



2017 WINTER CONVENTION GRAND MOUND, WA

RESOLUTION #17 - 17

“REAFFIRMING SUPPORT FOR THE IMPLEMENTATION OF INDIAN TRUST ASSET REFORM ACT”

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, beginning in 2011, the ATNI Trust Reform Committee drafted a bill titled the *Indian Trust Asset Reform Act* (ITARA) that would establish a tribal trust asset demonstration project, establish an Under Secretary for Indian Affairs, and restructure the Office of the Special Trustee (OST); and

WHEREAS, the ITARA had bipartisan support in Congress and widespread support in Indian country and on June 22, 2016, President Obama signed the legislation into law as Public Law 114-178; and

WHEREAS, on October 7, 2016, in response to the Department of the Interior's solicitation of Indian country input on the ITARA's implementation, ATNI and the National Congress of American Indians (NCAI) submitted joint comments (Joint Comments) to the Department that (1) recommended the establishment of the Under Secretary, together with detailed duties and authorities for that position; (2) recommended certain administrative changes to improve appraisals and valuations; and (3) made specific recommendations for the transition plan required by Section 304 of the law, which included identifying all OST functions (and accompanying funding) and recommending where such functions should be transferred or, for those functions that should not continue, where the funding should be reallocated; and

WHEREAS, representatives from President Trump's transition team have indicated an interest and intent to tribal leaders to establish the Under Secretary position, and to otherwise implement the ITARA; and

WHEREAS, ATNI and the Northwest tribes were the primary advocates for congressional passage and enactment of the ITARA into law and have a vested interest in ensuring that the Administration implements the law as intended; and

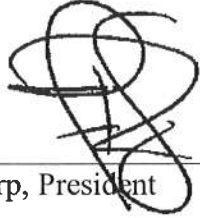
WHEREAS, funding for any OST function that may no longer be carried out as result of a transfer of functions or personnel must comply with Section 306 of the ITARA, which requires the Secretary to provide the Tribal Interior Budget Council with information to enable the Council to make recommendations on how funding for such activities should be reallocated; now

THEREFORE BE IT RESOLVED, that ATNI reaffirms the positions set forth in the Joint Comments, and to the extent the Administration intends to merge the duties of the Assistant Secretary Indian— Affairs into the Under Secretary position, urges the Administration to consult with and obtain the consent of Indian country on the composition of the Under Secretary's office to ensure sufficient capacity to handle all of the issues that position will oversee; and

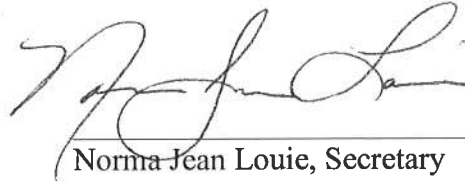
BE IT FURTHER RESOLVED, that the Administration should issue the report and transition plan for OST required by Section 304 of the ITARA and ensure that any funding for any OST function that will no longer continue will be preserved and reallocated to programs that serve Indian country, particularly natural resource programs.

CERTIFICATION

The foregoing resolution was adopted at the 2017 Winter Convention of the Affiliated Tribes of Northwest Indians, held at Great Wolf Lodge in Grand Mound, Washington, January 23-26, 2017, with a quorum present.



Fawn Sharp, President



Norma Jean Louie, Secretary

VIA EMAIL

October 7, 2016

Ms. Elizabeth Appel
Office of the Assistant Secretary - Indian Affairs
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Email: OST_ITARA@ost.doi.gov

RE: Joint Comments of the Affiliated Tribes of Northwest Indians and the National Congress of American Indians on the Implementation of the Indian Trust Asset Reform Act

Dear Ms. Appel:

The Affiliated Tribes of Northwest Indians (“ATNI”) and the National Congress of American Indians (“NCAI”) respectfully submit these comments on the Secretary of the Interior’s (“Secretary’s”) implementation of the Indian Trust Asset Reform Act, Pub. L. 114-178 (the “ITARA”). We intend this document to provide input not only on the provisions of the ITARA for which the Secretary has solicited comment, but also to provide a roadmap for improving delivery of trust services in the next Administration.

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California, and Montana. The ITARA originated from, and was drafted by, ATNI’s Trust Reform Committee. Founded in 1944, NCAI is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities. Both ATNI and NCAI advocated for the ITARA’s passage.

Most of the text of the ITARA had its origins in the Indian Trust Reform Act of 2005 (hereinafter “S. 1439”), which was introduced by then-Senate Committee on Indian Affairs Chairman John McCain and Vice Chairman Byron Dorgan in the 109th Congress. Following the introduction of S. 1439, the Committee staff travelled across the United States to consult with Indian tribes on the legislation. The Committee then generated a revised version of S. 1439 to reflect tribal input. Using the Committee’s revised draft of S. 1439 as a template, beginning in 2011, ATNI focused on updating the two titles of that bill that remained relevant in light of the *Cobell* settlement and that had universal tribal support. One of those titles related to the Office of the Special Trustee for American Indians (“OST”) and became Title III of the ITARA, which is the subject of this consultation.¹

At the outset, we want to focus on the positive vision that tribal leaders have long put forward for a trust system that places resources at the local tribal level and promotes tribal

¹ The legislative history of H.R. 812, its Senate companion bill S. 383, and the prior versions introduced in the 113th Congress (H.R. 409 and S. 165) are incorporated into these comments by reference.

decision-making on development and conservation of tribal land. The purpose of the Under Secretary of Indian Affairs authorized by Section 303 of the ITARA (“Under Secretary”) is to integrate high-level decision making on policy and avoid a “stove piped” organization of the Bureau of Indian Affairs (“BIA”) and OST that sharply separates the ability to make *policy* decisions. We support, however, keeping the core trust accounting functions separate and accountable. Under a tribally proposed structure, these fiduciary accounting and investment functions should remain intact but report to the Under Secretary to ensure coordination. The Buy Back Program would continue to function independently and would also report to the Under Secretary. Should the transition plan required by Section 304 be implemented, a new office of Trust Accountability could report to the Under Secretary to provide internal control and quality assurance. Within the BIA, a trust services section could provide support for field operations. If implemented in the next Administration, this structure would create a single line of authority for delivering trust programs and services to tribal communities.

I. CONCERNS ABOUT THE ITARA CONSULTATION PROCESS

Prior to discussing substantive recommendations for the ITARA implementation, we feel compelled to identify some concerns and observations about how the Department conducted the consultations. Materials that were presented and disseminated at the consultations and on OST’s ITARA website appear to be intended to influence the substance of the consultations. For example, OST has made available a document titled “OST Accomplishments”², a less-than-subtle attempt to advocate for the continuing existence of OST. Similarly, a flow chart of OST functions identifies several activities under the column “Management, Collection, and Investment of Indian Trust Funds,” some of which have only tangential relation to those activities.³

Section 304 of the ITARA requires the Secretary to submit a transition plan to Congress that provides for the termination of OST within two years. It would appear to be a conflict of interest for OST personnel to be involved in the consultations, the preparation of consultation materials, or the preparation of the report required by Section 304 in any capacity. At least one top level OST official personally lobbied against H.R. 812 when it was pending in the U.S. Senate and subsequently attended listening and consultation sessions. From an outside perspective, OST would appear to have a motivation to emphasize information in furtherance of its own self-preservation and to suppress information that does not comport with that view. For example, at the Seattle consultation, one prominent, nationally known tribal leader stated that none of the PowerPoint presentations mentioned that Section 304 of the ITARA requires the Secretary to submit to Congress a transition plan for OST to terminate within two years—undoubtedly a key piece of information for the attendees of the consultation.

We request that the Department of the Interior (“Department”) have a neutral third party examine these issues thoroughly before any drafts of the report are developed to ensure that the consultations were conducted in a manner free of conflicts of interests and undue influence. To

² DOI, *OST Accomplishments*, https://www.doi.gov/sites/doi.gov/files/uploads/ost_accomplishments_08-16-2016_final.pdf (last visited Oct. 5, 2016).

³ DOI, *OST Trust Functions* (July 25, 2016), https://www.doi.gov/sites/doi.gov/files/uploads/ost_trust_functions_diagram_07252016_v1.4_final.pdf.

the extent that the Department agrees that the consultations were or may have been conducted improperly, additional consultations should be scheduled and organized by an entity other than OST. No Section 304 report should be drafted, approved, or submitted to Congress until the Department examines these issues.

We strongly urge the Department to allow the next Administration to prepare and submit the report required by Section 304 of the ITARA. The ITARA consultations were truncated into a period of less than four weeks in August and September. These issues are far too important to rush such a report out the door before the end of calendar year 2016.

II. UNDER SECRETARY FOR INDIAN AFFAIRS

Section 303 of the ITARA authorizes the Secretary to establish an Under Secretary within the Department. If established, the Under Secretary would report directly to the Secretary. It would be a higher level position than the Assistant Secretary—Indian Affairs (“AS-IA”) and the heads of other non-Indian land management agencies, such as the Bureau of Reclamation, the Bureau of Land Management, and the National Park Service.

At this time, there is no single executive within the Secretary’s office that is focused on Indian affairs and that possesses authority over the non-Indian agencies and bureaus in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would “to the maximum extent practicable, *supervise and coordinate* activities and policies” of the Bureau of Indian Affairs (“BIA”) with activities and policies of non-BIA agencies and bureaus within the Department.⁴ The Under Secretary is intended to serve as a cross-agency advocate for Indian country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries. In addition to the duties enumerated in Section 303(c), that subsection also authorizes the Secretary to direct the Under Secretary to perform other duties.

The creation of this position would address a major issue that has been raised in every significant study of trust management at the Department: the lack of clear lines of authority and responsibility within the Department to ensure accountability by the non-Indian agencies within the Department. At the August 29, 2016 consultation in Seattle, one tribal leader explained the need for an Under Secretary by describing how National Park Service officials fail to recognize treaty rights and instead claim that adhering to the trust responsibility is the BIA’s job. Similar examples abound throughout Indian country.

The Under Secretary provision was included in S. 1439 and had previously been recommended by a Tribal Leader’s Trust Reform Task Force from 2002 to 2003. In response to a question at the Seattle consultation as to why the Department had advocated *against* the Under Secretary provision when H.R. 812 was pending in the U.S. Senate, Deputy Secretary Mike Connor clarified that once the Department realized the updates had been made to the legislation, it no longer had concerns with the Under Secretary provision or the legislation. We appreciate

⁴ 25 U.S.C. § 5633(c)(2) (emphasis added).

this clarification, considering that even the George W. Bush Administration supported the establishment of an Under Secretary.⁵

Recommendations for the Under Secretary

We recommend that the Secretary immediately establish the Under Secretary position to set the stage for the next Administration to consider potential nominees for the position. We also recommend that the Secretary designate an Acting Under Secretary to assist with the transition to the next Administration and to oversee any OST functions that might be transferred by next Administration or by Congress.

In establishing the position, the Secretary should include additional duties for the Under Secretary and memorialize all of the Under Secretary's duties in the appropriate sections of the Department of the Interior's Departmental Manual ("Departmental Manual"). Because of the importance of this position to Indian country and federal Indian policy, we strongly believe that the Department should consult with Indian tribes and Indian organizations prior to the Departmental Manual sections becoming final. We recommend that the following additional duties be included in the draft Departmental Manual sections:

- The Under Secretary will be one of the Department's representatives to the White House Council on Native American Affairs;
- For issues relating to (a) Indian trust property, including natural resources and fish and wildlife, (b) Indian rights reserved by treaty, executive order, or other federal law; (c) protection of environmental resources, sacred sites, or culturally significant places, or (d) any Departmental funding relating to or affecting (a), (b), or (c); the Under Secretary may exercise Secretarial direction and supervision over the following Departmental officials, including the deputy assistant secretaries, directors, commissioners, or other top officials of the subordinate bureaus and offices, as the case may be, that report to each: (1) Assistant Secretary—Policy Management and Budget and Chief Financial Officer (CFO); (2) Assistant Secretary—Water and Science; (3) Assistant Secretary for Fish and Wildlife and Parks; (4) Assistant Secretary—Land and Minerals Management; (5) the Special Trustee for American Indians; and (6) the Assistant Secretary—Insular Affairs.
- The Under Secretary may consult with the AS-IA on any issue in carrying out any of the Under Secretary's duties, but the AS-IA would retain whatever line authority he/she currently possesses.

⁵ In testimony before the Senate Committee on Indian Affairs in 2005 on S.1439, Associate Deputy Secretary James Cason stated that "Interior is receptive to the concepts of establishing an Under Secretary position and merging Indian programs under new leadership." *Statement of James Cason Associate Deputy Secretary and Ross Swimmer Special Trustee for American Indians Department of the Interior Before the Senate Committee on Indian Affairs on S. 1439, The Indian Trust Reform Act of 2005, Titles II-VI*, at 5 (Mar. 28, 2006), <http://www.bia.gov/cs/groups/xocl/documents/text/idc008288.pdf>.

Finally, we recommend the Secretary request funds in the FY 2018 budget request for the Under Secretary and for appropriate staff and administrative support for that position. These funds should not come from budgets of the AS-IA, the BIA, or other Indian affairs programs or line items within the Department. Rather, these funds should be included and requested in the budget of the Office of the Secretary, which funds the Secretary's and Deputy Secretary's offices. Within the Office of the Secretary, the "Departmental Operations" account would likely be the most appropriate place for this funding.

III. ADMINISTRATION OF APPRAISALS

Section 305(a) of the ITARA requires that "not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with Indian tribes and tribal organizations, shall ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency, or other administrative entity within the Department."⁶

As has been explained several times to Department officials at two consultations (Seattle and the teleconference consultation) and tribal organizational meetings, this provision is intended to simply ensure that one entity receives an appraisal request and is responsible for ensuring its completion. The April 10, 2015 ATNI testimony before the Subcommittee on Indian, Insular, and Alaska Native Affairs makes this intent clear:

In the report accompanying the FY 2010 Interior, Environment and Related Agencies spending bill, the House Appropriations Committee said the following about OST's involvement in the appraisal process:

"Indian Tribes routinely experience lengthy delays in obtaining appraisals from the Department for transactions involving the conveyance of Indian trust lands. The Bureau of Indian Affairs is responsible for requesting appraisals and the Office of the Special Trustee is responsible for procuring the appraisals. Appraisals are required for Indian Tribes and individual Indians to sell, acquire or exchange interests in trust land. Delays in obtaining appraisals also delay these transactions, which negatively impacts Tribal economies." ...

... As mentioned above, both the BIA and OST have a role in the appraisal process and neither have authority over the other. As a result, the bureaucracy of having two separate entities involved in accomplishing a single task often leads to lengthy delays. Section 305(a) requires the Secretary, within 18 months of enactment and in consultation with Indian tribes, to ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency or other administrative entity within the Department. ...

It is easy to see how involving two competing bureaucracies with no authority over each other and little coordination leads to delays in effectuating routine transactions like appraisals. As this Subcommittee knows from its focus on tribal energy development, delays in securing federal approvals and permits and—in

⁶ Codified at 25 U.S.C. § 5635(a).

this case—appraisals, often result in lost economic opportunities for Indian tribes and their members.⁷

Section 305(a) simply requires that a single entity “administer” appraisals of Indian trust property. It does not require specialty components of appraisals that are situated and funded in other agencies of the Department to be relocated. When drafting Section 305(a), ATNI was well aware that BIA Forestry personnel are responsible for valuing timber and a separate entity, the Division of Minerals Evaluation, is responsible for appraising minerals. These specialty functions can remain in place provided that a single entity receives the initial appraisal request and is responsible for delivering the completed appraisal.

Recommendation for the Administration of Appraisals and Valuations

The Office of Appraisal Service (“OAS”) should be the single entity that administers appraisals of Indian trust property. The processes that OAS has established and the appraisers it has on staff and available for contacting make it an obvious choice. Although we believe, as discussed in Part IV below, that OAS should be transferred to the AS-IA in the transition plan and report to Congress, we do not believe that OAS itself should be dismantled.

OAS can satisfy Section 305(a) and receive appraisal requests by simply directing that someone at OAS or within OST be the point of contact for appraisal requests for Indian tribes and Indian beneficiaries. OAS can similarly enter into memoranda of understanding with BIA Forestry and the DME to obtain forestry and subsurface valuations as necessary.

IV. REPORT TO CONGRESS AND TRANSITION PLAN

Section 304 of the ITARA requires the Secretary to consult with Indian country and submit a report to Congress that (a) describes OST’s non-trust funds-related activities; (b) provides a description of any OST functions that will be transitioned to other agencies or bureaus within the Department; and (c) includes a transition plan for OST to terminate within two years of submission, or an alternative date if an orderly transition cannot be done within two years.

Section 304(c) states that nothing in the report causes OST to terminate or affects application of the existing provisions in the American Indian Trust Fund Management Reform Act of 1994 (“1994 Act”), which created OST. It will be up to a future Administration or Congress to decide whether the transition plan is actually implemented.

⁷ Prepared Statement of the Honorable Ernest L. Stensgar, Vice-Chairman, Coeur d’Alene Tribe Chair, Trust Reform Committee, Affiliated Tribes of Northwest Indians Legislative Hearing on H.R. 812, the Indian Trust Asset Reform Act Subcommittee on Indian, Insular, and Alaska Native Affairs at 3-5 (April 14, 2015), <http://naturalresources.house.gov/uploadedfiles/stensgartestimony.pdf>.

When Congress created OST in the 1994 Act, it intended that office to be a temporary entity that would sunset after the major fiduciary accounting reforms were implemented. As noted by the Senate Committee on Indian Affairs in its report accompanying S. 383:

The major reforms that the OST was tasked with were completed years ago. The Government Accountability Office (GAO) stated that the “OST estimates that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services will be completed by November 2007.”⁸

Despite the findings in the GAO report, neither OST nor the Department initiated any dialogue on the future of OST. The report required by Section 304 was intended to, for the first time, direct the Secretary to provide Congress with a written transition plan detailing what a transition of OST would look like.

General Recommendations for the Report

The Secretary’s report to Congress should emphasize that, by default, all functions of OST are contractible and compactable under the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”). History has shown that Indian tribes do best when they are in control of their own destinies. Nothing exemplifies this more than the success tribes have achieved under the ISDEAA. The Secretary should strongly affirm in the report that the Department fully intends to contract and compact any OST functions that tribes are willing to assume.

Specific Recommendations for the Section 304 Report and the Transition Plan

We believe that the core OST fiduciary accounting and investment functions should remain largely intact to provide continuity for Indian tribes and Indian beneficiaries. Other OST line items and FTEs, however, should be transferred to other entities within the Department, such as the BIA or the Under Secretary.

For purposes of the transition plan, we recommend the following for the various programs within OST, which correspond to the program headings used in OST’s FY 2017 detailed budget justifications:

Executive Direction (\$2,044,000/ 6 Full-Time Equivalent (FTE))

The Executive Direction line item and accompanying FTEs should be moved to the Under Secretary. These top level executive expenditures would not be needed in any transition of OST.

⁸ S. Rep. No. 114-207, at 3 (2016) (internal citations omitted).

Program Operations

Office of Field Operations (\$26,569,000 /220 FTE): With the exception of the Office of Trust Fund Investments and the Trust Beneficiary Call Center (which should be transferred to the Under Secretary), the remainder of the Office of Field Operations funding and FTEs should be transferred to the BIA's Office of Trust Services. This would include the Regional Trust Administrators and Fiduciary Trust Officers. Most of these personnel are already physically situated in BIA regional and agency offices. For this reason, the BIA would be particularly suited to utilize these personnel for its Trust Services programs, most of which have been underfunded and understaffed for decades.

For example, the three Indian Forest Management Assessment Team ("IFMAT") assessments that have been published by the Intertribal Timber Council provide detailed data on the steady decline of BIA and tribal forestry staff, which are funded through the BIA's Office of Trust Services. In the IFMAT III report, data illustrates that from 2001-2011, BIA and tribal forestry programs lost 21 percent of staffing levels. BIA range and agricultural staff are nearly nonexistent at BIA agencies and funding for cadastral surveys and other BIA realty functions declined precipitously during those years. In contrast, OST's budget swelled during that same timeframe. In FY 2006, OST's budget was \$222.7 million—more than double what it had been four years earlier.

The woeful lack of staffing in BIA forestry in particular has had severe implications on the federal budget and taxpayers. In the past few years alone, the federal government settled tribal mismanagement settlements collectively totaling nearly \$600 million with the three largest timber tribes. Much of this liability arose from lack of staff to complete management duties required under the National Indian Forest Resources Management Act and related authorities. This potential liability is ongoing because the lack of staff continues, even after these settlements. Failure to address these issues has started the clock running anew for additional federal liability in coming decades. For these reasons, the BIA's Office of Trust Services is the most logical place to transfer OST funds and FTEs as part of any transition.

Office of Appraisal Services (\$10,811/84 FTE): The OAS should remain intact and be transferred to the AS-IA. Transferring OAS to the Department's Office of Valuation Services will, in our view, result in competition for resources between appraisals sought by the larger non-Indian land management agencies and bureaus within the Department.

Office of Trust Services (\$29,347,000/124 FTE): This program provides the core of OST's trust fund fiduciary activities. This funding and associated FTEs should be moved to the Under Secretary.

Office of Historical Trust Accounting (\$19,632,000/20 FTE): With the continued resolution of the various Indian trust mismanagement settlements, the Office of Historical Trust Accounting will be winding down in the coming years and largely be a litigation support entity. For this reason, it should be moved to the Office of the Solicitor.

Program Support

Business Management (\$1,810,000/15 FTE): This line item funds “strategic planning, workforce planning, training design and coordination for staff development, and the execution of special projects as directed by Executive Management” of OST.⁹ These functions will no longer be necessary in any transition of OST. This funding and associated FTEs should be transferred to the BIA’s Office of Trust Services.

Office of Budget, Finance and Administration (\$24,201,000/26 FTE): According to the FY 2017 budget justifications, this program funds personnel, Equal Employment Opportunity, space management, telephone services, Government Purchase Card, travel, vehicle management, transportation, management, facilities, and working capital fund activities. These “overhead” types of functions are duplicative of other personnel in the Department and would not be needed following a transition and wind down of OST. The \$8,516,000 in pass-through funding from this line item for the Office of Hearings and Appeals (“OHA”) should continue to go to OHA. The remaining \$15,685,000 from this line item should be transferred to the BIA’s Office of Trust Services.

Office of Information Resources (\$7,011,000/38 FTE): Half of this funding and accompanying FTEs should be transferred to the Under Secretary to support the core fiduciary accounting and investment functions that would also be transferred to the Under Secretary. The remaining \$3,505,500 should be transferred to the BIA’s Office of Trust Services.

Office of External Affairs (\$1,568,000/8 FTE): The Office of External Affairs budget and FTEs should be transferred to the Under Secretary.

Program Management (\$15,827,000/114 FTE)

Office of Trust Records (\$10,148,000/81 FTE): The Office of Trust Records, which includes the facility in Lenexa, Kansas, should remain intact and be transferred to the Under Secretary.

Office of Trust Review and Audit (\$5,025,000/28 FTE): This line item and associated FTEs should be transferred to the Under Secretary.

Office of Risk Management (\$654,000/5 FTE): The Office of Risk Management should be transferred to the Under Secretary.

⁹ DOI, *Budget Justifications and Performance Information Fiscal Year 2017: Office of the Special Trustee for American Indians*, at OST - 46, https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OST_Budget_Justification.pdf (last visited Oct. 5, 2016)

V. IMPROVING TRUST SERVICES IN THE NEXT ADMINISTRATION

Looking ahead to the next Administration, we believe the ITARA and the report required by Section 304 can provide the starting point for improved delivery of trust services to both tribal governments and Indian beneficiaries.

The principal goal of improving delivery of trust services should be to have the resources and decision making at the local level, coupled with an internal oversight mechanism. Tribes have always had concerns with the “stove piped” organization of the BIA and OST that sharply separates the ability to make decisions on trust resource management and trust services at the local level. For example, and division between the roles of the BIA and OST in the appraisal process and the delays it has caused is why Section 305(a) was ultimately included in the ITARA.

- As previously explained, OST’s core fiduciary accounting and investment functions should remain intact but have those functions report to the Under Secretary to ensure coordination with resource management.
- The Buy Back Program should continue to function independently and would also continue to report to the Secretary or to the Under Secretary.
- Utilizing funding from transferred OST line items and working in conjunction with OST’s Offices of Trust Records, Trust Review and Audit, and Risk Management (all three of which would transfer to the Under Secretary under the recommendations in Part IV, above), a new office of Trust Accountability should be established and report to the Under Secretary to provide internal control and quality assurance in trust administration throughout the Department as well as ensuring timely resolution of problems.
- Participation in Trust Asset Management Activities by Indian Tribes. All tribes around the Nation, both direct service and self-governance, are increasing their capacity to manage their own lands. Tribes are very interested in increasing their ability to make decisions about how the reservation lands will be used for the long term benefit of their people. The trust asset management planning option in title II of the ITARA will provide all tribes with the ability to establish management objectives for Indian trust assets, define critical values of the Indian tribe, and provide identified management objectives. The Under Secretary and the BIA should make implementing title II of the ITARA a priority.
- The BIA’s Office of Trust Services should provide technical support for field operations, train services for BIA and tribal staff, and controls to ensure that programs are administered in accordance with defined standards for trust administration, and help avoid problems before they reach serious proportions.
- Substantial changes to operations would be sought in adequate staffing, training and funding levels, technical assistance would need to be readily available, and performance

standards reflecting modern practices of trust administration would be established and enforced.

We are very enthusiastic about exploring these concepts in the next Administration and look forward to continuing to vigorously monitor the Department's implementation of the ITARA.

Sincerely,



Fawn Sharp
President, ATNI



Brian Cladoosby
President, NCAI



Ernest Stensgar
Vice Chairman, Coeur d'Alene Tribe
Co-Chair, ATNI Trust Reform Committee

cc: House Committee on Natural Resources
Senate Committee on Indian Affairs
House and Senate Committees on Appropriations