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UNITED STATES GENERAL ACCOUNTING OFFICE

REPORT TO THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

RELEASED

Information On Federally Owned Submarginal Land Within The Pine Ridge Reservation In South Dakota And Nebraska

B-147652
B-147655

Bureau of Indian Affairs
Department of the Interior

B-147652
B-147655

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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FEB. 7, 1973

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Mr. Chairman:

In accordance with your request of July 31, 1972, this is our report containing information on federally owned submarginal land within the Pine Ridge Reservation in South Dakota and Nebraska. This report updates a section (pp. 115 to 122) of our 1962 report on review of proposed legislation for conveying to certain Indian tribes and groups submarginal land administered by the Bureau of Indian Affairs, Department of the Interior (B-147652, B-147655, Aug. 13, 1962).

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

The Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
GAO	General Accounting Office

COMPTROLLER GENERAL'S REPORT TO THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

INFORMATION ON FEDERALLY OWNED SUBMARGINAL LAND WITHIN THE PINE RIDGE RESERVATION IN SOUTH DAKOTA AND NEBRASKA

Bureau of Indian Affairs
Department of the Interior
B-147652, B-147655

DIGEST

WHY THE REVIEW WAS MADE

The Chairman of the Senate Committee on Interior and Insular Affairs requested the General Accounting Office (GAO) to

--update the factual data in the 1962 GAO report on its review of proposed legislation for conveyance of submarginal land administered by the Bureau of Indian Affairs (BIA) to certain Indian tribes and groups and

--comment on how conveyance of the submarginal land to the Indian tribes involved can contribute to their social and economic advancement.

FINDINGS AND CONCLUSIONS

There are 46,211 acres of submarginal land within the Pine Ridge Reservation in South Dakota and Nebraska, which is inhabited by the Oglala Sioux Tribe. The Government acquired this land during the 1930s for about $208,000. During 1971 BIA appraised the submarginal land at about $1.5 million. (See pp. 3 and 6.)

Officials of BIA's Pine Ridge agency office told GAO that during the past 10 years some improvements had been made to the submarginal land by its users but that records of the improvements had not been maintained. They said, however, that the users often remove the improvements when their rights to use the land are terminated. (See pp. 6 and 7.)

Public Law 90-468, approved August 8, 1968, provides authority for Indians (individuals or groups) to purchase certain Government-owned land, including the submarginal land, in lieu of land purchased from them by the Government in the early 1940s for an Air Force aerial gunnery range. Agency office officials told GAO that none of the submarginal lands would be available for conveyance to the tribe until these Indians have selected the land they wish to purchase. (See pp. 7 to 10.)

The tribe has free use of 45,651 acres of submarginal land under a revocable permit issued by BIA for an indefinite period which began November 1, 1964. The permit reserves all timber, water rights, and mineral rights to the Government and prohibits the growing of price-supported crops which are in surplus supply. The remaining 560 acres of submarginal land, which had been used by the Air Force, were released and made available for tribal use in July 1972. (See pp. 10 and 11.)

Although the present permit allows free use of the submarginal land, BIA permits issued for various periods through October 1964 required

FEB. 7,1973

the tribe to pay annual rent and, up to that time, the Government had collected about $80,600, in rent. (See p. 11.)

The tribe subpermits about 70 percent of the land to Indians for grazing, and during the 5-year period ended October 31, 1972, the tribe received income of about $204,000 from the land. (See p. 11.)

A 1964 mineral survey report stated that mineral resources had contributed little to the welfare or economic support of the tribe. In 1972 the tribe received about $1,700 from oil and gas leases on 631 acres of tribal land, and individual Indians received about $12,800 from such leases on 3,444 acres of their land. As of August 1972, no oil and gas leases had been issued for the submarginal land. (See p. 12.)

In June 1972 the tribe owned about 403,000 acres of land, most of which was used for grazing. The tribe also had an interest in land allotted to individual tribal members, equivalent to about 62,000 acres. Tribal financial records showed that the tribe expended about $3.5 million for the purchase of land from 1962 through August 31, 1972. These purchases were made from funds of the tribal Land Acquisition Enterprise and a $1.9 million loan from the Farmers Home Administration, Department of Agriculture. (See p. 13.)

The tribe's financial statements showed that it had assets of about $6.3 million and liabilities of about $2.1 million at June 30, 1971. Also, during fiscal year 1972 the tribe received about $2 million in grants from Federal agencies for various purposes. (See pp. 15 and 16.)

An agency office official told GAO that the tribe had not received any claim settlements since 1962. As of November 10, 1972, the tribe had two claims pending with the Indian Claims Commission. The claims involving the Oglala Sioux Tribe and other Sioux tribes are for fair compensation for land ceded to the Government in 1868 and 1876. No specific amounts have been established for these claims. (See p. 16.)

The tribe has not developed a formal plan for use of the submarginal land because the land is still available for purchase by Indians under Public Law 90-468. The president of the tribal business council told GAO that, if the land were conveyed to the tribe, the tribe could trade the land for land adjacent to tribal land and thus benefit the tribal land acquisition program, which is directed toward consolidating tribal landholdings. (See p. 10.)

Pending disposition of the submarginal land under Public Law 90-468, GAO is unable to determine how much, if any, submarginal land may be available for conveyance to the tribe and therefore whether any social and economic benefits would accrue to the tribe. (See p. 16.)

CHAPTER 1

INTRODUCTION

Pursuant to a request dated July 31, 1972, from the Chairman of the Senate Committee on Interior and Insular Affairs (see app. I) and in accordance with subsequent discussions with his office, we have updated the factual data on pages 115 to 122 of our August 1962 report on submarginal land administered by the Bureau of Indian Affairs (BIA), Department of the Interior.[1] Also, the Chairman requested that we comment on how conveyance of the submarginal land to the Indian tribes involved can contribute to their social and economic advancement.

This report pertains to the 46,211 acres of submarginal land within the Pine Ridge Reservation in South Dakota and Nebraska, which is inhabited by the Oglala Sioux Tribe.

We reviewed pertinent records and interviewed officials and representatives of BIA's central office in Washington, D.C.; BIA's area office in Aberdeen, South Dakota; BIA's Pine Ridge agency office in Pine Ridge, South Dakota; and the tribe. We also interviewed county assessors and other individuals.

PINE RIDGE INDIAN RESERVATION

The Pine Ridge Reservation is in Bennett, Shannon, and Washabaugh Counties in southwest South Dakota and a small area of Sheridan County in northwest Nebraska. The reservation was formerly a part of the Great Sioux Reservation established in the Dakotas west of the Missouri River by the Fort Laramie Treaty of 1868. The act of March 2, 1889 (25 Stat. 888-899), established six smaller Sioux reservations within the Great Sioux Reservation, of which Pine Ridge was one, and restored the rest of the land to the

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[1]"Report on Review of Proposed Legislation for Conveyance to Certain Indian Tribes and Groups of Submarginal Land Administered by Bureau of Indian Affairs, Department of the Interior" (B-147652, B-147655, Aug. 13, 1962). This report was submitted to the House and Senate Committees on Interior and Insular Affairs.

public domain. The Pine Ridge Reservation covers an area of 2,786,540 acres.

Between 1904 and 1916 the tribe made 8,275 allotments of land totaling 2,372,286 acres to individual tribal members. Through land sales by individual tribal members over the years, the land held in trust for them has been greatly reduced. Ownership of land within the reservation boundaries at June 30, 1972, is shown below.

	Acres
Indian land: (title held in trust by the Government):	
Allotted to individual Indians	1,168,240[a]
Tribal	402,989
	1,571,229
Government land:	
Submarginal land	46,211[b]
Air Force aerial gunnery range	43,798
Excess land	37,455[c]
Badlands National Monument	42,512
LaCreek National Game Refuge	16,490
Other	2,093
	188,559
State, Indian, and non-Indian (fee title)	1,026,752
Total	2,786,540

[a]Includes land in which the tribe holds a part interest equivalent to about 62,000 acres.

[b]Excludes 14 acres on which easements have been granted for highway rights-of-way. The easement on 2 acres of the land was granted after our 1962 report was issued and therefore was included in the acreage shown in that report.

[c]Available for purchase by individual Indians who formerly owned land within an area retained by the Air Force for an aerial gunnery range or within the enlarged Badlands National Monument area. (See p. 9.)

OGLALA SIOUX TRIBE

The tribe was organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), but was never incorporated. The tribe ratified its constitution and bylaws on December 14, 1935, and the Secretary of the Interior approved them on January 15, 1936. The Oglala Sioux Council, consisting of 22 elected members, is the tribal governing body.

A BIA labor force report prepared in March 1972 showed that 8,734 Indians lived on the Pine Ridge Reservation and that 2,619 lived in adjacent areas. According to the report, the Indian labor force totaled 2,787, of which 1,157 (42 percent) were unemployed.

CHAPTER 2

INFORMATION ON SUBMARGINAL LAND, TRIBAL LAND, AND OTHER TRIBAL RESOURCES

SUBMARGINAL LAND

The 46,211 acres of federally owned submarginal land are in 170 scattered tracts ranging from 40 to 2,237 acres within the reservation boundaries.

The Government purchased the submarginal land during the 1930s under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200); the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115); and section 55 of the act of August 24, 1935 (49 Stat. 750, 781), at a cost of $207,792.

During 1971 BIA appraised the submarginal land at $1,523,705. On the basis of this appraised value and information obtained from county assessors' offices, we estimate that, if the submarginal land had been subject to real estate taxes, the tax for 1971 would have been about $21,200, as shown below.

County	Acres	Estimated annual tax
Shannon	23,471	$11,100
Bennett	5,536	3,700
Washabaugh	17,204	6,400
Total	46,211	$21,200

Improvements

Agency office officials told us that during the past 10 years some range improvements, such as fencing, corrals, stock water dams, and wells have been made to the submarginal land by the users who subpermit the land from the tribe. An agency office official and members of the tribal business council said that neither BIA nor the tribe has made any improvements to the land. They said also that records of the improvements made by subpermittees had not been maintained

and that they could not accurately estimate the value of the improvements without a visit to each tract. They added that the subpermittees often remove the improvements when their subpermits are terminated.

Legislation authorizing Indians to purchase submarginal land

Public Law 90-468 (16 U.S.C. 441j-o), approved August 8, 1968, provides authority, among other things, for Indians (individuals or groups) to purchase certain Government-owned land, including the submarginal land on the Pine Ridge Reservation, in lieu of land purchased from them by the Government in the early 1940s for an Air Force aerial gunnery range. Agency office officials told us that none of the submarginal land would be available for conveyance to the tribe until these Indians have selected the land they wish to purchase.

In 1942 and 1943 the former War Department established the aerial gunnery range covering 341,726 acres[1] in the northwest corner of the reservation. This area included 241,334 acres purchased from Indians and non-Indians, 93,609 acres leased from the tribe, and 6,783 acres of other Government land. In October 1963 the Air Force declared as excess to its needs 294,253 acres of the gunnery range, including 90,494 acres of the land leased from the tribe. Public Law 90-468 provides, among other things, for disposition of this land as follows:

--Some of the tribal lands and some of the Government-owned land would be included in the Badlands National Monument area which would be enlarged.

--Former Indian and non-Indian owners of specific tracts of land which are now excess to the needs of the Air

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[1]Our 1962 report stated that the gunnery range consisted of 344,489 acres. An agency office official said that the area of the gunnery range had not changed, and he said that he thought BIA's 1972 records reflected the acreage of the aerial gunnery range more accurately than its records at the time of our previous review.

Force and which are located outside the area of the enlarged Badlands National Monument would be given the opportunity to purchase the same tracts of land they formerly owned. The established time limit during which this land could be purchased has expired.

--Indians who formerly owned land within the area retained by the Air Force or within the enlarged monument area would be given an opportunity to purchase, in lieu of lands which they owned before the gunnery range was established, lands of substantially the same value which may be selected from (1) the submarginal lands or (2) the land declared excess by the Air Force which is not purchased by the former owners of specific tracts of land. The law did not establish a time limit for these Indians to make their selections.

The law also provides, in essence, that all lands declared excess to the needs of the Air Force which are located outside the enlarged monument area and which are not repurchased by former owners or other Indians in lieu of land they formerly owned may be conveyed to the tribe. In return the United States would obtain (1) the right to use all tribal land within the enlarged Badlands National Monument area (72,967 acres) for monument purposes and (2) title to 3,115 acres of tribal land within the area retained by the Air Force. Further, the law provides that the right of the United States to use tribal land within the enlarged monument area for monument purposes shall not impair the right of the tribe to use the lands for gazing purposes and mineral development, including the development of oil and gas.

The disposition of the acreage within the original gunnery range is shown below.

	Acres
Retained by the Air Force (includes 3,115 acres of tribal land)	46,913
Used to enlarge the Badlands National Monument area (includes 72,967 acres of tribal land)	115,479
Available for repurchase by former owners	155,024[a]
Tribal land (to be returned to the tribe)	17,527
Submarginal land (available for purchase by Indians)	6,446
Original Badlands National Monument area	337
Total	341,726

[a]Agency office records showed that former owners had repurchased 117,569 acres within the time permitted for such repurchases. The remaining 37,455 acres then became available for purchase by Indians who formerly owned land within the area retained by the Air Force or within the enlarged monument area.

The 83,666 acres of land available for purchase by Indians who formerly owned land in the two areas being retained by the Government includes the 46,211 acres of submarginal land and the 37,455 acres of land not repurchased by former owners.

Agency office records showed that 181 Indians (individuals or groups) had elected to purchase land from the above areas having substantially the same value as the land they formerly owned in the areas being retained by the Government. A drawing was held to determine the order in which the Indians would select the land they wanted to purchase. In July 1972 the number one selectee was notified to make his selection, but as of September 29, 1972, he had not made his selection and his name was placed at the bottom of the selectee list. The next four selectees had completed their

selections as of December 19, 1972. An agency office official told us that selectees are now given 1 month to make their selections. Agency office officials also said that it probably would be several years before all selections will be completed and that none of the submarginal land could be otherwise disposed of until then.

The 83,666 acres available for selection by the Indians was valued at $2.5 million by BIA appraisers in 1971. These Indians formerly owned 50,633 acres, valued at $1.6 million by independent appraisers in 1971. Because the acreage and total value of the land available for selection exceeds the acreage and total value of the land formerly owned by these 181 Indians, some of the land will be left over after their selections are completed. It appears, however, that none of the submarginal land can be conveyed to the tribe until the 181 Indians have completed their selections.

Planned use

The president of the tribal business council told us that the tribe had not developed a formal plan for use of the submarginal land because the land is still available for purchase by Indians. We obtained comments from him, however, and from an agency office official regarding how the submarginal land would be used if conveyed to the tribe.

The president of the tribal business council stated that:

--At present the most feasible use of the submarginal land by the tribe would be leasing it for grazing.

--The fact that tracts of the land are scattered makes it difficult to use the land under the existing land use program. If title were vested in the United States in trust for the tribe, the land could be traded to tribal members and others for land adjacent to tribal land and thus benefit the tribal land acquisition program, which is directed toward consolidating tribal landholdings.

--Individual tribal members would be given further assistance in improving their cattle operations and raising the living standards of their families.

The agency office official stated that if the submarginal land were conveyed to the tribe, it would enable the tribe to exchange the land with other Indians and non-Indians for land more favorably located for Indian use.

Present and past use

The tribe has free use of 45,651 acres of submarginal land under a revocable permit issued by BIA for an indefinite period which began November 1, 1964. The permit reserves to the Government all timber, water rights, mineral rights, and the right to grant easements and prohibits the growing of price-supported crops which are in surplus supply. The remaining 560 acres of submarginal land, which had been used by the Air Force, under a revocable permit issued by BIA, were released and made available for tribal use in July 1972.

An agency office official informed us that BIA permits issued for various periods through October 1964 required the tribe to pay annual rent for use of the land and that, up to that time, the Government had collected about $80,600 in rent. In October 1964 the Acting Secretary of the Interior directed that rental charges to Indian tribes for use of submarginal lands be discontinued.

The tribe subpermits most of the land, and agency office records show that in 1972 the land was used as follows:

	Acres
Grazing	44,995
Farm pasture	723
Idle	420
Unknown	73
Total	46,211

An agency office official said that in subpermitting the land, the tribe gives preference to Indians and that about 70 percent of the land was subpermitted to Indians. During the 5-year period ended October 31, 1972, the tribe received income of about $204,000 from the land.

Potential use

According to an agency office official, grazing is the best potential use for most of the submarginal land. He added that Wounded Knee Creek and the White River flow through or are adjacent to some of the tracts, which could possibly be developed for recreational purposes, but that no formal studies of such potential use had been made. He said also that there are no characteristics of the submarginal lands which might make them more desirable than the land owned by individual Indians or the tribe.

Mineral and water resources

The Bureau of Mines, Department of the Interior, made the latest mineral study of the Pine Ridge Reservation and reported the results in May 1964. The study concluded that mineral resources on the reservation had contributed very little to the welfare or economic support of the tribe. According to the report:

--Minerals, such as sand, gravel, and clay, were available for use on the reservation, but because equally good or better materials were available in adjacent areas, there was little opportunity to sell sand and gravel for use beyond the confines of the reservation.

--Only minor interest in exploration for oil and gas had been shown, and only five test holes had been drilled on the reservation since 1917.

As of August 1972, no oil and gas leases had been issued for the submarginal land. In 1972 the tribe received about $1,700 from oil and gas leases on 631 acres of tribal land, and individual Indians received about $12,800 from such leases on 3,444 acres of allotted lands.

As stated above, Wounded Knee Creek and the White River flow through or are adjacent to some of the tracts of submarginal land.

TRIBAL LAND

BIA agency office records showed the following use of tribal land as of June 30, 1972.

	Acres
Grazing	361,667
Dryfarming	7,189
Irrigated farming	1,100
Unproductive	32,683
Other uses (nonagricultural)	350
Total	402,989

The records showed also that Indians used 284,450 acres and that non-Indians used 85,856 acres. The income from tribal land for the 5-year period ended June 30, 1971 amounted to about $915,000.

Land consolidation program

In 1961 the tribe initiated a program to consolidate and increase its landholdings through the purchase of land adjacent to tribal land and through the exchange of scattered tracts of tribal land for other land. From 1962 through August 31, 1972, the tribe increased its landholdings by 164,335 acres and purchased a part interest in allotted lands equivalent to about 62,000 acres. Tribal financial records showed that the tribe expended about $3.5 million for the purchase of land during this period.

These land purchases were made from funds of the tribal Land Acquisition Enterprise and a $1.9 million loan from the Farmers Home Administration, Department of Agriculture, in December 1971. In August 1972 the tribe had spent all but $237,000 of the loan and had filed an application with the Farmers Home Administration for an additional loan of $2.1 million.

Tribal enterprises

According to tribal records, the tribe has the following enterprises:

Farm and Ranch Enterprise--established to obtain full use and maximum return from the tribal irrigable land, range land, and other land in or near the enterprise and to provide a facility and opportunity for training future farmers and ranchers who are members of the tribe. The enterprise employed two tribal members.

Cedar Pass Concession--established to operate the concession at the Badlands National Monument for the benefit of the Oglala Sioux Tribe, to provide more local employment and training for tribal members, and to develop the tourist trade. The concession employed 25 tribal members.

Oglala Sioux Housing Authority--established to remedy the unsafe and unsanitary housing conditions on the reservation; alleviate the acute shortage of decent, safe, and sanitary dwellings; and provide employment opportunities through the construction, reconstruction, and operation of low-rent housing. The authority employed eight tribal members.

Pine Ridge Village and Utilities Commission--established to provide utility services to residents of the reservation. The commission employed 20 tribal members.

Other tribal enterprises include the Land Acquisition Enterprise, a community center, and a shopping center.

As of July 1972 the tribe employed 144 tribal members in tribal enterprises and in civic and administrative functions.

Housing

In 1962 the Oglala Sioux Housing Authority was established to provide safe, sanitary, and adequate housing for low-income families on the reservation. By July 1970, 301 housing units had been completed which were financed as follows:

Financed by	Housing units
Home Improvement Program (BIA, the Office of Economic Opportunity, and the tribe)	51
Federal Housing Administration	50
Department of Housing and Urban Development	200
Total	301

In addition, many existing dwellings were repaired under the Home Improvement Program. By the end of fiscal year 1970, 19 percent of the Indian families were in standard housing, and BIA's plans provide for all Indians to be in standard housing by 1977. Also, during fiscal years 1961 through 1972, the Public Health Service provided water and sewer facilities for 703 Indian housing units at a cost of about $2 million.

TRIBAL FINANCIAL RESOURCES

The following table, which is based on financial statements prepared by BIA's Office of Audit but not verified by us, shows the financial condition of the tribe as of June 30, 1971.

Assets:	
Cash	$ 254,189
Receivables	672,958
Land	3,840,090[a]
Property and equipment	1,545,627
Other assets	34,870
Total	6,347,734
Liabilities	2,095,424
Equity	$4,252,310

[a] Land acquired prior to 1961 is valued at about $6.20 an acre, and the value of land acquired since that date is stated at cost.

In fiscal year 1972 the tribe received about $2 million in grants from Federal agencies for various educational, social, and economic development activities on the reservation, as shown below.

	Amount of grant
Office of Economic Opportunity	$ 714,020
Economic Development Administration, Department of Commerce	54,700
Department of Health, Education, and Welfare	277,600
Department of Housing and Urban Development	108,000
Department of Labor	826,000
Total	$1,980,320

An agency office official told us that the tribe has not received any claim settlements since 1962. As of November 10, 1972, the tribe had two claims pending with the Indian Claims Commission. The claims, involving the Oglala Sioux Tribe and other Sioux tribes, are for fair compensation for land ceded to the Government in 1868 and 1876. No specific amounts have been established for these claims.

SUMMARY

The tribe has not developed a formal plan for use of the submarginal land because the land is still available for purchase by Indians under Public Law 90-468. The president of the tribal business council told us that, if the land were conveyed to the tribe, the tribe could trade the land for land adjacent to tribal land and thus benefit the tribal land acquisition program, which is directed toward consolidating tribal landholdings.

Pending disposition of the submarginal land under Public Law 90-468, we are unable to determine how much, if any, submarginal land may be available for conveyance to the tribe and therefore whether any social and economic benefits would accrue to the tribe.

HENRY M. JACKSON, WASH., CHAIRMAN
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United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

July 31, 1972

The Honorable Elmer B. Staats
Comprtoller General of the United States
Washington, D. C.

Dear Elmer:

This letter is in reference to my letter dated April 1, 1971, in which I requested your staff to begin updating the Comprtoller General's Report on Submarginal Land which was submitted to the House and Senate Committees on Interior and Insular Affairs on August 13, 1962.

It has recently been brought to my attention that the Department of the Interior is making a study of instances in which a tribe or group of Indians seeks to acquire land and, as a result of this study, does not intend to submit any further proposed legislation and related comments on the proposed transfer of submarginal lands to Indian tribes and groups until the study is completed.

Previous agreements provided for your staff to initiate the updating of factual data in your 1962 report at the time the Department prepared a draft of proposed legislation providing for the transfer of submarginal land to an Indian tribe or group. Under these arrangements, reports were issued on four Indian tribes or groups and I understand that reports are currently in process on five additional tribes or groups.

The Honorable Elmer B. Staats
Page 2
July 31, 1972

Because the Department apparently does not plan to submit any further proposed legislation providing for the transfer of submarginal lands to Indian tribes and groups until after its study is completed, please consider this letter an official request to have your staff begin updating the factual data in the 1962 report regarding the remaining nine Indian tribes or groups and to furnish individual reports thereon as soon as each is completed.

I would like for your reports to include comments on how the conveyance of the lands in question to Indian tribes can contribute to their social and economic advancement.

Your assistance is appreciated.

Sincerely yours,

Henry M. Jackson
Chairman

HMJ:fge