Land Management Activities On Three Indian Reservations In South Dakota Can Be Improved

Bureau of Indian Affairs

Department of the Interior

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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JUNE 4, 1975

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

B-114868

The Honorable George McGovern
United States Senate

Dear Senator McGovern:

Pursuant to your request of April 3, 1973, we examined the effectiveness of the manner with which the Bureau of Indian Affairs carried out its land management responsibilities at the Rosebud, Pine Ridge, and Cheyenne River Indian Reservations in South Dakota.

We have obtained comments from the Department of the Interior on the matters discussed in the report. We have also obtained comments from the Cheyenne River Sioux Tribal Council on the reservation grazing situation. The Department's and the tribal council's comments are included where appropriate.

We do not plan to distribute this report further unless you agree or publicly announce its contents. We invite your attention to the fact that this report contains recommendations to the Secretary of the Interior which are set forth on pages 11, 17 and 23. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. Your release of this report will enable us to send the report to the Secretary and the four committees for the purpose of setting in motion the requirements of section 236.

Sincerely yours,

Comptroller General
of the United States

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ABBREVIATIONS

ASCS	Agricultural Stabilization and Conservation Service
BIA	Bureau of Indian Affairs
GAO	General Accounting Office
SCS	Soil Conservation Service

COMPTROLLER GENERAL'S
REPORT TO
THE HONORABLE
GEORGE McGOVERN
UNITED STATES SENATE

LAND MANAGEMENT ACTIVITIES ON THREE INDIAN RESERVATIONS IN SOUTH DAKOTA CAN BE IMPROVED

Bureau of Indian Affairs
Department of the Interior

D I G E S T

WHY THE REVIEW WAS MADE

Senator George McGovern asked GAO to review the effectiveness of the manner in which the Bureau of Indian Affairs carried out its land management activities at Rosebud, Pine Ridge, and Cheyenne River Indian Reservations in South Dakota.

To fulfill its trust responsibilities, the Bureau's land management objectives are to (1) generate, from the land, the greatest income for Indian owners, (2) manage the land for its best use and enjoyment by its owners, and (3) perform necessary legal, economic, and technical services required for its management.

FINDINGS AND CONCLUSIONS

The Bureau of Indian Affairs administers the Government's Indian trust responsibilities; however, these responsibilities have not been clearly defined in treaties, legislation, or administrative actions. (See p. 2.)

Specific duties and responsibilities of Indian tribes, groups, and individuals under the program of Indian self-determination, whereby Indians administer their own affairs, have not been defined. It has never been determined where trust responsibilities end and Indian self-determination begins. This situation has led to conflicts between the Bureau and the Indians. (See p. 2.)

Issuance of grazing permits

Federal regulations require that the Bureau administer grazing privileges on Indian land in a manner which will yield the highest returns for the landowners consistent with sustained yield land management principles and the fulfillment of the rights and objectives of tribal governing bodies and individual Indians.

At the three reservations the Bureau studied the carrying capacity of range units and the market value of grazing permits. At the Pine Ridge and Rosebud Reservations, carrying capacities and grazing fees were established in accordance with

the results of the studies. (See pp. 5 and 6.)

At the Cheyenne River Reservation, however, results of the studies were not followed. In response to the Cheyenne River Sioux Tribal Council recommendations, a carrying capacity equal to 115 percent of Bureau-established range carrying capacity and grazing fees less than the Bureau fair market value were recommended by the tribal council and approved by the Bureau, for the last two 5-year grazing periods. GAO believes that this situation demonstrates the conflict between the Bureau's trust responsibilities and Indian self-determination. (See pp. 5 to 8.)

GAO estimates that income to individual Indians for privately owned land and to the tribe for tribal owned land, which benefits all members of the tribe, would have been or would be increased by the amounts shown below if the lands had been leased at the fair market value rate determined by the Bureau. (See pp. 6, 7, and 8.)

	Private	Tribal
5-year period ended Oct. 1973	$391,000	$3,727,000
5-year period ending Oct. 1978	$137,000	$2,910,000

In response to GAO inquiries, the acting Deputy Commissioner of Indian Affairs said the Bureau recognized that approved grazing rates at Cheyenne River were below market value. He was confident this subject would receive attention in the future with rates gradually increasing to reflect fair market value. (See p. 8.)

The Bureau has a trust responsibility to insure that Indians obtain the highest return for their lands and to administer grazing privileges in a manner consistent with sustained yield management principles. All tribal members, not only cattle operators, have an interest in tribal lands.

GAO also found that the Bureau had not made the required range inspections and livestock counts at the three reservations. To determine if reservation lands had been overgrazed, GAO visited selected range units and was accompanied on the visits by technicians from one or more of the following organizations: the Soil Conservation Service and the Agricultural Stabilization and Conservation Service, Department of Agriculture, and the Bureau of Indian Affairs. (See p. 8.)

Technicians found the land to be in fair to excellent condition with no indication

of deterioration due to livestock overgrazing. Soil Conservation Service technicians said deterioration would probably not occur if the range was 15 percent overstocked unless overstocking continued for several years and was coupled with a prolonged decrease in annual rainfall. (See p. 8.)

GAO observed that these reservations had recently experienced a severe drought. This, combined with overgrazing, could result in land deterioration. To avoid such deterioration, the Bureau should make the required inspections and livestock counts.

Sale of Indian trust land

Federal regulations prohibit the sale, exchange, or donation of title to Indian trust land, whether individually or tribally owned, without approval of the Secretary of the Interior. Regulations provide that, in approving such sales, the Bureau make certain that the sale is in the long-range best interest of the owner.

Statements that sales were in the long-range best interest of the sellers were not prepared, although required by Bureau instructions, for 21 of 52 (40 percent) sales reviewed. For the remaining 31 sales, statements were prepared but they did not state the factors or the reasons considered by the Bureau in approving them. (See p. 13.)

The Bureau area director said he believed the Bureau could refuse sales requests only in cases where it could legally defend its action. (See p. 14.) The acting Deputy Commissioner of Indian Affairs said the term "long-range best interest" had never been specifically defined because the factors and criteria considered in each case were unique and applicable to the particular individual. (See p. 15.)

Because the Bureau's regulations concerning long-range best interest are vague and because conflict between trust responsibilities and Indian self-determination also affects the sale of Indian trust lands, Bureau officials have avoided disapproving the sale of these lands. (See p. 15.)

Bureau policy states that fair market value is to be obtained for the land to be sold, that sellers are to be advised that mineral rights may be reserved and that the tribe is notified of pending sales of land owned by individual Indians so that it may have an opportunity to purchase it. (See p. 13.)

GAO found the land had been appraised by the Bureau as required by applicable regulations. In all but three cases, sales prices were

equal to or exceeded appraised values. For the three cases, the land involved was advertised for sale and the owners agreed to accept the highest bid. (See p. 15.)

GAO, however, found no written evidence that the Bureau had fully advised Indian land sellers that mineral rights in their land might be reserved. (See p. 15.)

The Bureau also did not provide written notices of proposed land sales to the applicable tribe in 14 of the 52 sales reviewed. Tribes were provided with oral notifications for these 14 sales, but tribal officials at two reservations did not believe oral notification was proper to insure that tribal interests were protected. Officials of one tribe said they would have been interested in acquiring the land offered for sale. (See p. 16.)

Purchase of land for Indian reservations

Land purchase transactions are not separately covered by Federal regulations and Bureau instructions. However, since each land purchase by a tribe may also involve a sale by an individual Indian, regulations related to the sale of individually owned Indian land have some applicability to purchases of land by Indian tribes. Fifteen of the 52 sales of Indian trust lands reviewed were made to tribes.

The land involved in the 15 sales to the tribes had been appraised by Bureau appraisers using generally accepted appraisal methods. As required by applicable regulations, the sale price of the land in all 15 cases was equal to the appraised value. (See p. 18.)

Leasing of Indian land for mining and other purposes

There are no oil or gas leases on the Rosebud and Pine Ridge Reservations. GAO reviewed 29 of the 30 oil and gas leases at the Cheyenne River Reservation during fiscal year 1973. All 29 leases had been awarded in accordance with applicable regulations and procedures.

The Bureau's administration of oil and gas leases on the Cheyenne River Reservation has resulted in landowners' receiving a fair annual return for their land. (See pp. 19 and 20.)

Rates received for sand and gravel leases at the three reservations were comparable to prices paid by the State highway department, the largest user of sand and gravel in the State. (See pp. 20 and 21.)

The Bureau was unable to furnish GAO with its basis for using various data for

determining the reasonableness of farm and pasture lease rates at these reservations. Data on private leases was not available for comparison with Indian leases. However, Soil Conservation and Agricultural Service officials believed Indian lease rates for such lands were reasonable. (See pp. 21 to 23.)

Issuance of right-of-way grants

GAO examined 5 of the 14 right-of-way grants issued for highways and 1 dam during fiscal years 1972 and 1973. Fees charged for these grants were equal to the appraised value of the easement granted and each agreement contained appropriate provisions to protect the lessees' land and rights. (See p. 24.)

RECOMMENDATIONS

GAO recommends that the Secretary of the Interior direct the Bureau to:

--Resolve the conflict between interpretations of the Bureau's trust responsibility and Indian self-determination by directing that a Bureau study group developing a definition of Indian self-determination for all Federal agencies define the Bureau's responsibilities and determine whether this definition can be applied administratively or whether legislative action is needed by the Congress. (See p. 11.)

--Make the required range inspections and livestock counts to avoid possible deterioration of range lands. (See p. 11.)

--Determine what factors should be considered by Bureau officials in determining if a proposed land sale is in the long-range best interest of an Indian owner and provide examples of situations where the presence of such factors, either alone or combined with other factors, would raise questions as to the advisability of the proposed sale. (See p. 17.)

--Provide written notices to Indian owners that mineral rights in land to be sold may be reserved and provide written notices of proposed sales of Indian trust lands to applicable tribes. (See p. 17.)

--Review its basis for determining the reasonableness of rates for farm and pasture leases and to include specific documentation in the files to explain and justify the criterion used. (See p. 23.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

In commenting on this report

(see app. II), the Department of the Interior agreed that:

--The Government's trust responsibilities are not clearly defined and that conflicts arise between interpretations of trust responsibility and the program of Indian self-determination. (See p. 12.)

--Indian owners should have been provided with written notices that mineral rights in land to be sold may be reserved and that Indian tribes should have been provided with written notices of proposed sales of Indian trust land. (See p. 18.)

The Department said action was being taken or would be taken on these matters.

The Department did not agree that the Cheyenne River grazing situation shows a conflict between trust responsibility and self-determination. It also stated that the excess grazing capacity authorized has not resulted in deterioration of the rangeland. (See p. 12.)

It did not believe that the Bureau's land sales regulations concerning long-range best interest needed further clarification (see p. 17) or that the Bureau needed to review its bases for determining reasonableness of farm and pasture lease rates. (See p. 23.)

GAO continues to believe its findings and conclusions are valid concerning

--the grazing situation at the Cheyenne River Reservation (see p. 12),

--the potential for deterioration of rangeland if overutilization continues (see p. 13),

--the vagueness of the Bureau's land sales regulations on long-range best interest of Indian landowners (see p. 18), and

--the need for a review of the reasonableness of farm and pasture lease rates (see p. 23).

CHAPTER 1

INTRODUCTION

Pursuant to a request dated April 3, 1973, from Senator George McGovern (see app. I), we examined the effectiveness of the manner in which the Bureau of Indian Affairs (BIA), Department of the Interior, carried out its land management responsibilities at the Rosebud, Pine Ridge, and Cheyenne River Indian Reservations in South Dakota. Our review was specifically directed to

--the issuance of grazing permits,

--the sale of Indian trust lands,

--the purchase of land for Indian reservations,

--the leasing of Indian lands for mining and other purposes, and

--the issuance of right-of-way grants.

We reviewed appropriate regulations; selected samples of sale, lease, and permit transactions; and interviewed representatives and officials of BIA and the three Indian tribes. We also interviewed and obtained information from officials of other Federal, State, and local government agencies and members of the three Indian tribes. Our review was conducted at BIA headquarters, Washington, D.C.; the BIA area office in Aberdeen, South Dakota; and BIA reservation agency offices at Pine Ridge, Rosebud, and Eagle Butte, South Dakota.

As of June 30, 1973, the size of the three reservations, by type of land ownership, and the number of tribal members living on or near the reservations are shown below.

Size of reservation (acres)	Reservation		
	Pine Ridge	Rosebud	Cheyenne River
Indian owned:			
Tribe	432,290	439,896	915,815
Individual	1,151,178	493,640	485,169
Total	1,583,468	933,536	1,400,984
Non-Indian privately owned	1,117,350	2,367,168	1,399,573
Government owned	87,285	28,797	3,914
Total	2,788,103	3,329,501	2,804,471
Population	11,478	7,538	4,335

More current statistical data for the three reservations was not available.

CONFLICT BETWEEN TRUST RESPONSIBILITIES AND SELF-DETERMINATION

The Government's responsibilities for managing Indian affairs resulted from treaties between it and various Indian tribes. BIA is charged with administering the Government's Indian affairs trust responsibilities; however, these responsibilities have not been clearly defined in treaties, legislation, or administrative actions. Furthermore, BIA officials stated that court decisions had dealt only with whether a trust responsibility existed in a given situation, not with providing a definition of these responsibilities. They said they often had difficulty determining specific trust responsibilities in given situations.

Thus, the Government's trust responsibilities are often extremely vague and are often subject to individual interpretations. This matter is further complicated by the program of Indian self-determination.

For many years, Indian-governing bodies and individual Indians have said that they have had little control over their destinies because BIA has planned, conducted, and administered programs designed to benefit them. These groups and individuals have also pointed out the need for an Indian self-determination program whereby they would plan, conduct, and administer the programs.

As a result of Indian demands, in July 1970, the President announced such a program. However, the specific

duties and responsibilities of the tribes, groups, and individuals have not been defined and it has never been specifically determined where trust responsibilities end and Indian self-determination begins. This situation has led to conflicts between BIA and the Indians and has resulted in charges that BIA has abrogated its trust responsibilities.

We discussed this conflict with the special Assistant to the Secretary for Indian Affairs. He agreed that there was uncertainty concerning where BIA's trust responsibilities end and Indian self-determination begins. He said that in many aspects the two concepts were directly opposed.

CHAPTER 2

LAND MANAGEMENT ACTIVITIES

To fulfill its trust responsibilities, BIA's land management objectives are to (1) generate from the land the greatest income for Indian owners, (2) manage the land for its best use and enjoyment by its owners, and (3) perform necessary legal, economic and technical services required for its management.

We reviewed BIA's activities relating to the issuance of grazing permits, the sale and purchase of Indian land, the leasing of land for mining and other purposes, and the issuance of right-of-way grants.

ISSUANCE OF GRAZING PERMITS

The Code of Federal Regulations (25 CFR 151) requires that BIA administer grazing privileges on Indian land in a manner which will yield the highest returns for the landowners consistent with sustained yield land management principles and fulfillment of rights and objectives of tribal governing bodies and individual Indians. The CFR also provides for land to be divided into range units to allow proper conservation and effective use of the resources, and for BIA to determine the maximum number of livestock which can be grazed on each unit and the market value of the grazing privileges. The CFR states that grazing fees will be established as follows:

--Tribal-governing bodies will set the grazing rates on tribal-owned land.

--BIA shall establish a reservation minimum acceptable rate which shall apply to all grazing privileges on (1) individually owned lands, (2) non-Indian-owned livestock authorized to graze on tribal lands, and (3) tribal lands when the tribal-governing body fails to establish a rate.

--Individual landowners may stipulate a rate above the reservation minimum set by BIA or a lower rate than the reservation minimum when the privileges are granted to a member of the landowner's immediate family.

The CFR further states that all grazing use permits on range units containing trust lands which are entirely tribally owned or are in combination with Government land may

be issued by tribal-governing bodies, subject to approval by BIA. The CFR provides that, for range units containing trust land which is entirely individually owned or is in combination with tribal and/or Government lands, BIA shall issue the grazing use permits.

To provide the individual landowner with the option of stipulating the rate for his land, BIA sends each landowner a letter stating the BIA-established minimum rate for the land. The letter states that any landowner desiring to stipulate a higher rate for his land must return an attached form, completed, showing the desired rate, otherwise the BIA-established minimum rate will be charged.

To determine if BIA effectively discharged its responsibilities for the administration of grazing activities, we selected, on a random sampling basis, the files of 42 of the 839 range units at the three reservations for review. We found that at each of these reservations BIA had made the required studies to determine the carrying capacity of the range units and the market value of grazing permits.

The carrying capacity of the range units at the three reservations was determined by BIA based on soil and range inventory studies prepared in cooperation with the Bureau of Reclamation, Department of the Interior; the Soil Conservation Service (SCS), Department of Agriculture; and the South Dakota State University. The studies are periodically updated to show current range conditions, improvements made to the land, and improved range management practices. The market value of grazing permits was established by BIA based on studies of the grazing rates charged for comparable non-Indian lands located near the reservations. The grazing rate studies were made for the reservations at various times and were updated to show current conditions through the use of a farm real estate market developments study made by the Department of Agriculture.

At the Pine Ridge and Rosebud Reservations, carry capacities and grazing fees were established in accordance with the results of the BIA studies. At the Cheyenne River Reservation, however, recommendations from the BIA studies were not followed and a carrying capacity equal to 115 percent of the BIA-established range carrying capacity and grazing fees less than the BIA-established fair market value were recommended by the Cheyenne River Sioux Tribal Council and approved by BIA for two 5-year grazing

periods--from November 1968 to October 1973 and from November 1973 to October 1978.

During 1968 BIA conducted studies of the carrying capacity of the range units and the market value of grazing permits at the Cheyenne River Reservation. On the basis of these studies, BIA established a carrying capacity for the reservation range units and established a fair market value of grazing privileges at $33 per year per animal unit. 1/ In May 1968 BIA sent a letter to each landowner stating that $33 was the fair market value established by its study but that the owner could stipulate a higher rate by so marking an attached form and returning it to BIA. However, on November 8, 1968, the tribal council enacted a resolution which (1) recommended a 15-percent increase in the carrying capacity for each range unit, (2) set the grazing rate on tribal-owned land at $6.50 per year per animal unit, and (3) recommended a rate for grazing on individually owned land of $20.60 per year per animal unit.

The tribal resolution was forwarded by the BIA Superintendent through the area Director, with recommendations for approval, to the Commissioner of Indian Affairs. As justification for reducing the grazing rate, the Superintendent stated that existing circumstances on the reservation warranted consideration of a reduction from a fully competitive price. The circumstances cited were limited water, inadequate fencing, lack of consolidated lands, and limited guarantee of continuing grazing privileges. On December 6, 1968, the Commissioner gave the area Director authority to approve the resolution, and on December 11, 1968, the area Director notified the tribal council through the BIA Superintendent that the resolution was approved.

On December 12, 1968, the BIA Superintendent notified each Indian landowner of the tribal resolution recommending a maximum grazing rate of $20.60 per year per animal unit. Each landowner was advised of his right to stipulate a higher rate for his land by so indicating on an attached form and returning it to BIA.

On the basis of a BIA computer printout dated December 15, 1972, showing the annual rental payments to landowners not stipulating a higher rate, we estimate that

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1/Defined as the grazing area for one cow or five sheep.

individual Indian landowners would have received, for the 5-year period ended October 1973, $391,000 more for their land if it had been leased at the BIA-determined fair market value rate. Using the same basis, we estimate that income for the tribal-owned land, benefiting all individual members of the tribe, would have amounted to $3,727,000 more.

For the 5-year period November 1973 to October 1978, BIA again approved a grazing program for the Cheyenne River Reservation rangeland equal to 115 percent of the established carrying capacity. Local BIA officials refused, however, to grant the tribal council's request for a grazing rate of $28 on land owned by individual Indians because its study had established the fair market value of the grazing privileges at $35. The tribal council felt that the higher rate on individually owned Indian land would be inconsiderate to the welfare of the entire tribe because 160 of the 257 Indian cattle owners on the reservation were financed by the tribe. It also pointed out that 132 of the Indian cattle owners had less than 150 animals and could not compete with larger operators if there was an increase in grazing fees unless they had additional employment. The tribal council had set a rate of $14.50 per year on tribal land.

On October 3, 1973, the BIA Superintendent notified the Indian landowners that the grazing-rate fair market value was $35 per year and that this rate would be received for the next 5-year period unless they desired to stipulate a higher rate.

BIA area office officials upheld the local BIA officials' action on the basis of BIA's trust responsibility requiring it to obtain a fair market rental price for the landowners. They suggested that the tribal council consider some method of subsidy using tribal funds, either from fees obtained from tribal land or other sources, instead of charging subsidation against member landowners to aid operators experiencing financial difficulty. After the tribal council protested to the Commissioner of Indian Affairs, however, the fees for grazing privileges on individually owned Indian land were reduced to $28 per year. This was done because the tribal council felt that the higher BIA-established rate would bring economic hardship to the Indian ranchers. Also, the President's message on Indian self-determination required BIA to give more attention to wishes of tribal governing bodies. Consequently, in March 1974, the BIA Superintendent notified the landowners that the grazing rate during the next 5-year period would be

$28 instead of $35 unless the landowner desired to stipulate a higher rate.

On the basis of a BIA computer printout dated July 9, 1974, showing the annual rental payments to landowners not stipulating a higher rate, we estimate that individual Indian landowners would receive for the 5-year period ending October 1978, $137,000 more for their land if it had been leased at the BIA-determined fair market value rate. We estimate that income from the tribal-owned land would amount to $2,910,000 more.

In response to our inquiries, the acting Deputy Commissioner of Indian Affairs said the 15-percent increase in carrying capacity of range units at Cheyenne River was authorized with the hope that such action would materially aid the tribe's future administration and management of the range resource and would assist Indian self-determination.

He said BIA recognized that approved grazing rates at Cheyenne River were below market value. He was confident that this subject would receive attention in the future with rates gradually increasing to show fair market value.

In order to insure that too many livestock are not being grazed on a range unit, BIA is required to inspect each range unit and to count the livestock at least once a year. The annual inspections of range units and livestock counts had not been made during 1973 for the 15 range units we reviewed at the Cheyenne River Reservation and for the 17 range units we reviewed at the Pine Ridge Reservation. The required inspections and counts had been made for 5 of the 10 range units we reviewed at the Rosebud Reservation. BIA officials at the Cheyenne River Reservation said that the required inspections and livestock counts had not been made for several years because of personnel shortages. The acting Deputy Assistant Commissioner of Indian Affairs said that for several years funding and manpower for range program needs had been inadequate.

To determine if reservation lands had been overgrazed, we selected and visited 9 of the 42 range units reviewed, 2 at Rosebud, 3 at Pine Ridge, and 4 at Cheyenne River. We were accompanied by technicians from one or more of the SCS and the Agricultural Stabilization and Conservation Service (ASCS), Department of Agriculture, and BIA. The range units visited were selected because they could be reached by SCS and ASCS representatives with a minimum amount of travel. SCS, ASCS, and BIA technicians found

the land in fair to excellent condition with no indication of deterioration due to overgrazing of livestock. The technicians explained that several years of continued overstocking would be required before range destruction occurred. SCS technicians said that deterioration of range land would probably not occur if the range was 15 percent overstocked unless the overstocking continued for a long period of time coupled with a prolonged decrease in annual rainfall.

Although SCS, ASCS, and BIA technicians found no indication of range deterioration because of livestock overgrazing, we observed that the reservations had recently experienced a severe drought which, combined with range overgrazing, could cause land deterioration.

Tribal council comments

We discussed the grazing situation at the Cheyenne River Reservation with 16 of the 18 members of the tribal council at a council meeting in December 1974. The tribal council had been elected in September 1974. Some of the members had served on previous tribal councils.

The tribal council stated that the procedures BIA followed for establishing the fair market value of grazing privileges were not proper because (1) BIA rate determinations were based on a short grazing period, whereas Indian permittees must program the use of the range over a 12-month period, (2) BIA did not give enough consideration to the lack of improvements on Indian lands, such as stock-watering facilities and crossover fences, and (3) grazing permits on allotted lands could be revoked by the landowners and did not provide enough protection to allow permittees to recover the cost of needed improvements.

The council stated also that the rates established by BIA were too high to allow many small Indian cattle operators to successfully compete. It pointed out that the reservation's entire economy is based on livestock industry and that low grazing rates were necessary to maintain this economy. The council believes that, if grazing privileges were awarded on a bid basis, it might be possible that higher grazing rates would be obtained but that the permittees would be non-Indian and large Indian operators.

The tribal council believes that BIA should establish flexible grazing rates that would be adjusted yearly to compensate for market and weather conditions. It stated

that many of the Indian operators were on the verge of bankruptcy because of a drought in 1974 and the drop in cattle prices. The council also believes that the letters sent to Indian landowners advising them of the value of grazing privileges and the requesting of permission to include land in grazing units are very poorly written. It feels that landowners, especially senior citizens, do not understand and are not fully aware of their contents when they sign them.

With respect to the BIA-established range carrying capacities, the tribal council said the 15-percent increase really did not result in an increase in excess of the carrying capacity of the range land. The council further stated that the Indian people respect their land and have never overused it. It said a comparison of Indian land and non-Indian land adjacent to the reservation would clearly show that the Indian land was in better condition and has received proper use. The council believes that BIA should be required to inspect rangeland each year and to adjust the carrying capacities according to the current conditions.

Although we did not make a detailed review of BIA's grazing rate studies at the Cheyenne River Reservation, the procedures they used appeared reasonable. The rate determinations were made on the basis of a 12-month grazing period. The rates were adjusted downward to show the lack of improvements on Indian lands. We agree that the livestock industry is an important factor in the economy of the Cheyenne River Reservation and that higher grazing rates could affect the competitive ability of small Indian cattle operators. We believe, however, that BIA has a responsibility to obtain a fair market rental for Indian landowners and not to require individual landowners and nonranching tribal members to subsidize Indian ranchers. We agree that the letters sent to Indian landowners advising them of the value of grazing privileges and requesting permission to include their land in grazing units may have been confusing, especially when two rate notifications, with different rates, were sent to the landowners within a short period.

We agree that the 15-percent increase in BIA-established range carrying capacities did not result in land overgrazing. If, however, the Indian land is in better condition than non-Indian land adjacent to the reservation, it would seem that higher fees should be charged for such land. BIA should inspect the range land each year as required by its regulations.

Conclusions

BIA approved grazing permits for tribally owned land and individual Indian-owned lands at the Cheyenne River Reservation which contained grazing fee rates for less than the BIA-established fair market value. As a result, the tribe and individual Indian landowners would have received about $3.7 million and $391,000 more, respectively, in revenues during the 5-year period ended October 1973 had the land been leased at the BIA-established fair market value rate. On the same basis, the tribe and individual Indian landowners would receive about $2.9 million and $137,000 more, respectively, during the 5-year period ending October 1978. BIA approved the lower grazing fees, which were developed by the tribal council, in the interest of furthering the objective of Indian self-determination.

As discussed in chapter 1 of this report, there is much uncertainty about where BIA's trust responsibilities end and Indian self-determination begins. The grazing fee situation at the Cheyenne River Reservation demonstrates that these two concepts are directly opposed.

BIA has not made required range inspections and livestock counts at the three reservations. Although the reservations' lands have not been overgrazed, the land deterioration potential is great if overgrazing occurs for several years and is coupled with a prolonged decrease in annual rainfall as occurred in 1974.

Recommendations

We recommend that the Secretary of the Interior direct the Bureau to resolve the conflict between interpretations of BIA's trust responsibilities and Indian self-determination by directing that a study group developing a definition of Indian self-determination for all Federal agencies define BIA's trust responsibilities and determine whether this definition can be applied administratively or whether legislative action is needed by the Congress.

We recommend also that the Secretary of the Interior direct BIA to make the required range inspections and livestock counts to avoid possible rangeland deterioration.

Agency comments and our evaluation

In its comments dated January 8, 1975 (see app. II), the Department agreed that the Government's trust responsibilities are not clearly defined and that conflicts arise between interpretations of trust responsibilities and the program of encouraging Indian self-determination. The Department anticipates that the BIA study group developing a programmatic definition of self-determination will also develop a more precise definition of trust responsibility.

The Department did not agree that the grazing situation at the Cheyenne River Reservation, where land was leased at less than the fair market value and a stocking level of 115 percent of the range carrying capacity was permitted, shows a conflict between trust responsibility and Indian self-determination because (1) BIA approved the rates and carrying capacity in response to a tribal resolution, (2) reduced fees had the effect of subsidizing tribal members engaged in ranching and there were no non-Indian beneficiaries, (3) the prepondence of benefits related to reduced fees on tribal land, (4) where the land was owned by individuals, each owner approved the lower rates, and (5) the 15-percent excess carrying capacity authorized did not result in land resource deterioration.

We believe the grazing situation at the Cheyenne River Reservation shows a conflict between trust responsibility and self-determination. As discussed on page 7, BIA cited self-determination as a reason for approving the lower grazing fees. BIA, not the tribal council, is the trustee for Indian lands and has responsibility for insuring that the Indians obtain the highest return for their land. In response to self-determination pressures from the tribal council, BIA approved the lower paying fees.

Although there may have been no non-Indian beneficiaries as a result of lower grazing fees, there were tribal members who did not benefit from this action. All tribal members have an interest in tribally owned land, not just the Indian ranchers, and the nonranching tribal members did not benefit by BIA's action. We believe BIA's responsibilities extend to all tribal members, not only those engaged in ranching.

We agree that where land was owned by individuals, each owner approved the lower rates. However, the owners approved the rates by not replying to a BIA letter notifying them of the action. The owners' failure to request higher rates may easily have resulted from confusion over

receiving two rate notifications, with different rates, within a short period. (See pp. 6 and 7.) Also, many landowners may not have understood, or have been fully aware of, the contents of the letters.

We also agree that the land has not been overgrazed as a result of the 15-percent increase in the carrying capacity of the rangeland. The land deterioration potential is high, however, if overutilization continues for several years and is coupled with a prolonged decrease in annual rainfall as occurred in 1974. (See p. 9.) We therefore believe BIA should make the required range inspections and livestock counts.

SALE OF INDIAN TRUST LAND

The CFR prohibits the sale, exchange, or donation of title to Indian trust land, whether individually or tribally owned, without the approval of the Secretary of the Interior. The CFR further provides that, in approving such sales, BIA insure that the sale is in the long-range best interest of the owner. Also, BIA policy states that fair market value is to be obtained for the land to be sold, that sellers are to be advised that mineral rights may be reserved, and that the tribe is to be notified of pending sales of land owned by individual Indians so it may have an opportunity to purchase it.

We reviewed the records pertaining to 33 of 893 negotiated sales of trust land for the reservations, recorded in the document control register at the BIA area office during the period December 1, 1972, to May 30, 1973. We also reviewed the records pertaining to 19 of 68 advertised sales which occurred during the period July 1, 1971, to June 28, 1973. The 33 negotiated sales included sales spread over the entire period of our review with prices ranging between $1,000 and $10,000. The 19 advertised sales included some with the highest sales price, some with the lowest appraised value, and some with differences between the appraisal and sales price.

Long-range best interest

Implementing instructions require that, in considering a sale of trust land, BIA officials (1) conduct investigations necessary to determine if the sale would be in the long-range best interest of the owners, (2) seek the assistance and advice of specialists and technicians in the fields of resource management and community services, and (3) make written findings that a sale would be in the long-range best

interest of the Indian owner, indicating the factors they considered and the reasons for their decision. The instructions do not, however, clearly define the term "long-range best interest," or provide guidance for determing factors which should be considered in determining this.

Statements that sales were in the long-range best interest of the sellers were not prepared, although required by BIA instructions, for 21 of the 52 (40 percent) sales reviewed. For the remaining 31 sales, statements were prepared but did not state the factors or the reasons considered by BIA in approving them. Some BIA officials said that advice and assistance of specialists and technicians in the fields of resource management and community services had been sought before approving some of the sales, but the 52 sales records contained no evidence to support these statements.

We discussed with BIA officials the (1) failure to comply with regulations and instructions, (2) lack of clarification as to the meaning of long-range best interest, and (3) lack of guidance as to factors which should be considered in determining if a sale would be in the long-range best interest of the Indian.

BIA officials at the reservations agreed that they had not complied with regulations concerning the documentation of factors considered in approving sales of trust lands. They stated that, even if the circumstances raised questions as to whether the sale should be made, because of the lack of a definition of long-range best interest, they probably would not disapprove an application to sell Indian trust land on that basis. They stated also that they knew of no cases in recent years where a land sale had been disapproved on the basis that the sale would not be in the long-term interest of the Indian owner.

One reservation superintendent said he knew that the CFR required BIA to insure that sales were in the best interest of the sellers, but he believed BIA could not tell an Indian what he could do with his property. He said he would approve a sale, in most cases, with prior knowledge that the seller received welfare, had a drinking problem, or had not purchased material goods with proceeds from past sales.

The BIA area Director said he believed BIA could refuse sales request only in cases where it could legally defend its action. He specifically mentioned cases involving

mental incompetence and minor status as cases in which sales requests could be denied.

The acting Deputy Commissioner of Indian Affairs said that the term "long-range best interest" has never been specifically defined because the factors and criteria considered in each case were unique and applicable to the particular individual.

We believe that the conflict between BIA's trust responsibilities and Indian self-determination has made it difficult for BIA to develop specific criteria concerning long-range best interest of an Indian landowner and has resulted in BIA's approving applications for sale of land in most cases, unless the disapproval could be legally defended on such bases as the applicant's mental incompetence or minor status.

Fair market value

To make certain that fair prices are obtained when Indian land is sold, the CFR requires that an appraisal be made of each parcel of land to be sold in order to establish the fair market value of the land. The CFR further provides that for advertised sales, if the highest bid received for the land is less than the appraised value, the bid may be accepted with the owner's consent if the bid price approximates the appraised value and is the best price that may be received in the circumstances. For negotiated sales, the CFR provides that the sales price may not be less than the appraised value of the land except for sales to members of the owner's immediate family or to co-owners of the land.

The land involved in each of the 52 sales we reviewed had been appraised by BIA real estate appraisers using generally accepted appraisal techniques. The sales price was equal to the appraisal in 32 cases, was greater than the appraisal in 17 cases, and was from 2 to 10 percent less than the appraisal in the remaining 3 cases. For these three cases the land involved was advertised for sale and the owners agreed to accept the highest bid.

Notice that mineral rights may be reserved

BIA instructions require that Indians be fully advised that mineral rights in their land to be sold may be reserved if they desire. We found no written evidence that such notices had been provided to the sellers for 27 of the 52 (52 percent) sales reviewed.

Oil and gas exploration has been conducted at the Cheyenne River Reservation and some oil deposits have been found. BIA officials at the Pine Ridge and Rosebud Reservations said there were no known deposits of valuable minerals on the reservations and value for the mineral rights on the reservations had not been established.

We believe that the lack of knowledge concerning the reservation of mineral rights may have resulted in some owners not reserving such rights. We noted that the mineral rights were reserved in 15 of the 25 cases where owners received written notifications that the rights could be reserved and in 10 of the 27 cases where they did not receive written notification. Two of the owners who did not receive written notification said they would have reserved the mineral rights had they been aware they could do so.

Notice of land sales to tribes

BIA instructions require that written notices of proposed sales of Indian trust lands be provided to the applicable tribe to protect tribal interests and to determine if the tribe wishes to purchase such lands. Such notices were provided to the tribes for 15 of the 52 sales reviewed. For 23 of the 52 sales, notification to the tribes was not necessary because the tribes purchased the land. In the remaining 14 cases, the tribes were not properly notified of the proposed land sales.

The tribal chairman at the Pine Ridge Reservation stated that BIA had provided oral notification of proposed land sales, and the tribe considered such notification adequate. He said the tribe did not have enough funds to buy the lands for sale even if they wanted to. Tribal officals at the Cheyenne River and Rosebud Reservations, however, did not believe that BIA had provided proper notification to make certain that tribal interests were properly protected. For negotiated land sales at the Cheyenne River Reservation, BIA had orally notified the tribal Land and Forestry Committee and the tribal land clerk. A BIA official considered this as notification to the tribe, but the tribal land clerk said that he considered the oral notification inadequate. A Rosebud Reservation BIA official felt that the tribe had been properly notified of two sales where a tribal official was the purchaser. Tribal officials appointed after these sales, however, considered it improper notification. They said the tribe would have been interested in buying this land.

Conclusions

BIA land sale regulations concerning the long-range best interest of the Indian owners are vague. Also, BIA has not provided additional guidance on this matter to help assist its officials in determining if a land sale would be in the long-range best interest of the Indian owner. The Government's trust responsibililties to Indians have not been clearly defined. These responsibilities often conflict with the concept of Indian self-determination. As a result of this conflict, BIA officials have avoided disapproving the sale of Indian trust lands.

Also, BIA had not complied with its land sale instructions because it did not document the factors considered in approving the sale of Indian trust lands. As a result, we could not determine if BIA had adequately considered the long-range interests of the Indians when selling individually owned Indian lands. Moreover, BIA did not provide proper notification to sellers that mineral rights could be reserved and failed to notify the tribes of pending sales of individually owned land.

Recommendations

We recommend that the Secretary of the Interior direct BIA to determine what factors should be considered by its officials in determining if a proposed land sale is in the long-range best interest of an Indian owner and provide examples of situations where the presence of such factors, either alone or combined with other factors, would raise questions as to the advisability of the proposed sale.

We recommend also that the Secretary direct BIA officials to (1) provide written notices to Indian owners that mineral rights in land to be sold may be reserved and (2) provide written notices of proposed sales of Indian trust lands to the applicable Indian tribes.

Agency comments and our evaluation

The Department did not agree that BIA should develop criteria for determining what constitutes the long-range best interest of the Indian owners. It said the circumstances attached to each individual and each situation are so variable that constructing a workable definition seems impractical. It feels the only workable approach is to rely on the judgment of BIA officials who have the best knowledge of the individual's needs and operations.

We agree that the development of a single definition of the long-range best interest of an Indian landowner may not be practical. BIA officials have not, however, been provided with any guidance on this matter and are therefore reluctant to disapprove any sale on this basis. We believe that, at a minimum, BIA should determine what factors should be considered by its officials and provide examples of situations where such factors, either alone or combined with other factors, would raise questions as to the advisability of the proposed sale. The actual determination would remain a value judgment, but there would be criteria and a basis for such determinations.

The Department did agree that Indian owners should have been provided with written notices that mineral rights in land to be sold may be reserved and that Indian tribes should have been provided with notices of proposed sales of Indian trust lands. It stated that field officials would be reminded of existing requirements and told to comply fully in the future.

PURCHASE OF LAND FOR INDIAN RESERVATIONS

Land can be purchased for Indian reservations when authorized by special congressional legislation and by BIA-approved tribal acquisition of individually owned Indian land and non-Indian-owned land within reservation boundaries. No special legislation has been provided for the three tribes to acquire land outside of the reservations. Purchases of individually owned Indian land and non-Indian-owned land within the reservation boundaries have been made by the three tribes. Land purchase transactions are not separately covered by Federal regulations and BIA instructions. However, since each land purchase by the tribe may also involve a sale by an individual Indian, the regulations related to the sale of individually owned Indian land have some applicability to purchases of land by Indian tribes. Fifteen of the 52 sales of Indian trust lands which we reviewed were made to the tribes.

The land involved in the 15 sales had been appraised by BIA appraisers using generally accepted appraisal methods. The sales price of the land in all 15 cases was equal to the appraised value.

LEASING OF INDIAN LAND FOR MINING AND OTHER PURPOSES

Federal regulations relating to leasing activities on Indian lands require that BIA insure that a fair annual

return is obtained for the landowners. We found that BIA followed its regulations for the leasing of Indian lands for oil and gas development and production and for sand and gravel extraction.

BIA could not provide adequate explanations, however, regarding the reasonableness of certain rates approved for Indian farm and pasture leases. Also, comparable data on private farm and pasture leases was not available for comparison with Indian leases.

Oil and gas leases

The CFR requires that all oil and gas leases on Indian lands contain provisions for an annual rental rate of $1.25 per acre and a royalty rate of at least 12-1/2 percent of production. Lands to be leased are to be advertised with such provisions and prospective lessees submit bids for the leases, which include a specified one-time payment (called a cash bonus) in addition to the annual rental and royalties. The leases are then to be awarded to the bidder who submits the highest cash bonus bid.

Lands at the Rosebud and Pine Ridge Reservations have not been leased for oil and gas. We reviewed 29 of the 30 leases in effect at the Cheyenne River Reservation during fiscal year 1973; the remaining lease could not be located by the agency office. All leases reviewed were awarded in accordance with applicable regulations and procedures and each contained provisions for an annual rental rate of $1.25 per acre and a royalty rate of 16-2/3 percent of production. The bonus bids received ranged from $1.05 to $37.60 per acre.

A staff engineer at the U.S. Geological Survey office in Casper, Wyoming, which has responsibility for reviewing and recommending acceptance of the high bonus bids, said that he recommended acceptance of the highest competitive bids received because he considered them reasonable based on his analysis of Geological Survey reports showing the oil and gas production potential on the land to be leased. He said also that he did not compute minimum acceptable bonus bids for land on the Cheyenne River Reservation because a profitable discovery had not been made in the area and therefore required data was not available for use in making the computation. Areas where profitable discoveries have been made are identified as known geologic structures.

In contrast to the competitive leasing system used for oil and gas leases on the Cheyenne River Indian Reservation, Federal land areas which have not been previously leased and where known geologic structures have not been identified are leased noncompetitively without bonus bids to the first qualified applicant. This applicant is required to pay an annual rental of 50 cents per acre and a royalty rate of 12-1/2 percent of production. Upon discovery of oil or gas in paying quantities, a minimum royalty of $1 per acre is payable instead of the annual rental.

The rental payments to Indian landowners for oil and gas leases during fiscal year 1973 totaled $7,300. The net royalty payment distributed to the Indian landowners for oil production during fiscal year 1973 amounted to $202. No gas was produced on the reservation. We tested the collection and accounting of lease rental and royalty payments by reviewing one lease on tribal-owned land and one lease on individually owned land; we found no exceptions.

Sand and gravel leases

BIA officials use royalty rates the State highway department pays as a standard for determining if the royalty rates negotiated for sand and gravel leases on Indian lands will result in fair returns for the landowners. A Geological Survey official said that the large volume of sand and gravel purchased by the highway department tended to establish market values.

We selected 14 of the 61 sand and gravel leases in effect for the three reservations during fiscal year 1973 and compared the lease royalty rates with the royalty rates paid by the State highway department for sand and gravel in the same geographic areas as the Indian leases. Our selection included awards to private industry, the State highway department, and the county highway department.

As shown below, we found that 10 of the 14 leases contained royalty rates that equaled or exceeded the rates paid by the State highway department.

Reservation	Number of leases	Period leases were awarded	Indian royalty rate per ton	Highway department royalty rate per ton
Pine Ridge	1	6-73	$0.35	$0.10 to $0.12
	4	5-71 to 11-73	.07	.10 to .12
Rosebud	2	12-72 to 6-73	.15	.12 to .15
	2	9-70 to 6-72	.10	.10
Cheyenne River	2	8-72 to 5-73	.15	.12 to .15
	3	7-69 to 9-70	.10	.10
	14			

BIA and Geological Survey officials said the four Pine Ridge Reservation leases which contained royalty rates below the rates paid by the State highway department were for lands which contained lower quality sand and gravel than that purchased by the highway department. The lease, with a rate of 35 cents a ton, was for land which contained a higher quality sand and gravel. Prices paid by the State highway for sand and gravel throughout the State during fiscal year 1974 ranged from 5 to 25 cents a ton.

At all three reservations, royalty payments on the 14 leases reviewed were properly collected and distributed to the landowners.

Farm and pasture leases

Farming and pasture leases too small to be included in range units are awarded on the basis of advertised bids or negotiations between the landowners and lessees, depending on the wishes of the landowners. The procedures followed by BIA in determining fair annual returns varied among the three reservations.

At the Cheyenne River Reservation, BIA used the rental rate prescribed by the tribal council for the leasing of tribal-owned land for farm and pasture purposes to gauge the fairness of lease rates for land owned by individual Indians. Neither BIA nor tribal representatives could give the basis for the tribal council-established rate.

At the Rosebud Reservation BIA made appraisals of the land to be leased in three of the five adjacent counties where Indian land was located. BIA used these appraisals to gauge the fairness of lease rates awarded in these counties. In the remaining two counties where appraisals

had not been made, BIA used the rate prescribed by the tribal land enterprise, which manages tribal lands, for lease of tribal-owned lands to gauge the fairness of lease rates for land owned by individual Indians. Although BIA was unable to give us the basis upon which the tribal land enterprise rate was established, we noted that it was comparable to the appraisal-established rates in the three counties on the reservation.

For the Pine Ridge Reservation, BIA determined that lease rates were fair if rates equalled 5 or 6 percent of the sales value of the land, based on appraisals of the land being leased or appraisals of comparable land. BIA was unable to furnish us the basis used to select 5 to 6 percent of the sale value of the land as a fair rental rate.

Because we could not assure ourselves that the methods used by BIA resulted in fair returns to the Indian landowners, we attempted to obtain information on non-Indian farm and pasture lease rates to compare with the 1,234 Indian leases issued during fiscal years 1972 and 1973 at the reservations. For the pasture portion of the leases, we attempted to compare the Indian lease rates with the rates for advertised Indian leases and State-owned lands near the reservations. For the farm portion of the leases, we attempted to obtain information on lease rates for privately owned land near the reservations and compared these rates with Indian land rates.

For pasture leases, we were unable to determine if the rates obtained for Indian leases were reasonable because we were unable to identify advertised Indian leases and State lands of comparable quality with which to compare the negotiated Indian pasture leases. Also, Indian lands were generally leased on the basis of the number of animals allowed to graze on the land, rather than on the flat fee per acre basis used for State leases.

For farm leases, we were unable to determine if the rates for the Indian leases were reasonable because we could not obtain information on the lease rates for privately owned land near the reservations. SCS and ASCS officials said that very little privately owned land near the reservations was leased for farm purposes and that they could not identify any privately owned leased farm land. They believed, however, that the Indian lease rates for such lands were reasonable.

For the pasture and farm leases we reviewed, rental payments were properly collected and distributed to the Indian landowners.

Conclusions

BIA's administration of oil and gas leases on the Cheyenne River Reservation has resulted in obtaining a higher return than the Government receives for the leasing of public lands under the same circumstances. This is because the Indian lands are leased competitively with bonus bids and receive higher rental and royalty rates. The rates received for sand and gravel leases were comparable to prices paid by the State highway department, the largest user of sand and gravel in the State. Since BIA was unable to furnish us with the basis for using various data in determining if farm and pasture lease rates were reasonable, and since data on private leases was unavailable for comparison with Indian leases, we had insufficient information to decide whether or not BIA obtained fair annual returns for the leasing of Indian lands for farming and for pastures which are too small for inclusion in range units. However, SCS and ASCS officials believed the Indian lease rates for such lands were reasonable.

Recommendation

We recommend that the Secretary of the Interior direct BIA to review its basis for determining the reasonableness of rates for farm and pasture leases and to include specific documentation in the files to explain and justify the criteria used.

Agency comments and our evaluation

The Department disagreed with our recommendation that the Secretary direct BIA to review its basis for determining the reasonableness or rates for farm and pasture leases and document such determinations. It stated that, although it would be desirable to have specific criteria by which to measure reasonableness, the possibility of developing good measures was remote because of the many variables involved in this type of leasing. Since there is no evidence of unreasonable rates, the Department is reluctant to impose additional administrative requirements.

We believe our recommendation does not impose an additional administration requirement on BIA. Federal regulations relating to leasing activities on Indian lands

require that BIA insure that a fair annual return is obtained. (See p. 18.) In the absence of specific documentation explaining and justifiying the rates obtained, we do not believe that BIA has complied with its regulations or has insured that the landowners have received a fair return for their land.

ISSUANCE OF RIGHT-OF-WAY GRANTS

Federal regulations relating to grants of rights-of-way over Indian land require that BIA make certain that Indian landowners receive the fair market value for the property involved. BIA instructions require that an appraisal be made of the property involved with each right-of-way and that grants be made only for applications where the grantee agrees to pay the appraised value.

We examined 5 of the 14 right-of-way grants issued for highways and 1 dam at the Rosebud Reservation during fiscal years 1972 and 1973. It included some of high and low value and some issued in both fiscal years. No rights-of-way were granted at the Cheyenne River Reservation during this period. Also, adequate records to allow a review of this activity were not available at the Pine Ridge Reservation because they were misplaced during the Wounded Knee incident. Fees charged for rights-of-way at the Rosebud Reservation were equal to the appraised value of the easement granted and each of the right-of-way agreements required that the grantee:

1. Construct and maintain the right-of-way in a workmanlike manner.

2. Pay all damages determined by BIA due to construction and maintenance of the right-of-way.

3. Indemnify the landowner against liability for damages to life or property arising from occupancy of land by the grantee.

4. Restore the lands to original condition upon completion of construction.

5. Allow use of the land by the owner for any purpose which does not interfere with the right-of-way.

Conclusion

Our test as the Rosebud Reservation showed that BIA had adeguately discharged its responsibilities relating to issuance of rights-of-way over Indian lands.

GEORGE McGOVERN
SOUTH DAKOTA

United States Senate
WASHINGTON, D.C. 20510

April 3, 1973

B-114868

The Honorable Elmer B. Staats
Comptroller General of the United States
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Staats:

There has been a great deal of concern expressed by members of Congress and by the public with respect to the current state of Indian affairs in the United States. One of the controversial issues is the management of Indian lands by the Bureau of Indian Affairs in its trust capacity.

The Bureau of Indian Affairs is responsible for land-use management of Indian lands, including:

--the sale of Indian trust lands,

--the purchase of land for Indian reservations,

--the leasing of Indian lands for mining and other purposes, and

--the issuance of grazing permits and rights-of-way.

I would very much appreciate at this time your undertaking a review of the effectiveness of the manner in which the Bureau carries out its land-use management responsibilities, using the Rosebud, Pine Ridge and Cheyenne River Indian Reservations in South Dakota as examples.

Sincerely yours,

George McGovern

George McGovern

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 8 1975

Mr. Henry Eschwege
Director, Resources and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This responds to your request for comments on the GAO draft report entitled "Land Management Activities on Three Indian Reservations in South Dakota."

Your observation that the Federal Government's trust responsibilities are not clearly defined is certainly correct. You are also correct in noting that conflicts arise between interpretations of trust responsibilities and the policy of encouraging Indians to make their own decisions, i.e., self-determination. This conflict is particularly evident in situations involving the use of land resources.

Your draft report recognizes that a BIA study group is now developing a programatic definition of self-determination and goes on to recommend that the study group define BIA's trust responsibilities. Since the conflict between self-determination and trust responsibility was a principal reason for establishing the study group, a more precise definition of both terms is anticipated. This effort has been designated a Departmental objective for FY 1975 and is receiving priority attention.

Your draft report represents the situation at Cheyenne River, where land was leased at less than fair value and where a stocking level of 115 percent of range carrying capacity was permitted, as a conflict between trust responsibility and self-determination. The Department does not see this particular situation exactly in that light. The decisions made are considered reasonable and responsible for the following reasons:

1. BIA approved the rates and carrying capacity in response to a tribal resolution.

2. The reduced fees had the effect of subsidizing tribal members engaged in ranching. There were no non-Indian beneficiaries.

3. The preponderance of benefits related to reduced fees on tribal land.

4. Where the land was owned by individuals, each owner approved the lower rates.

5. The 15 percent excess carrying capacity authorized did not result in deterioration of the land resource.

Regarding the sale of individually owned lands, your report suggests that BIA should develop criteria for determining what constitutes the long range best interest of an Indian land owner. The circumstances attaching to each individual and each situation are so variable that constructing a workable definition seems impracticable. Consequently, continued reliance on the judgments of BIA officials who have the best knowledge of the individuals needs and aspirations is the only workable approach. Whatever judgments are made should be documented as the BIA manual now requires.

On your other points under "Sale of Indian Trust Land," i.e., the failure to notify individuals that mineral rights can be reserved and to notify Indian tribes of proposed sales of Indian trust lands, it is agreed that these notices should have been made and so documented. Field officials will be reminded of existing requirements and told to comply fully in the future.

Your final point relates to determining the reasonableness of rates for farm and pasture leases, and documenting such determination. Although it would be desirable to have specific criteria by which to measure reasonableness, there are so many variables involved in this type of leasing that the possibility of developing good measures is considered remote. And in the absence of any evidence showing that the rates are not reasonable, the Department is reluctant to impose additional administrative requirements. Your report indicates that the rates were considered reasonable by the Agriculture Stabilization and Conservation Service and the Soil Conservation Service.

We appreciate the opportunity to review and comment on your draft report.

Sincerely,

A L Reynolds

Director of Audit and Investigation

cc:
Mr. L. White, BIA