

# Forest Management “Compliance”

*What is required  
in order to actively manage  
Indian trust forests ?*

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Program Requirements



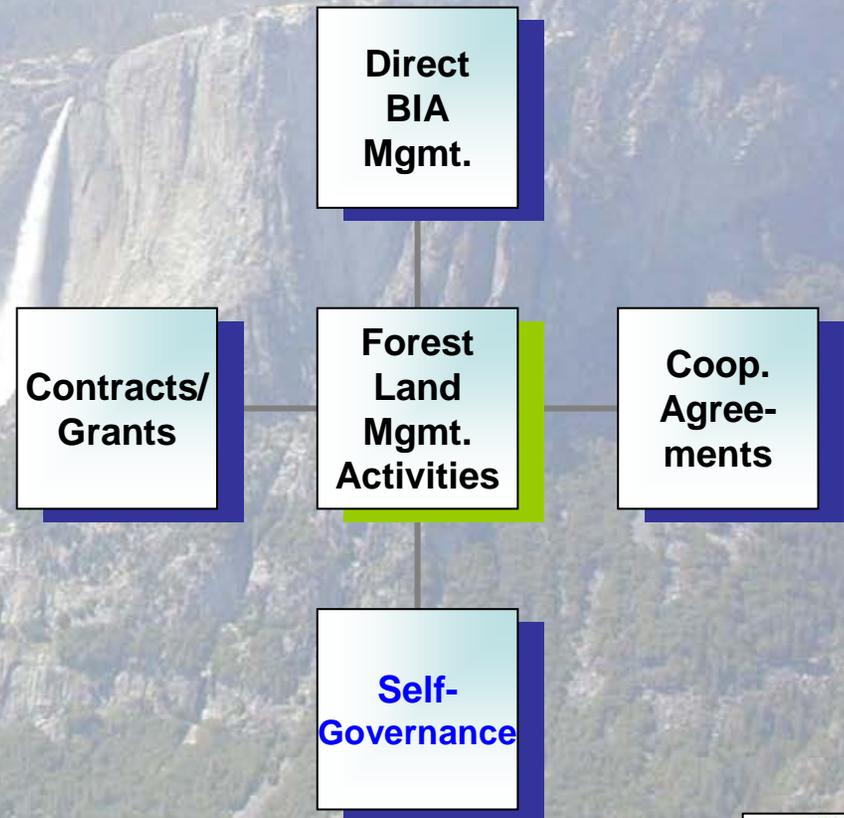
# National Indian Forest Resources Management Act

Enacted in 1990

Codified to 25 USC Sec 3104

## “(a) Management Activities”

*“The Secretary shall undertake **forest land management activities** on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act.”* (Emphasis added)



Program Requirements

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# Indian Self-Determination Tribal Participation in Forest Management

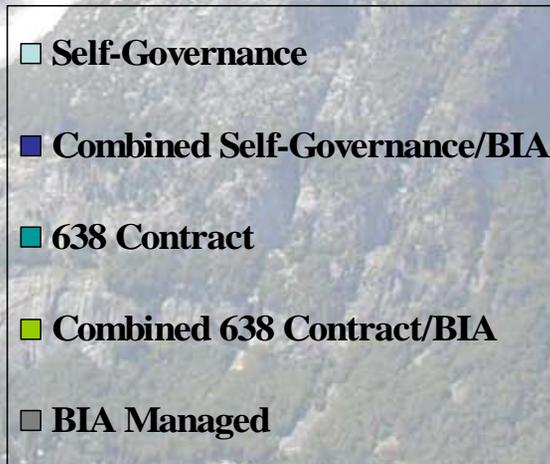
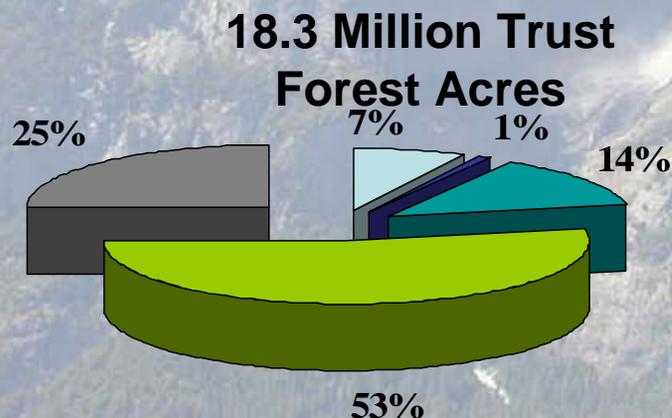
*(Are We Complex or What?)*

## Entire forestry program

- 31 Self-Governance Compacts
- 26 Self-Determination Contracts

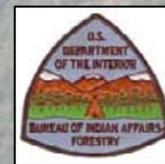
## Portions of forestry program

- 6 Self-Governance Compacts
- 28 Self-Determination Contracts



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# Compact, Contract, or BIA Managed

## *What are the requirements?*

- **BIA Managed**
  - Follow all – Statute, CFR, Executive Orders, Manual, Handbook, and other national/regional/tribal policy and guidance.
- **638 Contract Managed**
  - Follow all – Same as BIA Managed, unless specified in contract.
- **Self-Governance Compact Managed**
  - Follow all Statute, CFR, and tribal/federal laws.
  - Manual, Handbook and other BIA directives can be used verbatim, or as guidance for tribal equivalent (as specified in Annual Funding Agreement).



# National Indian Forest Resources Management Act

25 USC Sec 3104

## ***“(b) Management Objectives”***

***“Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives –”***

- (1) - Development, maintenance, enhancement...***
- Perpetually productive state...***
  - Principles of sustained yield...***
  - Standards and objectives set forth in forest management plans...***
  - Providing effective management and protection...***
  - Application of sound silvicultural and economic principles...***

- (2) - Development and implementation of forest management plans...***
- Active tribal consultation and participation...***
  - Supported by written tribal objectives and forest marketing programs...***



# National Indian Forest Resources Management Act

## *“(b) Management Objectives”*

*“Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives –”*

### *(3) - Regulation of Indian forest lands...*

- Ensure good method and order in harvesting...*
- Sustained yield basis...*
- Continuous productivity...*
- Perpetual forest business...*

### *(4) - Development of Indian forest lands and value added industries by Indians and tribes to promote self-sustaining communities...*

- So that in addition to stumpage, Indians may benefit from all the labor and profit that Indian forest land is capable of yielding...*



# National Indian Forest Resources Management Act

## *“(b) Management Objectives”*

***(5) - Retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values are its highest and best use...***

***(6) - Manage and protect to retain beneficial effects of regulating water run-off and minimizing soil erosion...***

***(7) - The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.***

# BIA Policy

## Allowed Activities

### *With & Without a Forest Management Plan (FMP)*

#### No FMP

- Preparation of an FMP
- Custodial management
  - Fire suppression and prevention
  - Suppression of insect and disease outbreaks
  - Free use cutting w/o permit
  - Trespass enforcement
  - Emergency sale of timber on trust allotted lands
  - No planned harvest of forest products

#### FMP in place

- Full spectrum of forest management activities
- All custodial management activities plus:
  - the sustainable harvesting of forest products as per the FMP
  - Forest Development activities



# Northwest Regional Solicitor's Opinion

(November 13, 1998)

***“...harvesting of Indian timber cannot occur absent an approved forest management plan providing for the specific harvest activity to be accomplished.”***



**Crosscut Saw – Colville Res.  
(circa 1942)**

# Washington, D.C. - SOL

## Solicitor's Opinion

(April 7, 1999)

- **Q1. “Must an approved FMP be in place before the harvesting of Indian trust timber?”**
- **A. Upheld the NW Region Solicitor Opinion; somewhat...**
  - **“...an approved FMP must be established for Indian trust timber.”**
  - **“However, while completion of a FMP is mandatory, failing to harvest and sell timber because such a plan has not been completed may be inconsistent with the BIA’s trust responsibility.”**
  - **“The BIA has...a trust responsibility to harvest timber at the appropriate time to maximize the return from the trust resource.”**
  - **“Therefore, the adoption of FMP’s should be a high priority.”**

# Washington, D.C. - SOL

## Solicitor's Opinion

(April 7, 1999)

- **Q2.** *“Should the FMP standards and objectives as set forth in 3104(b) be required of Self-Governance tribes...?”*
- **A.** **Affirmative.**
  - *“The FMP standards and objectives for managing trust forest lands as set forth in the National Indian Forest Resources Management Act...are statutorily mandated in a manner consistent with the Secretary’s trust responsibilities and cannot be redesigned by a Tribe under a self-determination contract or self-governance compact.”*
  - *“The Secretary may decline a self-determination contract proposal or refuse to enter into a self-governance compact if the FMP standards and objectives are not assured.”*



# Policy Memo

(AS-IA to RD's - April 9, 1999)

- Secretary's management objective; *"...developing and implementing forest management plans for regulation of Indian forest lands."*
- Where there is no approved FMP, an interim plan must be developed as a temporary substitute
- Interim plan contains at a minimum:
  - Harvest schedule or qualified cutting level
  - Special mitigation factors
  - Discussion of environmental compliance adherence
  - Approval signatures and expiration date
  - In no case will the AAC increase without a recent inventory analysis indicating same
- *"...line officer approval of any harvest of trust forest products will be contingent on an approved plan..."*



# Forest Management Planning Initiative

**FMPs will no longer automatically expire; plus...**

<b>Total Trust Forest Ac. (2005) = <u>18,303,158</u></b> <b>Total Trust Forest Reservations = <u>286</u></b>	<b>Actual 2004</b>	<b>Actual 2005</b>	<b>Est. 2006</b>	<b>Est. 2007</b>	<b>Target 2015</b>
<b>Number of Reservations with Current FMPs</b>	<b>98</b>	<b>105</b>	<b>115</b>	<b>125</b>	<b>286</b>
<b>Percentage of Reservations with Current FMPs</b>	<b>34%</b>	<b>37%</b>	<b>40%</b>	<b>44%</b>	<b>100%</b>
<b>Number of Trust Forest Acres Covered under FMPs (thousands)</b>	<b>9,879</b>	<b>15,518</b>	<b>15,924</b>	<b>16,290</b>	<b>18,303</b>
<b>Percentage of Trust Forest Acres Covered under FMPs (former target in parentheses)</b>	<b>54% (73%)</b>	<b>85% (76%)</b>	<b>87%</b>	<b>89%</b>	<b>100%</b>

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# Biomass Use Policy

## *(Service Contracts)*

- Final Rule in Federal Register 5/20/05
- *“The Department of Interior allows and encourages contractors to remove and use woody biomass from project areas when:*
  - *(1) The biomass is generated during land management service contract activity; and*
  - *(2) Removal is ecologically appropriate.”*
- Must comply with applicable legal limits, including NEPA.
- Applies to any solicitation or contract that meets the requirements above and is expected to generate woody biomass, unless biomass removal is already required.
- Agency contracting officer will:
  - *Insert clause from 1437.103 (relative to 48 CFR Part 1437);*
  - *Specify limitations on types of and areas within which biomass may not be removed.*



# **Biomass Use Possibilities**

## ***(Service Contracts)***

**One of three ways:**

- 1. Utilize biomass in lieu of disposal.***
- 2. Exchange some costs for biomass***
  - No exchange of money***
  - Get more acres done***
- 3. Separate permit or contract***



# Biomass Use Policy

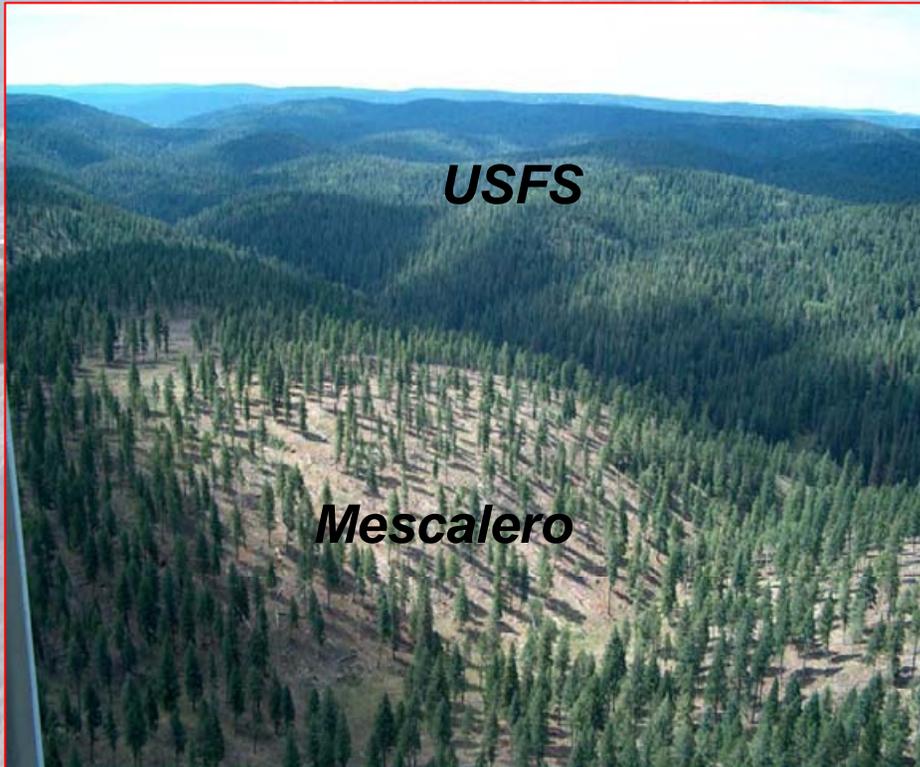
## (Harvest Contracts & Permits)

- Allow utilization of woody biomass when both environmentally sound and economically viable.
- Pricing of biomass that is below merchantable standards is described in the contract (*flexibility is the key*).
- Removal process described in Special Provisions.



Klamath IR circa 1919

# Why Use Biomass?



***“Removal or use of woody biomass will reduce smoke and emissions from prescribed and natural fires; preserve landfill capacities, reduce the threat of catastrophic wildfires to communities and public/private utilities; improve watershed and wildlife habitat protection; and improve forest, woodland, and rangeland health.”***

From: *Final Rule, Federal Register, 5/20/05*

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# Striving For



←==== THIS



NOT THIS ====→

**Tribal energy independence along the way is a bonus !!**

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