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*REPORT TO THE SENATE
COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*



Indian Natural Resources--
Part II: Coal, Oil, And Gas
Better Management Can Improve
Development And Increase
Indian Income And Employment

Department of the Interior

The development of Indian mineral resources for the benefit of American Indians has been hindered by

- lack of resource inventories, mineral management plans, and mineral expertise within the Bureau of Indian Affairs,
- no means to determine if Indian preference in hiring lease provisions are effective,
- failure to establish a coal lease royalty rate based on the selling price of coal,
- inadequate monitoring of lease terms after issuance of a lease.

This report makes numerous recommendations to help overcome these problems and improve the management of mineral resources to increase the economic benefits to the Indian people and help the Nation meet its energy needs.

RED-76-84

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

B-114868

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

Dear Mr. Chairman:

This report describes opportunities for the Department of the Interior to improve development of mineral resources and increase Indian income and employment through better management of coal, oil, and gas resources on Indian reservations. We made this review pursuant to your June 11, 1974, request, as modified by subsequent discussions with your office in February 1975.

You asked us to review the Bureau of Indian Affairs' efforts to help Indians develop their natural resources, provide much needed employment to Indians, and help reduce our Nation's shortages of food and raw material. This report covers our review on seven Indian reservations of three major nonrenewable resources--coal, oil, and gas. Our report on the three major renewable resources, "Indian Natural Resources--Opportunities For Improved Management And Increased Productivity, Part I: Forest Land, Rangeland, And Cropland" (RED-76-8), was issued to the Committee on August 18, 1975.

In accordance with a request from your office, we have not obtained written agency comments. However, we have informally discussed our findings with agency officials.

This report contains recommendations to the Secretary of the Interior. Section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions 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. We will be in touch with your office in the near future to arrange for the release of the report so that the requirements of section 236 can be set in motion.

Sincerely yours,
James A. Atch

Comptroller General
of the United States

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
BOM	Bureau of Mines
GAO	General Accounting Office
USGS	United States Geological Survey

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

INDIAN NATURAL RESOURCES--PART II:
COAL, OIL, AND GAS--BETTER
MANAGEMENT CAN IMPROVE DEVELOPMENT
AND INCREASE INDIAN INCOME AND
EMPLOYMENT
Department of the Interior

D I G E S T

Coal, oil, and gas are valuable resources that provide Indians with income and job opportunities which will increase as resources are further developed.

Indian income from oil and gas in fiscal year 1974 amounted to about \$43.1 million. Indian income from other minerals, including a large amount from coal, amounted to about \$9.6 million during the same period.

There are opportunities to improve development of mineral resources, increase the economic benefits to the Indian people, and provide the Nation with increased energy sources. Such development can provide needed jobs and income to Indians living on or near reservations, a group with a high rate of unemployment.

The Bureau of Indian Affairs has placed limited emphasis on developing Indian coal, oil, and gas resources. For example (1) the amount of mineral resources on most reservations is unknown, (2) planning for minerals resource development has not been adequate, (3) the Bureau does not have sufficient personnel with minerals expertise, and (4) information on experience gained during minerals development has not been exchanged among Bureau field offices.

To improve development of mineral resources, the Secretary of the Interior should direct the Commissioner of the Bureau of Indian Affairs to:

- Develop complete minerals inventories for all reservations having such resources.
- Develop, through use of available resource information, mineral management plans taking into consideration the wishes of the Indian people, and update these plans as additional information becomes available.
- Determine the mineral expertise staffing the Bureau needs to adequately fulfill its trust responsibilities at its headquarters and field

locations and take the steps necessary to meet these needs. If it is not feasible to have mineral experts at all mineral developing reservations, alternatives should be considered such as using a minerals task force or consultants.

- Establish procedures to exchange and distribute between area and agency offices information relating to experience gained by the tribes in developing mineral resources.
- Update and maintain the Bureau's operations manual and expedite revisions to the Code of Federal Regulations when changes are necessary. (See pp. 14 and 15.)

Indian employment in the mineral industry was substantially higher on those reservations GAO visited that had established specific requirements for Indian preference in hiring and followup procedures.

To increase Indian employment in the minerals industry, the Secretary of the Interior should direct the Commissioner of the Bureau of Indian Affairs to:

- Establish specific requirements in all Indian mineral leases for Indian preference in hiring as well as procedures for lessees to regularly report to the Bureau and the tribes on the status of Indian employment.
- Establish procedures for either the Bureau or the tribe to insure that Indian preference in hiring provisions and requirements are being followed. (See p. 21.)

Thirteen of the 16 Indian coal leases GAO reviewed had fixed royalty rates and, therefore, the income per ton produced did not rise during periods of rising coal prices. Also, the Bureau had, in many cases, leased in excess of a 2,560-acre limitation, provided in the Code of Federal Regulations, without adequately documenting the reasons for approving the excess.

To help insure that the Indian people benefit from the increasing value of their coal resources and to improve coal-lease management, the Secretary of the Interior should direct the Commissioner of the Bureau of Indian Affairs to:

- Establish a coal-lease royalty rate policy based on a percentage of the selling price of coal, with a fixed amount (floor) below which the price cannot fall.
- Determine whether the 2,560-acre limitation and the criteria for exceeding the limitation are valid; if it is found that they are no longer valid, act to revise the Code of Federal Regulations accordingly. In making this determination, factors to be considered in determining the number of acres to be leased should be identified. This recommendation should be carried out with the assistance of the Geological Survey.
- Insure that the Bureau's lease files are adequately documented to support all actions. (See p. 27.)

The Geological Survey has not adequately fulfilled its responsibilities for mineral resource development on Indian reservations. For example, it has not (1) performed all required oil and gas lease site inspections, (2) properly monitored royalty payments and operating reports, (3) verified lessee reports that oil and gas wells are not producing, and (4) postaudited most lease accounts to insure that Indians receive all royalties due.

To improve Geological Survey management of leases for Indian mineral lands the Secretary of the Interior should require the Director of Geological Survey to:

- Establish a penalty fee for late payment of royalties and enforce such requirements as necessary.
- Instruct lessees to submit reports required by Federal regulations and lease terms when they are due and require purchasers of Indian mineral resources to submit reports on products purchased.
- Establish procedures to coordinate reservation reclamation activities among the various agencies involved with this activity on each reservation.
- Determine the staffing level necessary to satisfactorily perform its mineral responsibilities for Indian lands and take the steps necessary to obtain such staffing.
- Require its field offices to verify on a random basis that oil and gas wells reported to be shut down are no longer producing.

--Perform all required oil and gas site inspections.

--Postaudit all Indian oil and gas lease accounts.

(See p. 38.)

At the Committee's request, GAO did not obtain written comments from Interior but the report was informally discussed with agency officials.

CHAPTER 1

INTRODUCTION

At the request of the Chairman, Senate Committee on Interior and Insular Affairs, we have reviewed the management of natural resources on selected Indian reservations. This report presents the results of our review of three major non-renewable mineral resources--coal, oil, and gas--on seven Indian reservations. (See scope, ch. 6.)

Although we directed our review to the development of coal, oil, and gas resources, many of the problems we identified may relate to other minerals and, accordingly, our recommendations may also relate to other minerals. The results of our review on the management of the three major renewable resources on Indian reservations--timber, rangeland, and croplands--were previously reported to the Committee in our report, "Indian Natural Resources--Opportunities For Improved Management And Increased Productivity Part I: Forest Land, Rangeland, And Cropland" (RED-76-8, Aug. 18, 1975).

SIGNIFICANCE OF INDIAN COAL, OIL, AND GAS RESOURCES

According to the Federal Energy Administration, as a result of a growing population, increasing industrialization, and greater affluence, the U.S. demand for energy has grown at an annual rate of 4 to 5 percent for the past 10 years. U.S. per capita energy consumption is eight times the average of the rest of the world. In 1973 imports of crude oil and petroleum products accounted for 35 percent of total domestic petroleum products consumption.

Since the oil embargo in 1973, the United States has experienced energy shortages and greatly increased prices for energy materials, particularly petroleum products. The embargo also produced an awareness of the potential costs of increased dependence on foreign energy sources. In response to these problems, the President in November 1973 established the goal of U.S. energy independence by 1980. The President has also called for a doubling of coal production by 1985.

Mineral resources such as coal, oil, and gas have been located on Indian reservations. Although the exact amounts of such resources are unknown, the U.S. Geological Survey (USGS), Department of the Interior, estimated that oil and gas resources are on 40 reservations in 17 States. These reservations contain about 39.1 million acres of land. Oil resources on these lands, as of November 1973, were estimated at about 4.2 billion barrels and gas resources at about

17.5 trillion cubic feet. USGS estimates Indian oil and gas reserves to amount to about 3 percent of the Nation's total reserves.

USGS also estimated that 33 reservations in 11 States containing a total of 34.5 million acres, have sizable coal reserves. As of January 1975, USGS estimated that these lands contain from 100 to 200 billion tons of identified coal resources--about 7 to 13 percent of the Nation's identified coal resources of 1,581 billion tons. An October 1975 Federal Trade Commission staff report, "Mineral Leasing on Indian Lands," reported that Indian lands may contain more than one-tenth of the Nation's currently minable coal reserves.

According to the 1970 census, there were about 827,000 Indians in the United States. In 1973 the Bureau of Indian Affairs (BIA), Department of the Interior, estimated that 543,000 Indians were living on or near reservations. Mineral resources development on reservations can thus provide substantial income and employment opportunities to the Indians.

RESPONSIBILITIES AND OBJECTIVES FOR MANAGING INDIAN MINERAL RESOURCES

The Federal Government, as a result of congressional actions and judicial decisions, is obligated to aid American Indians. The Department of the Interior, through BIA, provides services to Indians, including

- working with Indians and other Federal agencies to develop programs to improve Indian economic conditions,
- advising Indian landowners on how to make the most of their resources, and
- exercising trust responsibility for Indian lands.

BIA and USGS share responsibility for managing mineral resources on Indian reservations. BIA, as trustee of Indian land, is responsible for all phases of minerals management through the leasing process. USGS is responsible for certain aspects of the management of minerals on Indian reservations, including

- advising BIA and the Indian people on the adequacy of lease provisions,
- monitoring mineral development operations,

--computing, verifying, and collecting royalties for the Indian people, and

--monitoring reclamation of Indian lands.

Authority for leasing Indian lands for mineral development is contained in 25 United States Code 396 and 396a. Specific objectives for managing mineral resources are included in BIA's "Indian Affairs Manual" (54 IAM, ch. 6) which states,

"Indian tribes and individual Indians should be encouraged to lease their trust and restricted land for oil and gas development with the aim of obtaining a maximum recovery and income consistent with a sound conservation program."

This section covers oil and gas development; however, BIA instructions also direct that the same objectives apply to other minerals.

BIA and USGS program management of mineral resources is decentralized. BIA's overall organization consists of the central office in Washington, D.C.; area offices; and subordinate field installations (agency offices) located throughout the United States. BIA officials informed us that the authority of the Commissioner of BIA to act on behalf of the Secretary of the Interior regarding Indian mineral resources development has been delegated to BIA area offices and, in most cases, further delegated to BIA agency offices. USGS authority regarding Indian mineral resources also has been delegated to its regional and area offices.

BIA does not impose strict mineral management principles on the Indians; rather, it attempts to get voluntary acceptance of sound mineral management through such means as technical assistance.

The importance of voluntary acceptance was reemphasized in the Indian Self-Determination and Education Assistance Act of January 4, 1975 (Public Law 93-638). This act is intended to provide, among other things:

--Maximum Indian participation in the government and education of the Indian people.

--Full participation of Indian tribes in Government programs and services for Indians.

--A program of assistance to upgrade Indian education.

One of the act's more important features is that it allows tribes to directly contract with BIA for the administration of programs serving them. Also, the Secretary of the Interior is not authorized to enter into any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individual. It appears, therefore, that any actions taken regarding mineral resources should have the mutual consent of BIA and the participating tribes.

On January 26, 1976, the Secretary of the Interior announced a new comprehensive Federal coal lease policy to promote the orderly development of public energy resources. The policy, to be implemented on a gradual basis, is designed to:

- Help keep national energy costs down by permitting timely and efficient development of Federal coal by leasing only when needed.
- Provide a balance between national policy requirements for using the Nation's most abundant fossil fuel and preservation of the environment.
- Discourage private holdings of excessive reserves of Federal coal by implementing diligent development regulations requiring timely development or relinquishment.
- Provide for issuance of preference rights leases under a new definition of commercial quantities. (Preference rights leases are issued to prospecting permit holders who show that lands under the permit contain coal in sufficient quantities to support a commercial operation.)
- Return fair market value to the taxpayer through competitive bid sale of coal leases.
- Public participation in the Federal coal decision process.

The Secretary stated that there is no reason for Indian tribes to fear that their coal resources will be developed without their full concurrence and, as trustee for the various tribes, it is the Department's responsibility to insure that Indian desires regarding coal development are met. He said that the Department will approve coal leasing on Indian lands where

- the tribal or individual Indian landowner desires to dispose of the coal;
- the terms and conditions of the lease are in the best interest of the Indian landowner; and

--appropriate environmental protection and reclamation safeguards are imposed on the lessee.

Also, on January 2, 1975, the Congress enacted Public Law 93-580, establishing the American Indian Policy Review Commission. The consensus of the Congress in establishing the Commission was that Indian policy had been shaped by a fragmented approach which inhibited Indian development and did not consistently attempt to achieve Indian self-sufficiency. The Commission's primary purpose is to review the legal and historical background which serves as the basis for the unique relationship between the Indian people and the Federal Government.

The Commission will, among other things, investigate and study

--the relationship between the Federal Government and the Indian tribes and the land and other resources they possess and

--the policies, practices, and structure of the Federal agencies charged with protecting Indian resources and providing services to Indians, including a management study of BIA making use of experts from the public and private sector.

The Commission is expected to issue its final report no later than June 30, 1977.

CHAPTER 2

OPPORTUNITIES TO IMPROVE DEVELOPMENT

OF MINERAL RESOURCES ON INDIAN RESERVATIONS

Mineral resources on Indian reservations have provided Indians with substantial amounts of income and job opportunities. Total income, including rents, royalties, and bonuses, from oil and gas resources in fiscal year 1974 amounted to about \$43.1 million. Income from other minerals, including a large amount from coal, amounted to about \$9.6 million. BIA could not tell us the amount of income relating specifically to coal. Although there was no means to determine the number of Indians employed in the minerals industry on most of the seven reservations in our review, we did identify about 800 Indians employed in the industry earning about \$9 million annually. Additional opportunities exist to improve the development of these resources, increase benefits to the Indian people, and at the same time provide additional energy sources.

BIA has placed limited emphasis on developing mineral resources on Indian reservations. We found that

- inventories of mineral resources on Indian reservations do not exist;
- mineral resource development plans have not been prepared;
- expertise within BIA to help Indian tribes develop mineral resources has not been provided; and
- information on minerals development has not been exchanged among BIA offices.

NEED FOR DATA ON RESOURCES ON INDIAN LANDS

On the seven reservations we visited, BIA had not made a complete inventory (estimated amount of reserves) of mineral resources. However, on the Osage Reservation, BIA's agency superintendent said that information on mineral resources was adequate, with the exception of natural gas.

BIA officials said a mineral resources inventory is the starting point for mineral management planning. Such plans provide an appropriate course of action to follow in developing mineral resources. A BIA central office official told us, however, that initial inventory studies were not initiated

until August 1974 because mineral development had been a low priority. A June 27, 1974, BIA memorandum from the Director, Office of Tribal Resources Development, to the Commissioner of BIA stated:

"Data on the availability of energy resources on Indian lands is urgently needed. It is needed both by our tribal governments and by us in order that the tribes, for economic development reasons, and ourselves, for trust and planning reasons, can intelligently determine priorities, plans and budgets for the development of these resources."

BIA's fiscal year 1975 appropriation included \$1 million to conduct a minerals inventory. BIA, USGS, and the Bureau of Mines (BOM) agreed to make an information search and summary of mineral resources on 17 reservations covering about 9.7 million acres of land. The studies were designed to identify, evaluate, and summarize mineral information from published literature, computer data files, and unpublished sources. BIA officials said the initial studies were completed in July 1975 at a cost of about \$500,000. Three of the reservations in our review--the Crow, Northern Cheyenne, and Uintah and Ouray Reservations--were included in these studies.

BIA, USGS, and BOM have agreed to continue the minerals inventory project in fiscal year 1976. They will continue the information search and summary on 23 additional reservations, which is to be completed by June 30, 1976, at a cost of about \$396,000. Also, USGS and BOM plan to conduct field studies of mineral and energy resources on three reservations. These studies, necessary because existing information is insufficient to assess mineral resources on reservations, will help provide basic information necessary to appraise the mineral potential on the reservations. This work will continue until September 1980. However, it can be terminated by any of the agencies upon a 90-day notice. An annual renewal of the project is subject to agency approval and funds being made available through BIA.

The lack of adequate minerals inventories has contributed to the limited amount of planning for minerals development on reservations. Minerals development has resulted primarily from requests by private industry, rather than from actions by the tribes and BIA. Knowledge of the amount of recoverable resources on the reservations could also benefit the Indians in that companies may offer a higher bonus bid on areas offered for lease if it is known that the acreage contains a large amount of resources. To its credit, in August 1974 BIA initiated a comprehensive inventory study of mineral resources on Indian reservations.

NEED FOR MINERAL RESOURCE
MANAGEMENT PLANS

BIA has placed only minor emphasis on planning for mineral resource development. BIA had not developed formal mineral management plans for the reservations we reviewed. However, on the Fort Berthold Reservation BIA did contract with a private firm to conduct a minerals survey and make recommendations on reservation land to be offered for lease. (See pp. 6 and 9.)

BIA has a congressional mandate to manage Indian timber resources through the Indian Reorganization Act of 1934 (25 U.S.C. 466). To insure that all the forest management objectives are met, BIA is required to prepare a timber management plan for each major reservation having commercial timber. This plan specifies the annual allowable harvest of timber and the forest management techniques to be employed.

Similarly, mineral development plans should provide a basis on which Indian people can decide on the approach they wish to take on mineral development and also consider the long-term effects of such development. These plans should include

- alternative development levels,
- socioeconomic impacts,
- cultural impacts, and
- environmental impacts.

The Federal Energy Administration in July 1975 proposed to study Indian mineral resource development and specifically cited the need to establish a management plan for energy resource development on reservations. This recommendation was based on the concerns expressed by the Indian people.

BIA officials said, as previously mentioned, that an inventory is the starting point for planning and that when adequate information on the amount of minerals on Indian reservations is available, they will consider developing mineral management plans. Because of the need for reservation income and employment opportunities, leasing of Indian land containing mineral resources will probably continue without adequate knowledge of the resources. We, therefore, believe that BIA should make plans for mineral development based on the best information available and update these plans as more accurate data becomes available. Such plans must be flexible and must give consideration to the fact that they are based on incomplete resource information.

The lack of mineral development plans has in some cases caused delays in leasing of lands. For example, on the Fort Berthold Reservation, the Tribal Business Council passed a resolution in September 1973 requesting that BIA declare a moratorium on further leasing of lands for oil and gas development on the reservation until a comprehensive plan for oil and gas development could be formulated and approved by the Council. The Chairwoman said that before coal development can proceed, two major conditions must be satisfied--the desires of the Indian people must be determined and a coal management plan must be prepared including adequate information on coal reserves, the effects of coal mining, and alternative methods of development.

In response, BIA contracted with a mineral engineering and planning firm to conduct a survey of the potential for oil and gas on the Fort Berthold Reservation and to recommend which sections of the reservation should first be offered for lease. As a result of the survey, the tribe lifted the moratorium in August 1975. The lack of information resulted in a 23-month delay in minerals development on the reservation.

In addition, the Northern Cheyenne Tribe maintained that it could lose control of its reservation. If all prospecting agreements become mining leases, 56 percent of the reservation would be under lease. Proper planning might have prevented this situation and could have resulted in an awareness of the potential ramifications of uncontrolled development.

The Crow Tribe said it wants coal development; however, it wants to control such development. According to its tribal chairman, the tribe needs time to develop land-use planning, to pass zoning regulations, and to pass tax laws relating to such development. We believe that mineral development planning should include considerations of such factors.

LACK OF MINERALS EXPERTISE IN BIA

BIA central and field office officials said that BIA does not have sufficient minerals expertise. At the BIA central office and field locations we visited, with the exception of the Osage Reservation where BIA has a large minerals staff funded by the tribe, there was a limited number of BIA staff members with minerals expertise. Because of inadequate BIA minerals expertise, assistance provided to the Indian people for minerals development has been limited.

Central office expertise

Although BIA's authority for minerals management has been delegated to its field offices, we were informed that the central office makes policy and continues to provide its field offices with guidance and assistance. BIA central office officials said that in many cases, area offices realize they lack the necessary expertise and request their assistance. We were also told, however, that the central office mineral section is not sufficiently staffed to provide adequate support to its field offices. The BIA central office minerals section consists of one minerals expert and secretarial staff. BIA is attempting to hire an additional minerals specialist to work in the central office, which should increase the level of assistance and guidance provided its field offices.

BIA central office officials said central office direction to its field offices is provided mainly through title 25 of the Code of Federal Regulations. Guidance is also provided through the BIA manual (54 IAM, ch. 6), memorandums, and day-to-day telephone conversations with field offices. The officials acknowledge that BIA's manual is outdated and inadequate. They said that the lack of staff has prevented updating of the manual and has caused delays in making necessary revisions to the Code of Federal Regulations. For example, we were told that personnel shortages contributed to central office delays of up to 4 years to process changes to Osage oil and gas leasing regulations (25 CFR 183--Leasing of Osage Reservation Lands for Oil and Gas Mining).

It is essential that BIA's central office provide overall leadership, guidance, and technical assistance to its field offices so that these offices can effectively carry out their trust responsibilities for Indian mineral resource development. At a minimum, the central office should update and maintain its operations manual which provides instructions to field offices and also revise the Code of Federal Regulations when changes are necessary. It is particularly important for the central office to take the lead in developing objectives, policies, and general procedures for the development of Indian mineral resources because of the general lack of BIA field expertise in the minerals area.

Area office expertise

Of the six BIA area offices we reviewed which have responsibility for the reservations, five had delegated their minerals management authority to the agency offices. The remaining area office retained responsibility for mineral management, but the agency offices provide assistance for

monitoring reclamation efforts. The minerals section of this area office is staffed with one professional and three clerical employees. In July 1975 area office officials told us additional staff was needed. They stated that four additional professional staff members and clerical support were necessary to handle the present workload. We were told that the central office had previously rejected requests for more minerals staff because funds had not been available; therefore, they had not requested additional staff in recent years.

One of the area offices without mineral expertise had a minerals officer position authorized since November 1972; however, we were told that it had not been filled because of budget cutbacks. The area office requested this position because one tribe had expressed the need for BIA coal expertise to assist them in managing mineral development. BIA central office officials in the budget office said that BIA's employment ceiling, as established by the Office of Management and Budget, is generally lower than the number of positions authorized by the Congress, thereby making it difficult to fill all authorized positions.

Agency office expertise

At five of the six agency offices we visited that had been delegated authority for minerals management, BIA, by its own admission, does not have adequate minerals expertise. Minerals management is, generally, carried out by staff without formal minerals training. The BIA Osage Agency Office, however, had a minerals staff consisting of petroleum engineers and engineering technicians.

We noted during our review that, at the reservation level, BIA had concentrated considerably more staff on management of forestry, rangeland, and cropland than on minerals. For example, at the Navajo Reservation BIA had 15 employees assigned to forestry, 24 to rangeland, and 65 to cropland activities on a permanent basis as of June 30, 1974; the income from these resources amounted to about \$5.8, \$13.8, and \$2.7 million for fiscal year 1974, respectively. BIA had only four staff members assigned to minerals activity with related income of about \$11.5 million in fiscal year 1974. On the Jicarilla Reservation, BIA had two employees assigned to minerals activities, with income of about \$2.3 million in fiscal year 1974. During the same period BIA assigned nine staff members to forestry, with income of about \$258, and eight to rangeland activities, with income amounting to about \$498,000.

One BIA official said a task force approach, with experts assisting the field with minerals management, may be the most feasible method to overcome the lack of expertise problem.

BIA should give the task force approach more consideration. Although it seems unlikely that this approach would be workable on reservations with large amounts of resources and resource development, it may be the solution for reservations with limited mineral resource development. Such a task force would include petroleum and mining engineers, reclamation experts, and other experts necessary to cover all phases of minerals development. On reservations with a lot of development activity, we believe BIA needs a permanent staff of minerals experts to provide ongoing technical assistance and to carry out its trust responsibilities.

NEED FOR PROCEDURES TO EXCHANGE MINERAL RESOURCE DATA

BIA does not have formal procedures to regularly provide relevant mineral data relating to experience gained in the development process to field offices and/or Indian tribes. Such information would help most Indian tribes in the early stages of mineral resource development. The October 1975 Federal Trade Commission staff report on mineral leasing on Indian lands also made this observation.

BIA officials on the seven reservations we visited were not aware of important mineral development activities that had occurred on other reservations. They thought that a system to provide this type of information would be beneficial. A BIA official on the Osage Reservation said such a system would be helpful and added that he has been encouraging BIA to develop an information exchange system for more than 4 years.

Following are examples of the types of information we believe should be made available to other tribes.

- The Navajo Tribe increased income by receiving royalty rates based on a percentage of the selling price of coal in 1964, rather than on a fixed rate per ton of coal.
- The USGS office responsible for assisting the Navajo Reservation was converting prospecting data upon request to reserve figures for use in more accurately determining the amount of coal on the Navajo Reservation.
- BIA Osage officials are planning for the second and third phases of oil development to avoid ruining an oilfield.

--The Navajo Tribe has increased Indian employment by monitoring and insuring that Indian preference in hiring is being followed.

BIA Navajo Area Office officials told us that, although formal procedures to exchange mineral development information do not exist, the BIA central office encourages the informal exchange of such information with other area offices. However, this system has not always been effective. For example, in 1964 the Navajo established a royalty rate whereby the royalties increased as the selling price of coal increased. The Crow and Northern Cheyenne Tribes had coal-lease sales from 1966 through 1971; however, lease terms for both of these tribes provided for a fixed royalty rate. An official of the BIA area office responsible for the Crow and Northern Cheyenne Reservations said he depends on the BIA central office and USGS for guidance on such matters and, therefore, did not contact the Navajo or any other area office. A BIA headquarters official said fixed royalty rates were approved on the Crow and Northern Cheyenne Reservations because of (1) tribal pressure to develop reservation resources as soon as possible and (2) the lack of BIA experience in dealing with coal companies. Had the BIA area office responsible for the Crow and Northern Cheyenne Reservations been aware of the royalty rate concept based on the selling price of coal, it could have asked the central office to consider this concept in negotiating the coal leases.

BIA central office officials said they do not favor establishing a system to provide mineral development information to the various tribes. They said such a system may cause problems because tribes may believe that what has been obtained on one reservation could be obtained on their reservations without giving consideration to differing circumstances. They stated that this could force mineral companies not to develop minerals on a reservation. Also, some tribes, they added, may not want other tribes to have information about development on their reservation. The officials further stated that it would be difficult and expensive to establish such a system.

BIA should make pertinent information available to the various area and agency offices responsible for assisting reservations with mineral development potential. The BIA central office could coordinate the dissemination of data and act as the central clearing point to avoid some of the problems identified by BIA central office officials. Information distributed could include data on the tribes plan for developing their resources, lease provisions, and obstacles encountered.

CONCLUSIONS

Opportunities exist to improve development of mineral resources, increase Indian income and employment opportunities, and help alleviate the Nation's energy problems through improved BIA management of Indian coal, oil, and gas resources. Limited emphasis has been placed on developing these resources. Consequently, (1) the amount of mineral resources on most reservations is unknown, (2) planning for minerals resource development has not been adequate, (3) BIA does not have sufficient personnel with minerals expertise, (4) information on experience gained during minerals development has not been exchanged among the BIA field offices, and (5) revisions to BIA operations manual and applicable sections of the Code of Federal Regulations are not being made in a timely manner.

The development of Indian mineral resources has, generally, resulted from requests by the mineral industry rather than from action by BIA or the tribes. Also, mineral development has been delayed in some cases because the tribes were dissatisfied with the amount of data available.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

To help improve development of Indian mineral resources, we recommend that the Secretary of the Interior direct the Commissioner of BIA to:

- Develop complete minerals inventories for all reservations having such resources.
- Develop, through the use of available resource information, mineral management plans taking into consideration the wishes of the Indian people, and update these plans as additional information becomes available.
- Determine the mineral expertise staffing BIA needs to adequately fulfill its trust responsibilities at its headquarters and field locations and take the steps necessary to meet these needs. If it is not feasible to have mineral experts at all mineral developing reservations, alternatives should be considered such as using a minerals task force or consultants.
- Establish procedures to exchange and distribute between area and agency offices information relating to experience gained by the tribes in developing mineral resources.

--Update and maintain its operations manual and expedite revisions to the Code of Federal Regulations when changes are necessary.

CHAPTER 3

OPPORTUNITIES TO INCREASE

INDIAN EMPLOYMENT IN THE MINERALS INDUSTRY

The high rate of unemployment among Indians living on or near reservations makes job development a priority need of the Indian people. Leasing Indian land for the development of mineral resources provides the opportunity for Indian employment. Companies leasing Indian land for minerals development are usually required under the terms of the lease to give Indians employment preference in the development of these resources.

However, neither BIA nor the tribes were in a position to determine whether the Indian preference in hiring provisions were effective. We believe that, by establishing (1) specific requirements for Indian preference in hiring and (2) procedures to require the lessee to regularly report to BIA and the tribes on their employment of Indians on the reservation, BIA and the tribes would be better able to determine if lessees are complying with the Indian preference in hiring provisions. Such requirements could also help BIA and the tribes identify specific reasons for Indian unemployment. There was substantial Indian employment in the minerals industry on those reservations we visited that had specific requirements for Indian employment and had appropriate followup procedures. On the other hand, reservations without these requirements and followup procedures had only minimal Indian employment or the number of Indians employed was not known.

BIA OBJECTIVE FOR INDIAN EMPLOYMENT

A primary BIA objective is to help Indians obtain a level of per capita income and employment that is at least equal to that of their non-Indian neighbors. In its fiscal year 1976 budget justifications, BIA stated that development of job- and income-producing opportunities is essential if Indian employment and income problems are to be improved.

BIA reported that the nationwide unemployment rate for Indians living on or near reservations was about 39 percent in 1974. The unemployment rate on the reservations included in our review ranged from 16 to 35 percent, as follows:

<u>Reservation</u>	<u>Unemployment rate (percent)</u>
Navajo	35
Fort Berthold	26
Crow	27
Northern Cheyenne	27
Jicarilla	34
Uintah and Ouray	27
Osage	16

For the same period, the Bureau of Labor Statistics reported that the total U.S. civilian labor force unemployment rate averaged about 5.6 percent. The unemployment rate for the States in which the reservations we reviewed are located ranged from 4.4 percent in Oklahoma to 6.7 percent in Montana. These statistics, however, are not entirely comparable to those available for reservation Indians, because persons not seeking work are included in BIA estimates and their inclusion results in a higher unemployment rate. However, BIA estimates do indicate the comparatively high level of Indian unemployment.

BIA and tribal officials said the following factors contributed to high unemployment on Indian reservations:

- Lack of qualified Indian workers.
- Reluctance to hire Indians.
- Problem of commuting long distances to work.
- Reluctance of Indians to work for petroleum companies.
- Reluctance of Indians to leave the reservation for employment.
- Lack of adequate communicative skills.
- Poor Indian attitude toward employment.

However, BIA did not know how much these factors contributed to Indian unemployment.

OPPORTUNITIES TO INCREASE INDIAN EMPLOYMENT IN THE MINERALS INDUSTRY

At the seven reservations we visited, BIA did not determine if lessees had complied with Indian preference hiring provisions. However, tribes at two reservations--the Navajo

and Crow--had established procedures to insure that these provisions were being followed, and Indian employment in the minerals industry was significantly higher on these reservations.

Lease provisions for Indian preference in hiring vary; however, the requirements contained in the Jicarilla Tribe's leases are typical:

"Jicarilla Apaches shall be employed in such mining, drilling, exploration and development operations to the fullest extent that their qualifications and the law permits, and every reasonable effort will be made to train Jicarilla Apaches in the skills and abilities required ***."

We examined 27 prospecting permits and 33 leases for coal, oil, and gas development issued on the 7 reservations. Except for six leases on the Osage Reservation, all of the prospecting permits and leases included an Indian hiring preference provision. BIA Osage Agency Office officials indicated that Indian preference in hiring provisions had not been included in their leases because there was no problem with oil and gas operators hiring Indians on the reservation.

The coal leases we reviewed also stated that no nonmember of the tribe shall be hired until 48 hours after the delivery of notice to the tribe of a job opening. The oil and gas leases containing hiring preference provisions did not include such requirements.

BIA has not developed specific procedures to determine if lessees are complying with Indian hiring preference. However, certain procedures to assist Indians in obtaining employment in the minerals industry were being followed. For example:

--BIA advertised job openings in a local newspaper when notified by a coal company of an opening. (BIA did not, however, follow up to determine if the openings were filled by Indians.)

--BIA informally contacted oil and gas company officials to determine job availability.

We believe that these practices provide some assistance to Indians seeking employment in the minerals industry. They do not, however, provide adequate assurance that Indian workers are being provided employment opportunities. Procedures established by the Navajo and Crow Tribes are good examples of the types of procedures needed to help insure Indian hiring preference. The Navajo requirements include that:

- Coal companies establish goals to achieve relating to the number of Indian supervisors.
- Evaluations of the potential of nonmanagement Indian employees be performed by the coal companies at least once a year.
- Coal companies notify the tribe of any new hirings, promotions, and terminations within 5 working days of the action.
- Coal companies allow the tribe 10 working days to provide Indian candidates for permanent jobs.
- Training programs be developed.

On the Crow Reservation, procedures to insure Indian hiring include that:

- Monthly meetings be held between the tribe and coal company to discuss employment problems and potential vacancies.
- The coal company send weekly reports to the tribe showing the number of Indian staff days of labor scheduled for the week and Indian absenteeism.
- Indians, accepted by the coal company, be admitted for union membership.
- No nonmember of the Crow Tribe be hired until 48 hours after the tribe has been notified of the opening.

BIA central office officials said procedures to insure that lessees comply with Indian preference in hiring lease provisions have not been established but agreed that such action would be helpful. The officials added that limited manpower and funding make it difficult for BIA to institute such a program. The officials told us that it would be more effective to involve the tribes in such a program, which would also be consistent with the concept of Indian self-determination. If a tribe has the resources and ability to monitor the Indian preference in hiring procedures, BIA should encourage and assist them in doing so; otherwise, BIA should assume this responsibility.

We believe that the procedures used by the Navajo and Crow Tribes to help insure compliance with Indian preference in hiring lease provisions have helped increase Indian employment. Indian employment in the coal industry on these reservations averaged about 54 percent of the total coal industry

employment on the reservations during 1974. On the Navajo Reservation 1,313 persons were employed in the coal industry, 712 of whom were Indians with annual earnings totaling approximately \$8.2 million. On the Crow Reservation it is estimated that 55 to 60 percent of the 90 employees in the minerals industry are Crow Indians.

Of the other five reservations which had no procedures to assure Indian hiring preference, the Northern Cheyenne and Fort Berthold Reservations, which we visited relative to coal development, were not yet in the production stage. On the three reservations we visited relative to oil and gas development--Osage, Jicarilla, and Uintah and Ouray--accurate figures on the number of people employed were not available. State employment officials from New Mexico, Utah, and Oklahoma and various BIA and tribal officials did not know the number of Indians employed in the minerals industry. However, they indicated that it was minimal on the Jicarilla and Uintah and Ouray Reservations. On the Osage Reservation there were varying opinions as to the number of Indians employed.

Some BIA agency office officials indicated that procedures to assure Indian preference in hiring had not been established because there was no problem with employers not hiring Indians on the reservation. However, these officials could not determine the number of Indians employed on the reservation by the minerals industry or the number of jobs available. One official of a major oil company said he thought that reports to the tribe or BIA on job vacancies and the number of Indians working would assist his company in hiring Indians.

CONCLUSIONS

Indian employment in the minerals industry was substantial on the reservations we visited that had established specific requirements for Indian preference in hiring. In contrast, Indian minerals industry employment on those reservations not requiring companies to follow procedures, such as notifying the tribe in 5 working days of any new hirings, promotions, or terminations, was minimal or the number of Indians employed was not known. Except for the Navajo and Crow Tribes, which had their own procedures to insure compliance with Indian preference in hiring lease provisions, BIA and the tribes did not determine the number of jobs available or the number of Indians seeking employment.

We believe that all mineral leases should specifically require Indian hiring preference and that BIA and the tribes should establish procedures which would require lessees to provide BIA and the tribes with sufficient data to help insure

that Indian preference in hiring is being followed. Procedures have been established by the Navajo and Crow Tribes to insure Indian preference in hiring.

RECOMMENDATIONS TO THE
SECRETARY OF THE INTERIOR

To improve Indian employment in the minerals industry, we recommend that Secretary of the Interior direct the Commissioner of BIA to

- establish specific requirements in all Indian leases for Indian preference in hiring and procedures for lessees to regularly report to BIA and the tribes on the status of Indian employment and
- establish procedures, for each reservation with minerals development, for either BIA or the tribe to insure that Indian preference in hiring provisions and requirements are being followed.

CHAPTER 4

OPPORTUNITIES TO IMPROVE

COAL-LEASE TERMS

The leasing of Indian lands for mineral development is an important part of the economy on many reservations. According to USGS, in fiscal year 1974 there were 13,064 oil and gas leases and 981 leases for other minerals on Indian reservations. For the same period, BIA reported that the total income from these leases amounted to about \$52.7 million. We believe that BIA can improve management of Indian mineral resources and increase Indian income from minerals development. For most Indian coal leases we reviewed, royalty rates on coal remained fixed during periods of rising prices. Furthermore, the Federal regulation limiting the amount of coal-lease acreage on Indian land needs to be re-evaluated.

RESPONSIBILITIES AND OBJECTIVES FOR LEASING INDIAN MINERAL RESOURCES

BIA and USGS share responsibility for managing Indian mineral resources. BIA's objective in carrying out its responsibilities for approving mineral leases and permits is to obtain for the Indian owners a maximum recovery and income consistent with a sound conservation program.

Although BIA is responsible for all phases of mineral management through the leasing process, USGS also plays an important role since it is responsible for advising BIA on the adequacy of the lease terms and for assuring compliance with the lease terms. During the leasing process, USGS' specific responsibilities are to advise BIA and the tribes on

--the number of acres to be leased, royalty rates, and lease terms and

--the adequacy of bids received from interested parties.

USGS responsibilities for assuring compliance with lease terms are discussed in chapter 5.

ROYALTY RATES SHOULD BE BASED ON THE SELLING PRICE OF COAL

BIA has not established a coal-lease rate policy based on the selling price of coal. This has resulted in situations where the Indians do not benefit from their coal resources as the market value increases. With a fixed royalty rate, Indian

income per ton remains constant regardless of the selling price of the coal.

The Code of Federal Regulations (25 CFR 171.15 and 172.18) provides for a minimum royalty rate for coal of not less than 10 cents per ton. These regulations provide that for most other minerals, including oil and gas, royalty rates be set at a percentage of the selling value of the minerals. In November 1975 BIA officials said a proposal to require rates based on the increasing value of coal was being considered by the Commissioner of Indian Affairs. The officials added that as a result of the current increase in the demand for and selling price of coal, it has only recently been advantageous to require percentage royalty rates. They said when past fixed royalty rate leases were approved, the rates established did provide the Indians with a fair return.

We reviewed 15 coal leases from the Crow, Northern Cheyenne, and Navajo Reservations; 12 had fixed royalty rates and only 3 had royalty rates based on the selling price of coal. One of these three leases, negotiated in 1964, required that the royalty rate be 6.67 percent of monthly sales but not less than 25 cents per ton. The remaining two leases, although containing provisions for a fixed rate, required that the rate be increased as the selling price of coal increases to a certain level.

The acceptability of percentage royalty rates by coal companies is evidenced by the fact that the Crow Tribe in November 1974 successfully renegotiated the lease terms for two of its leases--replacing fixed royalty rates with percentage royalty rates. Also, USGS, responsible for coal leasing on Federal land, changed its policy from calculating royalties on the basis of a fixed amount per ton to a percentage of the selling price in February 1971. However, USGS policy is not required to be followed on Indian land. In April 1971 the Northern Cheyenne Tribe conducted a sale of exclusive coal prospecting permits with an option to lease on 18 tracts of reservation land covering about 367,000 acres. The royalty rate for leases issued under the permits was set at 17.5 cents per ton. However, USGS did not recommend percentage royalty rates and concurred in the terms of the sale. USGS said that its recommendations for the lease were made before the Federal policy change and before advertising the lease sale. The officials stated that it would have been difficult to stop the sale at that point and begin again.

In October 1964 the Navajo and Hopi Tribes had entered into a prospecting agreement with a major coal company with the option to lease up to 58,270 acres of land jointly owned by the tribes. The prospecting permit included a specific

right to lease with royalty terms of 6.67 percent of the monthly gross income, but not less than 25 cents per ton for all coal sold. Under the lease, the Navajo Power Plant, which is not on the joint-use area, will use 8.2 million tons of coal a year by 1976. BIA officials estimated the selling price for coal will be between \$3.50 and \$5.50 per ton by 1976. Using these selling prices, the minimum royalty income to the Navajo and Hopi Tribes assuming production of 8.2 million tons per year, will range between \$1,914,290 and \$3,008,170 per year. If they had accepted the 17.5 cent rate per ton used in coal leases on other reservations, income would have ranged between \$479,290 and \$1,573,170 less a year.

The 1971 policy change for Federal lands as well as the potential increased income to Indians justifies a change in future leasing terms for Indian mineral resources from the fixed-rate method to the percentage-rate method. This policy should also be applied to existing leases as renegotiations occur.

COAL-LEASE ACREAGE LIMITATION NEEDS TO BE REEVALUATED

Federal regulations for Indian mineral leasing (25 CFR 171.9(b) and 172.13) provide that a coal lease shall ordinarily be limited to 2,560 acres. The Commissioner of BIA may, however, upon application approve the combining of leases or the issuance of a single lease for more than 2,560 acres if the approval of such larger acreage is in the interest of the lessor and necessary to permit the establishment or construction of thermal electric powerplants or other industrial facilities on or near the reservation. A review of 15 coal leases disclosed that 10 exceeded the 2,560-acre limitation. These leases ranged in size from 11,157 to 40,287 acres.

BIA believes that the 2,560-acre limitation is not realistic for modern coal mining. In discussing the 2,560-acre limitation with BIA central office officials, we were told that the limitation is probably too restrictive and does not provide the flexibility necessary for modern coal mining. These officials believe that the 2,560-acre limitation is no longer valid and they are considering abolishing it. They said that each lease should be analyzed separately to determine what acreage should be allowed and that coal reserves, lessees' development plans, and the amount of resources the lessees must invest in the lease should be among the factors considered in determining a lease's acreage. The officials believe that large acreage leases are necessary to attract economic development on the reservations, but realize that such leases must contain provisions to require diligent

development with the stipulation that if such development does not occur the lease can be canceled. They also said that the ultimate decision on the size of the lease should be up to the tribe, as long as the tribe is aware of all the considerations and alternatives to a large lease.

BIA's Billings Area Office, responsible for coal leasing on the Crow and Northern Cheyenne Reservations, also believes that the 2,560-acre limitation is obsolete. In February 1972 the Billings Area Office told the Commissioner of BIA that coal lessees should be able to lease as many acres as necessary as long as they can be kept contiguous. They stated that coal operators need huge coal reserves that may not be mined for years and that without such reserves the operators could not attract financial assistance required to start a mining operation. In January 1972 the area office informed one coal company that it had revised the policy regarding the 2,560-acre limitation and would grant a single lease for as many contiguous acres as the lessee may require.

In January 1974 the Northern Cheyenne Tribe petitioned the Secretary of the Interior to set aside all outstanding coal permits and leases on the reservation. The petition, in part, states that there has been a pattern of gross deviation by the Secretary and his representatives from the terms of the regulations (25 CFR 171) regarding the Northern Cheyenne coal transactions, including violations of the 2,560-acre limitation. The petition states that it is highly significant that although the beneficiary had been advised verbally of the proposed use of its land for gasification plants, and although the lease contained a clause giving the coal company the right to construct such plants as it deems necessary for processing its product, nowhere can one find any documents expressing declarations concerning the gasification plants.

In his June 4, 1974, decision on the Northern Cheyenne petition, the Secretary of the Interior stated that there was no clear evidence of an explicit waiver of the excess acreage limitation and directed that the coal company and the Northern Cheyenne Tribe limit the lease to 2,560 acres or less or clearly demonstrate the need to waive this limitation. The Secretary also determined that no further administrative action could be taken on the leases until an environmental impact statement is completed and he has made a determination that further action should be taken. As of February 1976 the environmental impact statement had not been prepared.

We believe that BIA, in conjunction with USGS, should determine whether the 2,560-acre limitation and the criteria for exceeding the limitation are realistic or if the regulation

should be revised. In making such a determination, BIA and USGS must first identify the factors which should be considered in determining the number of acres to be contained in a lease. We believe that BIA and USGS should consider factors such as the amount of coal reserves on the acreage to be leased; the lessee's plans to develop the acreage, including plans for diligent development; the definite and prospective markets for the coal produced; the amount of coal committed for sale; resources the lessee must invest in the development; plans for financing the project; compensation to the tribe for allowing the lessee to hold such large acreages; and overall benefits to the Indians.

Also, in reviewing BIA files for coal leases in excess of the 2,560-acre limitation, we found that BIA was not adequately documenting the justifications or reasons for approving the excess acreage. BIA must fully document lease transactions in order to defend its actions and properly answer questions which may arise regarding approval of particular leases.

Of the 10 leases we reviewed exceeding the acreage limitation, documentation was inadequate for 8 as to the basis for BIA's action to waive the 2,560-acre limitation. For the remaining two leases, documentation showed that the Assistant Secretary of the Interior suspended the requirement that the lease comply with the Federal regulation in order to bring additional income to the tribe(s), improve economic conditions of the area, and provide employment opportunities for the Indians.

CONCLUSIONS

To help insure that Indians receive a fair return on the value of their coal resources, BIA should establish a coal-lease rate policy based on the selling price of coal with a floor below which the rate cannot fall. Such a policy will benefit the Indians as the price of coal increases since there would be a corresponding increase in income.

BIA, in conjunction with USGS, should also reevaluate the 2,560-coal lease acre limitation and identify the various factors which should be considered in determining the number of acres to be contained in the leases. By identifying these factors, BIA and USGS should then be better able to judge the adequacy of the present 2,560-acre limitation and, if necessary, modify or take action to implement new regulations. Also, BIA should act to insure that lease files are completely documented to support actions it takes on coal leases.

RECOMMENDATIONS TO THE
SECRETARY OF THE INTERIOR

To help insure that Indians benefit from the increasing value of the coal resources and to improve coal-lease management, we recommend the Secretary of the Interior direct the Commissioner of BIA to:

- Establish a coal-lease royalty rate policy based on a percentage of the selling price of coal, with a fixed amount (floor) below which the price cannot fall.
- Determine whether the 2,560-acre limitation and the criteria for exceeding the limitation are valid, and, if it is found they are no longer valid, take action to revise the Code of Federal Regulations accordingly. In making this determination, factors to be considered in determining the number of acres to be leased should be identified. This recommendation should be carried out with USGS assistance.
- Insure that BIA lease files are adequately documented to support all actions taken.

CHAPTER 5

OPPORTUNITIES TO IMPROVE

LEASE MANAGEMENT

USGS can improve lease management and increase Indian income by

- performing required inspections of oil and gas well sites;
- collecting royalties due in a timely manner and applying penalties for noncompliance with lease terms;
- requiring timely receipt of reports, verifying nonproduction and performing postaudits; and
- coordinating reclamation activities of reservation land and water resources performed by various agencies.

USGS RESPONSIBILITIES FOR INDIAN MINERAL LEASING

USGS responsibilities for Indian mineral leasing operations are set forth in Leasing of Tribal Lands for Mining (25 CFR 171) and Leasing of Allotted Lands for Mining (25 CFR 172). In addition, USGS's Oil and Gas Operating Regulations (30 CFR 221) give it the following responsibilities for Indian leasing:

- Determine lessee rental liabilities for leased land.
- Record rentals, royalties, and other payments due to the Indians.
- Maintain lease accounts.
- Receive reports of lessee operations and sales.
- Require compliance with lease terms and applicable laws and regulations.

LACK OF MONITORING AND ENFORCEMENT OF LEASE PROVISIONS

Our review showed that USGS has not adequately fulfilled its responsibilities for Indian lease operations. USGS officials said that the major reason it has been unable to carry out its responsibilities is because it does not have enough

personnel. USGS central regional office, in its fiscal year 1976 proposed budget, stated that additional staff are needed to

- accomplish necessary lease, well, and other inspections;
- handle increased workloads; and
- expand the accounting section to process work backlogs and establish an effective audit group for postaudit work on producing royalty accounts.

An Office of Audit and Investigation, Department of the Interior, audit report dated June 9, 1975, entitled "Review Of Royalty Accounting System For Onshore Oil And Gas Leases," also identified problems with USGS regarding receipt of lessee operating reports, royalty payments, and postaudit of lessee accounting. The report attributed many of these problems to insufficient staffing.

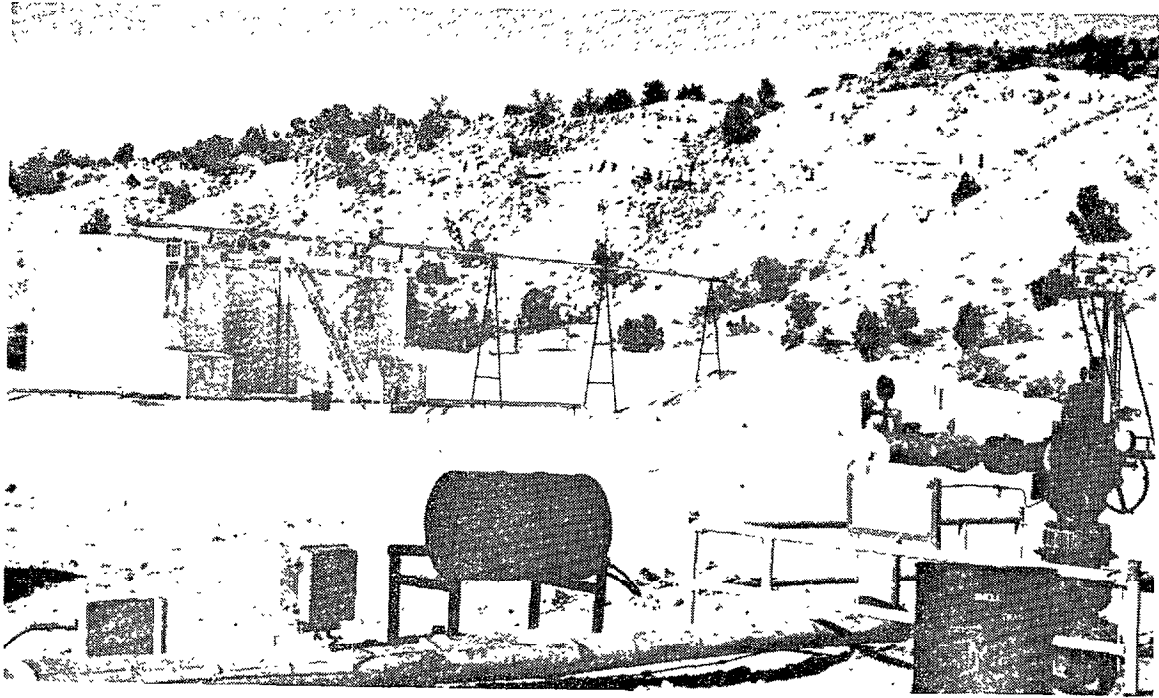
Required inspections not performed

USGS is required to perform oil and gas well site inspections for lease compliance including drilling, producing lease, abandonment, and meter proving inspections; e.g., to insure that meters that measure oil allocation and sales are accurate. The frequency of required inspections ranges from quarterly to annually, depending on the type, while certain types are required to be conducted on an as-needed and random basis. However, for fiscal year 1973, the USGS central region reported that only 15 percent of required oil and gas lease inspections work was done.

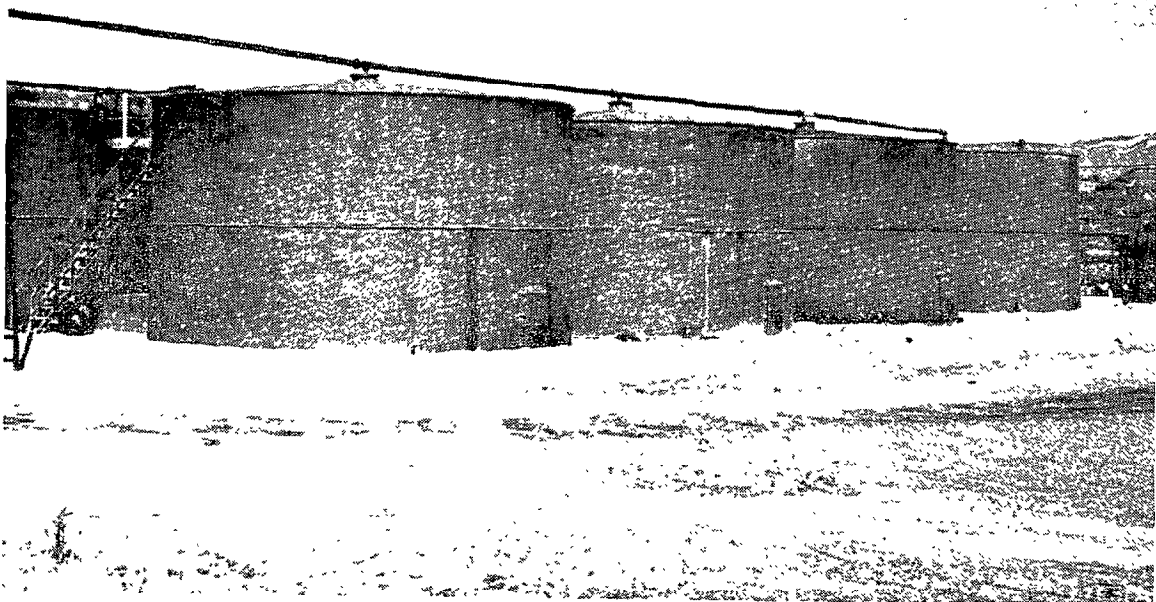
In the Northern Rocky Mountain Area, which includes the Uintah and Ouray Reservation (see photographs, p. 30), USGS performed only 20 percent of its required inspections in fiscal year 1973. The Southern Rocky Mountain Area, which includes the Jicarilla Reservation, reported performing only about 10 percent of its lease inspection work in fiscal year 1973. In its fiscal year 1975 budget justifications, USGS reported that its current resources permit only about 10 to 20 percent of the required oil and gas lease inspection work to be done.

We believe that USGS cannot determine if lessee's operations are in compliance with regulations without performing site inspections. The following situations might have been averted if more frequent inspections had been performed.

- While on a USGS-conducted tour of the Uintah and Ouray Reservation, we were shown an unapproved



OIL AND GAS WELL FACILITIES ON THE UINTAH AND OURAY RESERVATION.



OIL STORAGE FACILITY WHICH STORES OIL FROM WELLS OWNED BY INDIAN (UINTAH AND OURAY TRIBE), FEDERAL, AND PRIVATE INTERESTS.

common oil storage facility which violated regulations. This facility stored oil from Indian and non-Indian wells and the system did not provide adequate assurance that production from each well could only be allocated to that well. USGS officials said that there are other such unapproved facilities on the reservation. This facility also contained an unapproved oil metering system. A USGS official stated it is essential that automatic metering systems be checked regularly, otherwise it may be possible for a lessee to steal oil. This storage facility had been in operation over 6 months without approval, although the oil company had requested USGS approval of the facility. USGS officials informed us that this type of problem exists because it only has two inspectors to cover its Salt Lake District, which contains about 19.7 million acres.

--While on a tour of the Jicarilla Reservation, we were shown a well which had been flaring gas into the atmosphere for over 6 months without USGS approval. USGS inspectors were unaware of the flaring until the time of our visit. Unjustified flaring of gas can result in lost royalties to the Indians.

Our review showed that USGS' central region requested 222 new positions for fiscal year 1976. However, according to a USGS headquarters official, in its 1976 budget request USGS requested only 156 position increases nationally for all of its Conservation Division, of which the central region is a part. The central region was assigned 40 position increases, 10 of which were for oil and gas operations. The central region estimated that it will be only about 35-percent effective in carrying out its oil and gas responsibilities in fiscal year 1976, even after the staffing increases. Its fiscal year 1975 effectiveness was 32 percent. USGS measures effectiveness by its ability to carry out its required work.

Late royalty payments and penalties

We examined oil and gas royalty accounts for the Uintah and Ouray, Jicarilla, and Osage Reservations to determine if oil and gas companies were making royalty payments in a timely manner. Significant amounts of royalty payments were being received late on the Uintah and Ouray and Jicarilla Reservations where USGS is responsible for collecting payments, but not on the Osage Reservation where BIA has this responsibility. Federal regulations applicable to the Uintah and Ouray and Jicarilla Reservations do not require a specific penalty charge on late royalty payments.

The Osage Reservation oil and gas regulations require a late charge of 1.5 percent for each month or fraction thereof until payment is made. Although the timely collection of royalties on the Osage Reservation may, in part, be attributed to a specific minerals group that monitors royalty payments on a current basis, the availability of a precise charge to assess lessees, if the BIA Agency Office considers it necessary, helps enforce prompt payment.

The Code of Federal Regulations (25 CFR 171.16) provides that royalties for oil and gas on the Uintah and Ouray and Jicarilla Reservations are payable by the last day of the month following the month of production. Royalties for Osage oil and gas are payable by the 25th of the month following the month of production (25 CFR 183.45). A comparison of royalty payments on the Osage, Uintah and Ouray, and Jicarilla Reservations for a 3-month period in 1974 revealed the following:

<u>Reservation</u>	<u>Payments examined</u>	<u>Late payments</u>	<u>Percent late</u>
Osage	4,824	13	0.3
Uintah and Ouray	60	42	70.0
Jicarilla	60	28	46.7

We made a random selection of 20 of 207 producing oil and gas leases on the Uintah and Ouray Reservation to determine the dollar significance of late royalty payments over a 14-month period during 1974 and 1975. Royalties totaling over \$715,000 were made from 1 to 18 months late. If the Osage late charge of 1.5 percent a month was applicable to the Uintah and Ouray Tribe leases, they would have received over \$17,300 in late payment fees.

We also made a random selection of 20 of 125 producing oil and gas leases on the Jicarilla Reservation to determine the significance of late payments over a 14-month period during 1974 and 1975. Royalty payments totaling over \$270,000 were made from 1 to 11 months late. If the 1.5 percent late charge fee were applied, the tribe would have received over \$6,600 in late payment fees.

BIA Osage Reservation officials said they had no significant problems with royalty payments being made late. BIA Osage officials added that they examine each late payment to determine why the payment was late. They said normally they do not charge lessees for making late payments because the amount is insignificant and, consequently, the amount of the late charge would be small. The officials added that once they contact the lessee, or the oil or gas purchaser, concerning the late royalty payments, the payment is usually

made. In reviewing royalty payments from December 1974 through February 1975, we found late payments on the Osage Reservation to be relatively insignificant compared to royalties received of about \$3.4 million during this period. Royalty payments totaling only about \$23,000 were 1 month overdue.

USGS officials responsible for supervising oil and gas lease operations on the Uintah and Ouray and Jicarilla Reservations agreed that Indians were not receiving their royalty payments on time. The officials stated that they could better enforce prompt payment of royalties if they had sufficient manpower to insure that the payments were received on time and a penalty could be assessed whenever payments were late. Because of the amount of late payments, USGS should establish a specific charge for late royalty payments.

The Office of Audit and Investigation, Department of the Interior, in its June 9, 1975, report entitled "Review Of Royalty Accounting System For Onshore Oil And Gas Leases," also noted a significant number of late royalty payments to USGS and reported that meaningful financial penalties are necessary with uncooperative lessees or in cases of lessees who seek financial advantage by persistently delaying royalty payments. The report recommended that USGS establish meaningful penalties for overdue royalty payments.

A USGS headquarters official informed us that the Department of the Interior is currently considering revising its Federal regulations for oil and gas operations which include provisions for a specific penalty for late royalty payments. The proposed penalty rate is expected to be comparable to the prime interest rate charged by the major commercial banks in the area where the lessee operations are located.

Production and sales reports not received by USGS, nonproduction not verified, and postaudits not performed

USGS oil and gas regulations require lessees to submit various types of reports to USGS including reports of operations listing products produced, volume of products sold (run tickets), and royalty reports for products sold. Also, the USGS Area Oil and Gas Supervisor can, if he considers it necessary, require purchasers of oil and gas to submit reports of products purchased. The above reports often were not being submitted as required. These reports allow USGS to monitor production and royalty payments and can also be used in conducting postaudits.

In its Northern Rocky Mountain Area, which includes the Uintah and Ouray Reservation, USGS did not strictly enforce the requirement that the reports of the volume of products sold be submitted. Also, reports from purchasers were not required. Purchaser reports permit USGS to compare reports of products sold with products purchased to determine if they are in agreement and whether the company is accurately reporting production. USGS officials indicated that, because of inadequate staff, they cannot enforce the requirement that these reports be submitted. If these reports are not received, or are received late, it is difficult to compare production reports and perform postaudits. USGS must instead rely on the lessees' integrity concerning reported production and must assume that lessees have correctly reported and paid royalties and that lease accounts are accurate.

In addition to the lack of needed reports from lessees, USGS officials told us that the lack of staff to audit lease accounts has also hindered the performance of postaudits. In its Northern Rocky Mountain Area, USGS is postauditing only about 5 percent of the Indian lease accounts, even though the benefit of such audits has been significant. For example, during a 2-year period ended June 1975, the Northern Rocky Mountain Area collected additional revenues from both Federal and Indian oil and gas leases of over \$798,000 through postauditing. A USGS area office official said it would be preferable to postaudit all accounts at least biannually.

In the Southern Rocky Mountain Area, USGS does not verify that "run tickets" are received as required and, according to a USGS official, many operation reports are received late. The Southern Rocky Mountain Area requires purchasers to submit reports on products purchased. In this area, less than 5 percent of all Federal and Indian accounts are postaudited. In 1973 postaudits of Indian leases in this area office resulted in collections of about \$167,000. A USGS area office official also stated substantial amounts of money are realized from postaudits but that additional auditors are needed.

The Office of Audit and Investigation report of June 9, 1975, which applied to both Federal and Indian oil and gas leases, identified similar problems including:

--The USGS royalty accounting system does not function smoothly because information which is needed is not required and information which is required is either not submitted or submitted late.

--USGS devotes little effort to postaudit; i.e., analysis of prices, volumes, allowances, and reconciliation of account balances.

--USGS needs better controls for verifying production quantities.

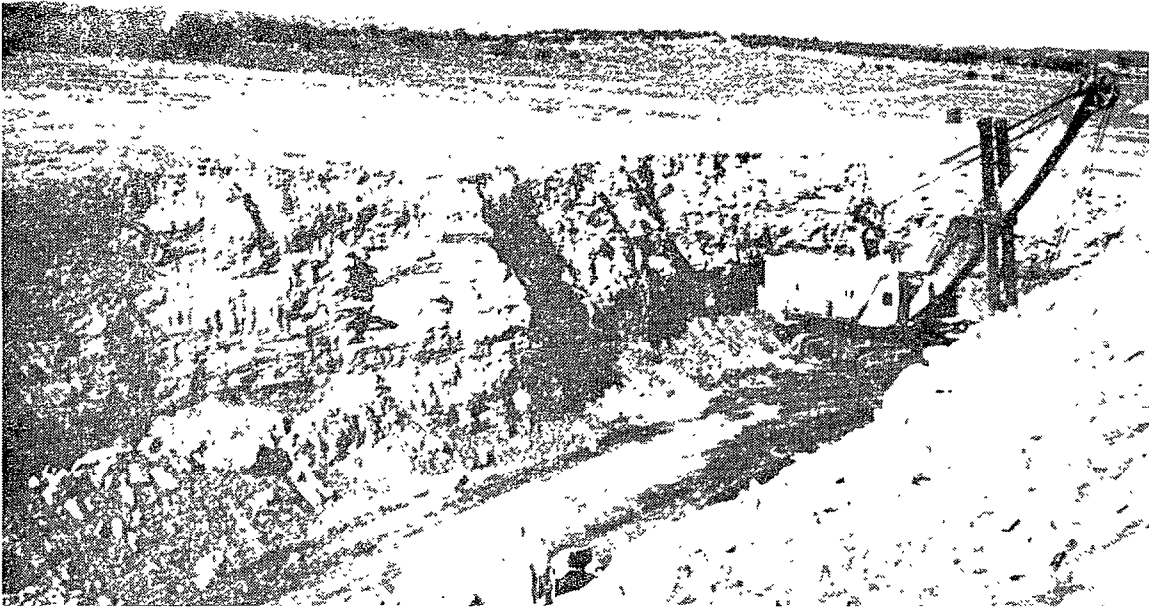
--The main reason the USGS royalty accounting system has so many problems is because of a chronic understaffing problem.

We were told that the lack of staffing has also forced USGS to rely upon industry to inform it if oil or gas wells are producing. When an oil or gas well is operating, the lessee is required to send monthly production reports to USGS. If there is no production the lessee is required to report that also. USGS, we were advised, does not have the staff to independently verify whether the well is producing or not. In one case on the Uintah and Ouray Reservation, the USGS district office was unaware that a well had been in production for over 9 months. Since the lessee had not sent production reports to USGS, the district office was not aware that royalties were due. However, in this case the lessee had been sending royalty payments to the USGS area office. If the lessee had not made such payments, USGS would not have known that payments were due. A USGS district office official added that there could be other such cases on the reservation.

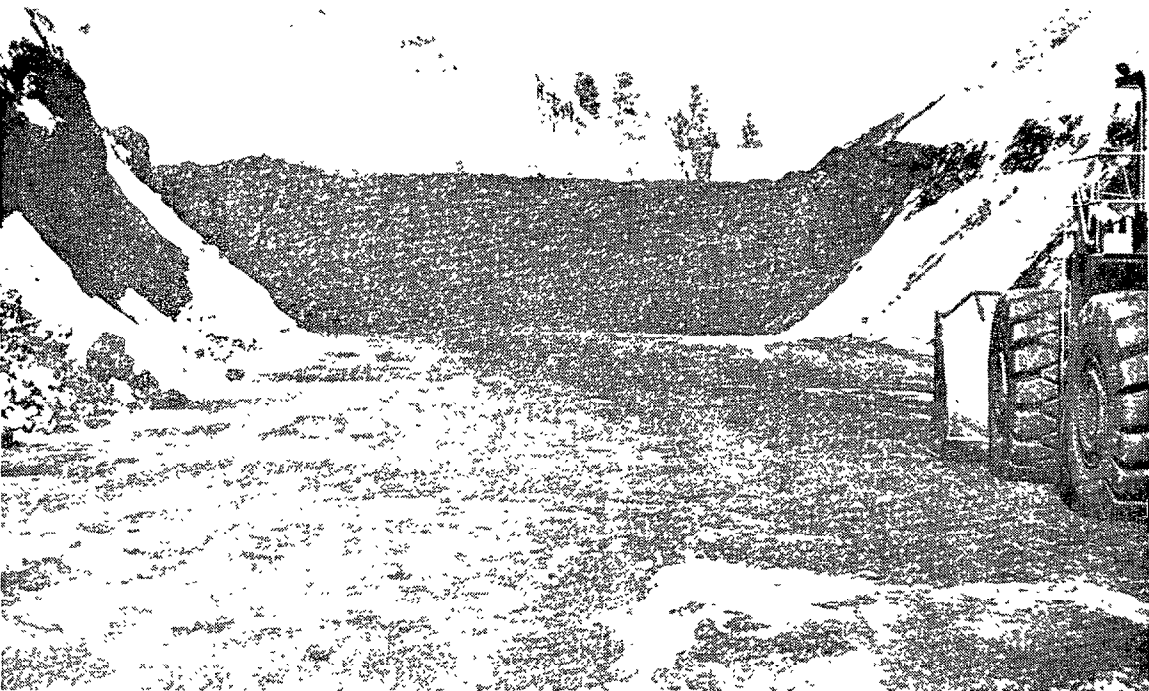
USGS should coordinate
reclamation activities

The monitoring of reclamation activities--the reconditioning or restoration of land or water affected by mineral development--is the responsibility of USGS on Federal and Indian lands. However, BIA, State, and local agencies are also involved in certain reclamation activities. USGS reclamation responsibilities are not outlined in the Code of Federal Regulations, although they are discussed in various sections (25 CFR 171, 172, and 177). USGS should coordinate the reservation reclamation activities of the various agencies to help clarify reclamation responsibilities on the reservations and to avoid possible duplication of effort.

On the Navajo Reservation, where coal development has started (see photographs, p. 36), three organizations--USGS, BIA, and the State of New Mexico--are responsible for monitoring reclamation on the reservation. The tribe is also involved in reservation reclamation activities. There are no formal agreements among these organizations to coordinate reclamation activities. One USGS official said there is no clear definition of responsibilities for monitoring reclamation on the reservation and, as a result, each agency is operating independently. New Mexico has assumed jurisdiction



**STRIP MINING OPERATION ON THE NAVAJO RESERVATION.
(Photograph furnished by BIA.)**



**COAL ON THE NAVAJO RESERVATION READY TO BE REMOVED AFTER
OVERLAYING ROCK AND SHALE HAD BEEN STRIPPED AWAY.
(Photograph furnished by BIA.)**

on Indian lands and State officials said they will continue to act in this capacity until court action dictates otherwise. Reclamation efforts were just starting on the reservation at the time of our review; therefore, we could not evaluate their effectiveness.

On the Crow Reservation, State of Montana reclamation requirements apply to "ceded" lands where coal development is taking place. "Ceded" land is land on which the surface rights are owned by non-Indians but the Indians have retained the mineral rights. There are, however, no coordination agreements between BIA, USGS, or Montana concerning responsibilities for reservation reclamation.

In addition, there are no coordination agreements on the Fort Berthold Reservation among USGS, BIA, or the State of North Dakota concerning reclamation activities. The State attorney general has ruled that the State coal mine inspector has no authority regarding coal mines on Indian lands.

Because most coal development had not begun on the reservations in our review, reclamation activity was minimal. The lack of coordination and specific responsibilities had not caused any problems in assuring that reclamation was satisfactorily occurring. However, once coal development activities become extensive proper coordination could help avoid problems, such as

- inadequate restoration of water resources,
- incorrect contouring of the land,
- improper types of vegetation used to revegetate the mineral development area, and
- delay in reclamation or failure to reclaim the land.

CONCLUSIONS

USGS has not adequately fulfilled its responsibilities for mineral resource development on Indian reservations. USGS has not (1) performed required oil and gas lease site inspections, (2) properly monitored royalty payments and operating reports, (3) verified lessee reports that oil and gas wells are not producing, (4) postaudited most lease accounts to insure that the Indians are receiving all royalties due, and (5) developed procedures to coordinate reclamation activities on the reservation with the various agencies involved to assure that reclamation is properly carried out. Also, USGS does not have a specific penalty for late payment of oil and

gas royalties due the Indian people. Many of the deficiencies we found have been due primarily to a lack of adequate staff.

RECOMMENDATIONS TO THE
SECRETARY OF THE INTERIOR

To improve USGS management of leases of Indian mineral lands, we recommend that the Secretary of the Interior require the Director of Geological Survey to

- establish a penalty fee for late payment of royalties and enforce such requirements as necessary;
- instruct lessees to submit reports required by Federal regulations and lease terms when they are due and require purchasers of Indian mineral resources to submit reports on products purchased;
- establish procedures to coordinate reservation reclamation activities among the various agencies involved with this activity on each reservation;
- determine the level of staffing necessary to satisfactorily perform its oil and gas responsibilities on Indian lands and take the steps necessary to obtain such staffing;
- require its field offices to verify on a random basis that oil and gas wells reported to be shut down are no longer producing;
- perform all required oil and gas site inspections; and
- postaudit all Indian oil and gas lease accounts.

CHAPTER 6

SCOPE OF REVIEW

In conducting our review of the development and management of coal, oil, and gas on seven Indian reservations, we reviewed applicable laws and regulations and BIA- and USGS-related policies, procedures, and practices. We also discussed the management of these resources with BIA officials at the central, area, and agency offices; USGS officials at the central, area, and district offices; various tribal offices; State officials; and representatives of the coal and petroleum industries.

Our review was conducted at:

- BIA central office, Washington, D.C., and at various field offices in Arizona, Montana, North Dakota, New Mexico, Oklahoma, South Dakota, and Utah.
- USGS central office, Reston, Virginia, and at various field offices in Colorado, Montana, New Mexico, Utah, and Wyoming.
- The Navajo Reservation in Arizona and New Mexico, the Crow and Northern Cheyenne Reservations in Montana, and the Fort Berthold Reservation in North Dakota for coal development and the Jicarilla Reservation in New Mexico, the Osage Reservation in Oklahoma, and the Uintah and Ouray Reservation in Utah for oil and gas development.

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United States Senate

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

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June 11, 1974

The Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Comptroller General:

As you know, due to the ever increasing demand for energy fuels, the United States is currently experiencing a fuel shortage. Also, to varying degrees, the Nation is experiencing shortages of certain agricultural and meat products, timber for home construction and other commercial purposes, and other mineral resources.

The American Indians, who have long been considered to be among the most disadvantaged Americans, have significant land and natural resources which, if properly developed, could play a significant role in contributing toward a reduction in these shortages and at the same time provide much needed employment, income, and economic development for the Indian people. For example, Indian lands contain nearly 4 1/2 million acres of range land, 13 million acres of forests, and 1.2 million acres of cropland. Also, a recent newspaper article stated that over two dozen Indian reservations contain significant reserves of oil, gas, coal, uranium, oil shale, tar sands, and geothermal resource potential. The article further noted that other reservations contain deposits of copper, tungsten, iron, gold, silver, phosphate, asbestos, and limestone.

The Committee is concerned about the energy, mineral, food, and timber shortages facing the Nation and the need to develop our domestic resources. Therefore, I



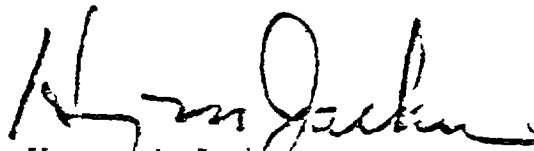
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would appreciate it if you would undertake a review of the efforts of the Bureau of Indian Affairs to encourage the development of the natural resources on Indian reservations and, which at the same time, could provide the Indian people with much needed employment, income and economic development.

You may disclose that your review is being made at the request of the Committee and you may obtain agency comments on your report.

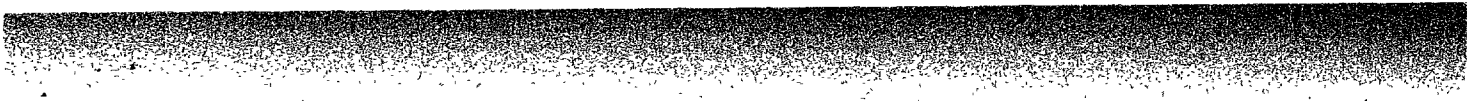
The Committee and its staff stand ready to assist you in your efforts.

Sincerely yours,



Henry M. Jackson
Chairman

HMJ/igh



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