

INDIAN TRUST ASSETS

OVERVIEW

All federal agencies have a responsibility to protect Indian trust assets. Indian trust assets are legal interests in assets held in trust by the federal government for Indian tribes or individuals. Assets may be owned property, physical assets, intangible property rights, a lease, or the right to use something. Indian trust assets may be located both on and off Indian reservations and typically include lands, minerals, water rights, hunting and fishing rights, natural resources, money, and claims. Indian trust assets do not include properties in which a tribe or individual has no legal interest, such as certain off-reservation sacred lands. Indian trust assets cannot be sold, leased, or alienated or otherwise have their value reduced without approval from the United States through the [Bureau of Indian Affairs \(BIA\)](#).

WHO NEEDS TO COMPLY?

The protection of Indian trust assets applies to all CALFED actions that could involve impacts on Indian trust assets. Although the requirement to protect Indian trust assets does not normally apply to State agencies, the Resources Agency, in signing the Programmatic Record of Decision and certification for the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report, made the commitment that State agencies would address Indian trust assets.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The process of addressing Indian trust asset issues is usually incorporated into the NEPA process. See [“National Environmental Policy Act”](#) earlier in this chapter for a description of time frames for preparation of environmental reports.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

See “What Does the Application and Evaluation Process Entail?” below.

WHAT IS THE FEE?

There is no fee for addressing Indian trust asset issues. There are, however, costs associated with NEPA compliance. See [“National Environmental Policy Act”](#) earlier in this chapter for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Although Indian trust assets were addressed within CALFED's Final Programmatic Environmental Impact Statement/Environmental Impact Report, impacts to Indian trust assets will need to be addressed in project specific NEPA compliance documents. It is also necessary to consider the impacts to Indian trust assets that could be affected by CALFED-related changes in

operations, or projects that do not trigger NEPA compliance but do require CEQA compliance. The United States has a responsibility to protect trust assets and rights and to take reasonable actions to protect Indian trust assets. Indian trust assets that could be adversely affected should be identified by the federal agency in consultation with the tribe(s). It is important to consider potential effects on Indian trust assets related to hunting, fishing, and water rights, even if the proposed action is not on a reservation.

To identify Indian trust assets, the following entities should be consulted:

- potentially affected Indian tribes or individuals;
- the BIA;
- the Solicitor's Office of the U.S. Department of the Interior; and
- the Federal Agency Native American Affairs Liaisons.

In most cases, the tribal government should be the primary point of contact, but the BIA should always be contacted.

Consultation with affected Indian tribes and individuals is usually documented in the NEPA compliance document along with a statement of potential impacts on Indian trust assets. The Secretary of the Interior, acting through the BIA, must approve any sale, lease, impacts of right-of-way acquisition, or other effects on Indian trust assets. Disagreements concerning impacts on Indian trust assets are resolved using the same channels of appeal open to other groups and individuals who disagree with conclusions that an agency reaches while implementing the NEPA process.

When adverse impacts on an Indian trust asset cannot be avoided, mitigation or compensation measures should be identified in consultation with Indian tribes or individual Indians. Agreements with Indian tribes and individual Indians concerning mitigation or compensation for adverse impacts on Indian trust assets may require BIA or congressional approval.

DOES THE PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

As mentioned earlier, the process of consideration and disclosure of Indian trust asset issues is usually incorporated into the NEPA process; consideration does not trigger any other environmental compliance requirements. However, implementation of mitigation measures may trigger other environmental requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

No substantial effects on Indian trust assets have been associated with the Preferred Program Alternative at the programmatic level. Project-specific analysis will be needed to determine potential effects. Using the NEPA scoping process to solicit information from the tribes and individual Indians regarding Indian trust assets is key to determining the impacts of individual CALFED projects on Indian trust assets.

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