



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee staff: Ken Degenfelder (Ken.Degenfelder@mail.house.gov), Jocelyn Broman (Jocelyn.Broman@mail.house.gov), and Kirstin Liddell (Kirstin.Liddell@mail.house.gov) x6-9725
Date: February 24, 2025
Subject: Oversight Hearing titled “*Federal Indian Trust Asset Management: Progress Made But Improvement Needed*”

The Subcommittee on Indian and Insular Affairs will hold an oversight hearing titled “*Federal Indian Trust Asset Management: Progress Made But Improvement Needed*” on **Tuesday, February 25, 2025, at 2:00 p.m. in 1324 Longworth House Office Building.**

Member offices are requested to notify Haig Kadian (Haig.Kadian@mail.house.gov) by 4:30 p.m. (EST) on Monday, February 24, 2025, if their member intends to participate in the hearing.

I. KEY MESSAGES

- The federal government has a trust responsibility towards American Indians and Alaska Natives, including the stewardship of tribal lands and assets.
- In 2016, Congress enacted the Indian Trust Asset Reform Act (ITARA) to reaffirm the trust responsibility of the federal government while promoting tribal management of their own trust assets through the Indian Trust Management Demonstration Program (ITARA Demonstration Program).
- Since the enactment of ITARA, only two tribes have successfully completed the necessary steps to establish an Indian Trust Asset Management Plan or Project (ITAMP), and those ITAMPs only covered forest trust assets, in contravention of the intent of ITARA.
- The ITARA Demonstration Program authorization expires in 2026. As Congress considers the merits of reauthorizing the program, this hearing will examine the scope of the trust assets allowed to be included in an ITAMP and the bureaucratic red tape that has prohibited tribes from fully participating in this program.

II. WITNESSES

- **Mr. Glen Gobin**, Tribal Council Member, Tulalip Tribes, Tulalip, WA
- **Ms. Amber Schulz-Oliver**, Executive Director, Affiliated Tribes of Northwest Indians, Portland, OR
- **Mr. Cody Desautel**, President, Intertribal Timber Council, Portland, OR
- **The Hon. Guy Capoeman**, President, Quinault Indian Nation, Taholah, WA [*Minority witness*]

III. BACKGROUND

This hearing will examine the impact of the Indian Trust Asset Reform Act (ITARA) and the Indian Trust Asset Management Demonstration Program (ITARA Demonstration Program), which is set to expire in 2026. Only a few tribes have submitted plans for the ITARA Demonstration Program since its creation 10 years ago, despite the intended purpose of granting tribes more direct authority to manage their trust assets.¹

Federal Trust Responsibility

Since the founding of the United States, the federal government has taken on a federal trust responsibility towards American Indians and Alaska Natives. The term “federal trust responsibility” is the “legal obligation under which the United States, through treaties, acts of Congress, and court decisions, ‘has charged itself with moral obligations of the highest responsibility and trust’ towards Tribes.”² This trust responsibility includes the obligation of the United States to steward lands and land assets for tribes and requires the federal government to, at some level, manage tribal trust lands.³

Federal policies pertaining to tribal lands have shifted dramatically throughout U.S. history. In the 1800s, as settlement moved westward, the United States negotiated treaties with tribes, subsequently creating Indian reservations. In the late 1800s, the United States pursued an assimilationist policy requiring allotment of reservation lands to individual tribal members, thereby removing these lands from traditional trust status and placing them into the hands of individuals.⁴ The Indian Reorganization Act (IRA) was enacted in 1934, which simultaneously ended the practice of allotment while granting the Secretary of the Interior (Secretary) the ability to take land into trust for the benefit of a Tribal nation.⁵

In the 1970s, the federal government transitioned to a policy of self-determination for tribes. In his July 8, 1970 message to Congress, President Nixon laid out the beginning of the self-determination policy, stating, “we must make it clear that Indians can become independent of

¹ Indian Trust Asset Reform Act, P.L. 114-178 (2016).

² Congressional Research Service, “Federal-Tribal Consultation: Background and Issues for Congress” Jun. 12, 2024. <https://crsreports.congress.gov/product/pdf/R/R48093>.

³ Congressional Research Service, “Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress” Jul. 21, 2021. <https://crsreports.congress.gov/product/pdf/R/R46647>.

⁴ Id.

⁵ Id.

Federal control without being cut off from Federal concern and Federal support.”⁶ In response, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA), which formed the statutory basis for tribes to contract and/or compact selected programs, functions, services, and activities (PFSAs).⁷ This law did not, however, remove the federal trust responsibility of the federal government, but did provide a statutory framework by which tribes could assume responsibility for operating programs traditionally provided for Indians by the federal government because of their status as Indians. Despite successes seen through ISDEAA, tribal assets remain largely in the managing hands of the federal government.

Trust Assets and Federal Management of Trust Assets

In 1994, the then-Associate Director of Financial Integrity Issues from the then-titled General Accounting Office (now the Government Accountability Office, or GAO), testified on the Department of the Interior’s (DOI) mismanagement of tribal trust assets. The testimony highlighted that trust asset ownership records were not up to date, there was inadequate management of natural resource assets, and weakness in the systems, policies, and procedures related to trust fund management.⁸ GAO also testified that DOI had failed to “consistently and prudently invest trust funds and pay interest to account holders.”⁹ The lack of accountability at DOI for tribal trust assets resulted in long-standing issues and legal liability related to tribal trust assets.

DOI attempted to address these issues through various approaches.¹⁰ However, these initiatives were undeveloped or duplicative and failed to address the root causes of these problems.¹¹ Recognizing that departmental initiatives were inadequate, Congress passed the American Indian Trust Fund Management Reform Act of 1994, which required the Secretary to discharge federal trust responsibilities properly, allow tribes to submit a plan to directly manage tribal funds held in trust by the United States, and established the Office of the Special Trustee for American Indians (OST).¹²

⁶ President Richard Nixon, Special Message on Indian Affairs. 1970. <https://www.epa.gov/sites/default/files/2013-08/documents/president-nixon70.pdf>.

⁷ P.L. 93-638. (1975). The “638” part is also used as another name for self-determination contracting (638 contracting) and self-governance compacting (638 compacting). For more information on self-determination contracting and self-governance compacting, see Indian and Insular Affairs Subcommittee oversight hearing “Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs’ 638 Contracting,” Mar. 6, 2024. Available at: <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415607>.

⁸ Statement of George H. Stalcup, Associate Director, Financial Integrity Issues, Accounting and Information Management Division of the U.S. Government Accounting Office, before the Sub. Cmte. on Environment, Energy, and Natural Resources, September 1994. <https://www.gao.gov/assets/aimd-94-110r.pdf>

⁹ Id.

¹⁰ GAO Report. *Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds*. Sept. 1994, p 16. <https://www.gao.gov/products/aimd-94-185>.

¹¹ House Report 103-778 at 14-15. <https://www.justice.gov/sites/default/files/jmd/legacy/2014/02/13/houserept-103-778-1994.pdf>.

¹² P.L. 103-412 (1994).

The OST was charged with overseeing and coordinating the reform efforts related to the federal trust responsibility toward American Indians.¹³ Having the OST report directly to the Secretary elevated the importance of trust asset management within the department.¹⁴ OST assumed full responsibility for tribal trust resources in 1996.¹⁵ Shortly after, Eloise Cobell, a member of the Blackfeet Nation, filed a class action lawsuit against the United States on behalf of 300,000 individual Indians over DOI's management of individual Indian money accounts, which are held for the benefit of individual tribal members with trust assets.¹⁶ This lawsuit, known as *Cobell v. Salazar*, was ultimately settled by the Obama Administration and brought about further trust asset reform.¹⁷ Despite the settlement, trust asset management concerns remained, leading Congress to evaluate if the federal government was adequately suited to manage tribal trust assets.

Indian Trust Asset Reform Act (ITARA) and Creation of the Bureau of Trust Funds Administration

Enacted in 2016, ITARA sought to reaffirm the federal trust responsibility to Indian tribes and encourage tribal self-determination regarding tribal trust assets.¹⁸ ITARA would achieve this in two ways: 1) allow tribes the opportunity to manage their own trust assets through a new demonstration program; and 2) reorganize where Indian trust assets are managed within the DOI.¹⁹

The ITARA Demonstration Program authorizes the Secretary to carry out ITAMPs with tribes that meet specific requirements. To participate in the demonstration program, tribes must submit an application, and after the Secretary approves the application, the tribe must submit an ITAMP that meets the statutory and regulatory requirements, including not violating federal statutes.²⁰ When tribes have more opportunity to manage tribal assets and pursue economic diversification, they generally have increased tribal revenue and created jobs for their communities.²¹

ITARA also reorganized the management of tribal trust assets, requiring the transition of OST functions to other bureaus or offices within the DOI.²² On October 1, 2020, the Bureau of Trust

¹³ GAO Report. *Tribal Programs: Actions Needed to Improve Interior's Management of Trust Services*. Apr. 27, 2023, GAO-23-105356 at 2, <https://www.gao.gov/assets/gao-23-105356.pdf>.

¹⁴ Id. at Fig. 2, p 11.

¹⁵ U.S. Department of the Interior. Secretarial Order No. 3197. Feb. 1996. <https://www.doi.gov/document-library/secretary-order/3197-establishment-office-special-trustee-american-indians-and>.

¹⁶ Congressional Research Service, "Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress," July 21, 2021. <https://crsreports.congress.gov/product/pdf/R/R46647>.

¹⁷ P.L. 111-291, the Claims Resolution Act of 2010; and DOI, "Land Buy-Back Program for Tribal Nations," accessed Feb. 18, 2025, <https://www.doi.gov/buybackprogram>.

¹⁸ P.L. 114-178 (2016); and House Report 114-432 at 10. <https://www.congress.gov/congressional-report/114th-congress/house-report/432/1>.

¹⁹ P.L. 114-178, see Title II and Title III.

²⁰ U.S. Department of the Interior. Indian Affairs. *Indian Trust Asset Reform Act (ITARA)*. <https://www.bia.gov/service/itara>.

²¹ Indian and Insular Affairs Subcommittee oversight hearing "Economic Diversification to Create Prosperous Tribal Economies," Feb. 15, 2024. Available at: <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415536>.

²² P.L. 114-178 – Section 304.

Funds Administration (BTFA) was established by secretarial order to take over the OST functions.²³ The creation of the BTFA aimed to consolidate the core functions carried out previously by the OST into an organized, indefinite “Trust Operations structure.”²⁴ The BTFA’s primary responsibility is to oversee and manage the financial trust assets of American Indians managed by the DOI.²⁵

ITARA required the Secretary to submit a report to Congress by June 2017 outlining a timeline and transition plan to terminate the OST.²⁶ However, to date, Interior has not provided Congress with this report.²⁷ The OST still technically exists, although as of this hearing, all full time positions have been vacant.²⁸

Indian Trust Asset Management Demonstration Program: Challenges and Room for Improvement

The original intent of ITARA was to allow tribes to enter into ITAMPs on a wide range of trust assets while relieving the federal government of any liability.²⁹ However, to date, DOI has limited its engagement with tribes to considering only the waiver of regulations under its purview, specifically those related to surface land and timber.³⁰ This limitation on what federal regulations can be waived through ITAMPs has hindered tribes’ ability to fully manage their trust assets and is counter to the intent of ITARA because trust assets are not defined as only surface land and timber within the statute. While the statute does not prescribe which assets may be included in an ITAMP, tribal assets are as varied as the tribes themselves and should not be arbitrarily limited. The Committee does intend to seek legislative solutions to ensure that tribes can more fully exercise greater determination to ensure the administration does not limit what trust assets may be included as part of an ITAMP.

In the nearly a decade since ITARA’s passage, only two tribes have successfully obtained ITAMP approvals.³¹ Other applications have stalled within DOI’s bureaucratic process, and

²³ U.S. Department of the Interior. Secretarial Order No. 3384. Aug. 2020. <https://www.doi.gov/sites/doi.gov/files/so-3384-signed-508-compliance.pdf>.

²⁴ Id.

²⁵ U.S. Department of the Interior. Indian Affairs. *Bureau of Trust Funds Administration*. <https://www.bia.gov/btfa>.

²⁶ P.L. 114-178, Sec. 304.

²⁷ There are conflicting viewpoints on whether the OST’s termination requirements have been triggered or not. For more information on this matter, please see p. 21 of GAO Report. *Tribal Programs: Actions Needed to Improve Interior’s Management of Trust Services*. Apr. 2023. <https://www.gao.gov/products/gao-23-105356>.

²⁸ See fn. 40 on p. 21 of GAO Report. *Tribal Programs: Actions Needed to Improve Interior’s Management of Trust Services*. Apr. 2023. <https://www.gao.gov/products/gao-23-105356>.

²⁹ Brian Gunn, “Overview of the Indian Trust Asset Reform Act”, 2017 Annual Tribal Self-Governance Consultation Conference (April 25, 2017), <https://www.tribalseg.gov/wp-content/uploads/2017/05/Gunn-presentation-for-2017-Self-Governance-Conference.pdf>, slide 7.

³⁰ U.S. Department of Interior’s “Response to Tribal Comments on Establishment of the Indian Trust Asset Reform Act Demonstration Project,” 2018. On file with IIA Staff.

³¹ U.S. Department of Interior’s Bureau of Indian Affairs Press Release - *Assistant Secretary Sweeney Signs Coquille’s Indian Trust Asset Management Plan and Tribal Forestry Regulations*, (October 20, 2020), <https://www.bia.gov/as-ia/opa/online-press-release/assistant-secretary-sweeney-signs-coquilles-indian-trust-asset> and U.S. Department of Interior’s Bureau of Indian Affairs Press Release - *Assistant Secretary Sweeney Signs Cow Creek Band of Umpqua Indians’ Indian Trust Asset Management Plan and Forestry Regulations*, (January 4, 2021),

tribes have been dissuaded from applying.³² One tribe described the ITAMP draft template as “lengthy, confusing, and [included] details that are not required by the ITARA law.”³³ Stakeholders have indicated that regional career staff at the Bureau of Indian Affairs (BIA) have pushed back on ITAMPs without any real explanation as to why tribes couldn’t manage their own trust assets.³⁴ The slow pace of ITAMP approvals raises concerns about the lack of administrative action and commitment to these tribal demonstration projects, as well as tribal self-determination.

Another concern surrounding the implementation of ITAMP is the lack of information provided to tribal entities about the program and its existence. Stakeholders have indicated that many tribes are unaware of the program's existence and the opportunities it could offer a tribe.³⁵ Congress could consider adding a notice requirement to an ITARA Demonstration Program reauthorization, requiring the Secretary to notify tribes with trust assets of their ability to participate in the demonstration program.

Despite these challenges, ITAMPs have demonstrated success where implemented. For example, the Cow Creek Band of Umpqua Tribe of Indians entered into an ITAMP that “significantly enhanced [their] forest management and economic opportunities” by improving wildfire mitigation and overall forest health and giving the tribe more opportunities to sell forest products in new and emerging markets.³⁶ The Coquille Indian Tribe had an approved ITAMP that allowed the tribe to remove bureaucratic red tape and manage its own land without requiring the federal government’s permission.³⁷ These examples showcase the positive impacts ITAMPs provide tribes if implemented promptly and correctly.

With the ITAMP provisions of ITARA set to sunset in 2026,³⁸ Congress should consider whether to reauthorize the demonstration program and what improvements can be made to it. Given ITARA’s goal of expanding tribal management of trust assets and the fact that only two projects have been approved, it is crucial to ensure that more tribes have access to this opportunity. A broader and more accessible ITAMP, as it was intended, would allow tribes to fully exercise their rights over trust assets and realize the potential benefits demonstrated by existing projects.

<https://www.bia.gov/news/assistant-secretary-sweeney-signs-cow-creek-band-umpqua-indians-indian-trust-asset-management>.

³² Confederated Tribes of the Colville Reservation comments on the Department of the Interior’s implementation of Title II of the Indian Trust Asset Reform Act. March 2018. On file with IIA Staff.

³³ House Natural Resources Committee correspondence with CRS on January 27, 2025.

³⁴ Briefing with Coquille tribe and Affiliated Northwest Indians with IIA Staff and Stakeholders. February 18, 2025.

³⁵ Id.

³⁶ Briefing Paper provided to IIA Staff from Cow Creek Tribe. *Expanding Tribal Forest Management: Lessons from the Indian Trust Asset Reform Act Demonstration Project*. Received on February 13, 2025.

³⁷ Briefing with Coquille tribe and Affiliated Northwest Indians with IIA Staff. February, 18.2025.

³⁸ P.L. 114-178, Section 203(d).