

# INDIAN AFFAIRS FOREST TRESPASS HANDBOOK

53 IAM 7-H



Director, Bureau of Indian Affairs  
Office of Trust Services  
Division of Forestry and Wildland Fire Management  
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## FOREWORD

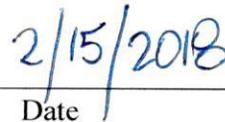
This handbook documents the procedures required to implement the Indian Affairs (IA) Forest Trespass policy, as documented in 53 IAM 7. It supersedes 53 IAM 7-H: Forest Trespass, issued 02/17/06, and all policies and procedures related to IA forest trespass that may have been created and/or distributed throughout IA previously.

The Secretary of the Interior takes part in the management of Indian forest lands with participation of the lands' beneficial owners in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners. The timely and appropriate management of forest trespass is a critical element in support of the Secretary's responsibilities. Further, the responsibility of the Bureau of Indian Affairs for the protection, conservation, utilization, management and enhancement of Indian Forest Lands as described in sec. 303. (4) of the National Indian Forest Resources Management Act, extends beyond the immediate Division of Forestry and Wildland Fire Management. The direction found in 53 IAM 7-H, extends to all program areas within the Bureau of Indian Affairs to carry out the agency's mission.



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Bryan Rice  
Director, Bureau of Indian Affairs



Date

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## ***Chapter 1: Introduction***

The National Indian Forest Resources Management Act (NIFRMA), 25 U.S.C. 3101 *et seq.*, authorizes the Bureau of Indian Affairs (BIA) to address trespass and unauthorized harvesting of forest products on Indian Land. The act provides that:

- trespass is a serious threat to Indian Lands;
- the U.S. has trust responsibility towards Indian forest lands;
- it is necessary to provide appropriations to protect, enhance and preserve Indian forest lands; and
- civil and criminal penalties are authorized for the purpose of recovering damages incurred from trespass and to serve as a deterrent to future trespass activity.

Trespass is defined in the *General Forestry Regulations* section of the Code of Federal Regulations (CFR) (25 CFR § 163.1) as:

*The removal of forest products from, or damaging forest products on, Indian Forest Land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian Forest land resulting from activities under contracts or permits or from fire.*

Indian Affairs (IA) policy on forest trespass is described in 53 IAM 7: Forest Trespass.

The Secretary of the Interior (Secretary), acting through the BIA or through Tribal programs to which authority has been assumed by delegation or by contract, is responsible for protecting Indian forest lands from trespass and for recovering damages when trespass occurs. The punishment of trespassers is as important as the recovery of damages because it serves as a deterrent to reduce future trespass activities.

### **1.1 Purpose**

This handbook documents the practices and procedures required to implement the policy described in 53 IAM 7: Forest Trespass. It also provides guidance for the detection and investigation of trespass incidents, appraisal of damages, preparation of appropriate reports, enforcement, litigation, settlement, distribution of collections, and prevention of trespass on Indian lands. This handbook addresses all forest trespass cases caused by unauthorized harvest or human-caused wildfire.

The following documents are incorporated by reference in this handbook. Working copies for the user may be found at <https://www.bia.gov/bia/ots/dfwfm/forest-management-documents>:

Notice to Cease and Desist Template

U.S. Government Seizure of Property Template

Notice of Seizure Template

Notice of Possible Trespass Template

Forest Trespass Field Data Report Template

Standard Operating Procedures for Trespass Investigation Template

Trespass Voluntary Statement Template

Damage and Costs Worksheet

Forest Trespass Case Report Template

Trespass Decision Document

Notice of Trespass Template

Demand Letter to Trespasser Template

Forest Trespass Settlement Agreement Template

Promissory Note Template

Trespass Case Closure Template

## **1.2 Consequences of not Enforcing Trespass Regulations**

When trespass is not enforced, there are multiple consequences for BIA and beneficial Indian owners which include:

- the loss of wealth and income opportunity;
- tort claims or liability lawsuits;
- the loss of future value;
- unreimbursed land rehabilitation costs;
- a higher potential for cultural/archaeological resource damages;
- unplanned site conversions; and
- emotional injury and loss of faith in institutions.

## **1.3 Differences between criminal and civil trespass enforcement**

There are many differences between criminal and civil enforcement of trespass enforcement. Below is a short list of distinct characteristics between the two. See Attachment 1 for more

information on specific differences. It is helpful to involve law enforcement officials early in the process of investigating an incident as they will determine if it is a criminal action.

### **1.3.1 Characteristics of Civil Trespass Actions**

- Successful prosecution of a civil trespass case requires proof of Indian ownership of the premises and commission of the acts by the trespasser.
- The intent of civil prosecution is to recover damages suffered by the injured party.
- Damages may be recovered from the trespasser and/or the purchaser of forest products removed or damaged in trespass.
- Civil prosecution is subject to applicable Tribal, federal, and state law as described in 25 CFR §163.29(a) (1) & (2).
- Civil action is independent of criminal action and may be filed before, during, or after prosecution for criminal acts of trespass. Criminal charges may take precedence over civil action; law enforcement must be consulted before proceeding with civil action when criminal action is also being pursued.

### **1.3.2 Characteristics of Criminal Trespass Actions**

- Successful prosecution of a criminal trespass case requires proof beyond a reasonable doubt that the defendant(s) committed the criminal act(s) with which charged.
- The intent of criminal prosecution is to punish the perpetrator (i.e., the trespasser) and act as a deterrent for similar offenses. Any money receipts taken in fines or damages go to the U.S. Treasury, or can be applied towards restitution to the landowner as ordered by the court.
- Criminal prosecution is subject to applicable Tribal, federal, and state statutes and ordinances. Public Law 83-280 (67 Stat. 588) states that Regional Directors, where applicable, will issue special instructions to provide for compliance with state laws and regulations pertaining to trespass.

## **1.4 Penalties**

In determining whether to charge a trespasser with civil or criminal liability, remember that one is not a substitute for the other. In appropriate cases, the BIA may want to proceed with both a criminal charge and a civil suit. A trespass, whether intentional or unintentional, always incurs civil penalties which include treble stumpage value plus interest, and may include costs associated with damage to land and resources, and costs associated with the investigation and enforcement of regulations.

NIFRMA authorizes civil penalties for timber trespass, and directs the Secretary to develop regulations establishing civil penalties providing for the collection of:

1. the value of the forest products illegally removed plus a penalty of double the value of the products;

2. the costs associated with restoring the damage to the Indian forest land which was caused by the trespass;
3. the costs associated with the enforcement and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees; and,
4. interest calculated at the statutory rate prescribed by the law of the Tribe in whose reservation or within whose jurisdiction the trespass was committed.

The Secretary has promulgated regulations as required under the law in 25 CFR § 163.29. The regulations read similar to the law, but with some key differences.

First, the regulations use the term *treble damages*, calculated as the value of the timber plus a penalty equal to two times that value. Treble damages must be based upon the highest stumpage value obtainable from the raw materials involved in the trespass (25 CFR 163.29 (a) (3) (i)). Charging treble damages is mandatory in all cases without exception. Only the Department of the Interior's (DOI) Office of the Solicitor can negotiate settlement for amounts less than full recovery of damages.

Second, the payment of costs is further defined in the regulations. These costs include, but are not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

Third, the payment of enforcement costs has also been fully defined. These must be "reasonable" costs, beginning with detection of the trespass and continue all the way through prosecution and collection of damages.

Finally, the regulations also allow for interest to be levied on treble damages that are due. The assessment of interest is based upon Tribal law, or federal law if no Tribal law exists.

Some costs may not be known until collection efforts are almost completed. For example, the costs of sending demand letters, accumulated interest, or enforcing the penalties in a civil action may not be fully known until the terms for settling the case are determined. The initial demand for payment should note that "the damages will be increased by reasonable collection and prosecution costs (if any)". Costs should be projected to the payment due date. Payment after the date may require the collection of additional costs and interest.

## **1.5 Responsibilities**

It is the policy of IA that the responsibility for forest trespass actions resides with the agency or Tribe having jurisdictional authority for the Forestry program. Therefore, unless specified otherwise in an approved agreement (e.g. Annual Funding Agreement), the agency or Tribe with jurisdictional authority will carry out enforcement tasks such as identifying the parties involved in the trespass, calculating damages and costs, and preparing reports. In locations where staff and expertise is limited, a request should be made to the regional office for assistance.

Protection of trust resources is understood to be a fundamental responsibility of the Secretary. Because of this, all BIA employees are responsible for detecting and reporting trespass.

It is the responsibility of the Line Officer on a case-by-case basis to appoint a Trespass Officer who will lead the team that manages the trespass investigation. In addition, the Line Officer is responsible for ensuring that new trespass cases are reported into the National Trespass Tracking Log on a quarterly basis.

Detailed information on trespass responsibilities is given in 53 IAM 7, section 1.5.

### **1.5.1 Tribal Responsibilities under P.L. 93-638**

When a trespass occurs on lands administered by a Forestry and Wildland Fire program operated by a Tribe through a self-determination contract or self-governance compact awarded under P.L. 93-638 (the Indian Self-Determination and Education Assistance Act of 1975), the Tribal organization responsible for operating the program takes the lead in trespass case investigation and reporting. Roles and timelines should be defined in the P.L. 93-638 compact or contract or Cooperative Agreement. Determination of trespass liability is an inherently federal function and cannot be contracted or compacted.

The Tribal organization must provide the initial determination of cause to its servicing BIA agency. The Tribal organization will also provide a detailed report of damages and loss in a timely manner so that the BIA can proceed with the trespass damage recovery process. The BIA, with support from the DOI Office of the Solicitor, is usually responsible for performing the billing, collection, and distribution of the collected funds unless the Tribal program has the capacity to utilize the Trust Asset Accounting Management System (TAAMS) for these functions.

### **1.6 Trespass Process**

Every trespass case is unique. There are various steps which may be taken in addressing a particular trespass situation. Below is a list of common steps that resolution of a trespass case may require. The specific time frames involved with each of these steps and the order in which they should occur varies depending on the circumstances of the particular trespass case. Employees must use their best judgement in determining the appropriate application of procedures when managing each trespass case. See Attachment 4 for an example of process steps and time frames.

- Trespass is detected - application of the Statute of Limitations begins;
- Stop trespass immediately and issue or post Cease and Desist Notice as appropriate;
- Notify Regional Trespass Coordinator;
- Document trespass in National Trespass Log in the Forest Information Reporting Statistics and Tracker (FIRST);
- Initiate field investigation as soon as detected;

- Seize products (if appropriate);
- Sell perishable products (if necessary);
- Compile Trespass Report (including calculation of damages);
- Issue Notice of Trespass to responsible party;
- Prepare Trespass Decision Document for Line Officer action;
- Notify Office of the Solicitor;
- Line Officer signs Trespass Decision Document;
- Issue Demand Letter;
- If Demand Letter appealed, complete Administrative Record;
- Collect and distribute payment for damages.

### **1.7 Statute of Limitations**

The statute of limitations refers to the amount of time the BIA has to file a trespass claim in federal court for criminal cases or to issue a Notice of Trespass to a trespass suspect for civil cases. This time limit is 6 years and 90 days from the date the trespass is reported to the BIA agency or Tribal Forestry program with jurisdiction in the geographical area. BIA and Tribal officials should not delay investigating a trespass once it is discovered. Delaying investigation can make the process more difficult to finalize and increase costs associated with case management.

### **1.8 Criminal Cases**

When law enforcement officials determine that criminal charges are appropriate, the BIA's role is to provide support to law enforcement and to the Department of Justice (DOJ), which has the lead role and responsibility for all criminal proceedings. BIA's role in these situations is to provide documents in support of prosecution detailing items such as fire costs, damages, assessments, and other administrative documents. If criminal activity is suspected during a wildfire investigation, the case shall be administered by law enforcement. Law enforcement officials will coordinate with the criminal justice system in prosecution and civil cost recovery. Decisions concerning criminal cases must be documented on the Trespass Decision Document (TDD).

## ***Chapter 2: Detection and Initial Actions***

### **2.1 Detection**

All employees are responsible for detecting trespass. Any information or observation that suggests a trespass may have occurred creates an alleged or possible trespass. Information pertaining to an alleged trespass should be reported to the appropriate program manager.

Methods of detection include the following:

- Staff observations as they travel to and from their field work locations.
- Specific patrol in areas with a history of trespass.
- Aerial detection.
- Complaints from the public to local officials.
- Trespasser voluntarily confesses.
- Use law enforcement to deploy motion activated cameras.
- Review of remote-sensing imagery.
- Tips, anonymous or otherwise, including hotlines.

### **2.2 What to do when trespass is detected**

The first thing to do when a trespass is detected is obviously to stop the action that is causing the trespass if possible. Involving law enforcement officials will address safety concerns and is essential if criminal activity is occurring along with the trespass. Once the activity is halted it must then be documented.

Proper documentation of a detected trespass is critical to the successful recovery of any damages. Individuals collecting information should be thorough, follow BIA agency standards, and maintain confidentiality and professionalism.

Proper documentation includes the following:

- name of the person reporting;
- time and date reported;
- conditions at time of discovery, including who or what is present, as well as what has been removed or damaged;
- photography of the scene (if possible). Follow digital photography standards established in the BIA Wildfire Investigation Handbook;
- if witnesses are present, collect witness voluntary statements. If witnesses have left the scene and can be identified, witness statements should be obtained if possible.

### **2.3 Enforcement Processes and Actions**

The appropriate administrative actions must be taken to enforce trespass. If a trespass is suspected or has occurred, stop the activities causing the trespass in order to prevent further damage and to verify whether or not a trespass has occurred. If the person detecting the trespass is uncomfortable confronting the potentially responsible party, law enforcement should be

contacted immediately for support. Once the trespass is verified, appropriate actions to determine damages incurred and to recover lost value on behalf of the beneficial owner should be initiated.

The following is a list of notifications that may be issued:

- Cease and Desist Notice
- Seizure of Property Poster
- Notice of Seizure
- Notice of Possible Trespass

Any official communication with a potentially responsible party will be sent by a trackable delivery method that provides a verification of receipt, or will be hand-delivered.

### **2.3.1 Cease and Desist Notice**

A Cease and Desist Notice is used when an individual is caught in the act of trespassing. This is a formal notice to the individual and can be issued on any paper that is available, such as a timber sale inspection report. A copy should be maintained by the issuer. The notice should include the statement that the trespass is on Indian land. If forest products are being removed and are on site, take possession and issue a Seizure of Property Poster. Law enforcement should be contacted if this has not already occurred.

### **2.3.2 Seizure of Property Poster**

A Seizure of Property poster is posted when the products are found on Indian Land and it is issued to the possessor or claimant of the products if that person is known and available. If possessor or claimant is known but unavailable when the products are seized, a copy of the posted document should be delivered to them.

The designated officer should post the poster on or near the products and within the general vicinity of the trespass area. The poster should forbid products from being moved. No disposition of products will be allowed until authorized by the Line Officer. The poster must be signed by an Authorized Representative; Line Officer signature is not required. The Authorized Representative can be any Forest Officer or designee addressing the trespass action. There are no appeal rights for this posting. The case file should include a copy with any incident report generated by the official seizing the products.

### **2.3.3 Notice of Seizure**

The Notice of Seizure is issued after products have been seized on Indian Lands. It is recommended that assistance from law enforcement be obtained when forest products are seized. The Notice of Seizure should indicate that the products seized were involved in a trespass, and should include, at a minimum:

- the date of seizure;

- a description of the products;
- the estimated value of the products seized;
- indication of whether or not the products are perishable;
- the name and title of the person seizing the products;
- a statement of seizure authority;
- a notice of appeal rights per 25 CFR Part 2; and
- the appropriate Line Officer's signature.

The Notice of Seizure must be sent (mailed or hand delivered) on the day that it is dated.

#### **2.3.4 Notice of Possible Trespass**

A Notice of Possible Trespass is issued if forest products have been moved to lands not under federal or Tribal supervision. The federal or Tribal official must immediately provide a Notice of Possible Trespass to the party in possession of the forest products. If it is determined that a trespass has occurred, a Notice of Trespass will also be issued.

#### **2.4 Sale of Perishable Property**

Perishable Property is defined as property that "...will lose substantial value if not sold or otherwise disposed of..." (25 CFR 163.29 (e)). The Line Officer has the responsibility to obtain the highest value of the perishable forest product. The product should be appraised and sold competitively at no less than the appraised rate. It is important to treat this sale as a competitive sale.

## *Chapter 3: Investigation*

### **3.1 Investigation**

A thorough trespass investigation is necessary whenever an alleged trespass occurs, whether the case leads to civil or to criminal adjudications. The purpose of the trespass investigation is to determine who did it, what was done, how much damage was incurred, from whom the damages can be recovered (legally and practically), disposition of proceeds and products, and whether the evidence collected can support the case in court.

#### **3.1.1 Investigation Considerations**

The investigation attempts to answer:

- **What** happened: were forest products stolen or damaged?
- **Where** did it happen?
- **When** did it happen?
- **How** did it happen?
- **Why** did it happen? Was it for profit, revenge, or accidental?
- **Who** are the responsible parties?
- What **evidence** is there to support the trespass claim?
- Are their **patterns** present in any of the above questions that might explain similar incidents?

The trespass investigation starts when an alleged trespass is detected or reported. When the trespass is reported, as much information as possible should be gathered from the reporting party. When traveling to the scene employees should carefully observe vehicles, people, and activities along the way and in the area, particularly if it believed that the trespass is in progress.

Every investigation should be handled as though the case were going to court. If the actions are criminal, the trespass and fire investigation reports are components of a law enforcement case. If they are accidental, with no criminal activity, the investigation report will be a component in the trespass case file.

Establish a systematic methodology for investigation and follow it every time. Investigations should make every attempt to answer who, what, when, where, why, how, and to provide proof. The Forest Trespass Field Data Template provides an outline for a systematic process to follow when conducting the trespass investigation.

One of the first steps required in the investigation of any alleged forest trespass is to determine the ownership of the land on which the incident occurred. Keep in mind that the Secretary's responsibility is to pursue trespass affecting Indian land as defined in 25 CFR Sec. 163.1. A

trespass may affect multiple tracts of land with different ownerships. Clearly defining each of the affected ownerships is crucial to these cases. Once ownership is verified, check the property lines and cutting boundaries to ensure they are clearly marked. Any interior areas where trespass has occurred should be identified and documented. A perimeter file from a GPS is acceptable as a preliminary step. In some cases, such as high value resources, it may be necessary to hire a licensed surveyor or request an official Bureau of Land Management (BLM) survey, although time constraints may not permit this.

### **3.1.2 Safety**

Safety is the highest priority in any activity, and this is also true while conducting a trespass investigation. Numerous factors can create a situation where an investigator or Trespass Officer is put in an unsafe situation. For example:

- It is likely that the alleged trespasser will dispute the accusation of trespass and may become argumentative or hostile.
- There are many hazards around logging sites, including logging trucks, logging equipment, and trees.
- Fire trespass investigations may occur in an area where an active wildfire is burning.
- Forest trespasses often occur in remote areas with limited access and communication.

Employees should consider the following practices when they are assigned to conduct a trespass investigation:

- Have two or more people conduct the field investigation to provide safety and to improve efficiency.
- Avoid threatening situations at all times.
- If threatened, contact law enforcement immediately.
- Active logging operations are inherently hazardous due to the presence of heavy equipment and the potential for falling trees. Never put yourself in harm's way. Be aware of your surroundings.
- Document potential safety concerns observed at or near the site for future reference.
- Stay within the scope of your job duties and assignment. Law enforcement functions should be performed by law enforcement personnel.
- Tell someone where you are going and when you expect to return. Check in with local dispatch when departing for the field and when returning to the office.
- Wear appropriate personal protective equipment when investigating the site.

### **3.1.3 Elements of a Good Investigation**

A good investigation:

- is prompt in responding to an alleged trespass;
- is thorough and uses a systematic methodology;
- documents: what, when, where, how, why, who, and provides evidence;
- properly handles and preserves evidence and the scene of the investigation;
- is coordinated with the proper authorities;
- is conducted before any other disturbance occurs;
- provides witness statements that are:
  - signed,
  - written by the witness or transcribed by an investigator,
  - assisted by law enforcement as necessary;
- communicates information to supervisors, the Line Officer, and law enforcement as necessary;
- follows through and is completed even if the case cannot be resolved due to lack of information and leads. The responsible official will make that decision and there may be evidence or witnesses that surface later;
- produces a comprehensive report that is prepared as soon as possible after the field work;
- has a complete determination of the extent and value of forest products affected (see section 4.7).

### **3.1.4 Qualifications**

The following is a list of desirable skills of an appointed Trespass Officer:

- Prior experience in managing trespass cases.
- Experience in scaling, cruising, and forest product valuation sufficient to perform a reasonable assessment of the resource or resources damaged or removed.
- Ability to prepare technical documents and complete the trespass report.

If the Trespass Officer leading the trespass investigation does not possess essential skills such as property line determination, boundary location, mapping, and timber volume determination, then he or she must coordinate with other staff that possesses these skills.

Other considerations in appointing a Trespass Officer include:

- The investigator must not have any personal connections with the alleged trespasser or other conflicts of interest. If the investigator does, he/she will need to recuse themselves from the investigation and the Line Officer will appoint another qualified person to oversee the investigation.

- If the managing agency lacks capacity to properly investigate the trespass incident, then the regional office should be contacted to provide assistance or to lead the investigation.

#### **3.1.4.1 Wildfire Investigator Qualifications**

The Wildfire Investigator should adhere to the standards established by the National Wildfire Coordinating Group (NWCG) and the BIA. The BIA National Wildfire Investigation Handbook (90 IAM 1.4 C (10)) provides specific guidance for conducting fire investigations in Indian Country.

### **3.2 Trespass Case Numbering**

A trespass case number will be assigned from the trespass register maintained at each Field Unit (Tribe or agency) location. The case file number will be recorded on all documents relating to the trespass and filed in the folder.

Each case file number consists of four groups of alpha/numeric numbers. For example, a case may be numbered “H52-313-2018-001”. The first alpha letter, H, identifies the BIA region; the next two numbers, 52, identify the BIA agency location where the trespass occurred; therefore H52 = Western Region, Fort Apache Agency. The next three characters, 313, refer to the specific land area upon which the trespass occurred. If the trespass crosses into another land area(s), use the land area that contains the point of origin. The next four numeric numbers, 2018, identifies the fiscal year the trespass occurred. The last three numbers, 001, are assigned from the trespass register maintained at each field unit location.

### **3.3 Law Enforcement**

Law enforcement should be consulted when it is believed a trespass has been committed. Law enforcement representatives will determine their level of involvement in the investigation. Most criminal prosecutions are handled by the U.S. Attorney through the DOJ, with assistance from the BIA Office of Justice Services (OJS) or the Federal Bureau of Investigation (FBI). The initial investigation of timber or fire trespass, however, is the responsibility of the managing agency or Tribe.

Criminal prosecutions may also be handled through state courts with assistance from a variety of law enforcement organizations on those reservations in which Public Law 83-280 (P.L. 280) applies. P.L. 280 confers criminal and some civil jurisdiction over Indian lands in some states to the state in which they are located. Contact the Office of the Solicitor to determine the applicability of P.L. 280 to particular situations.

#### **3.3.1 Situations in which to involve Law Enforcement**

Law enforcement should be contacted when a trespass involves any of the following:

- human caused fire, both accidental and intentional;
- any theft of forest products;
- threats to the federal or Tribal employee during a trespass investigation;

- criminal activity or other crimes associated with the trespass activity;
- damages to cultural resources or structures;
- serial arson;
- juvenile involvement;
- serious injury, accident or fatality.

### **3.3.2 Kinds of Assistance Provided by Law Enforcement**

Law enforcement officers have skills, expertise, and training to assist in the following situations that may arise from a trespass investigation:

- interview hostile witness(es);
- properly Mirandize if an arrest is made;
- take possession of evidence;
- refer cases to the appropriate court of law;
- discuss case with Office of the Solicitor or DOJ.

### **3.4 Physical Evidence**

Physical evidence consists of any objects collected by the investigator or by law enforcement, and presented as proof supporting the Line Officer’s decisions. Evidence is a very important component of a successful trespass resolution. It is the proof that connects the “who” to the “what, when, where, how and why.”

Employees collecting evidence have the responsibility for cataloguing and protecting the evidence. The Forest Trespass Field Data Template contains the standard evidence log to be used for documentation of all evidence collected. The evidence and scene must be protected until a qualified investigator arrives. Courts may not admit evidence if it is mishandled, contaminated, damaged, or otherwise spoiled.

One key advantage of having law enforcement collect evidence is that it shortens the chain of custody, which results in less paperwork, less of a chance that the evidence will be damaged, and reduces the time to transfer evidence that needs to be analyzed to testing facilities. Law enforcement officials are also specifically trained in evidence collection and handling techniques. Any forensic testing and examination of evidence will be ordered by law enforcement.

Decisions on perishable forest products should be considered when they are taken into possession. Disposition of these products should be accomplished promptly so that maximum value may be captured and returned to the beneficial owner. Investigators should work with law enforcement to document any perishable evidence prior to its disposition.

If employees do collect evidence, coordination with law enforcement is critical. A well-written standard operating procedure (SOP) or agreement developed in advance will facilitate this process. A formal agreement may be required before law enforcement will accept any evidence that is collected. An SOP template is provided online as mentioned in chapter 1.

### **3.5 Questioning of Witnesses, Persons of Interest, and Suspects**

All individuals identified at the trespass scene should be considered as potential witnesses. Investigative personnel should record, at a minimum, the name, contact information, and description of each potential witness. Investigators may collect a voluntary statement from a witness if the witness has to leave the scene. This statement must be signed by the witness giving the statement and signed by the investigation personnel receiving the statement.

Witness statements should be written, signed, and dated by the person making the statement as true and correct. When witnesses are unable to write out a statement; the investigator can write it for them, adding, "Statement of John Doe as told to Jimmy Q, investigator." The witness should initial the beginning of the statement, approve any changes (spelling errors, etc.) made to the statement, initial the end of the statement, and sign and date the statement as true and correct to the best of their knowledge.

If witnesses at the scene identify additional witnesses who are not on scene, the investigator must forward the information to law enforcement for follow-up. The investigator may follow-up only when the individual is employed by the BIA or Tribe and is not a person of interest.

If at any time a witness admits s/he started the wildfire, the investigator must document all statements provided and contact law enforcement immediately. This information must be transposed onto the Field Report using the Voluntary Witness Statement Template and be signed by the investigator.

If anyone is identified as a person of interest related to the wildfire occurrence, the investigator must contact law enforcement immediately. Law enforcement will be the lead for any follow-up related to this information. They will conduct any follow-up interviews or interrogation deemed necessary.

Locating and interrogating persons of interest or suspects is the role of law enforcement, not the trespass investigator. The investigator may provide information to assist law enforcement and may assist with providing specific interview questions based on the investigation.

## ***Chapter 4: Calculation of Trespass Damages***

### **4.1 Introduction**

One of the main provisions of the National Indian Forest Resources Management Act directs the Secretary to issue regulations to establish civil penalties for the commission of forest trespass (25 U.S.C. 33 §3106 (a) (1)). These civil penalties allow for the recovery of the full value of the forest products removed or damaged by the trespass action as well as additional penalties awarded to the beneficial owners as damages. Various costs related to rectifying the trespass action are also recoverable as civil penalties. Damages and costs that are recoverable from a trespasser include the following:

- treble damages (25 CFR 163.29 (3) (i));
- payment of costs associated with damage to Indian forest land (25 CFR 169.29 (3) (ii));
- payment of all reasonable costs associated with the enforcement of the trespass regulations (25 CFR 169.29 (3) (iii));
- interest (25 CFR 169.29 (3) (iv)).

These costs are documented on the Product Appraisal, Costs & Damages Worksheet. Refer to Attachment 2 for example.

### **4.2 Trespass Damage Estimation Best Practices**

Methods and calculations used to determine trespass damages should be those normally used within the given region to establish the commercial value of the resource and costs of damages and enforcement. Regardless of the method used, trespass damage calculations are likely to be challenged by the accused trespasser and may have to be defended, possibly in a courtroom setting. Because of the high probability that the calculations will be challenged at some point, there are several things the Trespass Officer should be aware of:

- actual costs and market values must be verifiable, current, and applicable to the geographic area;
- methods and calculations must be used appropriately and meet BIA standards (see section 4.4);
- if BIA standards for the methods and calculations required for appraisal do not exist, appropriate industry standards should be used; and
- all reasonable costs must be documented for the duration of the management of the trespass case. These costs will include payroll, travel costs, equipment, contracts, and other expenses.

### **4.3 Identification and Calculation of Trespass Damages**

A wide range of forest products may be subject to unauthorized removal or damage in a trespass case. Timber is the primary forest product having the highest value in most forest trespass cases and the focus of this section will be on timber appraisal methods. For methods of appraising non-timber forest products, consult with the appropriate regional office resource specialist. Agricultural and range trespass is outside the scope of this handbook but is addressed in 54 IAM 6: Trespass and in 25 CFR §166, Subpart I.

Timber products should be appraised using standard methods approved in the region for estimating the value of timber sales on the open market. If materials were seized and sold during the trespass, the proceeds of the sale are deducted from the gross value calculation of the amount due (treble stumpage) to the beneficial land owner.

#### 4.3.1 Triple Stumpage (Treble Damages)

Triple stumpage (sometimes called treble damages) is defined as three times the highest stumpage value obtained from the raw materials involved in the trespass. Standard appraisal methods should be used to determine the value of the products removed or damaged in the trespass. Triple stumpage is the stumpage value plus a penalty of double the stumpage value. Single stumpage is referred to as the *compensatory damages* due to the beneficial owners.

#### 4.3.2 Resource and Other Damages

Resource damages are costs associated with restoring the site to pre-trespass conditions and monetary damages for interim losses such as lost future revenue and profits. Resource damage costs included in civil penalties for trespass are those associated with all aspects of returning the site to its original condition, including but not limited to:

- **Rehabilitation:** Costs associated with returning the site to its pre-trespass condition.
- **Reforestation:** Costs to reforest the site, including seedling and sapling protection, if needed.
- **Lost future revenue and profits:** The revenue and profits that would have accrued had the trespass not taken place, discounted appropriately to present value.
- **Loss of productivity:** This refers to the long-term reduction in growth capacity on the site due to changes in site characteristics which may include loss of topsoil due to erosion; changes in soil chemistry or availability of nutrients; changes in species composition; or other factors. There is no established method for calculating damages due to loss of productivity, and care should be taken when including charges for this item in a determination of civil damages due from a trespasser. It may be very difficult to prove that a loss of productivity occurred in a courtroom setting since direct evidence of changes in site productivity will only become apparent as the affected site grows in the decades following the trespass incident.
- **Damage to other forest resources:** Includes reasonable and verifiable damage to remaining trees; understory plants, including those of cultural and medicinal importance; cultural resources; hydrological function; carbon storage capacity; wildlife habitat; and other ecosystem services.
- **Collectable fire costs:** Obtain from the fire investigator, if applicable.

#### 4.3.3 Immature stands

Appraisals of damage to immature stands should account for the value of the resource at the

time of the trespass and the costs that would be incurred to bring the affected area back to pre-trespass condition.

Timber stands containing products that were not mature at the time of the trespass which were irrecoverably harmed, degraded, or destroyed as a result of the trespass should be appraised by calculating their value per acre (or per stand) at their planned rotation age, and then discounting this future value back to the present. An appropriate interest rate on Treasury Notes and bonds should be selected from Appendix C of the Office of Management and Budget (OMB) Circular A-94 for the year in which the trespass occurred. A real discount rate (market rate minus the annual inflation rate) should be used to ensure that inflation is accounted for.

When calculating future stumpage, begin with today's fair market value for the species and product expected at the end of the rotation, then determine the value of the product at the year of harvest using the discount rate (see Attachment 3 for an example). When "growing" these products forward in the appraisal, costs and/or returns from intermediate treatments or products must be included. All costs and returns are discounted back to the present. A cost for the delay in reaching rotation caused by the trespass should be included where applicable.

#### **4.3.4 Damages to Improvements**

When a trespass results in damage to improvements such as roads, fences, gates, bridges, and other property, the cost of damage incurred may be included in the trespass appraisal. When these improvements are damaged, contact the appropriate BIA program for assistance in determining damage value. The value attached to improvements must be based on their condition at the time of the trespass and not replacement value.

Claims for damages to non-trust property are not recoverable under trespass regulations but may be addressed under the Federal Tort Claims Act.

#### **4.3.5 Enforcement Costs**

Enforcement costs are charges other than stumpage, interest, or resource damages that can be charged to the trespasser to recover expenses resulting from responding to the trespass. Enforcement costs are incurred beginning with detection and continue through all processes through the prosecution and collection of damages until the case is closed. These costs are any associated with trespass case preparation and resolution, including but not limited to:

- field examination and survey;
- damage appraisal;
- investigation assistance and reports;
- witness expenses;
- preparation of correspondence;
- court costs; and

- attorney fees.

#### **4.3.6 Interest**

Interest is calculated at the statutory rate prescribed by the law of the Tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of Tribal law in the amount prescribed by federal law (25 CFR 163.29 (a)(3)(iv)). An interest rate for trespass-related debts should be included in a Tribe's Timber Use Policy Statement.

If the Tribe has not specified procedures for calculating interest on trespass-related debts, then the interest rate prescribed by federal law must be used. Interest on debts to the federal government are prescribed in 31 U.S.C. chapter 37, Claims, subchapter II, Claims of the United States Government, § 3717, Interest and penalty on claims, which specifies the following regarding interest to be charged:

- A minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter. (§ 3717 (a) (1));
- Interest accrues from the date that the notice of the amount due is first mailed to the debtor (§ 3717 (b) (2));
- The rate of interest is the rate in effect from the date interest accrual begins (§ 3717 (c) (1));
- The rate of interest does not change for the duration of indebtedness (§ 3717 (c) (2));
- A penalty charge of not more than 6% per year will be charged on debts more than 90 days past due (§ 3717 (e) (2)).

The investment rate for the Treasury tax and loan accounts is the Treasury Current Value of Funds rate. It can be found online:

[https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm).

Interest charged is simple interest and is not compounded. Interest is charged annually. Interest will be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered (25 CFR 163.29 (a)(3)(iv)). A worksheet that can be used to calculate accrued interest is provided in the online templates.

#### **4.4 Volume Estimation Standards**

When trespass is reported, a determination of value is made using volume estimation methods. The nature of the damage and the physical evidence present will influence the design of the inventory as described in 53 IAM 8: Inventory and Monitoring, section 8.5 F.

An inventory must be performed to the following standards:

Scheduling	Promptly upon reported detection.
Design	100% sample; if impractical utilize a regionally approved sampling method.
Accuracy	5% sampling error at 1 standard deviation if using a regionally approved sampling method.
Data	All physical evidence will be mapped and photographically documented. All measurements necessary to yield quality and value will be recorded.
Analysis	Full documentation of quantity and value calculations, cost of site rehabilitation, and loss of intrinsic values.
Quality Control	Regional direction.

An accounting should be made for all merchantable material that has been cut or damaged in the trespass area whether removed or not. Logs and/or other forest products remaining on the ground must be scaled, graded, measured, or counted according to standard procedures and reported in appropriate units (board feet, cords, pieces, etc.). Where products have been removed, volume often must be estimated from a stump cruise. In some cases it may be possible to obtain information on trespass volume from the processing facility that received the material from the trespasser. All stumps and products remaining on the trespass area should be painted or otherwise identified to prevent confusion and provide for an accurate accounting.

## *Chapter 5: The Trespass Report*

### **5.1 Introduction**

The primary purpose of the trespass investigation is to collect and analyze information that is used to produce the Trespass Report. The Trespass Report is extremely important as it provides the factual basis upon which the Line Officer bases her or his decision on how to resolve the trespass incident. The Trespass Report must present the facts succinctly in order to clearly relate the conclusion indicated by analysis of the available evidence while also containing detail sufficient to stand up to intense scrutiny in a court of law. Creating a Trespass Report is an exercise that needs to be undertaken with deliberate care. It should never be done hurriedly or viewed as something that just needs to be gotten out of the way.

The Trespass Report should answer the questions of “who, what, when, where, how, and why” and provide whatever supporting evidence was gathered or developed to clearly demonstrate to the reader how the final recommendation was derived. It should be written in a format that a Line Officer, Solicitor, or judge can follow and understand, avoiding the use of jargon or officious language as well as acronyms. It should be a formal report, not merely a form or checklist with some relevant attachments.

The Line Officer has final responsibility for the Trespass Report, but usually delegates the preparation of this report to an individual referred to as the Trespass Officer. The Trespass Officer is responsible for completing the investigation, writing the report, and presenting the findings to the Line Officer. For investigations of forest product trespass resulting from a wildfire, the Line Officer has final responsibility to ensure that the fire investigation is completed and the report is written. Responsibility for this is typically delegated through the Fire organization and documented on a resource order. For more information regarding wildfire investigation origin and cause determination reports, see the current National Wildfire Investigation Handbook, 90 IAM 1.4 C (10)-H.

The Trespass Report should effectively communicate the following.

**Findings** – A narrative summary of what was found as a result of the investigation.

**Observations** – What was documented at the scene?

**Methodologies** – How the scene was processed; how and what data was collected; cruise design; appraisal methods used; interest calculations; etc.

**Analysis** – A description of how the evidence was assessed to arrive at the recommended action. Indicate what data was analyzed; how it was analyzed; what hypotheses were developed and tested to determine the outcome of the investigation; how witness testimony was considered; what mitigating circumstances were involved; and what socio-political considerations were weighed.

**Final Recommendation** – A brief synopsis of the evidence and how it is interpreted with a proposed course of action to aid the Line Officer in the decision making process.

## **5.2 Trespass Report Contents**

As the trespass investigation progresses, the designated Trespass Officer will prepare the Trespass Report. While the specific format of the report will vary due to the specific circumstances of the case, the information contained in the report will be similar in each case.

The following sections are typically included in a Trespass Report:

- Cover Page
- Narrative Statement
- Investigation
- Findings
- Damages
- Conclusion
- Attachments
  - a. Trespass Field Report
  - b. Damages Worksheets
  - c. Volume estimates (cruise or scale results)
  - d. Appraisal
  - e. Costs Worksheets
  - f. Interest calculations
  - g. Immature stand(s) value estimation
  - h. Property and Evidence
  - i. Map(s)
  - j. Photo Log and photographs
  - k. Supplemental Reports, worksheets, or other supporting documents
  - l. Witness Statements
- Distribution

### **5.2.1 Cover Page**

The cover page contains a confidentiality notice, the case number (see section 3.2), and date of the report. This date is the date on which the report was submitted to the Line Officer for review and decision.

### **5.2.2 Narrative Statement**

The narrative statement is the main portion of the Trespass Report. The narrative statement should expand upon the content of the field report and describe the circumstances which resulted in the trespass action. It should be detailed enough so that other staff members involved understand the case.

### 5.2.3 Investigation

This section provides a description of the investigation. It describes when the trespass was detected, the products removed or damaged, the circumstances surrounding the trespass, and the actions and procedures the investigator(s) employed to conduct their investigation.

The investigation must establish that a trespass occurred; where it occurred; when it occurred; how it occurred; why it occurred; and the responsible party. This section should include information collected on the Forest Trespass Field Data Report. If a fire was involved, it must also include a copy the fire investigation report.

In cases where the responsible party cannot be identified, the Line Officer is still responsible for completing the investigation report to document that the trespass occurred. Information pertaining to a responsible party may come in at a later date.

### 5.2.4 Conclusion

This section describes the findings of the investigation and the recommended course of action to remedy the trespass action.

### 5.2.5 Damages

This section describes how the trespass damages were determined. It should identify the products being appraised; include a description of the methodology used in determining their value; provide sources for price information; describe adjustments and/or penalties applied; and describe volume estimation methods and any other relevant information.

This section is supported by the damages worksheet completed during the investigation and utilizing the Forest Trespass Field Data template, output from cruise processing and volume estimation software, cost worksheets, interest calculations, and projections of the value of immature stands. The detailed analysis and calculation documents should be attached to the Trespass Report.

### 5.2.6 Maps

Maps should include a *locator map*, to show the general location of the trespass, and a *trespass area map*, showing the location of the trespassed lands as related to trust tracts and other ownerships. Add other maps that are useful to the investigation. Map quality should be clear and easy to understand, while including:

- Legend
- Compass Rose (North arrow)
- Scale (1:XX,XXX)
- Title

## **5.2.7 Property and Evidence**

This is a description of any property and evidence identified collected as a result of the trespass and the investigation. It should also include a statement if the chain of custody has changed.

## **5.2.8 Photo Log and Photos**

Photos are often the only long-term evidence that document the trespass. They should be taken to intentionally document conditions, damages, physical evidence found, and any people, vehicles, or equipment found at the scene. Each photo should be logged on a photo log as it was taken to document the time, date, location, describe what is being photographed, and the direction (N, NW, NE, E, W, S, SE, SW) the photo was taken. The name of the photographer and type of equipment should be included on the log.

The digital photography SOP included in BIA's National Wildfire Investigation Handbook (90 IAM 1.4C (10-H)) should be followed for all digital photography. The Forest Trespass Field Data Report contains a photo log.

## **5.2.9 Supplemental Reports**

Supplemental reports may include police reports, forensic testing results, timber sale contracts, individual fire reports, spot weather forecasts or records, and any other supporting information. Each should be factual, relevant, and referenced somewhere in the narrative, investigation report, or appraisal.

**5.2.9.1 Wildfire Investigation Reports** The BIA has an established format for wildfire investigations. It is required that Wildfire Investigators use this format to report their findings on every investigation. The format is found in 90 IAM 1.4 C (10), Appendix I. While the fire investigation report is similar to the Trespass Report and contains much of the same information, it is not the same. The Fire Investigation Report is always a supplemental report for a Law Enforcement Criminal Case Report or a Trespass Report.

For wildfire trespass, the fire cause is recorded on the Fire Report. On the trespass investigation subform, the case is established and a trespass number assigned. The Trespass Decision Document (see section 6.2), signed by the Line Officer, along with any trespass investigation information is filed in the Trespass Case Folder along with a copy of the Fire Report. The original Fire Report is filed in the Official Fire Report Folder in the unit's Central Files.

## **5.2.10 Witness Statements**

Witness statements can provide valuable evidence. It is preferable to have the witness write their own statement; however, it is acceptable if necessary for the witness statement to be transcribed by a third party. Each witness should sign their statement. Law enforcement officers are trained in taking witness statements and should be used in this role, if available.

### **5.2.11 Distribution**

List the individuals to which copies of the trespass report have been distributed.

## ***Chapter 6: Administrative Decisions and Determinations***

### **6.1 Introduction**

An Administrative Decision is the choice made from among multiple options by a designated government official, such as a Line Officer, as to which course of action the agency should take in pursuing official business. In the context of forest trespass, this refers to the decision made by the Line Officer as to whether or not to take action against the responsible party or parties identified by the Trespass Report. Because the chosen course of action in an Administrative Decision may be based on incorrect information or a faulty interpretation of evidence, Administrative Decisions are usually subject to appeals per 25 CFR Part 2.

### **6.2 Trespass Decision Document (TDD)**

Responsibility for taking action in response to a trespass incident resides with the designated Line Officer with authority in the location in which the trespass incident occurred (see 53 IAM 7, section 1.5). As the trespass investigation progresses, the designated Trespass Officer reviews and compiles the information received from the investigation process and completes the Trespass Report. The findings of the Trespass Report are used to provide the basis for the recommended course of action to be taken in order to remedy the effects of the trespass action. The facts of the trespass investigation in the form of the Trespass Report and the recommended course of action in the form of the Trespass Decision Document (TDD) are provided to the Line Officer for review and action. The purpose of the TDD is to document the rationale for the course of action that will be taken upon conclusion of the investigation based upon the findings of the investigation.

The options on the TDD from which the Line Officer can choose are as follows:

- Trespass case should proceed with civil actions;
- Trespass case should not proceed with any action, case closed;
- Trespass case should not proceed at this time, case file remains open;
- Trespass case should not proceed with civil action at this time in lieu of criminal action, case file remains open;
- Trespass case should proceed with civil actions due to unsuccessful cost recovery in criminal action;
- Trespass case should not proceed, due to successful cost recovery in criminal action, case file closed.

Signature of the TDD by the Line Officer constitutes the rendering of an Administrative Decision. Action cannot be taken to collect civil damages from an alleged trespasser until the Line Officer has signed the TDD in concurrence with the recommendation to proceed with civil actions.

### **6.3 Determination to Proceed**

The determination to proceed is based upon the facts of the investigation when a trespasser can be identified and when there is sufficient evidence to support the decision. In criminal cases, the Line Officer must consult with the BIA OJS, the Office of the Solicitor, or the appropriate law enforcement agency.

The Line Officer must make a determination based upon investigation information and the recommendations of the Trespass Officer and law enforcement. If the determination is made to not proceed with the case, the rationale of this decision must be documented on the TDD. A decision not to proceed at the request of the affected Tribe must be supported by Tribal resolution as well as by correspondence from the Tribe.

If the status of the case changes at a later date, the TDD must be amended to document the change in status. For example, if there was insufficient information to proceed with taking action on the trespass at the time of the incident but additional information is obtained later that enables the case to proceed with civil actions, then this change in status must be notated in the Trespass Report and on the TDD. Documentation of changes should be ongoing throughout the entire trespass process until the case is resolved on a permanent basis.

The procedures and guidance provided in this handbook apply to all federal agencies and programs participating in the management, accountability, or protection of Indian forest land. Regardless of the means of program execution, the appropriate Federal Official must ensure that the practices and procedures prescribed herein are followed. The procedures described in this handbook should be followed unless otherwise negotiated in a Tribal Compact.

### **6.4 Administrative Record (AR)**

The Administrative Record (AR) is a compilation of all documents pertaining to the trespass incident. An AR is critical to any agency decision because it thoroughly explains why the decision was made. It should demonstrate that the agency followed a reasoned decision-making process and complied with statutes, regulations, and policy. The Trespass Report is central to the AR, but the AR also includes all of the documents and records that went into the making of the Trespass Report.

The following is a non-exhaustive list of items that should be included in the AR:

- Notice of trespass;
- Demand letter;
- Any correspondence between trespasser and BIA agency;
- Trespass Report;
- TDD (see section 6.2 above);
- Correspondence between any parties involved in case including emails and phone logs.

The AR should include every document the Line Officer relied on to make the decision to bring the trespass action.

## **6.5 Office of the Solicitor Review Request**

All trespass cases, particularly those that are complex or controversial, may benefit from review by the Office of the Solicitor. If Solicitor review is necessary, use the following steps:

- The Line Officer completes the Line Officers' TDD;
- A copy of the AR with a case summary is submitted to the regional office for review;
- If the file is deemed complete, then the regional office forwards the case to the Office of the Solicitor.

## ***Chapter 7: Enforcement***

### **7.1 Enforcement Processes and Actions**

Following detection of a trespass incident, the investigation and notification processes occur as described in Chapter 2, continuing through the completion of the Trespass Report described in Chapter 5, which provides the basis for the determination and administrative decision described in Chapter 6. Upon determination of the course of action for pursuing the case further, a Notice of Trespass is then issued. The Notice of Trespass (or Trespass Notice) identifies parties who may be responsible for the trespass action. A Demand Letter is then issued to the party or parties who have been determined to be responsible for the action and therefore liable for civil damages. Any communication with the responsible party must be sent by a trackable delivery method that provides a verification of receipt or hand-delivered. The Notice of Trespass and the Demand Letter templates are located on <https://www.bia.gov/bia/ots/dfwfm/forest-management-documents>.

If the trespass incident is being pursued as a criminal case, law enforcement officials will take the lead in notifying trespassers. If the course of action chosen by the Line Officer and recorded on the TDD is that the case should not proceed pending resolution of the criminal case, then the issuance of the Notice of Trespass and Demand letter is deferred until after the outcome of criminal prosecution is known.

#### **7.1.1 Notice of Trespass**

A Notice of Trespass should be sent as soon as possible once a determination that a trespass has occurred has been made. The only exception to this is if there are criminal charges associated with the trespass. Criminal charges take precedence over civil charges, and because of this, the criminal investigation may delay the delivery of the Notice of Trespass. If a criminal charge is presented concerning the trespass, then pursuit of civil action must be coordinated with law enforcement.

The Notice of Trespass is sent before the Demand Letter. Its contents should include the following:

- Statement that a determination of a trespass has been made (25 CFR 163.29 (g)(1));
- the basis for determination (25 CFR 163.29 (g)(2));
- notification of the seizure of forest products, if any (25 CFR 163.29 (g)(3));
- an assessment of damages, penalties, and costs (25 CFR 163.29 (g)(4));
- notification that the trespasser's action may result in civil and/or criminal action (25 CFR 163.29 (g)(5); and
- a statement of civil and/or criminal action being taken.

A notice of appeal rights should not be included as the Trespass Notice is not appealable.

### **7.1.2 Demand Letter**

The Demand Letter is issued after the Notice of Trespass and after the trespass damages have been calculated. The Demand Letter must be sent to the trespasser before the trespass case can proceed. Only one Demand Letter should be sent. Due to the variability of trespass cases, there is no prescribed format for demand letters. Agencies should ensure that demand letters are sent on the same day that they are dated.

The Demand Letter must be signed by the Line Officer. Its content is as follows:

- a statement that informs the responsible party that they are responsible for a trespass that has been committed;
- a detailed description of the factual basis for the trespass;
- an indication that their responsibility for the trespass makes them liable to the U.S. government for damages;
- a statement informing the responsible party that their failure to cooperate may result in further legal action;
- a detailed description of the applicable damages, penalties, administrative costs, and applicable interest in detail;
- the name, address, email address and phone number of the appropriate BIA contact person;
- a statement that specifies the date payment is to be made (due date), which should not exceed 30 days from the date of the letter; and
- a statement informing the responsible party of their appeal rights per 25 CFR Part 2.

### **7.2 Statute of Limitations**

The statute of limitations imposes a limit to the amount of time that the BIA has to send the Notice of Trespass to the responsible party. The time limit is 6 years and 90 days from the date the trespass is discovered. Some federal courts have required that an action be brought before this period expires. Therefore, it is very important that BIA and Tribal officials not delay investigating a trespass once discovered. Any delay of investigation will make enforcement of the trespass more difficult.

## ***Chapter 8: Appeals***

### **8.1 Appeals Pertaining to Civil Trespass Processes**

Any decision issued by a Line Officer that is not final is subject to appeal. Appeal rights are defined in 25 CFR Part 2, which states:

*All written decisions, except decisions which are final for the Department pursuant to §2.6(c), shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.*

### **8.2 Appeal of Line Officer's Decision (25 CFR 2.9-14)**

A person wishing to appeal an agency decision (Appellant) must file a written notice of appeal to the appropriate Line Officer and also send a copy of the Notice of Appeal to the Regional Director. Because of their position as the deciding official for appeals, the Regional Director should not be designated as the Line Officer with decision authority for trespass cases managed by regional Forestry staff. In these cases, the Deputy Regional Director for Trust Services should be the deciding official who signs the TDD and the Demand Letter.

The Appellant must file a notice of appeal within 30 days of receipt of the Line Officer's decision. A Notice of Appeal that is filed by mail is considered filed on the date that it is postmarked. The Appellant is required to prove timely filing if this is in question. No extension of time will be granted for filing a Notice of Appeal. Notices of Appeal that are not filed within the specified time will not be considered.

The Notice of Appeal must include:

- Name, address, and phone number of appellant
- A label with the words "NOTICE OF APPEAL"
- A statement of the decision being appealed that is sufficient to permit identification of the decision
- A Statement of Reasons

Regional Directors must render written decisions in all cases appealed to them within 60 days after all of the time for pleadings (including all extensions granted) has expired. The decision must include a statement that it may be appealed pursuant to the regulations, identify the official to whom it may be appealed, and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal. A copy of the decision should be sent to the Appellant and each known interested party by a trackable delivery method that provides a verification of receipt.

### **8.3 Appeal to Interior Board of Indian Appeals (IBIA)**

Regional Director's decisions are appealable to the Interior Board of Indian Appeals (IBIA). There are different regulations that apply in appeals of a Regional Director's decision (43 CFR Part 4, subpart D). The AR is the critical component when the IBIA is reviewing a Regional Director's decision and considering an appeal.

If an Appellant wishes to appeal a Regional Director's decision, that notice of appeal must be in writing and within 30 days of the Regional Director's decision per 43 CFR 4.332. Within 20 days from appeal, regional staff must assemble an AR and send it to the Board (43 CFR 4.335(a)). The region and the Office of the Solicitor will provide written briefs to the IBIA. The Appellant also has the opportunity to provide written briefs to the IBIA. After all briefing is complete the IBIA will consider the arguments and issue a decision. A decision of the IBIA may only be appealed to federal court.

## ***Chapter 9: Settlement***

### **9.1 Authorities**

In some cases it may be in the best interest of the Indian landowner to reach a settlement with the trespasser for less than full and complete damages. The Forest Trespass Settlement Agreement should be utilized to articulate the specifics of the settlement. In cases of settlement, the following officials have specific responsibilities:

**Line Officers** – are authorized to accept full and complete damages in a trespass case (treble damages plus interest).

**Tribal Official** – When the Tribe has concurrent jurisdiction for trespass, a Tribal official is authorized to accept full and complete damages in a trespass case (treble damages plus interest).

**Office of the Solicitor** – Anything less than full and complete damages is a compromise and only the Office of the Solicitor is authorized to handle those situations. The Office of the Solicitor will accept compromise offers for trespasses on Indian land. The Office of the Solicitor may also work with the DOJ in a criminal trespass case.

**DOJ** – Will become involved if the trespass has been determined to be criminal. After a case has been referred to the DOJ, no settlement should be made or even attempted by the agency, field office or Tribe.

### **9.2 Payments**

The procedures for collecting and distributing trust funds obtained in trespass cases are found in chapter 7 of the BIA Forestry Collections and Distributions Handbook. This handbook is located under ‘Other Indian Forestry Authorities’ section on the Forestry and Wildland Fire Management webpage here: <https://www.bia.gov/bia/ots/dfwfm/forest-management-documents>. All payments of damages go through the lockbox and follow procedures for distribution through the Trust Asset Accounting Management System (TAAMS).

#### **9.2.1 Criminal Penalties**

Criminal penalties may be assessed as deemed by the court. These can include restitution such as repayment fire suppression costs if the trespass is a wildfire. All the costs previously discussed can be submitted to the court for recovery under a criminal prosecution.

#### **9.2.2 Civil Penalties**

Full recovery is the entire payment of civil penalties. Civil penalties are all recoverable damages, including:

**Compensatory Damages** – Single stumpage collected as the result of trespass. These are treated as the proceeds of sale of forest products and distributed to the beneficial owners.

Forest Management Deductions are collected from single stumpage payments associated with trespass if the total value of stumpage is greater than or equal to \$5,001.

**Double stumpage value penalty** – Penalty that is double the value of single stumpage, also distributed to the beneficial owners. Compensatory damages plus double stumpage value penalty is commonly referred to as treble stumpage.

**Interest** – Interest is calculated on treble stumpage from the date of the Demand Letter until collections are made in full (25 CFR §163.29(a)(3)(iv)). In accordance with the general principle that interest follows principle, interest on treble stumpage is distributed to the beneficial owners.

**Recovery Costs** – These costs are not for distribution to beneficial owners and include:

- 1) Cost to restore damaged land. The cost for damage to forest land includes rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources (25 CFR §163.29(a)(3)(ii)). These funds are held in a Financial and Business Management System (FBMS) account or a Tribal Trust Fund Accounting System (TFAS) Forestry Projects account, depending on whether restoration work is directed and carried out by BIA or by the Tribe, respectively.
- 2) Cost to enforce trespass regulations. The cost for the enforcement of trespass regulations includes expenditures for detection, field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees (25 CFR §163.29(a)(3)(iii)). These funds are held in an FBMS account to cover payroll of BIA employees who carried out the investigation and other expenses accrued by enforcement, or transferred to the Tribe if these expenses were incurred by Tribal employees.
- 3) Fire suppression costs are not addressed under 25 CFR §163.29. These costs may be recovered and must be returned to the U.S. Treasury Department. Refer to 28 U.S.C. § 2415 (b) and 31 U.S.C. § 3717 for further information.

### **9.3 Allocation of Payments**

Payments are generally allocated in a manner similar to other kinds of trust revenue that is allocated to the beneficial landowners of a given tract proportional to the amount of undivided interest that each owner holds. Where a trespass affects multiple tracts of land with different ownership, payment must be allocated to each tract in accordance with some defensible method such as weighted by acres or by volume of forest products removed.

#### **9.3.1 Trespass by Indian Owners**

Indian beneficial owners who trespass on land in which they have an undivided interest are not eligible to receive their share of civil penalties and restoration costs, with any remainder going

toward enforcement costs. If monies are left after these distributions, they will go into the Forest Management Deduction account (25 CFR § 163.29(c)).

### **9.3.2 Full recovery of damages**

Follow regular procedures used to distribute trust revenue.

### **9.3.3 Less than full recovery of damages**

Settlement between the trespasser and the Office of the Solicitor for less than full recovery of damages requires special consideration of how funds are allocated, as follows:

**9.3.3.1 Collections of up to single stumpage** – When the amount collected from the trespasser is up to the single stumpage value of the trespass products, the proceeds will be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the land (25 CFR § 163.29(b)(1)).

**9.3.3.2 Collections exceeding single stumpage** – When the amount collected from the trespasser exceeds the single stumpage value but is less than full recovery, funds will be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land (25 CFR § 163.29(b)(2)). See Attachment 5 for an example.

## **9.4 Payment Plans**

If a trespasser indicates a willingness to settle the matter but cannot pay the bill immediately then a promissory note may be utilized to allow the trespasser to pay in installments.

### **9.4.1 Promissory Notes**

A promissory note is a document containing a written promise to pay a stated sum to the debtor at a specified date. This document should contain provisions for a security (see 9.4.2 below) and acceleration clause (see 9.4.3 below). Because a promissory note is a compromise settlement and not collection of full damages, it must be prepared in cooperation with the Office of the Solicitor.

A promissory note is used when the trespasser desires to settle the matter but cannot make immediate payment. The original promissory note and 2 copies of it are required to execute this request. The original note will be kept in the agency case file and one copy in the regional file until all payments are made. An approved copy of the note will also be returned to the trespasser with a cover letter signed by the Line Officer.

The signing of the promissory note by the trespasser and acceptance by the Federal Government does not prevent the trespasser from doing business with the Government provided the payments are kept current.

**9.4.1.1 Promissory Note Security**– Trespasser is responsible to put up some form of security for the promissory note. A pledge, mortgage, or deed of trust against real property, some form of personal property, or other collateral is recommended as security. If the trespasser is an Individual Indian, their Individual Indian Money Account (IIM) may be used as form of security.

Security instruments relating to real estate should be recorded with the State Recorder’s Office, and any documents evidencing a pledge of personal property should also be evidenced by the Uniform Commercial Code Financing Statement which can be recorded in a like manner.

**9.4.1.2 Acceleration Clause**– An acceleration clause is a provision calling for an acceleration of the amount due in the event that the trespasser defaults on one or more payments. Such an acceleration clause will permit immediate filing of a legal action to recover the entire unpaid balance of the note, rather than being limited to collecting payments as they come due. This must be included in all promissory notes.

**9.4.1.3 Payment Default**– The acceptance by the BIA of a promissory note does not preclude the BIA from taking additional legal action on the trespass. If a trespasser defaults on a note and further payments are not forthcoming, it will be the decision of the BIA, upon recommendation by the Office of the Solicitor, as to whether suit will be brought on the note, or for action against the trespasser. Such a decision will take into consideration the financial status of the trespasser, the amount still due on the note, the possibilities for collection, the circumstances surrounding the trespass, and other information contained in the file.

## **9.5 Debt Collections**

**Bill of Collection** – If the trespasser fails to pay the amount owed, or pays only part of the damages due and BIA’s attempts at collection have failed, the BIA may complete Form DI-1040 (Billing Request Form) and send it to the Interior Business Center’s (IBS) BIA Billing Department, along with a cover letter or email. In order for the IBC to collect on a debt, they need the following information: name, address and social security number (if known) of the trespasser, a thorough description of what the bill is for, and a Line of Accounting (LOA) including fund, functional area, cost center, and budget object class. If there are multiple accounting strings to be paid, indicate the amount for each. Documentation concerning the trespass should also be sent to IBC, to identify that the trespasser has been identified responsible for the trespass, even if just the last correspondence with the trespasser. This information is sent by IBC to the trespasser with the bill. This information may be mailed or sent by email to the IBC. A template for a memorandum from BIA to IBC can be found online as referenced in Chapter 1.

**Referral to the DOJ** – It may be necessary to contact the DOJ to file an action in federal court to collect on the trespasser’s delinquent debt. Whether DOJ will initiate such a lawsuit will depend on many factors, including: the amount of debt owed, the trespasser’s ability to pay, the type of trespass, and the AR supporting the trespass determination. Contact the local Solicitor’s

Office for assistance if it has become necessary for DOJ to bring a collection case on behalf of the BIA for a given trespass case.

## **9.6 Closing the Case**

**Letter to Trespasser** – After payment in full has been received for the trespass, the responsible office will close the case by sending a letter to the trespasser. A copy of the letter must also be sent to the Regional Director and should be included in the AR for documentation purposes.

## ***Chapter 10: Records Management***

Managing and protecting records related to forest and fire trespass that document official actions and decisions is a fiduciary responsibility.

### **10.1 Record Series**

The record series from the Indian Affairs Record Schedule, 4400, *Forestry*, used for forest trespass is TR-4420-P5 Timber Trespass. The record series for forest trespass originating from a wildfire is TR-4421-P5 Fire Trespass. P.L. 93-638 compacted or contracted programs should use the standard for recordkeeping specified in their compact or contract. All trespass documentation relating to the trespass must be maintained within the case file regardless of media. The case file must document all actions and decisions.

Contact the local Office of Trust Records liaison for further assistance regarding trespass records.

### **10.2 Use of TAAMS**

TAAMS is the BIA's official system of record for transactions involving trust assets. By that definition this includes serving as the system of record for transactions associated with trespass. TAAMS is a complex database containing the official title record of every piece of trust land for which BIA is responsible; current ownership of that land; and detailed information about contracts, permits, and leases on that land. In addition to serving as the system of record, TAAMS is also used to generate invoices used in the collection of payments from trespassers, and to specify the distribution of these funds to the Individual Indian Money (IIM) or Tribal accounts of the beneficial owners, or to holding accounts in the U.S. Treasury.

#### **10.2.1 TAAMS Responsibilities**

- **Regional Forester** has the final responsibility for ensuring that TAAMS is used correctly and accurately for Forestry-related activities within his/her region, including the management of trespass cases. Every regional Forester has been instructed by the BIA Director to identify a **TAAMS Forestry Point of Contact** for their region.
- **TAAMS Forestry Point of Contact** provides support and advice to TAAMS users within their region.
- **Agency Superintendent** is responsible for ensuring that their agency has TAAMS access and staff qualified to complete TAAMS entry.
- **Agency Staff** are responsible for encoding transactions involving trust assets under the administration of their agency.

- **Tribal Staff** operating under P.L. 93-638 contracts or compacts may be responsible for encoding transactions involving trust assets under the administration of their Tribal program.

### 10.2.2 Help with TAAMS

Complete instructions for encoding trespass cases in TAAMS is beyond the scope of this Handbook. Individuals are referred to the most current version of the TAAMS Realty Forestry Guide (also referred to as the TAAMS Forestry Training manual) and the TAAMS Receivable Guide (<https://sites.google.com/a/bia.gov/bia-taams-system/home/taams-handbooks>).

The TAAMS Forestry Operations Group (FOG) provides support nationwide to Forestry staff who use TAAMS. This group of “power users” helps develop instructional material, system enhancements, and business rules. Support includes putting on TAAMS training sessions, updating handbooks and manuals, and providing phone support or site visits to answer questions about using the system or for coordinating strategies for applying the system to a given location’s unique situation. Contact information for TAAMS FOG members can be found on the FOG Sharepoint site at <https://sp.ia.doi.net/sites/BIA/ots/dfwfm/forestTAAMS/default.aspx>. This website is only available to current BIA employees and Tribal staff with HSPD12 access ID cards.

### 10.2.3 General Guidance for Using TAAMS in Trespass Case Management

- Each trespass case is unique and TAAMS entry may be challenging. Different procedures must be used for managing a case where the trespasser makes a single payment, refuses to pay, or makes a series of payments due to an approved promissory note or adjudicated payment plan. It is recommended that the TAAMS “Train” environment be used to test document entry and that an additional user review it prior to entering the document in the TAAMS Production database.
- When entering the Receivable Document in TAAMS, it must be kept in mind that the collection process can last for several years. The document dates must be encoded with these possible time frames in mind.
- The Beginning/Start Date field should be entered as the date that the trespass occurred. The Approval Date is the date upon which the TDD was signed by the Line Officer.
- Invoices for trespass cases should not be generated until it is known that a payment is forthcoming from the trespasser. This avoids the situation of having to create multiple invoices to account for additional accruals of interest in the event that the trespasser fails to make payment within desired timeframes.

TAAMS is a complex and frequently changing tool and the steps required for entry in the system may not be immediately apparent given the unique characteristics of the trespass case. Exercise care using TAAMS and have someone else review the entries if possible when trying something new.

## ***Chapter 11: Prevention***

There are many programs and procedures that can be implemented at the local level to prevent the loss or damage of forest products on Indian lands. These are described below.

### **11.1 Education**

Many trespass cases result from the occurrence of a landowner attempting to make a sale of timber from the land on which they reside. Many more trespass cases arise from Tribal members who cut firewood or collect other materials without having a proper permit. Ownership of Indian lands is often extremely complex, and most people aren't aware of the rules that are in place to manage and protect the land in light of that complexity. Likewise, rules in place to protect trust resources are not well-known or understood by the general public, including some Tribal and BIA employees. Education on the correct procedures for harvesting forest products as well as for raising awareness of differences in land ownership on Indian reservations is a crucial component of a successful land management program as well as a way of securing the cooperation of Tribal government program staff and the general public. A cooperative attitude held by all members of a well-informed community will not only prevent trespass occurrence and facilitate investigation into whatever incidents do occur, it will greatly improve the success of all aspects of the land management program.

Local citizens, allotment owners, Tribal officials, businesses, and contractors working with resources that are held in trust should be made aware of the responsibility of the Federal Government to protect trust assets and the process required before any harvesting of forest products can occur. They should be educated as to the types of activity that result in trespass. Community members should be informed of procedures to legally harvest forest products. In periods of high to extreme fire danger local citizens, allotment owners, Tribal officials, businesses, and contractors should be made aware of the fire danger levels and the associated fire precautionary measures.

### **11.2 Contract Language**

A contract or permit written for the sale of forest products should contain a clear and accurate description of the pertinent boundaries, products to be harvested, operating provisions, and the penalties for cutting or damaging products not authorized for removal. Carefully worded, clear contract documents minimize confusion and misunderstanding. Communication should be maintained with the purchaser, permittee, or other responsible party. Site visits by sale administrators should be frequent and thorough.

### **11.3 Survey/Boundary Marking**

Well-marked boundaries around harvest areas can help prevent unintentional trespass as well as make monitoring and administration of the sale easier. The colors used should be easy to see and the marks large enough to be easily seen even in adverse conditions. The marks should be located facing into the harvest area close enough together so there will be no question as to the location of the boundary. When marking the boundary be sure to include a good stump mark

that goes to ground level, and is positioned on the bole in a spot that is unlikely to be rubbed off in the harvesting operations. Conventional methodologies and colors should be used on property boundary marking.

#### **11.4 Timber Marking**

When products are individually marked to be cut or retained, the mark should be a color and size that is easily visible and marked on at least two sides of the bole. When marking timber for cutting include a good, wide stump mark that goes to ground level, in a location that is protected from cutting, scuffing, or abrasion during harvesting operations, often on the downhill side. Loose bark or moss should be scraped off the stump before paint is applied. Avoid using paint from local stores and, if possible, use marking paint that contains a tracer element that is unique to the project.

#### **11.5 Patrol**

Periodic patrols, especially during weekends and at times outside normally scheduled work hours, can be effective in detecting and deterring potential trespassers. Patrolling during periods of high to extreme fire danger combined with regular public contact is also an effective practice in reducing human caused fires. Patrol times and routes should vary so as to be unpredictable.

#### **11.6 Criminal Convictions and Civil Penalties**

Criminal convictions and civil penalties in a trespass case can serve as a deterrent to future trespasses.

#### **11.7 Tribal Involvement and Ordinances**

The involvement of Tribal officials in patrol, investigations, and prosecution can have a positive impact on preventing trespass. Tribal governments should be encouraged to adopt ordinances addressing trespass. Those Tribes that wish to prosecute cases involving non-member individuals in lieu of federal prosecution can adopt concurrent jurisdiction with the approval of the Secretary (25 U.S.C. 3106; 25 CFR § 163.29(j)).

## *Definitions*

**Administrative Decision:** The selection of one choice of action from multiple options made by a designated official of the Bureau of Indian Affairs regarding the official activity of the agency. Administrative Decisions are formal actions on the part of the government and may be appealed.

**Allotment:** A piece of land deeded by the government to a Native American, as part of the division of Tribally held land.

**Arson:** The intentional and wrongful burning of someone else's, or one's own, property. Frequently requires proof of malicious or wrongful intent.

### **Case:**

- (a) A general term for actions taken in response to a trespass incident, including investigation, reporting, and referral for prosecution.
- (b) A term for a legal action presented in a court of law. All the evidence and testimony compiled and organized by one party in a lawsuit to prove that party's version of the controversy at a trial in court.

**Compensatory Damage:** Single stumpage collected as the result of trespass. These are treated as the proceeds of sale of forest products. Forest Management Deductions are collected from single stumpage payments associated with trespass if the total value of stumpage is greater than \$5,001.

**Concurrent Jurisdiction:** Concurrent jurisdiction exists where two or more courts from different systems simultaneously have jurisdiction over a specific case. This refers to situations where a Tribe has adopted trespass regulations and granted the authority under §163.29 (j) to enforce them in Tribal court.

**Contacts or List of Contacts:** The investigation report includes names and contact information of people who were involved in the case. These contacts may include witnesses, investigators, technical specialists, suspects, firefighters, dispatch personnel, consultants, legal counsel, and others.

**Criminal Conviction:** This is a determination by a judge or jury that the accused is guilty of a crime beyond a reasonable doubt, followed by a formal sentencing or punishment. This is a typical conviction of a misdemeanor or felony resulting from a criminal code violation.

**Evidence:** Data presented in proof of the facts in issue and which may include the testimony of witnesses, records, documents, or objects.

**Fire Trespass:** The act of willfully or accidentally causing to be kindled or setting fire, without authority, any timber, underbrush, grass, or other inflammable material on Indian land by another. Fire trespass can occur on Indian forest lands and Indian agricultural lands, among others.

**Forest Products:** Marketable products extracted from Indian forests, such as: timber; timber products, including lumber, lath, crating, ties bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest lands (25 CFR§163.1).

**Indian Country:** This term is defined at 18 U.S.C. 1151 as follows:

... (a) all land within the limits of any Indian Reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including the rights-of-way through the reservation, (b) all dependent Indian Communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the titles to which have not been extinguished, including rights-of-way running through the same.

**Indian Land:** Land title which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian Tribe, or an Indian Tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized Tribe, or an Indian Tribe subject to a restriction by the United States against alienation (25 CFR § 163.1).

**Interior Board of Indian Appeals (IBIA):** The Chief Administrative Judge and Administrative Judge(s) of the Interior Board of Indian Appeals are authorized to exercise, pursuant to regulations published in the Federal Register, the authority of the Secretary in deciding appeals from (a) administrative actions and decisions of officials of the Bureau of Indian Affairs (other than actions and decisions involving contracts) in cases involving determinations, findings, and orders protested as a violation of a right or privilege of the appellant under regulations in 25 CFR Part 2; (b) orders and decisions of Administrative Law Judges and Indian Probate Judges in Indian probate matters; (c) decisions of the Superintendent of the Osage Indian Agency on the validity of Osage Indian wills, pursuant to 25 CFR § 17.14; (d) decisions of an administrative judge under the White Earth Reservation Land Settlement Act; and (e) historical accountings issued by the Office of Historical Trust Accounting. They are also authorized to decide other matters pertaining to Indians referred to the Board by the Secretary, the Assistant Secretary - Indian Affairs, or the Director.

**Interview:** A consensual questioning of a witness. It differs from a voluntary statement in that the investigator is asking the witness specific questions about the incident, rather than having the witness write a voluntary statement. An interview does not trigger the need for a Miranda warning and waiver.

**Juvenile:** A young person who has not yet attained the age at which he or she can be treated as an adult for the purposes of criminal law.

**Law Enforcement Officer (LEO):** An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses (See U.S. Code Title 5, Part III, Subpart G, Chapter 83, Subchapter III § 8331).

**Line Officer:** This refers to an individual to whom decision-making authority for the agency or jurisdiction has been delegated.

**Origin and Cause Determination:** The first steps in a wildland fire investigation are to determine the area of origin, then to establish what fuel was present, and what source of heat ignited it. Generally, if the origin of a wildfire cannot be determined, the cause cannot be determined.

**P.L. 93-638:** This refers to Public Law 93-638, the Indian Self-Determination and Education Act of 1975, as amended. Commonly referred to as the Self-Determination Act, or “638.” Regulations for this law are found in 25 CFR parts 900 and 1000.

**Person of Interest:** This term is often used by authorities when announcing the name of someone involved in a criminal investigation who has not yet been arrested or formally accused of a crime.

**Regional Trespass Coordinator:** An individual designated by the regional Forester to take the lead in tracking and reporting the incidence and progress of forestry trespass cases and providing support and assistance to personnel conducting the field investigation, reporting, and collection and distribution procedures related to trespass cases.

**Restricted Indian Land:** Land, the title to which is held by an individual Indian or a Tribe, and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law (25 CFR § 163.1).

**Statute of Limitations:** The time limit for filing charges against a defendant. In the context of forestry trespass, the statute of limitations imposes a time limit of 6 years and 90 days from the date the trespass is detected for issuing a Notice of Trespass to the trespass suspect in civil cases, or for filing a trespass claim in federal court for criminal cases.

**Trespass:** The removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or Tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire (25 CFR § 163.1).

**Trespass Case Status:** The terms *Open* or *Closed* are used when discussing a trespass case. This differs from case status in that case status is directly related to a law enforcement case, wildland fire investigations are not cases.

The following categories apply to trespass case status:

**A. Open Case:** An open case exists when the Trespass Officer is actively engaged in processing the case.

**B. Closed Case:** These cases have some results obtained as a result of work carried out. When cases have been classified in this category, they will generally not be reopened. Some examples of categories for closed cases are:

1. **Closed – Referred.** The case was referred to the appropriate law enforcement jurisdiction for criminal prosecution.
2. **Closed – Resolved.** No further work is required. Reasons may include payment in full, final adjudication in a criminal case, a settlement agreement has been reached, or dismissal due to other factors.
3. **Closed – Unsolved.** Work on this investigation has been suspended. Reasons may include insufficient evidence, no witnesses have been identified, or no responsible party is evident. This category may change if additional evidence, leads, or witnesses are identified.

**Trust Land:** Any tract, or interest therein, that the United States holds in trust status for the benefit of a Tribe or individual Indian (25 CFR § 163.1).

**Wildfire:** An unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out (National Wildfire Coordinating Group (NWCG)).

Also defined as:

*A fire occurring on wildland that is not meeting management objectives, and thus requires a suppression response.*

**Wildland Fire Investigator (INVF):** This is an NWCG position published in the Wildland and Prescribed Fire Qualifications Guide (PMS 310-1) with Standards for Professional Qualifications directed by NFPA 1033. The primary responsibility of the INVF is to determine the origin and cause of wildfire(s).

**Wildland Fire Investigation:** An investigation based on a systematic methodology and examination of wildland fire incident(s), which provides documentation of unbiased facts through interaction with people, assessment of physical objects, competent use of science, technical skill, and intuition, along with professional preparation in meeting strict administrative or legal mandates (NWCG).

**Witness:** Someone who has firsthand knowledge about a crime or significant event through their senses (e.g., seeing, hearing, smelling, touching) and can help certify important considerations to the crime or event. A witness who has seen the event firsthand is known as an "eye-witness." Witnesses are often called before a court of law to testify in trials after taking an

oath.

**Witness Statement or Witness Voluntary Statement:** The investigator asks a person(s) to record any observations or other knowledge they are willing to give in their own handwriting. This is generally done at the scene.

## Attachment 1 – Civil Versus Criminal Trespass

- A. Determination.** In determining whether to charge a trespasser with civil or criminal liability remember that one is not a substitute for the other. In appropriate cases, the Federal Government (Government) may want to proceed with both a criminal charge and a civil suit.

A fine, when levied in a criminal case by the Government, is a *punishment*. The fine is received and held by the Government in its sovereign capacity. It is *not* an offset against the civil liability of the trespasser. Money obtained by the Government in a civil suit is to compensate for *damages*. Damages claimed by the Government because of its position as trustee of Indian property and are generally then paid to the landowner whose property rights were violated. If both a criminal charge and a civil suit are pursued, the criminal case will usually be prosecuted first. If a conviction can be made under the higher standard of proof applicable to the criminal case, the judgment will legally establish the defendant's liability in a subsequent civil case.

Successful prosecution of a civil trespass case requires proof by a preponderance of the evidence that the defendant committed the trespass and caused a specific and demonstrable amount of damage to the owners. The intent of civil prosecution is to recover damages suffered by the injured party. Damages may be recovered from the trespasser and/or the purchaser of forest products cut in trespass. The solvency of the trespasser is of great concern in the civil case. The government cannot collect from a trespasser who has no assets, regardless of how guilty or liable the latter may be.

Successful prosecution of the criminal trespass case requires proof beyond a reasonable doubt that the defendant(s) committed the criminal act(s) with which charged. The intent of criminal prosecution is to punish the trespasser and act as a deterrent for similar offences. Any money receipts taken in fines or damages go to the U.S. Treasury or go towards restitution to the Indian land owner as ordered by the court. In order for the Indian owner(s) to recover damages, a civil action must be filed.

- B. Who Investigates.** Investigation of civil damages will be undertaken by the agency responsible for the management of Indian trust lands in which the trespass occurred (Bureau or Tribe under contract/compact). In criminal cases the investigation will usually be undertaken by the FBI. In some instances, particularly those involving smaller cases, the FBI may take a criminal case that was investigated primarily by the Bureau or Tribe. In any event, the office that first investigates a case should continue to exercise responsibility for the investigation until it is clearly relieved of that responsibility by another agency.
- C. Privilege Against Self-Incrimination.** In a criminal case, a defendant has the privilege against self-incrimination. In a civil case, a defendant has the burden of rebutting the presumption that he/she was responsible for unlawful cutting. In a criminal case the Government must establish all of the elements of the offence, including the element of willfulness, by its own investigation, and must establish it beyond a reasonable doubt.

- D. Establishing Damages.** In a civil case the Government must establish its damages by a preponderance of the evidence with reasonable certainty. This means that to get a judgment it must be shown that the defendant cut timber without authority and that the Indian owners suffered damages in the amount submitted. In a criminal case it is not necessary to show the precise degree of damages suffered by the Indian owners. There are occasions in a criminal case however, when a judge will impose a sentence and then suspend it on the condition that the defendant makes restitution in the amount of damages.
- E. Solvency of the Trespasser.** In a criminal case it does not matter whether the defendant is solvent or not. In a civil case solvency is a matter of great concern. The Government cannot collect from a trespasser who has no assets, no matter how liable he might be.
- F. Extradition of the Trespasser.** The criminal defendant can be apprehended in any state in which he can be found, and be returned to the scene of his crime to stand trial. A civil defendant, however, cannot be brought back to the court district of the trespass.
- G. Election of Remedies.** In a criminal case the Government's remedy is limited to those parties that are willfully and criminally at fault. Remedies cannot be obtained from parties that were innocent converters of trespass property or unjustly enriched adjacent landowners. In a civil case the Government frequently can obtain a fairly wide variety of remedies from a number of these alternative parties.

## Attachment 2 – Example Damage and Costs Worksheet

**Scenario:** On June 7, 2015 a trespass incident was discovered by firefighters responding to a small fire near the border of the Crow and Northern Cheyenne Reservations in southeastern Montana. A logger carrying out a timber harvest on a parcel of fee land on the Crow side of the boundary was found to have removed timber from approximately 30 acres of trust land on the Northern Cheyenne side. BIA Forestry immediately began an investigation of the incident.

A preliminary Investigation Report was drafted concurrent to the investigation and provided to the Agency Superintendent and Rocky Mountain regional Forestry staff 14 days after the incident was discovered. The narrative indicates that the owner of the fee parcel admitted to hiring the logger and directing harvest activity to occur past the boundary line to the end of the pine-filled draw, claiming that he owned the entire timbered area. Remnants of yellow and black striped flagging put up by the landowner indicate the boundary of the harvest area, and GPS mapping of the area indicates that a total of 28.72 acres were harvested. In addition, a logging road of 0.44 miles was constructed, routed through an existing range unit fence which was cut to accommodate the road construction, and 1.2 miles of skid trails were created. Landings were placed in natural openings, however 44 slash piles were created from processing the logs and none of the area has had slash lopping. A stump cruise is in progress as the landowner and the logger are unwilling to provide information on volumes removed and neighboring landowners are unable to provide useful information. A silvicultural reconnaissance determined that natural regeneration in the area was sufficient and therefore that tree planting would not need to occur.

At 30 days after the date of discovery, a revised preliminary Investigation Report was released to share updated information. Results of the stump cruise indicated that 48.97 MBF of sawlogs had been harvested from trust land. The investigation team had contacted a number of nearby sawmills to see if any had accepted delivery of logs from the logger on behalf of the owner of the fee land. The Archer Forest Products sawmill of Sheridan, Wyoming confirmed delivery of 60 truckloads of ponderosa pine and provided copies of truck scale receipts to law enforcement officials. The investigation team managed to connect the truck receipts to the owner of the fee land but have no way of identifying which loads contained logs harvested from fee land and which contained logs harvested from trust land. An appraisal determined the stumpage value of the logs to be \$55.85 per MBF. Based on inspection of the slash left on site it was determined that no other forest products had been removed.

In addition to this information, cost information for site rehabilitation were compiled. A local contractor can complete slash treatment on the site for a cost of \$12.45 per acre. The Northern Cheyenne Fire and Aviation program indicates that the cost of slash pile burning is \$85 per acre. Crow Agency Forestry staff identified a contract to complete road obliteration, recontouring, and seeding at a cost of \$126 per mile plus \$400 to move his equipment and purchase native grass seed. Skid trails and landings will also be seeded and erosion control features installed at a price of \$67.50 per mile plus \$217.70 for seed. The Northern Cheyenne Rangeland Management program identified a contractor who would repair the range fence for a flat rate of \$150.

The Investigation Report was finalized and sent to the Agency Superintendent on July 17, 2015. The Trespass Decision Document was signed by the Superintendent on July 22, 2015, directing

that action be taken to collect civil damages from the fee landowner. A Trespass Notice had been sent to the fee landowner and to the logger previously, so a Demand Letter was drafted and sent to the fee landowner to request payment of damages to date, which amounted to \$21,983.25 (see Figures 1, 3, and 4 showing the Damages and Costs worksheets). The Demand Letter was dated July 24, 2015.

The fee landowner made no response upon receipt of the Demand Letter, so the designated Trespass Officer followed up with multiple phone calls and visits the landowner in person to explain the consequences of not responding to the Demand Letter. Additional time went by, and the decision was made to send a second Demand Letter to document the efforts that have been made to resolve the issue to date. The second Demand Letter resulted in a response in the form of an Appeal submitted to the Regional Director by the fee landowner.

The appeal argued for dismissal of all charges on the grounds that the landowner had done the Tribe and BIA a favor by thinning a seriously overstocked pine stand that would have otherwise been the basis of a large catastrophic wildfire. It notes that the only access to the trust land that was harvested was through the fee land, and that the unmanaged timber on trust land threatened the fee land and the owner's home, and that evidence of this threat came from the fact that the harvest was discovered by a crew responding to a wildfire nearby. The appeal concluded by noting the fee landowner's long history of good relations with both the Crow and the Northern Cheyenne Tribes, including employment of several Tribal members on the staff of the ranch, and expressed hope that this action could be the catalyst for a needed conversation amongst all parties on the economic development of the area.

Upon reviewing the appeal, the Office of the Solicitor found no grounds for dismissal of charges and no deficiencies in the manner in which BIA handled the case. The Regional Director's office issued a response letter to the fee landowner noting that no valid grounds for dismissal were presented and again demanded payment in full. After allowing time for a response, BIA Forestry calculated the amount of interest owed (see Figure 2), and the case was referred to the Interior Business Center for collection under a memo dated September 15, 2015.

**Figure 1: Trespass Damages and Costs Worksheet**

Trespass Damages and Costs Worksheet		Costs and Damages as of this date: 9/15/2015	
Enter data from other worksheets in green-framed boxes.			
1)	Forest Products Value		
1a)	Single Stumpage	\$ 2,734.97	Enter from standard timber appraisal.
1b)	Double Damages	\$ 5,469.94	
1c)	<b>Total Treble Damages</b>	<b>\$ 8,204.91</b>	
2)	Interest	\$ 11.91	Enter from Interest Worksheet or other worksheet.
3)	Resource Damage Rehabilitation Costs	\$ 3,085.20	Enter from Rehab Worksheet.
4)	Enforcement Costs	\$ 10,693.14	Enter from Enforcement Worksheet.
<b>Total Civil Penalties</b>			
	Treble Damages	\$ 8,204.91	
	Interest	\$ 11.91	
	Resource Damage Rehabilitation	\$ 3,085.20	
	Enforcement	\$ 10,693.14	
	<b>Total Due U.S. Government:</b>	<b>\$ 21,995.16</b>	

**Figure 2: Interest Worksheet**

Interest Worksheet			<b>NOTE:</b>	If a Tribal Ordinance specifying procedures for calculating interest on trespass damages exists for the location where the trespass occurred, then follow those procedures instead of using this worksheet.
1)	Total Treble Damages	\$ 8,204.91		
2a)	Date of Demand Letter	07/24/2015		
2b)	Date to calculate Interest to	09/15/2015		
2c)	Days Since Payment Demand	53		
3)	Treasury Current Value of Funds Rate	1%	(enter as percentage)	
4)	Regular Interest Accrued	\$ 11.91		
5)	Non-Payment Penalty Indicated?	No		
6a)	Penalty Interest Rate		(enter as percentage)	
6b)	Penalty Interest Accrued	N/A		
7)	Total Interest Accrued	\$ 11.91		Copy this number to the Trespass Damages and Costs worksheet, line 2).

**Figure 3: Resource Damage Rehabilitation Cost Worksheet**

Resource Damage Rehabilitation Costs Worksheet					
					<b>Notes</b>
	Site Rehabilitation Costs				
1)	Road Reclamation				
1a)	Logging Road Reclamation Cost/Mile		\$ 126.00		Add \$400 for equipment mob. and seed
1b)	Number of Miles to Reclaim		0.44		
1c)	Skid Trail/Landing Cost/Mile		\$ 67.50		Add \$217.70 for seed
1d)	Number of Miles to Reclaim		1.20		
1e)	Total Road Rehab Costs		\$ 136.44		
2)	Soil Stabilization				
2a)	Soil Stabilization Cost/Acre				
2b)	Number of Acres to Stabilize				
2c)	Total Soil Stabilization Costs		\$ -		
3)	Reforestation				
3a)	Number of Acres for:				
3b)	Slash Treatment		28.72		
3c)	Site Prep				
3d)	Planting				
3e)	Veg Control				
3f)	Browse Protection				
3g)	Cost for:				
3h)	Slash Treatment/Acre		\$ 97.45		\$12.45/acre for slash lop and scatter, \$85/acre for pile burning
3i)	Site Prep/Acre				
3j)	Planting Stock/Acre				
3k)	Planting Labor/Acre				
3l)	Browse Prot/Acre				
3m)	Total Reforestation Costs		\$ 2,798.76		
4)	Lost Future Revenue and Profits				
5)	Damage to Other Forest Resources				
6)	Damage to Improvements		150.00		Fence Repair
7)	Collectable Fire Costs				
	<b>Total Rehabilitation Costs</b>		<b>\$ 3,085.20</b>		Copy this number to the Trespass Dam ages and Costs worksheet, line 3).

**Figure 4: Enforcement Costs Worksheet Sample**

Enforcement Costs Worksheet					
					Notes
1)	Investigation Costs				
1a)	Field Examination and Survey	\$ 8,029.00			2 Techs at \$20.50 each for 174 hrs + 895 for Law Enforcement
1b)	Damage Appraisal	\$ 1,158.68			1 For at \$30.23 for 16 hours + \$675 for Law Enforcement
1c)	Investigation Reporting	\$ 1,503.28			1 For at \$30.23 for 36 hours + \$415 for Law Enforcement
1d)	Witness Expenses				
1e)	Total Investigation Costs	\$10,690.96			
2)	Collection Costs				
2a)	Notices and Demand Letters	\$ 2.18			
2b)	Court Costs				
2c)	Attorney Fees				
2e)	Total Collection Costs	\$ 2.18			
3)	Total Enforcement Costs	\$10,693.14			Copy this number to the Trespass Damages and Costs worksheet, line 4).

### **Attachment 3 – Sample Calculation of Lost Future Revenue and Lost Profits Penalties**

Civil damages authorized by the trespass regulations in 25 CFR 163.29 (a) (3) include payment of costs associated with damage to Indian land, including, among other things, lost future revenue and lost profits. These things are the income that the beneficial landowner would have received from future harvests in the managed forest stand including those from intermediate commercial thinnings and the final (regeneration) harvest. Lost revenue and profits are calculated by projecting the stand forward in time through its entire rotation using a growth model such as the Forest Vegetation Simulator (FVS). Value of intermediate treatments and final harvest is calculated with current market prices being applied to the volume harvested as indicated by the growth model. The resulting value is then discounted to the present day using conventional economic methods to calculate Net Present Value (NPV). Similar methods are then applied to determine the growth and yield of the stand if it were re-established at the time of the trespass. Again, a growth model is used to grow the re-established stand forward in time through its entire rotation, and the yield from intermediate treatments and the final harvest are calculated and values calculated by applying present day stumpage rates to the projected harvest volumes. The resulting volumes are discounted to present day values. The difference between the NPV of the undamaged stand and the NPV of the damaged and re-established stand is the value of lost future revenue and lost profits.

An example illustrates the technique of calculating the value of lost future revenue and lost profits (see Figure 5). Consider a red pine plantation on the Fond du Lac Reservation in Minnesota that was destroyed in a fire in 2017. According to the reservation forest inventory, the stand was 25 years old with a site index of 65 and was 36 acres in size. Inventory data from four recently measured temporary plots was entered into FVS and projected through its 120 year rotation with commercial thinnings occurring as indicated in the Forest Management Plan (FMP). Another simulation was run showing a similar stand being established on the same site following the fire in 2017 and projected through a 120-year rotation with commercial thinnings as specified by the FMP. Harvest volumes from FVS are shown in Figure 5 in the columns labeled *MBF Vol Harvest* and *Cd Vol Harvest*.

Harvest value for this example is obtained by applying current stumpage rates to the projected future harvest volumes. Current stumpage rates are obtained either from contracts or permits for comparable sales within the vicinity of the trespass area or by doing a standard timber appraisal. In this example, stumpage rates are \$200/MBF for red pine sawlogs and \$29.82/cord for red pine pulp logs.

Discount rates are obtained from the Office of Management and Budget Circular A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*. Appendix C of this Circular is revised annually and provides both nominal discount rates and real discount rates. A real interest rate should be used for this calculation as the real rates given account for inflation, whereas using a nominal rate would require an additional calculation step to ensure that inflation is accounted for properly. Real interest rates are given in terms of the real interest rate on Treasury Notes and Bonds of specified maturities, and the maturities given are for 3-, 5-, 7-, 10-, 20-, and 30-year terms. For each value to be discounted, choose the real interest rate at the

maturity that is closest to the number of years from the present that value occurs. For example, revenue from a projected commercial thinning of the original stand in our illustration that occurs at stand age 30 (5 years in the future) would be discounted using a real interest rate of -0.3%. If a value to be discounted falls midway between two of the listed rates, it is recommended that the lower rate be chosen as this is more favorable for the beneficiaries.

The Net Present Value of revenue occurring in a future year  $t$  is calculated by:

$$NPV_t = \frac{V_t}{(1 + i)^t}$$

Where  $V_t$  is the value of the revenue in year  $t$  and  $i$  is the appropriate discount rate. The Net Present Value of the stand through its rotation is the sum of Net Present Values for each instance of an expense (such as a precommercial thinning) or revenue (such as stumpage income from a commercial thinning) through the entire rotation of the stand.

The original stand in our example was scheduled to have commercial thinnings occur at age 30, 45, 65, and 85, with a final harvest at age 120 as shown on the left half of the table in Figure 1. Harvest volumes at each treatment are derived from a projection of Stand Exam data using FVS, and harvest values at each treatment are obtained by multiplying projected harvest volumes by current prices as given above. This results in revenues per acre of \$737.36 at stand age 30, 5 years in the future; \$1,201.96 at stand age 45, 20 years in the future; \$1,863.64 at stand age 65, 40 years in the future; \$2,660.99 at age 85, 60 years in the future; and \$6,414.90 at stand age 120, 95 years in the future. Net Present Value for each of these revenues is calculated, resulting in a Net Present Value of future treatments of \$8,303.87 per acre, or \$298,939.32 for the entire stand.

The replacement stand in our example was simulated in FVS with the assumptions that the stand was replanted in the current year using the same specifications under which the previous stand was planted. This new plantation was then simulated to grow through the same 120-year rotation as the original stand. A similar management regime was prescribed for the new stand in accordance with the reservation FMP, although because the projection is based on simulated data rather than real observations the projected stand results in a slightly different management history than the original stand.

The replacement stand in our example is scheduled to have commercial thinnings occur at age 40, 60, 80, and 100, with a final harvest at age 120 as shown on the right half of the table in Figure 1. Harvest volumes at each treatment are derived from the FVS projection, and harvest values at each treatment are obtained by multiplying projected harvest volumes by current prices as given above. This results in revenues per acre of \$473.84 at stand age 40; \$2,421.00 at stand age 60; \$2,163.63 at stand age 80; \$2,562.88 at stand age 100; and \$5,188.73 at stand age 120. Note that since the replacement stand is assumed to have been established in the current year, the stand age at the time of each treatment is also the number of years from the present in which the treatment occurs. Net Present Value for each of these revenues is calculated, resulting in a Net Present Value of future treatments of \$6,712.20 per acre, or \$241,639.20 for the entire stand. The difference between the Net Present Value at full rotation of the original stand and that of the replacement stand is the value of lost revenue and profit. In our example this difference is

\$57,300.12. This amount should be included in the civil damages to be charged to the responsible party for the trespass.

**Figure 5: Lost Revenue from Immature Stands Destroyed in Trespass**

Lost Revenue from Immature Stands Destroyed in Trespass														
Species:	Red Pine													
Sawlog Rate/MBF:	\$ 200.00													
Pulp Rate/Cord:	\$ 29.82													
Stand Area, Acres	36													
	Undamaged Stand							Replacement Stand						
Year	n=Std age	adjusted n for npv calc	MBF Vol harvest	Cd Vol harvest	Harvest Value	rate (OMB 94 Appx C)	NPV	n=Std age	MBF Vol harvest	Cd Vol harvest	Harvest Value	rate (OMB 94 Appx C)	NPV	
Stand Established	1992	0												
Trespass Occurred	2017	25	0					0						
	2022	30	5	1.580	14.13	\$737.36	-0.3%	\$ 748.52	5					
	2027	35	10						10					
	2032	40	15						15					
	2037	45	20	5.151	5.76	\$1,201.96	0.5%	\$ 1,087.85	20					
	2042	50	25						25					
	2047	55	30						30					
	2052	60	35						35					
	2057	65	40	8.935	2.57	\$1,863.64	0.7%	\$ 1,409.88	40	-	15.89	\$473.84	0.7%	\$ 358.47
	2062	70	45						45					
	2067	75	50						50					
	2072	80	55						55					
	2077	85	60	13.047	1.73	\$2,660.99	0.7%	\$ 1,750.96	60	10.860	8.35	\$2,421.00	0.7%	\$ 1,593.04
	2082	90	65						65					
	2087	95	70						70					
	2092	100	75						75					
	2097	105	80						80	10.514	2.04	\$2,163.63	0.7%	\$ 1,238.30
	2102	110	85						85					
	2107	115	90						90					
	2112	120	95	31.824	1.68	\$6,414.90	0.7%	\$ 3,306.66	95					
	2117								100	12.631	1.23	\$2,562.88	0.7%	\$ 1,275.80
	2122								105					
	2127								110					
	2132								115					
	2137								120	25.723	1.48	\$5,188.73	0.7%	\$ 2,246.59
Total								\$ 8,303.87					\$ 6,712.20	
Note: volumes in the table are per acre.														

## Attachment 4 - Timber Trespass Case Process Example

Day 1: **The timber trespass is detected and reported.** While making a site visit to their unoccupied allotment, the owners discovered large Douglas-fir trees had been cut and removed as evidenced by fresh stumps and evidence of skidding towards active logging on the adjacent fee property. The allotment owners returned to town and reported the trespass to the Tribal Forest Manager. The Forest Manager was aware of the adjacent logging operation and familiar with the timber operator as a local that had purchased Tribal timber sales in the past. The Forest Manager had each allotment owner present make a written statement of what they had seen and had them sign the statements and verified their address and phone contact information were on the statements.

Day 1: **Stop trespass immediately and issue or post Cease Desist Notice.** The Forest Manager had a Timber Sale Officer and Tribal Law Enforcement Officer make a site visit to the allotment to verify the trespass. Upon arrival at the site, the timber operator was on the adjacent property. The Timber Sale Officer and Tribal Law Enforcement Officer were able to interview the owner of the logging business and he immediately admitted that fallers had erroneously crossed the property boundary. The Tribal Law Enforcement Officer took a written statement from the timber operator, and the Timber Sale Officer issued a Cease and Desist Notice handwritten on timber sale inspection report forms (reference section 2.3.1 of this handbook). The timber fallers had already gone home for the day, but the timber operator named the cutters that had cut the allotment timber and provided the Tribal Law Enforcement Officer their contact information.

Day 1: **Initiate field investigation as soon as detected.** The Timber Sale Officer and Tribal Law Enforcement Officer visited the site and identified the trespass area. The Tribal Law Enforcement Officer photographed the site (see the digital photography standards established in the BIA Wildfire Investigation Handbook), made a site sketch, and GPS'd the general perimeter of the trespass area and the stumps. The Timber Sale Officer painted and branded logs, painted and numbered each stump, and measured the diameter at stump height, and recorded all measurements on timber sale inspection report forms.

Day 2: **Notify Regional Trespass Coordinator.** The Superintendent, Forest Manager, and the Timber Sale Officer and Tribal Law Enforcement Officer making initial response to the trespass meet. The Superintendent **designates** the Forest Manager to be the **Trespass Officer** (see section 1.5 of this handbook). A conference call is made to the Regional Trespass Coordinator (see 53 IAM 7 1.5 (D)) and the Regional Trespass Coordinator is briefed.

Day 2: **Document Trespass in National Trespass Log.** The Trespass Officer initiates a record of the trespass in the National Trespass Log maintained in the Forest Information Reporting Statistics and Tracking application (FIRST) (see section 1.5 of this handbook).

Day 2: **Compile Trespass Report (including calculation of damages).** The Trespass Officer, Timber Sale Officer, and Tribal Law Enforcement Officer meet and discuss a plan to complete the investigation, reports, and damage assessment as expeditiously as possible. Items to be completed include interviews with the fallers and gathering of any other additional evidence or

facts relevant to the case including copies of timber contracts, log purchase agreements, additional field measurements needed to complete a stump cruise, completion of the Timber Trespass Field Data Template, and the Trespass Report (see section 5.2 of this handbook) including damage assessment and appraisal (see chapter 4 of this handbook). A target completion date of day 14 is agreed upon.

**Day 14: Issue Notice of Trespass to responsible party; Prepare Trespass Decision Document for Line Officer action; Notify Office of the Solicitor; Line Officer signs Trespass Decision Document; Issue Demand Letter.** The Superintendent, Trespass Officer, Timber Sale Officer, and Tribal Law Enforcement Officer meet to discuss the case. The Office of the Solicitor also participates in the meeting using web conferencing technology. The Trespass Officer has the finalized reports including damage assessment and draft documents ready for the Superintendent's signature including a Notice of Trespass (see section 7.1.1), a Demand Letter (section 7.1.2), and a Trespass Decision Document (section 6.2) with recommendations from the Trespass Officer and Tribal Law Enforcement Officer to proceed with civil action. Damages in this case include treble damages, interest, site rehabilitation, and reforestation costs. At the end of the meeting all present concur the documents are in order and agree with the recommendation to move forward. The Superintendent signs the Trespass Decision Document, the Notice of Trespass, and the Demand Letter. The Notice of Trespass and Demand Letter are mailed to the trespasser via express trackable mail.

**Day 34: Receipt of Notice of Appeal.** A written Notice of Appeal from the trespasser is received at the BIA agency office (see section 8.2). A call to the Regional Trespass Coordinator confirms that a copy was also delivered to the Regional Director. The trespasser's Notice of Appeal and Statement of Reasons indicate they believe the appraised stumpage rates are excessive and the enforcement costs are not reasonable. The trespasser also indicates that their equipment is still on the adjacent property and proposes that they be permitted to complete prescribed rehabilitation treatments in lieu of payment of those costs. The trespasser also indicates treble stumpage should not be charged because there was no criminal intent to their actions.

**Day 35: Preparation of Administrative Record.** A web conference is held between the Regional Trespass Coordinator, Superintendent, Trespass Officer, Timber Sale Officer, and Office of the Solicitor to discuss the appeal. The documents are reviewed and it is agreed that the Notice of Appeal includes all of the required items identified in 25 CFR 2.9 (c) (1-6), except the allotment owners were not listed as interested parties. The Regional Trespass Coordinator advises the agency to begin preparation of a brief and Administrative Record (AR). The Regional Trespass Officer also indicates a letter will be sent from the Regional Director to the trespasser acknowledging receipt of the Notice of Appeal. The letter will also inform the trespasser that all communication regarding the trespass should be directed to the region until an Appeal Decision is issued by the Regional Director. The trespasser will also be informed that the Regional Director will provide allotment owners an opportunity to respond to the appeal as interested parties as defined in 25 CFR 2.12 (a), they will be allowed 30 days from receipt to provide an "Answer of Interested Party," and a decision is anticipated within a 60 day timeframe.

Day 35: **Update the National Trespass Log.** The Trespass Officer updates the National Trespass Log.

Day 45: The agency completes a brief and AR, and submits the documents to the region.

Day 65: An “Answer of Interested Party” is received from one of the allotment owners indicating no settlement should be made for less than full damages demanded by the agency.

Day 80: The region completes a draft decision and requests review by the Office of the Solicitor. The region also requests the Office of the Solicitor opinion on approving the trespasser request to complete the rehabilitation work.

Day 85: The region issues a decision to uphold the agency decision. The letter provides additional appeal rights to the Interior Board of Indian Appeals (IBIA). The letter indicates the trespasser will be permitted to complete rehabilitation work but must contact the agency within 14 days to arrange a work schedule. Upon work completion satisfactory to the Superintendent, trespass damages will be reduced by appraised rehabilitation costs less agency inspection costs.

Day 90: The agency and trespasser agree to a rehabilitation work plan and work begins.

Day 110: The agency completes final inspection of rehabilitation work.

Day 115: The region receives a copy of an appeal letter from the trespasser to the IBIA.

Day 120: The region receives an acknowledgement letter from the IBIA which contains language requesting the region prepare and submit a brief and AR within 20 days.

Day 121: The Trespass Officer updates the National Trespass Log.

Day 121: The Regional Trespass Coordinator notifies the Office of the Solicitor their review of AR and briefs, and representation with IBIA, will be requested.

Day 130: The AR is transmitted to the IBIA.

Day 140: The IBIA docket the case.

Day 150: The trespasser files an opening brief.

Day 160: The Regional Director submits an answer brief.

Day 550: The IBIA upholds the Regional Director’s decision.

Day 555: The agency enters the trespass into the Trust Asset and Accounting Management System (TAAMS) receivable module and generates an invoice (see section 10.2 of this handbook). The invoice reflects re-calculated interest charges through day 555. The invoice is transmitted to the trespasser.

Day 600: Trespass payment is received in the lockbox and funds are distributed.

Day 601: A trespass closure letter is sent from the Superintendent to the trespasser (see section 9.6 of this handbook). The Trespass Officer updates the National Trespass Log to reflect case closure.

## **Attachment 5 - Example Allocation of Settlement Funds when Amount is Greater than Compensatory Damages but Less than Full Recovery.**

Scenario: The owner of a tract of land adjacent to trust land hired a consulting forester to set up a timber sale on his land. The consulting forester did a poor job of laying out the sale and included 10 acres of Tribal land in the harvest unit. This error was discovered several months after the timber harvest was completed by the landowner who had hired the consulting forester. The landowner immediately contacted the BIA to report the mistake and fully cooperated with BIA Forestry officials during the investigation. Triple damages were calculated as \$19,264.83. Enforcement costs amounted to \$464.22, and rehabilitation costs were calculated to be \$6,487.23. Civil penalties totaled \$26,216.28.

The owner of the tract who hired the consulting forester was unable to make full payment and proposed to compensate the Tribe for the trespass by paying \$15,000.00 and by providing in-kind services. This proposal was acceptable to the Tribe and supported by the Solicitor's Office and the Regional Director. Agency Forestry staff created a Receivable Document in TAAMS and generated an invoice for \$15,000.00. The landowner promptly made payment by sending a cashier's check to the BIA lockbox.

The amount of money recovered through the trespass process exceeds the value of single stumpage. Allocation of funds per section 9.3.3 of this handbook requires that funds be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Based on the amounts due for triple damages, investigation costs, and restoration costs, a pro rata allocation provides approximately 74.5% of recovered funds toward triple damages, 1.8% towards enforcement costs, and 24.7% towards rehabilitation costs. Accordingly, the \$15,000 payment would be allocated with \$11,022.63 being distributed to the beneficial owners; \$265.61 used by the management agency and law enforcement officials who completed the investigation; and \$3,711.76 being utilized by the Tribe to carry out site rehabilitation work on the land affected by the trespass.