



# American Indian Issues



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✦ In this section we will cover:

- ✦ Trust Responsibility
- ✦ Indian Oil & Gas
- ✦ Indian Self-Determination Act contracting

# Unit Objectives

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✦ When you complete this section you should:

- ✦ Have a better understanding of your role as trustee to Indian mineral owners
- ✦ Know some of the ways Indian oil and gas is different from Federal oil and gas
- ✦ Have a general understanding of self-determination contracting

# BLM Trust Responsibility

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- ✦ Trust responsibility is the legally enforceable responsibility of the government as trustee, to the Indian mineral owner, as beneficiary
- ✦ The federal trust responsibility evolved from Statutes, Executive Orders and court decisions

# Federally Recognized Tribes

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- ✦ The federal government has a trust obligation to 561 federally recognized tribes
- ✦ Requirements for a tribe to be federally recognized are found at 25 CFR 83
- ✦ A list of federally recognized tribes can be found at:  
<http://www.doi.gov>
- ✦ 42 of the federally recognized tribes have O&G (either tribal and/or allotted production)

# DOI guidance on trust responsibility

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✦ Written guidance relating to the Secretary's trust responsibility can be found in the Departmental Manual at:

- ✦ 303 DM 2 - Principles for Managing Indian Trust Assets
- ✦ 512 DM 2 - Departmental Responsibilities for Indian Trust Resources

## Part 303 Departmental Manual Chapter 2

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- ✦ 303 DM 2 - provides Department-wide guidance for carrying out the Secretary's trust responsibility as it pertains to Indian trust assets.

## Part 512 Departmental Manual Chapter 2

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- ✦ 512 DM 2 - establishes the policies, responsibilities, and procedures for operating on a government-to-government basis with federally recognized Indian tribes for the identification, conservation, and protection of American Indian and Alaska Native trust resources to ensure the fulfillment of the federal Indian trust responsibility

# What are trust assets?

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✦ “Indian trust assets” means lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation for Indian tribes and individual Indians.

# Elements of a Trust

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✦ In order to have a trust situation, there must be:

- ✦ A trust corpus - the trust asset (e.g., minerals)
- ✦ A beneficiary - the Indian mineral owner
- ✦ A trustee - the line manager

# Who in BLM is the Trustee?

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The delegation is:

Secretary of the Interior



BLM Director



State Director

Field Office Manager

# Obligations of the Trustee

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- ✦ To fulfill the trust responsibility and act in the “best interest” of the Indian mineral owner”

# What is trust responsibility?

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- ✦ The concept of trust responsibility is a highly debated issue between the DOI and tribes
- ✦ Many tribes feel that trust responsibility is all things promised to tribes in treaties, statutes, etc.
- ✦ DOI ties trust responsibility to a “trust asset”
- ✦ To further complicate things the terms “trust relationship” and “trust obligation” are also used
- ✦ BLM follows DOI guidance

# What is “Best Interest” ?

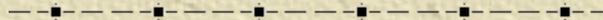
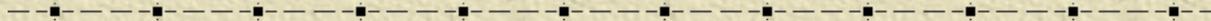
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In considering whether it is “in the best interest of the Indian mineral owner” the Secretary shall consider any relevant factor including, but not limited to, economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of lands concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social and cultural effects. *25 CFR 211.3, Definitions*

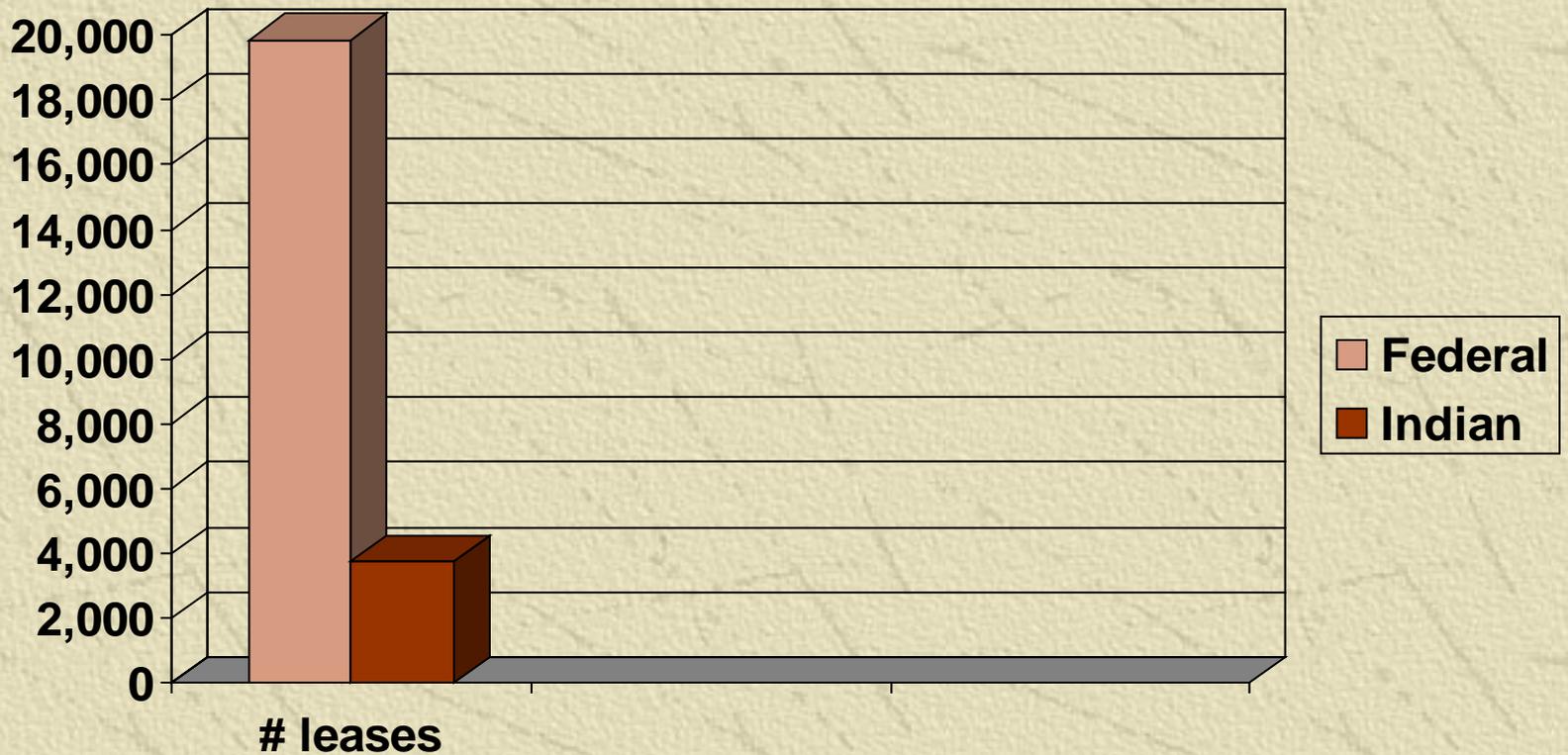
# Other aspects of trust responsibility

- ✦ 303 DM 2 also provides for:
  - ◆ the protection of trust assets from public land activities
    - Requires assessment of the impact of public land activities and consultation with impacted Indians
  - ◆ the protection of off-reservation treaty rights on the public lands
  - ◆ Depending on the treaty, off reservation treaty rights may include hunting, fishing, gathering
  - ◆ BLM is responsible for rights of access to certain public lands for the exercise of off-reservation rights

# Indian Oil and Gas



# Comparison of Federal and Indian Oil & Gas



# Comparison of Federal and Indian Minerals

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## ✦ Number of active leases:

- ✦ O&G: 20,000 Federal - 4,000 Indian
- ✦ Coal: 158 Federal - 6 Indian
- ✦ Other: 141 Federal - 38 Indian (mostly S&G)

# Indian Oil & Gas

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- ✦ Indian oil and gas is similar to federal oil and gas from a technical standpoint
- ✦ Indian oil and gas is different in other ways
  - ◆ leases are different
  - ◆ trust responsibility and “best interest”
  - ◆ tribal culture
  - ◆ tribal politics

# Indian Oil & Gas

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- ✦ BIA is the surface management agency and is responsible for leasing Indian lands
- ✦ The leasing authorities are different on Indian lands
  - ◆ tribal lands
    - Act of May 11, 1938
    - Indian Mineral Development Act of 1982
  - ◆ allotted lands
    - Act of March 3, 1909
- ✦ There are several standard Indian leases

# Indian Oil & Gas

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- ✦ Regulations are found at 25 CFR 211's - 225's
- ✦ Lowest royalty rate is 16.66 %
- ✦ BIA often negotiates a better rate
- ✦ Some royalties are calculated using the dual accounting method
- ✦ Additional tribal taxes are applied

# Indian Oil & Gas

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- ✦ Working with Indian leases takes more time
  - ✦ Requires coordination with BIA, MMS, tribe
  - ✦ The tribe often runs a concurrent approval process
  - ✦ Can be complicated by large number of allottees/heirs
  - ✦ BLM conducts diligence reviews and sets spacing on Indian leases
  - ✦ Requires an adequate analysis of “best interest”

# Examples of Basic Trust Activities

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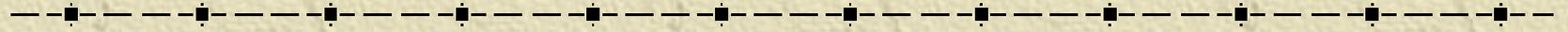
## Pre-lease functions

- ✦ Mineral appraisals
- ✦ Evaluation of tracts
- ✦ Recommend fair market value of bonus bids
- ✦ IMDA's - review/make recommendations
- ✦ Recommend bonding levels
- ✦ Upon request, provide TA to BIA for pre-lease NEPA documentation

## Post-Lease Mineral Operations

- ✦ Approve APD's, sundry notices, off-lease measurement, POD's, commingling, well plugging, final abandonment, etc.
- ✦ Recommendations for agreements
- ✦ NEPA for mineral dev.
- ✦ Establish spacing
- ✦ Conduct drainage, diligence reviews
- ✦ I&E

# BLM does not



- ✦ Lease Indian lands
- ✦ Do planning on Indian lands
- ✦ Maintain Indian land ownership information

# Cooperative Inspection Agreements

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- ✦ Section 202 of FOGRMA provides for BLM to enter into cooperative agreements with tribes for the tribes to conduct inspections on tribal lands
- ✦ BLM trains and certifies qualified tribal inspectors
- ✦ BLM funds coop agreements at 100%
- ✦ Regulations for coop agreements are found at 43 CFR 3192

# Indian Oil and Gas

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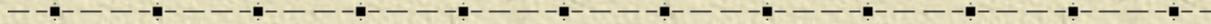
- ✦ Tribal culture is an important factor in managing Indian mineral resources
  - ◆ for some topics the political leaders may defer to the religious leaders for decision making
  - ◆ In some areas development may be prohibited because they are areas of traditional use which may take precedence over development of the resource

# Indian Oil and Gas

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- ✦ Tribal politics may also influence oil and gas development on tribal lands
  - ◆ individuals within the tribe may not agree on whether or not to develop the resource
  - ◆ philosophies may change with turn over of tribal leadership

# Indian Self-Determination and Education Assistance Act



# Indian Self-Determination Act

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- ✦ P.L. 93-638, is the Indian Self-Determination and Education Assistance Act of 1975
- ✦ This Act provided for tribes to contract to take over certain federal programs benefiting tribes
- ✦ Self-determination act contracts are also know as “638” contracts
- ✦ Initially this program only applied to the Bureau of Indian Affairs and Indian Health Service programs
- ✦ Later amendments to the Act expanded self-determination contracting to all DOI agencies

# Indian Self-Determination Act

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- ✦ The regulations were negotiated by federal and tribal representatives and are found at 25 CFR 900
- ✦ In addition to the Act and regulations, there is an Internal Agency Procedures handbook which was also negotiated by federal and tribal representatives

# History of Amendments

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## ✦ **P.L. 93-638, passed in 1975**

- ✦ Applied to BIA and IHS
- ✦ Consisted of Titles I and II
- ✦ Provided for 3 declination criteria

## ✦ **P.L. 100-472, passed in 1988**

- ✦ Extended contracting to other DOI agencies
- ✦ Added stringent timelines for Federal action
- ✦ Added Title III – SG Demonstration Project - applied to BIA, IHS

# History of Amendments

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## ✦ **P.L.103-413, passed in 1994**

- ✦ Added Title IV which made SG permanent and extended it to to other DOI agencies
- ✦ Added 2 more declination criteria at Sec.102(a)(2)(d) & (E)
- ✦ Title IV does not apply to IHS (until passage of P.L.106-260 IHS still operated under the Title III demonstration project for SG)

# P.L. 93-638

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- ✦ SD Regulations were published 6/24/96
  - ✦ Prepared by agencies and tribes using negotiated rulemaking process
  - ✦ Limited to specific subject matter areas (Sec. 107 of Act)
  - ✦ Found at 25 CFR 900 (SG regulations at 25 CFR 1000)
  
- ✦ DOI/HHS Internal Agency Procedures Handbook
  - ✦ Also negotiated
  - ✦ Applies to all agencies in DOI/HHS

# P.L. 93-638

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✦ As you read through the Act, regulations and IAP handbook be aware that some sections:

- ✦ Are mandatory, some are discretionary
- ✦ Apply to IHS, BIA and non-BIA DOI agencies differently
  - Tribes participate in the development of BIA & IHS budgets (900.3(b)(6))
  - BIA & IHS can't apply declination criteria to renewal contracts and non-BIA agencies can (900.32)
  - BIA & IHS property donation procedures are different than those for non- BIA agencies (900.97 and 900.102)

# Indian Self-Determination Act

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✦ P.L. 93-638, as amended, consists of 5 titles

- ✦ Title I, Indian Self-Determination
- ✦ Title II, Indian Education
- ✦ Title III, Self-Governance Demo Project\*
- ✦ Title IV, Tribal Self-Governance
- ✦ Title V, Tribal Self-Governance
- ✦ Title VI, Tribal Self-Governance (DHHS)

\* Title III was deleted by amendment

# Which Titles apply to BLM?

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✦ **Title I – Indian Self-Determination Act**

✦ **Title IV – Tribal Self-Governance**

# Title I, Self-Determination

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## ✦ Title I - Indian Self-Determination Act

- ✦ Contracting is mandatory (Sec. 102(a)(1))
- ✦ Contracts must be approved or declined within 90-day from receipt or they are automatically approved (Sec. 102 (a)(2))
  - there are 5 declination criteria
  - funding must be no less than currently spent on program
  - tribes receive base amount plus indirect costs, support costs, and start-up costs for first year

# Title IV, Self-governance

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## ✦ Title IV - Indian Self-Governance

- ◆ Tribes can take over multiple programs at once
- ◆ Tribes sign compact with Secretary and then negotiate an Annual Funding Agreements (AFA) with the agency
- ◆ All federally recognized tribes are eligible for self-determination contracting but tribes must apply and be approved by the Secretary to to become self-governance tribes

# Title IV, Self-governance

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- ◆ Sec. 403(c) provides for inclusion of “nexus” programs
  - Nexus programs are public land programs for which the tribe can establish a cultural, historical or geographic connection
  - Contracting of nexus programs by the Secretary is discretionary

# Indian Self-Determination Act

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## ✦ Contractible BLM programs

- Indian minerals
- Field survey portion of cadastral survey

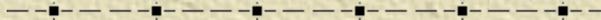
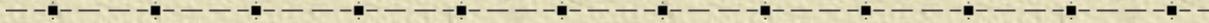
## ✦ BLM has several self-determination contracts

# What tribes have contracts with BLM?

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- ✦ BLM currently has 638 contracts for:
  - ✦ O&G inspection and enforcement with the Blackfeet, Rocky Boy's Chippewa-Cree and Crow tribes in Montana
  - ✦ Solid minerals functions with the Crow Tribe in Montana
  - ✦ The field survey function of the cadastral survey program with many native corporations in Alaska

# Summaries



# Summary of Trust Responsibility

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- ✦ The U.S. Government as trustee has a legal obligation to perform to the highest standard
- ✦ The United States government can be held liable for breach of trust
- ✦ BLM managers are trustees with responsibility for the management of Indian mineral resources

# Summary of Indian Oil and Gas

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- ✦ Technically, Indian oil and gas is similar to federal oil and gas, in many other respects it is different
- ✦ You are obligated to make decisions that are in the “best interest” of the Indian mineral owner
- ✦ Each Tribe is different in terms of culture and politics - get to know the tribes

# Summary

## of Self-Determination Contracting

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- ✦ ISDA contracts are mandatory unless one of the declination criteria apply
- ✦ There are only 5 declination criteria
- ✦ Timeframes are legally mandated
  - ◆ 90-day declination
- ✦ Funding is different than for regular government contracting

# Courses Offered by NTC

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- ✦ Native American Coordination & Consultation -  
Course No. 8100-09
- ✦ Indian Self-Determination Act Contracting -  
Course No. 1515-01

# Unit Objectives

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✦ At this point you should:

- ✦ Have a better understanding of your role as trustee to Indian mineral owners
- ✦ Know some of the ways Indian oil and gas is different from Federal oil and gas
- ✦ Have a general understanding of self-determination contracting