Indian Forestry Authorities

Statutory, Regulatory, Manual Requirements and Other Tidbits

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Authorities

Sometimes knowing all the rules makes everything turn out okay. Then again, sometimes you’re pretty much hosed any way you look at it.
What I'll Cover

- Brief History of BIA Forestry
- Self-Determination Complexities
- Ownership Complexities
- Federal Partnerships in Indian Country
- Our Authority Hierarchy
  - Statute, Regulation, Manual, Handbook, Other
- Applying the Authorities
A Brief History

- 19th Century – Indian timber exploited.
- Widespread illegal timber cutting.
- Indian agents (not foresters) administered tribal timber sales.
- Planning for forest sustainability absent.
- Benefits to Indian people absent.

Steam Donkey on Quinault Res. (circa 1900’s)
• 1889 – Legislation authorized sale or disposal of dead and down timber on Indian lands.

• 1908 – Cooperative Agreement between Interior and Agriculture.

• 1909 – Funds appropriated to Interior – G. Pinchot manages Indian forests.

• 1910 – Arrangement ends due to Forest Service / Interior friction.

Wheeled Steam Tractor on Flathead Res. (circa 1920’s)
• 1910 - Indian Forest Service created within the Interior
  - Authorized the regulation of the Indian forest
  - Authorized timber sales on Indian lands.

• First Chief Forester - J.P. Kinney
  - Chief until 1933
  - Scientific forest management.
  - Sustained yield forestry.
  - Supported abolishing the Indian allotment policy; policy ended with the Indian Reorganization Act of 1934.
- Post World War II - balancing act
  - sustained yield vs.
  - war effort demands for timber plus tribal demands for more revenue.
- The policy of “termination” was passed by Congress in 1953.
- The policy of “self-determination” was passed in 1975 (Pub. L. 93-638).
- The National Indian Forest Resources Management Act (NIFRMA) passed in 1990.
Indian Self-Determination
Tribal Participation in Forest Management

(Are We Complex or What?)

**Entire forestry program**
- 31 Self-Governance Compacts
- 26 Self-Determination Contracts

**Portions of forestry program**
- 6 Self-Governance Compacts
- 28 Self-Determination Contracts

18.2 Million Trust Forest Acres

- 53% Self-Governance
- 7% Combined Self-Governance/BIA
- 25% 638 Contract
- 14% Combined 638 Contract/BIA
- 1% BIA Managed
Ownership Complexities

- Tribal vs. Allotted Lands
  - General Allotment Act of 1887
  - About 57 million acres of Indian Trust land
  - ~10 million of these acres are Allotted to individual Indians

- Tribal Trust vs. Tribal Fee Lands
  - Changing dynamic of Indian lands
  - New federal recognition of tribes (new lands)

- Creating the most complicated “legal trust” there is
Many Federal Partnerships

Indian Forestry Authorities

Office of Surface Mining

Minerals Management Service

Indian Land Mgmt. Activities

Bureau Of Indian Affairs

Bureau Of Land Mgmt.

Fish & Wildlife Service

Forest Service

Environmental Protect. Agency

National Marine Fisheries Service

Office of Surface Mining

Office of Surface Mining

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The Authority Hierarchy

• The **Statute** - laws passed by Congress *(P.L.101-630)*

• The **Regulations** - further describe and interpret the statute *(25 C.F.R. 163)*

• The **Manual** - describes the *"policy"* of the organization
  - Departmental (DOI) Manual *(e.g., 516 DM 1)*
  - Indian Affairs Manual *(53 IAM Forestry)*

• The **Handbook** - gives detailed *"procedures"* and the necessary *"forms"* for each of the chapters under the Manual.

We've evolved: BIAM ➞ IAM
Other Authorities

- Executive Orders - from the President or the Secretary
- Assistant Secretary Orders
- National Policy Memoranda
- Regional Directives to the IAM
- Regional Handbooks
- Regional Policy Memoranda

Klamath 1919 - Horse Bunching

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Indian Forestry Authorities
The Statute

**National Indian Forest Resources Management Act (NIFRMA)**

- Excellent example of the effectiveness of tribal consultation

**Some Key Sections**

- 3105. Forest Management Deduction (FMD)
- 3106. Forest Trespass
- 3107. Direct Payment of Forest Products
- 3108. Secretarial Recognition of Tribal Laws
- 3109. Indian Forest Land Assistance Account
- 3110. Tribal Forestry Programs
- 3111. Independent Program Assessments
- 3113. Forestry Education Assistance
The Code of Federal Regulations
25 C.F.R. § 163
(1995)

Six Subparts

   (definitions, etc.)
2. Subpart B - Forest Management & Operations
3. Subpart C - Forestry Education, Education Assistance, Recruitment and Training
4. Subpart D - Alaska Native Technical Assistance Program
5. Subpart E - Cooperative Agreements
6. Subpart F - Program Assessment (IFMAT)
25 C.F.R. 163

Subpart B - Sections 163.10 to 163.37

Forest Management & Operations

- 163.10 Management of Indian Forest Land
- 163.11 Forest Mgmt. Planning and Sustained Yield Mgmt.
- 163.12 Harvesting Restrictions
- 163.13 Indian Tribal Forest Enterprise Operations
- 163.14 Sale of Forest Products
- 163.15 Advertisement of Sales
- 163.16 Forest Product Sales Without Advertisement
- 163.17-18 Deposit with Bid, Bid Acceptance/Rejection
- 163.19-20 Forest Products Contracts: Sale, Execution, Approval
- 163.21 Performance Bonds
- 163.22-23 Payment for Forest Products
25 C.F.R. 163
Subpart B - Sections 163.10 to 163.37
Forest Management & Operations

- 163.24 Maximum Duration of Contracts
- 163.25 Forest Management Deductions (FMD)
- 163.26-27 Permits
- 163.29 Trespass Regulations
- 163.30 Revocable Road Use
- 163.31 Insect and Disease Control
- 163.32 Forest Development
- 163.33 Administrative Appeals
- 163.34 Environmental Compliance
- 163.35 Indian Forest Land Assistance Account
- 163.36 Tribal Forestry Program Financial Support
- 163.37 Forest Management Research
The Departmental Manual

- **130 DM 7 Trust Services (7.4 is Division of Forestry)**
  - Defines the functions under Deputy Bureau Director of Trust Services

- **303 DM 2 Principles for Managing Indian Trust Assets**
  - Provides Department-wide guidance on Trust Asset Management

- **512 DM 2 American Indian and Alaska Native Programs**
  - Government-to-government policies and procedures to fulfill Federal Indian Trust Responsibility

Klamath 1934 – Flatcar of 32' logs lowered by cable attached to steam donkey engine

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Indian Forestry Authorities
The Departmental Manual

- 516 DM 2 Categorical Exclusions to NEPA - DOI
  - Includes National Fire Plan Fuels update of 2003
- 516 DM 6 Categorical Exclusions to NEPA - BIA
  - 1998 - More advantageous than updated 516 DM 2 in many cases
- 586 DM 1 Timber Management Responsibilities
- 611 DM 1 Forest Pest Control Program
  - Contains agreement with Dept. of Agriculture

Klamath 1958 - Park-like 70-yr old pine stand maintained with annual burning.
The Forestry Manual

53 IAM Forestry

- Chapter 1 Policies, Authorities and Responsibilities
- Chapter 2 Forest Management Planning
- Chapter 3 Contract Sales of Forest Products
- Chapter 4 Permit Sales of Forest Products
- Chapter 5 Forest Development
- Chapter 6 Forest Pest Management (aka “Forest Health Protection”)
- Chapter 7 Trespass
- Chapter 8 Forest Resources Inventory and Monitoring
- Chapter 9 Silviculture
- Chapter 10 Woodland Management
- Chapter 11 Forest Management Deductions
National Indian Forest Management Handbook

(A Handbook Volume for Every Manual Chapter)

- Volume 1  Administrative Functions
- Volume 2  Forest Management Planning
- Volume 3  Contract Sales of Forest Products
- Volume 4  Permit Sales of Forest Products
- Volume 5  Forest Development
- Volume 6  Forest Pest Management
- Volume 7  Trespass
- Volume 8  Forest Resources Inventory and Monitoring
- Volume 9  Silviculture
- Volume 10  Woodland Management
- Volume 11  Forest Management Deductions
National Indian Forest Management Handbook

(Completed Volumes)

- Volume 3  Contract Sales of Forest Products
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- Volume 5  Forest Development
- Volume 7  Trespass
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National Indian Forest Management Handbook

(To Be Completed This Year)

- Volume 2  Forest Management Planning
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(To Be Completed Next Year)

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- Volume 8  Forest Resources Inventory & Monitoring
- Volume 10  Woodland Management
Applying the Authorities
Management Requirements

25 CFR§900.5 states,

"...an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law."

BIA Managed


- Follow all Statute, CFR, tribal/federal laws, and published program requirements.
- Unpublished guidance, e.g. Manual, Handbook and other BIA directives can be used as guidance if desired.
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