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



LM095794

**Information On Federally Owned  
Submarginal Land Within The  
Lower Brule Reservation  
In South Dakota** B-147652 B-147655

Bureau of Indian Affairs  
Department of the Interior

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

704508

FEB. 13, 1973



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

B-147652  
B-147655

C. R. Dear Mr. Chairman:

In accordance with your request of July 31, 1972, this is our report containing information on federally owned submarginal land on the Lower Brule Reservation in South Dakota. This report updates a section (pp. 108 to 115) 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). 6 37

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

Sincerely yours,

A handwritten signature in cursive script, reading "James B. Axtell".

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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## C o n t e n t s

	<u>Page</u>
DIGEST	1
CHAPTER	
1 INTRODUCTION	5
Lower Brule Reservation	5
Lower Brule Sioux Tribe	6
2 INFORMATION ON SUBMARGINAL LAND, TRIBAL LAND, AND TRIBAL FINANCIAL RESOURCES	8
Submarginal land	8
Improvements	8
Present use	9
Potential use	10
Planned use	10
Water resources	11
Mineral resources	11
Tribal land	12
Tribal financial resources	14
Summary	15
APPENDIX	
I Letter dated July 31, 1972, from the Chairman, Committee on Interior and Insular Affairs, United States Senate	17

## 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 LOWER  
BRULE RESERVATION IN SOUTH DAKOTA  
Bureau of Indian Affairs  
Department of the Interior  
B-147652, B-147655

D I G E S T

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 could contribute to their social and economic advancement.

FINDINGS AND CONCLUSIONS

There are 13,209 acres of federally owned submarginal land within the Lower Brule Reservation in South Dakota, which is inhabited by the Lower Brule Sioux Tribe. (See p. 5.)

BIA reported, in January 1971, that the submarginal land had an average value of about \$40 an acre and a total value of about \$550,000. BIA records showed that, during the 1930s, the Government paid about \$57,000 for 14,297 acres of submarginal land. Since that time the Corps of Engineers took 1,088 acres of the submarginal land for the construction of two reservoirs. (See p. 8.)

In 1962 GAO reported that improvements on the submarginal land consisted of two houses, two farm buildings, five dams, and fencing. In 1964 the construction of five additional dams was financed with Federal funds. In August 1972 the tribal chairman said that the houses were being used but that he and officials of BIA's agency and area offices did not know whether the other improvements still existed. (See p. 8.)

The tribe has free use of the submarginal land under a revocable permit issued by BIA. The current permit, effective November 1, 1964, is for an indefinite period. It allows subpermitting but prohibits the growing of price-supported crops in surplus supply and reserves all timber, water, and mineral rights for the Government. (See p. 9.)

Although the present permit allows free use of the submarginal land, BIA permits issued for various periods through October 1964 required the tribe to pay annual rent and, up to that time, the Government had collected about \$25,000 in rent. (See p. 9.)

GAO estimated that the tribe received about \$41,000 from subpermitting the submarginal land from 1967 through 1971. The tribe gives preference to Indians in subpermitting the submarginal land. In 1971 Indians used 11,950 acres and

non-Indians used the remaining 1,259 acres primarily for grazing and farming. (See p. 9.)

Department of Agriculture and agency office officials told GAO that generally the best use of the submarginal land was for grazing. However, Agriculture officials said that some of the land now used for grazing has potential for use as farmland, especially that which is capable of being irrigated. (See p. 10.)

A BIA official told GAO that the tribe had the right to use water from the reservoir formed by the Big Bend Dam, which was completed in 1963, to irrigate tribal land. The official said that he believed that the same water rights would apply to the submarginal land if it were conveyed to the tribe. (See p. 11.)

A 1963 report on a study by the Bureau of Mines, Department of the Interior, concluded that manganese ore deposits were the reservation's most promising mineral resource but that their extraction was not economically feasible. One of the coauthors of the study report confirmed that this conclusion still applied in August 1972. (See p. 11.)

The Government holds title, in trust for the tribe, to 69,507 acres of tribal land. The tribe also owns 5,415 acres in fee-simple title. All the land is within the reservation boundaries. (See p. 12.)

Tribal land was used primarily by Indians for grazing and farming during calendar year 1971. GAO estimated that the tribe earned about \$38,000 from agricultural leases and grazing permits on tribal land during fiscal year 1972. (See p. 12.)

Public Law 87-734, approved October 3, 1962, authorized the payment of about \$3.2 million to the tribe and its members in full settlement for land taken by the Corps of Engineers for construction of the Big Bend Dam and reservoir project. About \$2 million was for programs to improve the tribe's social and economic conditions. (See p. 13.)

From 1966 through 1970 the Department of Housing and Urban Development provided loans of about \$1.4 million to the tribe for the construction of 83 housing units on tribal land and seven housing units on individual Indian-owned land. The units were constructed under the Department's low-rent, mutual-help, and turnkey housing programs. In 1973, 30 additional housing units are planned for construction on tribal land. (See p. 13.)

The Public Health Service, Department of Health, Education, and Welfare, provided grants of \$169,000 to the tribe from 1968 through 1970 for community water and sewage facilities and for individual wells and septic tanks for 60 new homes. Also, in 1970 the Public Health Service provided a grant of \$41,000 to the tribe for wells and septic tanks for eight homes. (See p. 13.)

The tribe's balance sheet as of June 30, 1971, furnished by BIA but not verified by GAO, showed a net worth of about \$3.3 million. (See p. 14.)

As of November 1972 the tribe had three claims pending with the Indian Claims Commission. Two of the claims, involving the Lower Brule Sioux Tribe and other Sioux tribes, were for fair compensation for land ceded to the Government in 1868 and 1876. The other claim requested a proper accounting of all

funds held and expended by the Government on behalf of the tribe since July 1, 1925. No specific amounts have been established for these claims. (See p. 15.)

BIA and tribal officials told GAO that the tribe had not prepared a plan for specific use of the submarginal land if it were conveyed to the tribe but that the tribe probably would continue to use most of the land for grazing. (See p. 10.)

Tribal officials mentioned various potential benefits from conveyance

of the submarginal land to the tribe, including consolidation of tribal land; irrigation projects; and improvements, such as fencing, dams, and housing, which would then more likely be placed on the land. The chairman of the tribal council told GAO that the various benefits could provide about \$58,600 in annual income to the tribe and increased employment for tribal members. (See pp. 10 and 11.)

Accordingly, GAO believes that conveyance of the submarginal land to the tribe 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 on pages 108 to 115 in our August 1962 report on submarginal land administered by the Bureau of Indian Affairs (BIA), Department of the Interior.<sup>1</sup> The Chairman also requested our comments on how conveyance of the submarginal land to the Indian tribes could contribute to their social and economic advancement.

This report pertains to the 13,209 acres of federally owned submarginal land within the Lower Brule Reservation in central South Dakota, which is inhabited by the Lower Brule Sioux Tribe.

We reviewed 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 Lower Brule agency office in Lower Brule, South Dakota; and the tribe. We interviewed also the Department of Agriculture's district conservationist; a representative of the Agricultural Stabilization and Conservation Service in Kennebec, South Dakota; representatives of the Lyman County assessor's and treasurer's offices; and a professor of geological engineering from the South Dakota School of Mines and Technology, Rapid City, South Dakota.

### LOWER BRULE RESERVATION

The Lower Brule Reservation, located in Stanley and Lyman Counties in central South Dakota, was established by

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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). This report was submitted to the House and Senate Committees on Interior and Insular Affairs.

the act of April 30, 1888 (25 Stat. 94), which was largely superseded by the act of March 2, 1889 (25 Stat. 888). Under the 1889 act the Lower Brule Reservation consisted of about 446,500 acres. The acts of March 3, 1899 (30 Stat. 1362), and April 21, 1906 (34 Stat. 124), reduced the reservation area to its present 232,466 acres by restoring a portion of the reservation to the public domain.

As of June 30, 1972, the ownership status of the reservation land was as follows:

	<u>Acres</u>
Indian land:	
Allotted by the tribe to individual Indians	31,813
Tribal (title held by the Government in trust for the tribe)	69,507
Tribal (fee-simple title held by the tribe)	<u>5,415</u>
	<u>106,735</u>
Other land:	
Submarginal, Government owned	13,209
Corps of Engineers, Government owned	26,941
All other ownerships	<u>85,581</u>
	<u>125,731</u>
Total	<u><u>232,466</u></u>

#### LOWER BRULE SIOUX TRIBE

The Lower Brule Sioux Tribe was organized, pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), under a constitution and bylaws ratified by the tribe on October 5, 1935, and approved by the Secretary of the Interior on November 27, 1935. The tribe ratified its corporate charter on July 11, 1936. Its governing body is a tribal council of seven members elected for 2-year terms.

A BIA report dated March 1972 showed that 674 Indians, tribal members and nonmembers, lived on the Lower Brule Reservation and 27 Indians lived in areas adjacent to it. The report showed also that the Indian labor force totaled 152, of whom 35 were unemployed and 32 were temporarily

employed. According to an agency office official, total tribal membership, regardless of residence, was 994 as of August 10, 1972.

## CHAPTER 2

### INFORMATION ON SUBMARGINAL LAND, TRIBAL LAND, AND

#### TRIBAL FINANCIAL RESOURCES

##### SUBMARGINAL LAND

The 13,209 acres of submarginal land are in 50 widely scattered tracts, ranging from 25 to 960 acres, in Stanley and Lyman Counties within the reservation boundaries. The submarginal tracts are surrounded by land in various types of ownerships.

During the 1930s, the Government purchased 14,297 acres of submarginal land 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). BIA records showed that the Government paid \$56,989 for the land.

The 13,209 acres of submarginal land are less than the amount shown in our 1962 report because the Corps of Engineers took 1,088 acres for the Big Bend and Fort Randall reservoir projects. In January 1971 the agency office reported to the area office that the 13,209 acres of submarginal land had an average value of about \$40 an acre and a total value of about \$550,000.

Using BIA's valuation and information obtained from the Lyman County assessor, we estimate that, if the submarginal land were subject to real estate taxes, the calendar year 1971 taxes would have been about \$7,300.

##### Improvements

In 1962 we reported that improvements on the submarginal land having an estimated value of \$10,275, consisted of two houses, two farm buildings, five dams, and fencing. In 1964 the construction of five additional dams was financed with Federal funds.

In August 1972 the tribal chairman said that the houses were being used but that he and officials of BIA's agency and area offices did not know whether the other improvements still existed.

#### Present use

Since October 1964 the tribe has had free use of the 13,209 acres of submarginal land under revocable permits issued by BIA. The present permit, effective November 1, 1964, for an indefinite period, reserves for the Government all timber, water, and mineral rights, and the right to grant easements on the land for public purposes. It allows subpermitting but prohibits the growing of price-supported crops in surplus supply.

BIA permits issued for various periods through October 1964 required the tribe to pay annual rent for use of the submarginal land. In October 1964 the Acting Secretary of the Interior directed that charges to Indian tribes for use of submarginal land be discontinued. According to a report prepared by a consultant for the National Council on Indian Opportunity, the Government had collected about \$25,000 in rent up to that time.

BIA records show the following uses of submarginal land during calendar year 1971.

<u>Use</u>	<u>Acres</u>
Open grazing	12,476
Dry farming	671
Noncommercial timber	<u>62</u>
Total	<u>13,209</u>

BIA records show also that in 1971, under subpermits issued by the tribe, Indians used 11,950 acres and non-Indians used the remaining 1,259 acres. An area office official told us that the tribe gives preference to Indians in subpermitting the submarginal land.

We estimated that, from 1967 through 1971, the tribe received about \$41,000 from subpermitting the submarginal land.

These revenues, plus revenues from tribal land, were used to pay tribal operating expenses.

#### Potential use

Officials of the Department of Agriculture and the agency office told us that generally the best use of the submarginal land was for grazing. However, Agriculture officials said that some of the land now used for grazing has potential for use as farmland, especially that which is capable of being irrigated.

#### Planned use

BIA and tribal officials told us that the tribe had not prepared a plan for specific use of the submarginal land if it were conveyed to the tribe but that the tribe probably would continue to use most of the land for grazing.

Under the tribe's land management program, portions of the reservation are designated as consolidation areas. These areas are considered most advantageous and desirable for concentrating tribal land ownership to provide land units which can be managed and operated more economically. There are 10,727 acres of submarginal land located in these areas. An area office official said that the 2,482 acres of submarginal land located outside of the consolidation areas could be either exchanged for land within the consolidation areas or sold and the proceeds used for purchasing land within the consolidation areas.

Tribal officials mentioned various potential benefits from conveyance of the submarginal land to the tribe.

- Land consolidation to provide more economical operating units would result in increased tribal land value.
- About 500 acres of submarginal land feasible for irrigation would be included in planned irrigation projects.
- Improvements, such as fencing, dams, and housing, would then more likely be placed on the land.

--More profitable price-supported crops could be raised.

--The tribe could obtain Federal cost sharing for conservation practices, such as grassland improvement, reforestation of selected areas, and game habitat improvement.

--Commercial recreation could be developed.

The chairman of the tribal council told us that the various benefits could provide about \$58,600 in annual income to the tribe, full-time employment for five tribal members, and temporary employment for 18.

#### Water resources

A BIA official told us that the tribe has the right to use water from the reservoir formed by the Big Bend Dam, which was completed in 1963, to irrigate tribal land. The official said that he believed that the same water rights would apply to the submarginal land if it were conveyed to the tribe.

#### Mineral resources

A December 1963 report by the Bureau of Mines, Department of the Interior, on its study of the mineral resources on the lower Brule Reservation concluded that the reservation's most promising mineral resource was an estimated 3 million tons of manganese ore deposits. The report stated that, although it was technologically possible to extract this manganese and the associated iron, it was not then economically feasible to do so.

A South Dakota School of Mines and Technology professor who had coauthored the 1963 report told us in August 1972 that the facts, opinions, and conclusions, as stated in that report, were still current. He said that he did not foresee any commercial mining of manganese on the reservation within the next 30 to 50 years.

He said that test drilling for oil and gas within the proximity of the reservation had been discouraging. A 1970

mineral appraisal by the Geological Survey, Department of the Interior, stated that chances for discovery of oil and gas on the reservation were only fair.

The Bureau of Mines report estimated that deposits of sand and gravel on the reservation consisted of 164 million cubic yards but pointed out that their value depended on the demand in the immediate area and that no major demand was expected to exist in the foreseeable future.

#### TRIBAL LAND

The Government holds title, in trust for the tribe, to 69,507 acres of tribal land which is surrounded by land in various types of ownership. The tribe also owns 5,415 acres in fee-simple title which are subject to property taxes; in 1971 these taxes amounted to \$3,696. All the land is within the reservation boundaries. An area office official said that since 1962 the tribe has acquired land through trade, with tribal general funds, or with settlement funds received as compensation for land taken by the Corps of Engineers.

BIA's records showed the following uses of tribal land during calendar year 1971.

<u>Use</u>	<u>Acres</u>
Open grazing	71,541
Dry farming	2,502
Irrigation farming	333
Noncommercial timber	262
Idle	<u>225</u>
Total	<u>74,863<sup>a</sup></u>

<sup>a</sup>The tribe has acquired 59 acres of land since 1971, which increased its landholdings to 74,922 acres as of June 1972.

The records show also that, of the 74,638 acres in use during 1971, 65,440 acres were used by Indians and 9,198 acres were used by non-Indians. We estimated that, for fiscal year 1972, the tribe earned about \$38,000 from agricultural leases and grazing permits on tribal land.

Public Law 87-734, approved October 3, 1962, authorized the payment of about \$3.2 million to the tribe and its members in full settlement of all claims and rights arising from 14,299 acres of tribal and allotted land taken by the Corps of Engineers for construction of the Big Bend Dam and reservoir project. As part of the settlement, the tribe received about \$2 million to be used for programs that would improve its economic and social conditions. The tribe used these funds for such programs as family improvement, education, community development, industrial development, ranching, and land purchase.

Due to the inundation of the tribe's former townsite by the Big Bend Dam and reservoir project, the townsite was relocated about 1 mile from the original site. The Executive Director of the Lower Brule Housing Authority told us that from 1966 through 1970 the Department of Housing and Urban Development provided loans of about \$1,363,000 to the tribe for the construction of 83 housing units on tribal land and seven housing units on individual Indian-owned land. The units were constructed under the Department's low-rent, mutual-help, and turnkey housing programs. Also, 30 additional housing units are planned for construction on tribal land in 1973 under the Department of Housing and Urban Development's low-rent and mutual-help housing programs at a cost of about \$801,000.

The Public Health Service, Department of Health, Education, and Welfare, provided grants of \$169,000 to the tribe from 1968 through 1970 for community water and sewage facilities and for individual wells and septic tanks for 60 new homes. Also, in 1970 the Public Health Service provided a grant of \$41,000 to the tribe for wells and septic tanks for eight homes under the tribe's home improvement program.

Improvements made on the reservation since we issued our 1962 report include an administration building, a neighborhood facilities building, a health clinic, an elementary school, and a fairground. Also the tribe invested \$121,000 under its industrial development program for the construction of a building that was used from November 1969 to January 1972 for manufacturing mailbags and for an operating loan to an electronics firm.

In 1967 planning consultants employed under a \$19,800 Department of Housing and Urban Development grant completed a comprehensive report and plan on the Lower Brule Reservation. The report concluded that the reservation economy is basically a land economy with limited commercial and industrial activity; emphasis is placed on ranching but use of land for agricultural purposes will undoubtedly be intensified, especially irrigable land; and recreation may become increasingly significant in the future.

An agency office official told us that a reservation acceleration program, dated June 1972, was prepared cooperatively by the tribe and the agency office for fiscal year 1973. The objectives of this program are to facilitate involvement of the tribe in BIA's budgeting process for matters pertaining to the tribe; establish programs supporting tribal priorities; provide technical assistance; and formulate or implement development plans for mobilizing county, State, Federal, public, and private assistance programs. Under the program, the tribe proposed that funding from BIA and other agencies be increased from \$1 million in fiscal year 1972 to about \$2.9 million for fiscal year 1973 to finance tribal development programs.

#### TRIBAL FINANCIAL RESOURCES

The following table, based on a balance sheet, furnished by BIA but not verified by us, shows the financial condition of the tribe as of June 30, 1971.

Assets:	
Cash	\$ 531,847
Receivables	177,653
Land, buildings, and equipment	2,559,853
Livestock	21,189
Other assets	<u>85,204</u>
Total	3,375,746
Liabilities	<u>109,341</u>
Net worth	<u><u>\$3,266,405</u></u>

As of November 1972 the tribe had three claims pending with the Indian Claims Commission. Two of the claims, involving the Lower Brule Sioux Tribe and other Sioux tribes, were for fair compensation for land ceded to the Government in 1868 and 1876. The other claim requested a proper accounting of all funds held and expended by the Government on behalf of the tribe since July 1, 1925. No specific amounts have been established for these claims.

#### SUMMARY

BIA and tribal officials told us that the tribe had not prepared a plan for specific use of the submarginal land if it were conveyed to the tribe but that the tribe probably would continue to use most of the land for grazing.

Tribal officials mentioned various potential benefits from conveyance of the submarginal land to the tribe, including consolidation of tribal land; irrigation projects; and improvements, such as fencing, dams, and housing, which would then more likely be placed on the land. The chairman of the tribal business council told us that the various benefits could provide about \$58,600 in annual income to the tribe and increased employment for tribal members.

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

HENRY M. JACKSON, WASH., CHAIRMAN  
CLINTON P. ANDERSON, N. MEX.    GORDON ALLOTT, COLO.  
ALAN BIBLE, NEV.    LEN B. JORDAN, IDAHO  
FRANK CHURCH, IDAHO    PAUL J. FANNIN, ARIZ.  
FRANK E. MOSS, UTAH    CLIFFORD P. HANSEN, WYO.  
QUENTIN N. BURDICK, N. DAK.    MARK O. HATFIELD, OREG.  
GEORGE MC GOVERN, S. DAK.    HENRY BELLMON, OKLA.  
LEE METCALF, MONT.    JAMES L. BUCKLEY, N.Y.  
MIKE GRAVEL, ALASKA

JERRY T. VERKLER, STAFF DIRECTOR

## 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

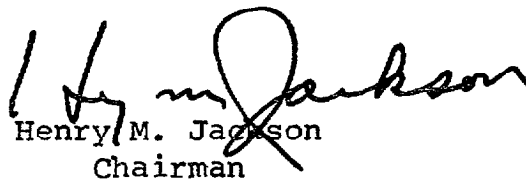
The Honorable Elmer B. Staats  
Page 2  
July 31, 1972

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