

NEWLY PROPOSED PROVISIONS FOR SENATE BILL 1439 THE INDIAN TRUST REFORM ACT

Senate bill 1439, the Indian Trust Reform Act of 2005, would resolve the *Cobell v. Kempthorne* case and make reforms to the way the United States manages Indian trust funds and assets. The bill was introduced in July 2005 and Committee staffs have been meeting with representatives from the plaintiffs, the Administration, and Indian tribes to decide what changes, if any, should be made to the bill. This paper highlights several proposals that have come out of some of those discussions.

To gain support for a multi-billion dollar bill, it may be necessary to incorporate significant changes to the management system for Indian trust assets. As proposed, these changes would not remove the trust status of Indian lands, but would reallocate significant decision-making authority and legal responsibility from the Federal government to the Indian tribes and individuals. The proposed changes are generally described below.

The Chair and Vice-Chair of the Committee have not approved these proposed changes to S.1439, but have asked their respective staff to seek input from Indian Country before they make a decision on these proposals and how to proceed with the bill.

Land Fractionation – Consolidate all 128,000 individual Indian allotments into ownership of no more than 10 individuals PER TRACT of land within 10 years.

The highly fractionated nature of many individual Indian lands has made it difficult for the United States to manage these lands and the revenues generated from them. There are currently 128,000 individual Indian allotments and 3.6 million fractionated interests. One proposal to address this issue has been to develop aggressive mechanisms to consolidate all allotments into 10 or fewer owners for each tract of land within the next 10 years.

- All land would remain in Indian title with individual Indian or tribal owners.
- Consolidation would include voluntary and involuntary mechanisms, but large interest owners would have a first opportunity to buy out the smaller interest owners before an entire tract is put up for sale to either the tribe or a member of that tribe
- Consolidation of tracts with 100 or more owners would be prioritized.
- Funding for the proposed consolidation mechanisms would be assured by inclusion in the funding levels of the bill.

Beneficiary-Managed Trust – Transition of all individual Indian and tribal land to a beneficiary-managed trust system within 10 years.

After fractionated lands are consolidated, it is proposed to convert the current management system for all individual Indian and tribal land into a new system within a 10 year timeframe. The lands would remain in trust and NOT be subject to taxation, but the individual or tribal owner of the lands would have most of the privileges and responsibilities of property management.

- The landowners would make nearly all decisions on land use within certain broad parameters.
- All revenues generated from the land would go directly to the landowners (direct pay).
- The landowners would negotiate their own long-term leases and land use agreements, without Secretarial approval.
- The BIA would provide “management” financial support and technical assistance during a transition period to assist owners in becoming efficient property owners and managers.
- The federal government would remain responsible for: preventing involuntary alienation of land; approving transfers of land title; maintaining land title records; and probating trust estates.

Resolution of Tribal Claims Related to the Mismanagement of Trust Funds, Lands and Resources

In addition to resolving all individual Indian claims related to the United States’ mismanagement of trust funds, lands and resources, it has been proposed to resolve all tribal claims for the same matters. Possible suggestions for addressing this issue include:

- All mismanagement claims for tribal monies, lands, and resources would be resolved and settled.
- A settlement fund would be established and each tribe would receive a distribution based on a formula that would take into account the amount of land a tribe owns and the amount of revenues that were generated from that land for a specified period of time.
- All historical accounting claims against the United States would be settled.
- Account balances for Indian trust accounts would be deemed accurate as of the date of passage of senate bill 1439.
- The bill would NOT settle takings claims for land or related resources, claims to establish the right to possess or the ownership of tribal land, or claims arising under Federal environmental laws.

Limitation on Liability of the United States During and After Transition Period

In order to facilitate the proposed reforms, it has also been proposed that during the period of time for land consolidation and transition of the trust management system into a beneficiary-managed trust there would be some limitations on the liability of the United States in regard to the management of trust resources.

After the transition period, the Federal government would remain responsible for correcting errors, but without damage claims against the government for its residual responsibilities.