



Federal Laws & Tribal Forest Management

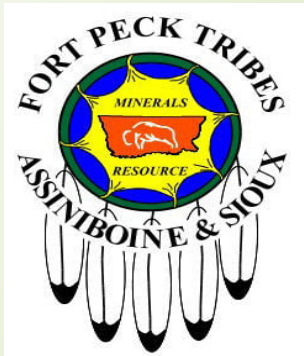
Professor Gerald Torres



Significant Federal Laws/Court Cases that have shaped Tribal Forest Management

- ▶ Nonintercourse Act --1809
- ▶ *United States v. Mitchell* --1983
- ▶ The National Indian Forest Resources Management Act -- 1990
- ▶ The American Indian Agricultural Resources Management Act -- 1993
- ▶ Tribal Forest Protection Act -- 2004
- ▶ Indian Trust Asset Reform Act -- 2016
- ▶ Good Neighbor Authority (GNA) -- 2018
- ▶ Secretarial Order 3403 -- 2021
- ▶ BLM & Cow Creek Band of Umpqua Tribe of Indians Memorandum of Understanding (MOU) -- 2023

Even though varying degrees of Tribal Management are encouraged today, **1809 Nonintercourse Act, 25 U.S.C. § 177** still plays a large role in governing management of natural resources – especially when it comes to lease approval.



U. S. v. Mitchell

U.S. Government held accountable in financial damages for breaches in trust in connection with management of forest resources



Justice Thurgood Marshall delivered the opinion of the court, stating that it “naturally follows that the Government should be liable in damages for the breach of its fiduciary duties.”

The National Indian Forest Resources Management Act (1990)

NIFRMA is a primary statute that authorizes federal funds for Indian forest management activities, establishing an independent assessment of Indian forest lands to be completed every 10 years.

The American Indian Agricultural Resources Management Act of 1993 further carries out the trust responsibility of the United States to promote self-determination of Indian Tribes by providing for management & related renewable resources consistent with identified Tribal goals & priorities.



TRIBAL FOREST PROTECTION ACT OF 2004

The Tribal Forest Protection Act of 2004 authorizes the Secretaries of Agriculture and Interior to give special consideration to tribally-proposed Stewardship Contracting or other projects on Forest Service or BLM land bordering or adjacent to Indian trust land to protect the Indian trust resources from fire, disease, or other threat coming off of that Forest Service or BLM land.



The Indian Trust Asset Reform Act (ITARA)

was passed in 2016, authorizing the Secretary of the Department of the Interior to establish & carry out an “Indian Trust Asset Management Plan” (ITAMP).

Requirements of a proposed ITAMP

A proposed Indian Trust Asset Management Plan should include provisions that:

1. identify the trust assets that will be subject to the plan;
2. establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian Tribe;
3. allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;
4. if the Indian Tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets:
 1. identify the functions or activities that are being or will be performed by the Indian tribe under the contracts, compacts, or other agreements under that Act, which may include any of the surface leasing or forest land management activities authorized by the proposed plan
 2. describe the practices and procedures that the Indian Tribe will follow;
5. establish procedures for nonbinding mediation or resolution of any dispute between the Indian Tribe and the United States relating to the trust asset management plan;
6. include a process for the Indian Tribe and the federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and
7. identify any federal regulations that will be superseded by the plan.

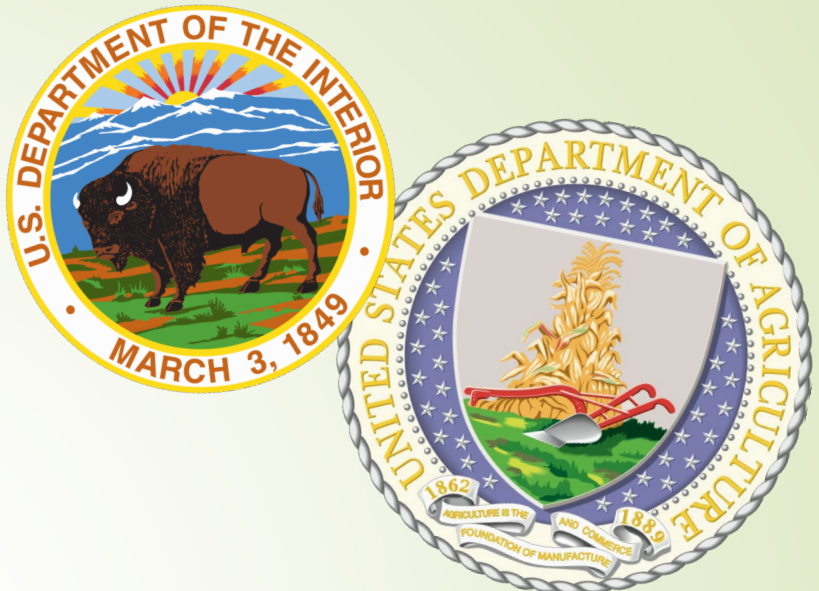
Good Neighbor Authority Guidance



The **Good Neighbor Authority**, passed in 2018, allows the USDA Forest Service & Bureau of Land Management to authorize states, counties, & federally recognized Tribes to conduct certain projects on federal lands in pursuit of specified land management goals.

Order No. 3403

Subject: Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters



Legal review of current land, water, and wildlife treaty responsibilities and authorities that can support co-stewardship and Tribal stewardship within 1 year.



Cow Creek Umpqua Tribe Signs MOU With Regional BLM Offices

As we move towards Tribal Co-Management, Tribal Stewardship, & Co-Stewardship oriented solutions, what changes need to be made?

- Although past Indian Forest Management Assessment Team reports show Tribal forestry promoting environmental stewardship, departments tend to be understaffed & underfunded as new co-management authorities are created.
- Funding for Bureau of Indian Affairs forestry tends to be significantly less than Bureau of Land Management, with the disparity increasing since 2001.

