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

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RELEASED

**Information On Federally Owned
Submarginal Land In Oklahoma
Set Aside For Use By The
Cherokee Tribe Of Oklahoma**

B-147655

B-147652

Bureau of Indian Affairs
Department of the Interior

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

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FEB. 2, 1973



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

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Dear Mr. Chairman:

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In accordance with your request of July 31, 1972, this is our report on federally owned submarginal land set aside for use by the Cherokee Tribe of Oklahoma. This report updates a section (pp. 56 to 59) of our 1962 report on review of proposed legislation for conveying to certain Indian tribes and groups submarginal land administered by the Bureau of Indian Affairs, Department of the Interior (B-147652, B-147655, Aug. 13, 1962). C 35

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

Sincerely yours,

Comptroller General
of the United States

9
The Honorable Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
GAO	General Accounting Office

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

INFORMATION ON FEDERALLY OWNED
SUBMARGINAL LAND IN OKLAHOMA
SET ASIDE FOR USE BY THE
CHEROKEE TRIBE OF OKLAHOMA
Bureau of Indian Affairs
Department of the Interior
B-147652, B-147655

D I G E S T

WHY THE REVIEW WAS MADE

The Chairman of the Senate Committee on Interior and Insular Affairs requested the General Accounting Office (GAO) to

--update the factual data in the 1962 GAO report on its review of proposed legislation for conveyance of submarginal land administered by the Bureau of Indian Affairs (BIA) to certain Indian tribes and groups and

--comment on how conveyance of the submarginal land to the Indian tribes involved can contribute to their social and economic advancement.

FINDINGS AND CONCLUSIONS

There are 18,749 acres of federally owned submarginal land in Adair and Delaware Counties, Oklahoma, which have been set aside for use by the Cherokee Tribe of Oklahoma. The Government acquired the land for \$60,351. In 1970 BIA appraised the land, including improvements, at \$793,000. (See pp. 3 and 6.)

Officials of BIA's Tahlequah agency office told GAO that the tribe had used tribal income to finance improvements, valued at about \$124,000, on the submarginal land. Agency office officials told GAO that the tribe had not improved

the submarginal land to the same extent as tribal land, because the tribe had use of the submarginal land only under a revocable permit. (See p. 7.)

BIA issued a revocable permit to the tribe for free use of the submarginal land from May 1965 through April 1975. In 1972 the tribe subpermitted, primarily to Indians, 6,768 acres of the submarginal land for grazing. During 1972 the tribe expected to receive \$4,670 from the subpermittees. (See p. 7.)

The tribe owns 24,921 acres of land, of which the Government holds title in trust to 22,175 acres and the tribe holds fee title to the remaining 2,746 acres. (See p. 10.)

The tribal trust land was being used primarily for grazing. The tribe receives annual income of \$28,775 from 2,668 acres of the fee title land which are leased for growing wheat. Several tribal enterprises--an arts and crafts center, a restaurant, and office buildings--are located on the remaining 78 acres of fee title land. (See p. 10.)

The tribe's financial statements showed that the tribe had assets of about \$6.2 million and liabilities of about \$59,000 as of June 30, 1971. (See p. 11.)

In 1961 the tribe received \$14,789,476 from the Indian Claims Commission as additional compensation for 6 million acres of Cherokee Outlet lands ceded to the United States in 1893. From this award per capita payments totaling \$10,399,574 were made to members of the tribe. The funds remaining after the per capita payments and expenses were made available for tribal use, subject to BIA approval. (See p. 12.)

In February 1972 the Indian Claims Commission awarded a judgment of \$4,266,309 to the tribe as additional compensation for about 2.1 million acres of Cherokee Outlet lands ceded to other Indian tribes. Both the Government and the tribe have appealed the case to the Court of Claims. (See p. 13.)

In December 1966 the tribe brought suit against the State of Oklahoma and various corporations to which the State had leased oil and gas and other mineral rights underlying a portion of the Arkansas River in Oklahoma. The tribe claimed that since 1835 it had been the absolute fee owner of land underlying the navigable portion of part of the river. (See p. 13.)

On April 27, 1970, the United States Supreme Court held that, under various treaties and patents

issued thereunder in the 1830s, the Cherokee, Choctaw, and Chickasaw Nations had received title to the land underlying the navigable portion of the Arkansas River from its confluence with the Grand River to the Oklahoma-Arkansas border. The Supreme Court remanded the case for further proceedings consistent with its opinion. (See p. 13.)

After further lower court rulings in favor of the Indian tribes involved, the State of Oklahoma filed a petition for permission to reargue the case before the Supreme Court, but on December 4, 1972, permission was denied. (See p. 14.)

Tribal officials told GAO that, if the submarginal land were conveyed to the tribe, it proposed to

- use some of the land for developing a commercial recreation area,

- exchange some of the land for privately owned land to consolidate scattered tracts of tribal lands, and

- use some of the land for crop farming and various other enterprises which would provide employment for Indians. (See pp. 7 and 8.)

GAO believes that such use of the land could contribute to the social and economic advancement of the tribe. (See p. 14.)

CHAPTER 1

INTRODUCTION

Pursuant to a request dated July 31, 1972, from the Chairman of the Senate Committee on Interior and Insular Affairs (see app. I) and in accordance with subsequent discussions with his office, we have updated the factual data on pages 56 to 59 of our August 1962 report on submarginal land administered by the Bureau of Indian Affairs (BIA), Department of the Interior.¹ The Chairman also requested our comments on how conveyance of the submarginal land to the Indian tribes involved can contribute to their social and economic advancement.

This report pertains to the 18,749 acres of federally owned submarginal land in Adair and Delaware Counties, Oklahoma, which have been set aside for use by the Cherokee Tribe of Oklahoma.

We reviewed records and interviewed officials and representatives of BIA's central office in Washington, D.C.; BIA's area office in Muskogee, Oklahoma; and BIA's Tahlequah agency office and the Cherokee Tribal Office in Tahlequah, Oklahoma. We also interviewed Agricultural Stabilization and Conservation Service officials in Adair and Delaware Counties.

CHEROKEE LAND IN OKLAHOMA

Under the Treaty of New Echota dated December 29, 1835, the United States issued a patent to the Cherokee Tribe for 14,374,135 acres of land in eastern and northern Oklahoma. Part of this land (about 8.1 million acres) in northern Oklahoma is commonly known as the Cherokee Outlet. The remainder constituted the Cherokee Reservation which was in a

¹"Report on Review of Proposed Legislation for Conveyance to Certain Indian Tribes and Groups of Submarginal Land Administered by Bureau of Indian Affairs, Department of the Interior" (B-147652, B-147655, Aug. 13, 1962). This report was submitted to the House and Senate Committees on Interior and Insular Affairs.

14-county area in northeastern Oklahoma. In return the tribe conveyed to the United States all lands it owned, claimed, or possessed east of the Mississippi River.

In May 1971 the General Counsel for the Cherokee Tribe summarized the dispositions made of the Cherokee lands which accounted for 13,828,960 acres, leaving a difference of 545,175 acres between the land specified in the patent and the actual acreage received by the Cherokee Tribe, as follows:

Acreage specified in patent issued to Cherokee Tribe on December 31, 1838	<u>14,374,135</u>
Reconciliation of land:	
Ceded to the United States:	
The Kansas Nebraska Act of 1854 and the Cherokee Treaty of July 19, 1866	1,234,639
Agreement of December 19, 1891, ratified by the Congress on March 3, 1893	6,022,754
Deeded to other Indian tribes:	
Osage and Kaw (17 Stat. 228, June 5, 1872)	1,570,186
Pawnee (19 Stat. 228, April 10, 1876)	230,014
Ponca (20 Stat. 63, May 27, 1878)	101,895
Nez Perce (20 Stat. 63, May 27, 1878)	90,711
Otoe and Missouri (21 Stat. 380, March 3, 1881)	129,113
Allotted to individual Cherokee Indians under the Cherokee Allotment Act of 1902 (note a)	4,346,223
Sold by United States under authority of the act of April 26, 1906	51,216
Reserved for townsites, railroad rights-of-way, cemeteries, churches, schools, etc.	22,880
Sold to Corps of Engineers in 1968	644
Riverbeds:	
Verdigris	2,844
Grand	12,399
Arkansas	<u>13,442</u>
Total	<u>13,828,960</u>
Difference	<u>545,175</u>

^a After completion of these allotments, the Cherokee Reservation no longer existed.

On July 15, 1971, House bill 9850 was introduced, and referred to the Committee on Interior and Insular Affairs, to provide for compensation to the Cherokee Nation for the difference between the number of acres specified in the patent and the actual number of acres within the boundaries described in the patent.

As of June 30, 1972, the tribe owned 24,921 acres of land, of which the Government held title in trust to 22,175 acres and the tribe held fee title to 2,746 acres.

CHEROKEE TRIBE OF OKLAHOMA

Public Law 91-495, approved October 22, 1970, authorized the tribe to elect its principal officer. On August 14, 1971, the tribe elected a principal chief for a 4-year term. The chief has a cabinet to assist him and two boards of trustees to study the use of land. As of August 1972 a tribal committee was drafting a constitution for the tribal organization.

Census data for 1970 showed that about 23,800 Indians lived within the 14-county area covered by the former reservation. The Cherokee population within this area was estimated by tribal officials in November 1971 to be about 20,600, of which about one-half lived in Adair, Cherokee, and Delaware Counties. A BIA report showed that the Indian labor force in the 14-county area was 7,982 in 1970 and that about 29 percent were unemployed and 22 percent were underemployed. In August 1972 a tribal representative estimated that 60 percent of the Cherokee Indian labor force was unemployed.

Information compiled by BIA's area office in 1971 indicated that the average annual income was \$2,586 for Indian families in Delaware County. Agency office officials estimated that the average annual income was between \$1,700 and \$1,800 for Indian families in Adair County.

CHAPTER 2
INFORMATION ON
SUBMARGINAL LAND, TRIBAL LAND,
AND OTHER TRIBAL RESOURCES

SUBMARGINAL LAND

The 18,749⁽¹⁾ acres of federally owned submarginal land in Delaware and Adair Counties has been set aside for use by the tribe. The land is in 77 scattered tracts ranging from 10 to 6,993 acres.

The Government purchased the submarginal land under the provisions of Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200); the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115); and section 55 of the act of August 24, 1935 (49 Stat. 750, 781). According to BIA records, the Government paid \$60,351 for the land.

In 1970 BIA appraised the submarginal land, including improvements, at \$793,000. The appraisal reports classified the land as follows:

<u>Type of land</u>	<u>Acres</u>
Wooded pasture	17,459
Open pasture	1,125
Improved pasture or cropland	<u>165</u>
	<u>18,749</u>

On the basis of this information and information obtained from the county assessors' offices, we estimate that, if the

¹Our 1962 report showed 18,649 acres of submarginal land. At the time of our prior review, BIA's records showed 100 acres of the land as being held in trust for the tribe and was, therefore, excluded from the submarginal land acreage shown in our 1962 report.

land had been subject to real estate taxes, the 1971 taxes would have been about \$6,354.

Improvements

In August 1972 agency office officials estimated the value of improvements to the land at \$123,575. The improvements included buildings, ponds, fences, timber clearing, and pasture improvements. These officials told us that the improvements had been financed primarily from tribal funds. Agency office officials estimated that about \$385 in Government funds had been used for improvements made to 28 acres.

Agency office officials told us that the tribe had not improved the submarginal land to the same extent as tribal land, because the tribe had use of the submarginal land only under a revocable permit. They added that the tribe had shown interest in the submarginal land by using tribal income to improve it.

Present and past use

BIA issued a revocable permit to the tribe for free use of the land from May 1965 through April 1975. Prior to May 1965 BIA leased the land to individual Indians and non-Indians. These permits were allowed to expire or were revoked so the land could be made available to the tribe.

In 1972 the tribe subpermitted, primarily to Indians, 6,768 acres for grazing. During 1972 the tribe expected to receive \$4,670 from the subpermittees who were also required to make improvements to the land valued at \$188. The other 11,981 acres were not used by the tribe except for hunting.

Proposed uses

Tribal officials told us about seven proposed uses of the submarginal land for economic and social development. They said that these proposals are tentative, pending conveyance of the land to the tribe.

The proposal which would require the most land is the development of a commercial recreation area on tribal and submarginal land near Lake Eucha. A small tract of submarginal land borders a portion of the lake. This project

would require about 12,000 acres of submarginal land and 6,000 acres of tribal trust land for hunting, fishing, camping, and other outdoor recreation activities. It would be tribal owned and managed and would provide employment for 100 to 150 Indians. The contractor who is developing the plans for the project estimated that it would cost about \$1.3 million and said that he anticipated it would be financed by the Economic Development Administration (50 percent); OZARKA, a Tri-State Commission which provides grants for recreation projects in the Ozark region (25 percent); a Small Business Administration loan (15 percent); and tribal funds (10 percent).

The tribal land manager said that other proposed uses of the submarginal land include

- exchanging tracts of the land for privately owned land to consolidate scattered tracts of tribal lands,
- establishing a plant and tree nursery which would provide employment for about 50 Indians,
- cutting timber on the land which would provide employment for about 30 Indians,
- establishing hog-raising operations which would employ about six Indians and encourage Indian families to start their own operations to supplement their income,
- contracting with individuals for growing crops on the land which would employ about 100 Indians, and
- using the land as homesites for constructing mutual-help housing which would provide new homes for about 100 Indian families.

An agency office official said that:

- One of the most urgent needs for the land is to provide homesites for construction of mutual-help housing for Indian families.
- The tribe has a program under which tribal trust land is made available to Indian families for homesites through a 25-year lease.

--A family may build a new home on the land with the assistance of the Cherokee Housing Authority which receives financial assistance from the Department of Housing and Urban Development.

--Under the tribe's program, the tribe has provided land for about 150 one-acre homesites but is running out of suitable homesites which border on county roads.

Agency office officials estimated that an average of 80 Indians had been employed part time through the tribe's use of tribal and submarginal land during the past 5 years. They estimated also that 300 full-time jobs would be created over the next 5 years if the submarginal land were conveyed to the tribe and its proposals for use of the land were adopted.

Mineral and water resources

There has been no production of minerals in either Adair or Delaware County. BIA appraisals indicate that the value of sand, gravel, limestone, and minor amounts of other minerals on the submarginal land is between \$1 and \$5 an acre.

Several creeks flow through, or are adjacent to, some of the tracts of submarginal land. The potential uses of the streams are for irrigation, stock ponds, and fishing. There is also a small tract (146 acres) of submarginal land which borders Lake Eucha. In 1964 BIA made a study of the potential development of this land for recreation purposes, and it is included in the 12,000 acres the tribe proposes to develop as a commercial recreation area. (See p. 7.)

TRIBAL LAND

The Government holds title in trust for the tribe to 22,175 acres of land in northeastern Oklahoma. Most of this land (19,000 acres) is in Adair and Delaware Counties. The tribe holds fee title to an additional 2,746 acres of land.

According to BIA's records the tribal trust land was being used for grazing, except for about 600 acres used for farming and about 450 acres used for nonagricultural purposes.

The fee title land is not subject to control or supervision by BIA. The tribe receives annual income of \$28,775 from 2,668 acres of the land which are leased for growing wheat. Several tribal enterprises--an arts and crafts center, a restaurant, and several office buildings--are located on the remaining 78 acres of fee title land. One of the office buildings is being leased by BIA for its Tahlequah agency office for \$18,360 a year.

BIA area office officials stated that, in line with the self-determination policy as stated in a message to the Congress by the President on July 8, 1970, the tribe has become more involved in the management of its lands and has established a land management enterprise. The tribe recently hired a land enterprise manager to assume many of the duties and responsibilities for managing, developing, improving, and leasing tribal land previously carried out by BIA personnel. Beginning with fiscal year 1973, the land enterprise manager has had the authority, with BIA approval, to expend tribal funds for the management of tribal lands.

The policies and procedures governing the operations of the land enterprise have been drafted but as of August 1972 had not been submitted to BIA for approval. The draft provides that projects which create jobs for the greatest number of tribal members and which provide a net profit be given priority and that, after establishing a capital reserve of \$50,000, profits not needed for development be used for assistance to needy members of the tribe.

TRIBAL FINANCIAL RESOURCES

The following table, which is based on financial statements prepared by BIA and not verified by us, shows the financial condition of the tribe as of June 30, 1971.

Assets:	
Current assets	\$1,769,047
Buildings and equipment	830,877
Land (note a)	1,667,000
Construction-in-process	543,936
Other	6,440
Investments	<u>1,336,248</u>
Total	6,153,548
Liabilities	<u>59,198</u>
Equity	<u>\$6,094,350</u>

^a BIA's records showed that the tribal land cost \$388,259. The financial statement did not show how the book value of the land had been determined, but the tribal accountant estimated that the land had a value of about \$3,155,785.

Agency office officials said that the investments were made primarily to provide employment for tribal members.

The investments include:

- The Tsa-La-Gi Cultural Center which consists of a typical Cherokee village and an amphitheater. A Cherokee Museum and Cherokee Archives buildings are planned for the center. Seasonal employment was provided for an average of 50 tribal members.
- An arts and crafts center which provides training to tribal members in certain arts and crafts skills and which provides a market for the sale of arts and crafts items.
- A restaurant which provides training to tribal members in restaurant management and operation

and thereby provides them with employment opportunities. As of May 1971, about 24 tribal members were employed.

--The Cherokee Nation Construction Company which is building housing for Cherokee families.

In addition, the tribe has obtained contracts from BIA for assuming the operations of several BIA assistance programs, such as the Indian Action Training Program and the Employment Assistance Program. Also the tribe has submitted a proposal for assuming the operations of the Tahlequah agency office under a contract with BIA.

In 1961 the tribe received an award from the Indian Claims Commission as additional compensation for about 6 million acres of the Cherokee Outlet land ceded to the United States in 1893. According to BIA records and BIA officials, this money was used as follows:

Award		\$14,789,476
Interest earned		<u>2,087,022</u>
		16,876,498
Less:		
Attorney fees	\$1,436,448	
Offsets (note a)	<u>454,505</u>	
		<u>1,890,953</u>
		14,985,545
Disbursements:		
Per capita roll preparation	365,860	
Per capita payments	10,399,574	
Tribal programs	2,841,326	
Tribal investments	<u>1,369,000</u>	
		<u>14,975,760</u>
Balance as of June 30, 1972		\$ <u><u>9,785</u></u>

^aRepresents negotiated amount of Government claims against the tribe, plus interest, offset against the amount of the award.

The funds remaining after per capita payments and expenses were made available for tribal use, subject to BIA approval.

In 1962 the tribe had another claim pending with the Indian Claims Commission covering about 2.1 million acres of land in the Cherokee Outlet deeded to other Indian tribes. The claim requested fair market value for the land as of June 1883 and the value of all oil and gas extracted therefrom to date. On February 2, 1972, the Indian Claims Commission awarded a judgment to the tribe of \$4,266,309, after deducting offsetting claims, as additional compensation for the 2.1 million acres of land based on its value in 1883. On May 1, 1972, the Government appealed the case to the Court of Claims on the basis that the date used in establishing the value of the land was incorrect and that additional offsets should have been considered in awarding the judgment. Also the tribe appealed the case to the Court of Claims on May 2, 1972, for interest at 5 percent since 1883 on the amount of the award.

In December 1966 the tribe brought suit against the State of Oklahoma and various corporations to which the State had leased oil and gas and other mineral rights underlying a portion of the Arkansas River. The tribe sought to recover the royalties derived from the leases and to prevent future interference with its property rights, claiming that since 1835 it had been the absolute fee owner of land underlying the navigable portion of part of the Arkansas River in Oklahoma. Subsequently, the Choctaw and Chickasaw Nations were granted permission to intervene in the case in order to present their claims that part of the river bed belonged to them.

After lower court rulings against the Indian tribes, the case was appealed to the United States Supreme Court. On April 27, 1970, the Supreme Court held that, under various treaties and patents issued in the 1830s, the Cherokee, Choctaw, and Chickasaw Nations had received title to the land underlying the navigable portion of the Arkansas River from its confluence with the Grand River in Oklahoma to the Oklahoma-Arkansas border.

The Supreme Court reversed the ruling of the lower court and remanded the case for further proceedings consistent with its opinion.

After further lower court rulings, in April 1971 and June 1972, in favor of the Indian tribes involved, the State of Oklahoma, in September 1972, filed a petition for permission to reargue the case before the Supreme Court, but on December 4, 1972, permission was denied.

SUMMARY

Tribal officials told us that, if the submarginal land were conveyed to the tribe, it proposed to (1) use some of the land for developing a commercial recreation area which would provide employment for 100 to 150 Indians, (2) exchange some of the land for privately owned land to consolidate scattered tracts of tribal lands, and (3) use some of the land for crop farming and various other enterprises which would provide employment for Indians. We believe that such use of the land could contribute to the social and economic advancement of the tribe.

HENRY M. JACKSON, WASH., CHAIRMAN
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JERRY T. VERKLER, STAFF DIRECTOR

United States Senate

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

July 31, 1972

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

Dear Elmer:

This letter is in reference to my letter dated April 1, 1971, in which I requested your staff to begin updating the Comptroller General's Report on Submarginal Land which was submitted to the House and Senate Committees on Interior and Insular Affairs on August 13, 1962.

It has recently been brought to my attention that the Department of the Interior is making a study of instances in which a tribe or group of Indians seeks to acquire land and, as a result of this study, does not intend to submit any further proposed legislation and related comments on the proposed transfer of submarginal lands to Indian tribes and groups until the study is completed.

Previous agreements provided for your staff to initiate the updating of factual data in your 1962 report at the time the Department prepared a draft of proposed legislation providing for the transfer of submarginal land to an Indian tribe or group. Under these arrangements, reports were issued on four Indian tribes or groups and I understand that reports are currently in process on five additional tribes or groups.