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

72-0109

Federally Owned Submarginal Land  
Within The Fort Totten Reservation  
In North Dakota Proposed To Be  
Held In Trust For The Devils Lake  
Sioux Tribe

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B-147652, B-147655

Bureau of Indian Affairs  
Department of the Interior

BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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089241

MARCH 24, 1972



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

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Dear Mr. Chairman:

In accordance with your request of April 1, 1971, and subsequent discussions with our representatives, this is our report on federally owned submarginal land on the Fort Totten Reservation in North Dakota, proposed to be held in trust for the Devils Lake Sioux Tribe. Our comments on Senate bill 1393, which would convey this land to the Indians, are being furnished separately.

The information in this report updates certain information contained in our 1962 report "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 begin updating the information on submarginal land proposed to be conveyed to other Indian tribes and groups as we obtain the comments of the Bureau of Indian Affairs on specific bills providing for such conveyances.

We plan to make no further distribution of this report unless 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,

Comptroller General  
of the United States

The Honorable Henry M. Jackson, Chairman  
Committee on Interior and Insular Affairs S. 01900  
United States Senate

## C o n t e n t s

	<u>Page</u>	
DIGEST	1	
CHAPTER		
1	INTRODUCTION AND SCOPE	3
	Fort Totten Indian Reservation	3
2	INFORMATION ON SUBMARGINAL AND TRIBAL LAND	5
	Submarginal land	5
	Tribal land	5
	Improvements to submarginal land	5
	Present and past uses of submarginal land	6
	Potential uses of submarginal land	7
	Planned uses of submarginal land and income derived therefrom	7
	Water and mineral resources	10
	Tribal financial and other resources	10
	Summary	11
APPENDIX		
I	Letter dated April 1, 1971, from the Chair- man, Senate Committee on Interior and Insular Affairs, U.S. Senate	13

### 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*

FEDERALLY OWNED SUBMARGINAL LAND  
WITHIN THE FORT TOTTEN RESERVATION  
IN NORTH DAKOTA PROPOSED TO BE  
HELD IN TRUST FOR THE  
DEVILS LAKE SIOUX TRIBE  
Bureau of Indian Affairs  
Department of the Interior  
B-147652, B-147655

D I G E S T

WHY THE REVIEW WAS MADE

Under proposed legislation 1,424 acres of submarginal land on the Fort Totten Reservation in North Dakota would be transferred to the Devils Lake Sioux Tribe with title to be held in trust by the U.S. Government.

The Chairman of the Senate Committee on Interior and Insular Affairs, in a letter dated April 1, 1971, requested the General Accounting Office to

- 1, 2 --provide the Committee with an updated version of its 1962 report on the review of proposed legislation for conveyance of submarginal land administered by the Bureau of Indian Affairs (BIA), Department of the Interior, to certain Indian tribes and groups and 6, 33
- examine into how conveyance of the land in question can contribute to the social and economic advancement of the Indian groups involved.

FINDINGS AND CONCLUSIONS

BIA estimates that the land, for which the Government paid \$11,869, had a market value of about \$78,000 in January 1971. (See p. 5.)

The only improvements on the land are 2 miles of multirow shelterbelt, three fourths of a mile of graded road, and 3 miles of barbed-wire fence. (See pp. 5 and 6.)

The tribe holds a revocable permit, issued by BIA in February 1965, which allows the use of the entire tract of submarginal land for an indefinite period. The permit prohibits the growing of price-supported crops in surplus supply on the land and reserves all timber, water, and mineral rights for the Government. (See p. 6.)

During the 5-year period ended June 30, 1971, revenues to the tribe averaged about \$725 annually from subpermittees who used the land for growing hay or as pasture. (See p. 6.)

The chairman of the Devils Lake Sioux Tribal Council indicated that, if the submarginal land was held in trust by the United States for the tribe,

the council would realize about \$7,200 annually from leases to farmers who would use about half of the land to grow price-supported crops.

This annual revenue would be about \$6,500 more than the tribe currently receives from subpermits. According to a production adjustment program specialist of the Department of Agriculture, the raising of price-supported crops, presently prohibited, could result in annual Federal farm subsidy payments of about \$5,300. (See pp. 11 and 12.)

The tribal chairman informed us that the tribe planned to use the additional income, combined with other anticipated income, to pay full-time salaries of one or two of its council members as well as to support certain social and recreational programs being considered by the tribe to serve the needs of its members.

## CHAPTER 1

### INTRODUCTION AND SCOPE

Pursuant to a request dated April 1, 1971, from the Chairman of the Senate Committee on Interior and Insular Affairs (see app. I) and to subsequent discussions with General Accounting Office (GAO) representatives, GAO has obtained information to update certain information contained in our August 1962 report on submarginal land administered by the Bureau of Indian Affairs.<sup>1</sup> That report was submitted to the House and Senate Committees on Interior and Insular Affairs.

Under proposed legislation 1,424 acres of submarginal land on the Fort Totten Reservation in North Dakota would be conveyed to the Devils Lake Sioux Tribe with title to be held in trust by the U.S. Government. This report updates the section (pp. 92 to 97) of our 1962 report which pertained to that land.

To obtain the updated information, we reviewed pertinent records and interviewed cognizant officials and representatives of BIA's Central Office in Washington, D.C.; BIA's Area Office in Aberdeen, South Dakota; BIA's Fort Totten Agency Office, North Dakota; and the Devils Lake Sioux Tribe. We also interviewed a production adjustment program specialist of the Agricultural Stabilization and Conservation Service, Department of Agriculture, to obtain his opinion on certain matters within his area of expertise.

#### FORT TOTTEN INDIAN RESERVATION

The Fort Totten Indian Reservation, located in Benson, Eddy, Nelson, and Ramsey Counties in northeastern North Dakota, was established on February 19, 1867, by a treaty (15 Stat. 505) between the U.S. Government and the Sisseton and Wahpeton bands of Sioux. The reservation is bounded on

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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).

the north by Devils Lake and on the south by the Sheyenne River. The area within the original reservation boundaries comprised 220,834 acres.

In accordance with the 1867 treaty and under authority of the General Allotment Act of February 8, 1887, as amended (24 Stat. 388), 129,504 acres were allotted to the Indians, and a small amount of land was reserved for BIA's administrative purposes. Pursuant to an agreement ratified on April 27, 1904 (33 Stat. 319), and to the Presidential proclamation of June 2, 1904, about 88,000 acres of unallotted reservation land were opened for settlement.

The Devils Lake Sioux Tribe which inhabits the reservation is an unincorporated tribe operating under a constitution and bylaws approved February 14, 1946, revised May 5, 1960, and amended June 17, 1969.

A statistical report prepared by BIA's Aberdeen Area Office on the basis of March 1971 labor-force data showed that 1,838 Indians lived within the reservation boundaries and that 150 additional Indians lived near the reservation.

The following table shows the ownership of the land within the original reservation boundaries as of June 30, 1971.

Land Ownership Status

	<u>Acres</u>
Indian land:	
Individual Indian allotments (trust)	47,758
Tribal (title held by the Government in trust for the tribe)	396
Tribal (fee-simple title held by the tribe)	<u>78</u>
	48,232
Other land:	
Submarginal land	1,424
Fort Totten Agency--administrative reserve of BIA	376
Sullys Hill Game Refuge--administered by Bureau of Sport Fisheries and Wildlife	1,674
All other ownerships	<u>169,128</u>
Total	<u><u>220,834</u></u>

## CHAPTER 2

### INFORMATION ON SUBMARGINAL AND TRIBAL LAND

#### SUBMARGINAL LAND

BIA's records showed that the 1,424 acres of submarginal land were in a single tract, were located in Benson County, and were within the original Fort Totten Reservation boundaries.

The submarginal land was acquired by the U.S. Government under the provisions of 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). According to BIA's records the Government paid \$11,869 for the submarginal land.

In September 1965 a BIA appraiser determined the value of the submarginal land to be about \$50,000. According to the Fort Totten Agency, the estimated value of the land as of January 1971 was \$78,000.

The Benson County auditor estimated that, if the 1,424 acres of submarginal land were subject to real estate taxes, the 1971 taxes would have been \$616.

#### TRIBAL LAND

The tribal land comprises five separate tracts; the tribe holds fee-simple title to two tracts amounting to 78 acres and the Government holds title, in trust for the tribe, to three tracts amounting to 396 acres. Of the 396 acres of tribal trust land, 276 acres, in two tracts, were donated to the tribe under the act of December 11, 1963 (77 Stat. 347). The 276 acres were purchased from the tribe by the Government in 1904 for \$3.25 an acre.

#### IMPROVEMENTS TO SUBMARGINAL LAND

The Fort Totten Agency's land operations officer told us in September 1971 that the only improvements on the land were 2 miles of multirow shelterbelt (trees planted in rows



to reduce soil erosion due to high winds), 3 miles of barbed-wire fence, and three fourths of a mile of graded road.

PRESENT AND PAST USES OF SUBMARGINAL LAND

In February 1965 BIA issued a revocable permit to the Devils Lake Sioux Tribe allowing the use of the entire tract of submarginal land for an indefinite period. The permit reserves all timber, water, and mineral rights for the Government and prohibits the growing of any price-supported crops in surplus supply on the land. During the past 5 years, the tribe has subpermitted the land to the extent shown in the following table.

	<u>1967</u>		<u>1968</u>		<u>1969</u>		<u>1970</u>		<u>1971</u>	
	<u>Num-ber</u>	<u>Acres</u>	<u>Num-ber</u>	<u>Acres</u>	<u>Num-ber</u>	<u>Acres</u>	<u>Num-ber</u>	<u>Acres</u>	<u>Num-ber</u>	<u>Acres</u>
Subpermitted to:										
Indians	3	392	3	322	5	598	4	513	2	285
Non-Indians	<u>1</u>	<u>120</u>	<u>1</u>	<u>120</u>	<u>1</u>	<u>120</u>	<u>1</u>	<u>120</u>	<u>1</u>	<u>120</u>
Total		512		442		718		633		405
Not subpermitted	-	<u>912</u>	-	<u>982</u>	-	<u>706</u>	-	<u>791</u>	-	<u>1,019</u>
Total	<u>4</u>	<u>1,424</u>	<u>4</u>	<u>1,424</u>	<u>6</u>	<u>1,424</u>	<u>5</u>	<u>1,424</u>	<u>3</u>	<u>1,424</u>

Under its policy for subpermitting submarginal land, the tribe gives priority to Indians by offering land to them at minimum rates before making it available to non-Indians.

The tribe received an average annual income of about \$725 from subpermitting submarginal land during the 5-year period ended June 30, 1971. The Fort Totten Agency's Administrative Officer informed us that the subpermit income was deposited in the U.S. Treasury and was used to help finance the tribal council's annual budget.

Benson County property tax records show that the non-Indian subpermittees are the only subpermittees who own land adjacent to the submarginal tract.

The uses made of subpermitted submarginal land during the period 1967 through 1971 are shown in the following table.

	<u>Acres</u>				
	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Type of use:					
Hay land	392	157	433	348	120
Pasture	120	285	285	285	285
Not in use	<u>912</u>	<u>982</u>	<u>706</u>	<u>791</u>	<u>1,019</u>
Total	<u>1,424</u>	<u>1,424</u>	<u>1,424</u>	<u>1,424</u>	<u>1,424</u>

#### POTENTIAL USES OF SUBMARGINAL LAND

An appraisal report prepared in September 1965 by the BIA appraiser, showed that, of the 1,424 acres of submarginal land, 400 acres could be classified as tillable land, 507 acres as hay land, and 517 acres as pasture. The Acting Superintendent of the Fort Totten Agency informed us that, because the BIA permit prohibited using the land to grow price-supported crops in surplus supply, the tribe had been unable to subpermit the 400 acres of tillable land at maximum rental rates.

The chairman of the Devils Lake Sioux Tribal Council informed us that the tribe, because it had only a temporary permit revocable at the Government's discretion, preferred not to subpermit the land for more than 1-year periods. We were informed also that (1) as a consequence of this condition, local farmers were unwilling to subpermit the land because at least a year would be needed to prepare the land for crop production and (2) the prohibition against raising price-supported crops in surplus supply further reduced the demand for the land.

#### PLANNED USES OF SUBMARGINAL LAND AND INCOME DERIVED THEREFROM

The tribal chairman stated that the tribe, if it acquired the submarginal land, would realize about \$7,200 annually by leasing the land to local farmers for various purposes, as shown below.

<u>Land use</u>	<u>Acres</u>	<u>Rate an acre</u>	<u>Estimated income</u>
Cropland	721	\$8	\$5,768
Hay land	238	2	476
Pasture land	465	2	<u>930</u>
Total			<u>\$7,174</u>

This annual income would be about \$6,500 more than the tribe has averaged from subpermits over the past 5 years.

A production adjustment program specialist of the Department of Agriculture estimated that the annual price-support payments on the 721 acres of cropland could amount to about \$5,300 on the basis of 1971 price-support rates and of the average yields for Benson County during the period 1968 through 1970. The estimate also was based on the further assumptions that the maximum allowable acreage of wheat would be produced and that barley, grain sorghum, and corn would be grown on the other cropland not in summer fallow.

The tribal chairman informed us that, to realize the estimated income, both the cropland and pasture land would have to be improved to make them suitable for their intended purposes. The chairman also told us that local prospective farm lessees were willing to donate labor and equipment to improve the land.

The Fort Totten Agency Superintendent and the tribal chairman have informed us that the tribal council has discussed the possibilities of paying full-time salaries to one or two of its council members and of continuing to pay the other council members on a meeting-attendance basis, the same basis on which all council members are paid presently.

They informed us also that the tribe was considering the development and operation of a juvenile control center and recreational facilities but that completion of these would depend on the amount of tribal income and when it was received. They also advised us that some assistance from the tribe would be needed for future operation of a family development center.

We were informed that the additional annual income from submarginal land leases, along with income from leasing office space, office equipment, a house trailer, two automobiles, and acreage which the tribe was in the process of acquiring, would be used to pay the cost of these programs.

## WATER AND MINERAL RESOURCES

The land operations officer, Fort Totten Agency Office, informed us that there were no water rights of significant value on the submarginal land.

A study of mineral resources, conducted on the Fort Totten Reservation in 1964 by the Bureau of Mines, indicated that there was some potential for petroleum production but that there were no sand and gravel or shale and clay deposits on the submarginal land. A report prepared in 1971 by the Fort Totten Agency Office, however, states that no known oil or gas or hard-rock minerals were on the submarginal land.

## TRIBAL FINANCIAL AND OTHER RESOURCES

As of June 30, 1971, the Devils Lake Sioux Tribe had cash assets totaling \$3,471. Of this amount, \$1,122 was in a U.S. Treasury account and was reserved for financing the tribe's annual budget and \$457 was in a commercial bank account and was reserved for paying expenses pertaining to a claim against the Government by the Mississippi Sioux Indians, of which the Devils Lake Sioux is a member tribe.

The 474 acres of tribal trust and fee land were valued at \$66,075, on the basis of appraisals and estimates supplied by the land operations officer of BIA's Fort Totten Agency Office. The tribe also owns a building which is located on tribal fee land and used as a family development center. The tribe has assigned a value of \$30,000 to the center building. In 1970 the Department of Health, Education, and Welfare furnished \$15,000 to convert a day school into the family development center. Office equipment had an assigned value of \$140.

Tribal assets as of June 30, 1971, were valued at \$99,686. Some major changes have occurred, however, in the tribe's asset holdings since June 30, 1971. A Catholic mission, located within the original reservation boundaries, gave the tribe various structures and personal property appraised at \$768,900 for insurance purposes. The tribe also received five school buses and a pickup truck, appraised by the tribe's finance officer at \$15,400.

The land on which the mission is located--about 1,000 acres--is being conveyed to the tribe. The tribe has leased about 600 of the 1,000 acres at \$8 an acre to an individual for the 1972 crop year. The possibility also exists that an additional \$500 to \$600 will be realized through rental of the remaining 400 acres of grassland.

The main tribal building, designed and paid for by BIA, was constructed in 1962 at a cost of \$33,150. The Chief of the Development Programs Branch, Fort Totten Agency Office, informed us that BIA planned to transfer ownership of the building to the tribe.

The tribe borrowed \$15,000 in July 1971 to purchase office equipment, a house trailer, and two automobiles. These are leased to the Office of Economic Opportunity for \$1,100 a month. Practically all of this income currently is applied toward payment of the \$15,000 note. After about September 1972, when the debt is expected to be paid, the monthly rental income--less any costs of keeping the office equipment, the house trailer, and the automobiles in operating condition until additional major expenditures are necessary to replace the office equipment and the automobiles--will become available to serve tribal needs.

The tribe's economic development administration specialist estimates that the tribe expects to begin receiving a net annual income of \$7,000 from leases of space in its community center, scheduled to be completed in November 1972. Construction of the center is being financed with grants from the Economic Development Administration and the Department of Housing and Urban Development. BIA and the Indian Health Service will lease office space in the center, and other space in the center will be rented to programs operating on the reservation, such as the Community Action Program and the Public Service Careers Program.

#### SUMMARY

The chairman of the Devils Lake Sioux Tribal Council has indicated that, if the submarginal land on the Fort Totten Reservation in North Dakota is declared to be held in trust by the United States for the tribe, the tribe would realize about \$7,200 annually by leasing the land to farmers

who would use about half of it to grow price-supported crops. This annual revenue would be about \$6,500 more than the tribe currently receives from subpermitting the land. A production adjustment program specialist of the Department of Agriculture estimated that the raising of price-supported crops could result in annual Federal farm subsidy payments of about \$5,300, which presently are not being paid on the land.

The tribal chairman has informed us that the additional submarginal land income, combined with anticipated income from other sources, would enable the tribe to pay the full-time salaries of one or two of its council members, as well as to support certain social and recreational programs being considered by the tribe to serve the needs of its members.

HENRY M. JACKSON, WASH., CHAIRMAN  
 LINTON P. ANDERSON, N. MEX.  
 LAN BIBLE, NEV.  
 BANK CHURCH, IDAHO  
 MARK E. MOSS, UTAH  
 N. BURDICK, N. DAK.  
 MCGOVERN, S. DAK.  
 METCALF, MONT.  
 GRAVEL, ALASKA

GORDON ALLOTT, COL.  
 LEN B. JORDAN, IDAHO  
 PAUL J. FANNIN, ARIZ.  
 CLIFFORD P. HANSEN, WYO.  
 MARK O. HATFIELD, OREG.  
 TED STEVENS, ALASKA  
 HENRY BELLMON, OKLA.

## United States Senate

COMMITTEE ON  
 INTERIOR AND INSULAR AFFAIRS  
 WASHINGTON, D.C. 20510

JERRY T. VERKLER, STAFF DIRECTOR

April 1, 1971

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

Dear Elmer:

This letter is in reference to 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.

Recently, Senator Gordon Allott, ranking minority member of the Committee, and I introduced two bills S. 1217 and S. 1230 to convey beneficial interest in submarginal lands to the Indians on the White Earth Reservation in Minnesota and the Stockbridge Munsee Indian Community in Wisconsin, respectively, with title to be held in trust by the United States Government. The bills were based on Executive Communications transmitted to the Congress by the Administration.

Hearings were held on the proposed legislation on March 26, 1971, with testimony being presented by Administration and tribal officials. The proposed legislation was discussed before the full Committee in executive session on March 31, 1971. At that time, Senator Allott moved that the two bills be tabled until such time as the Comptroller General could present the Committee with an updated revision of the 1962 report.

Please consider this letter an official request to have your staff begin an updating of the document in question. Also, you or representatives from your office may find it useful to discuss this matter with Mr. Jerry T. Verkler, Staff Director of the Committee.

In preparing for the revision, I believe it is important for you to give recognition to the fact that both



APPENDIX I

Honorable Elmer B. Staats

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April 1, 1971

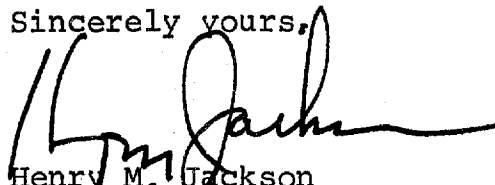
the Administration and Congress have, in a sense, repudiated the so-called "termination" policies of the 1950's. President Nixon's Indian Message to Congress of July 8, 1970, clearly states a policy of "Self-Determination, without Termination." Also, during the past Congress, a number of concurrent resolutions repudiating termination as a policy in the Indian field were introduced in both Houses of Congress. The multi-agency involvement in Indian affairs with identifiable Federal expenditures in excess of \$625 million in the 1971 fiscal year is further evidence that we view development of the human and natural resources of our Indian citizens as a more realistic approach to this complex problem.

I am hopeful that the updating of your 1962 Report on Submarginal Lands will be undertaken within the more positive climate of Indian affairs today, and that your staff will examine closely how the conveyance of the lands in question to Indian tribes can contribute to their social and economic advancement.

Enclosed are copies of S. 1217 and S. 1230 currently pending before our Committee. Will you please review these bills now and submit an immediate report to the Committee on them to expedite our consideration of this legislation.

With every good wish,

Sincerely yours,



Henry M. Jackson  
Chairman

HMJ:fgr  
Enclosures

GAO note: Copies of S. 1217 and S. 1230 have not been reproduced herein. The requested report on these bills was submitted to the Committee on October 18, 1971.