budget and performance period. A budget specifies the reasonable costs of performing the contract, and the performance period specifies the timeframe allowed or required for performance to be completed. According to 25 C.F.R. § 1000.248(b), tribes with Title IV construction projects are required to give USBR timely notice of any proposed changes to the project that require (1) an increase to the negotiated funding amount, (2) an increase in the negotiated performance period, or (3) any significant departure from the scope or objective of the project. We believe the reference to a "negotiated performance period" implies that, like Title I projects, Title IV construction projects are also required to have a performance period.

USBR should also refer to 2 C.F.R. § 200.210, which states that a Federal award must include a period of performance start and end dates and a budget approved by the Federal awarding agency. Furthermore, it requires the Federal award to include "the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program." While this section of 2 C.F.R. does not directly apply to contracts and agreements implemented under Pub. L. No. 93-638, it represents a best practice USBR can use to strengthen the oversight of its construction projects.

By not establishing individual project completion dates, USBR cannot account for deviations from expected project completion dates that are due to annual funding fluctuations, delays or impediments to the project, or other limiting factors, and USBR has no expectation on when the projects will be completed. In addition, with USBR's estimated completion dates ranging from 2035 to 2065—33 to 100 years after project authorization—there is no assurance that the intended beneficiaries will receive all project services as intended (see Appendix 3). Further, the longer it takes to complete a project, the more costly it becomes; as mentioned previously in the "Background," USBR estimated a \$2.5 billion savings if the projects are completed by 2035 rather than 2065.

USBR's awarding officer's technical representatives cited uncertainty surrounding the amount of annual appropriations as the reason for not having target completion dates for individual projects, but USBR does not track and analyze physical construction progress to reasonably estimate when individual projects will be completed. Without this analysis, it may be difficult for USBR to hold tribes accountable for ensuring adequate construction progress is being made.

Recommendations

We recommend that USBR:

2. Conduct an analysis to determine appropriate project completion dates and the required funding to meet those completion dates for each tribal rural water supply project; and
3. Establish procedures to identify and track project deviations, impediments, or delays from the expected completion dates of tribal rural water supply projects and coordinate with DOI budget officials to ensure adequate project funding requirements are included in future budget requests.

Inconsistent Oversight and Documentation

USBR policies and procedures contained in its Reclamation Manual “Directives and Standards” do not provide adequate requirements for oversight and documentation of tribal rural water supply projects.

The Government Accountability Office’s Green Book⁵ states:

Those in key roles for the unit may further define policies through day-to-day procedures, depending on the rate of change in operating environment and complexity of the operational process. Procedures may include the timing of when a control activity occurs and any follow up corrective actions to be performed by competent personnel if deficiencies are identified.

Inconsistencies in oversight and documentation occur because USBR’s current policies are vague and leave many decisions about oversight and documentation to the judgment of the awarding officer’s technical representative. For example, the Reclamation Manual “Directives and Standards” state that the awarding officer’s technical representative is responsible for “conducting post-award monitoring,” but do not provide adequate detail about oversight or documentation requirements. In addition, lengthy project completion times inevitably lead to staff turnover midproject, and new staff do not have consistent oversight guidance or the institutional knowledge of a project to adequately monitor performance.

As a result, the type and extent of oversight and documentation vary across projects. For example, project files are inconsistent. Some include detailed monitoring plans—the framework for oversight—with oversight visit dates and project milestones, while other project files do not include any monitoring plan. In addition, some awarding officer’s technical representatives rely on independent

⁵ “Standards for Internal Control in the Federal Government,” GAO-14-704G, September 2014.

consultants who work for and are paid by the tribe to conduct site visits, while others conduct site visits or have other USBR staff conduct them.

Having adequate policies and procedures in place would strengthen project oversight and ensure that newly assigned awarding officer's technical representatives are performing their oversight duties and responsibilities in a consistent manner. Without adequate policies and procedures, the risk of project delay, mismanagement, or failure exists and it may be difficult to reassume a contract if deemed necessary.

Recommendation

We recommend that USBR:

4. Develop and implement policies and procedures for awarding officer's technical representatives that will ensure adequate oversight and documentation are standardized for all tribal rural water supply projects.

Annual Funding Agreement Submissions Not Complete

USBR is not providing a complete and accurate picture to Congress of the total funding needed to accomplish the construction activities listed in Title IV annual funding agreements. USBR submits the annual funding agreement for its Title IV tribe to Congress without providing a budget that reflects the true cost of proposed project construction activities. Without an actual budget amount, it is impossible for Congress to make informed decisions regarding the funding for a project; 25 U.S.C. § 5363(f) requires Federal agencies to submit annual funding agreements for Title IV tribes to Congress for review “not later than 90 days before the proposed effective date of an agreement.”

USBR currently submits an annual funding agreement with a \$5,000 “placeholder” budget amount instead of an actual budget amount needed to complete the work listed on the agreement. Officials from USBR stated that the placeholder budget amount is later modified (after congressional review) to the actual budget. For example, in 2015, the \$5,000 “placeholder” budget was modified to over \$6.6 million. It can be difficult for Congress to make informed budget decisions with such sizeable modifications.

In the October 2016 NPFR response, the USBR Regional Director stated that USBR frequently did not have knowledge of appropriation levels until after the beginning of the fiscal year. The placeholder budget is submitted to expedite the congressional review process and allows for construction to begin sooner. This

practice, however, circumvents the congressional review process and can hinder the ability of Congress to make informed decisions regarding the project.

Pub. L. No. 93-638 limits oversight of contracts and agreements with Title IV tribes to what DOI can negotiate in the annual funding agreement. Because oversight may be more restricted, congressional review could represent one of the few opportunities the U.S. Government can provide oversight of the project. Therefore, it is critical that USBR submits a budget that properly reflects the costs of the proposed construction activities listed to preserve the oversight functions of the congressional review process.

Recommendation

We recommend that USBR:

5. Submit a complete annual funding agreement for Title IV tribes, including a budget that reflects an accurate estimate of costs of activities listed, to Congress.

Conclusion and Recommendations

Conclusion

Although Pub. L. No. 93-638 and relevant regulations were written to give tribes more autonomy and limit Federal oversight of agreements and contracts with the tribes, there are steps USBR can take to improve oversight of its agreements with tribes for construction of rural water supply projects. By tracking physical project completion, establishing individual project completion dates, and establishing adequate oversight and documentation standards, USBR could help improve tribal accountability and increase the likelihood that these projects are completed for the intended beneficiaries. USBR estimated that by increasing its annual funding to \$162 million, it could complete all projects 30 years sooner and for \$2.5 billion less than at the current annual funding level of \$50 million. In addition, by submitting an annual funding agreement with a budget reflecting the costs of activities listed, USBR would ensure that Congress is fully informed when it decides on the level of funding for projects.

Recommendations Summary

USBR responded to our draft report on June 2, 2017 (see Appendix 4). According to its response, USBR concurred with four of our five recommendations and partially concurred with one recommendation. We consider Recommendation 1 partially resolved but not implemented; Recommendations 2, 3, and 4 resolved but not implemented; and Recommendation 5 resolved and implemented (see Appendix 5). We are referring the recommendations to the Assistant Secretary for Policy, Management and Budget (PMB) for tracking.

We recommend that USBR:

1. Track both the physical and financial completion percentages for tribal rural water supply projects.

USBR Response: USBR partially concurred with the recommendation. USBR stated in its response that it will develop a methodology to track the physical as well as the financial completion of tribal rural water projects. USBR, however, plans to track physical completion using a methodology that incorporates data on when project features are substantially complete “as defined by their transfer from construction status to operational or occupied status” rather than tracking actual physical completion as a percentage. USBR contends there is no feasible way to track physical completion as a percentage because of important differences in the various components that make up a rural water project.

OIG Reply: We consider this recommendation partially resolved but not implemented because USBR’s proposed alternative to using the percentage of project completion method may not ensure that reasonable

construction progress has been made in relation to funds expended. Accordingly, we request that USBR provide to PMB additional information that describes how USBR plans to track physical completion so that construction progress may be measured against tribal rural water project expenditures from start (or from its current status) to finish. We will refer this recommendation to PMB to track implementation.

2. Conduct an analysis to determine appropriate project completion dates and the required funding to meet those completion dates for each tribal rural water supply project.

USBR Response: USBR concurred with the recommendation. USBR stated that it has already conducted the recommended analysis, and the results were published in USBR's October 2014 rural water activities assessment report. USBR further stated that because Congress controls the appropriations process, the analysis was based on assumptions about future appropriations, and showed projected completion dates vary considerably as appropriation levels change.

OIG Reply: We consider this recommendation resolved based on USBR's response that it has conducted the recommended analysis but not implemented because we found insufficient evidence to support that this analysis was performed. Because we could not substantiate USBR's assertion that the results of its analysis of estimated project completion dates and required funding to meet these completion dates for each tribal rural water supply project were reported in the October 2014 rural water activities assessment report, we request that USBR provide to PMB the recommended analysis for each project. During our review of the 2014 assessment report, we could only find an overall estimated completion date of 2035 for all tribal rural water projects based on an annual funding of \$162 million. In addition, the awarding officer's technical representatives we interviewed during our review cited uncertainty surrounding the amount of annual appropriations as the reason for not having target completion dates for individual projects. We will refer this recommendation to PMB to track implementation.

3. Establish procedures to identify and track project deviations, impediments, or delays from the expected completion dates of tribal rural water supply projects and coordinate with DOI budget officials to ensure adequate project funding requirements are included in future budget requests.

USBR Response: USBR concurred with the recommendation. USBR stated that it will pursue this recommendation through the work of a newly formed USBR Pub. L. No. 93-638 Steering Committee. The Steering Committee will have representation from USBR's five regional offices and the Washington, DC office.

OIG Reply: We consider this recommendation resolved but not implemented. USBR's implementation of this recommendation is contingent upon its analysis of estimated completion dates and required annual funding for each project, as described in Recommendation 2, and the establishment and operation of USBR's newly formed Steering Committee. We will refer this recommendation to PMB to track implementation.

4. Develop and implement policies and procedures for awarding officer's technical representatives that will ensure adequate oversight and documentation are standardized for all tribal rural water supply projects.

USBR Response: USBR concurred with the recommendation. USBR's newly formed Steering Committee will be charged with developing policies and procedures for awarding officer's technical representatives when conducting and documenting post-award project oversight.

OIG Reply: We consider this recommendation resolved but not implemented until the newly formed USBR Steering Committee develops and implements appropriate policies and procedures. We will refer this recommendation to PMB to track implementation.

5. Submit a complete annual funding agreement for Title IV tribes, including a budget that reflects an accurate estimate of costs of activities listed, to Congress.

USBR Response: USBR concurred with the recommendation. USBR stated that it will continue the practice begun in fiscal year 2016 of submitting to Congress annual funding agreements that contain funding amounts based on the President's budget request, rather than using small placeholders.

OIG Reply: We consider this recommendation resolved and implemented based on USBR's response that it will discontinue its use of small placeholder amounts when submitting annual funding agreements to Congress. We request, however, that USBR provide to PMB a copy of its fiscal year 2016 (or more recent) annual funding agreements submitted to Congress for Title IV tribes containing good faith estimates of project activity costs to substantiate USBR's assertion of its improved practice. We will refer this recommendation to PMB to track implementation.

Appendix 1: Scope and Methodology

Scope

We focused our review on improving the Bureau of Reclamation's (USBR's) oversight of its Pub. L. No. 93-638 rural water construction projects. Because USBR's Great Plains Region (GPR) administers all of the ongoing USBR tribal rural water construction projects, we focused our evaluation on GPR's agreements with nine tribes to construct four rural water supply construction projects, one of which is complete.

Methodology

We conducted our 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.

USBR provided us with tribal rural water supply project data on actual and estimated appropriation and expenditure amounts which is included in this report. We did not verify the accuracy or completeness of the dollar figures provided to us.

We conducted our evaluation from March 2016 to October 2016. To accomplish the evaluation, we—

- reviewed pertinent laws, regulations, policies, and procedures;
- reviewed prior Office of Inspector General reports;
- reviewed fiscal year (FY) 2012, 2013, and 2014 single audit reports for nine tribes;
- obtained a list of USBR's current Pub. L. No. 93-638 water supply projects;
- reviewed the rural water projects' appropriated funds and expenditure data for FY 2016 and cumulatively as of September 30, 2016;
- reviewed the yearly percentage completed of the water supply projects as financially determined for FY 2013, FY 2014, and FY 2015;
- reviewed USBR's October 2014 Rural Water Assessment Report, which contains projected completion dates using current Federal funding levels;
- reviewed USBR's budget submission to the Office of Management and Budget for FY 2016 and other data related to rural water supply project funding;
- reviewed USBR's tribal rural water project files;
- visited USBR's Headquarters Office and Native American International Affairs Office (NAIAO) in Washington, DC; regional office in Billings, MT; and the Federal Center Field Office in Denver, CO;

- visited the U.S. Department of the Interior's (DOI's) Office of Acquisition and Property Management in Washington, DC;
- visited the Bureau of Indian Affairs' (BIA's) Office of Self-Governance in Washington, DC;
- interviewed officials at USBR Headquarters Office, NAIAO, GPR, and Denver Federal Center;
- interviewed field office personnel in Billings, MT, Bismarck, ND, and Pierre, SD;
- interviewed DOI and BIA officials; and
- obtained legal advice from our Office of General Counsel.

Appendix 2: Prior Audit Coverage

The Offices of Inspector General (OIGs) for U.S. Department of the Interior (DOI) and the U.S. Department of Justice (DOJ) have recently reported significant findings regarding the Bureau of Reclamation's (USBR's) rural water supply projects. These OIGs have identified over \$16 million in questioned costs due, in part, to an absence of internal controls, inadequate accounting systems, and inaccurate financial reporting. In addition, \$3.5 million in USBR funds was misapplied and concealed through false financial reporting. Also, DOI OIG previously identified the need for USBR to establish policies and procedures to provide consistent oversight, establish performance measures for rural water projects, and adopt industry best practices.

**“Audit of Contract Nos. A13AV00621 and A12AV00769/A15AV00265 Between the Bureau of Indian Affairs and the Lower Brule Sioux Tribe”
Report No. 2015-ER-069-A**

In 2016, DOI OIG completed an audit of costs incurred by the Lower Brule Sioux Tribe in Lower Brule, SD, on Contract Nos. A13AV00621 and A12AV00769/A15AV00265 with the Bureau of Indian Affairs (BIA).

OIG identified \$385,127 in unallowable and questioned costs. The questioned costs that were identified included unsupported payments to related parties and vendors, unsupported internal transactions in the tribe's accounting system, and unallowable payments to vendors. In addition, OIG found that BIA did not adequately oversee the contracts in accordance with Federal laws and regulations and BIA guidelines, resulting in the tribe claiming costs that were unsupported and unallowable.

**“Audit of Cooperative Agreement No. R95AV60020 Between the Bureau of Reclamation and the Lower Brule Sioux Tribe”
Report No. 2015-ER-069**

In 2016, DOI OIG completed an audit of costs incurred by Lower Brule Sioux Tribe on Cooperative Agreement No. R95AV60020 with USBR. USBR issued the agreement for operation, maintenance, and administrative activities associated with the Lower Brule Rural Water System, which serves tribal and nontribal customers in southwestern South Dakota.

OIG identified a total of \$1,440,748 in questioned costs, as well as the need for increased USBR oversight of the agreement. Overall, inadequate internal controls and inadequate oversight by USBR resulted in the tribe claiming costs that were unsupported, unallowable, and unreasonable.

**“Audit of the Office of Justice Programs Multi-Purpose Grants Awarded to the Lower Brule Sioux Tribe Lower Brule, South Dakota”
Report No. GR-60-16-005**

In 2016, DOJ OIG completed an audit of grants awarded to the Lower Brule Sioux Tribe. The audit found that the tribe did not comply with essential award conditions related to grant expenditures, award special conditions, budget management, and program performance. Specifically, the tribe: (1) expended funds without prior approval, (2) paid for unbudgeted positions with Federal funds, (3) did not maintain adequate documentation related to performance, (4) exceeded the allowable indirect cost rates, (5) exceeded the 10 percent rule for movement of funds between approved budget categories without the required approval, and (6) used Federal funds to pay for unallowable and unsupported transactions totaling \$1,398,387. OIG made seven recommendations to improve the tribe’s management.

**“Audit of Crow Tribe Accounting System and Interim Costs Claimed Under Agreement Nos. R11AV60120 and R12AV60002 with the Bureau of Reclamation”
Report No. ER-CX-BOR-0010-2014**

In 2015, DOI OIG completed an audit of the Crow Tribe’s accounting system and associated interim costs under Agreement Nos. R11AV60120 and R12AV60002 with USBR. OIG identified \$400,542 in unsupported costs and \$75,857 in ineligible costs, for a total of \$476,399 in questioned costs, and made 12 recommendations to USBR to assist the tribe in improving its accounting system, including—

- work with the tribe to develop a system for identifying all program income and reporting it on an SF-425 Quarterly Financial Report;
- implement internal controls and hire qualified individuals in order to complete and submit required reports on time;
- develop consistent and accurate budgets that can be used to monitor costs throughout the life of the projects; and
- update the policies and procedures manual.

“Memorandum – Insufficiency of Chippewa Cree Construction Corporation Audited Financial Statements, September 30, 2013”

In 2015, DOI OIG issued a memorandum notifying USBR’s Great Plains Region that the Chippewa Cree Construction Corporation was not in compliance with the requirements set forth in Office of Management and Budget (OMB) Circular A-133. Specifically, the corporation’s audited financial statements for the period ending September 30, 2013, failed to note that \$3.5 million in USBR funds were misapplied and subsequently repaid or that the tribe filed false SF-425s to conceal the misapplication.

**“Audit of Bureau of Reclamation Funding Agreements with Chippewa Cree Construction Corporation: R10AV60025 and 06NA602127”
Report No. C-CX-BOR-0010-2013**

In 2013, DOI OIG completed an audit of costs claimed by the Chippewa Cree Construction Corporation for Annual Funding Agreement R10AV60025 and Contract No. 06NA602127. Of the \$52,729,482 in claimed costs, OIG identified \$11,739,744 in unsupported costs and \$1,174,801 in ineligible costs, totaling \$12,914,545 in questioned costs with a recommendation to resolve the questioned costs.

**“Management Advisory of Investigative Results for
Case No. OI-SD-09-0537-I”**

In 2012, DOI OIG issued a management advisory concerning the embezzlement of USBR and Environmental Protection Agency (EPA) funds awarded to the Mni Sose Intertribal Water Rights Coalition, Rapid City, SD. The investigation identified approximately \$156,000 in USBR and EPA funds that coalition officers

embezzled between October 2006 and September 2008. In May 2011, were charged with conspiracy and theft in U.S. District Court, Rapid City, SD.

The investigation identified significant operating deficiencies within USBR relating to its internal controls over financial reporting. In addition, while USBR staff were aware of the coalition’s poor performance, absence of technical expertise, and prior misuse of Federal funds, USBR continued to award significant funding to them without increased monitoring. Concerns were also expressed over USBR’s failure to refer information of possible waste, fraud, or abuse for official investigation pursuant to departmental regulations.

**“Recovery Oversight Advisory – U.S. Bureau of Reclamation Rural Water Projects”
Report No. RO-B-USBR-0109-2010**

In 2011, DOI OIG issued an advisory highlighting several significant issues with USBR oversight of American Recovery and Reinvestment Act of 2009 rural water projects, including an absence of policy and noncompliance with procedures and engineering costs, inadequate project monitoring, and serious acquisition issues on specific projects. OIG provided USBR with seven recommendations to help address these issues, including to—

- develop and implement consistent policies and procedures among regions for oversight of Pub. L. No. 93-638 (Indian Self-Determination and Education Assistance Act) rural water contracts;
- direct its Great Plains Region to ensure tribal rural water contracts reflect the most current project scopes of work; and
- develop and implement consistent processes for regions to negotiate with tribes having rural water projects to ensure project fees are reasonable and appropriate.

**“Program Assessment Rating Tool Progress Evaluation – Bureau of Reclamation Rural Water Supply Projects”
Report No. ER-RR-BOR-0002-2008**

In 2009, DOI OIG evaluated USBR’s progress in addressing recommendations from the Program Assessment Rating Tool review that was completed by OMB in 2002. Based on its review, OIG noted that continued efforts were needed and provided eight suggestions designed to help establish appropriate performance measures and improve management of the rural water projects, including—

- establish performance measures and baseline data for old and new projects;
- establish a structured review process that ensures effective cost oversight mechanisms are in place from project inception through construction; and
- become familiar with similar rural water supply programs from the public or private to measure, understand, and adopt the industries’ best practices.

Appendix 3: Tribal Rural Water Supply Construction Projects

Tribal Rural Water Supply (RWS) Construction Project Funds*						
RWS Project and Supported Tribe	Year Authorized	Performance Period - \$162 Million in Annual Funding	Performance Period - \$50 Million in Annual Funding**	Total Estimated Cost	Appropriated Costs as of 09/30/2016	Balance to Complete†
Garrison (Indian) Project 1. Spirit Lake Tribe 2. Standing Rock Sioux 3. Three Affiliated Tribes 4. Turtle Mountain	1965	70 years	100+ years	\$363	\$228	\$135
Mni Wiconi Project‡ 5. Oglala Sioux 6. Rosebud Sioux 7. Lower Brule Sioux	1988	N/A	N/A	488	488	0
Fort Peck Reservation/Dry Prairie Project 8. Assiniboine Sioux	2000	35 years	65+ years	301	194	107
Rocky Boys/North Central Montana Project 9. Chippewa Cree Tribe	2002	33 years	63+ years	332	90	242
Total				\$1,484	\$1,000	\$484

* Table values were provided by USBR, are recent as of November 9, 2016, and costs are computed through fiscal year 2016. The estimated costs are based on October 1, 2017 pricing levels. The dollars are in millions (rounded).

** At a funding level of \$50 million annually for construction, USBR estimates that the remaining projects would not be completed until well after 2065.

† Dollar figures represent total Federal construction costs including both tribal and nontribal.

‡ The Mni Wiconi Project construction is complete.

Appendix 4: Bureau Response

The Bureau of Reclamation's response to our draft report follows on page 22.



United States Department of the Interior

BUREAU OF RECLAMATION

Washington, DC 20240

IN REPLY REFER TO:

84-27410

3.1.3

VIA ELECTRONIC MAIL ONLY

MEMORANDUM

To: Office of Inspector General
Attn: Assistant Inspector General for Audits, Inspections, and Evaluations

Through: ^{for} Scott Cameron  JUN 02 2017
Acting Assistant Secretary for Water and Science

From: Alan Mikkelsen  MAY 31 2017
Acting Commissioner

Subject: The Bureau of Reclamation's Response to the Office of Inspector General (OIG) Draft Report, *Improvements Needed in the Bureau of Reclamation's Oversight of Tribal Rural Water Projects*, Report No. 2016-WR-026

The OIG in its April 4, 2017, draft report, *Improvements Needed in the Bureau of Reclamation's Oversight of Tribal Rural Water Projects*, requested that Reclamation inform the OIG of the planned course of action to address and implement the recommendations in the subject report. The requested information is attached.

If you have any questions or require additional information, please contact Elizabeth Cordova-Harrison, Director, Mission Support Organization, at 303-445-2783.

Attachment

The Bureau of Reclamation's Response to the
Office of Inspector General (OIG) Draft Evaluation Report
Improvements Needed in the Bureau of Reclamation's Oversight of Tribal Rural Water Projects
Report No. 2016-WR-026

May 2017

General Comments: None.

Response to OIG Recommendations

Recommendation 1: Track both the physical and financial completion percentages for tribal rural water supply projects.

Reclamation's Response: Partially Concur.

Reclamation will develop a methodology to track physical as well as financial completion of tribal rural water projects. However, because of important differences in the various components that make up a rural water project, there is no feasible way to track physical completion as a percentage. Instead, Reclamation will track physical completion using a methodology that incorporates data on when project features are substantially complete, as defined by their transfer from construction status to operational or occupied status.

Responsible Official: Deputy Commissioner - Operations

Target Implementation Date: July 31, 2018

Recommendation 2: Conduct an analysis to determine appropriate project completion dates and the required funding to meet those completion dates for each tribal rural water supply project.

Reclamation's Response: Concur.

Reclamation has already conducted the recommended analysis, the results of which Reclamation published in a 2014 Rural Water Assessment Report¹. Because Congress controls the appropriations process, the analysis was based on assumptions about future appropriations, and showed projected completion dates vary considerably as appropriation levels change.

Responsible Official: Deputy Commissioner - Operations

Target Implementation Date: Actions Completed.

¹ <https://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report.pdf>

Recommendation 3: Establish procedures to identify and track project deviations, impediments or delays from the expected completion dates of tribal rural water supply projects, and coordinate with Departmental budget officials to ensure adequate project funding requirements are included in future budget requests.

Reclamation's Response: Concur.

Reclamation will be pursuing this recommendation through the work of its newly formed PL 93-638 Steering Committee. The Steering Committee is being formed now with representation from across Reclamation's five regions and the Washington Office.

Responsible Official: Deputy Commissioner - Operations

Target Implementation Date: July 31, 2018

Recommendation 4: Develop and implement policies and procedures for awarding officer's technical representatives that will ensure adequate oversight and documentation are standardized for all tribal rural water supply projects.

Reclamation's Response: Concur.

Reclamation will develop policies and procedures for Awarding Officials Technical Representatives (AOTRs) to use in conducting and documenting post-award project oversight. This task will be performed by the newly created P.L. 93-638 Steering Committee, which will be charged with developing Reclamation-wide standards that include an appropriate level of flexibility reflecting differences among regions and projects, as well as limitations on Reclamation's ability to implement contract terms without the concurrence of the relevant tribe.

Responsible Official: Deputy Commissioner – Operations

Target Implementation Date: July 31, 2018.

Recommendation 5: Submit a complete annual funding agreement for Title IV tribes, including a budget that reflects an accurate estimate of costs of activities listed, to Congress.

Reclamation's Response: Concur.

Reclamation will continue the practice begun in Fiscal Year 2016 of submitting to Congress annual funding agreements that contain funding amounts based on the President's budget request, rather than using *de minimus* placeholders. Once final appropriations and funding allocations are made, Reclamation amends the annual funding agreement to reflect actual funding amounts, which it then reports to Congress in the next year's budget request.

Responsible Official: Deputy Commissioner – Operations

Target Implementation Date: Actions Completed.

Appendix 5: Status of Recommendations

Recommendation	Status	Action Required
1	Partially resolved; not implemented	We will refer this recommendation to the Assistant Secretary for Policy, Management and Budget (PMB) to track implementation. We request that the Bureau of Reclamation (USBR) provide PMB with additional information describing how USBR plans to track physical completion so that construction progress may be measured against tribal rural water project expenditures from start to finish.
2	Resolved; not implemented	We will refer this recommendation to PMB to track implementation. We request that USBR provide PMB with the results of its analysis of estimated project completion dates and required funding to meet these completion dates for each tribal rural water supply project.
3	Resolved; not implemented	We will refer this recommendation to PMB to track implementation. USBR's implementation of this recommendation is contingent upon its implementation of Recommendation 2 and the establishment and operation of USBR's newly formed Steering Committee.
4	Resolved; not implemented	We will refer this recommendation to PMB to track implementation.

Recommendation	Status	Action Required
5	Resolved; implemented	We will refer this recommendation to PMB to track implementation. We request that USBR provide PMB with a copy of its most recent annual funding agreements submitted to Congress for Title IV tribes containing good faith estimates of project activity costs to substantiate USBR's assertion of its improved practice.

