



# 2017 TRIBAL SELF-GOVERNANCE ANNUAL CONSULTATION CONFERENCE

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PROGRESSIVE PARTNERSHIPS: INVESTING IN TRIBAL NATION BUILDING

## Recorder Form

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Recorder: Melanie Fourkiller

Date: April 25, 2017

Session Title: implementation of the Indian Trust Asset Reform Act (ITARA)

Panelists: Ernie Stensgar, Vice Chairman, Coeur d'Alene Tribe

Brian Gunn, Principal, Powers Pyles Sutter & Verville

Lee Frazier, Office of the Special Trustee, DOI

Summary of Issues and Items Discussed:

Ernie Stensgar, Vice Chairman, Coeur d'Alene Tribe

- Overview of the history from a Tribal perspective that led up to ITARA
- Problems with Interior, in terms of managing Trust resources; natural resources are critically important to Tribes
- Issues with trespass, and conflicts with local and state authorities over jurisdiction; needed additional federal support to enforce Tribal rights to these lands and resources, enforce law and prevent encroachment
- Needs were also present for timely appraisals and division of interests – there were problems passing Tribes back and forth between BIA and OST
- ANTNI was actively expressing themselves on these and other issues, such as spraying on Tribal lands where traditional huckleberries grow. Frustrating as Tribal leaders to have these issues when there are many other pressing issues in Indian Country.
- Started discussing legislation that would be developed by the Tribes, designed to express the trust responsibility of the Federal government. Started advocacy efforts, meeting with Regional organizations to address different interests with Trust resources across the country.
- Wanted to bring BIA and OST together, emphasizing the best parts of each agency to live up to Trust and Treaty responsibilities.
- Cobell case was in full swing at that time, and all federal resources in DOI were focused on that case at that time. However, settling Cobell did not address these issues adequately.
- Asked Idaho Senators to step up on these issues/potential legislation. Tribes emphasized efficiencies and cutting administrative costs and streamlining these important Trust functions. This resulted in Republicans supporting the legislation. Tribal attorneys were instrumental in assisting in writing the language.
- This Under Secretary should be able to navigate the various agencies of the DOI and resolve problems and improve communication as it goes to management of Trust resources. Conflicting bureaucracy and unclear roles and responsibilities hindered management of the Trust.
- Management of Trust assets, but also appraisals and jurisdictional issues were intended to be addressed with the legislation.

Brian Gunn, Principal, Powers Pyles Sutter & Verville (See Powerpoint)

- Technical overview of ITARA and potential application to Tribes.
- Law is voluntary for Tribes and beneficiaries; authorizes new flexibility particularly suited for energy development; authorizes structural changes at DOI. No structural changes are mandated by the law.

- Summary of legislative history of ITARA, beginning with the Indian Trust Reform Act of 2005 until passage of ITARA
- Three Titles in ITARA
  - Recognition of Trust Responsibility;
  - Indian Trust Asset Management Demonstration Project
  - Improving Efficiency and Streamlining Processes
- Demonstration Project (second Title):
  - Authorizes tribes to submit trust asset management plans to the Secretary;
  - Secretary must act within 120 days of submission
  - Secretary shall approve unless the proposed plan
    - Fails to include the application requirements;
    - Violates treaties, statues or Executive orders that are applicable to the trust assets; or
    - The cost of implementing plan exceeds available federal funding.
  - Management Plans can waive federal regulations – not limited to regulations in Title 25, and can cut across agencies
  - 10-year demo project can be extended by the Secretary
  - No limit on number of participating tribes.
  - No resources are excluded from potentially being included in a Plan
  - Title II also authorizes HEARTH Act treatment for forest management activities
  - Nothing in the Act conflicts with Self-Governance or Self-Determination authorities.
  - If the standard for federal management is lesser than what DOI would have provided in the absence of a demo project, the federal government is not liable for damages resulting from the breach.
  - ITARA does not enlarge or diminish the federal trust responsibility
- Improving Efficiency and Streamlining Processes (third Title):
  - Authorizes establishment of an Under Secretary for Indian Affairs, reporting directly to the Secretary. The Administration was reviewing prior to election, and continues to review.
  - Appraisals and valuations – requires that appraisals and valuations be administered by a single bureau/agency within the Department. Also eliminates duplicative reviews/approvals when a Tribe or beneficiary submits an appraisal that satisfies minimum standards. Proposed Rule was published on minimum appraisal standards and comments closed November 21, 2016.
  - Requires the Secretary to identify cost savings and report to TBIC; such cost savings cannot be used to cut DOI's budget, but must stay within Indian programs.

Lee Frazier, Office of the Special Trustee, DOI (See Powerpoint)

- Update on Implementation of ITARA
- Overview of deadlines for implementation; identification of mandatory and non-mandatory provisions. Last Administration made a choice to implement some portions that were possible to move forward prior to the new administration.
- Most consultations conducted to date involve Title III of the Act.
- 10 Tribal Consultations on Title III, and one Listening Session conducted. Decision made early not to make pre-determined decisions until consultation had been conducted.
- Section 303, Under Secretary: was not adequate time during the last Administration to fully work on this option.
- Section 304, OST functions: Consultation conducted and determination was to leave OST intact; this section has been completed.
- Section 305 a, b and c, Appraisals:
  - Single entity -- In 2001, all bureaus had their own appraisal functions. BLM had a situation that was reviewed by the OIG, which determined that there was not sufficient separation of duties from those acquiring the land to provide objectivity. The Secretary at that time instructed that all appraisals be performed by Office of Valuation Services (OVS). Indian appraisals were conducted by BIA, and then shifted to OST due to this overriding issue in the DOI. We need to be cautious not to re-create the problem of conflict of interest. Reorganization of the DOI may affect this timeline/decision.
  - Minimum Qualifications are expected to be published mid year, 2017.

Danny Jordan, Hoopa Valley Tribe (Moderator) (See Powerpoint)

- Provided wrap up comments for the panel.
- Two sovereigns are involved in the demonstration projects, via government-to-government negotiations. This is complicated by the long history of litigation over breaches of the federal government in managing the Trust.
- The demonstration projects have potential – and could deal with many problems. However, the federal government has failed to conduct Tribal Consultation on the demonstration project.
- Opportunities now with more resources and federal authorities to interact with Tribes more progressively (Self-Governance).
- Discussion of what expectations Tribes have with regard to the Federal government’s responsibilities and how they carry them out, especially in light of reorganizational plans of this new administration.
- Tribal spending and opportunities to consolidate resources and access new resources for trust management is enhanced by self-governance. That is why self-governance works. The BIA is limited to one appropriation.
- The extent of Trust responsibility is not defined by appropriation levels by the Congress, but what is required and what Tribes expect the level of trust responsibility to be.
- These plans do not define inherent authority of Tribes, but rather how the federal agencies will contribute to Tribal priorities for trust management, law enforcement/jurisdiction and other matters.

Questions from the Audience:

Follow Materials, Documents, Websites for Reference:

<https://www.doi.gov/ost/itara> -- contains all the input from Tribal Consultation, letters, etc. Tribal consultation only includes matters involving Administrative actions (not legislative actions).

Executive Order 13781 –  
Comprehensive Plan for Reorganizing the Executive Branch (March 13, 2017)  
OMB Memo Issued April 12, 2017