The original documents are located in Box 31, folder "10/17/75 S1327 Submarginal Land Trust for Indians" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 14 1975

Postal 10/17
J. Cavanaugh 10/20

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1327 - Submarginal land trust for Indians
Sponsors - Sen. Abourezk (D) South Dakota and 7 others

Last Day for Action

October 20, 1975 - Monday

Purpose

Provides that certain submarginal land of the United States shall be held in trust for designated Indian tribes and be made a part of the reservations of said Indians.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	Defers to Interior
Department of the Army	No objection
Indian Claims Commission	No Recommendation

Discussion

During the 1930's, the Department of Agriculture purchased some eleven million acres of submarginal farmland that was no longer suitable for cultivation. The majority of the acreage purchased by Agriculture remains in Federal ownership under the jurisdictions of the Forest Service and the Bureau of Land Management in the Interior Department. Of the balance of the land, approximately one million acres were transferred to states and municipalities and nearly another one million acres were designated for Indian submarginal land projects and were transferred to the Department of the Interior by executive order between 1939 and

1946 with the Federal Government continuing to hold title. Since 1946, four Indian tribes have received title to nearly 600,000 acres of this land under trust agreements administered by Interior. Thus, the Federal Government presently retains title to somewhat less than 400,000 acres of Indian submarginal lands which are being managed by Interior for the use and benefit of seventeen Indian tribes.

Most of this land lies within the various Indian reservations' current boundaries, except for the Cherokee Nation which has no reservation in the technical sense.

The original acquisition cost of these submarginal lands (400,000 acres) was $1.85 million while its present fair market value is roughly $29,000,000 exclusive of the mineral estate. The total accrued income derived from mineral, timber, grazing, and farming operations since the date of purchase is slightly in excess of $3,900,000, most of which is now held in a special treasury deposit account for Indian minerals receipts until finally disposed of by Congress.

However, Federal title to the Indian submarginal lands has proven to be unsatisfactory because it creates a situation in which land management units are partially both Indian-owned and Federally-owned. This has impeded the Indian's desire and ability to maximize the economic development of their reservations because tenure and title to the submarginal lands are uncertain. The clouded title situation has also (a) made it difficult for these tribes to obtain private financing for their business ventures, (b) blocked the approval of Federal housing projects on these lands, and, (c) made long-range land use planning for their reservations impossible.

Earlier this year, Interior submitted legislation designed to remove the legal obstacle that has created the problems noted above. Briefly, the Interior proposal contained three basic features:

> First, title to all remaining Federally-owned Indian submarginal project land would be transferred to seventeen designated Indian tribes and held in trust for them by Interior. Such title transfer would (a) be subject to the continued right to use lands within Ellsworth Air Force Range, located in the Pine Ridge

Reservation, South Dakota, and (b) stipulate the continuance of certain water resource development and flood control programs affecting certain of these lands.

Second, all existing rights which individuals may have in the land covered by the bill would be protected (including mining, mineral and access rights).

Third, the Indian Claims Commission (ICC) would be authorized to determine de novo whether the beneficial interest conveyed to the tribes should or should not be set off against other claims arising before the Commission.

The enrolled bill conforms to the first two substantive provisions of Interior's proposal as outlined above. However, it differs from the Department's proposal in two fundamental ways.

First, S. 1327 does not provide for an offset consideration by the ICC in connection with any judgment award made to any of the affected tribes.

Second, S. 1327 provides for the transfer of almost all accrued income (about $3,900,000) that has been deposited in the Treasury since the lands were originally acquired.

Furthermore, several prior Indian submarginal lands conveyance statutes would be amended to conform to the provisions of the enrolled bill including subsurface rights. Finally, the conveyed lands and all income therefrom would be exempted from Federal, State, and local taxation. Receipts from the property could not be considered income in determining benefits under any Federal or Federally assisted program.

In its enrolled bill letter, Interior analyzed the substantive differences between its proposal and S. 1327 by noting that:

1. In response to a question from the Senate Interior Committee concerning the appropriateness of applying an offset requirement against the tribes who would receive submarginal lands, the ICC advised that the Indian Claims Commission Act prohibits the use of such offsets in cases where expenditures were made "throughout the United States for relief in stricken agricultural areas." In a recent case involving the

question of submarginal land offsets, this ICC interpretation was contested by the Department of Justice, and the U.S. Court of Claims affirmed the Commission's disallowance of such offsets. In light of these developments, Interior now concurs with the ICC, though the Administration's bill was written specifically to overcome any legal conflicts with the Indian Claims Commission Act.

2. With respect to the provision which transfers accrued income to the appropriate tribes, Interior references and concurs with the Senate Interior Committee statement that:

"Since these lands were acquired for the benefit of the tribe, the income derived from the management and administration of such lands should also be for the benefit of the tribe."

Finally, in regard to the tax and Federal benefit provisions, both the Interior and Treasury enrolled bill letters cite various legislative and judicial precedents which are consistent with the approach set forth in S. 1327.

While our preference would be for the Administration's original proposal, the enrolled bill's non-conforming provisions do generally carry some validity in light of the judicial and legislative history associated with the submarginal lands issue. As the concluding paragraph in Interior's enrolled bill letter states:

"Presidential approval of the enrolled bill would be the final step in transferring those lands to the Indians which were set aside for their benefit over 40 years ago."

James M. Frey

Assistant Director
for Legislative Reference

Enclosures

Signed 10/17

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: October 20

October 15, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill S. 1327 - Submarginal Land Trust for Indians

Attached for your consideration is S. 1327, sponsored by Senator Abourezk and seven others, which provides that 370,000 acres of submarginal lands of the United States be held in trust for 17 designated Indian tribes.

A detailed discussion of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), Ted Marrs, and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 1327 at Tab B.

B

To Cunningham 10/14 RDL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 14 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1327 - Submarginal land trust for Indians
Sponsors - Sen. Abourezk (D) South Dakota and 7 others

Last Day for Action

October 20, 1975 - Monday

Purpose

Provides that certain submarginal land of the United States shall be held in trust for designated Indian tribes and be made a part of the reservations of said Indians.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	Defers to Interior
Department of the Army	No objection
Indian Claims Commission	No Recommendation

Discussion

During the 1930's, the Department of Agriculture purchased some eleven million acres of submarginal farmland that was no longer suitable for cultivation. The majority of the acreage purchased by Agriculture remains in Federal ownership under the jurisdictions of the Forest Service and the Bureau of Land Management in the Interior Department. Of the balance of the land, approximately one million acres were transferred to states and municipalities and nearly another one million acres were designated for Indian submarginal land projects and were transferred to the Department of the Interior by executive order between 1939 and

1946 with the Federal Government continuing to hold title. Since 1946, four Indian tribes have received title to nearly 600,000 acres of this land under trust agreements administered by Interior. Thus, the Federal Government presently retains title to somewhat less than 400,000 acres of Indian submarginal lands which are being managed by Interior for the use and benefit of seventeen Indian tribes.

Most of this land lies within the various Indian reservations' current boundaries, except for the Cherokee Nation which has no reservation in the technical sense.

The original acquisition cost of these submarginal lands (400,000 acres) was $1.85 million while its present fair market value is roughly $29,000,000 exclusive of the mineral estate. The total accrued income derived from mineral, timber, grazing, and farming operations since the date of purchase is slightly in excess of $3,900,000, most of which is now held in a special treasury deposit account for Indian minerals receipts until finally disposed of by Congress.

However, Federal title to the Indian submarginal lands has proven to be unsatisfactory because it creates a situation in which land management units are partially both Indian-owned and Federally-owned. This has impeded the Indian's desire and ability to maximize the economic development of their reservations because tenure and title to the submarginal lands are uncertain. The clouded title situation has also (a) made it difficult for these tribes to obtain private financing for their business ventures, (b) blocked the approval of Federal housing projects on these lands, and, (c) made long-range land use planning for their reservations impossible.

Earlier this year, Interior submitted legislation designed to remove the legal obstacle that has created the problems noted above. Briefly, the Interior proposal contained three basic features:

> First, title to all remaining Federally-owned Indian submarginal project land would be transferred to seventeen designated Indian tribes and held in trust for them by Interior. Such title transfer would (a) be subject to the continued right to use lands within Ellsworth Air Force Range, located in the Pine Ridge

Reservation, South Dakota, and (b) stipulate the continuance of certain water resource development and flood control programs affecting certain of these lands.

Second, all existing rights which individuals may have in the land covered by the bill would be protected (including mining, mineral and access rights).

Third, the Indian Claims Commission (ICC) would be authorized to determine de novo whether the beneficial interest conveyed to the tribes should or should not be set off against other claims arising before the Commission.

The enrolled bill conforms to the first two substantive provisions of Interior's proposal as outlined above. However, it differs from the Department's proposal in two fundamental ways.

First, S. 1327 does not provide for an offset consideration by the ICC in connection with any judgment award made to any of the affected tribes.

Second, S. 1327 provides for the transfer of almost all accrued income (about $3,900,000) that has been deposited in the Treasury since the lands were originally acquired.

Furthermore, several prior Indian submarginal lands conveyance statutes would be amended to conform to the provisions of the enrolled bill including subsurface rights. Finally, the conveyed lands and all income therefrom would be exempted from Federal, State, and local taxation. Receipts from the property could not be considered income in determining benefits under any Federal or Federally assisted program.

In its enrolled bill letter, Interior analyzed the substantive differences between its proposal and S. 1327 by noting that:

1. In response to a question from the Senate Interior Committee concerning the appropriateness of applying an offset requirement against the tribes who would receive submarginal lands, the ICC advised that the Indian Claims Commission Act prohibits the use of such offsets in cases where expenditures were made "throughout the United States for relief in stricken agricultural areas." In a recent case involving the

question of submarginal land offsets, this ICC interpretation was contested by the Department of Justice, and the U.S. Court of Claims affirmed the Commission's disallowance of such offsets. In light of these developments, Interior now concurs with the ICC, though the Administration's bill was written specifically to overcome any legal conflicts with the Indian Claims Commission Act.

2. With respect to the provision which transfers accrued income to the appropriate tribes, Interior references and concurs with the Senate Interior Committee statement that:

"Since these lands were acquired for the benefit of the tribe, the income derived from the management and administration of such lands should also be for the benefit of the tribe."

Finally, in regard to the tax and Federal benefit provisions, both the Interior and Treasury enrolled bill letters cite various legislative and judicial precedents which are consistent with the approach set forth in S. 1327.

While our preference would be for the Administration's original proposal, the enrolled bill's non-conforming provisions do generally carry some validity in light of the judicial and legislative history associated with the submarginal lands issue. As the concluding paragraph in Interior's enrolled bill letter states:

"Presidential approval of the enrolled bill would be the final step in transferring those lands to the Indians which were set aside for their benefit over 40 years ago."

(Signed) James M. Frey

Assistant Director
for Legislative Reference

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 14 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1327 - Submarginal land trust for Indians
Sponsors - Sen. Abourezk (D) South Dakota and 7 others

Last Day for Action

October 20, 1975 - Monday

Purpose

Provides that certain submarginal land of the United States shall be held in trust for designated Indian tribes and be made a part of the reservations of said Indians.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	Defers to Interior
Department of the Army	No objection
Indian Claims Commission	No Recommendation

Discussion

During the 1930's, the Department of Agriculture purchased some eleven million acres of submarginal farmland that was no longer suitable for cultivation. The majority of the acreage purchased by Agriculture remains in Federal ownership under the jurisdictions of the Forest Service and the Bureau of Land Management in the Interior Department. Of the balance of the land, approximately one million acres were transferred to states and municipalities and nearly another one million acres were designated for Indian submarginal land projects and were transferred to the Department of the Interior by executive order between 1939 and

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 14, 1975 Time: 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Ted Marrs

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 15 Time: 5:00pm

SUBJECT:

S. 1327 - Submarginal Land Trust for Indians

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

October 15, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF M.L.F.

SUBJECT: S. 1327 - Submarginal Land Trust for Indians

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 603

Date: October 14, 1975 Time: 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 15 Time: 5:00pm

SUBJECT:

S. 1327 - Submarginal Land Trust for Indians

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 10/15/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON **LOG NO.:** 603

Date: October 14, 1975 **Time:** 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Ted Marsh

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 15 **Time:** 5:00pm

SUBJECT:

S. 1327 - Submarginal Land Trust for Indians

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

This is not everything we wanted but is a basically appropriate bill and Presidential signature is desirable. This would be a counter to poor Indian relationship challenges if we had a signing ceremony — Marsh

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

[redacted]

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 603

Date: October 14, 1975 Time: 600pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 15 Time: 5:00pm

SUBJECT:

S. 1327 - Submarginal Land Trust for Indians

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS: Approval. RPP

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 14 1975

Dear Mr. Lynn:

This responds to your request for the views of this Department on enrolled bill S. 1327, "To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

We strongly recommend that the President approve the enrolled bill.

The provisions of S. 1327 as enrolled

S. 1327 as enrolled declares that all right, title, and interest of the United States to certain submarginal lands purchased by the United States under authority of emergency relief measures of the 1930's shall be held in trust, together with the mineral interest (however acquired by the United States), for the tribes named in section 2(a) and shall, except in the case of the Cherokee Nation, be a part of the reservation of such tribes. (The Cherokee Nation has no reservation in the technical sense). The lands to be transferred in trust under the bill are known as submarginal lands. They comprise the remaining 370,000 acres of the original Indian submarginal land projects, and affect 17 Indian tribes and communities.

The other major provisions of S. 1327 would provide for the following:

1. Make portions of submarginal lands on the Pine Ridge, Bad River, Standing Rock, Crow Creek, Lower Brule and Cheyenne River Reservations subject to appropriation or disposition pursuant to previous statutes;

2. Amend several statutes, conveying submarginal lands to tribal groups, to make those statutes conform to the provisions of S. 1327;

3. Preserve valid existing rights on the conveyed lands including access across such lands to public domain lands;

4. Maintain leases approved pursuant to the Mineral Leasing Act for Acquired Lands of 1947 and the Mineral Leasing Act of 1920;

5. Authorize a procedure for an approval of pending applications for mineral leasing under the Indian Mineral Leasing Act of 1938;

6. Provide for the transfer of all income, surface and subsurface, to the affected tribes or communities with the exception of approximately $26,000 derived from mineral leasing of Fort Belknap submarginal lands. That income is subject to disposition under the Mineral Leasing Act of 1920; and

7. Exempt the conveyed lands and income from Federal and State taxes and from consideration under certain Federal programs.

Background

The lands that would be transferred to trust status by enrolled bill S. 1327 are commonly known as submarginal lands. The term "submarginal" refers to the temporary inability of the land to provide more than a marginal economic return, rather than the condition of the land itself. These lands were purchased by the United States during the 1930's under the National Industrial Recovery Act (48 Stat. 200), and subsequent relief Acts, at a cost of $1,852,773. The purpose was to retire them from private ownership, to correct maladjustments in land use and to benefit various disadvantaged groups. They were also bought with the expectation that they would be made available for Indian tribal use. The Roosevelt Administration initially decided that 10% of the $25 million made available to the Federal Emergency Relief Administration (FERA) for the purchase of submarginal lands would go for Indian land projects to benefit those Indians under the jurisdiction of the Bureau of Indian Affairs.

Circular No. 1, issued on June 7, 1934, by the Federal Emergency Relief Administration, to govern the acquisition of submarginal land, stated that the land acquisition program of the Federal Government would be of three major types, the third type being "Demonstration Indian Land Projects," which would include land to be purchased primarily for the benefit of Indians. It further stated that the objectives of the programs included "Improvement of the economic and social status of "industrially stranded population groups, occupying essentially rural areas, including readjustment and rehabilitation of Indian population by acquisition of land to enable them to make appropriate and constructively

planned use of the combined land areas in units suited to their needs." The Circular set forth the following five types of demonstration Indian areas to be included in the program: (1) checkerboard areas; (2) watershed or water control areas; (3) additional land to supplement inadequate reservations: (4) land for homeless Indian bands or communities now forming acute relief problems, and (5) land needed for proper control of grazing areas.

A Memorandum of Understanding between the Federal Resettlement Administration, (FERA's successor to submarginal land acquisition responsibility) and the Bureau of Indian Affairs, dated October 19, 1936, gave the Bureau temporary supervision over the lands during the prolonged period required by the Resettlement Administration to complete acquisition, "pending transfer of the lands within these projects to the Office of Indian Affairs (sic.) for permanent administration for the exclusive benefit of Indians." Subsequently, Executive Orders transferred jurisdiction over the lands included in 21 projects from the Secretary of Agriculture to the Secretary of the Interior.

The 1936 Memorandum of Understanding between the Federal Resettlement Administration and the Bureau of Indian Affairs spelled out the ground rules for BIA supervision. The Memorandum stated that these submarginal lands, which were situated almost entirely within existing Indian Reservation, were intended as addition to such to provide subsistence farm sites and consolidated grazing areas for the exclusive use of Indians.

The Memorandum concluded:

> "Upon the consummation of its land acquisition program in connection with the projects listed . . . the Resettlement Administration will concur in appropriate recommendations made by the Department of the Interior to Congress for incorporation of these projects lands into the Indian Reservations respectively indicated . . ."

The history and extensive documentation clearly outline the understanding between the Federal agencies involved in the acquisition and administration of submarginal land on or near Indian reservations. The land was being selected for acquisition in connection with Demonstration Indian Land Projects. It was needed by the Indians, and it would be utilized by the Indians in connection with the use of Indian-owned land. The land would

improve the Indians' economy and lessen relief costs. Proper recommendations would be made at the appropriate time for the enactment of legislation to add this land permanently to Indian reservations.

Out of the original Indian submarginal land projects, 370,000 acres remain and affect 17 Indian tribes and communities. S. 1327 as enrolled will transfer the title to these remaining lands.

It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795) and the Act of October 13, 1972 (86 Stat. 806), respectively transferred submarginal lands to the Stockbridge-Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. Only one of the five Acts--the transfer to the Stockbridge-Munsee Indian Community--reserved the subsurface to the United States.

Although the subsurface value of the remaining submarginal lands is not substantial, there are known reserves of oil, gas, coal, and bentonite under the submarginal lands project at the Fort Belknap Indian Community, Montana, and known oil reserves under the project at the Fort Pack Reservation, Montana. The Bureau of Land Management currently leases the mineral rights under all 25,530.10 acres of the project at Fort Belknap. Mineral exploration is in progress on the lands under lease and there are indications that the Fort Belknap project may have sizable reserves of natural gas. The earnings deposited in the United States Treasury from the Fort Belknap submarginal lands since the date of their purchase are $161,763.62, and the earnings from the Fort Peck project lands since the date of their purchase are $2,886,461.65. The total earnings deposited in the U.S. Treasury from all 17 submarginal lands project since the date of their purchase is $3,939,417.37.

As the various submarginal land acquisition projects were transferred from the Secretary of Agriculture to the Secretary of the Interior, the Superintendents of the various Indian agencies were informed that these lands should be administered for the benefit of the Indians in the same manner as tribal land. The use thereof was to be discussed with the tribal councils concerned.

Several tribes adopted tribal land enterprise programs which were administered by tribal officials for the primary purpose of obtaining maximum utilization of the tribal land resources. The majority of these programs were for livestock grazing purposes. As the programs were included in the issuance of leases and permits to both Indians and non-Indians, as well as the assignment of units of members of the tribes, it was determined administratively that submarginal lands should be made available to the tribes by permits from the Department, in order that the tribes could issue subpermits as a part of their programs. As a general rule, these permits were issued for a nominal rental.

Currently, the tribes receive rentals comparable to those received by the Government from similiar lands in the same general areas administered by the Bureau of Land Management and U.S. Forest Service.

Commercial timber cutting on these lands is under the supervision of the BIA. Receipts from commercial timber operations are deposited in the General Fund of the United States Treasury. Since 1964, the grazing rights have been granted to the respective tribes without charge, on a revocable permit. The mineral rights on these submarginal lands are currently managed by the Bureau of Land Management, which issues the mineral leases. Receipts from the mineral leases are deposited in the U.S. Treasury, but are segregated pursuant to the Act of August 7, 1947 (61 Stat. 913, 915).

The mineral deposits underlying approximately 9,000 acres of the Fort Belknap submarginal lands are classified as public domain minerals. This acreage was originally public domain, and when the lands were transferred to private ownership, the minerals were reserved to the United States. The United States subsequently acquired the surface in these lands through the submarginal land program. These reserved minerals are subject to the Mineral Leasing Act of 1920 rather than the Mineral Leasing Act for Acquired Lands of 1947. Approximately $26,000 has been collected from leases of these reserved minerals, and such receipts will be subject to disposition under the 1920 Act.

The present title situation, concerning the Indian submarginal land affected by S. 1327, is unsatisfactory because the tribal management units are partially Federally-owned and partially Indian-owned. There is a need, therefore, for the enactment of the legislation to remove this legal obstacle. The current ambiguous title problem impedes Indian social and economic efforts as follows:

(1) The affected tribes or communities have been reluctant to expend their own funds for any improvements on the submarginal lands because of their uncertain tenure;

(2) The private sector is reluctant to provide financing to the Indians for farming, stock raising, and other business ventures because of the cloud on the title of these lands;

(3) The Department of Housing and Urban Development will not approve public housing projects on these lands due to the uncertainty regarding the title; and

(4) The tribes cannot realistically incorporate such lands in any long-range land use plans.

The submarginal lands are needed by the Indians in order to obtain maximum utilization of their tribal lands and in order to augment their other income. If the lands are not turned over to the Indians, proper utilization will not be possible, and the loss of the use of such lands would seriously affect the economic standards of many Indians. If the title is transferred to the Indians, further consolidation into acceptable ranch units for grazing purposes will be possible. This Department has received requests from all 17 tribes for the transfer of their respective submarginal lands into trust status. In each instance, the tribes can, if given the opportunity, demonstrate a need and a planned-for, significant use of their submarginal land.

Differences between the Administration's proposed bill and S. 1327

On April 23, 1975, the Administration transmitted to the Congress proposed legislation to transfer the 398,899 remaining acres of Indian submarginal lands to the 17 affected tribes. This proposed bill, like S. 1327 as enrolled, provides for the transfer in trust of the subsurface and surface estates of these lands.

There are two substantive differences between the Administration's proposal and S. 1327 as introduced, (S. 1327 as enrolled included a number of amendments to the original legislation) which were noted by this Department in our report on S. 1327 to the Senate Committee on Interior and Insular Affairs, dated May 8, 1975.

First, section 4 of our proposal authorized the Indian Claims Commission to determine de novo whether the beneficial interests conveyed therein should or should not be set off against claims arising before the Commission. The purpose of the section was to allow the Commission, because of the magnitude of this land transfer, to review its previous practice with respect to such offset on submarginal lands. S. 1327 as introduced did not contain this provision.

Second, pursuant to section 6 of the Mineral Leasing Act for Acquired Lands (61 Stat. 913, 915) the receipts from the mineral leases on these lands have been deposited in a special fund in the U.S. Treasury. S. 1327 as introduced would deposit to the credit of the tribes conerned all receipts received by the United States directly related to the lands conveyed. In our May 8, report we stated that these receipts belong in the general fund of the U.S. Treasury.

S. 1327 as enrolled, does not incorporate the Administration's recommendations with regard to these two issues, and the differences still remain.

With regard to the first issue, the Senate Committee on Interior and Insular Affairs requested the Indian Claims Commission to determine the appropriateness of applying the usual offset clause against the tribes who would receive the submarginal lands in question.

In a response dated April 23, 1975, the Claims Commission noted that, in determining the quantum of relief to be awarded successful claimants, the Commission must adhere to section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). That provision authorizes the Commission to consider various gratuitous expenditures for the benfits of a claimant, and depending on the nature of the claim and other factors, the Commission may set off all or part of such expenditures against any award made to the claimant.

However, the claims Commission added that section 2 specifically provides that "expenditures under any emergency appropriation of allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas . . . shall not be a proper offset against any award."

The Commission further noted that it had considered the question of offset of submarginal lands in two previous decisions. In these decisions the Commission determined that the lands had been purchased with funds supplied under Title II of the National Industrial Recovery Act of June 16, 1933 and subsequent relief acts for the relief of stricken agricultural areas throughout the United States. The Commission determined in each case that the claims expenditures were expressly prohibited as offsets by section 2 of the the Indian Claims Commission Act. The Government appealed the one of the Commission's decisions and the U.S. Court of Claims affirmed the Commission's disallowance of offsets for submarginal lands in that docket.

The Indian Claims Commission concluded that since the Indian submarginal lands were acquired by expenditures pursuant to the National Industrial Recovery Act, and subsequent relief acts, the application of the usual offset clause against the recipient tribes under S. 1327 would be inconsistent with section 2 of the Indian Claims Commission Act, and the inclusion of such clause would be "inappropriate."

Because of this information, section 3 was added to S. 1327 by the Indian Affairs Subcommittees of both Houses. This provision, now part of S. 1327 as enrolled, repeals both offset provisions in the Acts transferring submarginal lands to the Stockbridge-Munsee Indian Community, Wisconsin, and the Burns Paiute Indian Colony, Oregon.

This Department concurs with the Indian Claims Commission. In light of the Claims Commission's conclusion, we believe that Presidential approval of S. 1327 without the offset provision for the lands transferred thereunder, and with the repeal provision of section 3, is appropriate.

With regard to the disposition of the receipts from the submarginal lands, we would first note that since the provision of the Mineral Leasing Act of 1920 did not apply to the submarginal lands and other lands acquired by the United States, Congress enacted the Mineral Leasing Act for Acquired Lands or August 7, 1947 (61 Stat. 913). Submarginal lands are included in this category.

In recognition of the Indians' interests, the 1947 Act provides in pertinent part:

> . . . Provided, however, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction which has been transferred to the Department of the Interior by the Executive Order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress.

Therefore, Congress has a clear mandate under the 1947 Act to dispose of these receipts as it determines to be in the best interest of the Indians. The legislative history of enrolled bill S. 1327 confirms this interpretation of the 1947 Act:

> Since these lands were acquired for the benefit of the tribe, the income derived from the management and administration of such lands should also be for the benefit of the tribe. (Sen. Rep. No. 94-377 at 15).

Although the Administration would prefer that these receipts be transferred to the general fund of the U.S. Treasury, S. 1327 as enrolled is consistent with the intent of the 1947 Act and the Indian submarginal lands program. Therefore, transfer of these receipts to the affected tribes under S. 1327 would be as equally appropriate as their transfer to the general fund of the U.S. Treasury.

We would note that section 3(a) of the enrolled bill provides for the transfer of the subsurface estate reserved to the United States by the 1972 submarginal land transfer to the Stockbridge-Munsee Indian Community, Wisconsin. The provision is consistent with the Administration's proposal transferring the subsurface estate of the remaining submarginal lands to the affected tribes.

Section 6 of the enrolled bill exempts the property and the receipts conveyed thereunder from Federal, State and local taxation. Any per capita distribution of the receipts under S. 1327 shall not be considered as income or resources for purposes of reducing benefits under Federal programs.

This section provides the normal tax exemption which applies to trust property and to income from trust property.

With regard to Federal benefits, precedent exists for this provision in the Act of December 22, 1974, "the Navajo-Hopi Act" (88 Stat. 1712), which exempted all moneys received thereunder from consideration as income in determining the eligibility of a recipient for Federal benefits. Further, insofar as this provision applies to the Social Security Act, it is consistent with the intent of section 7 of the Act of October 19, 1973, "the Judgment Funds Distribution Act," (87 Stat. 468, 25 U.S.C. 1407) which exempts per capita distributions of judgment awards from consideration as income for Social Security Act benefits.

We would note that the receipts involved total approximately $4 million to 17 tribes. It is not necessarily contemplated that the affected tribes will even make a per capita distribution of the transferred income, in which case this language would not apply. However, since any possible per capita distribution would only be a small one-time distribution, it could not be construed as income-producing revenue.

Presidential approval of the enrolled bill would be the final step in transferring those lands to the Indians which were set aside for their benefit over 40 years ago.

Sincerely yours,

Morris Thompson
Commissioner of Indian Affairs

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D. C. 20503

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 10 1975

Dear Sir:

This is in response to your request for the views of the Treasury Department on the enrolled bill, "AN ACT To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

The basic purpose of this bill is to place in trust for the benefit of the Indian tribes set forth in the bill, with the United States as trustee, land acquired by the United States under Title II of the National Industrial Recovery Act of June 16, 1935, the Emergency Relief Appropriation Act of April 8, 1935, and section 55 of the Act of August 24, 1935 and now administered by the Secretary of the Interior for the benefit of said Indian tribes. The Treasury Department defers to the appropriate agencies with respect to substantive provisions of the bill that carry out this purpose.

Section 6 of the bill provides that all property conveyed to the named tribes pursuant to the bill and the receipts derived therefrom shall be exempt from Federal, State and local taxation as long as the land is held in trust by the United States. It also provides in part that no distribution of such receipts to tribal members shall be considered as income or resources of any such members for purposes of any such taxation.

As part of a 1970 study on the Federal income tax treatment of Indians, we concluded that income from any tribal lands acquired or placed in trust for Indians should be subject to the same Federal income tax treatment as the tribal lands originally reserved to them. Income from those lands is clearly exempt from Federal income taxation, whether held on behalf of the tribe or on behalf of any individual Indian under an allotment in trust. See Squire v. Capoeman, 351 U.S. 1 (1956). Furthermore, the exemption from taxation for the property is consistent with other statutes which provide, in general, that lands held in trust for Indian tribes, and the income from such land, are exempt from Federal taxes. The exemptions from state and local taxes are also consistent with the conclusions in our study and with the principles set forth in Capoeman and similar statutes relating to Indian affairs.

While the Treasury Department is generally opposed to legislation providing for shelter from taxation, we realize that the Indian tribes have a special relationship to the United States which has led the Congress and the Executive Branch of government to continue to extend this pattern of tax exemption for Indians. This bill is consistent with prior legislative enactments, and given a Congressional determination that the provisions of section 6 of the bill are appropriate as a matter of Federal policy regarding Indian tribes, the Treasury Department does not object to their enactment.

Section 6 also provides that receipts derived from the property held in trust, which are distributed to tribal members, shall not be considered income or resources of such members in determining benefits under the Social Security Act or any other Federal or Federally assisted program. The Treasury Department defers to the comments of the Department of Health, Education and Welfare respecting this provision.

In accordance with these comments the Treasury Department recommends that the President sign the enrolled bill.

Sincerely yours,

Richard R. Albrecht
General Counsel

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference, Legislative
Reference Division
Washington, D. C. 20503

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

October 10, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 1327, "To declare that submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

S. 1327 would declare 370,000 acres of submarginal lands of the United States are transferred to 17 Indian tribes or committees to be held in trust by the United States. The transfer includes both the surface and subsurface mineral estates. In each case, with the exception of that of the Cherokee Nation, the subject lands would be added to the reservations of the affected tribes.

The Department of Justice defers to the agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

14 OCT 1975

Honorable James T. Lynn

Director, Office of Management and Budget

Dear Mr. Lynn:

The Secretary of Defense has delegated responsibility to the Department of the Army for reporting the views of the Department of Defense on enrolled enactment S. 1327, 94th Congress, "To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

The Department of the Army, on behalf of the Department of Defense, interposes no objection to approval of the enrolled enactment since the Department of Defense has no interest in the property which is the subject of the Act.

Section 1(a) of the Act provides that all right, title and interest of the United States (including improvements now thereon) acquired under 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, now administered by the Secretary of the Interior for the use and/or benefit of the Indian tribes identified in section 2(a) of the Act, together with all underlying minerals however acquired by the United States, are declared to be held in trust by the United States for each of said tribes (except for the Cherokee Nation) and shall be a part of the reservations established for each of said tribes.

Section 1(b) of the Act provides that the property conveyed by the Act shall be subject to the disposition or appropriation of any lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663) and subject to a reservation in the United States to

prohibit or restrict improvements on and to inundate or otherwise use certain lands in the State of Wisconsin in connection with the Bad River flood control project and to exempt from the Act lands or interests therein that prior to enactment of the Act have been included in the water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), provided that such Missouri River Basin projects shall be treated as former trust lands are treated.

Section 2 of the Act provides that the Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands generally described in said section.

Section 3(a) of the Act provides that all mineral interests in submarginal lands held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795) are also held in trust by the United States for said Community.

Sections 3(b) and 3(c) repeal and amend sections 2 and 5, respectively, of the Acts of October 9, 1972 (86 Stat. 795) and October 13, 1972 (86 Stat. 806), respectively.

Section 4(a) of the Act reserves all valid existing rights in the lands conveyed, as well as access across said lands to public domain lands, to the holders thereof as determined by the Secretary of the Interior. Section 4(a) also provides that all existing mineral leases held under section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, prior to the date of enactment of the subject Act, shall remain in force and effect and that all applications for mineral leases pursuant to such acts pending on the date of enactment of the subject Act as to minerals conveyed by sections 1 and 3 of the subject Act shall be rejected.

Section 4(b) of the Act provides that, subject to the provisions of subsection a. of this section, the property conveyed in trust for an Indian tribe under the Act shall be administered in accordance with the laws and regulations applicable to other property held in trust for such Indian tribes.

Section 5 of the Act provides for deposit to the credit of the Indian tribe receiving land under the Act, gross receipts derived from the property conveyed under the Act and certain prior Acts, including section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947, except as to receipts received from the leasing of public domain minerals subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended prior to enactment of the subject Act.

Section 6 of the Act exempts the property conveyed and all receipts referred to in section 5 of the Act, distributed to tribal members from Federal,

State and local taxation and further provides that any receipts distributed shall not be considered as resources or income for the purpose of such taxation or otherwise utilized for denying or reducing financial assistance under the Social Security Act or any other Federal or federally assisted program.

Approval of the enactment will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

Sincerely,

Martin R. Hoffmann
Secretary of the Army

INDIAN CLAIMS COMMISSION
RIDDELL BUILDING, 6TH FLOOR
1730 K STREET NW.
WASHINGTON, D.C. 20006

October 9, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Re: S. 1327
Enrolled Bill

Dear Mr. Frey:

This is in reply to your request dated October 8, 1975, regarding enrolled bill S. 1327, an act "To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

This bill does not involve any matters now pending before this Commission. Accordingly, we have no views or recommendations on the merits of this bill.

Sincerely yours,

Jerome K. Kuykendall

Jerome K. Kuykendall
Chairman

Calendar No. 371

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-377

THE INDIAN SUBMARGINAL LANDS TRANSFER ACT

SEPTEMBER 17 (legislative day), SEPTEMBER 11, 1975.—Ordered to be printed

Mr. ABOUREZK, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1327]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1327) to declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land (including the improvements now thereon) which was acquired under 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), and which is now administered by the Secretary of the Interior for the use and/or benefit of an Indian tribe identified in section 2 of this Act, together with all minerals underlying any such land however acquired or owned by the United States, is hereby declared to be held by the United States in trust for such tribe, and (except in the case of the Cherokee Nation) shall be a part of the reservation established for such tribe.

(b) The property conveyed by this Act in trust for the Oglala Sioux Tribe shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663). The property conveyed by this Act in trust for the Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin shall be subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311). This Act shall not convey the title to any part of the lands, or any interest therein, which prior to enactment of this Act has been included in the authorized water resources development projects in the Missouri River basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented.

SEC. 2. The Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The lands are generally described as follows:

Tribe	Reservation	Submarginal land project donated to said tribe or group	Approximate acreage
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	Bad River	Bad River LI–WI–8	13,149
2. Blackfeet Tribe	Blackfeet	Blackfeet LI–MT–9	9,037
3. Cherokee Nation of Oklahoma		Delaware LI–OK–4	18,750
		Adair LI–OK–5	
4. Cheyenne River Sioux Tribe	Cheyenne River	Cheyenne Indian LI–SD–13	3,739
5. Crow Creek Sioux Tribe	Crow Creek	Crow Creek LI–SD–10	19,170
6. Lower Brule Sioux Tribe	Lower Brule	Lower Brule LI–SD–10	13,210
7. Devils Lake Sioux Tribe	Fort Totten	Fort Totten LI–ND–11	1,425
8. Fort Belknap Indian Community	Fort Belknap	Fort Belknap LI–MT–8	25,531
9. Assiniboine and Sioux Tribes	Fort Peck	Fort Peck LI–MT–6	85,856
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles	Lac Courte LI–WI–9	13,185
11. Keweenaw Bay Indian Community	L'Anse	L'Anse LI–MI–8	4,017
12. Minnesota Chippewa Tribe	White Earth	Twin Lakes LI–MN–6	28,545
		Flat Lake LI–MN–15	
13. Navajo Tribe	Navajo	Gallup-Two Wells LI–NM–18	69,948
14. Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI–SD–7	18,065
15. Rosebud Sioux Tribe	Rosebud	Cutmeat LI–SD–8	28,735
		Antelope LI–SD–9	
16. Shoshone-Bannock Tribes	Fort Hall	Fort Hall LI–ID–2	8,712
17. Standing Rock Sioux Tribe	Standing Rock	Standing Rock LI–ND–10	10,256
		Standing Rock LI–SD–10	

SEC. 3. (a) All of the right, title, and interest of the United States in all the minerals, including gas and oil, underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795) are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

(b) Section 2 of the Act of October 9, 1972 (86 Stat. 795), is hereby repealed.

(c) Section 5 of the Act of October 13, 1972 (86 Stat. 806), relating to the Burns Indian Colony, is amended by striking the words "conveyed by this Act" and inserting in lieu thereof the words "conveyed by section 2 of this Act".

SEC. 4. (a) Nothing in this Act shall deprive any person of any valid existing right of use, possession, contract right, interest, or title he may have in the land conveyed, or of any existing right of access to public domain lands over and across the land conveyed, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. Notwithstanding any other provision of law, all applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on the date of enactment of this Act and covering any of the minerals conveyed by sections 1 and 3 of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property conveyed by this Act in trust for an Indian tribe shall hereafter be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for such Indian tribe, including, but not limited to, the Act of May 11, 1938 (52 Stat. 347), as amended.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806), which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to the conveyance in trust, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by such tribe for such beneficial

programs as the tribal governing body of such tribe may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which are subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

PURPOSE OF THE MEASURE

The major purpose of S. 1327, as amended, is to provide for the trust transfer of approximately 370,000 acres of submarginal lands in 17 projects to the affected tribes or communities. Such transfer would involve both the surface and subsurface mineral interests in the lands in question. With the exception of the Cherokee Nation, the subject lands would be added to the reservations of the affected tribes.

SUMMARY OF OTHER MAJOR PROVISIONS

The major provisions of S. 1327, as amended, would provide for the following:

1. Make portions of submarginal lands on the Pine Ridge, Bad River, Standing Rock, Crow Creek, Lower Brule and Cheyenne River Reservations subject to appropriation or disposition pursuant to previous statutes;
2. Amend several statutes, conveying submarginal lands to tribal groups, to make those statutes conform to the provisions of S. 1327;
3. Preserve valid existing rights on the conveyed lands including access across such lands to public domain lands;
4. Maintain leases approved pursuant to the Mineral Leasing Act for Acquired Lands of 1947 and the Mineral Leasing Act of 1920;
5. Authorize a procedure for an approval of pending applications for mineral leasing under the Indian Mineral Leasing Act of 1938;
6. Provide for the transfer of all income, surface and subsurface, to the affected tribes or communities with the exception of approximately $26,000 derived from mineral leasing of Fort Belknap submarginal lands. That income is subject to disposition under the Mineral Leasing Act of 1920; and
7. Exempt the conveyed lands and income from Federal and State taxes.

BACKGROUND AND NEED

The lands that would be transferred to trust status by S. 1327 are commonly known as submarginal lands. The term "submarginal" refers to the temporary inability of the land to provide more than a marginal economic return, rather than the condition of the land itself.

These lands were purchased by the United States during the 1930's as a part of a national program to retire from private cultivation land which was low in productivity or otherwise ill-suited for farming operations. Approximately eleven million acres of such lands were acquired by the United States through this program.

Of the total acreage purchased, almost half remains within the jurisdiction of the Forest Service; over two million acres were transferred to the Bureau of Land Management; and approximately a million acres were transferred to States and municipalities through a combination of sales and grants.

The overall national program was conducted pursuant to title II of the National Industrial Recovery Act (48 Stat. 200), and subsequent relief acts. The submarginal lands subject to the bill were purchased at a cost of $1.8 million, and along with other submarginal lands were transferred by a series of Executive Orders from the Department of Agriculture to the Department of the Interior for 21 Indian submarginal land projects for the "exclusive" use or benefit of designated Indian tribes or communities under the jurisdiction of the Bureau of Indian Affairs.

Administration officials determined that the Indian submarginal land projects would assist the affected Indian groups through five Indian "Demonstration Areas" as follows:

1. To enable certain tribes to consolidate land areas on checkerboarded reservations;
2. To improve watershed or water control areas;
3. To provide additional lands to certain tribes to supplement their reservations;
4. To make lands available to selected Indian bands or communities forming acute relief problems; and
5. To provide additional lands for the proper control of grazing areas.

Eventual control of the Indian submarginal lands was vested in the Farm Security Administration in the Department of Agriculture in 1935. During that era an important Memorandum of Understanding was entered into between the Federal Resettlement Administration (another involved federal agency) and the Bureau of Indian Affairs on October 17, 1936, which gave the Bureau temporary supervision over the lands. This action was necessitated because of the prolonged period required by the Resettlement Administration to complete the acquisition, "pending transfer of the lands within these projects to the Office of Indian Affairs for permanent administration for the exclusive benefit of Indians".

The 1936 Memorandum of Understanding between the Federal Resettlement Administration and the Bureau of Indian Affairs spelled out the ground rules for BIA supervision. The Memorandum stated:

> Whereas, the lands acquired under this program are situated almost entirely within the existing Indian Reservations to which they are intended for addition for the purpose of providing subsistence farm sites and consolidated grazing areas for the exclusive use of Indians. . . .

The Memorandum concluded:

> Upon the consummation of its land acquisition program in connection with the projects listed . . . the Resettlement Administration will concur in appropriate recommendations made by the Department of the Interior to Congress for incorporation of these projects lands into the Indian Reservations respectively indicated. . . .

The history and extensive documentation clearly outline the understanding between the Federal agencies involved in the acquisition and administration of submarginal land on or near Indian reservations. The land was being selected for acquisition in connection with Demonstration Indian Land Projects. It was needed by the Indians, and it would be utilized by the Indians in connection with the use of Indian-owned land. The land would improve the Indians' economy and lessen relief costs. Proper recommendations would be made at the appropriate time for the enactment of legislation to add this land permanently to Indian reservations.

Originally, this intent was followed and the lands were utilized by the tribes for a nominal fee under a revocable permit issued by the Secretary of the Interior. In some cases, the tribes or their members used the land, and, in some cases, the tribes leased the lands to non-Indians thereby earning income.

During the 1950's, however, when the national Indian policy sought to end or terminate the Indians' special Federal relations, the Secretary of the Interior abruptly changed the policy governing the fees. The tribes were charged the going rate for the use of the lands and the United States enjoyed an earned income from lands which were supposedly purchased for the benefit of the Indians.

In 1964, the Secretary discontinued the practice of charging fees for the revocable permits issued to the tribes for use of the submarginal lands.

Income earned from surface permitting of the submarginal lands, generally to the affected tribes, was originally held by the Bureau of Indian Affairs in "Special Deposit" accounts pending the expected transfer of the lands in trust by the Congress. However, these funds and other earned income were later deposited in the miscellaneous receipts of the Treasury.

Interest in developing the minerals underlying the Indian submarginal land projects for the Fort Belknap and Fort Peck Reservations in Montana led to extensive mineral leasing at these two locations.

Since the provisions of the Mineral Leasing Act of 1920 did not apply to the submarginal lands and other lands acquired by the United States, Congress enacted the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913). Submarginal lands are included in this category.

Section 6 of the Act governs distribution of receipts derived from the leasing of minerals underlying the various lands affected by this Act.

In recognition of the Indians' interests, the 1947 Act provided:

> . . . *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction which has been transferred to the Department of the Interior by the Executive Order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress.

The Treasury Department continues to maintain this fund pending a Congressional determination of their disposition.

The Department of the Interior reports that there are known reserves of oil, gas, coal, and bentonite under the submarginal lands project at the Fort Belknap Indian Community, Montana, and known oil and gas reserves under the project at the Fort Peck Reservation, Montana.

The Bureau of Land Management is responsible for mineral leasing of lands within the Department of the Interior's jurisdiction, and has approved leases for the mineral rights underlying all of the 25,000 acres of submarginal land at Fort Belknap. According to the Bureau of Land Management, the mineral deposits underlying approximately 9,000 acres of the Fort Belknap submarginal lands are classified as public domain minerals. This acreage was originally public domain, and when the lands were transferred to private ownership, the minerals were reserved to the United States. The United States subsequently acquired the surface in these lands through the submarginal land program.

As a result of the status of the minerals underlying the 9,000 acres of submarginal lands at Fort Belknap, the Departmental Associate Solicitor for Energy and Resources has concluded that these reserved minerals are subject to leasing under the Mineral Leasing Act of 1920 rather than the Acquired Lands Mineral Leasing Act of 1947. Approximately $26,000.00 has been collected from such leases and are subject to disposition pursuant to the formula contained in the 1920 Act as follows: 37.5 percent to the State, 52.5 to the Reclamation Fund, and 10 percent to the United States Treasury.

The minerals underlying the submarginal lands located on the Fort Peck Reservation were acquired at the time the United States purchased such lands under the submarginal land program; these minerals were leased pursuant to the Mineral Leasing Act for Acquired Lands of 1947. Therefore, the income derived from such leases along with income realized from producing wells is subject to disposition under the provisions of the 1947 Act.

As previously noted, 21 submarginal land projects were established for various Indian tribes with the expectation that the Administration would recommend enactment of legislation to add this land permanently to their respective reservations. Congress has enacted legislation addressed to four of these projects as follows:

(1) Act of August 13, 1949 (63 Stat. 604) transferred trust title to 457,530 acres of submarginal lands and 154,502 acres of public domain lands to several Pueblos and the Canoncito Navajo of New Mexico. That Act transferred subsurface mineral interests to the affected tribes and transferred approximately $8,100 accrued income from the submarginal lands to the tribes.

(2) Act of July 20, 1956 (70 Stat. 581) transferred trust title to 27,000 acres of submarginal lands to the Seminole Indians of Florida. The Act transferred subsurface mineral interests to the Seminole but contained no provision to transfer accrued income to the tribe.

(3) Act of August 2, 1956 (70 Stat. 941) transferred trust title to 78,372 acres of submarginal lands to Jemez and Zia Pueblos of New Mexico. The Act transferred subsurface mineral interests to the Indians, but contained no provision to transfer accrued income to the Pueblos.

(4) Act of October 9, 1972 (86 Stat. 795) transferred trust title to 13,077 acres of submarginal land to the Stockbridge Munsee Community of Wisconsin. The Act contained an Indian Claims Commission offset clause, reserved subsurface mineral interests to the United States, and contained no provision to transfer accrued income to the Community.

(5) Act of October 13, 1972 (86 Stat. 806) transferred trust title to 606 acres of submarginal land to the Burns Paiute Colony of Oregon. The Act contained an Indian Claims Commission offset clause, transferred subsurface mineral interests to the Colony, and contained no provision to transfer accrued income to the Colony.

The present title situation, concerning the Indian submarginal land affected by S. 1327, as amended, is unsatisfactory because the tribal management units are partially federally-owned and partially Indian-owned. There is a need, therefore, for the enactment of the legislation to remove this legal obstacle. The current ambiguous title problem impedes Indian social and economic efforts as follows:

(1) The affected tribes or communities have been reluctant to expend their own funds for any improvements on the submarginal lands because of their uncertain tenure;

(2) The private sector is reluctant to provide financing to the Indians for farming, stock raising, and other business ventures because of the cloud on the title of these lands;

(3) The Department of Housing and Urban Development will not approve public housing projects on these lands due to the uncertainty regarding the title; and

(4) The tribes cannot realistically incorporate such lands in any long-range land use plans.

As a practical matter the tribes cannot treat the lands as their own for optimum utilization, and the United States cannot realize any reasonable utility from the land. The enactment of S. 1327, as amended, will resolve this dilemma.

There follows a table reflecting pertinent data and information relating to the Indian submarginal lands affected by S. 1327, as amended:

Tribe	Reservation	Approximate acreage	Original purchase price	Accrued income from submarginal lands Jan. 1, 1975 (all sources)	Income less original purchase price	Total fair market value [1]	Mineral value of submarginal lands
Bad River Band of the Lake Superior Tribe of Chippewas.	Bad River	13,149	$32,093	$114,396.60	$82,303.60	$1,298,800	No mineral income ever received from the land nor is there a potential for mineral development.
Blackfeet	Blackfeet	9,037	31,076	84,081.84	53,005.84	542,220	The lands have been valued in the past at $4 per acre. Mostly all lands are considered to have potential value for oil and gas. However, none of the acreage is currently under a producing oil lease. There is a potential for coal, magnetite sand, and gravel, but the value would be nominal.
Cherokee Nation		18,750	60,230	0	−60,230.00	1,975,000	These lands have a low potential value for oil and gas.
Cheyenne River Sioux	Cheyenne River	3,739	18,202	4,548.00	−13,654.00	383,325	The lands are potentially valuable for oil and gas. Test holes have been drilled. No other prospective mineral development.
Crow Creek Sioux	Crow Creek	19,170	81,591	30,348.20	−51,242.80	1,472,025	The lands are valuable prospectively for oil and gas. Uranium has been reported in some black shales yet the value is considered nominal. No mineral income has ever been received.
Lower Brule Sioux	Lower Brule	13,210	56,990	25,358.20	−31,631.80	1,071,750	The lands are valuable prospectively for oil and gas. Uranium has been reported in some black shales yet the value is considered nominal. No mineral income has ever been received.
Devils Lake Sioux	Fort Totten	1,425	11,869	2,318.40	−9,550.60	106,800	There is a low prospective value for oil and gas. No other prospective mineral development.
Fort Belknap Indian Community	Fort Belknap	[2] 25,531	89,936	[6] 161,763.62	71,827.62	1,276,800	These lands are considered to have some potential value for oil and gas, coal and bentonite. The value is considered nominal.
Assiniboine and Sioux	Fort Peck	85,836	412,302	2,876,461.65	2,464,159.65	4,693,590	These lands are prospectively valuable for oil and gas. In the past there has been income derived from oil and gas leases.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles	[3] 13,185	25,598	88,270.00	€2,672.00	1,818,500	There are no known minerals in the project area except for possible sand and gravel development.
Keeweenaw Bay Indian Community	L'Anse	4,017	16,121	32,283.00	16,162.00	402,200	No minerals of a commercial nature are known to occur or near the land project area.
Minnesota Chippewa	White Earth	28,545	175,664	262,870.00	87,206.00	2,855,000	No minerals of a commercial nature are known to exist here. No income from mineral activity has ever been recorded.
Navajo	Navajo	[4] 69,948	318,311	0	−318,311.00	5,000,000	No minerals of a commercial nature are known to exist here. No income from minerals has ever been received.
Oglala Sioux	Pine Ridge	18,065	207,792	115,144.50	−92,647.50	3,489,150	The subject lands are valuable prospectively for uranium, bentonite and oil and gas. Some mining of Niobrara clays for ceramics.
Rosebud Sioux	Rosebud	28,735	155,004	97,864.70	−57,139.30	2,154,825	The lands are prospectively valuable for oil and gas, though the value is considered nominal. No income has ever been received from this land.
Shoshone-Bannock	Fort Hall	[5] 8,712	133,213	15,966.94	−117,246.06	304,850	The lands have a low potential value for oil and gas. There also exists on some lands potential development of phosphate.
Standing Rock Sioux	Standing Rock	10,256	24,911	17,741.72	−7,169.28	515,925	The subject lands are potentially valuable for oil and gas, and, in part, for lignite and uranium-bearing lignite.
Total		371,310	1,850,903	3,929,417.37	2,078,514.37	29,360,760	

[1] These figures do not include the monetary value of the subsurface mineral interest, but do include the value of timber. The Department of the Interior states that the fair market values were determined on the basis of their review of current field data and information. The Department has not conducted an on-the-ground survey and commercial appraisal of the submarginal lands.

[2] 24,939 acres are located beyond exterior boundaries of the Reservation and 592 acres are located within such boundaries.

[3] 2,552 are located beyond exterior boundaries of the Reservation and 10,633 acres are located within such boundaries.

[4] The entire 69,948 acres are located beyond exterior boundaries of the Reservation.

[5] 3,689 acres are located beyond the exterior boundaries of the Reservation, and 4,843 acres are located within such boundaries.

[6] Approximately $26,000 of the accrued income was derived from leasing of the minerals underlying approximately 9,000 acres of land in the Fort Belknap submarginal lands project. The Department of the Interior has determined that when these lands were patented under the homestead laws, the United States reserved the minerals which consequently never left public ownership; the lands were subject to mineral leasing pursuant to the Mineral Leasing Act of 1920; and the income is, therefore, subject to disposition under that Act. The 1920 Act provides that the funds shall be distributed as follows: 37.5 percent to the State, 52.5 percent to the Reclamation Fund, and 10 percent to the Treasury.

Legislative History

S. 1327 was introduced by Senator James Abourezk, Chairman, Subcommittee on Indian Affairs, and several cosponsors on March 26, 1975. A hearing was held on the proposed measure before the Subcommittee on Indian Affairs on May 9, 1975. At that time Department of the Interior and tribal officials presented their views and recommendations on the measure. Departmental officials recommended enactment of their substitute bill which is discussed in a later section of this report. Tribal officials, save for several recommended changes, were supportive of S. 1327 and favored its enactment.

A companion measure, H.R. 5778, was introduced in the House of Representatives by Congressman Lloyd Meeds. That bill, as amended, was recently ordered favorably reported by the full House Committee on Interior and Insular Affairs.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Interior and Insular Affairs, in open business session on September 10, 1975, with a quorum present recommended that the Senate adopt S. 1327 if amended as described herein. The Committee voice vote was unanimous with the exception of one abstention (Senator Dale Bumpers).

Committee Amendments

The Committee adopted an amendment in the nature of a substitute for the language of S. 1327. The amendment is, in substance, identical to S. 1327. Subcommittee hearings, however, identified certain technical problems which were not addressed in the bill which the amendment meets. In addition, the language of the bill is clarified with respect to preserving valid, existing rights in the lands.

The Committee fully reviewed the broad powers and authorities conferred on the President by 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) which formed the legal basis for submarginal lands program.

In addition, the Committee examined in detail the administrative records and documents relating to the administration of the Indian submarginal lands program and the purpose and intent of the Federal officials involved in the acquisition and administration of the lands.

The Committee further reviewed the past record of the Congress in transferring submarginal lands to certain Indian tribes. Based on that record the Committee concluded that these lands should properly be declared to be held in trust for the tribes for which they were purchased.

The Committee noted that the Department of the Interior's estimate of $29,360,760.00 for the fair market value of the Indian submarginal land does not include the mineral value of such land. In their statement to the Committee, the Department stated, "these figures do not include the monetary value of the subsurface mineral interest, but do include the value of timber".

Senator Dale Bumpers expressed two reservations regarding the transfer of the subsurface interest in the lands to the tribes affected by S. 1327. First, Senator Bumpers believes that the reservation of minerals to the United States in federal land transfers to private parties is in the best interest of the Federal Government and the general public. Second, he is concerned that, if the Committee approves the provision in S. 1327, authorizing the transfer of the mineral interest to the tribes, the government would, in effect, be conveying a mineral estate to the Indians in which there is no precise information concerning the mineral value of such lands.

In concluding his remarks on the question of mineral value of the lands. Senator Bumpers specifically requested staff to undertake an effort to obtain the desired information from the Department of the Interior.

Following Committee markup of S. 1327, Committee staff explored the question of the value of minerals underlying the Indian submarginal lands with Department officials. They were unable to provide new substantive information on this question beyond that previously provided to the Committee. However, the Department officials contend that the lands in question have been considered of such relatively low mineral value that the cost of conducting an on-the-ground survey to determine precisely the potential monetary value of the subsurface mineral interest would represent an unwarranted expenditure. The Department officials contend further that the numerous tracts of land involved and their geographic dispersion would require a lengthy period for such a survey and evaluation.

The substitute bill proposed by the Department of the Interior would, subject to specified reservations and existing rights, transfer the surface and subsurface interests in the 370,000 acres of submarginal lands to the 17 affected tribes. There are two main differences between the Departmental proposal and S. 1327.

First, the Departmental proposal, unlike S. 1327, fails to provide for the transfer of the income derived from the submarginal lands to the affected tribes or communities.

The Committee concluded, however, that the income earned by the United States on these lands, often from the Indian tribes which were to have enjoyed the exclusive benefit, should be deposited to the credit of such tribe.

Second, the Departmental bill provides for an offset consideration by the Indian Claims Commission in connection with any judgment award made to any of the tribes affected by the proposed bill. This provision is not included in S. 1327.

Prior to the subcommittee hearing on S. 1327, the Committee requested the Indian Claims Commission to review S. 1327 to determine the appropriateness of applying the usual offset clause against the tribes who would receive the submarginal lands in question.

In response to that request, Chairman Kuykendall noted that, in determining the quantum of relief to be awarded successful claimants, the Commission must adhere to Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). That provision authorizes the Commission to consider various gratuitous expenditures for the benefit of a claimant, and, depending on the nature of the claim and other factors,

the Commission may set off all or part of such expenditures against any award made to the claimant.

However, Section 2 specifically provides . . . "expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas . . . shall not be a proper offset against any award." Since the Indian submarginal lands were acquired by expenditures pursuant to title II of the National Industrial Recovery Act of 1933, and subsequent relief acts, such expenditures, obviously, fall within the prohibition in section 2 of the Indian Claims Commission Act.

The Indian Claims Commission has considered the question of offsetting submarginal lands in two previous decisions: Dockets 73 and 151 involving the Seminole Indians of the State of Florida and Seminole Nation of Oklahoma; and Docket 137 involving several Pueblos of New Mexico. In these decisions the Commission determined that the lands had been purchased with funds supplied under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200) and subsequent relief acts for the relief of stricken agricultural areas throughout the United States. The Commission determined in each case that the claimed expenditures were expressly prohibited as offsets by the above-quoted provision in Section 2 of the Indian Claims Commission Act. The government appealed the Commission's decision in Docket 137 and the U.S. Court of Claims affirmed the Commission's disallowance of offsets for submarginal lands in that docket.

Section 2 of the Indian Claims Commission Act clearly precludes the Commission from considering the value of submarginal lands as an offset against any award made to a successful claimant. On this basis, the Committee rejected the recommendation of the Department.

Section-by-Section Analysis of S. 1327, as Amended

S. 1327, to declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians.

Section 1. Subsection (a) declares that all right, title and interest of the United States to certain submarginal lands purchased by the United States for the benefit of Indian tribes pursuant to the emergency relief measures of the 1930's shall be held in trust, together with the mineral interest however acquired by the United States, for the tribes named in section 2 and shall, except in the case of the Cherokee Nation, be a part of the reservation of such tribes.

Subsection (b) provides that the lands so conveyed shall be subject (1) to the appropriation or disposition of any of the lands or interests therein, within the Pine Ridge Sioux Reservation, South Dakota, as authorized by the Act of August 8, 1968; (2) to certain flood control rights of the United States on submarginal lands of the Bad River Band of Chippewa Indians in Wisconsin as authorized by the Act of July 3, 1958; and (3) to the title of the United States to lands included in the Missouri River basin flood control project.

Section 1 of the Act completes the transfer into trust of various lands which were acquired by the United States for the benefit of Indian tribes during the 1930's as a part of a broad national land program

designed to retire from private cultivation selected lands which were of "submarginal" productivity.

Section 1 conveys the entire Federal interest in these lands, including the mineral estate, and incorporates these lands into the existing reservations. Specific language conveying the mineral estate is necessary due to the nature of approximately 9,000 acres of Fort Belknap submarginal lands. When these lands were patented under the homestead laws, the United States reserved the mineral estate which consequently never left public ownership and, therefore, are not technically included within the term "submarginal lands". There are four exceptions to the incorporation of these lands into reservations:

(1) Those lands to be held in trust for the Cherokee Nation are excepted since they do not have a reservation in the technical sense.

(2) Part of the submarginal lands of the Oglala Sioux Tribe of the Pine Ridge Reservation are subject to appropriation or disposition under the terms of the Act of August 8, 1968, which provides authority for Indians (individuals or groups) to purchase certain government-owned land, including the submarginal land on the Pine Ridge Reservation, in lieu of land purchased from them by the government in the early 1940's for an Air Force aerial gunnery range. Until the authorities of that Act are carried out, the transfer of the Pine Ridge submarginal lands will remain subject to the terms of that Act.

(3) Certain of the submarginal lands of the Standing Rock Sioux, the Cheyenne River Sioux, the Crow Creek Sioux, and the Lower Brule Sioux of South Dakota are either inundated by or included within the taking area of the Missouri River Basin flood control project authorized by the Act of July 3, 1958. These lands are excepted from the transfer.

(4) Finally, certain of the submarginal lands of the Bad River Band of Chippewa Indians of Wisconsin are within the Bad River flood control project authorized by the Act of July 3, 1958. These lands will be conveyed, but will be subject to the right of the United States to use the lands in conjunction with that project.

Section 2. Section 2 provides a general description of the affected submarginal lands by tribe, reservation, submarginal land project number, and approximate acreage, and further directs the Secretary to publish precise boundary descriptions of the affected lands in the Federal Register.

The acreage descriptions in Section 2 are general estimates which will be more accurately defined by the Secretary. The description neither expands nor limits the actual acreage transferred into trust by Section 1.

Section 3. Subsection (a) provides for the transfer into trust of the mineral interest underlying the surface of the submarginal lands transferred to the Stockbridge Munsee Indian Community by the Act of October 9, 1972.

Subsection (b) repeals Section 2 of the Act of October 9, 1972. Section 2 presently authorizes the value of the lands transferred to be offset by the Indian Claims Commission against any judgment obtained by the community.

Subsection (c) amends the Act of October 13, 1972, transferring certain submarginal and other lands to the Burns Paiute Indian

Colony to provide for offsets only with respect to the nonsubmarginal lands transferred thereby.

During the 92d Congress, the submarginal lands being administered for the Stockbridge Munsee Indian community and the Burns Paiute Indian Colony were transferred into trust. This section eliminates those provisions of the transfer Act which are inconsistent with the intent of the original acquisition and the provisions of this Act as it relates to other submarginal lands. The Stockbridge Munsee transfer failed to convey the mineral interests which was acquired through the submarginal program. Subsection (a) would accomplish this conveyance.

In addition, the Stockbridge-Munsee Act provided that the value of the lands transferred were to be used as an offset against any award made to the tribe by the Indian Claims Commission. The Indian Claims Commission Act specifically provides that these forms of benefits provided by the United States to Indian tribes shall not be used as an offset, and in keeping with the intent of the Indian Claims Commission Act and the intent underlying the original acquisition of these lands for the benefit of the tribe, that provision allowing offset is repealed.

A similar provision in the Burns Paiute transfer Act would be repealed to the extent of the value of submarginal lands. Other lands, not acquired by the United States under the submarginal lands programs for the benefit of the Burns Paiute Tribe would continue to be available for use as an offset against any Claims Commission award.

Section 4. Subsection (a) preserves valid existing rights on the conveyed lands as well as valid existing rights of access across such lands to public domain lands. It provides that the existing mineral, oil or gas leases on such lands under the Mineral Leasing Act for Acquired Lands and the Mineral Leasing Act of 1920 shall remain in full force and effect. Pending applications for such leases under such Acts, however, are to be rejected and the advance rental returned to the applicant.

Subsection (b) provides that, subject to the limitations provided in subsection (a), the property conveyed shall be administered in accordance with applicable laws and regulations governing Indian lands.

Some of the submarginal lands have been leased by the Bureau of Land Management for mineral, gas, or oil development under the Mineral Leasing Act for Acquired Lands or the Mineral Leasing Act of 1920. In addition there may be valid existing rights of access across these lands to public domain lands. All such valid rights or leases are preserved and the conveyances are made subject to such rights. This section, however, directs the Secretary to reject any pending application for leases and return advance rentals to the applicant.

Subsection (b) of this section provides that, subject to the valid existing rights protected in subsection (a), these lands will be administered in accordance with the laws affecting other lands held in trust for the particular tribe. Among these statutes is included the Indian Mineral Leasing Act of May 11, 1938 (52 Stat. 347).

Section 5. Subsection (a) provides that all of the income earned by the United States on the lands transferred by this Act, the Stockbridge-Munsee Act, the Burns-Paiute Act, a 1956 Act transferring certain submarginal lands to the Pueblos of New Mexico; and a 1956 Act transferring certain submarginal lands to the Seminole of Florida

shall be deposited to the credit of the affected Indian tribe since the lands were acquired by the United States for the benefit of the Tribe. Such income will include income derived from mineral leases on such lands pursuant to the Mineral Leasing Act for Acquired Lands and now held in a special deposit in the Treasury. Excepted from the transfer of income is income earned from public domain minerals leases made pursuant to the Mineral Leasing Act of 1920.

Subsection (b) provides that all gross receipts earned subsequent to this Act from said lands shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust for Indian tribes.

Subsection (a) of this section provides that income derived by the United States from those submarginal lands which have either been transferred into trust through prior Acts or which are transferred by this Act will be deposited to the credit of the affected Indian tribe. Since these lands were acquired for the benefit of the tribe, the income derived from the management and administration of such lands should also be for the benefit of the tribe. Excepted from this provision are revenues derived under the Mineral Leasing Act of 1920 which would be applicable to certain submarginal lands of the Fort Belknap Tribe. Those lands, when patented under the homestead acts, did not include the mineral estate which was reserved by the United States. Although the mineral estate is being transferred to the tribe, it was not acquired under the Submarginal Lands Act, but was always a part of the public domain mineral acreage and consequently any revenues derived therefrom were not derived for the benefit of the tribe.

Subsection (b) provides that henceforth all receipts derived by the United States from these lands will be administered in accordance with laws relating to tribal income.

Section 6. Section 6 exempts the property conveyed and the receipts therefrom from Federal, State and local taxation. Any per capita distribution of the receipts under this Act shall not be considered as income or resources for purposes of certain Federal benefits. This section provides the normal tax exemption which applies to trust property and to income from trust property. This language is similar to that approved by the Congress in the Act of December 22, 1974 (88 Stat. 1712).

In addition, though it is not necessarily contemplated that the tribes will or will not make any per capita distribution of the transferred income, the section provides that such per capita payment will not be considered as income or resources for purposes of reducing certain Federal benefits under the Social Security Act or other federally-assisted programs.

Cost and Budgetary Considerations

The enactment of S. 1327, as amended, will result in no additional cost to the United States.

Executive Communications

Set forth in full below is the report of the Department of the Interior on S. 1327 together with pertinent communications from the Department and the Indian Claims Commission.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 8, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 1327, a bill "To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes."

On April 28, 1975, we transmitted to the Senate a proposed bill, "To declare certain submarginal lands of the United States to be held in trust for certain designated Indian tribes or communities and to make such lands part of the reservation involved." We recommend that our proposed bill be enacted in lieu of S. 1327.

The provisions of S. 1327

Section 1 of S. 1327 would declare that, subject to all valid existing rights, all rights, title and interest of the United States in the lands, and the improvements thereon, acquired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and subsequent relief Acts, are to be held in trust by the United States for the Indian tribes and groups identified in the bill. Section 1 describes the lands declared to be held in trust, and identifies the tribes and communities for whose benefit such transfer in trust shall be made.

Section 2 of the bill provides that the property subject to S. 1327 shall be administered in accordance with the laws and regulations applicable to Indian tribal property.

Section 3 of S. 1327 provides that all receipts directly related to the land conveyed by the bill which are received by the United States prior to the date of enactment shall, on the date of enactment, be deposited to the credit of the Indian tribe receiving such land. Such receipts may be expended by the tribe for such beneficial programs as the tribal governing body shall determine.

The provisions of the Department's proposed bill

Section 1 of our proposed bill, like section 1 of S. 1327, would declare all rights, title and interest of the United States in the lands, and the improvements thereon, acquired under Title II of the National Industrial Recovery Act, and subsequent relief Acts, to be held in trust by the United States for the Indian tribes and groups identified in the bill.

However, our bill has a separate section 3, which would preserve and protect all valid existing rights which individuals may have in the land covered by the bill, and a description of such rights. S. 1327 preserves all valid existing rights in section 1.

Some of the submarginal lands are located within the taking areas of the Fort Randall, Oahe and the Big Ben Reservoirs on the Missouri River. Special legislation has recently been enacted by Congress compensating the Indians for the taking of the Indian owned lands that are needed for the Fort Randall and Oahe Reservoirs, and similar legislation will be needed in connection with the Big Ben Reservoir.

Unless proposed legislation to give the Indians the Federally-owned submarginal lands under consideration reserves to the United States right to flood or use the portion that is needed for the Missouri River Basin Flood Control Program, it will be necessary for the United States to buy back from the Indians some of the lands that are given to them. Our proposed legislation therefore reserves such right to the United States. A similar reservation is included with respect to lands within the Bad River Flood Control Project, Wisconsin.

Section 1 of our proposed bill would reserve to the United States the right to use for military purposes any part of the lands that are within the boundaries of Ellsworth Air Force Range, located along the southwestern portion of the Pine Ridge Reservation, South Dakota. Section 1 would further reserve to the United States the right to flood and restrict the use of lands within the Bad River Flood Control Projects, Wisconsin. The proviso of section 1 excepts from the provisions of the bill any of the lands or any interests therein that are needed for authorized water resource development in the Missouri River Basin. S. 1327 does not contain these express reservations.

Section 2 of our proposal describes the lands declared by section 1 to be held in trust for the benefit of the affected 17 tribes or communities. Those tribes or communities are named in section 2. The lands declared to be held in trust by both our proposed bill and by S. 1327 are identical, as are the tribes or communities for whose benefit such transfer in trust shall be made.

Section 4 of our proposal would authorize the Indian Claims Commission to determine *de novo* whether the beneficial interest conveyed therein should or should not be set off against claims arising before the Commission. The purpose of this section is to allow the Commission, because of the magnitude of this land transfer, to review its previous practice with respect to such offset on submarginal lands. S. 1327 does not contain this provision.

Pursuant to section 6 of the Mineral Leasing Act for Acquired Lands (61 Stat. 913, 915) the receipts from the mineral leases on these lands have been deposited in a special fund in the U.S. Treasury. We cannot support section 3 of S. 1327, which would deposit to the credit of the tribes concerned all receipts received by the United States directly related to the lands conveyed. We believe these receipts belong in the general fund of the U.S. Treasury. Of course, all such receipts accruing subsequent to the recommended transfer to the tribes would be paid to the tribes.

The lands that would be transferred to trust status by both S. 1327 and by our proposal are commonly known as submarginal lands. These lands were purchased by the United States during the 1930's as a part of the National program to retire from private cultivation land which was low in productivity or otherwise illsuited for farm crops, a program under which over eleven millions acres were acquired by the United States. Of the total acreage so purchased, almost half remains within the jurisdiction of the Forest Service as part of the National Forest and National Grasslands systems, over 2 million acres were transferred to the Bureau of Land Management and nearly a million acres were transferred to States and municipalities through a combination of sales and grants. The overall National program was conducted

under the National Industrial Recovery Act (48 Stat. 200), subsequent relief acts, and Title III of the Bankhead-Jones Farm Tenant Act. The particular lands, subject to the proposed bill, were purchased at a cost of $1,852,773, and, along with other submarginal lands, were transferred by a series of Executive Orders from the Department of Agriculture to the Department of the Interior for Indian land projects to benefit those Indians under the jurisdiction of the Bureau of Indian Affairs.

The following table shows all of the Indian submarginal land projects:

Project	Reservation	Acreage	Original cost
Projects transferred by: Executive Order 7868, Apr. 15, 1938; Executive Order 8473, July 8, 1940:			
Seminole, LI–FL–6	Seminole, Fla	27,086	[1] $92,800
Fort Hall, LI–ID–2	Fort Hall, Idaho	8,711	133,213
L'Anse, LI–MI–8	L'Anse, Mich	4,016	16,121
Twin Lakes, LI–MN–6	White Earth, Minn	24,114	156,236
Flat Lake, LI–MN–15	do	4,436	19,428
Fort Peck, LI–MT–6	Fort Peck, Mont	85,338	412,302
Fort Belknap LI–MT–8	Fort Belknap, Mont	25,530	89,936
Blackfeet, LI–MT–9	Blackfeet, Mont	9,037	31,076
Standing Rock, LI–ND–10	Standing Rock, N. Dak	4,086	[2] 21,612
Do	Standing Rock, S. Dak	6,878	24,911
Fort Totten, LI–ND–11	Fort Totten, N. Dak	1,424	11,869
Delaware, LI–OK–5	Cherokee, Okla	13,778	49,313
Adair, LI–OK–5	do	4,960	10,934
Burns Colony, LI–OR–5	Burns Colony, Oreg	760	14,620
Pine Ridge, LI–SD–7	Pine Ridge, S. Dak	46,213	207,792
Cutmeat, LI–SD–8	Rosebud, S. Dak	10,089	52,803
Antelope, LI–SD–9	do	18,642	102,201
Crow Creek, LI–SD–10	Crow Creek, S. Dak	19,627	[3] 81,591
Lower Brule, LI–SD–10	Lower Brule, S. Dak	14,290	[4] 56,990
Cheyenne Indian, LI–SD–13	Cheyenne River, S. Dak	5,110	[5] 18,202
Bad River, LI–WI–8	Bad River, Wis	13,069	32,093
Lac Courte, LI–WI–9	Lac Courte Oreilles, Wis	13,185	25,598
Stockbridge, LI–WI–11	Stockbridge, Wis	13,077	69,546
Projects transferred by: Executive Orders No. 7792, Jan. 1, 1938; No. 7975, Sept. 16, 1938; No. 8255, Sept. 18, 1939; No. 8471, July 8, 1940; No. 8472, July 8, 1940; No. 8696, Feb. 28, 1941; No. 8697, Feb. 28, 1941:			
Zia-Santa Ana, LI–NM–6	Zia-Santa Ana, N. Mex	46,391	[6] 85,323
Laguna, LI–NM–7	Laguna, N. Mex	106,512	265,479
Cuba-Rio Puerco, LI–NM–38–22	do	85,610	150,860
Acoma, LI–NM–8	Acoma, N. Mex	103,954	220,724
Jemez, LI–NM–9	Jemez, N. Mex	113,141	282,853
Isleta, LI–NM–11	Isleta, N. Mex	17,493	31,810
Zuni, LI–NM–13	Zuni, N. Mex	62,028	131,177
Gallup Two-Wells, LI–NM–18	Navajo, N. Mex	72,267	333 144
Sandoval County, N. Mex	San Idelfonso, N. Mex	5,914	([6])

[1] Held in trust by United States for the tribe, pursuant to act of July 30, 1956 (70 Stat. 581).
[2] Includes 650.09 acres located within the Oahe Dam and Reservoir project.
[3] Includes 495 acres located within the Fort Randall Dam and Reservoir project.
[4] Includes 294 acres located within the Fort Randall Dam and Reservoir project.
[5] Includes 1,509 acres located within the Oahe Dam and Reservoir project.
[6] Part of these lands are now held in trust by the United States for the various pueblos, part has been transferred to Bureau of Land Management, part has been reserved for administrative purposes, and part has been transferred to the Department of Agriculture. See act of Aug. 13, 1949 (63 Stat. 604), 15 Federal Register 1851, and act of Aug. 2, 1956 (70 Stat. 941, 942).

Out of the original Indian submarginal land projects, 398,899 acres remain and affect 17 Indian tribes and communities. Our proposed bill will transfer the title to these remaining lands.

It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New

Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795) and the Act of October 13, 1972 (86 Stat. 806), respectively transferred submarginal lands to the Stockbridge Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. One of the five Acts—the transfer to the Stockbridge Munsee Indian Community—reserved the subsurface to the United States.

Although the subsurface value of the remaining submarginal lands is not substantial, there are known reserves of oil, gas, coal, and bentonite under the submarginal lands project at the Fort Belknap Indian Community, Montana, and known oil reserves under the project at the Fort Peck Reservation, Montana. The Bureau of Land Management currently leases the mineral rights under all 25,530.10 acres of the project at Fort Belknap. Mineral exploration is in progress on the lands under lease and there are indications that the Fort Belknap project may have sizeable reserves of natural gas. The earnings deposited in the United States Treasury from the Fort Belknap submarginal lands since the date of their purchase are $161,763.62, and the earnings from the Fort Peck project lands since the date of their purchase are $2,886,461.65. The total earnings deposited in the U.S. Treasury from all 17 submarginal lands project since the date of their purchase is $3,939,417.37.

As the various submarginal land acquisition projects were transferred from the Secretary of Agriculture to the Secretary of the Interior, the Superintendents of the various Indian agencies were informed that these lands should be administered for the benefit of the Indians in the same manner as tribal land. The use thereof was to be discussed with the tribal councils concerned.

Several tribes adopted tribal land enterprise programs which were administered by tribal officials for the primary purpose of obtaining maximum utilization of the tribal land resources. The majority of these programs were for livestock grazing purposes. As the programs were included in the issuance of leases and permits to both Indians and non-Indians, as well as the assignment of units to members of the tribes, it was determined administratively that submarginal lands should be made available to the tribes by permits from the Department, in order that the tribes could issue subpermits as a part of their programs. As a general rule, these permits were issued for a very nominal rental.

In 1947, a change occurred with respect to the income the tribes were deriving from subletting submarginal land. A budget limitation forced a drastic reduction in the personnel of the Bureau of Indian Affairs, and as a result many of the tribes had to employ personnel to administer a portion of the realty functions at the agency level and used the income received from submarginal lands to pay the salaries of these employees. This diverted income that otherwise would have gone to the tribes.

All use permits to the tribes expiring subsequent to 1954 have been renewed on a more realistic rental basis. The current formula used in determining the rental value to be paid to the tribes has resulted

in their receiving rentals comparable to those received by the Government from similar lands in the same general areas administered by the Bureau of Land Management and the U.S. Forest Service.

Commercial timber cutting on these lands is under the supervision of the BIA. Receipts from commercial timber operations are deposited in the General Fund of the United States Treasury. Since 1964, the grazing rights have been granted to the respective tribes without charge, on a revocable permit. The mineral rights on these submarginal lands are currently managed by the Bureau of Land Management, which issues the mineral leases. Receipts from the mineral leases are deposited in the U.S. Treasury, but are segregated pursuant to the Act of August 7, 1947 (61 Stat. 913, 915).

The present title situation is unsatisfactory because the tribal management units are partially Federally owned and partially Indian owned. On many reservations the Indians have been reluctant to expend tribal funds for any improvements on the submarginal lands because of their uncertain tenure. Many Indians who hold assignments on these lands would have constructed their own homes or would have made permanent improvements except for the uncertainty regarding the title. They are unable to obtain outside financing without title to the land. These submarginal lands are needed by the Indians in order to obtain maximum utilization of their tribal lands and in order to augment their other income. If the lands are not turned over to the Indians, proper utilization will not be possible, and the loss of the use of such lands would seriously affect the economic standards of many Indians. If the title is transferred to the Indians, further consolidation into acceptable ranch units for grazing purposes will be possible. In this regard, the Department has received requests from all 17 tribes for the transfer of their respective submarginal lands into trust status. In each instance, the tribes can, if given the opportunity, demonstrate a need and a planned-for, significant use of their submarginal land.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 23, 1975.

Hon. NELSON A. ROCKEFELLER,
President of the U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enlosed is a proposed bill "To declare certain submarginal lands of the United States to be held in trust for certain designated Indian tribes or communities and to make such lands part of the reservation involved."

We recommend that the proposed bill be referred to the appropriate Committee for consideration, and that it be enacted.

Our proposal affects approximately 398,899 acres of Federally owned lands, and involves 17 Indian tribes or communities. All of the tracts involved lie with in, abut, or are in close proximity to existing reservation boundaries.

Section 1 of our bill would declare all rights, title and interest of the United States in the lands, and the improvements thereon, acquired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and subsequent relief Acts, to be held in trust by the United States for the Indian tribes and groups identified in the bill.

Section 1 reserves to the United States the right to use for military purposes any part of the lands that are within the boundaries of Ellsworth Air Force Range, located along the southwestern portion of the Pine Ridge Reservation, South Dakota. Section 1 also reserves to the United States the right to flood and restrict the use of lands within the Bad River Flood Control Project, Wisconsin. The proviso of section 1 excepts from the provisions of the bill any of the lands or any interests therein that are needed for authorized water resource development in the Missouri River Basin.

Section 2 of our proposal describes the lands declared by section 1 to be held in trust for the benefit of the affected 17 tribes or communities. Those tribes or communities are named in section 2.

Section 3 of our proposal provides that all existing rights which individuals may have in the land covered by the bill shall be protected.

Section 4 of our proposal would authorize the Indian Claims Commission to determine *de novo* whether the beneficial interest conveyed therein should or should not be set off against claims arising before the Commission. The purpose of this section is to allow the Commission, because of the magnitude of this land transfer, to review its previous practice with respect to such offset on submarginal lands.

The lands that would be transferred to trust status by our proposal are commonly known submarginal lands. These lands were purchased by the United States during the 1930's as part of the national program to retire from private cultivation land which was low in productivity or otherwise illsuited for farm crops, a program under which over eleven million acres were acquired by the United States. Of the total acreage so purchased, almost half remains within the jurisdiction of the Forest Service as part of the National Forest and National Grasslands systems, over 2 million acres were transferred to the Bureau of Land Management and nearly a million acres were transferred to States and municipalities through a combination of sales and grants. The overall national program was conducted under the National Industrial Recovery Act (48 Stat. 200), subsequent relief acts, and Title III of the Bankhead-Jones Farm Tenant Act. The particular lands, subject to the proposed bill, were purchased at a cost of $1,852,773, and, along with other submarginal lands, were transferred by a series of Executive Orders from the Department of Agriculture to the Department of the Interior for Indian land projects to benefit those Indians under the jurisdiction of the Bureau of Indian Affairs.

The following table shows all of the Indians submarginal land projects:

Project	Reservation	Acreage	Original cost
Projects transferred by: Executive Order 7868, Apr. 15, 1938; Executive Order 8743, July 8, 1940:			
Seminole, LI–FL–6	Seminole, Fla.	27,086	[1] $92,800
Fort Hall, LI–ID–2	Fort Hall, Idaho	8,711	133,213
L'Anse, LI–MI–8	L'Anse, Mich.	4,016	16,121
Twin Lakes, LI–MN–6	White Earth, Minn.	24,114	156,236
Flat Lake, LI–MN–15	do	4,436	19,428
Fort Peck, LI–MT–6	Fort Peck, Mont.	85,338	412,302
Fort Belknap, LI–MT–8	Fort Belknap, Mont.	25,530	89,936
Blackfeet, LI–MT, 9	Blackfeet, Mont.	9,037	31,076
Standing Rock, LI–ND–10	Standing Rock, N. Dak.	4,086	[2] 21,612
Do	Standing Rock, S. Dak.	6,878	24,911
Fort Totten, LI–ND–11	Fort Totten, N. Dak.	1,424	11,869
Delaware, LI–OK–5	Cherokee, Okla.	13,778	49,313
Adair, LI–OK–5	do	4,960	10,934
Burns Colony, LI–OR–5	Burns Colony, Ore.	760	14,620
Pine Ridge, LI–SD–7	Pine Ridge, S. Dak.	46,213	207,792
Cutmeat, LI–SD–8	Rosebud, S. Dak.	10,089	52,803
Antelope, LI–SD–9	do	18,642	102,201
Crow Creek, LI–SD–10	Crow Creek, S. Dak.	19,627	[3] 81,591
Lower Burle, LI–SD–10	Lower Burle, S. Dak.	14,290	[4] 56,990
Cheyenne Indian, LI–SD–13	Cheyenne River, S. Dak.	5,110	[5] 18,202
Bad River, LI–WI–8	Bad River, Wis.	13,069	32,093
Lac Courte, LI–WI–9	Lac Courte Oreilles, Wis.	13,185	25,598
Stockbridge, LI–WI–11	Stockbridge, Wis.	13,077	69,546
Projects transferred by: Executive Orders No. 7792, Jan. 1, 1938; No. 7975, Sept. 16, 1938; No. 8255, Sept. 18, 1939; No. 8471, July 8, 1940; No. 8472, July 8, 1940; No. 8696, Feb. 28, 1941; No. 8697, Feb. 28, 1941:			
Zia-Santa Ana, LI–NM–6	Zia-Santa Ana, N. Mex.	46,391	[6] 85,323
Laguna, LI–NM–7	Laguna N. Mex.	106,512	[6] 265,479
Cuba-Rio Puerco, LI–NM–38–22	do	85,610	[6] 150,860
Acoma, LI–NM–8	Acoma, N. Mex.	103,954	[6] 220,724
Jemez, LI–NM–9	Jemez, N. Mex.	113,141	[6] 282,853
Isleta, LI–NM–11	Isleta, N. Mex.	17,493	[6] 31,810
Zuni, LI–NM–13	Zuni, N. Mex.	62,028	[6] 131,177
Gallup Two-Wells, LI–NM–18	Navajo, N. Mex.	72,267	333,144
Sandoval County, N. Mex.	San Idelfonso, N. Mex.	5,914	([6])

[1] Held in trust by United States for the tribe ,pursuant to act of July 30, 1956 (70 Stat. 581).
[2] Includes 650.09 acres located within the Oahe Dam and Reservoir project.
[3] Includes 495 acres located within the Fort Randall Dam and Reservoir project.
[4] Includes 294 acres located within the Fort Randall Dam and Reservoir project.
[5] Includes 1,509 acres located within the Oahe Dam and Reservoir project.
[6] Part of these lands are now held in trust by the United States for the various Pueblos, part has been transferred to Bureau of Land Management, part has been reserved for administrative purposes, and part has been transferred to the Department of Agriculture. See act of Aug. 13, 1949 (63 Stat. 604), 15 Federal Register 1851, and Act of Aug. 2, 1956 (70 Stat. 941, 942).

Out of the original Indian submarginal land projects, 398,899 acres remain and affect 17 Indian tribes and communities. This proposal will transfer the title to these remaining lands.

It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795) and the Act of October 13, 1972 (86 Stat. 806), respectively transferred submarginal lands to the Stockbridge Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. One of the five Acts—the transfer to the Stockbridge Munsee Indian Community—reserved the subsurface to the United States.

Although the subsurface value of the remaining submarginal lands is not substantial, there are known reserves of oil, gas, coal, and bentonite under the submarginal lands project at the Fort Belknap Indian

Community, Montana, and known oil reserves under the project at the Fort Peck Reservation, Montana. The Bureau of Land Management currently leases the mineral rights under all 25,530.10 acres of the project at Fort Belknap. Mineral exploration is in progress on the lands under lease and there are indications that the Fort Belknap project may have sizeable reserves of natural gas. The earnings deposited in the United States Treasury from the Fort Belknap submarginal lands since the date of their purchase are $161,763.62, and the earnings from the Fort Peck project lands since the date of their purchase are $2,886,461.65. The total earnings deposited in the U.S. Treasury from all 17 submarginal lands project since the date of their purchase is $3,939,417.37.

As the various submarginal land acquisition projects were transferred from the Secretary of Agriculture to the Secretary of the Interior, the Superintendents of the various Indian agencies were informed that these lands should be administered for the benefit of the Indians in the same manner as tribal land. The use thereof was to be discussed with the tribal councils concerned.

Several tribes adopted tribal land enterprise programs which were administered by tribal officials for the primary purpose of obtaining maximum utilization of the tribal land resources. The majority of these programs were for livestock grazing purposes. As the programs were included in the issuance of leases and permits to both Indians and non-Indians, as well as the assignment of units to members of the tribes, it was determined administratively that submarginal lands should be made available to the tribes by permits from the Department, in order that the tribes could issue subpermits as a part of their programs. As a general rule, these permits were issued for a very nominal rental.

In 1947, a change occurred with respect to the income the tribes were deriving from subletting submarginal land. A budget limitation forced a drastic reduction in the personnel of the Bureau of Indian Affairs, and as a result many of the tribes had to employ personnel to administer a portion of the realty functions at the agency level and used the income received from submarginal lands to pay the salaries of these employees. This diverted income that otherwise would have gone to the tribes.

All use permits to the tribes expiring subsequent to 1954 have been renewed on a more realistic rental basis. The current formula used in determining the rental value to be paid to the tribes has resulted in their receiving rentals comparable to those received by the Government from similar lands in the same general areas administered by the Bureau of Land Management and the U.S. Forest Service.

Commercial timber cutting on these lands is under the supervision of the BIA. Receipts from commercial timber operations are deposited in the General Fund of the United States Treasury. Since 1964, the grazing rights have been granted to the respective tribes without charge, on a revocable permit. The mineral rights on these submarginal lands are currently managed by the Bureau of Land Management, which issues the mineral leases. Receipts from the mineral leases are deposited in the U.S. Treasury, but are segregated pursuant to the Act of August 7, 1947 (61 Stat. 913, 915).

The present title situation is unsatisfactory because the tribal management units are partially Federally owned and partially Indian owned. On many reservations the Indians have been reluctant to expend tribal funds for any improvements on the submarginal lands because of their uncertain tenure. Many Indians who hold assignments on these lands would have constructed their own homes or would have made permanent improvements except for the uncertainty regarding the title. They are unable to obtain outside financing without title to the land. These submarginal lands are needed by the Indians in order to obtain maximum utilization of their tribal lands and in order to augment their other income. If the lands are not turned over to the Indians, proper utilization will not be possible, and the loss of the use of such lands would seriously affect the economic standards of many Indians. If the title is transferred to the Indians, further consolidation into acceptable ranch units for grazing purposes will be possible. In this regard, the Department has received requests from all 17 tribes for the transfer of their respective submarginal lands into trust status. In each instance, the tribes can, if given the opportunity, demonstrate a need and a planned-for, significant use of their submarginal land.

Some of the submarginal lands are located within the taking areas of the Fort Randall, Oahe and the Big Ben Reservoirs on the Missouri River. Special legislation has recently been enacted by Congress compensating the Indians for the taking of the Indian owned lands that are needed for the Fort Randall and Oahe Reservoirs, and similar legislation will be needed in connection with the Big Bend Reservoir. Unless our proposed legislation to give the Indians the Federally owned submarginal lands under consideration reserves to the United States right to flood or use the portion that is needed for the Missouri River Basin Flood Control Program, it will be necessary for the United States to buy back from the Indians some of the lands that are given to them. The proposed legislation therefore reserves such right to the United States. A similar reservation is included with respect to lands within the Bad River Flood Control Project, Wisconsin.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal from the standpoint of the Administration's program.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

Enclosure.

A BILL To declare certain submarginal lands of the United States to be held in trust for certain designated Indian tribes or communities and to make such lands part of the reservation involved

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the rights, title, and interest of the United States of America in the lands described in section 2 of this Act, and the improvements thereon, that were acquired under 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), and that are now under the

jurisdiction of the Department of the Interior and administered for the benefit of the Indian tribes or communities as hereinafter named in section 2 of this Act, are hereby declared to be held by the United States in trust for such Indian tribes or communities, subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, Township 48N, Range 3W, at Odanah, Wisconsin, in connection with the Bad River Flood Control Project as authorized by the Act of July 3, 1958 (72 Stat. 297, 311), and the lands shall be parts of the reservations heretofore established for the tribes or communities involved. *Provided*, That the provisions of this Act shall not apply to the title to any part of such lands or any interest therein that have been prior to the date or this Act included in the authorized water resources development projects in the Missouri River basin as authorized by the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented.

SEC. 2. The lands, declared to be held in trust by the United States by section 1 of this Act, for the benefit of the Indian tribes or communities named in this section, are described as follows:

Tribe	Reservation	Submarginal lands project	Counties	State
Bad River Band of the Lake Superior Tribe of Chippewas.	(1) Bad River	Bad River LI–WI–8	Ashland and Iron	Wisconsin.
The Blackfeet Tribe of the Blackfeet Indian Reservation, Mont.	(2) Blackfeet	Blackfeet LI–MT–9	Glacier and Pondera	Montana.
Cherokee Tribe of Oklahoma	(3) Cherokee, Okla	Delaware IL–OK–4, Adair LI–OK–5	Delaware and Adair	Oklahoma.
The Cheyenne River Sioux Tribe, S. Dak	(4) Cheyenne River	Cheyenne Indian LI–SD–13	Dewey	South Dakota.
The Crow Creek Sioux Tribe, S. Dak	(5) Crow Creek	Crow Creek LI–SD–10	Hughes, Hyde, and Buffalo	Do.
Devils Lake Sioux	(6) Fort Totten	Fort Totten LI–ND–11	Benson	North Dakota.
The Fort Belknap Indian Community	(7) Fort Belknap	Fort Belknap LI–MT–8	Blaine and Phillips	Montana.
Fort Peck	(8) Fort Peck	Fort Peck LI–MT–6	Roosevelt and Valley	Do.
Keweenaw Bay Indian Community, Michigan	(9) L'Anse	L'Anse LI–MI–8	Baraga	Michigan.
Lac Courte Oreilles Band of Lake Superior Chippewas	(10) Lac Courte Oreilles	Lac Courte LI–WI–9	Sawyer	Wisconsin.
Lower Brule Sioux	(11) Lower Brule	Lower Brule LI–SD–10	Stanley and Lyman	South Dakota.
Minnesota Chippewa	(12) White Earth	Twin Lakes LI–MN–6, Flat Lake LI–MN–15	Mahnomen and Becker	Minnesota.
Navajo	(13) Navajo	Gallup-Two Wells LI–NM–18	McKinley	New Mexico.
Oglala Sioux	(14) Pine Ridge	Pine Ridge LI–SD–7	Bennett, Shannon Washabaugh, and Washington	South Dakota.
Rosebud Sioux	(15) Rosebud	Cutmeat LI–SD–8, Antelope LI–SD–9	Todd	Do.
Shoshone-Bannock Tribes	(16) Fort Hall	Fort Hall LI–ID–2	Bannock, Bingham, and Power	Idaho.
Standing Rock Sioux	(17) Standing Rock	Standing Rock LI–ND–10	Sioux	North Dakota.
		Standing Rock LI–SD–10	Corson	South Dakota.

SEC. 3. Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior, and, of any existing rights under permits or leases issued pursuant to section 5 of the Mineral Leasing Act for Acquired Lands (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437, as amended).

SEC. 4. Notwithstanding the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the Indian Claims Commission is directed to determine the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 23, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of April 8, concerning S. 1327, in which you requested the answers to several questions.

Following are the responses to each of your questions and the data needed to support the response.

1. What is the Department's standing policy regarding mineral interests when Federal lands are conveyed Indian tribes to be held in trust by the United States?

It has been the general policy of the Department to transfer subsurface rights along with the surface rights. It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795), and the Act of October 13, 1972 (86 Stat. 806), respectively, transferred submarginal lands to the Stockbridge Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. Only one of the five Acts—the transfer to the Stockbridge Munsee Indian Community—reserved the subsurface to the United States.

Public Law 93–599, enacted January 2, 1975, amended (40 U.S.C. 483) to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for any group, band, or subsurface rights at the same time as surface rights were transferred.

2. Does the Department's policy with respect to the transfer of Federal land to Indians differ from its policy concerning the transfer of Federal land to non-Indians?

The Department transfers very little land today and it does not transfer any land that has mineral values. In general, the Department

Tribe	Reservation	Submarginal lands project	Counties	State
Bad River Band of the Lake Superior Tribe of Chippewas.	(1) Bad River	Bad River LI–WI–8	Ashland and Iron	Wisconsin.
The Blackfeet Tribe of the Blackfeet Indian Reservation, Mont.	(2) Blackfeet	Blackfeet LI–MT–9	Glacier and Pondera	Montana.
Cherokee Tribe of Oklahoma	(3) Cherokee, Okla	Delaware IL–OK–4, Adair LI–OK–5	Delaware and Adair	Oklahoma.
The Cheyenne River Sioux Tribe, S. Dak	(4) Cheyenne River	Cheyenne Indian LI–SD–13	Dewey	South Dakota.
The Crow Creek Sioux Tribe, S. Dak	(5) Crow Creek	Crow Creek LI–SD–10	Hughes, Hyde, and Buffalo	Do.
Devils Lake Sioux	(6) Fort Totten	Fort Totten LI–ND–11	Benson	North Dakota.
The Fort Belknap Indian Community	(7) Fort Belknap	Fort Belknap LI–MT–8	Blaine and Phillips	Montana.
Fort Peck	(8) Fort Peck	Fort Peck LI–MT–6	Roosevelt and Valley	Do.
Keweenaw Bay Indian Community, Michigan	(9) L'Anse	L'Anse LI–MI–8	Baraga	Michigan.
Lac Courte Oreilles Band of Lake Superior Chippewas	(10) Lac Courte Oreilles	Lac Courte LI–WI–9	Sawyer	Wisconsin.
Lower Brule Sioux	(11) Lower Brule	Lower Brule LI–SD–10	Stanley and Lyman	South Dakota.
Minnesota Chippewa	(12) White Earth	Twin Lakes LI–MN–6, Flat Lake LI–MN–15	Mahnomen and Becker	Minnesota.
Navajo	(13) Navajo	Gallup-Two Wells LI–NM–18	McKinley	New Mexico.
Oglala Sioux	(14) Pine Ridge	Pine Ridge LI–SD–7	Bennett, Shannon Washabaugh, and Washington	South Dakota.
Rosebud Sioux	(15) Rosebud	Cutmeat LI–SD–8, Antelope LI–SD–9	Todd	Do.
Shoshone-Bannock Tribes	(16) Fort Hall	Fort Hall LI–ID–2	Bannock, Bingham, and Power	Idaho.
Standing Rock Sioux	(17) Standing Rock	Standing Rock LI–ND–10	Sioux	North Dakota.
		Standing Rock LI–SD–10	Corson	South Dakota.

SEC. 3. Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior, and, of any existing rights under permits or leases issued pursuant to section 5 of the Mineral Leasing Act for Acquired Lands (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437, as amended).

SEC. 4. Notwithstanding the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the Indian Claims Commission is directed to determine the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 23, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of April 8, concerning S. 1327, in which you requested the answers to several questions.

Following are the responses to each of your questions and the data needed to support the response.

1. What is the Department's standing policy regarding mineral interests when Federal lands are conveyed Indian tribes to be held in trust by the United States?

It has been the general policy of the Department to transfer subsurface rights along with the surface rights. It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795), and the Act of October 13, 1972 (86 Stat. 806), respectively, transferred submarginal lands to the Stockbridge Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. Only one of the five Acts—the transfer to the Stockbridge Munsee Indian Community—reserved the subsurface to the United States.

Public Law 93–599, enacted January 2, 1975, amended (40 U.S.C. 483) to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for any group, band, or subsurface rights at the same time as surface rights were transferred.

2. Does the Department's policy with respect to the transfer of Federal land to Indians differ from its policy concerning the transfer of Federal land to non-Indians?

The Department transfers very little land today and it does not transfer any land that has mineral values. In general, the Department

follows the same general policy when transferring Federal land to non-Indians that it follows with reference to transfers to Indians, except when mineral values in commercial quantities are known to exist in the land. Furthermore, there can be no transfer of the subsurface estate in those instances where the subsurface has been reserved by either an Act of Congress or Executive or Secretarial Order.

3. Provide the Committee with the best estimate of the current fair market value for the submarginal land tracts in S. 1327.

Reservation	Original cost	Fair market value
Bad River	$32,093	$1,298,800
Blackfeet	31,076	542,220
Lower Brule	56,990	1,071,750
Crow Creek	81,591	1,472,025
L'Anse	16,121	402,200
Navajo	318,311	5,000,000
Rosebud	155,004	2,154,825
Cherokee	60,230	1,975,000
Cheyenne River	18,202	383,325
Fort Totten	11,869	106,800
Fort Belknap	89,936	1,276,800
Pine Ridge	207,792	3,489,150
Standing Rock	24,911	515,925
Fort Hall	133,213	304,850
Fort Peck	412,302	4,693,590
White Earth	175,664	2,855,000
Lac Courte Oreilles	25,598	1,818,500
Total	1,850,903	29,360,76

The fair market values above were arrived at using the best current field information available. There has been no on-the-ground survey and commercial appraisal of the submarginal lands.

4. Provide the Committee with the most recent report reflecting accrued income for each of the submarginal land tracts in S. 1327?

(a) Identify the source of such income, i.e. minerals, grazing, farming, etc.

Reservation	Income	Source of Income
Bad River	$114,396.60	Timber, pipeline rights-of-way.
Blackfeet	84,081.84	Grazing, minerals.
Lower Brule	25,358.20	Grazing.
Crow Creek	30,348.20	Do.
L'Anse	32,283.00	Timber.
Navajo	0	
Rosebud	97,864.70	Grazing, farming.
Cherokee of Oklahoma	0	
Cheyenne River	4,548.00	Grazing.
Fort Totten	2,318.40	Grazing, farming.
Fort Belknap	161,763.62	Grazing.
Pine Ridge	115,144.50	Grazing, minerals.
Standing Rock	17,741.72	Grazing.
Fort Hall	15,966.94	Grazing, minerals.
Fort Peck	2,886,461.65	Do.
White Earth	262,870.00	Grazing, timber, minerals.
Lac Courte Oreilles	88,270.00	Grazing, timber.

(b) Where are such funds currently deposited?

Receipts from commercial timber operations are deposited in the General Fund of the United States Treasury. Since 1964, the grazing rights have been granted to the respective tribes without charge, on a revocable permit. The mineral rights on these submarginal lands are currently managed by the Bureau of Land Management, which issues

the mineral leases. Receipts from the mineral leases are deposited in the United States Treasury, but are segregated pursuant to the Act of August 7, 1947 (61 Stat. 913, 915).

(c) Have such receipts been allocated to any unit of Federal, State and local governments? If so, identify the entity and the amount of funds involved.

Funds derived from submarginal land have not been allocated and remain in the United States Treasury.

5. With respect to the submarginal lands in S. 1327 identify the following:

(a) those tracts located wholly within the exterior boundaries of Indian reservations;

1. Bad River
2. Blackfeet
3. Lower Brule
4. Crow Creek
5. L'Anse
6. Rosebud
7. Cherokee Tribe of Oklahoma
8. Cheyenne River
9. Fort Totten
10. Sioux Tribe Pine Rine Ridge Oglala
11. Standing Rock
12. Fort Peck
13. White Earth

(b) those tracts located partly within exterior boundaries of Indian reservations;

14. Fort Belknap
15. Fort Hall
16. Lac Courte Oreilles

(c) those tracts abutting the exterior boundaries of Indian reservations; and

None.

(d) those tracts located away from the exterior boundaries of Indian reservations.

17. Navajo

6. In conversations with members of the Staff of your Committee question 6 was rephrased to read:

Provide the Committee with the legal description of each tract of land within each of the 17 submarginal project areas.

We have enclosed a list of the legal descriptions for each tract of land within each of the 17 submarginal project areas.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

Enclosure.

INDIAN CLAIMS COMMISSION,
Washington, D.C., April 23, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of April 7, 1975, enclosing a copy of S. 1327, a bill to declare that certain sub-

marginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and specifically requesting that we review this legislation to determine the appropriateness of applying the usual offset clause against the tribes who would receive the submarginal lands in question.

In determining the quantum of relief to be awarded successful claimants, the Commission is instructed by Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050; 25 U.S.C. § 70a) that it may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that, *inter alia:* " * * * expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award."

The Commission has considered the question of offsetting submarginal lands in two decisions, *Seminole Indians of the State of Florida and Seminole Nation of Oklahoma* v. *United States*, Dockets 73 and 151, 24 Ind. Cl. Comm. 1–20 (1970); and *Pueblo de Zia, Pueblo de Jemez, and Pueblo de Santa Ana* v. *United States*, Docket 137, 26 Ind. Cl. Comm. 218–264 (1971). The lands involved in these decisions had been purchased with funds supplied under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200) or subsequent acts for the relief of stricken agricultural areas throughout the United States. The Commission determined in each case that the claimed expenditures were prohibited as offsets by the above-quoted provision in Section 2 of the Indian Claims Commission Act. The United States Court of Claims affirmed the Commission's disallowance of offsets for submarginal lands in Docket 137 (*The United States of America* v. *Pueblo de Zia, Pueblo de Jemez, and Pueblo de Santa Ana*, 200 Ct. Cl. 601, 608 (1973), 474 F.2d 639).

Since it appears that the lands involved in S. 1327 were acquired under Title II of the National Industrial Recovery Act of June 16, 1933, and other emergency appropriations or allotments made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, the application of the usual offset clause against the tribes who would receive these lands would be inconsistent with the provision quoted above from Section 2 of the Indian Claims Commission Act. This provision is an important part of the declared policy of the Congress in Section 2 as to the offsetting of gratuitous expenditures. Clearly, the inclusion of the usual offset clause in S. 1327 would be inappropriate.

The usual offset clause, if included in the bill, would direct the Commission to consider the question of offsetting the donated lands against the claims of the affected tribes. This directive would preclude

the Department of Justice from exercising any discretion in excluding these trust lands from any claim for gratuitous offsets. Presumably, this circumstance would also seriously restrict the parties in any effort to expedite the entry of a final award by compromising the issue of gratuitous offsets.

All of the affected tribes cited in S. 1327, except the Cherokee Nation, are plaintiff parties in claims pending before the Commission. Some of these tribes are plaintiffs only in aboriginal land claims, others are plantiffs only in accounting claims, and some are plaintiffs in both aboriginal land claims and accounting claims.

I trust this information will be considered responsive to the Committee's request and that you will call upon us if we can be of any further assistance.

Sincerely yours,

JEROME K. KUYKENDALL,
Chairman.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the standing rules of the Senate, changes in existing law made by the bill S. 1327, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 9, 1972 (86 STAT. 795)

* * * * * * *

[SEC. 2. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.]

ACT OF OCTOBER 13, 1972 (86 STAT. 806)

* * * * * * *

SEC. 5. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the beneficial interest [conveyed by this Act] *conveyed by section 2 of this Act* should or should not be set off against any claim against the United States by the Commission.

○

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-480

DECLARING THAT CERTAIN SUBMARGINAL LAND OF THE UNITED STATES SHALL BE HELD IN TRUST FOR CERTAIN INDIAN TRIBES AND BE MADE A PART OF THE RESERVATIONS OF SAID INDIANS, AND FOR OTHER PURPOSES

SEPTEMBER 15, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 5778]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 5778) to declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under title II of the National Industry 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), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 2(a) of this Act, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

(b) The property conveyed by this Act shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this Act shall not convey the title to any part of the lands or any interest therein that prior to enactment of this Act have been included in the

authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

SEC. 2. (a) The lands, declared by section 1 of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	Reservation	Submarginal land project donated to said tribe or group	Approximate acreage
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	Bad River	Bad River LI-WI-8	13, 148. 81
2. Blackfeet Tribe	Blackfeet	Blackfeet LI-MT-9	9, 036. 73
3. Cherokee Nation of Oklahoma.		Delaware LI-OK-4	18, 749. 19
		Adair LI-OK-5	
4. Cheyenne River Sioux Tribe.	Cheyenne River	Cheyenne Indian LI-SD-13.	3, 738. 47
5. Crow Creek Sioux Tribe.	Crow Creek	Crow Creek LI-SD-10.	19, 169. 89
6. Lower Brule Sioux Tribe.	Lower Brule	Lower Brule LI-SD-10.	13, 209. 22
7. Devils Lake Sioux Tribe.	Fort Totten	Fort Totten LI-ND-11.	1, 424. 45
8. Fort Belknap Indian Community.	Fort Belknap	Fort Belknap LI-MT-8.	25, 530. 10
9. Assiniboine and Sioux Tribes.	Fort Peck	Fort Peck LI-MT-6	85, 835. 52
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles.	Lac Courte LI-WI-9	13, 184. 65
11. Keweenaw Bay Indian Community.	L'Anse	L'Anse LI-MI-8	4, 016. 49
12. Minnesota Chippewa Tribe.	White Earth	Twin Lakes LI-MN-6.	28, 544. 80
		Flat Lake LI-MN-15	
13. Navajo Tribe	Navajo	Gallup-Two Wells LI-NM-18.	69, 947. 24
14. Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI-SD-7	18, 064. 48
15. Rosebud Sioux Tribe.	Rosebud	Cutmeat LI-SD-8	28, 734. 59
		Antelope LI-SD-9	
16. Shoshone-Bannock Tribes.	Fort Hall	Fort Hall LI-ID-2	8, 711
17. Standing Rock Sioux Tribe.	Standing Rock	Standing Rock LI-ND-10.	10, 255. 56
		Standing Rock LI-SD-10	

(b) The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

SEC. 3. (a) All of the right, title and interest of the United States in all the minerals including gas and oil underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795), are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

(b) Section 2 of said Act of October 9, 1972, is hereby repealed.

(c) Section 5 of the Act of October 13, 1972 (86 Stat. 806), relating to the Burns Indian Colony is amended by striking the words "conveyed by this Act" and inserting in lieu thereof the words "conveyed by section 2 of this Act".

SEC. 4. (a) Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, or of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. All applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on the date of enactment of this Act and covering any of the minerals conveyed by sections 1 and 3 of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property conveyed by this Act shall hereafter be administered in accordance with the laws and regulations applicable to property held in trust by the United States for Indian tribes, including but not limited to the Act of May 11, 1938 (52 Stat. 347), as amended.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property conveyed to tribes pursuant to this Act and all the receipts thereform referred to in section 5 of this Act, shall be exempt from Federal State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

PURPOSE

The purpose of H.R. 5778, introduced by Mr. Meeds for himself, Mr. Young of Alaska, Mr. Risenhoover, Mr. Bergland, Mr. Obey, Mr. Jones of Oklahoma, Mr. Ruppe, Mr. Andrews of North Dakota, and Mr. Lujan, is to declare that certain submarginal lands of the United States will be held in trust for the Indian tribes for whose

authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

SEC. 2. (a) The lands, declared by section 1 of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	Reservation	Submarginal land project donated to said tribe or group	Approximate acreage
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	Bad River	Bad River LI-WI-8	13, 148. 81
2. Blackfeet Tribe	Blackfeet	Blackfeet LI-MT-9	9, 036. 73
3. Cherokee Nation of Oklahoma.		Delaware LI-OK-4	18, 749. 19
		Adair LI-OK-5	
4. Cheyenne River Sioux Tribe.	Cheyenne River	Cheyenne Indian LI-SD-13.	3, 738. 47
5. Crow Creek Sioux Tribe.	Crow Creek	Crow Creek LI-SD-10.	19, 169. 89
6. Lower Brule Sioux Tribe.	Lower Brule	Lower Brule LI-SD-10.	13, 209. 22
7. Devils Lake Sioux Tribe.	Fort Totten	Fort Totten LI-ND-11.	1, 424. 45
8. Fort Belknap Indian Community.	Fort Belknap	Fort Belknap LI-MT-8.	25, 530. 10
9. Assiniboine and Sioux Tribes.	Fort Peck	Fort Peck LI-MT-6	85, 835. 52
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles.	Lac Courte LI-WI-9	13, 184. 65
11. Keweenaw Bay Indian Community.	L'Anse	L'Anse LI-MI-8	4, 016. 49
12. Minnesota Chippewa Tribe.	White Earth	Twin Lakes LI-MN-6.	28, 544. 80
		Flat Lake LI-MN-15	
13. Navajo Tribe	Navajo	Gallup-Two Wells LI-NM-18.	69, 947. 24
14. Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI-SD-7	18, 064. 48
15. Rosebud Sioux Tribe.	Rosebud	Cutmeat LI-SD-8	28, 734. 59
		Antelope LI-SD-9	
16. Shoshone-Bannock Tribes.	Fort Hall	Fort Hall LI-ID-2	8, 711
17. Standing Rock Sioux Tribe.	Standing Rock	Standing Rock LI-ND-10.	10, 255. 56
		Standing Rock LI-SD-10	

(b) The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

SEC. 3. (a) All of the right, title and interest of the United States in all the minerals including gas and oil underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795), are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

(b) Section 2 of said Act of October 9, 1972, is hereby repealed.

(c) Section 5 of the Act of October 13, 1972 (86 Stat. 806), relating to the Burns Indian Colony is amended by striking the words "conveyed by this Act" and inserting in lieu thereof the words "conveyed by section 2 of this Act".

SEC. 4. (a) Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, or of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. All applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on the date of enactment of this Act and covering any of the minerals conveyed by sections 1 and 3 of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property conveyed by this Act shall hereafter be administered in accordance with the laws and regulations applicable to property held in trust by the United States for Indian tribes, including but not limited to the Act of May 11, 1938 (52 Stat. 347), as amended.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property conveyed to tribes pursuant to this Act and all the receipts thereform referred to in section 5 of this Act, shall be exempt from Federal State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

PURPOSE

The purpose of H.R. 5778, introduced by Mr. Meeds for himself, Mr. Young of Alaska, Mr. Risenhoover, Mr. Bergland, Mr. Obey, Mr. Jones of Oklahoma, Mr. Ruppe, Mr. Andrews of North Dakota, and Mr. Lujan, is to declare that certain submarginal lands of the United States will be held in trust for the Indian tribes for whose

benefit they were purchased and that all income earned by the United States on these lands since their purchase shall be deposited to the credit of such tribe.

Background

H.R. 5778 provides that approximately 370,000 acres of lands of the United States, purchased for the benefit of certain Indian tribes, shall be held in trust for such tribes and that the income earned by the United States will be credited to the tribe for whose benefit they were purchased.

History

These lands were purchased by the United States as part of the general emergency relief measures necessitated by the severe depression of the 1930's and a series of natural disasters, including floods, drought, and dust storms.

In 1933, Congress enacted the National Industrial Recovery Act which, among other things, provided authority for the creation of an agency to administer the selection and purchase of "submarginal" lands. It was the purpose of this program to purchase and take out of production large tracts of land which were overworked and depleted and to enable the occupants of these lands to relocate to more promising areas where they could be rehabilitated and taken off the relief rolls.

The term "submarginal" is somewhat of a misnomer in that it referred to the temporary inability of the land to provide more than a marginal economic return rather than to a long-term submarginal status.

Approximately $25,000,000 was appropriated and approximately 11,0 0,000 acres of lands were purchased. Of that total acreage, almost half remains within the jurisdiction of the Forest Service; over 2,000,000 acres were transferred to the Bureau of Land Management; and approximately 1,000,000 acres were transferred to States and municipalities through a combination of sales and grants.

Of the $25,000,000, $5,000,000 was used to purchase approximately 1,000,000 acres of submarginal lands for the benefit of various Indian tribes. The Indian submarginal lands program included five "demonstration areas" as follows: (1) elimination or alleviation of checkerboarding of Indian reservations; (2) facilitation of watershed or water control on reservations; (3) provision of additional lands to supplement reservations; (4) provision of lands for homeless bands of communities of Indians forming acute relief problems; and (5) provision of lands needed for proper control of grazing areas on the reservation.

Administration of all submarginal lands was vested in an independent Resettlement Administration which, in 1935, was transferred to the Department of Agriculture under the name of Farm Security Administration. A series of agreements between FSA and the Bureau of Indian Affairs were entered into which resulted in the BIA administering the Indian project lands for the "exclusive benefit" of the tribes involved.

Beginning in 1938, President Roosevelt issued a series of executive orders which formally transferred the Indian land projects from administration by the Department of Agriculture to the Department of

the Interior. The orders provided that the Interior Department would "permanently" administer the lands for the exclusive benefit of the Indians.

The history and extensive documentation clearly outline the understanding between the Federal agencies involved in the acquisition and administration of the lands that the Indian lands were being purchased for their exclusive benefit; that it was needed by the Indians; and that it could be used by the Indians in connection with other Indian-owned land. It was contemplated by Federal officials that the land would improve the Indians' economy and lessen relief costs and that proper recommendations would be made at the appropriate time for the enactment of legislation to add this land permanently to the appropriate Indian reservation.

Originally, this intent was followed. The lands were utilized by the tribes for a nominal fee under a revocable permit issued by the Secretary of the Interior. In some cases, the tribes or their members used the land and, in some cases, the tribes leased the lands to non-Indians, thereby earning an income.

During the 1950's, however, when the national Indian policy sought to terminate the Indians' special relationship with the Federal Government, the Department abruptly changed the policy governing the fees. The tribes were charged the going rate for the use of the lands and the United States enjoyed an earned income from lands which were supposedly purchased for the exclusive benefit of the Indians.

In 1964, the Secretary discontinued the practice of charging the going rate as fees for the revocable permits issued to the tribes for use of the submarginal lands, but receipts from timber production continue to be covered into the general fund of the U.S. Treasury.

Income earned from surface permits on the submarginal lands, generally granted to the affected tribe, was originally held by the Bureau of Indian Affairs in "Special Deposit" accounts pending the expected transfer of the land in trust by the Congress; however, these funds and other earned income were later deposited in the miscellaneous receipts of the Treasury and their identity was lost. This transfer from "Special Deposits" to the miscellaneous receipts of the Treasury was a direct result of the shift of the Federal policy to terminate the special relationship between the tribes and the United States—a policy which has since been determined to be totally inappropriate to resolving the problems of the Indian people.

Mineral Leasing

Since the provisions of the Mineral Leasing Act of 1920 did not apply to the submarginal lands and other lands acquired by the United States, Congresss enacted the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913). Submarginal lands are included in this category.

Section 6 of the Act governs distribution of receipts derived from the leasing of minerals underlying the various lands affected by this Act.

In recognition of the Indians' interests, the 1947 Act provided:

> . . . *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been

> transferred to the Department of the Interior by the Executive Order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress.

The Treasury Department continues to maintain this fund pending a Congressional determination of its disposition.

Previous Legislation

Twenty-one submarginal land projects were established for various Indian tribes with the expectation that the Administration would recommend enactment of legislation to add this land permanently to Indian reservations. Congress has enacted legislation addressed to 4 of the 21 Indian submarginal lands projects as follows:

(1) Act of August 13, 1949 (63 Stat. 604) transferred trust title to 457,530 acres of submarginal lands and 154,502 acres of public domain lands to several Pueblos and the Canoncito Navajo of New Mexico. That Act transferred subsurface mineral interests to the affected tribes and transferred approximately $8,100 accrued income from the submarginal lands to the tribes.

(2) Act of July 20, 1956 (70 Stat. 581) transferred trust title to 27,000 acres of submarginal lands to the Seminole Indians of Florida. The Act transferred subsurface mineral interests to the Seminole but contained no provision to transfer accrued income to the tribe.

(3) Act of August 2, 1956 (70 Stat. 941) transferred trust title to 78,372 acres of submarginal lands to Jemez and Zia Pueblos of New Mexico. The Act transferred subsurface mineral interests to the Indians, but contained no provision to transfer accrued income to the Pueblos.

(4) Act of October 9, 1972 (86 Stat. 795) transferred trust title to 13,077 acres of submarginal land to the Stockbridge-Munsee Community of Wisconsin. The Act contained an Indian Claims Commission offset clause, reserved subsurface mineral interests to the United States, and contained no provision to transfer accrued income to the Community.

(5) Act of October 13, 192 (86 Stat. 806) transferred trust title to 606 acres of submarginal land to the Burns Paiute Colony of Oregon. The Act contained an Indian Claims Commission offset clause, transferred subsurface mineral interests to the Colony, and contained no provision to transfer accrued income to the Colony.

Explanation

H.R. 5778, as introduced, declares that all right, title and interest of the United States to approximately 370,000 acres of submarginal lands shall be held in trust, surface and subsurface, for the 17 Indian tribes for whose benefit it was purchased. These lands are to be a part of the reservation of the appropriate tribes and administered in accordance with the laws and regulations applicable to Indian tribal lands.

In addition, all income earned by the United States on such lands since their acquisition, including mineral revenue under section 6 of the Mineral Leasing Act for Acquired Lands, shall be deposited to the credit of the appropriate tribe.

The Committee adopted an amendment in the nature of a substitute for the language of H.R. 5778. The amendment is, in substance, identical to H.R. 5778. However, Subcommittee hearings identified certain technical problems which were not addressed in the bill which the amendment meets. In addition, the language of the bill is clarified with respect to preserving valid, existing rights in the lands.

The Committee fully reviewed the broad powers and authorities conferred on the President by 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) which formed the legal basis of the submarginal lands program.

It examined in detail the administrative records and documents relating to the administration of the Indian submarginal lands program and the purpose and intent of the Federal officials involved in the acquisition and administration of the lands.

The Committee also reviewed the past record of the Congress in transferring submarginal lands to certain Indian tribes.

Based upon this record, the Committee concluded that these lands should properly be declared to be held in trust for the tribes for which they were purchased. In addition, it has concluded that the income earned by the United States on these lands, often from the Indian tribes which were to have the exclusive benefit, should be deposited to the credit of such tribe.

The report of the Department of the Interior recommended that language be included in the bill providing that the value of these lands be considered by the Indian Claims Commission as an offset against awards of the Commission to such tribes against the United States.

The Indian Claims Commission must adhere to section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). That provision authorizes the Commission to consider various gratuitous expenditures for the benefit of a claimant, and, depending on the nature of the claim and other factors, the Commission may set off all or part of such expenditures against any award made to the claimant.

However, Section 2 specifically provides:

> Expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas . . . shall not be a proper offset against any award.

Since the Indian submarginal lands were acquired by expenditures pursuant to title II of the National Industrial Recovery Act of 1933, and subsequent relief acts, such expenditures, obviously, fall within the prohibition in section 2 of the Indian Claims Commission Act.

The Indian Claims Commission has considered the question of offsetting submarginal lands in two previous decisions: Dockets 73 and 151 involving the Seminole Indians of the State of Florida and Seminole Nation of Oklahoma; and Docket 137 involving several Pueblos

of New Mexico. In these decisions the Commission determined that the lands had been purchased with funds supplied under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200) and subsequent relief acts for the relief of stricken agricultural areas throughout the United States. The Commission determined in each case that the claimed expenditures were expressly prohibited as offsets by the above-quoted provision in Section 2 of the Indian Claims Commission Act. The government appealed the Commission's decision in Docket 137 and the U.S. Court of Claims affirmed the Commission's disallowance of offsets for submarginal lands in that docket.

Section 2 of the Indian Claims Commission Act clearly precludes the commission from considering the value of submarginal lands as an offset against any award made to a successful claimant. On this basis, the Committee rejected the recommendation of the Department.

Section-By-Section Analysis of H.R. 5778, as Amended

Section 1(a) declares that all right, title, and interest of the United States to certain submarginal lands purchased by the United States under authority of emergency relief measures of the 1930's shall be held in trust, together with the mineral interest (however acquired by the United States), for the tribes named in section 2(a) and shall, except in the case of the Cherokee Nation, be a part of the reservation of such tribes.

This subsection is the effective granting language of the bill and it is not intended that it should be limited or expanded by the acreage estimates contained in section 2(a), nor by the publication of the Secretary in the Federal Register required by section 2(b).

The subsection also makes clear that the mineral interests underlying the surface transferred will also be transferred whether such interest was acquired by the United States as part of the submarginal lands program or otherwise. This language is necessitated by the nature of the title to certain mineral interests underlying the submarginal lands of the Ft. Belknap Indian reservation. When the surface was originally patented to third parties, the United States reserved the mineral interest. When the surface was subsequently reacquired as submarginal lands, the two estates merged and it is intended that these mineral interests shall also be held in trust for the tribe.

Finally, since the Cherokee Indian Nation technically has no reservation, the subsection makes clear that the lands transferred to that tribe will not become a reservation.

Section 1(b) provides that the lands conveyed by subsection (a) shall be subject (1) to appropriation or disposition of any of the lands or interests therein, within the Pine Ridge Sioux Reservation, South Dakota, as authorized by the Act of August 8, 1968; (2) to certain flood control rights of the United States on submarginal lands of the Bad River Band of Chippewa Indians in Wisconsin as authorized by the Act of July 3, 1958; and (3) to the title of the United States to lands included in the Missouri Basin flood control project.

The Act of August 8, 1968 (82 Stat. 663) provided for the return of certain lands taken during World War II as an Air Force gunnery

range to the Oglala Sioux Tribe of the Pine Ridge Reservation. Former individual owners were given the right to re-purchase lands taken from them. If their former lands had been included in the Bad Lands National Monument, as provided by the 1968 Act, they were given an option to select in lieu lands from other lands, including submarginal lands. Upon the expiration of this statutory option to select submarginal lands under the 1968 Act, the remainder of the lands will be subject to section 1(a).

Subsection (b) also subjects the submarginal lands transferred to the Bad River Band of Chippewa Indians to certain uses of the United States under the Bad River flood control project authorized by the Act of July 3, 1958.

Finally, subsection (b) provides that certain submarginal lands of the Cheyenne River, Crow Creek, Lower Brule, and Standing Rock Sioux Tribes which were included within the taking area of the Missouri River Basin project authorized by the Act of July 3, 1958 (72 Stat. 297, 311), shall not be transferred to such tribes in trust, but that such lands will be treated as if they were former tribal or individual trust lands which were taken for the project. Under acts supplementary to the 1958 Act, the tribes and their members retained certain access and use rights to their former lands included within the taking area of the project. Subsection (b) would give the tribe and its members the same right of use and access to the submarginal lands not transferred to the tribe.

Section 2(a) provides an estimate of acreages within the various submarginal lands projects by tribe, reservation, and submarginal lands project number. As stated above, these estimates are not to limit or expand the grant made in section 1(a).

Section 2(b) provides that the Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands conveyed by this bill. It further provides that the acreages set out in subsection (a) are estimates and are not to be taken to expand or limit the grant in section 1.

Subsection 3(a) provides for the trust transfer of mineral interests underlying the surface of the submarginal lands transferred to the Stockbridge-Munsee Indian Community by the Act of Octobetr 9, 1972 (86 Stat. 795). This is to conform that previous transfer with the provisions of this general bill.

Subsection 3(b) repeals the provision of the foregoing Act which authorizes the value of the lands transferred to be offset by the Indian Claims Commission against any award to that tribe against the United States.

Subsection 3(c) repeals a similar provision in the Act of October 13, 1972 transferring submarginal lands to the Burns Paiute Indian Colony of Oregon. The rationale for these repeals is discussed in the background of this report.

Section 4(a) preserves valid existing rights on the conveyed lands and existing rights of access across such lands to public domain lands. It provides that the existing mineral, oil, or gas leases on such lands under the Mineral Leasing Act for Acquired Lands and the Mineral

Leasing Act of 1920 shall remain in full force and effect. Pending applications for such leases under such Acts are to be rejected and advance rentals returned to the applicant.

As explained in the background of this report, mineral interests reacquired by the United States after the issuance of the initial patents were held not to be subject to leasing under the Mineral Leasing Act of 1920. As a consequence, Congress enacted the Mineral Leasing Act for Acquired Lands of 1947. The Bureau of Land Management has authority to lease Indian submarginal mineral interests pursuant to the provisions of this Act. In addition, the mineral interest underlying approximately 9000 acres of the submarginal lands of the Ft. Belknap Reservation in Montana never left the original ownership of the United States. This interest, as public domain, is subject to leasing pursuant to the provisions of the Mineral Leasing Act of 1920. The subsection provides that existing leasing of the subject lands pursuant to these Acts shall remain in full force and effect. It further provides that pending applications for leases of the subject lands pursuant to these acts shall be rejected and any advance rental payment returned.

Section 4(b) provides that, subject to the preservation of rights contained in subsection (a), the property transferred will be administered as other Indian lands are administered, including mineral leasing under the Act of May 11, 1938 (52 Stat. 347).

Section 5(a) provides that all income earned by the United States on lands transferred by this Act, the Stockbridge-Munsee Act, the Burns Paiute Act, a 1956 Act transferring certain submarginal lands to the Pueblos of New Mexico, and a 1956 Act transferring certain submarginal lands to the Seminole Indian tribe of Florida shall be deposited to the credit of the affected Indian tribes. Such income will include income earned by the United States from mineral leases on such lands pursuant to the Mineral Leasing Act for Acquired Lands and now held in a special account in the U.S. Treasury. Excepted from the transfer of income is income earned from public domain mineral leases pursuant to the Mineral Leasing Act of 1920. The amounts credited to the tribes under this subsection may be expended by the tribes for such beneficial programs as determined by the governing body thereof.

Section 5(b) provides that all gross receipts earned by the United States subsequent to this Act or otherwise from said lands shall be administered in accordance with laws and regulations applicable to receipts from property held in trust for Indian tribes.

This subsection makes clear that, after the effective date of this Act, all further income, whether from existing or future leases, etc., shall be tribal income and administered as such.

Section 6 provides that the property conveyed and the income transferred shall be exempt from Federal, state, and local taxation. Any per capital distribution of funds derived from this Act shall not be considered as income or other resources for purposes of certain Federal benefits.

SELECTED INFORMATION RELATING TO H.R. 5778, A BILL TO DECLARE THAT CERTAIN SUBMARGINAL LAND OF THE UNITED STATES SHALL BE HELD IN TRUST FOR CERTAIN INDIAN TRIBES AND BE MADE A PART OF THE RESERVATIONS OF SAID INDIANS, AND FOR OTHER PURPOSES

Tribe	Reservation	Approximate acreage	Original purchase price	Accrued income from submarginal lands Jan. 1, 1975 (all sources)	Income less original purchase price	Total fair market value [1]	Mineral value of submarginal lands
Bad River Band of the Lake Superior Tribe of Chippewas.	Bad River	13,140	$32,093	$114,396.60	$82,303.60	$1,298,860	No mineral income ever received from the land nor is there a potential for mineral development.
Blackfeet	Blackfeet	9,037	31,076	84,081.84	53,005.84	542,220	The lands have been valued in the past at $4 per acre. Mostly all lands are considered to have potential value for oil and gas. However, none of the acreage is currently under a producing oil lease. There is a potential for coal, magnetite sand, and gravel, but the value would be nominal.
Cherokee Nation		18,750	60,230	0	−60,230.00	1,975,000	These lands have a low potential value for oil and gas.
Cheyenne River Sioux	Cheyenne River	3,730	18,202	4,548.00	−13,654.00	383,225	The lands are potentially valuable for oil and gas. Test holes have been drilled. No other prospective mineral development.
Crow Creek Sioux	Crow Creek	19,170	81,591	30,348.20	−51,242.80	1,472,025	The lands are valuable prospectively for oil and gas. Uranium has been reported in some black shales; yet the value is considered nominal. No mineral income has ever been received.
Lower Brule Sioux	Lower Brule	13,210	56,990	25,358.20	−31,631.80	1,071,750	The lands are valuable prospectively for oil and gas. Uranium has been reported in some black shales; yet the value is considered nominal. No mineral income has ever been received.
Devils Lake Sioux	Fort Totten	1,425	11,869	2,318.40	−9,550.60	106,800	There is a low prospective value for oil and gas. No other prospective mineral development.
Fort Belknap Indian Community	Fort Belknap	[2]25,531	89,936	[3]161,763.62	71,827.62	1,276,800	These lands are considered to have some potential value for oil and gas, coal and bentonite. The value is considered nominal.
Assiniboine and Sioux	Fort Peck	85,836	412,302	2,876,461.65	2,464,159.65	4,693,980	These lands are prospectively valuable for oil and gas. In the past there has been income derived from oil and gas leases.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles	[2]13,185	25,598	88,270.00	62,672.00	1,818,500	There are no known minerals in the project area except for possible sand and gravel development.

See footnote at end of table.

SELECTED INFORMATION RELATING TO H.R. 5778, A BILL TO DECLARE THAT CERTAIN SUBMARGINAL LAND OF THE UNITED STATES SHALL BE HELD IN TRUST FOR CERTAIN INDIAN TRIBES AND BE MADE A PART OF THE RESERVATIONS OF SAID INDIANS, AND FOR OTHER PURPOSES—Continued

Tribe	Reservation	Approximate acreage	Original purchase price	Accrued income from submarginal lands Jan. 1, 1975 (all sources)	Income less original purchase price	Total fair market value [1]	Mineral value of submarginal lands
Keweenaw Bay Indian Community	L'Anse	4,017	16,121	[2] 32,283.00	16,162.00	402,200	No minerals of a commercial nature are known to occur on or near the land project area.
Minnesota Chippewa	White Earth	28,545	175,664	202,870.00	87,206.00	2,855,000	No minerals of a commercial nature are known to exist here. No income from mineral activity has ever been recorded.
Navajo	Navajo	[4] 69,948	318,311	0	−318,311.00	5,000,000	No minerals of a commercial nature are known to exist here. No income from minerals has ever been received.
Ogala Sioux	Pine Ridge	18,065	207,792	115,144.50	−92,647.50	3,489,150	The subject lands are valuable prospectively for uranium, bentonite and oil and gas. Some mining of Niobrara clays for ceramics.
Rosebud Sioux	Rosebud	28,735	155,004	97,864.70	−57,139.30	2,154,825	The lands are prospectively valuable for oil and gas, though the value is considered nominal. No income has ever been received from this land.
Shoshone-Bannock	Fort Hall	[5] 8,712	133,213	15,966.94	−117,246.06	304,850	The lands have a low potential value for oil and gas. There also exists on some lands potential development of phosphate.
Standing Rock Sioux	Standing Rock	10,256	24,911	17,741.72	−7,169.28	515,925	The subject lands are potentially valuable for oil and gas, and, in part, for lignite and uranium-bearing lignite.
Total		371,310	1,850,903	3,929,417.37	2,078,514.37	29,360,760	

[1] These figures do not include the monetary value of the subsurface mineral interest, but do include the value of timber. The Department of the Interior states that the fair market values were determined on the basis of their review of current field data and information. The Department has not conducted an on-the-ground survey and commercial appraisal of the submarginal lands.

[2] 24,089 acres are located beyond exterior boundaries of the Reservation and 202 acres are located within such boundaries.

[3] 2,532 are located beyond exterior boundaries of the Reservation and 10,033 acres are located within such boundaries.

[4] The entire 69,948 acres are located beyond exterior boundaries of the Reservation.

[5] 3,859 acres are located beyond the exterior boundaries of the Reservation, and 4,853 acres are located within such boundaries.

[6] Approximately $38,000 of the accrued income was derived from leasing of the minerals underlying approximately 9,000 acres of land in the Fort Belknap submarginal lands project. The Department of the Interior has determined that when these lands were patented under the homestead laws, the United States reserved the minerals which consequently never left public ownership; the lands were subject to mineral leasing pursuant to the Mineral Leasing Act of 1920; and the income is, therefore, subject to disposition under that Act. The 1939 Act provides that the funds shall be distributed as follows: 37.5 percent to the State, 22.5 percent to the Reclamation Fund, and 10 percent to the Treasury.

Cost and Budget Act Compliance

The legislation contemplates no new expenditures, but it provides for a transfer of funds held in a special account to certain Indian tribes, as well as submarginal lands. No significant costs or budgetary impact is involved.

Inflationary Impact Statement

Since the funds involved are relatively nominal and are subject to expenditure by the appropriate tribal governing bodies, no inflationary impact is expected.

Oversight Statement

Other than the normal oversight responsibilities exercised in conjunction with these legislative operations, no recommendations were submitted to the Committee pursuant to Rule X, Clause 2(b)(2).

Committee Recommendation

The Committee on Interior and Insular Affairs, by a voice vote, recommends the enactment of H.R. 5778, as amended.

Departmental Report

The Department of the Interior submitted, on April 23, 1975, an Executive Communication to the Congress stating its position on the submarginal lands issue and proposing legislation. A copy of the Executive Communication follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 23, 1975.

Hon. Carl B. Albert,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: Enclosed is a proposed bill "To declare certain submarginal lands of the United States to be held in trust for certain designated Indian tribes or communities and to make such lands part of the reservation involved."

We recommend that the proposed bill be referred to the appropriate Committee for consideration, and that it be enacted.

Our proposal affects approximately 398,899 acres of Federally owned lands, and involves 17 Indian tribes or communities. All of the tracts involved lie within, abut, or are in close proximity to existing reservation boundaries.

Section 1 of our bill would declare all rights, title and interest of the United States in the lands, and the improvements thereon, ac-

quired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and subsequent relief Acts, to be held in trust by the United States for the Indian tribes and groups identified in the bill.

Section 1 reserves to the United States the right to use for military purposes any part of the lands that are within the boundaries of Ellsworth Air Force Range, located along the southwestern portion of the Pine Ridge Reservation, South Dakota. Section 1 also reserves to the United States the right to flood and restrict the use of lands within the Bad River Flood Control Project, Wisconsin. The proviso of section 1 excepts from the provisions of the bill any of the lands or any interests therein that are needed for authorized water resource development in the Missouri River Basin.

Section 2 of our proposal describes the lands declared by section 1 to be held in trust for the benefit of the affected 17 tribes or communities. Those tribes or communities are named in section 2.

Section 3 of our proposal provides that all existing rights which individuals may have in the land covered by the bill shall be protected.

Section 4 of our proposal would authorize the Indian Claims Commission to determine *de novo* whether the beneficial interest conveyed therein should or should not be set off against claims arising before the Commission. The purpose of this section is to allow the Commission, because of the magnitude of this land transfer, to review its previous practice with respect to such offset on submarginal lands.

The lands that would be transferred to trust status by our proposal are commonly known as submarginal lands. These lands were purchased by the United States during the 1930's as a part of the national program to retire from private cultivation land which was low in productivity or otherwise illustrated for farm crops, a program under which over eleven million acres were acquired by the United States. Of the total acreage so purchased, almost half remains within the jurisdiction of the Forest Service as part of the National Forest and National Grasslands systems, over 2 million acres were transferred to the Bureau of Land Management and nearly a million acres were transferred to States and municipalities through a combination of sales and grants. The overall national program was conducted under the National Industrial Recovery Act (48 Stat. 200), subsequent relief acts, and Title III of the Bankhead-Jones Farm Tenant Act. The particular lands, subject to the proposed bill, were purchased at a cost of $1,852,773, and, along with other submarginal lands, were transferred by a series of Executive Orders from the Department of Agriculture to the Department of the Interior for Indian land projects to benefit those Indians under the jurisdiction of the Bureau of Indian Affairs.

The following table shows all of the Indian submarginal land projects:

Project	Reservation	Acreage	Original cost
Projects transferred by: Executive Order 7868, Apr. 15, 1938; Executive Order 8473, July 8, 1940:			
Seminole, LI–FL–6	Seminole, Fla	27,086	[1] $92,800
Fort Hall, LI–ID–2	Fort Hall, Idaho	8,711	133,213
L'Anse, LI–MI–8	L'Anse, Mich	4,016	16,121
Twin Lakes, LI–MN–6	White Earth, Minn	24,114	156,236
Flat Lake, LI–MN–15	do	4,436	19,428
Fort Peck, LI–MT–6	Fort Peck, Mont	85,338	412,302
Fort Belknap, LI–MT–8	Fort Belknap, Mont	25,530	89,936
Blackfeet, LI–MT–9	Blackfeet, Mont	9,037	31,076
Standing Rock, LI–ND–10	Standing Rock, N. Dak	4,086	[2] 21,612
Standing Rock, LI–ND–10	Standing Rock, S. Dak	6,878	24,911
Fort Totten, LI–ND–11	Fort Totten, N. Dak	1,424	11,869
Delaware, LI–OK–5	Cherokee, Okla	13,778	49,313
Adair, LI–OK–5	do	4,960	10,934
Burns Colony, LI–OR–5	Burns Colony, Oreg	760	14,620
Pine Ridge, LI–SD–7	Pine Ridge, S. Dak	46,213	207,792
Cutmeat, LI–SD–8	Rosebud, S. Dak	10,089	52,803
Antelope, LI–SD–9	do	18,642	102,201
Crow Creek, LI–SD–10	Crow Creek, S. Dak	19,627	[3] 81,591
Lower Brule, LI–SD–10	Lower Brule, S. Dak	14,290	[4] 56,990
Cheyenne Indian, LI–SD–13	Cheyenne River, S. Dak	5,110	[5] 18,202
Bad River, LI–WI–8	Bad River, Wis	13,069	32,093
Lac Courte, LI–WI–9	Lac Courte Oreilles, Wis	13,185	25,598
Stockbridge, LI–WI–11	Stockbridge, Wis	13,077	69,546
Projects transferred by: Executive Orders No 7792, Jan 1, 1938; No 7975, Sept 16, 1938; No 8255, Sept 18, 1939; No. 8471, July 8, 1940; No 8472, July 8, 1940; No 8696, Feb 28, 1941; No 8697, Feb 28, 1941:			
Zia-Santa Ana, LI–MN–6	Zia-Santa Ana, N. Mex	46,391	[6] 85,323
Laguna, LI–NM–7	Laguna, N. Mex	106,512	[6] 265,479
Cuba-Rio Puerco, LI–NM–38–22	do	85,610	[6] 150,860
Acoma, LI–NM–8	Acoma, N. Mex	103,954	[6] 220,724
Jemez, LI–NM–9	Jemez, N. Mex	113,141	[6] 282,853
Isleta, LI–NM–11	Isleta, N. Mex	17,493	[6] 31,810
Zuni, LI–NM–13	Zuni, N. Mex	62,028	[6] 131,177
Gallup Two-Wells, LI–NM–18	Navajo, N. Mex	72,267	[6] 333,144
Sandoval County, N Mex	San Idelfonso, N. Mex	5,914	(6)

[1] Held in trust by United States for the tribe, pursuant to Act of July 30, 1956 (70 Stat 581).
[2] Includes 650.09 acres located within the Oahe Dam and Reservoir project.
[3] Includes 495 acres located within the Fort Randall Dam and Reservoir project.
[4] Includes 294 acres located within the Fort Randall Dam and Reservoir project.
[5] Includes 1,509 acres located within the Oahe Dam and Reservoir project.
[6] Part of these lands are now held in trust by the United States for the various Pueblos, part has been transferred to Bureau of Land Management, part has been reserved for administrative purposes, and part has been transferred to the Department of Agriculture. See Act of August 13, 1949 (63 Stat. 604), 15 F.R. 1851, and Act of August 2, 1956 (70 Stat 941, 942).

Out of the original Indian submarginal land projects, 398,899 acres remain and affect 17 Indian tribes and communities. This proposal will transfer the title to these remaining lands.

It should be noted that five statutes have already been enacted transferring to affected tribes the project lands that were administered for them. Three of those statutes transferred project lands to the Seminole Indians of Florida and to the Pueblos and other groups in New Mexico. See the Act of July 30, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), and the Act of August 13, 1949 (63 Stat. 604). Two later statutes, the Act of October 9, 1972 (86 Stat. 795) and the Act of October 13, 1972 (86 Stat. 806), respectively transferred submarginal lands to the Stockbridge Munsee Indian Community, Wisconsin, and to the Burns Indian Colony, Oregon. One of the five Acts—the transfer to the Stockbridge Munsee Indian Community—reserved the subsurface to the United States.

Although the subsurface value of the remaining submarginal lands is not substantial, there are known reserves of oil, gas, coal, and ben-

tonite under the submarginal lands project at the Fort Belknap Indian Community, Montana, and known oil reserves under the project at the Fort Peck Reservation, Montana. The Bureau of Land Management currently leases the mineral rights under all 25,530.10 acres of the project at Fort Belknap. Mineral exploration is in progress on the lands under lease and there are indications that the Fort Belknap project may have sizeable reserves of natural gas. The earnings deposited in the United States Treasury from the Fort Belknap submarginal lands since the date of their purchase are $161,763.62, and the earnings from the Fort Peck project lands since the date of their purchase are $2,886,461.65. The total earnings deposited in the U.S. Treasury from all 17 submarginal lands project since the date of their purchase is $3,939,417.37.

As the various submarginal land acquisition projects were transferred from the Secretary of Agriculture to the Secretary of the Interior, the Superintendents of the various Indian agencies were informed that these lands should be administered for the benefit of the Indians in the same manner as tribal land. The use thereof was to be discussed with the tribal councils concerned.

Several tribes adopted tribal land enterprise programs which were administered by tribal officials for the primary purpose of obtaining maximum utilization of the tribal land resources. The majority of these programs were for livestock grazing purposes. As the programs were included in the issuance of leases and permits to both Indians and non-Indians, as well as the assignment of units to members of the tribes, it was determined administratively that submarginal lands should be made available to the tribes by permits from the Department, in order that the tribes could issue subpermits as a part of their programs. As a general rule, these permits were issued for a very nominal rental.

In 1947, a change occurred with respect to the income the tribes were deriving from subletting submarginal land. A budget limitation forced a drastic reduction in the personnel of the Bureau of Indian Affairs, and as a result many of the tribes had to employ personnel to administer a portion of the realty functions at the agency level and used the income received from submarginal lands to pay the salaries of these employees. This diverted income that otherwise would have gone to the tribes.

All use permits to the tribes expiring subsequent to 1954 have been renewed on a more realistic rental basis. The current formula used in determining the rental value to be paid to the tribes has resulted in their receiving rentals comparable to those received by the Government from similar lands in the same general areas administered by the Bureau of Land Management and the U.S. Forest Service.

Commercial timber cutting on these lands is under the supervision of the BIA. Receipts from commercial timber operations are deposited in the General Fund of the United States Treasury. Since 1964, the grazing rights have been granted to the respective tribes without charge, on a revocable permit. The mineral rights on these submarginal lands are currently managed by the Bureau of Land Management, which issues the mineral leases. Receipts from the mineral leases are deposited in the U.S. Treasury, but are segregated pursuant to the Act of August 7, 1947 (61 Stat. 913, 915).

The present title situation is unsatisfactory because the tribal management units are partially Federally owned and partially Indian owned. On many reservations the Indians have been reluctant to expend tribal funds for any improvements on the submarginal lands because of their uncertain tenure. Many Indians who hold assignments on these lands would have constructed their own homes or would have made permanent improvements except for the uncertainty regarding the title. They are unable to obtain outside financing without title to the land. These submarginal lands are needed by the Indians in order to obtain maximum utilization of their tribal lands and in order to augment their own income. If the lands are not turned over to the Indians, proper utilization will not be possible, and the loss of the use of such lands would seriously affect the economic standards of many Indians. If the title is transferred to the Indians, further consolidation into acceptable ranch units for grazing purposes will be possible. In this regard, the Department has received requests from all 17 tribes for the transfer of their respective submarginal lands into trust status. In each instance, the tribes can, if given the opportunity, demonstrate a need and a planned-for, significant use of their submarginal land.

Some of the submarginal lands are located within the taking areas of the Fort Randall, Oahe and the Big Ben Reservoirs on the Missouri River. Special legislation has recently been enacted by Congress compensating the Indians for the taking of the Indian owned lands that are needed for the Fort Randall and Oahe Reservoirs, and similar legislation to give the Indians the Federally owned submarginal lands under consideration reserves to the United States right to flood or use the portion that is needed for the Missouri River Basin Flood Control Program, it will be necessary for the United States to buy back from the Indians some of the lands that are given to them. The proposed legislation therefore reserves such right to the United States. A similar reservation is included with respect to lands within the Bad River Flood Control Project, Wisconsin.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal from the standpoint of the Administration's program.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

A BILL To declare certain submarginal lands of the United States to be held in trust for certain designated Indian tribes or communities and to make such lands part of the reservation involved

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the rights, title, and interest of the United States of America in the lands described in section 2 of this Act, and the improvements thereon, that were acquired under 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), and that are now under the jurisdiction of the Department of the Interior and administered for the benefit of the Indian tribes or communities as hereinafter named in section 2 of this Act, are hereby declared to be held by the United States in trust for

such Indian tribes or communities, subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, Township 48N, Range 3W, at Odanah, Wisconsin, in connection with the Bad River Flood Control Project as authorized by the Act of July 3, 1958 (72 Stat. 297, 311), and the lands shall be parts of the reservations heretofore established for the tribes or communities involved: *Provided*, That the provisions of this Act shall not apply to the title to any part of such lands or any interest therein that have been prior to the date of this Act included in the authorized water resources development projects in the Missouri River basin as authorized by the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented.

SEC. 2. The lands, declared to be held in trust by the United States by section 1 of this Act, for the benefit of the Indian tribes or communities named in this section, are described as follows:

Tribe	Reservation	Submarginal lands project	Counties	State
Bad River Band of the Lake Superior Tribe of Chippewas.	(1) Bad River	Bad River LI-WI-8	Ashland and Iron	Wisconsin.
Blackfeet Tribe of the Blackfeet Indian Reservation, Montana.	(2) Blackfeet	Blackfeet LI-MT-9	Glacier and Pondera	Montana.
Cherokee Tribe of Oklahoma	(3) Cherokee, Oklahoma.	Delaware IL-OK-4; Adair LI-OK-5.	Delaware and Adair	Oklahoma.
Cheyenne River Sioux Tribe, South Dakota.	(4) Cheyenne River	Cheyenne Indian LI-SD-13.	Dewey	South Dakota.
Crow Creek Sioux Tribe, South Dakota.	(5) Crow Creek	Crow Creek LI-SD-10	Hughes, Hyde, and Buffalo.	South Dakota.
Devils Lake Sioux	(6) Fort Totten	Fort Totten LI-ND-11	Benson	North Dakota.
Fort Belknap Indian Community.	(7) Fort Belknap	Fort Belknap LI-MT-8	Blaine and Phillips	Montana.
Fort Peck	(8) Fort Peck	Fort Peck LI-MT-6	Roosevelt and Valley	Montana.
Keweenaw Bay Indian Community, Michigan.	(9) L'Anse	L'Anse LI-MI-8	Baraga	Michigan.
Lac Courte Oreilles Band of Lake Superior Chippewas.	(10) Lac Courte Oreilles.	Lac Court LI-WI-9	Sawyer	Wisconsin.
Lower Brule Sioux	(11) Lower Brule	Lower Brule LI-SD-10	Stanley and Lyman	South Dakota.
Minnesota Chippewa	(12) White Earth	Twin Lakes LI-MN-6	Mahnomen	Minnesota.
		Flat Lake LI-MN-15	Becker	
Navajo	(13) Navajo	Callup-Two Wells LI-NM-18.	McKinley	New Mexico.
Oglala Sioux	(14) Pine Ridge	Pine Ridge LI-SD-7	Bennett, Shannon, Washabaugh, and Washington.	South Dakota.
Rosebud Sioux	(15) Rosebud	Cutmeat LI-SD-8; Antelope LI-SD-9.	Todd	South Dakota.
Shoshone-Bannock Tribes	(16) Fort Hall	Fort Hall LI-ID-2	Bannock, Bingham and Power.	Idaho.
Standing Rock Sioux	(17) Standing Rock	Standing Rock LI-ND-10	Sioux	North Dakota.
		Standing Rock LI-SD-10	Corson	South Dakota.

SEC. 3. Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior, and, of any existing rights under permits or leases issued pursuant to section 5 of the Mineral Leasing Act for Acquired Lands (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437, as amended).

SEC. 4. Notwithstanding the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the Indian Claims Commission is directed to determine the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 9, 1972 (86 STAT. 795)

* * * * * * *

[SEC. 2. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.]

ACT OF OCTOBER 13, 1972 (86 STAT. 806)

* * * * * * *

SEC. 5. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the beneficial interest [conveyed by this Act] *conveyed by section 2 of this Act* should or should not be set off against any claim against the United States by the Commission.

S. 1327

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under 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), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 2(a) of this Act, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

(b) The property conveyed by this Act shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this Act shall not convey the title to any part of the lands or any interest therein that prior to enactment of this Act have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

SEC. 2. (a) The lands, declared by section 1 of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	Reservation	Submarginal land project donated to said tribe or group	Approximate acreage
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	Bad River	Bad River LI-WI-8	13,148.81
2. Blackfeet Tribe	Blackfeet	Blackfeet LI-MT-9	9,036.73
3. Cherokee Nation of Oklahoma		Delaware LI-OK-4	18,749.19
		Adair LI-OK-5	
4. Cheyenne River Sioux Tribe	Cheyenne River	Cheyenne Indian LI-SD-13	3,738.47
5. Crow Creek Sioux Tribe	Crow Creek	Crow Creek LI-SD-10	19,169.89
6. Lower Brule Sioux Tribe	Lower Brule	Lower Brule LI-SD-10	13,269.22
7. Devils Lake Sioux Tribe	Fort Totten	Fort Totten LI-ND-11	1,424.45
8. Fort Belknap Indian Community.	Fort Belknap	Fort Belknap LI-MT-8	25,530.10
9. Assiniboine and Sioux Tribes	Fort Peck	Fort Peck LI-MT-6	85,835.52
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Lac Courte Oreilles.	Lac Courte LI-WI-9	13,184.65
11. Keweenaw Bay Indian Community.	L'Anse	L'Anse LI-MI-8	4,016.49
12. Minnesota Chippewa Tribe	White Earth	Twin Lakes LI-MN-6	28,544.80
		Flat Lake LI-MN-15	
13. Navajo Tribe	Navajo	Gallup-Two Wells LI-NM-18	69,947.24
14. Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI-SD-7	18,064.48
15. Rosebud Sioux Tribe	Rosebud	Cutmeat LI-SD-8	28,734.59
		Antelope LI-SD-9	
16. Shoshone-Bannock Tribes	Fort Hall	Fort Hall LI-ID-2	8,711
17. Standing Rock Sioux Tribe	Standing Rock	Standing Rock LI-ND-10	10,255.5
		Standing Rock LI-SD-10	

(b) The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

SEC. 3. (a) All of the right, title, and interest of the United States in all the minerals including gas and oil underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795), are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

(b) Section 2 of said Act of October 9, 1972, is hereby repealed.

(c) Section 5 of the Act of October 13, 1972 (86 Stat. 806), relating to the Burns Indian Colony is amended by striking the words "conveyed by this Act" and inserting in lieu thereof the words "conveyed by section 2 of this Act".

SEC. 4. (a) Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, or of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. All applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on the date of enactment of this Act and covering any of the minerals conveyed by sections 1 and 3 of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property conveyed by this Act shall hereafter be administered in accordance with the laws and regulations applicable to property held in trust by the United States for Indian tribes, including but not limited to the Act of May 11, 1938 (52 Stat. 347), as amended.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

October 8, 1975

Dear Mr. Director:

The following bills were received at the White House on October 8th:

S. 824
S. 1327 ✓
S. 1549 ✓
H.R. 5952 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.