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

089705

**Information On Federally Owned Land  
In Oregon Set Aside For Use By  
The Burns Paiute Indian Colony**

B-147652

B-147655

Bureau of Indian Affairs  
Department of the Interior

**BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

SEPT. 12, 1972

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089705



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

B-147652

B-147655

1.2  
Dear Mr. Chairman:

In accordance with your request of July 31, 1972, this is our report containing information on federally owned land in Oregon set aside for use by the Burns Paiute Indian Colony. The information in this report updates that section (pp. 51 to 55) of our 1962 report on review of proposed legislation for conveyance to certain Indian tribes and groups of submarginal land administered by the Bureau of Indian Affairs, Department of the Interior (B-147652, B-147655, Aug. 13, 1962).

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "A. J. Keller", is written above the typed name.

Acting Comptroller General  
of the United States

1.2  
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 LAND  
IN OREGON SET ASIDE FOR USE BY THE  
BURNS PAIUTE INDIAN COLONY  
Bureau of Indian Affairs  
Department of the Interior  
B-147652, B-147655

D I G E S T

WHY THE REVIEW WAS MADE

1 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 can contribute to the social and economic advancement of the Indian tribes involved.

FINDINGS AND CONCLUSIONS

The federally owned land in Harney County, Oregon, set aside for use by the Burns Paiute Indian Colony (the colony), consists of 606 acres of submarginal land, 156 acres of subsistence homestead land, and 10 acres of donated land. Under proposed legislation introduced in the Ninety-second Congress, the Government's right, title, and interest in this land would be conveyed to the colony and the title would be held in trust by the Government. (See pp. 5 and 8.)

The Harney County assessor told GAO that, as of March 1972, the submar-

ginal and subsistence homestead lands, for which the Government paid \$14,620, had a market value of about \$50,000 and that the donated land was almost worthless. (See p. 8.)

An official of the BIA Warm Springs agency office told GAO in March 1972 that the improvements made on the submarginal and subsistence homestead lands had an estimated value of \$86,950. (See p. 8.)

BIA issued a revocable permit to the colony, effective October 1961 through February 1972, for use of the 606 acres of submarginal land. From 1962 through 1969 the colony had subpermitted the land for \$3,250 to a non-Indian who used the land for grazing purposes. The colony did not subpermit the land from January 1970 to September 1971 because it was unable to find a subpermittee. From September 1971 to February 1972, the colony subpermitted the land to a non-Indian and required him to build and repair fences as payment for use of the land. In February 1972 BIA issued a new revocable permit to the colony for use of the submarginal land through February 1982. (See p. 10.)

BIA issued a revocable permit to a non-Indian, effective October 1961 through February 1970, for use of 106 of the 156 acres of subsistence homestead land. The permittee used the land for haying purposes

and paid rental fees of \$5,800 to BIA. During 1970, BIA gave permission to a non-Indian to cut hay on the land and received \$1,000 in return. The remaining 50 acres were used by 119 colony members as homesites. (See p. 10.)

In June 1972 the colony issued a revocable subpermit to a non-Indian for use of the submarginal land and the subsistence homestead land for grazing through February 1973. The subpermittee was required to pay \$400, repair fences, and control weeds for use of the land. (See p. 11.)

An official of the Warm Springs agency office informed the BIA Portland area office that BIA instructions to the agency office required that all revenues collected for use of subsistence homestead lands be deposited in the U.S. Treasury until the acquisition price is recovered. He said that agency office records indicated that revenues exceeding the \$11,592 acquisition cost of the land by \$1,493 had been deposited in the U.S. Treasury.

The agency office official stated that it seemed to be the intent of the legislation, under which the subsistence homestead land was purchased, that ownership of the land would pass to the users for homestead purposes and inquired as to whether title to the land could be transferred to the colony without legislation inasmuch as the acquisition cost had been recovered. In March 1972 the BIA Portland area office brought this matter to the attention of the Commissioner of Indian Affairs. As of August 30, 1972, the Commissioner's office had not reached a decision on the matter. (See p. 11.)

Agency office officials stated that the 10 acres of donated land had little present or potential value. As of August 1972, five colony members lived on this land. These officials stated also that the submarginal land is poor grazing land but that grazing is its best use. They said also that the subsistence homestead land, if irrigated, would be best suited for haying and farming operations. (See p. 11.)

The subsistence homestead land has a floodwater right, dating from 1906, which permits irrigation of the land from the Silvies River. However, water is not available for irrigation during July and August when the need is greatest. (See p. 11.)

The colony does not own any land. In June 1971 the Government held 70 individual allotments totaling 11,014 acres in trust for colony members. (See p. 12.)

An agency office official said that the colony was in a precarious financial condition with limited sources of income. Colony and BIA officials said that the colony did not have any significant assets or major liabilities. (See p. 14.)

Colony officials told GAO that a formal land use plan had not been developed for the submarginal and subsistence homestead lands. They said that, if title to the lands were conveyed to the colony, it might be possible for individual colony members to use the land for farming or grazing or to lease some of the land for independent business ventures. They said also that any income derived by the colony from use of the lands could be used to make improvements to the lands and buildings and to pay the

colony's operating expenses and certain educational expenses. (See p. 14.)

Colony officials said that, if the submarginal and subsistence homestead lands were conveyed to the colony, it would enable the colony to become eligible for financial assistance from certain Federal agencies, such as the Economic De-

velopment Administration, Department of Commerce, which provides assistance for the development of public facilities and private enterprise to help create new, permanent jobs. (See p. 15.)

GAO believes that conveyance of the lands to the colony could contribute to its social and economic advancement. (See p. 15.)

## 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 in our August 1962 report on submarginal land administered by the Bureau of Indian Affairs (BIA), Department of the Interior.<sup>1</sup> That report was submitted to the House and Senate Committees on Interior and Insular Affairs. Also, the Chairman requested that we comment on how conveyance of the submarginal land could contribute to the social and economic advancement of the Indian tribes.

This report updates that section (pp. 51 to 55) of our 1962 report which pertained to the federally owned land in Harney County, Oregon, set aside for use by the Burns Paiute Indian Colony (the colony). Under proposed legislation introduced in the Ninety-second Congress, the Government's right, title, and interest in these lands--submarginal, subsistence homestead, and donated--would be conveyed to the colony and the title would be held in trust by the U.S. Government.

We reviewed pertinent records and interviewed officials and representatives of BIA's central office in Washington, D.C.; BIA's area office in Portland, Oregon; BIA's Warm Springs agency office, Warm Springs, Oregon; and the colony. We interviewed also the mayor of Burns, Oregon, and the Harney County assessor to obtain their opinions on certain matters within their areas of expertise.

### BURNS PAIUTE INDIAN COLONY

Ancestors of the Burns Paiute Indians lived within an area of about 5,250 square miles in the present vicinity of

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<sup>1</sup>"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).

Burns. An Executive order dated September 12, 1872, established the Malheur Reservation, comprising about 2,275 square miles in Harney and Malheur Counties, Oregon, for "all roving and straggling bands in eastern and southeastern Oregon."

At the time of the Bannock War of 1878, Indians of the Malheur Reservation were dispersed over a wide area. The Department of the Interior contended that the Indians had abandoned the Malheur Reservation. Most of the Malheur Reservation was restored to the public domain by 1883 and was open to settlement by the end of 1889.

During 1896 and 1897, 115 allotments of public domain land were made to individual Paiute Indians pursuant to a Secretary of the Interior order dated January 24, 1880. This order stated that the Paiutes:

"\*\*\*heretofore entitled to live on the Malheur Reservation who will make that reservation their permanent home are to have lands allotted to them in severalty at the rate of 160 acres to each head of a family and each adult male. Such lands they are to cultivate for their own benefit."

The allotments were made principally in the arid and semiarid portions of Harney Valley from land that originally had been the Malheur Reservation. The Paiute Indians were unable to live on the allotted land because the land had no water resources and because they had no capital to develop the land and resources. Most of the Paiutes returned to their old nomadic life but generally camped near Burns. In July 1925, however, the Paiute Indians moved to a 10-acre tract of land 1-1/2 miles west of Burns, which was donated to the Government. In 1935 the Government purchased 156 acres of subsistence homestead land and 606 acres of submarginal land which has been set aside for use by the Burns Paiute Indians.

The colony was recognized as an organized Indian band on June 13, 1968, when the Commissioner of Indian Affairs approved its constitution and bylaws.



As of March 17, 1972, 234 individuals were enrolled as members of the colony. Of this number, 130 lived near Burns. An official of the BIA Warm Springs agency office told us that the remaining 104 members lived either on the Warm Springs Reservation in Oregon, or in adjacent States.

As of March 17, 1972, the colony's labor force was 47, of which 33 were employed. The agency office official also estimated that the average annual income per wage earner was about \$3,500. He said that male members of the colony were working in lumbering or agricultural industries whereas female members were employed as teacher aides in schools or as domestic help in private homes.

## CHAPTER 2

### INFORMATION ON GOVERNMENT-OWNED LAND,

### COLONY LAND, AND COLONY FINANCIAL RESOURCES

#### GOVERNMENT-OWNED LAND

BIA's records showed that, as of June 30, 1970, 772 acres of Government-owned land in Harney County, Oregon, had been set aside for use by the colony. The land is located outside the boundaries of the former Malheur Reservation and was acquired as follows:

- In 1925, 10 acres of land were donated to, and in 1928 title was taken in the name of, the Government. Although this land has been considered donated land, the Government paid a token purchase price of \$10 for the land.
- In 1935 the Government purchased 156 acres of subsistence homestead land for \$11,592, under authority of section 208, title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200).
- In 1935 the Government purchased 606 acres of submarginal land for \$3,028, under authority of section 202, title II of the National Industrial Recovery Act of June 16, 1933.

The Harney County assessor told us that, as of March 1972, the market value of the submarginal and subsistence homestead lands, excluding improvements, was about \$50,000. The assessor said that, if the land were subject to real estate taxes, the estimated tax for 1972 would be about \$1,300. She said also that there was no assessment record for the 10 acres of donated land because it was almost worthless.

#### Improvements

An official of BIA's Warm Springs agency office told us in March 1972 that the improvements on the submarginal and subsistence homestead lands had an estimated value of \$86,950 as shown below.

<u>Land</u>	<u>Number of acres</u>	<u>Specific use</u>	<u>Type of improvement</u>	<u>Estimated value of improvement</u>
Submarginal Subsistence homestead	606	Grazing	Fences	\$ 1,000
Subsistence homestead	106	Farming	Fences	500
	50	Housing	1. 24 dwellings <sup>a</sup> 2. Sewers and water system <sup>b</sup>	43,750 <u>41,700</u>
Total				<u>\$86,950</u>

<sup>a</sup>These dwellings were constructed with a rehabilitation grant of \$69,000 awarded in 1937 under the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115). In addition the dwellings were rehabilitated with a grant of \$25,000 awarded in 1968 under BIA's Housing Improvement Program.

<sup>b</sup>These improvements were made in 1967 with a grant of \$55,600 from the Public Health Service, Department of Health, Education, and Welfare.

The official also said that the 10 acres of donated land and improvements were in poor condition and that he did not know the value of the improvements. He estimated, however, that the salvage value of 11 homes located on the land would be about \$200.

BIA Warm Springs agency office officials told us that, because BIA issues only short-term revocable permits for use of the land, permittees and subpermittees were not willing to improve the submarginal or subsistence homestead lands. They said that the colony would like to have the submarginal and subsistence homestead lands conveyed to the colony with the title held in trust by the Government so that long-term irrevocable leases could be issued.

## Present and past uses

### Submarginal land

BIA issued a revocable permit to the colony, effective October 1961 through February 1972, for use of the 606 acres submarginal land. Colony officials told us that individual colony members were unable to use the land because they did not have the financing to purchase the high-cost equipment necessary for farming or grazing operations. From 1962 through 1969 the colony subpermitted the submarginal land for \$3,250 to a non-Indian for grazing purposes.

BIA Warm Springs agency office and colony officials said that the submarginal land was not used from January 1970 to September 1971 because they were unable to find a subpermittee willing to take a short-term revocable subpermit. From September 2, 1971, through February 1972, the colony subpermitted the land to a non-Indian. The colony required the subpermittee to build and repair fences as payment for use of the land.

On February 18, 1972, BIA issued a new revocable permit to the colony for use of the submarginal land during the period March 1972 through February 1982. In June 1972 the colony issued a revocable subpermit to a non-Indian for use of the submarginal land for grazing through February 1973. The subpermit also covered use of the subsistence homestead land.

### Subsistence homestead land

Colony officials said that because of financial problems, individual colony members had not tried to obtain a permit for use of the subsistence homestead land. BIA issued a revocable permit, effective October 1961 through February 1970, to a non-Indian for use of 106 of the 156 acres of subsistence homestead land. The permittee used the land for haying purposes and paid rental fees totaling \$5,800 to BIA. The remaining 50 acres were used by 119 colony members as homesites under a BIA revocable temporary assignment.

An official of the BIA Warm Springs agency office told us that BIA could not find a permittee willing to enter into a short-term revocable permit for use of the subsistence homestead land during 1970 and 1971. In 1970 the agency office gave permission to a non-Indian to cut hay on the subsistence homestead land and received \$1,000 in return. In June 1972 the colony issued a subpermit for use of the land. (See p. 10.) The subpermittee, who was also subpermitting the submarginal land, was required to pay \$400, repair fences, and control weeds for use of the subsistence homestead land and the submarginal land.

In a letter dated February 29, 1972, an official of the BIA Warm Springs agency office informed the BIA Portland area office that BIA instructions to the agency office required that all revenues collected for use of subsistence homestead lands be deposited in the U.S. Treasury until the acquisition price is recovered. He said that agency office records indicated that revenues exceeding the \$11,592 acquisition cost of the land by \$1,493 had been deposited in the U.S. Treasury.

The agency office official stated in the letter that it seemed to be the intent of the legislation, under which the subsistence homestead land was purchased, that ownership of the land would pass to the users for homestead purposes and inquired whether title to the land could be transferred to the colony without legislation inasmuch as the acquisition cost had been recovered. In March 1972, the BIA Portland area office brought this matter to the attention of the Commissioner of Indian Affairs. As of August 30, 1972, the Commissioner's office had not reached a decision.

#### Donated land

As of August 1972, five colony members lived on the 10 acres of donated land. BIA Warm Springs agency office officials stated that this land has little present or potential value.

#### Potential uses

BIA Warm Springs agency office officials said that the submarginal land is poor grazing land but that grazing

is its best use. They told us that, because of the shallow, rocky nature of the soil and the low annual rainfall, it might not be economical to seed the land to improve grazing conditions.

The officials said also that the subsistence homestead land, if irrigated, would be best suited for haying and farming operations. They told us that the land was infested with rodents and noxious weeds and would require considerable improvement.

#### Planned uses and income derived therefrom

Colony officials told us that a formal plan for use of the submarginal and subsistence homestead lands had not been developed. They said that they had been focusing their attention on having title to the lands transferred in trust to the colony and that, after they acquire such title, they will give greater attention to possible uses.

Colony officials said that, if the submarginal and subsistence homestead lands were conveyed to the colony:

- Individual colony members could lease some of the land for independent business ventures such as a gas station or repair shop.
- Colony members could use the lands for farming or grazing.
- Income derived from the issuance of long-term leases could be used to make improvements to the lands and buildings and to pay the colony's operating expenses.
- The colony could also use the income to pay educational expenses, such as the cost of books and the salary of a teacher aide, related to the operation of a study room in the community center.

#### Water resources

A floodwater right, dating from 1906, permits irrigation of the subsistence homestead land from the Silvies River, which borders the northeast corner of the land.

However, BIA Warm Springs agency office officials said that water is not available for irrigation during July and August when the need is greatest.

The officials told us that, during fiscal year 1971, BIA spent \$1,835 to renovate the diversion control dam on the Silvies River. They said, however, that the remainder of the irrigation system on the subsistence homestead land was in poor condition.

An official of the BIA Warm Springs agency office told us that there are no significant streams of water on or adjoining the submarginal land.

### Mineral resources

The Harney County assessor and BIA Warm Springs agency office officials told us that there was no record of any mineral surveys conducted on the submarginal and subsistence homestead lands. BIA officials said that, to their knowledge, no mineral discoveries have been reported on or near the submarginal and subsistence homestead lands.

### COLONY LAND

The colony does not own any land. As of June 30, 1971, the Government held 70 individual allotments totaling 11,014 acres in trust for members of the colony. The 70 allotments were the only remaining allotments from the 115 made to individual Paiute Indians in 1896 and 1897. (See p. 6.)

An official of the BIA Warm Springs agency office told us in March 1972 that all the allotted land was being leased to non-Indians for grazing purposes at an annual rate of 40 cents per acre. He said that the value of the allotted land was between \$10 and \$25 per acre.

### COLONY FINANCIAL RESOURCES

An official of the BIA Warm Springs agency office told us that the colony was in a precarious financial condition. He said that the colony's only sources of income were voluntary contributions from colony members, interest on a colony cash account maintained by the agency office, payments from subpermittees of the submarginal land, and profits under contracts for providing health and education services. These contracts, awarded to the colony by the Indian Health Service and BIA, provide for the colony to furnish health and sanitation services and a summer enrichment education program to colony members.

Between October 14, 1969, and December 15, 1969, 168 Burns Paiute Indians received \$743 each as their share of the proceeds of a claim against the Government for taking the former Malheur Reservation in 1882 and 1883. Individual Burns Paiute Indians voluntarily contributed \$1,178 to the colony from their share of the claim proceeds. An official



of the BIA Warm Springs agency office said that this was the only claim ever awarded to the Burns Paiute Indians and that no other claims were pending.

Colony and BIA Warm Springs agency office officials told us that the colony did not possess any significant assets or major liabilities. As of August 24, 1972, the colony had a cash balance of \$8,605 in an account maintained by the BIA Warm Springs agency office. An agency office official said that the interest on this account could be considered the colony's only steady source of income.

Colony officials said that, if the submarginal and subsistence homestead lands were conveyed to the colony, it would enable the colony to become eligible for financial assistance from certain Federal agencies such as the Economic Development Administration, Department of Commerce, which provides assistance for the development of public facilities and private enterprise to help create new, permanent jobs.

#### SUMMARY

Colony officials said that they had not prepared a formal plan for use of the submarginal and subsistence homestead lands. They said also that colony members might use the lands for agricultural purposes or independent business ventures if the lands were conveyed to the colony and that income derived by the colony from such lands would be used to make improvements on the lands and to pay the colony's operating expenses and certain educational expenses.

Because the colony does not have title to the lands and only has use of the lands under a relatively short-term revocable permit, we do not believe that it would be practicable for it to make substantial investments to develop the lands or to make significant improvements. Further, colony officials told us that, if the lands were conveyed to the colony, it would enable the colony to become eligible for financial assistance from certain Federal agencies.

Accordingly, we believe that conveyance of the lands to the colony could contribute to its social and economic advancement.

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  
Comptroller 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 Comptroller 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.

APPENDIX I

The Honorable Elmer B. Staats

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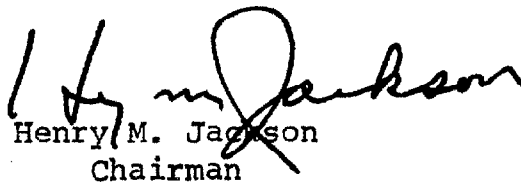
July 31, 1972

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

BEST DOCUMENT AVAILABLE