

Indian Forestry Authorities

*Statutory, Regulatory,
Manual Requirements
and
Other Tidbits*

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Authorities



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

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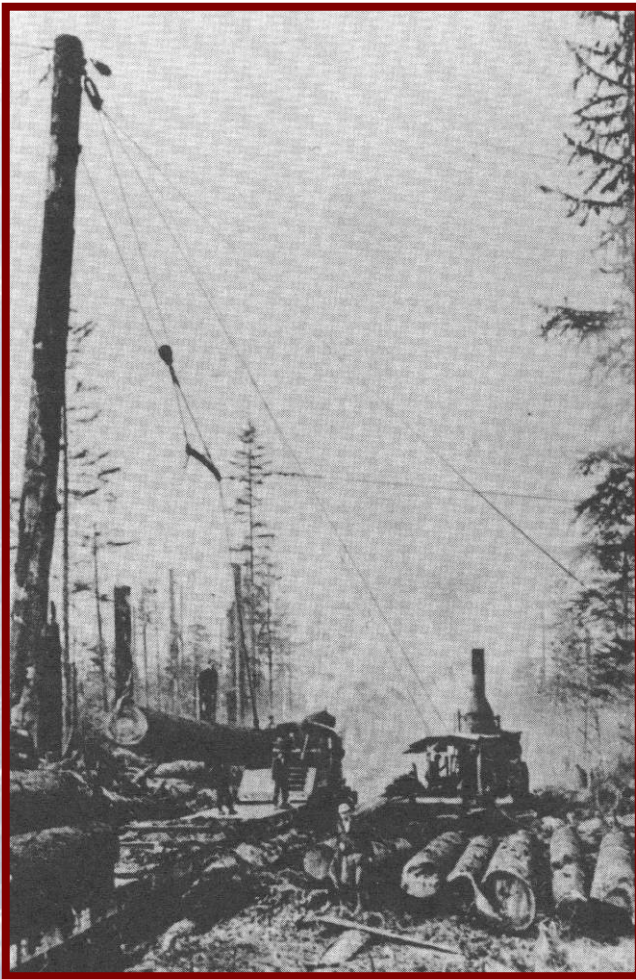
What I'll Cover

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



A Brief History

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



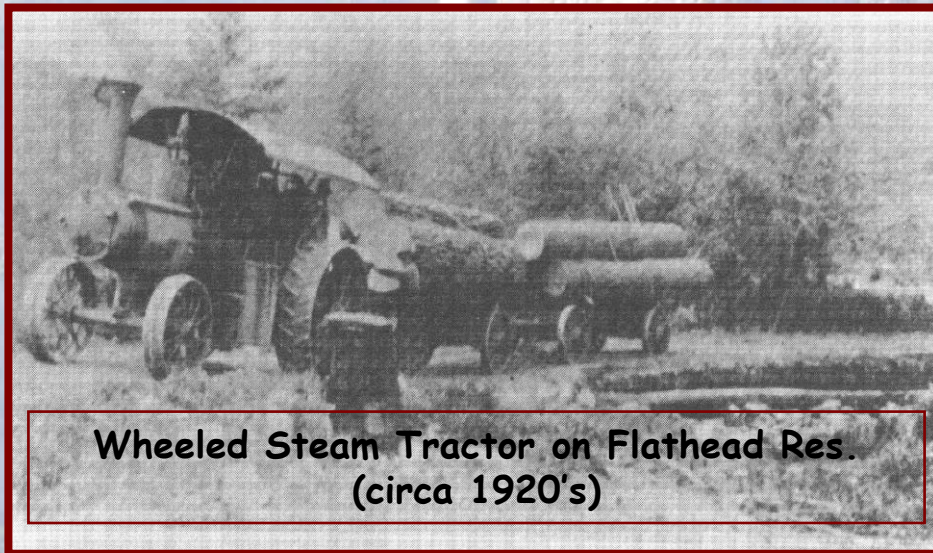
Steam Donkey on Quinault Res. (circa 1900's)

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- **1889** - Legislation authorized sale or disposal of dead and down timber on Indian lands.
- **1908** - Cooperative Agreement between Interior and Agriculture.
- **1909** - Funds appropriated to Interior - G. Pinchot manages Indian forests.
- **1910** - Arrangement ends due to Forest Service / Interior friction.



Wheeled Steam Tractor on Flathead Res.
(circa 1920's)

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- **1910 - Indian Forest Service created within the Interior**

- **Authorized the regulation of the Indian forest**
- **Authorized timber sales on Indian lands.**

- **First Chief Forester - J.P. Kinney**

- **Chief until 1933**
- **Scientific forest management.**
- **Sustained yield forestry.**
- **Supported abolishing the Indian allotment policy; policy ended with the Indian Reorganization Act of 1934.**

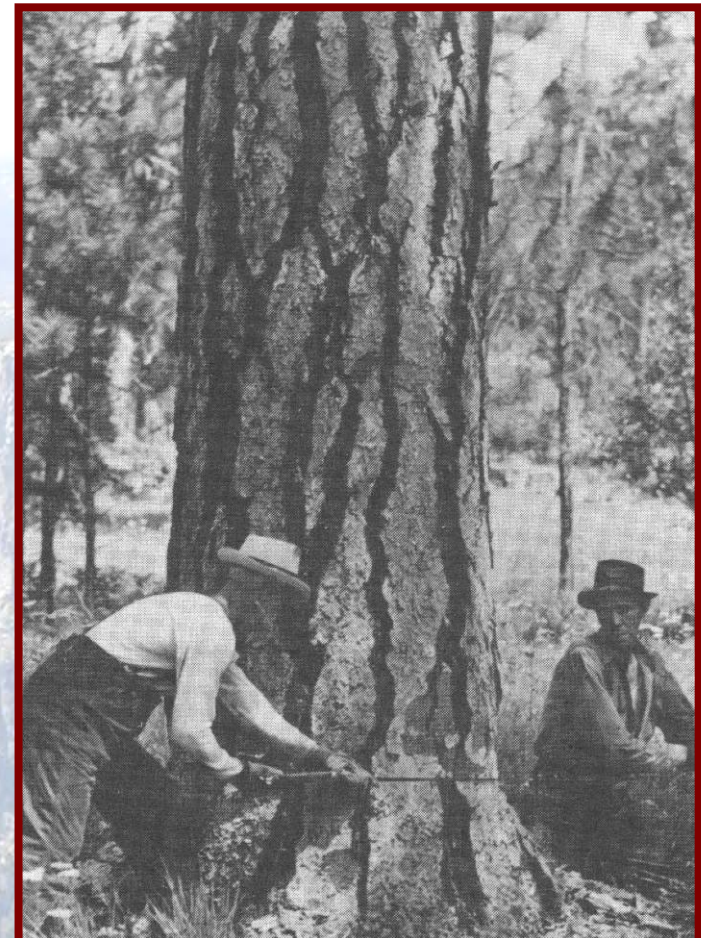


**Cross Hand Loading - Navajo Res.
(circa 1930's)**



**Solid Tire Log Truck - Colville Res.
(circa 1927)**

- **Post World War II - balancing act**
 - **sustained yield vs.**
 - **war effort demands for timber plus tribal demands for more revenue.**
- **The policy of “termination” was passed by Congress in 1953.**
- **The policy of “self-determination” was passed in 1975 (Pub. L. 93-638).**
- **The National Indian Forest Resources Management Act (NIFRMA) passed in 1990.**
- **The policy of “self-governance” modified “self-determination” in 1994.**



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

Indian Self-Determination Tribal Participation in Forest Management

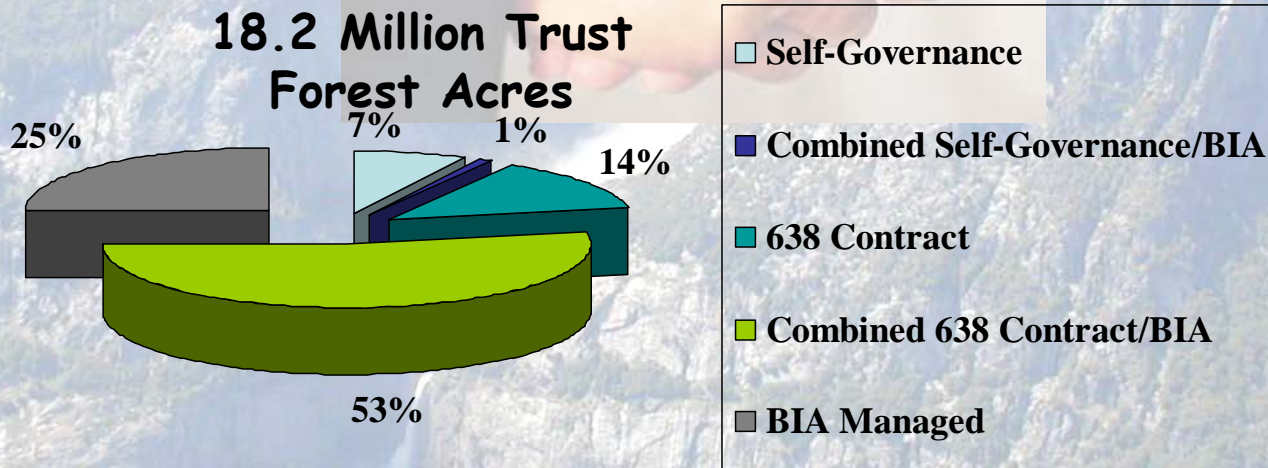
(Are We Complex or What?)

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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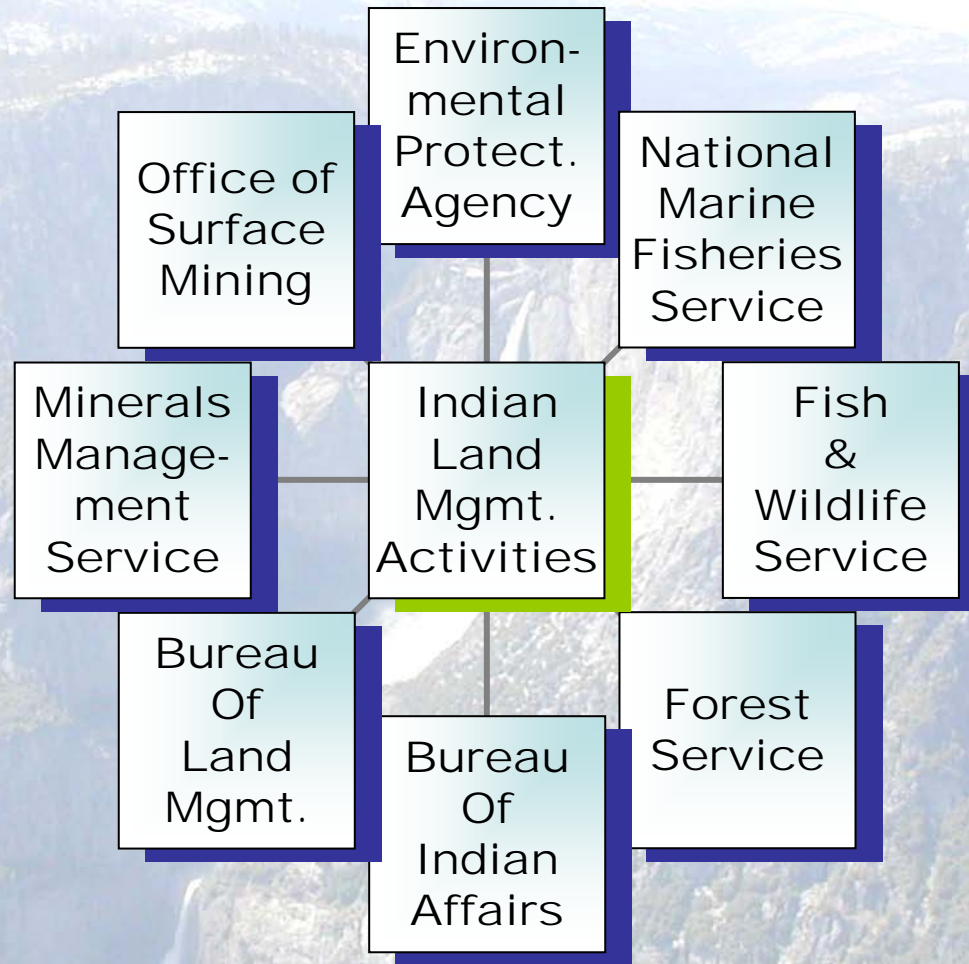


Ownership Complexities

- **Tribal vs. Allotted Lands**
 - **General Allotment Act of 1887**
 - **About 57 million acres of Indian Trust land**
 - **~10 million of these acres are Allotted to individual Indians**
- **Tribal Trust vs. Tribal Fee Lands**
 - **Changing dynamic of Indian lands**
 - **New federal recognition of tribes (new lands)**
- **Creating the most complicated “legal trust” there is**



Many Federal Partnerships



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The Authority Hierarchy

- The Statute - laws passed by Congress (*P.L. 101-630*)
 - *Later codified into U.S. Code (25 U.S.C. 33)*
- The Regulations - further describe and interpret the statute (*25 C.F.R. 163*)
- The Manual - describes the "policy" of the organization
 - *Departmental (DOI) Manual (e.g., 516 DM 1)*
 - *Indian Affairs Manual (53 IAM Forestry)*
- The Handbook - gives detailed "procedures" and the necessary "forms" for each of the chapters under the Manual.

We've evolved: BIAM ==> IAM



Other Authorities



Klamath 1919 - Horse Bunching

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

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The Statute

National Indian Forest Resources Management Act (NIFRMA)

- Statute - law passed by Congress (P.L. 101-630) U.S. Code (25 U.S.C. 33) in 1990
- Excellent example of the effectiveness of tribal consultation

Some Key Sections

- 3105. Forest Management Deduction (FMD)
- 3106. Forest Trespass
- 3107. Direct Payment of Forest Products
- 3108. Secretarial Recognition of Tribal Laws
- 3109. Indian Forest Land Assistance Account
- 3110. Tribal Forestry Programs
- 3111. Independent Program Assessments
- 3113. Forestry Education Assistance



The Code of Federal Regulations

25 C.F.R. § 163

(1995)

Six Subparts

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



Klamath 1919 - Slip-Tongue Big Wheels

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25 C.F.R. 163

Subpart B - Sections 163.10 to 163.37

Forest Management & Operations

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



25 C.F.R. 163

Subpart B - Sections 163.10 to 163.37

Forest Management & Operations

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

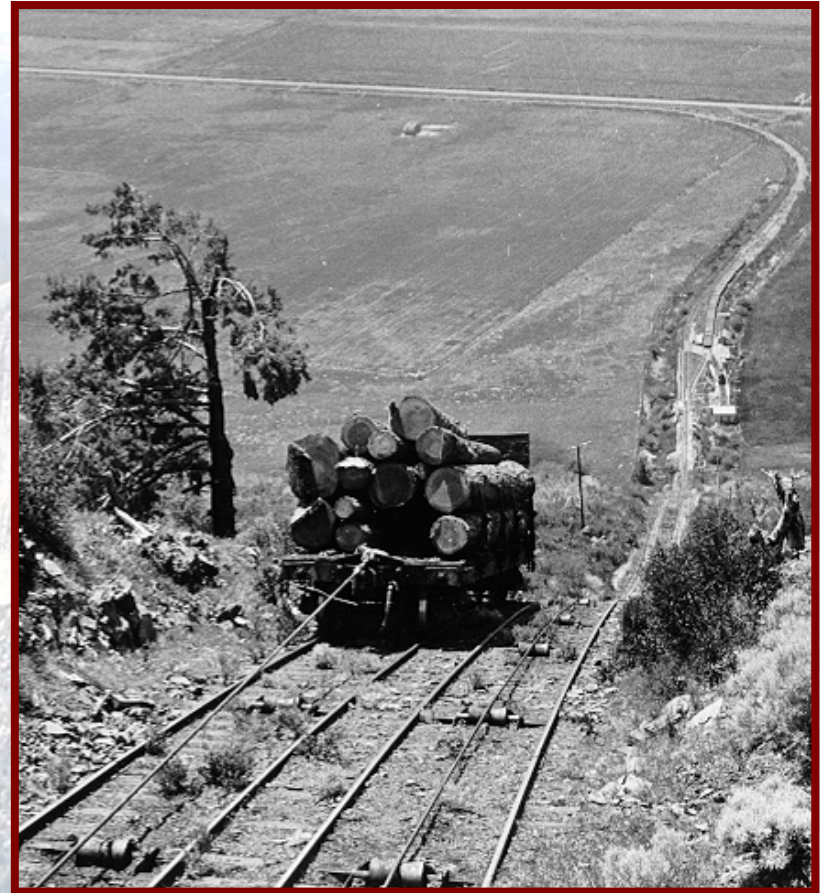
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The Departmental Manual

- **130 DM 7 Trust Services (7.4 is Division of Forestry)**
 - Defines the functions under Deputy Bureau Director of Trust Services
- **303 DM 2 Principles for Managing Indian Trust Assets**
 - Provides Department-wide guidance on Trust Asset Management
- **512 DM 2 American Indian and Alaska Native Programs**
 - Government-to-government policies and procedures to fulfill Federal Indian Trust Responsibility



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

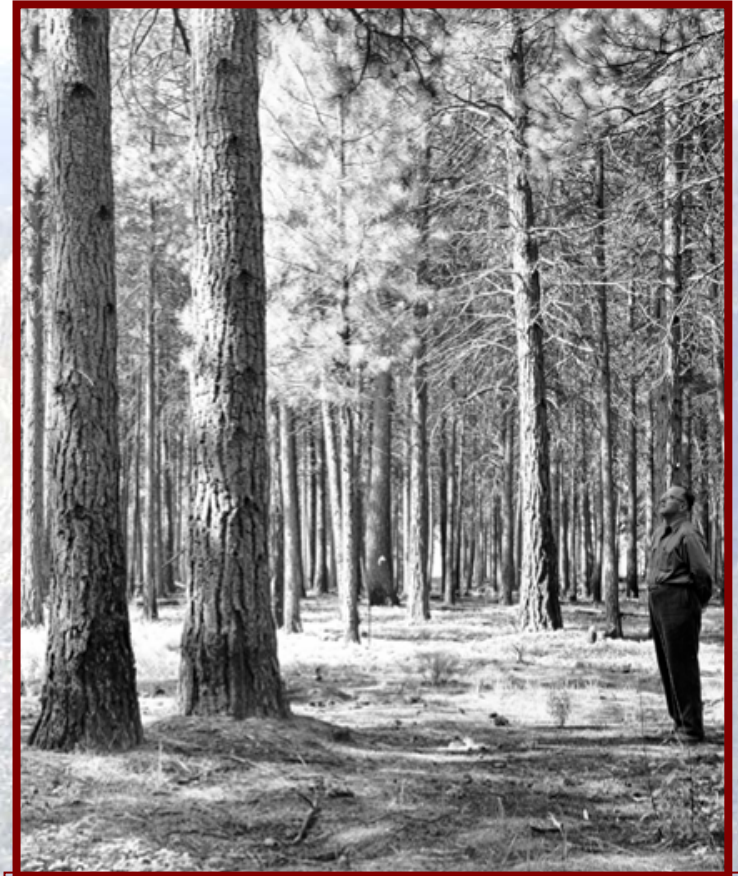
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The Departmental Manual

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



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

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The Forestry Manual

53 IAM Forestry

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

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National Indian Forest Management Handbook

(A Handbook Volume for Every Manual Chapter)

- Volume 1 *Administrative Functions*
- Volume 2 *Forest Management Planning*
- Volume 3 *Contract Sales of Forest Products*
- Volume 4 *Permit Sales of Forest Products*
- Volume 5 *Forest Development*
- Volume 6 *Forest Pest Management*
- Volume 7 *Trespass*
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National Indian Forest Management Handbook

(Completed Volumes)

- Volume 3 *Contract Sales of Forest Products*
- Volume 4 *Permit Sales of Forest Products*
- Volume 5 *Forest Development*
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- Volume 11 *Forest Management Deductions*

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(To Be Completed This Year)

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Applying the Authorities

Management Requirements

25 CFR§900.5 states,

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

BIA Managed

- Follow all - Statute, CFR, Executive Orders, Manual, Handbook, other national/regional/tribal policy and guidance.

Pub. L. 93-638 Contract & Self-Gov. Compact

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





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