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## Overview of the Indian Trust Asset Reform Act

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2017 Annual Tribal Self-Governance Consultation  
Conference

April 25, 2017

# The Indian Trust Asset Reform Act

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- The “ITARA”
  - H.R. 812 (and S.383)
  - President Obama signed into law on June 22, 2016
  - Pub. L. 114-178
- As signed into law, the ITARA is
  - (1) voluntary for tribes and beneficiaries
  - (2) authorizes new flexibility particularly suited for energy development
  - (3) authorizes structural changes at DOI

# A Decade in the Making

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- Originated from S.1439 and H.R. 4322 in the 109<sup>th</sup> Congress
  - “Indian Trust Reform Act of 2005”
  - SCIA hearing on bill on March 1, 2006
  - *Cobell* title made the bill difficult to move
- ATNI Trust Reform Committee began updating the text in 2011 after *Cobell* settlement approved
- ATNI focused on two titles of S.1439/H.R. 4322
  - Indian trust asset reform demonstration project
  - The Office of the Special Trustee

# Overview of the ITARA

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- Contains three titles
  - I. Recognition of Trust Responsibility
  - II. Indian Trust Asset Management Demonstration Project
  - III. Improving Efficiency and Streamlining Processes
- DOI consulted on title III in the early fall of 2016

# Title II: Indian Trust Asset Demonstration Project

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- Authorizes tribes to submit trust asset management plans to the Secretary that will guide federal or tribal management
- Secretary must act within 120 days of submission
- Secretary shall approve unless proposed plan:
  - (1) fails to include the application requirements
  - (2) violates treaties, statutes, or Executive orders that are applicable to the trust assets; or
  - (3) the cost of implementing plan exceeds available federal funding
- Management plans can waive federal regulations
- 10 year demo project can be extended by Secretary
- No limit on number of participating tribes

# What is Needed to Obtain a Trust Asset Management Agreement?

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- A proposed Indian trust asset management agreement shall include provisions that—
  - 1) identify the trust assets that will be subject to the plan
  - 2) establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe
  - 3) allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities
  - 4) identify the functions or activities that are being or will be performed by the Indian tribe under contracts or compacts under the ISDEAA
  - 5) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States

# Trust Asset Management Plans: Waiving Federal Regulations

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- Tribes may waive federal regulations in trust asset management plans
  - Not limited to regulations in title 25 of the CFR
  - Plan cannot violate federal statutes, but potentially any federal regulations relating to trust assets not prescribed by statute can be waived
    - BLM, OSMRE, ONNR, Fish & Wildfire, others
- **New flexibility and possibilities**
  - No resources excluded from asset management plans
  - Land, energy resources, and trust funds
- Title II also authorizes HEARTH Act treatment for forest management activities

# Other ITARA Provisions Relevant to Trust Asset Management Agreements

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- Federal liability
  - If a trust asset management agreement directs DOI to manage trust assets at a lesser standard than DOI would manage in absence of an agreement, federal government not liable for damages resulting from breach
- Does not enlarge or diminish the federal trust responsibility
- Ability of tribes to contract or compact unaffected
  - Tribes can carry out the new management standards under 638 or Self Governance
- Judicial review available should DOI disapprove



# Title III: Improving Efficiency and Streamlining Processes

- Authorizes Secretary to establish an Under Secretary for Indian Affairs
  - Would report directly to the Secretary
  - “Supervise and coordinate activities and policies of the BIA with activities and policies of” non-BIA agencies and bureaus within DOI
    - Intended to ensure that other parts of DOI cannot implement policies that negatively affect tribes and beneficiaries without Indian Affairs knowing about it early
- Once position established, appointed by President with advice and consent of Senate
- New Administration is considering

# Appraisals and Valuations

- Section 305(a): Within 18 months, the Secretary “shall ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency, or other administrative entity within the Department.”
- Section 305(b): When a tribe or Indian beneficiary submits an appraisal that satisfies minimum standards—
  - no further Secretarial review or approval is required, and
  - the appraisal is considered final for purposes of effectuating the transaction for which it was required
  - Eliminates requirement for review appraisal
- Proposed Rule on minimum appraisal standards published in *Federal Register*
  - Comments closed November 21, 2016 but no rule issued to date
- Rulemaking not required by statute

# Cost Savings and TIBC Input

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- Section 306 requires that for any OST function, service, or activity that will not be carried out as result of transfer of functions or personnel—
  - the Secretary shall identify the cost savings and provide this information to TIBC representatives
  - TIBC has 90 days to provide recommendations to Administration and Congress on how funds should be reallocated
- Included to prevent any cost savings resulting from reorganization or streamlining of OST cannot be used to cut DOI's budget
- Safeguard to ensure money stays in Indian programs

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