H. R. 812

To provide for Indian trust asset management reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 9, 2015

Mr. SIMPSON (for himself, Mr. COLE, and Mr. HECK of Washington) introduced the following bill; which was referred to the Committee on Natural Resources.

A BILL

To provide for Indian trust asset management reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Indian Trust Asset Reform Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Sec. 101. Congressional statement of findings.
Sec. 102. Congressional reaffirmation of policy.
TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

Sec. 201. Short title.
Sec. 203. Establishment of demonstration project; selection of participating Indian tribes.
Sec. 204. Indian trust asset management plan.
Sec. 205. Effect of title.

TITLE III—RESTRUCTURING OFFICE OF THE SPECIAL TRUSTEE

Sec. 301. Purpose.
Sec. 302. Definitions.
Sec. 303. Under Secretary for Indian Affairs.
Sec. 304. Office of the Special Trustee for American Indians.
Sec. 305. Appraisals and valuations.
Sec. 306. Cost savings.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

SEC. 101. CONGRESSIONAL STATEMENT OF FINDINGS.

The Congress, after careful review of the Federal Government’s historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the relationship of Indian tribes to the United States is founded in part on the settled doctrine of the law of nations that when a stronger sovereign assumes authority over a weaker sovereign, the stronger one assumes a duty of protection for the weaker one, which does not surrender its right to self-government;

(2) the United States fiduciary responsibilities to Indians also are founded in part on specific commitments made through written treaties and agree-
ments securing peace, in exchange for which Indians have surrendered claims to vast tracts of land, which provided legal consideration for permanent, ongoing performance of Federal trust duties; and

(3) the foregoing historic Federal-tribal relations and understandings have benefitted the people of the United States as a whole for centuries and established enduring and enforceable Federal obligations to which the national honor has been committed.

SEC. 102. CONGRESSIONAL REAFFIRMATION OF POLICY.

Pursuant to its constitutionally vested authority over Indian affairs, the Congress hereby reaffirms that the United States fiduciary responsibilities to Indian tribes include and are not limited by a duty to promote tribal self-determination regarding governmental authority and economic development.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2015”.

SEC. 202. DEFINITIONS.

In this title:
(1) PROJECT.—The term “Project” means the Indian trust asset management demonstration project established under section 203(a).

(2) INDIAN TRIBE.—The term “Indian tribe” means an Indian tribe that—

(A) is federally recognized; and

(B) submits an application under section 203(c).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 203. ESTABLISHMENT OF DEMONSTRATION PROJECT; SELECTION OF PARTICIPATING INDIAN TRIBES.

(a) IN GENERAL.—The Secretary shall establish and carry out an Indian trust asset management demonstration project, in accordance with this title.

(b) SELECTION OF PARTICIPATING INDIAN TRIBES.—

(1) INDIAN TRIBES.—

(A) IN GENERAL.—Any Indian tribe shall be eligible to participate in the Project if—

(i) the Indian tribe submits to the Secretary an application under subsection (c); and
(ii) the Secretary approves the application of the Indian tribe.

(2) NOTICE.—

(A) IN GENERAL.—The Secretary shall provide a written notice to each Indian tribe approved to participate in the Project.

(B) CONTENTS.—A notice under subparagraph (A) shall include—

(i) a statement that the application of the Indian tribe has been approved by the Secretary; and

(ii) a requirement that the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with section 204.

(e) APPLICATION.—

(1) IN GENERAL.—To be eligible to participate in the Project, an Indian tribe shall submit to the Secretary a written application in accordance with paragraph (2).

(2) REQUIREMENTS.—The Secretary shall consider an application under this subsection only if the application—

(A) includes a copy of a resolution or other appropriate action by the governing body of the
Indian tribe, as determined by the Secretary, in support of or authorizing the application; (B) is received by the Secretary after the date of enactment of this Act; and (C) states that the Indian tribe is requesting to participate in the Project.

(d) Duration.—The Project shall remain in effect for a period of 10 years after the date of enactment of this Act, but may be extended at the discretion of the Secretary.

SEC. 204. INDIAN TRUST ASSET MANAGEMENT PLAN.

(a) Proposed Plan.—

(1) Submission.—After the date on which an Indian tribe receives a notice from the Secretary under section 203(b)(2), the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with paragraph (2).

(2) Contents.—A proposed Indian trust asset management plan shall include provisions that—

(A) identify the trust assets that will be subject to the plan;

(B) establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or oth-
erwise subject to the jurisdiction, of the Indian

tribe;

(C) 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;

(D) if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets—

(i) identify the functions or activities that are being performed by the Indian tribe under the contracts or compacts; and

(ii) describe the practices and procedures that the Indian tribe will follow;

(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan;

(F) include a process for the Indian tribe and the Federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and
(G) identify any Federal regulations that will be superseded by the plan;

(3) TECHNICAL ASSISTANCE AND INFORMATION.—The Secretary shall provide to an Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan on receipt of a written request from the Indian tribe.

(b) APPROVAL AND DISAPPROVAL OF PROPOSED PLANS.—

(1) APPROVAL.—

(A) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), the Secretary shall approve or disapprove the proposed plan.

(B) REQUIREMENTS FOR DISAPPROVAL.—The Secretary shall approve a proposed plan unless the Secretary determines that—

(i) the proposed plan fails to address a requirement under subsection (a)(2);

(ii) the proposed plan includes one or more provisions that are inconsistent with subsection (c); or
(iii) the cost of implementing the proposed plan exceeds the amount of funding available for the management of trust assets that would be subject to the proposed plan.

(2) ACTION ON DISAPPROVAL.—

(A) NOTICE.—If the Secretary disapproves a proposed plan under paragraph (1)(B), the Secretary shall provide to the Indian tribe a written notice of the disapproval, including any reason why the proposed plan was disapproved.

(B) ACTION BY TRIBES.—If a proposed plan is disapproved under paragraph (1)(B), the Indian tribe may resubmit an amended proposed plan not later than 90 days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) FAILURE TO APPROVE OR DISAPPROVE.—If the Secretary fails to approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be approved.

(4) JUDICIAL REVIEW.—An Indian tribe may seek judicial review of the determination of the Secretary in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code
(commonly known as the “Administrative Procedure Act”) if—

(A) the Secretary disapproves the proposed plan of the Indian tribe under paragraph (1) or (3); and

(B) the Indian tribe has exhausted any other administrative remedy available to the Indian tribe.

(e) **Applicable Laws; Standards; Trust Responsibility.**—

(1) **Applicable Laws.**—Except as provided in subsection (e), an Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with all treaties, statutes, Executive orders, and court decisions that are applicable to the trust assets, or the management of the trust assets, identified in the plan.

(2) **Standards.**—Subject to the laws referred to in paragraph (1)(A), an Indian trust asset management plan shall not be approved unless the Secretary determines that the plan will—

(A) conform, to the maximum extent practicable, to the preferred use of the trust asset by the beneficial owner, unless the use is incon-
sistent with a treaty, statute, Executive order, or court decision referred to in paragraph (1)(A); and

(B) protect any applicable treaty-based fishing, hunting and gathering, and similar rights relating to the use, access, or enjoyment of a trust asset.

(d) TERMINATION OF PLAN.—

(1) IN GENERAL.—An Indian tribe may terminate an Indian trust asset management plan on any date after the date on which a proposed Indian trust asset management plan is approved by providing to the Secretary—

(A) a notice of the intent of the Indian tribe to terminate the plan; and

(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan.

(2) EFFECTIVE DATE.—A termination of an Indian trust asset management plan under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

(e) APPROVAL OF CERTAIN AGREEMENTS BY INDIAN TRIBE.—
(1) In general.—Notwithstanding subsection (e)(1), the Secretary may approve an Indian trust asset management plan that includes a provision authorizing the Indian tribe to enter into, approve and carry out a surface leasing transaction or forest land management activity without approval of the Secretary, even though the surface leasing transaction or forest land management activity would require such approval under otherwise applicable law (including regulations), if—

(A) the resolution of other action of the governing body of the Indian tribe referred to in section 203(c)(2)(B) expressly authorizes the inclusion of such provision in the Indian trust asset management plan;

(B) the Indian tribe has adopted regulations expressly incorporated by reference into the Indian trust asset management plan that—

(i) with respect to a surface leasing transaction—

(I) have been approved by the Secretary pursuant to subsection (h)(4) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(h)(4) titled “An Act to authorizes the leas-
ing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases” 415(h)(4)), or

(II) have not been approved yet by the Secretary in accordance with subclause (I) but that the Secretary determines at or prior to the time of approval under this paragraph meet the requirements of subsection (h)(3) of the first section of that Act (25 U.S.C. 415(h)(3)); or

(ii) with respect to forest land management activities, the Secretary determines—

(I) are consistent with the regulations of the Secretary adopted under the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.); and

(II) provide for an environmental review process that includes—

(aa) the identification and evaluation of any significant ef-
effects of the proposed action on
the environment; and

(bb) a process for ensuring
that—

(AA) the public is in-
formed of, and has a reason-
able opportunity to comment
on, any significant environ-
mental impacts of the pro-
posed forest land manage-
ment activity identified by
the Indian tribe; and

(BB) the Indian tribe
provides responses to rel-
evant and substantive public
comments on any such im-
pacts before the Indian tribe
approves the timber resource
transaction.

(2) Kinds of Transactions.—

(A) In General.—At the discretion of the
Indian tribe, an Indian trust asset management
plan may authorize the Indian tribe to carry
out either a surface leasing transaction or a for-
est land management activity, or both of those kinds of transactions and activities.

(B) Selection of specific transactions and activities.—At the discretion of the Indian tribe, the Indian tribe may include in the Integrated Resource Management Plan any one, several or all of the kinds of transactions and activities authorized to be included in such plan under subparagraph (A).

(3) Technical assistance.—The Secretary may provide technical assistance, upon request of the Indian tribe, for development of a regulatory environmental review process required under paragraph (1).

(4) Indian self-determination act.—The technical assistance to be provided by the Secretary pursuant to paragraph (2) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(5) Federal environmental review.—Notwithstanding paragraph (1), if an Indian tribe carries out a project or activity funded by a Federal
agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

(6) DOCUMENTATION.—If an Indian tribe executes a surface leasing transaction or forest land management activity, pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

(A) a copy of the surface leasing transaction or forest land management activity documents, including any amendments to or renewals of the applicable transaction; and

(B) in the case of tribal regulations, a surface leasing transaction, or forest land management activities that allow payments to be made directly to the Indian tribe, documentation of the payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

(7) TRUST RESPONSIBILITY.—

(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).
(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

(8) COMPLIANCE.—

(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming respon-
sibility for the approval of leases of tribal trust lands.

(C) **DOCUMENTATION.**—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of the trust asset transaction approval responsibilities, provide the applicable Indian tribe with—

(I) a hearing that is on the record; and

(II) a reasonable opportunity to cure the alleged violation.

(9) **DEFINED TERMS.**—As used in this subsection, the term—
(A) “interested party” means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe;

(B) “surface leasing transaction” means a residential, business, agricultural, or wind and solar resource lease of tribal land;

(C) “forest land management activity” means any one or more of the activities set forth in section 304(4) of the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.); and

(D) “tribal land” means land, the title to which is held in trust by the United States for the benefit of an Indian tribe or held in fee by an Indian tribe subject to restrictions against alienation under Federal law.

SEC. 205. EFFECT OF TITLE.

(a) LIABILITY.—Subject to subparagraph (b), nothing in this title, or a trust asset management plan approved under section 204, shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the Project for any loss resulting from the management of an
Indian trust asset under an Indian trust asset management plan.

(b) Deviation from Standard Practices.—The United States shall not be liable to any party (including any Indian tribe) for any term of, or any loss resulting from the terms of, an Indian trust asset management plan that provides for management of trust assets at a less stringent standard than the Secretary would otherwise require or adhere to in absence of an Indian trust asset management plan.

(c) Effect on Other Laws.—Except for any regulation superseded by a trust asset management plan approved under section 204(b), or any tribal regulations included in or incorporated by reference in such a plan under section 204(e), nothing in this title amends or otherwise affects the application of any treaty, statute, regulation, Executive order, or court decision that is applicable to Indian trust assets or the management or administration of Indian trust assets.

(d) Trust Responsibility.—Nothing in this title enhances, diminishes or otherwise affects the trust responsibility of the United States to Indian tribes and individual Indians.
TITLE III—RESTRUCTURING OFFICE OF THE SPECIAL TRUSTEE

SEC. 301. PURPOSE.

The purpose of this title is to ensure a more efficient and accountable administration of duties of the Secretary of the Interior with respect to providing services and programs to Indians and Indian tribes, including the management of Indian trust resources.

SEC. 302. DEFINITIONS.

In this title:

(1) BIA.—The term “BIA” means the Bureau of Indian Affairs.

(2) DEPARTMENT.—The term “Department” means the Department of the Interior.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) UNDER SECRETARY.—The term “Under Secretary” means the individual appointed to the position of Under Secretary for Indian Affairs, established by section 303(a).

SEC. 303. UNDER SECRETARY FOR INDIAN AFFAIRS.

(a) AUTHORIZATION OF POSITION.—Notwithstanding any other provision of law, the Secretary may establish in the Department the position of Under Sec-
Secretary for Indian Affairs, who shall report directly to the Secretary.

(b) APPOINTMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXCEPTION.—The officer serving as the Assistant Secretary for Indian Affairs on the date of enactment of this Act may assume the position of Under Secretary without appointment under paragraph (1) if—

(A) the officer was appointed as Assistant Secretary for Indian Affairs by the President by and with the advice and consent of the Senate; and

(B) not later than 180 days after the date of enactment of this Act, the Secretary approves the assumption.

(c) DUTIES.—In addition to any other duties directed by the Secretary, the Under Secretary shall—

(1) coordinate with the Special Trustee for American Indians to ensure an orderly transition of any or all functions of the Special Trustee to the
BIA or to any other agency or bureau within the Department;

(2) to the maximum extent practicable, supervise and coordinate activities and policies of the BIA with activities and policies of—

(A) the Bureau of Reclamation;

(B) the Bureau of Land Management;

(C) the Office of Natural Resources Revenue;

(D) the National Park Service; and

(E) the U.S. Fish and Wildlife Service;

and

(3) provide for regular consultation with Indians and Indian tribes that own interests in trust resources and trust fund accounts.

(d) PERSONNEL PROVISIONS.—

(1) APPOINTMENTS.—The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) REQUIREMENTS.—Except as otherwise provided by law—
(A) any officer or employee described in
paragraph (1) shall be appointed in accordance
with the civil service laws;

(B) the compensation of such an officer or
employee shall be fixed in accordance with title
5, United States Code; and

(C) in appointing or otherwise hiring any
employee, the Under Secretary shall give pref-
erence to Indians in accordance with section 12

SEC. 304. OFFICE OF THE SPECIAL TRUSTEE FOR AMER-
ICAN INDIANS.

(a) REPORT TO CONGRESS.—Notwithstanding sec-
tions 302 and 303 of the American Indian Trust Fund
the Secretary shall prepare and, after consultation with
Indian tribes and appropriate Indian organizations, sub-
mit to the Secretary and the Committee on Natural Re-
sources of the House of Representatives, Committee on
Indian Affairs of the Senate, and the House and Senate
Committees on Appropriations, within one year after en-
actment of this Act, a report that includes the following:

(1) Identification of all functions, other than
the collection, management, and investment of In-
dian trust funds, that the Office of the Special
Trustee performs, either independently or in concert with the BIA or other federal agencies, specifically those functions that affect or relate to management of non-monetary trust resources;

(2) A description of any functions of the Office of the Special Trustee that will be transitioned to the BIA or other bureaus or agencies within the Department, together with applicable timeframes; and

(3) A transition plan and timetable for the termination of the Office of the Special Trustee to occur not later than 2 years after the date of the report.

(b) FIDUCIARY TRUST OFFICERS.—Subject to applicable law and regulations, the Secretary shall, at the request of an Indian tribe or consortia of Indian tribes, include fiduciary trust officers in a contract, compact, or cooperative agreement under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended.

SEC. 305. APPRAISALS AND VALUATIONS.

(a) IN GENERAL.—Within 18 months of enactment of this Act, the Secretary shall, in consultation with Indian tribes and tribal organizations, ensure that appraisals and valuations of Indian trust property are administered by
a single bureau, agency or other administrative entity within the Department.

(b) MINIMUM QUALIFICATIONS.—Within one year of enactment of this Act, the Secretary shall establish and publish in the Federal Register minimum qualifications for persons to prepare appraisals and valuations of Indian trust property.

(c) SECRETARIAL APPROVAL.—When an Indian tribe or Indian beneficiary submits an appraisal or valuation to the Secretary that satisfies the minimum qualifications in paragraph (2) and such submission acknowledges the tribe or beneficiary’s intent to have the appraisal or valuation considered under this subsection, the appraisal or valuation—

(1) shall not require any further Secretarial review or approval; and

(2) shall be considered final for purposes of effectuating the transaction for which the appraisal or valuation is required.

SEC. 306. COST SAVINGS.

(a) IN GENERAL.—For any program, function, service, or activity (or any portions of programs, functions, services, or activities) of the Office of the Special Trustee that will not have to operate or carry out as a result of
any transfer of functions and personnel under this title, the Secretary shall, within 60 days—

(1) identify the amounts that the Secretary would have otherwise expended to operate or carry out each program, function, service, and activity (or any portion of a program, function, service, or activity); and

(2) provide to the Secretary and the tribal representatives of the Tribal/Interior Budget Council, or the representatives of any other appropriate entity that advises the Secretary on Indian program budget or funding issues, the list of the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) identified pursuant paragraph (1) and the amounts associated with each program, function, service, and activity (or any portion of a program, function, service, or activity).

(b) TRIBAL RECOMMENDATIONS.—Within 90 days of receipt of the information in subsection (a)(2), the tribal representatives of the Tribal/Interior Budget Council, or the representatives of any other appropriate entity that advises the Secretary on Indian program budget or funding issues, may provide recommendations on how any amounts or cost savings should be reallocated, incor-
porated into future budget requests, or appropriated, to the—

(1) Secretary;

(2) Office of Management and Budget;

(3) Committee on Appropriations of the House of Representatives;

(4) Committee on Natural Resources of the House Representatives;

(5) Committee on Appropriations of the Senate;

and

(6) Committee on Indian Affairs of the Senate.