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May 1997

# INDIAN PROGRAMS

## BIA's Management of the Wapato Irrigation Project



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**Resources, Community, and  
Economic Development Division**

B-276157

May 28, 1997

The Honorable Slade Gorton  
Chairman  
The Honorable Robert C. Byrd  
Ranking Minority Member  
Subcommittee on Interior and  
Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Patty Murray  
United States Senate

The Honorable Richard Hastings  
House of Representatives

In the late 1800s, the Congress began authorizing funds for the construction of Indian irrigation projects. Such projects were constructed primarily to enhance the economic development of Indian reservations or to meet federal legal obligations. Currently, the Bureau of Indian Affairs (BIA) administers over 70 projects that deliver water to about 1 million acres of reservation land.

The Wapato Irrigation Project is located within the boundaries of the Yakama<sup>1</sup> Indian Reservation in Yakima County, Washington, and irrigates about 142,000 acres. Some of the irrigated land is held in trust for individual Indian landowners and for the Yakama Indian Nation by the United States, and some is privately owned. The costs of operating and maintaining the project, which BIA has designated as self-sustaining, are to be covered by annual assessments against all irrigable acres. Individual Indian landowners may pay the assessment themselves or lease their lands to lessees who agree to pay the assessment. Alternatively, BIA may lease lands on behalf of the Indian landowners. Neither the Indian landowners nor BIA is required to lease Indian trust lands. BIA does not lease privately owned (nontrust) land.

The project has contributed substantially to the local economy. In 1994, the total market value of crops raised on land irrigated by the project was \$152 million. Over the years, however, the project has fallen into disrepair,

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<sup>1</sup>P.L. 103-434, title XII, section 1204(g), dated Oct. 31, 1994, changed the spelling of the Yakima Indian Nation back to the original spelling of Yakama. The spelling of the county's name was not changed.

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and many irrigated acres are idle (not in agricultural production). Estimates of the costs to repair the project and bring it up to operating standards range from about \$100 million to \$200 million.

The Senate Committee on Appropriations is concerned about the viability of the project in light of reports issued by the Department of the Interior's Office of Inspector General that found significant problems with the project's management.<sup>2</sup> To supplement this work, you asked us to further investigate (1) the key reasons for the project's idle acreage and the steps that can be taken to return these lands to production, (2) the principal reasons why operation and maintenance assessments for the project are past due, and (3) the obstacles that BIA will face in trying to collect the past due operation and maintenance assessments.

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## Results in Brief

BIA officials estimate that approximately 30,000 acres, or 21 percent of the project's acreage, are currently idle. These lands are out of production for a variety of reasons, including changing farm economics and poor soil conditions. In addition, BIA has not often exercised its authority to grant leases on behalf of Indian landowners who have not leased the lands themselves. In 1996, BIA decided to exercise its authority to grant leases more often and began marketing the idle lands more extensively.

Over the last decade, uncollected operation and maintenance assessments have accumulated to a total of \$7.3 million, excluding interest, penalties, and fees. BIA's practice of deferring the collection of operation and maintenance assessments for idle trust land is the main reason why assessments are past due. Deferred collections on idle trust land account for \$5.5 million in past due assessments. The remaining \$1.8 million in past due assessments consists of delinquent payments from lessees of Indian trust land and from owners of nontrust land. BIA has not aggressively attempted to recover any of the \$7.3 million in past due assessments.

The biggest obstacle to the collection of past due assessments is BIA's belief that assessments on idle trust land are not justified. Moreover, because BIA has not collected past due assessments in a timely manner, federal and state statutes of limitations preclude the agency from using certain methods to collect the older assessments. For example, the federal statute of limitations for using administrative offsets, such as deductions

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<sup>2</sup>Indian Irrigation Projects, Bureau of Indian Affairs (Rpt. No. 96-I-641, Mar. 29, 1996), Wapato Irrigation Project, Bureau of Indian Affairs (Rpt. No. 95-I-1402, Sept. 30, 1995), and Operation and Maintenance Assessments of Indian Irrigation Projects, Bureau of Indian Affairs (Rpt. No. 88-42, Feb. 3, 1988).

from federal income tax refunds, is 10 years. When BIA has collected past due assessments through land sales, it has not, since August 1991, returned the funds to the project as required by law. Instead, it has deposited the funds in special accounts, anticipating that the past due assessments would eventually be canceled and the funds could then be returned to the landowners. As of December 1996, the balance in the special accounts was about \$103,000.

## Background

The Wapato Irrigation Project is one of the oldest and largest irrigation projects operated by BIA. The project consists of three units—Wapato-Satus, Toppenish-Simcoe, and Ahtanum—and irrigates approximately 142,000 acres. The Wapato-Satus Unit accounts for about 95 percent of the total acreage within the project. Ownership of the 142,000 acres is split between Indians and non-Indians; Indians own 55 percent, and non-Indians own the remaining 45 percent. The title to the Indian-owned land is held in trust for individual Indians and the Yakama Indian Nation by the United States.<sup>3</sup> Most of the project's acreage held in trust is leased to non-Indians for agricultural purposes. See appendix I for a map of the project.

The project is operated and maintained by BIA's Wapato Irrigation Project Office, located in Wapato, Washington. BIA's Yakama Agency Office, Branch of Real Estate Services, located in Toppenish, Washington, has the authority to lease Indian trust land within the project on behalf of individual Indians. See appendix II for an organizational chart showing these BIA offices. The Yakama Indian Nation handles the negotiation of leases for tribal trust land. Private landowners farm or lease nontrust land within the project.

In 1960, BIA classified the project as self-sustaining; that is, BIA considered the project's lands capable of supporting the full amount of the project's annual operation and maintenance costs. Therefore, BIA's regulations require that all irrigable lands within the project be assessed annual operation and maintenance charges that cover the full costs of delivering water, including the day-to-day operation and maintenance costs plus an allowance for rehabilitation and replacement as necessary. The total estimated annual costs are to be divided by the total number of irrigable

<sup>3</sup>Originally, all of the Yakama Indian Reservation was owned by the Yakama Indian Nation. Over time, portions of the reservation were allotted to individual Indians or sold to non-Indians. For more detailed information on land ownership on Indian reservations, including the Yakama Indian Reservation, see Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, Feb. 10, 1992).

acres to determine the annual assessment rate. The base assessment rate for the Wapato-Satus Unit for 1996 was \$40 per acre.<sup>4</sup>

The project's operation and maintenance problems are well documented. Since 1990, BIA, the Yakama Indian Nation, the Bureau of Reclamation, and the Department of the Interior's Office of Inspector General have issued at least seven reports on the project's deteriorated physical condition. In its 1995 report on the project, the Inspector General recommended, among other things, that BIA (1) develop assessment rates for the project that fully cover the costs of properly operating and maintaining it and of rehabilitating or replacing its infrastructure; (2) comply with the Department of the Interior's billing regulations and procedures, which require that all owners or users of water on the project's lands be billed an annual assessment charge; and (3) enforce debt collection procedures. BIA generally concurred with these recommendations and, in August 1995, established a task force to address the Inspector General's findings and recommendations, set forth in reports that go back to 1988. The task force is implementing these recommendations at 3 BIA power projects and 18 Indian irrigation projects, including the Wapato Irrigation Project. As of March 31, 1997, the task force's work was still ongoing.

## Factors Contributing to Idle Trust Land

BIA officials estimate that approximately 21 percent of the project's acreage is idle. Changing farm economics, poor soil conditions, BIA's past leasing practices, and high appraised rental values have contributed to keeping these lands out of productive use. BIA revised its leasing practices in 1996, in an effort to move the idle lands into productive use.

## Changing Farm Economics and Physical Deficiencies

Over time, the project's farm economy has deteriorated. In the early to mid-1980s, high interest rates and low crop prices further depressed the project's farm economy. Some farmers had to reduce operations, while others—particularly small “mom and pop” operators—quit farming altogether. According to project officials, about 30,000 acres—or about 21 percent of the land served by the project—were idle in 1996, including 24,000 acres of Indian trust land and 6,000 acres of nontrust land.

The inventory of idle trust land includes small and isolated parcels, parcels with poor-quality soil, and parcels with poor drainage—all of which limit their leasing potential. The size of a typical parcel on the reservation is 80

<sup>4</sup>Because of the lower cost of providing irrigation water for the two smaller units—Toppenish-Simcoe and Ahtanum—the 1996 assessment rate for these two units was \$10 per acre.

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acres for irrigated agricultural land. The farmable area of some parcels is reduced by features such as irrigation canals, residences, and uneven terrain (gullies and steep slopes).

Over the project, the soil varies in quality, depth, and drainage, from shallow, gravelly soil in the floodplain of the nearby Yakima River to richer, deeper soil near the foothills. Several studies issued during the past 10 years have found severe soil limitations associated with portions of the project's idle land. BIA has identified about 8,000 acres of idle trust land with high alkaline or saline content or excessive gravel that would preclude the growth of some crops or require reclamation practices to make the land productive. Where remediation is feasible, repeated leaching and draining would be required to reduce the soil's alkalinity or salinity.

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## BIA's Leasing and Appraisal Practices

Although BIA generally has no control over the economic and physical factors that have contributed to the idling of trust land, it does have more authority than it has exercised, until recently, over the leasing process. Specifically, the Superintendent of BIA's Yakama Agency Office has the authority to grant leases on behalf of individual Indian landowners, but former superintendents did not often exercise this authority. The current superintendent, appointed in October 1996, plans to exercise his authority more often. However, the lands' unrealistically high appraised rental values pose an obstacle to leasing. BIA has also expanded its advertising of idle lands available for lease.

Individual Indian landowners have the authority to grant leases on their land. A new lease agreement can be entered into starting 1 year before an existing lease expires. If, after 3 months, the individual landowner or landowners have not negotiated a new lease, BIA can begin acting on the landowner's or landowners' behalf, advertising the available land and trying to find a lessee. If a lessee is found, the superintendent can choose either to obtain the consent of the landowner(s)—who thereby grant the lease—or to grant the lease on behalf of the landowner(s). Former superintendents sought to obtain the consent of Indian landowners rather than exercise their authority to grant leases.

Obtaining the consent of a parcel's Indian landowner(s) can be burdensome because the ownership of many parcels on the Yakama Indian Reservation is highly fractionated. As we reported in February 1992, over one-third (2,236) of the reservation's parcels had

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multiple owners, while just under two-thirds (3,823) had a single owner—usually the Yakama Indian Nation.<sup>5</sup> For example, the most highly fractionated parcel had 162 owners. To lease fractionated parcels, BIA formerly obtained the approval of owners representing a majority of the interests in the parcel. To prevent land from remaining idle when BIA is unable to locate enough landowners to obtain their consent to lease a parcel, the current superintendent has decided to exercise his authority to grant a lease on behalf of the Indian landowners.

The superintendent is generally required to lease Indian trust land at its “present fair annual rental value.” According to the superintendent, he relies on appraisals prepared by BIA’s Portland Area Office’s Real Estate Service Team to determine the property’s present fair annual rental value. However, the appraisals for idle trust properties do not take into account the fact that some idle lands require rehabilitation. For example, land that is idle for a number of years becomes overgrown with weeds and other vegetation; such land requires work before it can be cultivated. Nevertheless, BIA appraises the idle land at the same value as land that is being actively farmed, not taking into account the investment needed to reclaim the land. As a result, the appraised values for idle lands often exceed the rents that farmers are willing to pay. The superintendent stated that he is reluctant to grant or approve leases at significantly less than the appraised values and noted that the current appraised rental values for idle lands present an obstacle to his leasing these lands in the future.

In the past, BIA’s limited advertising of idle trust land also restricted leasing opportunities. The agency’s former marketing strategy was limited to “word of mouth” and advertising in local newspapers. In 1996, BIA’s Yakama Agency Office expanded its advertising of trust land available for lease to newspapers in Seattle, Portland, and Spokane. However, the 1996 bid cycle still produced very limited results. Only about 88 of the 632 advertised irrigated parcels within the Wapato-Satus Unit received bids. The office is planning to continue expanding its advertising, perhaps to additional newspapers, trade journals, and the Internet.

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## Factors Contributing to Past Due Assessments

BIA’s practice of deferring the collection of operation and maintenance assessments from the owners of idle trust land is the main reason why assessments for the project are past due. In addition, some lessees of Indian trust land and some owners of nontrust land have not paid their assessment bills. Finally, BIA has not aggressively attempted to collect the

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<sup>5</sup>See footnote 3.



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assessments owed. As a result, past due assessments have accumulated, totaling \$7.3 million—excluding interest, penalties, and fees—over the life of the project. However, through 1984, the project received annual appropriations from the Congress to cover the uncollected assessments. Since fiscal year 1984, when the Congress authorized the establishment of an interest-bearing account for collections, the project has earned \$3.6 million in interest from its operation and maintenance collections to partially offset the uncollected assessments. However, neither the appropriations nor the interest earnings canceled the past due assessments.

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**BIA's Deferral of  
Collections and Practice of  
Not Taking Aggressive  
Collection Action**

Deferred collections on idle trust land account for \$5.5 million of the total \$7.3 million in past due assessments, some of which date as far back as 1926. BIA assumed that because the land was not being leased, the Indian landowners would not be able to pay their assessments. According to BIA's manual, when assessable Indian trust land is idle and assessments are "impossible" to collect during the current irrigation season, bills "shall be prepared and kept on file." The Department of the Interior's Inspector General reported in 1995 that BIA did not provide any analysis to support its assumption that operation and maintenance assessments for idle trust land were uncollectible.<sup>6</sup> BIA prepares assessment bills for the idle trust land but does not mail them to the Indian landowners. Past due assessments become a lien against the Indian trust land, and their collection is deferred until the land is sold.

The remaining \$1.8 million of the total \$7.3 million in past due assessments consists of delinquent payments from lessees of Indian trust land and from owners of nontrust land. Currently, the lessees of Indian trust land owe about \$1.2 million and the owners of nontrust lands owe about \$0.6 million. Table 1 breaks down the past due assessments owed by the owners of idle trust land, the lessees of trust land, and the owners of nontrust land.

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<sup>6</sup>See footnote 2.

**Table 1: Past Due Assessments at the Project Through Fiscal Year 1996**

<b>Year</b>	<b>Owners of idle trust land</b>	<b>Lessees of trust land</b>	<b>Owners of nontrust land</b>	<b>Total</b>
1926-84	\$555,761	\$84,629	\$8,937	\$649,327
1985-96	4,977,065	1,071,351	567,616	6,616,032
<b>Total</b>	<b>\$5,532,826</b>	<b>\$1,155,980</b>	<b>\$576,553</b>	<b>\$7,265,359</b>

Note: Data are as of Feb. 28, 1997.

Source: BIA.

BIA has not aggressively attempted to collect the \$7.3 million in past due assessments. BIA has collected past due assessments only when idle trust land has been sold but has not, since August 1991, applied these collections to the project's operation and maintenance. Additionally, BIA has made little effort to collect past due assessments from delinquent lessees or nontrust landowners.

## Funds Received to Mitigate Past Due Assessments

Through 1984, the Congress annually appropriated funds to cover uncollected assessments at the project. However, after 1984, the Congress stopped appropriating supplemental operating funds for Indian irrigation projects that were classified as fully self-sustaining. To replace these appropriations and enable the projects to cover their unpaid assessments, the Congress authorized BIA to deposit the annual operation and maintenance collections from the projects into interest-bearing accounts.<sup>7</sup> These deposits were to earn interest until they were withdrawn and expended for operation and maintenance purposes.

BIA first began depositing operation and maintenance collections from Indian irrigation projects into interest-bearing accounts on November 10, 1983. Over the 13-year period from fiscal year 1984 through fiscal year 1996, these deposits generated approximately \$3.6 million in interest for the project. However, the deposits have not earned enough interest to cover all of the past due assessments. See appendix III for a graph comparing the cumulative past due assessments with the cumulative interest earned on the collected assessments from 1984 through 1996.

<sup>7</sup>P.L. 98-146, 97 Stat. 929, dated Nov. 4, 1983.

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## Obstacles to Collecting Past Due Assessments

The major obstacle to collecting the past due assessments for the project is BIA's belief that the charges are not justified. Furthermore, by not collecting past due assessments in a timely manner, BIA has severely limited its ability to collect older assessments, whose collection may be unenforceable under federal and state statutes of limitations. Because BIA has viewed the past due assessments as not justified or not collectible, it has occasionally forgiven portions of these assessments. Finally, when BIA has collected past due assessments through Indian land sales, it has deposited these collections into special accounts, rather than returning the funds to the project as required by federal law.

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## BIA's Belief That Charges for Idle Trust Land Are Not Justified

BIA has chosen not to collect past due assessments for idle trust land because it believes the charges are not justified. BIA argues that assessments for idle trust land are not justified because, in its view, (1) Indian landowners with idle trust land are not able to pay their assessments and (2) land that is physically incapable of producing crops should have been removed from the project's assessable acreage and not assessed in the first place.

BIA maintains that Indian landowners are not able to pay their assessments when their lands are idle. The 1914 law that authorized BIA to fix annual operation and maintenance assessments states that they "shall be reimbursable where the Indians have adequate funds to repay the Government. . . ." For idle trust land, BIA has concluded that the Indian landowners do not have "adequate funds" to pay their assessments, and it has therefore deferred any collection action until such time as funds become available. However, as the Department of the Interior's Inspector General reported in 1995, BIA has not documented its assumption that the owners of idle lands are unable to pay their assessments.

In addition, BIA argues that some of the charges are not justified because idle land physically incapable of producing crops has not been removed from the project's assessable acreage. According to BIA's manual, land physically incapable of producing crops through the use of irrigation water provided by the project should not be assessed an operation and maintenance charge. The manual requires the temporary or permanent removal of such land from the project's assessable acreage. BIA's Yakama Agency Office has identified about 8,000 acres of idle trust land that have physical deficiencies that would limit their ability to produce crops. However, these lands continue to be assessed operation and maintenance charges.

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Because the project received annual appropriations from the Congress through 1984 to offset the uncollected assessments, BIA had no incentive to remove from the project the idle acreage that was incapable of producing crops. Keeping the project's assessable acreage at the highest possible level meant that the assessments for all landowners were lower because the project's costs were spread over more acres.<sup>8</sup>

Although BIA received congressional appropriations to offset the uncollected assessments, the assessments owed by the project's landowners remained as debts on their lands. Under legislation passed in 1961, land within the Wapato-Satus Unit cannot be redesignated or removed for a "higher use" until all debts on it have been paid in full.<sup>9</sup> According to BIA's Portland Area Office's policy, no land within the project can be redesignated or removed for any purpose until all debts on it have been paid in full. Because landowners have generally refused to pay the past due assessments, idle land incapable of producing crops remains in the project, accumulating more debt. In some cases, the assessments owed on idle property exceed the property's value. BIA and the landowners are at a standoff. BIA will not remove the land from the project until the debts have been paid.

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## Statutes of Limitations for Debt Collection

Delays in the collection of past due assessments have severely limited BIA's ability to recover about \$1.8 million in older assessments, or about 25 percent of the total \$7.3 million owed. BIA is still carrying past due assessments on the project's books from as far back as 1926. To collect past due assessments from the owners of idle trust land, BIA has the option of using administrative offsets, such as deductions from federal income tax refunds or from the paychecks of federal employees. However, the federal statute of limitations for collecting debts by using administrative offsets is 10 years. Of the \$5.5 million in past due assessments on idle trust land, \$1.2 million, or over 20 percent, is 10 years old or older.

To collect past due assessments from a lessee, BIA can take the lessee to court. However, the federal statute of limitations for enforcing collections in court against a lessee under a lease contract is 6 years. Of the \$1.2 million in past due assessments on leased trust land, almost \$0.5 million, or over 40 percent, is more than 6 years old.

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<sup>8</sup>BIA has also been reluctant to remove land from the project's assessable acreage for fear that the removal might eventually result in a decrease in the water entitlement for the Yakama Indian Reservation.

<sup>9</sup>P.L. 87-316, section 6 (75 Stat. 680), dated Sept. 26, 1961.

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Finally, to collect past due assessments from a private landowner, BIA can foreclose to enforce a lien on the property. In the state of Washington, the statute of limitations for foreclosing on privately owned land is 6 years. Of the \$0.6 million in past due assessments on nontrust land, about \$0.1 million, or over 15 percent, is more than 6 years old.

Because BIA believes that the past due assessments are not justified or not collectible, it has occasionally chosen to forgive rather than collect some of these assessments. Past due assessments were canceled selectively four times for Indian landowners under a 1932 act and three times for non-Indian landowners under a 1936 act. For example, under these actions past due assessments were canceled because (1) the quality of the soil was poor, (2) drainage of the land was inadequate, or (3) the older assessments were uncollectible. Since 1942, a total of almost \$360,000 in past due assessments has been canceled. See appendix IV for more information on the cancellation actions taken.

Starting in about 1991, BIA began planning a fifth cancellation request for Indian landowners, which was officially submitted to the Deputy Commissioner of Indian Affairs in July 1995. In this request, BIA's Portland Area Director proposed to cancel about \$2.3 million in assessments that were more than 6 years old, plus accrued interest, penalties, and fees. The request was returned to the Portland Area Office in August 1995. It will be reconsidered after the BIA task force established to implement the Inspector General's recommendations has finished reconciling the project's past due accounts.

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### Assessments Collected Through Land Sales Not Returned to the Project

When Indian trust land with past due assessments is sold, BIA is required to collect the past due assessments from the proceeds of the sale and apply the collections to the project. Under federal law, the funds collected from the sale proceeds of Indian trust land must be used to satisfy the project's debt. In August 1991, BIA stopped complying with this requirement when it began depositing such collections in a special account, anticipating that the past due assessments would eventually be canceled and that it would then return the funds to the landowners. BIA had no authority to make these deposits. As of December 1996, the balance in two such special accounts was about \$103,000.

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### Conclusions

The project's idle acreage, past due assessments, and insufficient collections have contributed to, but are not the main cause of, the

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project's deteriorated condition. Even if all of the past due assessments were collected, they would constitute only a small fraction of the estimated \$100 million to \$200 million needed to repair the project. The Department of the Interior's Inspector General has already recommended, in its 1995 report, that BIA develop appropriate assessment rates, bill annual assessment charges, and enforce debt collection procedures.

Implementing the Inspector General's recommendations can go a long way toward correcting the project's problems; however, our work disclosed additional problems. The appraised rental values for idle trust land, which do not recognize the costs of rehabilitation, pose an obstacle to leasing and discourage the economic activity that is ultimately necessary to support the project. The project can no longer afford to assess operation and maintenance charges on land that is physically incapable of producing crops and then cancel the unpaid assessments as has been done seven times in the past. Removing this land from the project's assessable acreage is an essential step in developing appropriate assessment rates.

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## Recommendations

To facilitate the leasing of idle trust land, we recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to develop a process that estimates the fair market rental value for the idle land, taking into account the cost of the rehabilitation required to bring the land back into productive use.

To ensure that the costs of operating and maintaining the project are assessed against acreage that is physically capable of producing crops, we recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to remove land that is incapable of producing crops from the project's assessable acreage.

We also recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to apply the past due assessments collected through land sales to the project as required by law and to liquidate the special accounts.

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## Agency Comments and Our Evaluation

We provided copies of a draft of this report to BIA for its review and comment. We met with BIA officials, including the Deputy Commissioner for Indian Affairs, and other Department of the Interior officials, who agreed with the report's recommendations. However, they said that the draft report did not acknowledge BIA's progress in implementing the

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Inspector General's recommendations. They also provided some minor clarifications, which we incorporated into the report where appropriate.

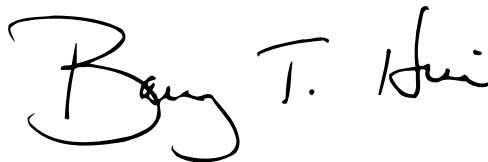
We agree that BIA has begun implementing a number of corrective actions to address the Inspector General's recommendations and other management weaknesses at Indian irrigation projects. However, fully implementing these corrective actions will be a multiyear effort, and the agency's efforts have not yet resulted in any significant changes in the project's management. BIA has worked hard over the past year to obtain current information on landownership and addresses for the project's billing system, but bills were not mailed to Indian landowners with idle trust land for the 1997 irrigation season. BIA plans to mail bills to all of the project's landowners for the 1998 irrigation season. BIA still does not plan to collect the \$7.3 million in past due assessments. The task force implementing the Inspector General's recommendations plans to recommend that all of the past due assessments be canceled either because they are uncollectible or because trying to collect them would not be cost-effective.

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We conducted our review from October 1996 through April 1997 in accordance with generally accepted government auditing standards. We did not independently verify the data BIA provided on the project's idle acreage and past due assessments. A detailed discussion of our scope and methodology is contained in appendix V.

We are sending copies of this report to the appropriate congressional committees, the Secretary of the Interior, the Assistant Secretary for Indian Affairs, and other interested parties. We will also make copies available to others upon request.

Please call me at (202) 512-3841 if you or your staff have any questions about this report. Major contributors to this report are listed in appendix VI.



Barry T. Hill  
Associate Director, Energy,  
Resources, and Science Issues

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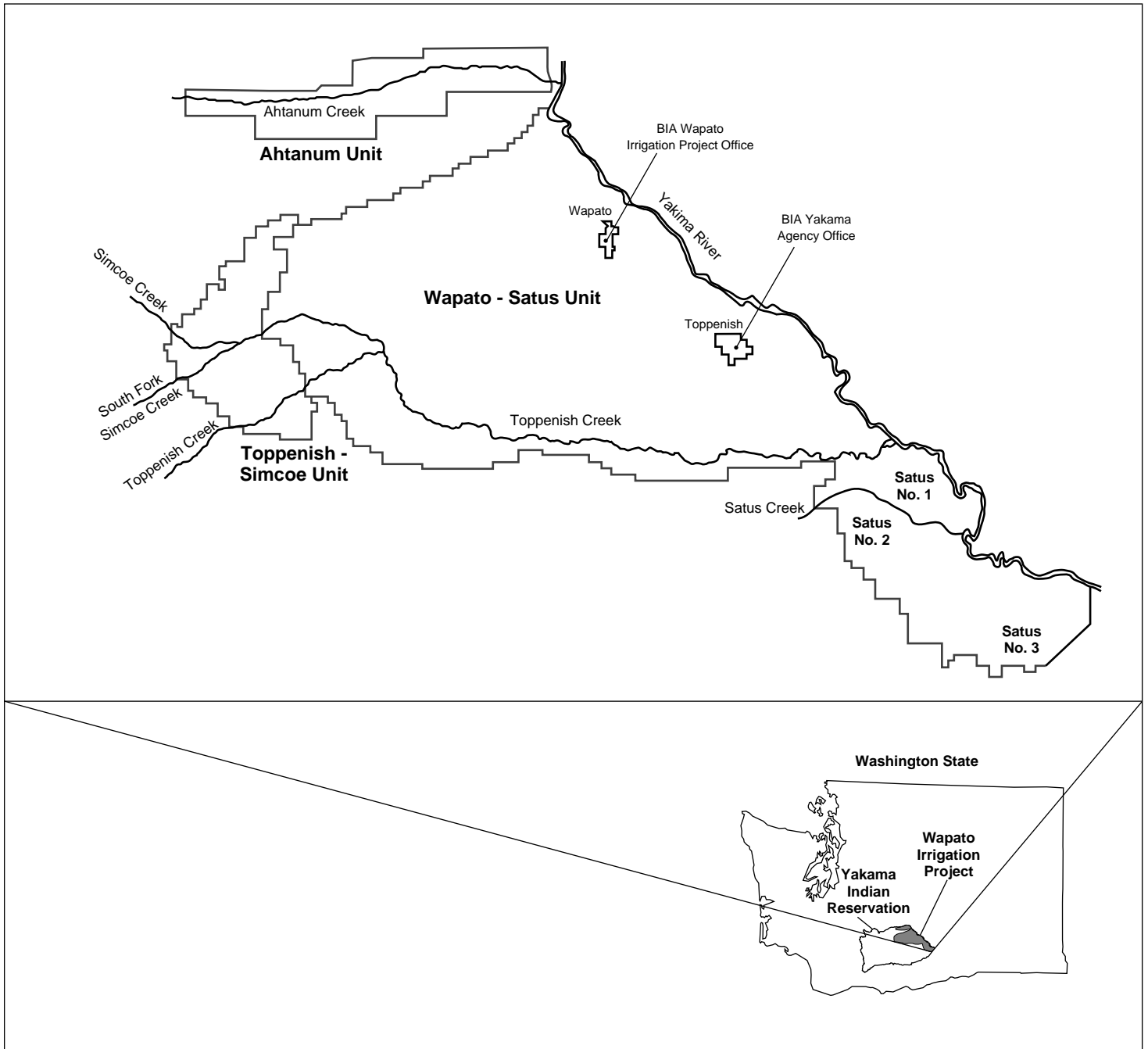
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**Abbreviations**

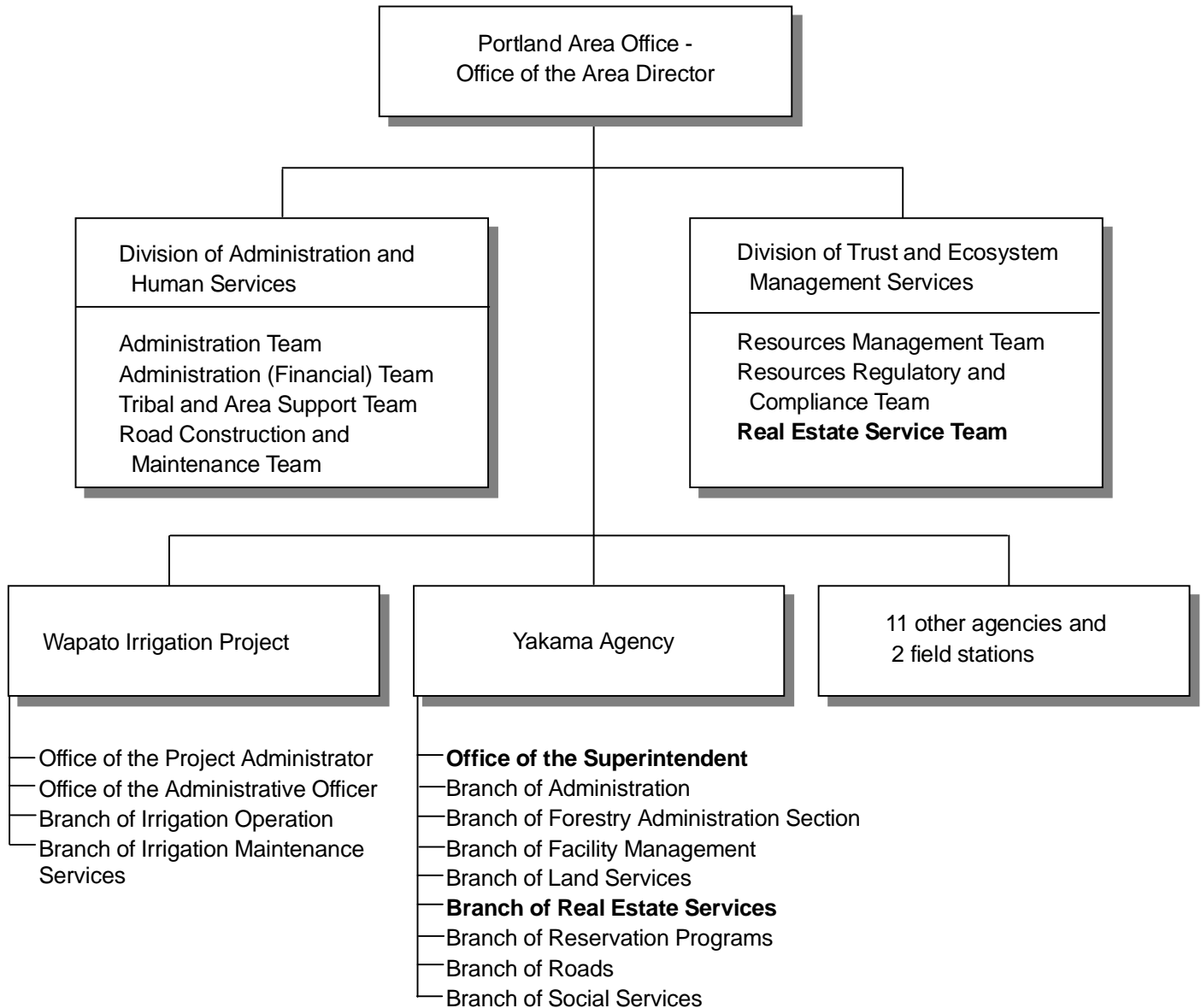
BIA	Bureau of Indian Affairs
GAO	General Accounting Office

# Map of the Wapato Irrigation Project



Source: GAO's adaptation of a map provided by the Bureau of Indian Affairs (BIA).

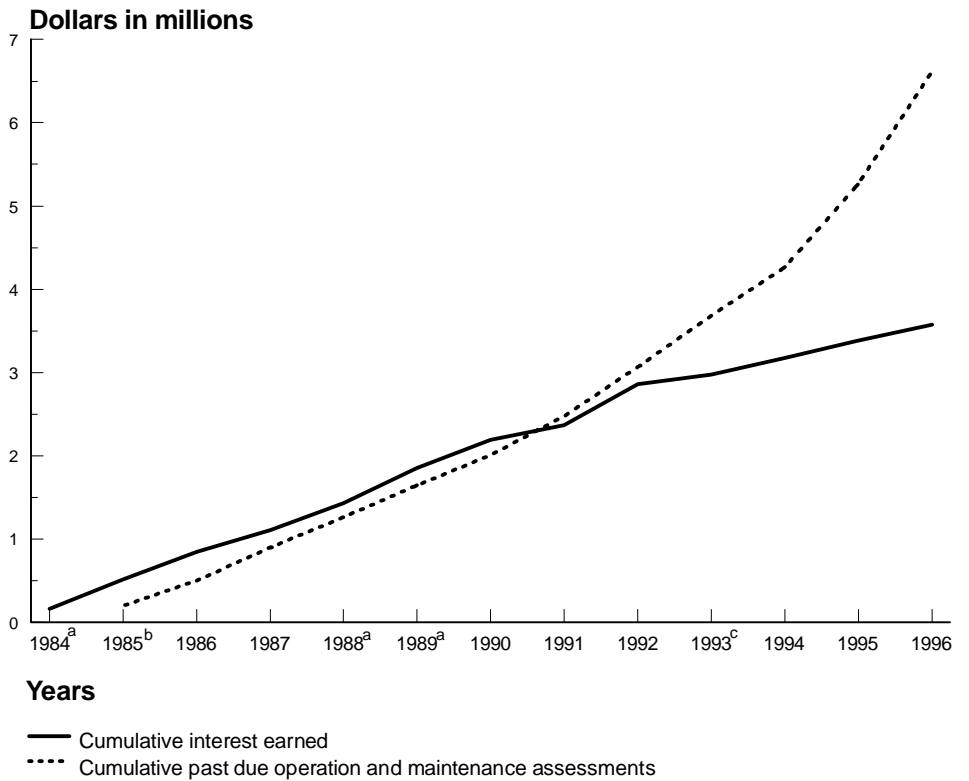
# Organization Chart for BIA's Portland Area



Note: Bolding added to emphasize offices discussed in the report.

Source: GAO's adaptation based on information provided by BIA.

# Cumulative Interest Earned Versus Cumulative Past Due Operation and Maintenance Assessments



<sup>a</sup>BIA's estimate of the interest earned by the project is based on the total interest earned for all Indian irrigation projects.

<sup>b</sup>The \$649,327 in cumulative past due assessments for 1926 through 1984 is not included in this graph. The Congress annually appropriated funds through 1984 to cover uncollected assessments at the project.

<sup>c</sup>P.L. 102-497, section 7, authorized the Secretary of the Interior to spend up to \$1.3 million to operate and maintain the project from funds originally collected to repay the project's construction costs. This \$1.3 million emergency operation and maintenance authorization is not included in the graph.

Source: BIA.

# Cancellation Actions for the Wapato Irrigation Project

Portions of the project's past due assessments have been canceled seven times. Table IV.1 shows the four cancellation orders for past due assessments on Indian lands that were issued under a 1932 act. Table IV.2 shows the three cancellation orders for past due assessments on non-Indian lands that were issued under a 1936 act.

## Cancellation Actions for Indians

An act of July 1, 1932 (25 U.S.C. 386a), referred to as the Leavitt Act, provided the authority for canceling past due operation and maintenance assessments owed by Indians. Specifically, the act authorized and directed the Secretary of the Interior to "adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made. . . ." The act also canceled construction charges that had been assessed in accordance with the provisions of BIA's fiscal year 1921 appropriations act of February 14, 1920 (41 Stat. 409), and deferred all future construction charges as long as the land remained Indian-owned. The Secretary was required to report actions taken under the act to the Congress. The actions were not effective until either they were approved by the Congress or 60 legislative days had elapsed. Table IV.1 summarizes the four debt cancellation orders for past due assessments on Indian lands at the project under the 1932 act.

Table IV.1: Cancellation Actions for Indians

Date of cancellation order	Operation and maintenance assessments canceled	Acres removed from the project's assessable acreage
January 4, 1957	\$54,796	210
January 14, 1957	4,062	99
June 29, 1961	83,111	678
June 27, 1972	188,644	0
<b>Total</b>	<b>\$330,613</b>	<b>987</b>

Source: National Archives and the Department of the Interior.

Table IV.1 does not show any cancellations for construction charges or penalties. The 1932 act permanently deferred the assessment of all future construction charges on Indian-owned land as long as the land remained Indian-owned. The act also canceled past uncollected construction charges against Indian-owned lands. Therefore, no further forgiveness of construction charges was necessary for Indian-owned lands. Up through

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1991, BIA did not assess penalties on debts owed by Indians at the project. Although BIA subsequently assessed penalties retroactively on uncollected Indian assessments, all of the assessments shown in table IV.1 were canceled before BIA started assessing penalties against Indian landowners.

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## **Cancellation and Deferment Actions for Non-Indians**

An act of June 22, 1936 (25 U.S.C. 389, 389a-e), authorized and directed the Secretary of the Interior to investigate whether non-Indian landowners were

“unable to pay irrigation charges, including construction, maintenance, and operating charges, because of inability to operate such lands profitably by reason of lack of fertility of the soil, inadequacy of water supply, defects of irrigation works, or for any other causes. Where the Secretary finds that said landowners are unable to make payment due to the existence of such causes, he may adjust, defer, or cancel such charges, in whole or in part, as the facts and conditions warrant.”

The act authorized the Secretary to enter into repayment contracts for deferred debts, under which payments could be made over 10 years. Table IV.2 summarizes the three cancellation orders for past due assessments on non-Indian lands at the project under the 1936 act.

**Appendix IV  
Cancellation Actions for the Wapato  
Irrigation Project**

**Table IV.2: Cancellation and Deferment  
Actions for Non-Indians**

	Year of cancellation order			Total
	1942 <sup>a</sup>	1958 <sup>b</sup>	1962 <sup>c</sup>	
<b>Debts canceled</b>				
Construction	\$8,673	\$1,071	\$159	\$9,903
Operation and maintenance	4,741	21,023	2,500	28,263
Penalties	1,959	13,606	1,836	17,401
<b>Total</b>	<b>\$15,372</b>	<b>\$35,701</b>	<b>\$4,495</b>	<b>\$55,568</b>
<b>Debts deferred</b>				
Construction	\$0	\$11,937	\$5,603	\$17,540
Operation and maintenance	0	1,827	3,432	5,260
Penalties	0	88	1,321	1,409
<b>Total</b>	<b>\$0</b>	<b>\$13,852</b>	<b>\$10,356</b>	<b>\$24,208</b>
<b>Acres removed from the project's assessable acreage</b>				
	<b>386</b>	<b>233</b>	<b>78</b>	<b>697</b>

Note: Totals may not add because of rounding.

<sup>a</sup>Cancellation order dated Sept. 9, 1942. Approved Dec. 24, 1942, by 56 Stat. 1081.

<sup>b</sup>Cancellation order dated May 14, 1958. Approved Sept. 16, 1959, by P.L. 86-281 (73 Stat. 564).

<sup>c</sup>Cancellation order dated Sept. 12, 1962. Approved Oct. 28, 1963, by P.L. 88-159 (77 Stat. 278).

Source: National Archives.

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# Objectives, Scope, and Methodology

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Senate Report 104-319, which accompanied the fiscal year 1997 appropriations bill for the Department of the Interior and related agencies, directed the General Accounting Office to conduct an audit and provide recommendations on BIA's operation and management of the Wapato Irrigation Project. Subsequently, through discussions with various congressional offices, we agreed to determine (1) the key reasons for the project's idle acreage and the steps that can be taken to return these lands to production, (2) the principal reasons why operation and maintenance assessments for the project are past due, and (3) the obstacles that BIA will face in trying to collect the past due operation and maintenance assessments.

We conducted audit work primarily at BIA's Portland Area Office, Yakama Agency Office, and Wapato Irrigation Project Office. At each location, we interviewed responsible managers and staff and reviewed studies, reports, correspondence, and data related to the three objectives of this report. We toured the project with project officials and BIA soil scientists to observe some of the project's idle acreage and facilities. We also contacted officials from BIA's Central Office, the Yakama Indian Nation, the Bureau of Reclamation, the Department of the Interior's Office of Inspector General and Office of the Solicitor, and the task force established by BIA to implement the Inspector General's recommendations—the Power and Irrigation Reconciliation Team.

To determine the extent of the project's idle acreage, we obtained BIA reports estimating the number of idle acres. We relied on estimates of the project's idle acreage provided by BIA officials and did not independently verify the number of idle acres. To determine the reasons for the project's idle acreage, we interviewed officials at BIA's Portland Area Office, Yakama Agency Office, and Wapato Irrigation Project Office, as well as representatives of the Yakama Indian Nation. Because BIA is not involved in managing or leasing nontrust land within the project, limited information was available on the number of idle nontrust acres and the reasons for this idle acreage. We also reviewed reports on Indian irrigation projects issued by the Department of the Interior's Office of Inspector General and by BIA. We reviewed recommendations from these prior reports and evaluated the steps that have been taken or proposed to return the land to productive use.

To determine the principal reasons why operation and maintenance assessments for the project are past due, we examined BIA's policies and procedures for determining operation and maintenance assessment rates



and for billing and collecting assessments from landowners. We obtained a summary report of the past due operation and maintenance assessments from BIA's Irrigation and Power Liaison and Compliance Section, located in Albuquerque, New Mexico, and asked agency officials to describe why the unpaid balance had increased to \$7.3 million, excluding interest, penalties, and fees. In addition, we interviewed the Western Regional Audit Supervisor for the Department of the Interior's Office of Inspector General, located in Sacramento, California, and reviewed audit workpapers from the Inspector General's prior reviews of the project. We relied on the information provided by BIA and did not independently verify the accuracy of any of the accounting data.

To obtain information on why the Congress stopped appropriating funds to cover the uncollected assessments for the project, we reviewed congressional documents for the Department of the Interior's fiscal year 1984 appropriation. We also reviewed the budget justifications that BIA submitted to the Congress from fiscal year 1983 through fiscal year 1987. We did not attempt to determine whether each year's appropriation was sufficient to cover that year's collection shortfall. We obtained information on the interest earned from the project's deposits of operation and maintenance collections from BIA's Irrigation and Power Liaison and Compliance Section.

To determine the obstacles that BIA will face in trying to collect the past due operation and maintenance assessments, we reviewed laws, regulations, and opinions of the Department of the Interior's Office of the Solicitor. We also examined some steps taken to collect past due assessments and the extent to which these steps have succeeded. In addition, we discussed debt collection issues with the Department of the Interior's Office of the Solicitor in Portland, Oregon, and our own Office of the General Counsel. We reviewed project files and congressional files at the National Archives to obtain detailed information on the prior actions taken to cancel past due assessments for the project.

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