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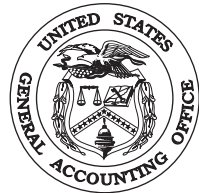
Report to the Subcommittee on Interior  
and Related Agencies, Committee on  
Appropriations, U.S. Senate

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June 1999

# INDIAN PROGRAMS

## BIA Should Streamline Its Processes for Estimating Land Rental Values



G A O

Accountability \* Integrity \* Reliability

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United States General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-282436

June 30, 1999

The Honorable Slade Gorton  
Chairman  
The Honorable Robert Byrd  
Ranking Minority Member  
Subcommittee on Interior  
and Related Agencies  
Committee on Appropriations  
United States Senate

The Department of the Interior's Bureau of Indian Affairs has jurisdiction over roughly 56 million acres (about 87,500 square miles) of Indian-owned land that is held in trust by the federal government.<sup>1</sup> In 1997, tribes and individual Indians received over \$104 million from about 102,000 leases covering almost 8 million acres of land. This land is leased for a variety of uses, including farming, livestock grazing, business development, and residential use.<sup>2</sup> The Bureau is required to approve leases on Indian land held in trust by the federal government and to ensure that the landowners receive a fair annual rental for their leases.

Concerned about how the amount of rent for this land is established and how rent appraisals may affect the ability of Indians to lease their land and of lessees to rent it, you asked us to review the Bureau's method of establishing the lease value of Indian land. On the basis of language in Senate Report 105-56 and discussions with your offices, we agreed to provide information on (1) how the Bureau uses appraisals and other methods to establish the lease value of Indian land; (2) how its appraisal methods compare to those of other federal and state agencies and of private appraisers and what other methods are used to value federal, state, and private leases; (3) what impediments to leasing Indian trust land have been identified; (4) what alternatives to appraisals could be used to establish the lease value of Indian land, including any changes in federal

<sup>1</sup>Not all reservation land is trust land—some reservation land is owned by non-Indians and some is Indian-owned land that the government does not hold in trust. Interior has no responsibility for nontrust land.

<sup>2</sup>In this report, we discuss only surface uses of leased Indian trust land. The subsurface rights to Indian land may also be leased for mineral development.

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laws and regulations that would be required; and (5) what efforts the Bureau has made to improve its appraisal methods. We also provide information on the leasing of Indian trust land in appendix I, on issues surrounding residential leases of Indian trust and other land in appendix II, and on acreage in Indian irrigation projects in appendix III.

To respond to these objectives, we contacted or visited officials in Bureau area offices in Portland, Oregon; Billings, Montana; Phoenix, Arizona; Muskogee, Oklahoma; and Aberdeen, South Dakota; and we visited several agency offices within the areas we visited. We also contacted officials with the Department of the Interior's Bureau of Land Management and the Department of Agriculture's Forest Service to discuss surface-lease valuation on federally managed land. In addition, we contacted officials with the states of Colorado, Minnesota, Montana, and Washington to discuss their methods of establishing rents for leases on state-owned land held in trust for public institutions such as schools. Finally, we contacted private appraisers representing two professional appraisal associations.

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## Results in Brief

In summary, we found the following:

- The Bureau of Indian Affairs relies mostly on appraisals to ensure that Indian land is leased for a fair annual rental. However, the Bureau has not defined fair annual rental and does not have a clear policy on how that amount should be determined. We found no statutory or regulatory requirement that appraisals be used to establish lease values. Under certain circumstances, some Bureau offices use other methods in addition to appraisals.
- The standards and methods that apply to Bureau appraisers also apply to other appraisers, including other federal, state, and private appraisers. However, managers of other land also use other methods to establish lease values. For example, the Bureau of Land Management and the Forest Service are required to obtain fair market value for real estate transactions, and they use appraisals along with fee schedules and formulas to establish lease values. Managers of state-owned land also use appraisals for some types of leases, and states can also use competitive bidding, market surveys, and formulas to establish rents. According to several private appraisers we spoke to, the rents for agricultural leases on private land are often not set by appraisal. However, leases for other uses on private land, such as business uses, may be valued by appraisal.

- Impediments to leasing Indian trust land include appraisal amounts that are more than lessees want to pay; the time taken to prepare and review appraisals; and the Bureau's cumbersome bureaucracy. Appraisal amounts were considered a particular problem because of Bureau officials' reluctance to approve leases for less than the appraised value. In addition, while Bureau and other appraisers stated that there is no standard for the amount of time it should take to prepare or review an appraisal, some Indian communities expressed frustration with the time taken by the Bureau's processes. For example, in one area office, the Bureau's review of contractor-prepared appraisals submitted by one Indian community required an average of 146 days.
- In addition to appraisals, other methods are available for establishing lease values in some circumstances. Such other methods include advertising for competitive lease bids, conducting market surveys, and applying fee schedules or formulas. Current laws and regulations do not require the use of appraisals to establish lease values and would not need to be changed for the Bureau to adopt these or other alternative methods to establish rents for leases. Interior's field solicitor in Minneapolis, Minnesota, conducted a preliminary legal review and found no statutes that require the Bureau to prepare appraisals. However, Bureau officials said a more comprehensive review of laws, regulations, and court cases would need to be conducted before Bureau-wide changes would be considered.
- The Department of the Interior is reviewing the Bureau's use of appraisals and is considering improvements to the Bureau's current processes. Proposed improvements include training realty staff on the circumstances under which appraisals should be requested to limit the number of unnecessary appraisals and automating—and thus streamlining—the valuation processes for certain types of real estate transactions. The improvement plan also includes a recommendation that the Bureau develop a system for tracking appraisals to allow more effective use of appraisal resources. Although a Bureau workgroup found that such tracking systems are in place, our analysis of appraisal tracking records from four Bureau area offices showed that their usefulness varied widely. For example, we found that over 61 percent of the appraisal tracking records from one area office were either incomplete (that is, missing data) or inconsistent (for example, indicating a negative number of elapsed days for preparing an appraisal); for another office, all of the appraisal log data were usable.

This report makes several recommendations designed to clarify and improve the Bureau's appraisal policy.

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## Background

The Bureau's budget for real estate appraisals of Indian trust land is about \$4.1 million for fiscal year 1999, and the agency estimates that approximately 27,000 appraisals will be completed this year. The Bureau does not maintain data on the number of appraisals that are prepared for leases, but appraisal logs from four area offices—Aberdeen, South Dakota; Muskogee, Oklahoma; Phoenix, Arizona; and Portland, Oregon—show that 43 percent of about 6,900 appraisals approved in those offices in calendar years 1997 and 1998 were for leases. Appraisers may be either Bureau employees or contractors, and all appraisals—regardless of who prepares them—must be reviewed and approved by Bureau review appraisers.

Current Bureau guidance on appraisals requires that appraisers adhere to professional appraisal standards when preparing appraisals, regardless of whether they are for the sale, lease, exchange, or other disposition of the land. The standards that are the basis for the Bureau's policies are the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisitions, and the standards set forth in the Uniform Relocation Assistance and Real Property Acquisitions Act. USPAP, which reflects the appraisal profession's current standards for preparing and communicating the results of appraisals, is published by the Appraisal Standards Board of the Appraisal Foundation.<sup>3</sup> The Uniform Appraisal Standards for Federal Land Acquisitions contain guidelines for determining fair market value and are intended to promote uniformity in the appraisal of real property among the various agencies acquiring property on behalf of the United States.<sup>4</sup> The objectives of the Uniform Relocation Assistance and Real Property Acquisitions Act include promoting public confidence in federal and federally assisted land acquisition programs.<sup>5</sup>

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<sup>3</sup>USPAP was adopted for federally related transactions in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73, Aug. 9, 1989).

<sup>4</sup>Uniform Appraisal Standards for Federal Land Acquisitions, Interagency Land Acquisition Conference (Washington, D.C.: 1992).

<sup>5</sup>Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, et seq.).

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## The Bureau Relies Mostly on Appraisals to Establish the Lease Value of Indian Trust Land

Bureau officials are responsible for ensuring that leases of Indian trust land reflect a fair annual rental, and they rely primarily on appraisals to estimate that value.<sup>6</sup> However, the Bureau has not defined fair annual rental and does not have a clear policy on how that amount should be estimated. The Bureau's appraisal handbook, revised in October 1998, states that the policies it contains apply to all real estate transactions and makes no exception for leases,<sup>7</sup> and Bureau officials have said they believe that fair annual rental can be determined only through an appraisal. In effect, fair annual rental has come to mean no less than "fair market rental" as estimated in an appraisal.<sup>8</sup> However, we found no statutory or regulatory requirement that appraisals be used to estimate fair market rental, and, in fact, some area offices use other methods in addition to appraisals to establish lease values.

Appraisals are opinions, or estimates, of the fair market value of property, and the Bureau uses them to estimate property values for such transactions as sales, exchanges, leases, gifts, or inheritances. The value may be estimated using one or more of three approaches—comparable sales, cost, or income capitalization. The approach the Bureau's appraisers most often use is the comparable sales approach, in which a property's value is inferred from recent transactions involving properties similar to the one being appraised. In the cost approach, the appraiser estimates the value of the property on the basis of costs that would be incurred to replace an existing structure or improvement. In the income capitalization approach, the appraiser estimates a property's capacity to generate benefits (usually income) and uses these benefits to derive the property's present value. The appraised value of real property is estimated on the basis of its "highest and best use." The highest and best use is that which is legally permissible, physically possible, and financially feasible and results in the highest value consistent with the market. While an appraisal is a tool to estimate the value of a property, its actual value is established only when it is sold or leased.

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<sup>6</sup>While the responsibility for granting leases on Indian trust land lies with the individual landowners or tribes, Bureau officials must approve all leases on trust land.

<sup>7</sup>Real Estate Services Appraisal Handbook, Bureau of Indian Affairs, Department of the Interior (Oct. 1998).

<sup>8</sup>Fair market rental may be defined as that price in a competitive market that a well-informed and willing lessee will pay, and a well-informed and willing lessor will accept, for the temporary use of the property.

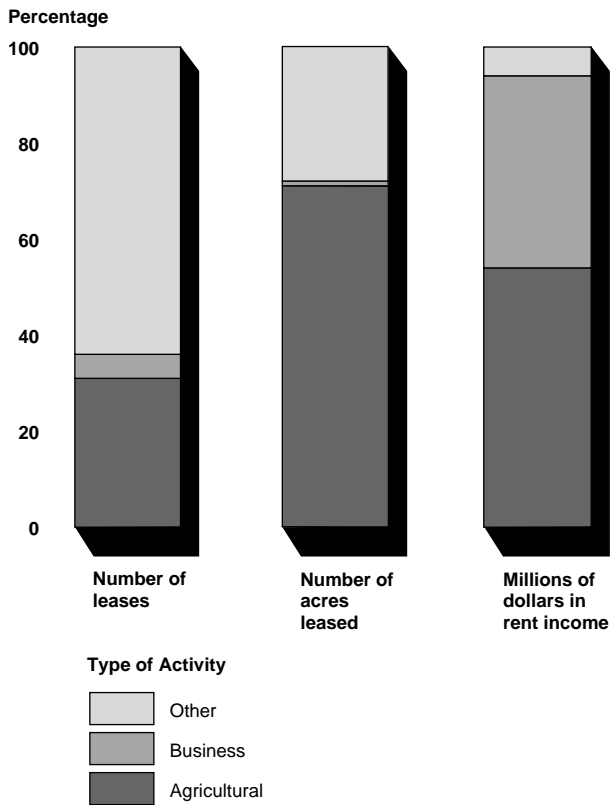
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Because of such practical considerations as land uses and staffing levels, different approaches are sometimes used to establish lease values in some areas. Officials in the Aberdeen and Billings offices told us that they do not have enough appraisers to appraise all leases and that they sometimes use other methods to determine the lease value of land. Some expressed concern that if appraisals are indeed required for all lease transactions, they are out of compliance with the Bureau's requirements by using these other methods. An official from the office of the Bureau's Deputy Commissioner emphasized that it is not the Bureau's policy that staffing levels should dictate the methods used to establish the fair annual rental for trust land. The official said that the Bureau needs to have consistent procedures that apply to all offices.

The Bureau has identified three general types of Indian trust land leases: agriculture, business, and other. Figure 1 shows the percentage of leases of trust land by type of use and the percentage of total leased acreage by type of use as of December 31, 1997. It also shows the percentage of total rent revenue by type of use for the year ending December 31, 1997.



**Figure 1: Percentages of Leases and Acres Leased on Trust Land as of December 31, 1997, and Rent Income for the Year Ending December 31, 1997**



Source: GAO's analysis of Bureau of Indian Affairs' data.

## Agricultural Leases

The Bureau's method for establishing the lease value of land for agriculture varied depending on the crops grown and, in some cases, on the number of appraisers employed in the area. For example, on the Yakama Reservation in Washington (served by the Portland Area Office) and along the Colorado River in California (served by the Phoenix Area Office), the crops are high in value and of many varieties, such as fruits and vegetables. Those area offices employ seven and eight appraisers, respectively, and each tract

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being leased receives an appraisal.<sup>9</sup> In contrast, on reservations served by the Aberdeen and Billings area offices, the crops are lower in value and more homogeneous, such as wheat and grass for grazing livestock. Those area offices employ fewer appraisers—two in Aberdeen and four in Billings—and often establish lease values by such methods as market surveys, which provide a range of prevailing rents in an area, and competitive bidding, which allows parties interested in leasing the land to submit bids for the tracts they wish to rent.<sup>10</sup>

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## Business Leases

Establishing the value of leases for business use is more complex than for agricultural use, according to Bureau officials. In each of the Bureau's areas where we contacted officials, business leases were valued by appraisal. In addition to using sales of comparable properties to estimate their value, appraisers may consider a business enterprise's gross or net return on sales (combining elements of the sales comparison and income capitalization approaches) to establish a lease rate.

The areas we visited had different levels of business leasing activity. For example, in the Phoenix area, business leases make up about 13 percent of all leases. Two of the tribes in the area—the Salt River and Gila River Pima-Maricopa Indian Communities—have properties with opportunities for business development because of their proximity to Phoenix, Arizona. The Salt River community leases its property for a 140-acre retail center (described as the nation's largest business development ever built on Indian land), two golf courses, and a solid waste disposal operation that serves the community and nearby cities. The Gila River community leases property for several tribal enterprises, including three industrial parks, a retail store, a billboard company, an airfield, a telephone company, and a marina. In contrast, there are comparatively fewer business opportunities for trust land in the Billings area: Only about 3 percent of all leases are issued for business use.

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<sup>9</sup>The Yakama Tribe prepares its own appraisals under a contract with the Department of the Interior. The tribal appraisers' reports must be reviewed and approved by the Bureau's review appraisers.

<sup>10</sup>The Department of the Interior's Office of Inspector General recently issued a report on leasing in an agency in the Bureau's Billings area. See [Agricultural Leasing and Grazing Activities, Fort Peck Agency, Bureau of Indian Affairs](#) (Report No. 98-I-703, Sept. 1998).

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## Other Leases

Leases are also issued for uses of trust land other than agriculture and business. These leases typically have nominal rents; they include leases of homesites for tribal members (which can be leased to tribal members for as little as \$1 per year) and special-use permits for temporary uses, such as fireworks stands. According to the Portland Area Office's realty officer, the values for these leases are sometimes established by appraisals (especially when the landowner and lessee are unrelated individuals), and sometimes the values are more arbitrary (when the landowner and lessee are related or when the tribe owns the land and the lessee is a tribal member).

This category can also include leases for residential use, when lessees rent property under a long-term lease (generally up to 25 years) and build a home on the land. The rent for these leases is established by appraisal, and appraisers use market data for comparable residential ground leases when such data are available. However, when comparable lease information is not available—as in the Portland Area Office—appraisers first estimate the market value of the land on the basis of sales of comparable residential properties, after adjusting the value to reflect that of the land only (without buildings or other improvements). Once that value has been determined, a rate of return is applied to the property's estimated market value to arrive at the annual rental. In real estate markets where land values are rising, this method can result in increasing rental rates. These changes in rents are reflected in adjustments to the leases that, under the Bureau's regulations, must occur at least once every 5 years. We provide information in appendix II on issues surrounding residential leases.

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## Federal, State, and Private Lease Values Are Established by Other Methods in Addition to Appraisals

The Bureau's appraisers are held to the same general standards and use similar appraisal techniques as other federal appraisers, state appraisers, and private appraisers. However, these land managers also use other methods to establish lease values. For example, while Interior's Bureau of Land Management (BLM) primarily uses appraisals to estimate the value of public land, it also uses administrative fee schedules to establish the price for such land uses as linear rights-of-way (e.g., for oil and gas pipelines or power lines) and communication sites (e.g., for broadcasting and transmitting television and radio signals). Managers of state-owned land—held in trust for such public institutions as schools—use a range of methods including market surveys and competitive bidding for cropland and appraisals for residential and business uses. Private farmers usually do

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not use appraisals to establish rent values but rely, instead, on their knowledge of the local market and on common practices in the area.

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## Federal Land Management Agencies

BLM and the Forest Service are required to obtain fair market value for real-estate transactions and use appraisals in many—but not all—cases. While appraisers for both agencies are governed by the profession’s standards and by the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, both agencies are also bound by land-use authorizations and requirements in the Federal Land Policy and Management Act and by other statutes authorizing uses of federal land. For example, grazing fees on federal land (whether managed by BLM or the Forest Service) are established by a statutorily defined formula.<sup>11</sup>

Leasing is a small part of BLM’s appraisal workload—officials’ estimates ranged from 5 to 30 percent in the BLM state offices we contacted. BLM officials said that the agency rarely leases land for agricultural or residential use. These leases usually occur only when farms or residences have inadvertently extended onto public land and BLM allows the use to continue pending an exchange or sale of the land.

The Forest Service issues special-use authorizations, including leases, for a variety of uses, including vacation homes and such business activities as ski areas and guide services. It is generally required to obtain fees that reflect the fair market value, as determined by appraisal or “other sound business management principles,” for the rights and privileges authorized. In 1996, we reported that most of these permits—about 15,200—were for lots where individuals could build recreation homes or cabins. The Forest Service’s method of establishing the value of land leased for vacation homes is similar to that used for Indian land—the market sales value is estimated by an appraisal, and the fees are computed by applying an annual rate-of-return to the market sales value.<sup>12</sup> However, we reported that, in many instances, the fees the Forest Service charged did not reflect fair market value because, while the fees were adjusted annually for inflation,

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<sup>11</sup>We have reported on grazing fees on federally managed land. See Rangeland Management: Current Formula Keeps Grazing Fees Low (GAO/RCED-91-185BR, June 11, 1991).

<sup>12</sup>See U.S. Forest Service: Fees for Recreation Special-Use Permits Do Not Reflect Fair Market Value (GAO/RCED-97-16, Dec. 20, 1996), and Forest Service: Barriers to and Opportunities for Generating Revenue (GAO/T-RCED-99-81, Feb. 10, 1999)

the appraisals on which the fees were based had not been updated in nearly 20 years.

Both BLM and the Forest Service use fee schedules to determine the rent amounts for communication sites (for television and radio, for example) and certain rights-of-way (for oil and gas pipelines and power lines). We have reported on weaknesses in BLM's and the Forest Service's use of fee schedules in cases where they did not reflect fair market value. Specifically, in July 1994, we reported that many of BLM's fees for communication sites were established on the basis of out-of-date appraisals and that the Forest Service's fees were established on the basis of a 40-year-old, outdated formula.<sup>13</sup> In April 1996, we reported that although the fee schedules for rights-of-way were established on the basis of rates for those uses on private land, they were subsequently adjusted downward because the industry and the agency's management viewed the rates as too high.<sup>14</sup> In both reports, we stated that the fee schedules could be updated to reflect fair market value through periodic appraisals or market surveys.

## State Trust Land Management Agencies

The four states we contacted—Colorado, Minnesota, Montana, and Washington—use various methods to establish the value of leases on their trust land, depending on the use. For example, in Washington, agricultural leases are offered through a competitive public auction.<sup>15</sup> Minimum rents for land used for crops, whether irrigated or not, are established on the basis of a “fair market value assessment,” that considers such factors as crop options, soil type, and water availability. The rents for the state leases in Washington reflect the private lease terms identified in the market value assessment. However, they may be lower than the rents for private leases because, unlike private landowners, the state does not provide such improvements as fences and water, and lessees pay certain state taxes on operations on state land. Rents for crops that are not irrigated, such as wheat and other small grains, are generally paid by crop-share; that is, the state takes possession of a percentage of the crop harvested and sells it at market. Rents for irrigated crops, such as corn, potatoes, and alfalfa, are

<sup>13</sup>See Federal Lands: Fees for Communication Sites Are Below Fair Market Value (GAO/RCED-94-248, Jul. 12, 1994).

<sup>14</sup>See U.S. Forest Service: Fee System for Rights-of-Way Program Needs Revision (GAO/RCED-96-84, Apr. 22, 1996).

<sup>15</sup>Renewals of expiring leases may be negotiated with the existing lessee.

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generally paid in cash. Both the crop-share percentages and the cash rent amounts are established on the basis of market surveys of private leasing practices. Taking a different approach, Colorado establishes rents for agricultural leases by using income-based formulas—that is, the rents reflect the amount of income the land is expected to generate.

The states we contacted that lease land for residential use generally establish a minimum acceptable rent by applying a rate of return to the property's estimated market value. For example, Minnesota leases lakeshore property for residential purposes; establishing leases for 10 years with rents of 5 percent of the land's appraised fair market sales value. Rents for business leases most often are established by using an appraisal to estimate the land's sales value and then applying an annual rate of return to that value, although, according to a Colorado official, business rents sometimes also assess lessees a percentage of the business' revenues.

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## Private Landowners

Private landowners may or may not use appraisals to value land leases, depending on the intended use of the land. According to several private appraisers we spoke to, rents for agricultural land are rarely set by appraisal: Landowners and lessees are generally familiar with prevailing lease rates and may informally negotiate the rent to be paid for a tract of land. The rent for a tract of land may be affected by the presence of such improvements as fences or water delivery systems, which could increase the market rent (if the landowner pays for them) or result in a rent credit (if the lessee pays for them). For business uses, lease rates are more likely to be estimated by appraisal. In those cases, appraisers often estimate the sales value of the property on the basis of recent sales of comparable properties and then apply a rate of return that reflects the risk inherent in the lease agreement.

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## The Bureau's Appraisals and Processes for Appraising and Leasing Land Were Named as Impediments to Leasing

There are several reasons that any land—including Indian land—might not be leased. The landowners may choose not to lease the land or there may be no demand for the land because of poor soil quality, a slow farming economy, inaccessibility, or lack of water. However, in cases where trust land is in demand because, for example, it is near other valuable land (such as in Phoenix) or it can support valuable crops, there may be other impediments to leasing the land if it has not been leased. Bureau officials, tribal representatives, and lessees cited appraisal amounts, the time taken

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to prepare and review appraisals, and the Bureau's cumbersome bureaucracy.

Some lessees and Bureau realty officials asserted that Indian trust land remains unleased in some areas because the land is appraised at values higher than lessees want to pay. Bureau officials often will not approve a lease if the negotiated or offered rent is less than the appraised value. These officials interpret the requirement to obtain a fair annual rental to mean that the appraised amount is the minimum acceptable lease amount and told us they fear approving leases for less would cause the Indian landowners to submit appeals or file lawsuits challenging their decisions. However, Bureau officials told us that they can and do approve leases for less than the appraised value if the Indian landowners agree to accept less. According to Bureau and other appraisers, appraisals are estimates of a property's value and should be used as a management tool for making informed leasing decisions. In our opinion, the estimates are not intended to be a "floor price" any more than a "ceiling price."

Concern over this issue is not new. According to a December 1987 report of the National Indian Agriculture Working Group, "the unswerving application of the appraised market rental rates has frequently resulted in the complete loss of income to Indian landowners when their land sits unleased due to the lack of flexibility in determining rental rates."<sup>16</sup> While a prospective lessee may believe that the appraised value of a tract of land is too high, the owner of that same tract of land may believe that it is too low. In the words of an administrative judge with the Interior Board of Indian Appeals (IBIA), "the determination of 'fair annual rental' requires the exercise of judgment and . . . reasonable people may differ in their calculation of 'fair annual rental.'"<sup>17</sup>

Timing is an important factor affecting the accuracy of appraisals because, as land values increase or decrease over time, appraisals become outdated. For this reason, according to Bureau and other appraisers, appraisals have a limited useful life. The longer it takes to prepare and review an appraisal, the more likely it is that the data used in it to estimate a property's value are too old to accurately reflect the current market.

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<sup>16</sup>Final Findings and Recommendations of the National Indian Agricultural Working Group, prepared for the Assistant Secretary—Indian Affairs and the Intertribal Agricultural Council (Dec. 1987).

<sup>17</sup>Strain v. Portland Area Director, 23 IBIA 114, 117-18 (1992).

Representatives of the Salt River Pima-Maricopa Indian Community expressed frustration about the slowness of the Bureau's Phoenix Area Office in reviewing and approving appraisals prepared by appraisers under contract to the community. According to Bureau officials, all appraisals—whether prepared by a Bureau appraiser or a contract appraiser—must be reviewed and approved by a Bureau review appraiser to ensure that they are consistent with USPAP. Community representatives said that it sometimes takes months to hear back from the area office when the review appraiser has a problem with their appraisals and that the Bureau's slowness jeopardizes the Community's business deals.

We analyzed records from the Phoenix Area Office's appraisal tracking system for the period from January 1, 1997, to December 3, 1998, to see how long it took to review or prepare appraisals.<sup>18</sup> From the tracking system, we were able to compute review times for 30 contractor-prepared appraisals submitted by the Salt River Pima-Maricopa Community to the area office for review. Review time is defined as the number of days between the date a contractor appraisal was received by the Bureau for review and when it completed the review. We calculated that the 30 Salt River appraisals had an average review time of 146 days:

- 1 was reviewed and approved the same day,
- 16 were reviewed and approved in between 4 and 77 days,
- 8 were pending approval after between 297 and 512 days, and
- 5 were rejected after review periods ranging from 13 to 40 days.

We were also able to compute the preparation time for nine Bureau-prepared appraisals of tribal land on the Gila River Reservation. Preparation time is defined as the number of days between the date the Bureau received an appraisal request and the date it returned the reviewed appraisal to the requester. The Gila River community recently hired an appraiser to estimate the value of some properties because the Bureau was taking too long. We calculated that the nine Gila River appraisals had an average processing time of 82 days: All were prepared, reviewed, and approved in between 40 and 126 days.

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<sup>18</sup>We used only the data that were complete or were not obviously inconsistent (such as showing a negative number of elapsed days). Because we found weaknesses in the Bureau's data and did not independently verify the usable data, we consider these results to be only indicators of the time periods involved.



While we did not specifically determine the reasons for the time required to prepare and review appraisals, the former chief review appraiser at the Phoenix Area Office cited workload issues and concern about the quality of contractor-prepared appraisals as reasons for some delays. He emphasized that USPAP requires a review appraiser to do sufficient work to be satisfied that an appraisal meets the standards and does not limit the time allowed for review.

Some lessees and Bureau officials identified a variety of problems with the Bureau's bureaucracy; for example, the Bureau's processes were characterized as more cumbersome than the private sector's (for example, the Bureau takes more time, requires more paperwork, and is less flexible). Some said Bureau staff show a lack of initiative and accountability for such things as being responsive to lessees and for leasing land on behalf of landowners. One lessee complained to us that a Bureau agency office closes its realty office on Mondays and Fridays. We also found a related situation when we attempted to contact a realty officer at one of the agency offices—twice in one week, we were told that he was not accepting any calls while he worked on a report.

According to Bureau officials, the primary factor affecting the speed with which they can approve leases is the prevalence of tracts of land with multiple owners. This occurs when an Indian landowner dies without a will, and the property is divided among the landowner's heirs in accordance with the Indian General Allotment Act of 1887, as amended.<sup>19</sup> Over time, the number of owners of some tracts of land has increased as the ownership interests have passed through several generations of multiple heirs. The landowners may all be individual Indians; sometimes the tribe or non-Indians also own an interest. For example, in 1992 we reported that over one-third of the trust land tracts on the Yakama Reservation had multiple owners and that 19 percent of these tracts had more than 25 owners.<sup>20</sup> Under the Bureau's regulations, officials must notify and obtain concurrence from landowners owning a majority interest before leasing land; therefore, the more owners a tract of land has, the longer it may take for the Bureau to obtain their concurrence.

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<sup>19</sup>25 U.S.C. 348.

<sup>20</sup>See [Indian Programs: Profile of Land Ownership at 12 Reservations](#) (GAO/RCED-92-96BR, Feb. 10, 1992).

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## The Bureau Could Use Methods Other Than Appraisals to Establish Lease Values for Indian Land

In addition to appraisals, a number of other methods may be used to establish lease values. These methods do not preclude the use of appraisals, but appraisals would not necessarily be prepared for every lease transaction. These other methods include advertising for competitive bids, conducting market surveys, and applying fee schedules or formulas. We did not analyze the costs and benefits of these methods, but they are used to varying degrees by other federal and state land management agencies and by private landowners. While we recognize that the Bureau's trust responsibility to Indian landowners is unique and differs from the relationships of other federal agencies to federal taxpayers and of state land managers to school trust funds, these other methods may be appropriate in some circumstances. In fact, some area offices currently use some of these methods, in some cases because they do not have enough appraisers to appraise all tracts of land before leasing them.

Alternative approaches that are already in use in some Bureau offices include competitive bidding and the use of market surveys:

- Under its regulations, the Bureau is allowed to advertise tracts of unleased trust land for competitive lease bids if the landowner wishes to explore the market and is required to do so for leases that are not negotiated or for which a fair annual rental cannot be obtained through negotiations. When there is a competitive market, the high bid received in a competitive auction would establish the market rental value. The Bureau would then approve the granting of a lease to the highest bidder. Two of the agencies we visited (in the Billings and Portland areas) have advertised unleased trust land for competitive lease bids with mixed success (see app. I). Competitive bidding is also used to lease state-owned trust land in some states, such as Montana (for cabin and homesite leases) and Washington (for agricultural leases). In addition, when the demand for land is high, private landowners may use competitive bidding techniques by soliciting sealed bids from potential renters.
- Market surveys may be used to identify the range of prevailing lease rates for land in a specified area, particularly where the land use is homogeneous. Some Bureau offices—such as those in Aberdeen and Billings (for agricultural leases)—already use this method. Market surveys result in generalized statements of what rents should be, or parameters that decisionmakers can use in negotiating leases. The lease rate for a specific tract of land is compared with the range of rates identified in the market survey to determine if the lease rate is within

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that range. The market survey approach differs from an appraisal in that an appraisal is done for a specific property and is used to estimate the market value of that property. Some states also use this method for determining whether the rent for their trust land is consistent with prevailing rents in an area.

Other approaches, which are not currently being used for Indian trust land, include the use of fee schedules and formulas:

- As with market surveys, fee schedules could be used where land is used for homogeneous purposes, such as grazing or the cultivation of some crops. Instead of appraising each site, land managers would refer to a fee schedule to establish the rent. We have reported on BLM's and the Forest Service's use of fee schedules for communication sites (for television and radio, for example) and rights-of-way (for oil and gas pipelines and power lines). While we support the concept of fee schedules, we have reported on weaknesses in their implementation in cases where they did not reflect fair market value.
- Some states, such as Colorado, use formulas to determine the appropriate lease value for cropland. Formulas can be used where information is available on expected income and costs associated with the land. For example, the Colorado State Land Board determines the per-acre rent value of irrigated cropland on the basis of the farmer's expected per-acre income for the parcel of land. The board multiplies the state's share by the per-acre income (the state's share varies by agricultural crop and practices) and reduces the total to reflect the farmer's irrigation costs. Washington also uses formulas to set rates for grazing permits on its trust land.

Changes in current laws or regulations would not be necessary for the Bureau to adopt these or other alternative methods. Consistent with this view, in December 1998, a workgroup studying appraisal issues reported to the Deputy Commissioner for Indian Affairs that it found no statutes that specifically require the Bureau to conduct appraisals.<sup>21</sup> A representative of the Deputy Commissioner's office emphasized that this position has not been adopted by the Bureau and that a legal review that examines laws and court cases that apply Bureau-wide would be required before it would

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<sup>21</sup>There was one exception. For purchases of certain Indian land in Oklahoma, fair market value must be determined by appraisal.

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consider doing so. We discuss this workgroup and its results in greater detail below.

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## Interior Is Proposing Several Improvements to the Appraisal Process

The Department of the Interior is currently reviewing the Bureau's appraisal process as part of an improvement project begun in 1997 by the Office of the Special Trustee for American Indians and the Bureau. The appraisal program was included in the project because of a lack of consistency in preparing appraisals across the Bureau's area offices and because of a backlog of appraisals requested by agency officials but not yet completed. As of June 1998, the Bureau's area offices reported a total of almost 1,500 appraisal requests that were more than 60 days old.<sup>22</sup>

The improvement plan included several proposed changes to the Bureau's appraisal program at the time we began our review (July 1998); the plan was updated in the fall of 1998. Specific initiatives in the improvement plan, together with their status, follow:

- Appraisers must be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).<sup>23</sup> By the fall of 1998, 28 of the Bureau's 43 appraisers were certified, including all of the area review appraisers, and the remaining appraisers were completing the certification requirements.
- The Bureau was to update its real estate appraisal handbook (issued in 1970), which it did in October 1998.
- The Bureau was to hire a Bureau-wide chief appraiser; the position was filled in April 1999.
- The Bureau was to identify the extent of the appraisal backlog. The backlog was identified as of June 1, 1998.
- The Bureau was to increase funding for the appraisal program. Funding is being requested under the Office of the Special Trustee's budget to implement improvements in the appraisal program and to eliminate appraisal backlogs.

The improvement plan was updated in the fall of 1998 to include two additional initiatives. The first directed the Bureau's Office of Trust

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<sup>22</sup>The Phoenix Area Office did not report its appraisal backlog.

<sup>23</sup>FIRREA (P.L. 101-73) requires that appraisers of federally related transactions be certified or licensed by a state with certification or licensing requirements that meet the minimum criteria as issued by the Appraisal Foundation.

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Responsibilities, with assistance from Interior's Office of the Solicitor, to determine whether and to what extent existing laws, regulations, and court rulings require appraisals of trust land. The second directed Bureau offices to develop and maintain a database for tracking appraisals. In November 1998, the Bureau convened a workgroup to consider and recommend ways to reduce the backlog of appraisal requests, which are made for many types of land transactions, including sales, exchanges, rights-of-way, and leases of property. In December 1998, the workgroup made its recommendations to the Deputy Commissioner for Indian Affairs.

The field solicitor in the Minneapolis Area Field Office reviewed the legal requirements for appraisals. He concluded that no laws specifically require the Bureau to conduct appraisals of property or interests in that property and that the statutes give the Secretary of the Interior discretion in determining the fair value of property. However, Bureau officials stated that the review was preliminary and that a comprehensive legal review by Interior's Office of the Solicitor would be required before the Bureau would consider making changes to the program on that basis.

The appraisal workgroup also reported that each area or agency office maintains its own tracking system and that all systems are adequate to monitor, or track, appraisal requests. According to the improvement plan, these tracking systems are designed to provide the Bureau with information on when most of the appraisals are needed and to enable Bureau management to use appraisal resources (funding and staff) more effectively.

However, we obtained appraisal tracking data from four offices and found wide variability in the usability of the data; in some cases, data on an individual appraisal were virtually unusable for analyzing the status of the appraisal.<sup>24</sup> We requested appraisal tracking data from five area offices (Aberdeen, Billings, Muskogee, Phoenix, and Portland) and obtained such data from four (Billings did not have an areawide system). Specifically,

- in Aberdeen's system, 100 percent of the tracking records for 54 lease appraisals were usable for determining the status of the appraisals;
- in Portland's system, 99 percent of the tracking records for 1,781 lease appraisals were usable;

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<sup>24</sup>Records that we defined as unusable were incomplete (that is, data were missing) or inconsistent (for example, indicating a negative number of elapsed days to prepare an appraisal).

- in Phoenix's system, 66 percent of the tracking records for 545 lease appraisals were usable; and
- in Muskogee's system, 39 percent of the tracking records for 585 lease appraisals were usable.

The workgroup also recommended several short-term and long-term changes to the appraisal program, both in how appraisals are prepared and in how they are requested. Short-term changes include establishing reservation- or neighborhood-specific computer-generated models for determining the value of multiple ownership interests in land and training realty specialists on when to request appraisals and what type of report is sufficient for the realty action to be taken.

According to Bureau officials, a great deal of their time is spent estimating the value of each of the multiple ownership interests in tracts of land. For homogeneous land such as cropland, grassland, or hayland within a reservation or neighborhood, the appraisal workgroup has recommended that Bureau offices use computer-generated models—similar to those used by tax assessors—to estimate the market value of these multiple interests. The appraisers would be responsible for collecting and entering capitalization and market rental rates for the land into the computer modules on a regular basis. In a separate initiative, the Department of the Interior has proposed legislation that would provide a way to consolidate very small ownership interests in Indian-owned land. It has requested a budget increase of \$10 million in fiscal year 2000 to expand an ongoing pilot project to consolidate land ownership interests of 2 percent or less.

According to the workgroup, many appraisals are prepared for transactions that are never completed (if, for example, the landowner or tribe decides not to lease the land). Although the exact number is not known, these unnecessary appraisals could be canceled—or never requested—if realty clerks were better trained in evaluating the need for appraisals. Also, the workgroup noted, the type and format of appraisal report has a significant impact on the cost and time required to complete the appraisal, and realty clerks often request more extensive reports than are called for by the type of transaction being considered.

Long-term actions the workgroup recommended that the Bureau take include, among other things, creating appraisal guidelines that address specific circumstances in different geographic areas. These guidelines would give officials the flexibility to request limited—and, thus, less expensive and time-consuming—appraisal reports when appropriate.

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Under USPAP's "departure" provision, appraisers may agree to prepare an appraisal that is less detailed or different from the work that would otherwise be required by USPAP's guidelines. The appraiser must be certain that the resulting report would not be misleading and must clearly identify and explain the departure, and the client must agree that a limited appraisal is appropriate. Under this long-term action, the Bureau's area or agency offices would be allowed to create guidelines on when different formats may be used for appraisal reports.

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## Conclusions

Under its regulations, the Bureau of Indian Affairs is required to ensure that Indian land is leased for a fair annual rental. The Bureau often relies on appraisals, which must be prepared in conformance with professional appraisal standards—the same standards that apply to all professional appraisers, including other federal, state, and private appraisers. However, fair annual rental has not been defined and the Bureau does not have a clearly stated policy on how it should be determined. In some Bureau offices, methods other than appraisals are used when land uses and staffing levels make appraisals impractical, but officials have expressed concern about whether they are complying with the Bureau's requirements in using these other methods. Consistent policies and procedures for deciding how lease values should be determined would alleviate these concerns and clarify for realty officials what methods they may rely on for valuing leases.

Appraisals were cited as an impediment to leasing, both because officials adhere to the appraised value as a minimum lease value and because the processes are considered by some to be too time-consuming. However, we believe that, in addition to appraisals, other methods are available to Bureau officials for estimating a fair annual rental for Indian land and could be used under certain circumstances. Furthermore, we believe that these methods could be implemented without legislative or regulatory changes. This view is consistent with the results of a preliminary legal review conducted by the Minneapolis Area Office's field solicitor. However, before the Bureau will consider adopting those findings Bureau-wide, officials say a Bureau-wide review of laws, regulations, and court cases must be conducted.

The Department of the Interior has begun to review its use of appraisals and is considering alternatives to the current processes. One proposed improvement to the current system included making sure that Bureau offices have systems for tracking the status of appraisals. While a Bureau workgroup found that Bureau offices have adequate tracking systems, we

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found that the appraisal tracking records were not consistently usable. Because these tracking systems could provide the Bureau with information on when most appraisals are needed and could allow Bureau management to use appraisal funding and staff more effectively, the data in these systems should be more consistent and complete.

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## Recommendations

In addition to concurring with the Department of the Interior's ongoing efforts to review and revise the Bureau's appraisal program, we recommend that the Secretary of the Interior direct the Commissioner of the Bureau of Indian Affairs to do the following:

- Develop a clear policy on how fair annual rental can be estimated using other methods in addition to appraisals, such as market surveys, fee schedules, and formulas, where appropriate.
- Establish consistent standards and guidelines for applying lease valuation methods.
- Review the area offices' appraisal tracking data and ensure that the data are consistent and complete so that the Bureau can monitor and make the most effective use of its appraisal resources.

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## Agency Comments

We provided a copy of a draft of this report to the Department of the Interior for its review and comment. Interior agreed with our recommendations that the Bureau evaluate alternatives to appraisals for estimating fair annual rental, establish consistent standards for applying lease valuation methods, and ensure that appraisal tracking data are complete and consistent. Furthermore, Interior commented that work has begun to address the recommendations, and the Assistant Secretary for Indian Affairs stated that he is confident that they will be fulfilled. Interior provided technical clarifications on funding for the appraisal program, which we incorporated as appropriate. Interior's comments appear in appendix IV.

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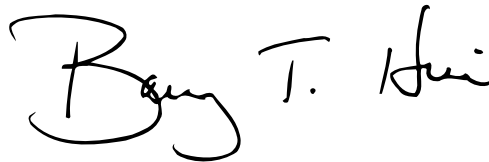
We conducted our review from July 1998 through June 1999 in accordance with generally accepted government auditing standards. We did not independently verify or test the reliability of the data provided by the Bureau's offices. Details of our scope and methodology are discussed in appendix V.



We will send copies of this report to the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Hilda Manuel, Deputy Commissioner, Bureau of Indian Affairs; and other interested parties. We will also make copies available to others upon request.

If you or your staff have any questions, please call me at (202) 512-3841. Key contributors to this report were Jennifer Duncan, Sue Naiberk, Cynthia Rasmussen, and Victor Rezendes.

Sincerely yours,

A handwritten signature in black ink that reads "Barry T. Hill". The signature is written in a cursive style with a large, looped initial "B".

Barry T. Hill  
Associate Director, Energy,  
Resources, and Science Issues

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**Figure**

Figure 1: Percentages of Leases and Acres Leased on Trust Land as of December 31, 1997, and Rent Income for the Year Ending December 31, 1997

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**Abbreviations**

BLM Bureau of Land Management  
FIRREA Financial Institutions Reform and Recovery Enforcement Act of 1989  
GAO General Accounting Office  
IBIA Interior Board of Indian Appeals  
USPAP Uniform Standards of Professional Appraisal Practice

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# Leasing Indian Trust Land

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The Bureau of Indian Affairs has jurisdiction over roughly 56 million acres—about 87,500 square miles—which are held in trust by the Secretary of the Interior for Indian tribes and individuals. Indian trust land represents less than 3 percent of the total land base of the United States (3.5 million square miles) but is, in total, equal to almost twice the area of Pennsylvania or more than half the area of California. Over 95 percent of this trust land is located in states west of the Mississippi River, and much of it lies within the boundaries of about 280 Indian reservations.<sup>1</sup> Indian tribes own the majority of the trust land—about 46 million acres, or 82 percent of the total—and individual Indians own the remaining 10 million acres, or 18 percent of the total.

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## Information on Leased Trust Land

According to the Bureau's most recent published data on land use, about 102,000 surface leases were in effect at the end of 1997. These leases covered almost 8 million acres (12,000 square miles) and generated over \$104 million in rental income for the landowners.<sup>2</sup> About 70 percent of the leased acreage was used for agricultural purposes, but about 65 percent of the leases were for other, nonbusiness purposes with nominal rents, including temporary special uses (such as a fireworks stand) and homesites for tribal members. Table I.1 presents data on leases and leased acreage reported by the Bureau as of December 31, 1997, for agricultural, business, and other surface uses. Table I.2 shows the revenue these leases generated in 1997.

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<sup>1</sup>Not all reservation land is trust land—some reservation land is owned by non-Indians and some is Indian-owned land that the government does not hold in trust. Interior has no responsibility for nontrust land.

<sup>2</sup>In this report, we discuss only surface uses of Indian trust land. The subsurface rights to Indian land may also be leased for mineral development.

**Appendix I  
Leasing Indian Trust Land**

**Table I.1: Ownership and Type of Use for Trust Land, December 31, 1997**

Ownership	Agricultural		Business		Other		Total	
	Number of leases	Acreage	Number of leases	Acreage	Number of leases	Acreage	Number of leases	Acreage
Tribal	11,530	2,049,019	3,068	65,349	36,615	2,059,744	51,213	4,174,112
Individual	19,596	3,371,342	1,951	24,874	28,958	60,802	50,505	3,457,018
<b>Total</b>	<b>31,126</b>	<b>5,420,361</b>	<b>5,019</b>	<b>90,223</b>	<b>65,573</b>	<b>2,120,546</b>	<b>101,718</b>	<b>7,631,130</b>

Source: GAO's analysis of data from the Bureau of Indian Affairs.

**Table I.2: Rent Proceeds for Leased Trust Land, by Use, for the Year Ending December 31, 1997**

Ownership	Agricultural	Business	Other	Total
Tribal	\$14,909,653	\$23,272,798	\$4,357,872	<b>\$42,540,323</b>
Individual	41,300,465	17,933,435	2,321,902	<b>61,555,802</b>
<b>Total</b>	<b>\$56,210,118</b>	<b>\$41,206,233</b>	<b>\$6,679,774</b>	<b>\$104,096,125</b>

Source: GAO's analysis of data from the Bureau of Indian Affairs.

## Process to Lease Trust Land

Neither the Bureau nor landowners are required to lease trust land. For land that is unleased, the process usually begins with an expression of interest by either the landowner or a potential lessee. For land that is already leased, Bureau realty staff identify which leases will expire within the next year or so and send a "90 day notice" to the owners to provide 3 months for them to negotiate leases with lessees. In either case, realty staff request appraisals for the tracts of land.

If a lease agreement is successfully negotiated, the prospective lessee and at least one landowner sign and submit a lease application to the responsible Bureau agency office. The application is routed to various Bureau departments for review, including a determination as to whether the negotiated amount is at least equal to the appraised amount. For land with more than one owner, landowners owning a majority interest must consent to the lease. The application is then sent to the agency office superintendent for approval. If approved, a lease is prepared for the tract of land and signed by the landowner(s) and lessee; it is then returned to the agency office and reviewed for signatures, bonding, insurance, and rent and fee payments and is presented to the superintendent for approval.

If no satisfactory lease agreement has been negotiated for expiring leases or if landowners wish to advertise their land for competitive bid, Bureau realty staff prepare, mail, and post lease advertisements. If sealed bids are received for the land, the bid amounts are compared with the appraised amounts. If the bid is acceptable—that is, if it equals or exceeds the appraised amount—a lease is prepared. If it does not equal or exceed the appraised amount, Bureau officials may either reject the bid or—as we found at the Fort Peck and Yakama reservations—begin negotiations with the prospective lessee to reach an acceptable rent amount. When the signed lease is returned to the agency office, it is reviewed for completeness, submitted to tribal officials for action if tribal land is involved, and submitted to the superintendent for approval.

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## Information on Unleased Trust Land

Most Indian trust land—more than 48 million acres (75,000 square miles) at the end of 1997—is not leased. This unleased land may be occupied and/or otherwise used by the various landowners (e.g., for residences or tribal enterprises such as agricultural operations), or it may be unused. The Bureau does not maintain statistics on the use or condition of all the unleased trust land. For this reason, the Bureau could not provide us with information for unleased trust land on (1) the number of acres that are currently used and the number of acres that are currently unused, (2) the number of acres of unused land that could be economically productive, or (3) the number of acres of potentially productive unused land that could be leased and could generate revenue for the landowners.

These data are not available for at least two reasons. First, much of the trust land is not considered economically productive and there is therefore little or no interest in leasing it. While there are exceptions to this generalization, Bureau officials said they believe that the trust land that can support economic production is already leased. Second, the Bureau has limited staff resources to manage trust land, and these staff rely mostly on landowners or potential lessees to express interest and thereby initiate the Bureau's leasing process. Officials said they do not believe that the Bureau has sufficient staff resources to identify unused and unleased trust land and actively market it to potential lessees. However, they also said that a computer system that would allow the Bureau to have this information is being developed and will be piloted in the Billings, Montana, area in the summer of 1999.

The Bureau does not have good information on the interest or lack thereof in leasing trust land. We obtained data from two of the Bureau offices we

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**Appendix I**  
**Leasing Indian Trust Land**

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visited that advertised tracts of unleased trust land for competitive bids in 1998: the Fort Peck agency office in Montana advertised 251 tracts, and the Yakama agency office in Washington advertised 1,425 tracts. In both cases, the tracts offered for lease had generally been leased, but the leases were due to expire. Responses to the advertisements varied widely between the two offices, indicating that interest in leasing trust land may also vary according to local conditions. The Fort Peck office received bids on 69 percent of its advertised tracts; in contrast, the Yakama office received bids on only 7 percent of its advertised tracts.<sup>3</sup> Anecdotal information suggests that land without a history of being leased tends to remain unleased even when it is offered for competitive bid.

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<sup>3</sup>At Fort Peck, about 83 percent of the bids received were accepted, and at Yakama, about 5 percent of the bids received were accepted. At both locations, additional properties were leased through negotiations.

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# Residential Leases

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Residential leases can present a variety of issues for the Bureau of Indian Affairs and for other land managers. These include controversies over rent adjustments, which we found at the Swinomish Reservation in Washington and on state land in Montana. We were also told of other problems with residential leases in some places, such as confusion among lessees over who owns the land.

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## Controversies Over Rent Adjustments

Rent adjustments were controversial on the Swinomish Reservation and on state trust land in Montana. The controversy on the Swinomish Reservation focuses on five allotments of trust land located on Puget Sound (about 75 miles from Seattle) that are divided into about 250 lots on or near the water, many of which are leased for residential use. At one time, these lots were very primitive—they were considered “camping lots”—and lessees made only small investments in putting houses or other structures on the lots. Given the small amounts they invested, lessees could choose with relative ease not to renew their leases (thereby losing their investments) if their rents increased over time. However, as these lots became more attractive for permanent residences, lessees built increasingly expensive homes on them and increased their investments.

In the early 1990s, two events dramatically increased lessees’ costs: The lots were reappraised and the rents were increased to reflect the increased land value, and the Swinomish Community improved the water and sewer systems in the area. Annual rents increased from an average of about \$1,200 to between \$5,000 and \$6,000, and the improvements resulted in utility assessments that ranged from \$8,000 to \$11,500 for each of the lots and, in many cases, were charged to the lessees.<sup>1</sup> The Community arranged for funds from Skagit County (under a state block grant) of up to \$8,000 per lot to defray the utility assessment costs for low-income lessees; 30 lessees—about one-third—qualified for the grant.

Lessees asserted that the new appraisals overstated the value of the lots and that the resulting lease increases were inappropriately high; however, landowners asserted that the appraisals might have understated the value of the lots. Lessees appealed the increased rents, which were upheld by the

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<sup>1</sup>The law does not permit encumbrances to be placed on trust land without the landowner’s consent. Some landowners agreed to pay the assessment, but only if rents were increased accordingly.



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Interior Board of Indian Appeals.<sup>2</sup> The lessees filed suit in the U.S. District Court for the Western District of Washington, which dismissed the case in March 1999.

Following this dismissal, the Community—which has an ownership interest in two of the allotments—plans to meet with other landowners and Bureau officials to discuss possible changes that may relieve some of the lessees' concerns. These include changes in the lease term (such as increasing the term from the current 25 years to 50 years) and alternative methods for adjusting rents (such as allowing the prepayment of rents or linking rent increases to a federal Treasury index).

A similar rent adjustment controversy occurred in Montana where, according to one official, the state leases over 1,000 sites for cabins and homes. The controversy began in the late 1980s, when Montana began setting rental rates at 5 percent of the respective property's appraised market value—a 5-percent rate of return. In response to the change, there was such an outcry from lessees that, according to the official, the Montana legislature intervened and directed the state agency to reduce the rate of return on which the rent was based by 30 percent, to 3.5 percent of the property's appraised sales value.

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## Other Problems With Residential Leases

Leases of residential properties can pose other problems. For example, Bureau officials in the Phoenix Area Office told us of a situation on one reservation where lessees are confused about who actually owns the land. According to these officials, the Colorado River Tribe in Arizona and California leased land to a non-Indian for use as a trailer park; the lessee then sublet parcels for trailer-home use. Because these subleases have tended to be longer-term and, in some cases, were even transferred to a sublessee's heirs, some sublessees are confused over who actually owns the land. In addition, Bureau officials in the Portland Area Office told us about a controversy with lessees of oceanfront property on the Tulalip Reservation in Washington. Some of the land is eroding, and some lessees believe the Bureau should reduce their lease rents to cover the costs of moving their homes away from the eroding banks. The Bureau disagrees; it will instead measure each lot, appraise the land, and reduce the rent accordingly if the lot size has decreased through erosion. According to

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<sup>2</sup>The director of the Portland Area Office reviewed the rents for some of the leases and adjusted the rate of return used to compute them downward.

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**Appendix II**  
**Residential Leases**

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Bureau officials, the existing lease documents include a provision that warned lessees of the erosion problem and made lessees responsible for maintaining the banks.

Other land managers told us they avoid leasing property for residential purposes. For example, a Minnesota state official told us his agency was disposing of its residential properties, which are primarily lakeshore properties. A Washington state official said his agency has four residential properties and will sell them if there is an opportunity to do so.

# Trust Land Within Indian Irrigation Projects

About 527,000 acres of trust land (and about 222,000 acres of nontrust land, primarily owned by non-Indians) lie within the boundaries of 16 Indian irrigation projects administered by the Bureau.<sup>1</sup> The costs of operating and maintaining these projects are supposed to be paid through assessments that are levied annually against the acres that can be irrigated within each project (called “assessable” acres). Landowners are responsible for paying these assessments (or their lessees may agree to do so), whether the land is being leased or is being used by the landowner to produce crops. In January 1999, the Bureau reported that, in total, about 543,000 acres were considered to be assessable and about 231,000 of these acres were leased. Table III.1 provides additional information on the status of trust and nontrust land within the Indian irrigation projects.

**Table III.1: Status of Trust and Nontrust Land in 16 Indian Irrigation Projects, January 8, 1999**

Ownership and leasing status	Assessable acreage			Total assessable and nonassessable acreage in projects
	Leased	Unleased	Total	
Trust	229,339	148,271	<b>377,611</b>	526,546
Nontrust	1,425	163,573	<b>164,997</b>	221,604
<b>Total</b>	<b>230,764</b>	<b>311,844</b>	<b>542,608</b>	<b>748,150</b>

Source: GAO's calculations based on data from the Bureau of Indian Affairs.

While roughly three-quarters of the total acreage within the irrigation projects was considered to be assessable, there are striking differences in the percentages of trust and nontrust assessable acres that were reported as leased: 61 percent of the assessable trust land was leased, whereas only 1 percent of the assessable nontrust land was leased. Bureau officials told us that most of the non-Indian landowners farm their land rather than renting it out and that the trust land is generally not being farmed unless the acres are leased. However, the Bureau does not have data on unleased trust acreage that is or is not in agricultural production.

<sup>1</sup>There are 18 Indian irrigation projects in total, but this appendix presents information on only 16. We excluded two projects—the Flathead and San Carlos Projects—because the Bureau's National Irrigation Information Management System did not include data for them that would allow this analysis.

In January 1999, the Bureau reported that unpaid assessments totaled more than \$22 million (\$15 million in unpaid principal and \$7 million in unpaid interest and penalties). Whereas 93 percent of the unpaid assessments related to trust land, trust land represents only 70 percent of the total assessable acreage. One project, the Wapato Irrigation Project in Washington, accounts for about two-thirds of the total unpaid assessments.

Trust land represents 56 percent of the Wapato project's 146,000 total acres and 145,000 assessable acres and 99 percent of its 44,000 leased acres. However, 92 percent of the almost \$15 million in unpaid assessments (including interest and penalties) for the Wapato project relate to trust land. In 1997, we reported that the main reason for past due assessments was the Bureau's practice of deferring the collection of assessments from owners of trust land that was not in agricultural production.<sup>2</sup> Specifically, we found that the Bureau had sometimes declined to mail assessment bills, had failed to collect assessments from some lessees, and did not aggressively collect past due assessments.

We reported that changing farm economics and poor soil conditions were among the reasons that land within the project area was out of production. In addition, we reported that the Bureau had not often exercised its authority to grant leases of trust lands on behalf of landowners but that the superintendent had decided to do so. For example, in leasing parcels that have multiple owners, the superintendent of the Yakama agency had decided to approve the leases on behalf of the owners rather than letting the land remain idle because the Bureau was unable to locate enough of the landowners to consent to lease the land. We also reported that the Yakama agency had begun marketing unleased trust land more extensively, expanding its advertising of trust land available for lease to newspapers in major cities such as Seattle and planning to do more.

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<sup>2</sup>Indian Programs: BIA's Management of the Wapato Irrigation Project (GAO/RCED-97-124, May 28, 1997).

# Comments From the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUN 4 1999

Mr. Barry T. Hill  
Associate Director, Energy, Resources,  
and Science Issues  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Hill:

Thank you for the opportunity to comment on your Draft Report "INDIAN PROGRAMS: Bureau of Indian Affairs Should Streamline Its Procedures for Estimating Fair Annual Land Rental Values" (GAO/RCED-99-165).

The Bureau agrees with the Report's recommendations that we need to evaluate alternatives to appraisals for estimating fair annual rental; that we need to establish consistent standards for applying lease valuation methods; and that appraisal tracking data needs to be complete and consistent Bureau-wide. These issues were identified in the Secretary's High Level Implementation Plan for the Trust Management Improvement Project (TMIP), and work has begun to address them.

Although the scope of the GAO assignment did not include a historical review of funding and staffing for appraisal activities, it is worth noting that in 1975 the Bureau requested 114 positions and \$3 million for appraisals. Our enacted level for Fiscal Year 1999 is \$3.4 million and 38 positions. Our reported appraisal backlog in 1975 was 9,000 cases compared to a current backlog of 1,800 cases. While further improvements are certainly required, based on funding and staffing trends, the Bureau staff have performed remarkably well.

An FY 1999 supplemental appropriation has provided an additional \$665,000 under the Office of Special Trustee's budget for implementing improvements to the Bureau's appraisal program. The funding reference on page 4 of the report should be revised to reflect this additional funding.

We request that the last bullet on specific initiatives in the improvement plan on page 17 of the report be revised. While \$3 million was the original estimate of the increase required for the appraisal Subproject of the TMIP, the Department is in the process of revising and updating the High Level Implementation Plan to more accurately reflect current circumstances. The revised plan will be available in July. Rather than citing a specific dollar figure in the GAO report, we suggest the following language: "Funding is being requested under the Office of Special Trustee's budget to implement improvements to the appraisal program and to eliminate appraisal backlogs."

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**Appendix IV  
Comments From the Department of the  
Interior**

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As noted in the GAO report, the Bureau recently created and filled the Chief Appraiser position in the Office of Trust Responsibilities. To assist the Chief Appraiser, the Bureau also established an Appraisal Technical Board composed of one Area Director and four Area Chief Appraisers. In addition to providing policy and procedural guidance, the Appraisal Technical Board will provide assistance to field staff on complex appraisal assignments; facilitate resource sharing; identify training needs; create uniformity in handling of specific appraisal problems and techniques; recommend an organizational structure for the Bureau appraisal program; review self-governance compact and self-determination contract issues; review licensing and certification programs; and conduct program reviews.

Recommendations

Implementation of these recommendations will be accomplished under two subprojects of the TMIP. Gabriel Sneezy, Chief Appraiser, is coordinating the Appraisal Subproject and Dominic Nessi, Acting Director of Economic Development, is coordinating the Trust Asset Accounting Management System (TAAMS) Subproject.

**Recommendation 1.** *Develop a clear policy on how fair annual rental can be estimated that includes other methods in addition to appraisals, such as market surveys, fee schedules, and formulas, where appropriate.*

**Response:** As stated in the 1998 High Level Implementation Plan, the Bureau will review the statutory and regulatory authorities to determine the legal requirements for appraisals. Alternative approaches to appraisals will be examined, and statutory or regulatory changes will be recommended, if necessary. The Bureau plans to complete this task by September 1999. Following the establishment of policies and standards, training will be conducted for credit, trust, roads, housing, and facilities staff on when to request an appraisal.

**Recommendation 2.** *Establish consistent standards and guidelines for applying lease valuation methods.*

**Response:** Under Task D of the Appraisal Program Sub-Project, the Bureau is preparing an Indian Affairs Manual Part for Real Estate Services, which will include a chapter on appraisals. The immediate goal for the Chief Appraiser and the Appraisal Technical Board will be to update the Bureau's Appraisal Handbook, which supports the Manual, by inserting advisory opinions that address and clarify specific appraisal standards and processes. This will be an ongoing effort so that the appraisal program can evolve with the constant changes of the profession and the needs of the Bureau.

**Recommendation 3.** *Review Area Office appraisal-tracking data and ensure that they are consistent and complete so that the Bureau can monitor and make the most effective use of its appraisal resources.*

**Response:** The Bureau concurs that appraisal tracking data needs to be complete and consistent Bureau-wide. Although most of the Area Offices have informally adopted the same database tracking system, the Trust Asset and Accounting Management System (TAAMS) will replace that database.

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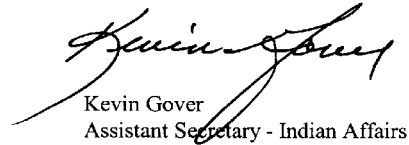
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TAAMS is nearing the pilot stage. When fully implemented, TAAMS will include the following tracking functions:

- Value/Effective Date. The system will record the date and value of the appraisal for each lease/contract/agreement and conveyance transaction.
- Appraisal Activity Checklist. The system will generate and maintain a checklist to track appraisal activities. The user will be able to indicate the completion of a particular activity and add any pertinent comments. The user will be able to tailor the standard checklist for an appraisal by adding/modifying/deleting certain conditions/stipulations and specifying the date by which items must be completed, what is incomplete, and what is on hold.
- Integrated Appraisal Processing. The system will provide integrated appraisal processing.
- Appraisal History System. An appraisal history will be maintained by the system.

The Bureau's activities to improve the appraisal process are being accomplished in a timely manner and I am confident that your recommendations will be fulfilled.

Sincerely,



Kevin Gover  
Assistant Secretary - Indian Affairs

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# Scope and Methodology

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We obtained information on the Bureau of Indian Affairs' methods of establishing the lease value of Indian land through discussions with officials from the Department of the Interior and the Bureau at their headquarters offices in Washington, D.C., and at Interior's Office of Audit and Evaluation in Denver, Colorado. We also met with officials at the Bureau's Portland (Oregon) Area Office and its Puget Sound and Yakama agencies, the Billings (Montana) Area Office and its Northern Cheyenne and Fort Peck agencies, and the Phoenix (Arizona) Area Office and its Salt River and Pima agencies. We spoke by telephone with Bureau officials at the Aberdeen (South Dakota) and Muskogee (Oklahoma) area offices. We obtained and reviewed the Bureau's guidance on appraising trust land, including the area offices' specific guidance, and obtained and examined examples of appraisals and leases. We examined various reports on appraisals and leasing, including reports by Interior's Office of Inspector General, the National Indian Agriculture Working Group, and GAO.

Through discussions with officials from Interior's Bureau of Land Management (BLM) and the Department of Agriculture's Forest Service at their headquarters offices in Washington, D.C.; at BLM field offices in Colorado, Oregon, Washington, and Idaho; and Forest Service offices in Colorado and Oregon, we obtained information on how BLM and the Forest Service value surface leases on the land they manage. We also obtained and reviewed documents containing appraisal guidance for BLM and the Forest Service. To identify methods used to establish rents for leases on trust land in various states, we contacted officials in Colorado, Montana, Minnesota, and Washington, either in person or by telephone. We also interviewed, either in person or by telephone, private appraisers and representatives of the American Society of Farm Managers and Rural Appraisers and the Colorado chapter of the Appraisal Institute.

To identify impediments to leasing Indian trust land, we met with representatives of the Swinomish, Yakama, Northern Cheyenne, Sioux and Assiniboine, Salt River Pima-Maricopa, and Gila River Pima-Maricopa tribes and spoke with lessees of Indian land at the Yakama and Fort Peck reservations. We obtained and examined documents related to the Bureau's analysis of its appraisal backlog and obtained appraisal workload logs from the Portland, Phoenix, Aberdeen, and Muskogee area offices. We used the appraisal workload logs to determine the time it takes to prepare and review appraisals at the various area offices.

To determine whether the Bureau has a legal or regulatory requirement to appraise trust land for leasing, we reviewed laws and regulations relevant



to the leasing of Indian land. We identified alternative methods of establishing the rent value of land through discussions with Bureau and other land-management officials and with private appraisers and landowners, as well as through a review of prior GAO reports on land-management practices.

We identified the Department of the Interior's efforts to improve the appraisal process through discussions with Interior and Bureau officials. We obtained and examined documents describing the ongoing Trust Management Improvement Project and recommendations of the appraisal workgroup.

To provide information on the leasing of trust land, we obtained statistics on leasing and owning Indian land from the Bureau's headquarters. We also obtained information on unleased land within irrigation districts from the Bureau's National Irrigation Information Management System in Albuquerque, New Mexico, and the results of competitive lease auctions in two Bureau area offices.

We conducted our review from July 1998 through June 1999 in accordance with generally accepted government auditing standards. We did not independently verify or test the reliability of the data provided by the Bureau's offices.

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# Related GAO Products

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Indian Trust Funds: Interior Lacks Assurance That Trust Improvement Plan Will Be Effective (GAO/AIMD-99-53, Apr. 28, 1999).

Forest Service: Barriers to and Opportunities for Generating Revenue (GAO/T-RCED-99-81, Feb. 10, 1999).

Indian Programs: BIA's Management of the Wapato Irrigation Project (GAO/RCED-97-124, May 28, 1997).

U.S. Forest Service: Fees for Recreation Special-Use Permits Do Not Reflect Fair Market Value (GAO/RCED-97-16, Dec. 20, 1996).

Military Bases: Update on the Status of Bases Closed in 1988, 1991, and 1993 (GAO/NSIAD-96-149, Aug. 6, 1996).

U.S. Forest Service: Fee System for Rights-of-Way Program Needs Revision (GAO/RCED-96-84, Apr. 22, 1996).

Federal Office Space: More Businesslike Leasing Approach Could Reduce Costs and Improve Performance (GAO/GGD-95-48, Feb. 27, 1995).

Federal Lands: Fees for Communications Sites Are Below Fair Market Value (GAO/RCED-94-248, July 12, 1994).

Hawaiian Homelands: Hawaii's Efforts to Address Land Use Issues (GAO/RCED-94-24, May 26, 1994).

Bank and Thrift Regulation: Better Guidance Is Needed for Real Estate Evaluations (GAO/GGD-94-144, May 24, 1994).

Forest Service: Little Assurance That Fair Market Value Fees Are Collected From Ski Areas (GAO/RCED-93-107, Apr. 16, 1993).

Appraisal Reform: Implementation Status and Unresolved Issues (GAO/GGD-93-19, Oct. 30, 1992).

Resolution Trust Corporation: Better Qualified Review Appraisers Needed (GAO/GGD-92-40BR, Apr. 23, 1992).

Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, Feb. 10, 1992).

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**Related GAO Products**

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Rangeland Management: Current Formula Keeps Grazing Fees Low  
(GAO/RCED-91-185BR, June 11, 1991).

Farm Programs: Conservation Reserve Program Could Be Less Costly and  
More Effective (GAO/RCED-90-13, Nov. 15, 1989).

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