



Affiliated Tribes of Northwest Indians

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Oversight Hearing on “Federal Indian Trust Asset Management: Progress Made But Improvement Needed”

Committee on Natural Resources
Subcommittee on Indian, Insular, and Alaska Native Affairs

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The Affiliated Tribes of Northwest Indians (“ATNI”) is pleased to provide this testimony on federal Indian trust asset management, specifically the Indian Trust Asset Reform Act (“ITARA”). As explained below, in 2011, ATNI began developing the underlying bill text that Congress would five years later enact into law as ITARA. I am pleased to provide ATNI’s perspective on ITARA, its implementation by the Department of the Interior, and provide recommendations for the Committee to consider going forward.

BACKGROUND ON ATNI AND THE DEVELOPMENT OF ITARA

Founded in 1953, ATNI represents 57 tribal governments from Washington, Oregon, Idaho, southeast Alaska, northern California, and Montana. For more than two decades, ATNI and its member tribes in the Pacific Northwest have been active proponents of forward-looking trust reform. ATNI’s support and interest in these issues has been and is grounded in our commitment to maintaining the integrity of the United States’ trust responsibility, the foundation of which is based upon the historical cession of millions of acres of ancestral lands by tribes to the United States. It is also based on our recognition that in nearly every instance, Indian tribes have demonstrated that they are better managers of their natural resources and affairs than the federal government.

Much of the text of ITARA had its origins in S.1439 and its House companion bill, H.R. 4322, which were introduced in the 109th Congress. Those bills were introduced and co-sponsored by the respective committee chairmen and ranking members of the House Natural Resources Committee and the Senate Committee on Indian Affairs. Following introduction, staff from those committees travelled across the United States to consult with Indian tribes on the legislation. The committees then generated a revised version of S.1439 to reflect the input they received. Using the committees’ revised draft of S.1439 as a template, beginning in 2011, ATNI focused on updating the two titles of that bill that

remained relevant following the settlement of the *Cobell* litigation. Those two titles were the “Indian Trust Asset Demonstration Project” and “Restructuring the Office of the Special Trustee.”

ATNI’s Trust Reform Committee, which includes tribal leaders and technical staff, drafted the new bill text over a period of months. Once ATNI adopted the text through ATNI Resolution #12-62, we sought sponsors for introduction. Rep. Mike Simpson (R-ID) and former Rep. Denny Heck (D-WA) introduced the House bill, H.R. 812. Senators Mike Crapo (R-ID) and Patty Murray (D-WA) sponsored the Senate bill. President Obama signed H.R. 812 into law on June 22, 2016.

OVERVIEW OF ITARA AND TRUST ASSET DEMONSTRATION PROJECT

ITARA contains three titles. Title I includes findings and a reaffirmation that “the responsibility of the United States to Indian tribes includes a duty to promote tribal self-determination regarding governmental authority and economic development.”

Title II establishes a 10-year demonstration project that authorizes Indian tribes, on a voluntary basis, to direct the management of their non-monetary trust resources through negotiated agreements—called Indian Trust Asset Management Plans (“ITAMPs”)—with the Secretary of the Interior (“Secretary”).

To participate, tribes submit a letter of interest to the Secretary and, upon approval by the Secretary, then submit a proposed ITAMP. An ITAMP must include, among other things, a description of the trust assets that would be subject to the plan, the tribe’s management objectives and priorities for assets subject to the plan, and a proposed allocation of funding for the proposed management activities.

Unlike the Indian Self-Determination and Education Assistance Act, which authorizes tribes to contract or compact federal functions under *federal standards*, the demonstration project in Title II of ITARA is unique in that it allows participating tribes the freedom to determine how their resources will be managed under *tribal standards*.

For example, an Indian tribe with timber resources that seeks to participate in the demonstration project could submit a plan that would direct that some of its forest land be managed in a manner to maximize value on timber sales. The plan might also direct that other forested acreage not be harvested at all to encourage tourism or promote certain wildlife habitat.

Title II of ITARA also authorizes the Secretary to approve ITAMPs that include provisions authorizing Indian tribes to carry out surface leasing or forest management activities without secretarial approval under certain conditions. This concept is modeled on and is substantively identical to the HEARTH Act of 2012.

Empowering tribes to create value with their own resources epitomizes the federal policy of self-determination. In an era where federal appropriations for management of tribal natural resources have been a fraction of the actual need, ATNI intended the ITARA demonstration project in Title II to be a practical tool that tribes could utilize to maximize its resources. ATNI also envisioned that the demonstration project would eventually become permanent.

Finally, Title III of ITARA authorizes the creation of an Undersecretary for Indian Affairs and directs the Secretary to prepare a report to the authorizing committees on a transition of functions of the Office of the Special Trustee. Although no administration has established the Undersecretary position since ITARA was enacted, ATNI and other tribal organizations continue to support the establishment of that position.

OBSTACLES TO REALIZING ITARA'S POTENTIAL

The initial enthusiasm of ITARA's enactment into law was disappointedly tempered when the Department began tribal consultation on its implementation. The Department first began consultations on Title III of the law and presented information in such a manner to foreclose any meaningful discussion of restructuring the Office of the Special Trustee. When the Department consulted on Title II, it presented a template document that contained broad waivers of liability and other requirements not required or even contemplated by the text of the ITARA law.¹

The most significant concern, however, is the Department's continued assertion that only forest resources and surface leases can be included in ITAMPs, despite ITARA applying broadly to "trust resources." When drafting the underlying legislation, ATNI intentionally did not define the term "trust resources" out of concern that the administration might jettison traditional energy trust resources from its scope. There is no basis, legal or otherwise, for the Department's continued view that the law is limited to forestry and surface leases. This interpretation has prevented Indian country from utilizing ITARA to its full potential.

To date, ATNI is aware of only two ITAMPs that the Secretary has approved, both of which involved forest resources. The Cow Creek Band of Umpqua Tribe of Indians had the first approved ITAMP and the Coquille Indian Tribe the second. Both tribes are in the state of Oregon.

¹ See <https://www.bia.gov/sites/default/files/dup/assets/as-ia/raca/pdf/ITARA%20Draft%20Guidance.pdf>

RECOMMENDATIONS

With the benefit of hindsight and the experiences of other Indian tribes that have attempted to utilize or expressed interest in utilizing ITARA, ATNI recommends that the Committee consider clarifying amendments to eliminate the agency-imposed obstacles to tribal participation. At a minimum, ATNI recommends the following:

- (1) Eliminate the Secretary's discretion to reject tribes from submitting ITAMPs: Section 203(a) of ITARA sets forth a process for tribes to submit a written application and, following approval by the Secretary to participate in the demonstration project, submit an ITAMP. This language was a holdover from the text of S.1439 in the 109th Congress and, unfortunately, appears to have been used by the Department as a pre-screening mechanism to dissuade or preclude tribes from submitting ITAMPs. Section 203(a) should be revised to eliminate the initial approval requirement and simply allow tribes to submit ITAMPs for the Secretary's consideration.
- (2) Clarify the Scope of Resources Includable in ITAMPs: The Department's narrow and baseless interpretation that only forest resources and surface leases are includable in ITAMPs must be addressed. ATNI will work with the Committee on language to ensure that Indian tribes can include the full breadth of tribal trust resources in ITAMPs as we originally intended.
- (3) Make Title II Permanent: ITARA provides for the demonstration project in Title II to have a term of 10 years, which can be extended at the discretion of the Secretary. In 2024, ATNI adopted a Resolution #24-25, which urged the Secretary to make the demonstration project permanent, and the National Congress of American Indians adopted this resolution at its 2024 annual conference.² Despite this resolution and calls from other organizations for the Secretary to extend the program, no action has been taken to date. Any amendments to ITARA should clarify that the Title II authority is permanent.

ATNI is grateful for the Subcommittee holding today's hearing and looks forward to working with the Committee on issues related to ITARA.

² See <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=5608&index=5&total=59&view=viewSearchItem>