

Indian Forest Management Assessment Team (IFMAT-III)

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To: The Secretarial Commission on Indian Trust Administration and Reform

From: IFMAT III (John Gordon, John Sessions, Co-Chairs, Michael Sterner, Project Manager)

We herewith submit written comments in response to the questions given us by the Indian Trust Reform Commission. These are submitted with the understanding that they are derived from the previous assessments, IFMAT I and II, and the experience of the authors, since the work of the current assessment, IFMAT III, is incomplete and as yet unreviewed). They originate from a forestry and natural resources perspective. We present them in summary form, and would be pleased to elaborate on any should that prove helpful to the Commission.

ITC question 1. What are the three (3) most important functions the Government, as trustee, performs with regard to administering or managing tribal agriculture, timber or water resources? What are the pros and cons of a public versus private trustee for a tribe's non-monetary assets?

- **Adequate recurring and assured funding of essential trust management activities**, with an allocation scheme based on a base level and an incentive scale, geared to tribal vision, priorities and plans. The base funding should provide for adequate protection and stewardship that would assure the continued existence and health of Indian forests and their associated resources. Incentive funding would provide for the production of additional forest and resource benefits, including ecosystem services, timber, recreation and others as stated in the tribal vision and plans.
- **State of the art technical assistance in planning (IRMP, FMP), technology, and management** that is available flexibly and geared to individual tribal needs. It is imperative that the trustee assure adequate technical capability to support tribal planning and operations. This should include technical capacity in all the disciplines of modern forestry and resource management. This function may include providing technical

information to tribal governments to allow tribes to make informed decisions about their resources. Tribes with smaller forests can't support full time positions in all the necessary disciplines, making the provision of shared technical expertise imperative. This has classically been provided by the Bureau of Indian Affairs (BIA) but can (and sometimes is now) provided by other US Government Agencies and consultants. Coordinated action by the agencies is an especially important aspect of this Trust requirement.

- **Effective trust oversight including fiscal management and accounting, coordination among US agencies, and adequate review of plans by a system geared to tribal vision, priorities and objectives.** IFMATs I and II suggested a form of public/ private blend to achieve trust oversight of forests and natural resources. On the one hand, the US government will always bear the trust responsibility, no matter how it is implemented. On the other hand, tribes, as sovereign nations evolving to self governance, should, through plans focused on tribal vision and priorities, guide fulfillment of the trust responsibilities. The system proposed in IFMAT I may be a starting point for this discussion, at least regarding non monetary assets. See the answer to question 2 below.

ITC question 2. What type of involvement should tribes have with the Government's oversight of tribal trust natural resource assets? What form should such tribal involvement take (i.e., regional advisory boards, individual tribal advisors for individual tribal assets, a national tribal advisory board)? How should individual allottees be included?

The transfer of forest assets to a fully private trustee (bank, law or consulting firm) seems to risk losing the flexibility and direct US government participation needed to meet tribal goals as tribal vision and objectives evolve. The current public model suffers from making the BIA both the de-facto deliverer of the trust activities and the oversight to see if the activities are appropriate and well executed (this is the pitching and umpiring referred to in IFMAT I. In the changed model suggested in IFMAT I, an independent commission would periodically review performance against Tribal plans, accepted by the Secretary of the Interior, and would have the power to require corrections when departure from the plan, or plan obsolescence (for example resulting from major unexpected changes such as fire, insects and disease, or major shifts in markets) threatened the adequate performance of trust responsibility. This would be a national commission with local reach. The Nuclear Regulatory Commission has been suggested as an

analogy. Such a commission could contract with regional entities to be primary providers of the oversight with review by the national commission. Any trust oversight body must have the technical capacity and skill to identify issues with management of the underlying asset (here, timber) and not serve merely an accounting function.

Allottees should be included in all phases of forest planning and operations and allotted forest lands should be repurchased by tribes on a willing seller/willing buyer basis. A strong case can be made that the allotment system was a consequence of a mistaken approach to the discharge of the trust responsibility, and therefore should be modernized as part of the trust responsibility.

3. What are your top three recommendations that you think would improve or strengthen trust management and/or administration for the Commission to consider?

1. Adequate recurring funding geared to tribal goals under a trust system as above. Uncertain funding and competitive funding do not efficiently support sustainable forest management, drain tribal resources, and chase short term fixes rather than longer term goals.

2. Improved technical assistance and cooperation, with greatly improved US interagency delivery. The existing breadth of technical assistance within the BIA is limited and decreasing while other agencies have capacity, but that capacity is not coordinated. Human and environmental resources are best managed across landscapes. Tribes can both contribute to landscape management of adjacent lands and benefit from their participation. Anchor forests are an example here. Agencies should be directed to collaborate in the development *and* implementation of landscape management plans. The Tribal Forest Protection act is an example of federal legislation that could facilitate landscape planning and implementation, but it is left at the discretion of the federal government.

Technical assistance is needed on the approximately 10 million acres of woodlands on Indian lands. These lands have special values (water, soil condition, ecological functions), especially to the 109 tribes with only woodlands. Lands on the margin of woodland and forest are likely to suffer the greatest impact under climate change.

3. Implement the trust oversight recommendations of IFMAT I to make tribal goals, capacity and self-governance central. Separate the group responsible for delivering technical services from the group judging its adequacy.

A summary of the findings and recommendations of IFMAT I and II follow. The findings and recommendations of IFMAT III are scheduled to be final in June, 2013.

IFMAT I had four gaps listed as its “most significant findings”: 1) the gap between the visions that Indians express for their forests and how these forests have been managed; 2) the gap in funding between Indian forests and comparable federal and private lands; 3) the [relative] lack of coordinated resource planning and management; and 4) the need for a better method of setting and overseeing trust standards for Indian forestry. These gaps resulted in one major recommendation and a set of supporting recommendations.

The Major Recommendation

Redefine the U.S. government’s role in discharging its trust responsibility so that tribal governments have primary responsibility for directing Indian forestry.

Supporting Recommendations

1. Develop tribally defined trust standards that are easy to monitor and that clarify trust oversight. This called for separation of trust oversight and the provision of technical assistance to tribes.
2. Increase base-line funding and investment for Indian forest management to levels comparable to those of the National Forests. Particular funding deficiencies were found in forest development, road systems and timber sale support.
3. Protect the health and productivity of Indian forests through ecosystem management. This called for increased forest health monitoring and increased watershed protection and restoration, as well as increased use of prescribed fire, among others.
4. Bring staffing levels to parity with those of National Forests having similar resource management objectives. Particular staffing deficiencies in ecology and engineering were noted, and enhanced funding for education was advocated.

5. Increase tree value through improved forest management, timber harvest and forest enterprise performance. This included improving training for harvest managers and communication, especially between forest managers and enterprise managers.
6. Greatly strengthen coordinated forest resource planning and natural resource inventorying.
7. Address issues requiring special planning and management, including allotments, Alaska lands, other ownerships within Indian reservations, and off reservation lands.

IFMAT II addressed the same statutory tasks as IFMAT I but also included an inquiry into the potential of forest certification schemes on Indian lands. This resulted in a broader analysis than one focused solely on the statutory questions, but also spread available resources more thinly over the tasks at hand. The certification analysis was handled and reported separately.

IFMAT II noted that the IFMAT I “gaps” had narrowed in some instances, but were still observable. IFMAT II made 6 “Primary” recommendations and 11 “additional” recommendations.

Primary Recommendations

1. Bring per acre investment in Indian forestry to levels comparable to that available for similar federal, state, and private forests over a ten year period. This echoes IFMAT I, and adds state lands as a comparison and proposes a 10 year (IFMAT cycle) time period.
2. Implement a management and oversight structure to endure effective trust oversight in implementing plans that reflect the visions of individual tribes for forest sustainability. This again echoes the IFMAT I call for a triangulated model of tribal vision and management, US technical support, and separate US trust oversight.
3. Maintain BIA technical services capacity at least at the 1993 level. This also suggested a call for a Small Tribes Technical Service Center in the West.
4. Provide adequate funding to support the development of Integrated Resource Management plans (IRMPs).
5. Fund a “willing buyer/willing seller” program to enable tribes to consolidate tribal and allotment lands.
6. Continue the 10-year cycle of Indian Forest Management Assessments, with improved, continuous and coordinated interim data collection techniques and to provide adequate funding for a consistent monitoring process. The main

thrust here was to have a responsible, external (to the BIA and individual tribes) organization continuously monitor and gather data required to fulfill the NIFRMA mandated tasks.

Additional recommendations

1. Develop tribal visions to guide forest management objectives and practices through inclusive and continuing tribal public involvement.
2. Fund a study through the ITC to determine the reason for the difference in stumpage revenues between tribes and neighboring public and private lands.
3. Bring woodlands into the mainstream of forest management planning.
4. Analyze the condition and effectiveness of education-funding programs for tribal forest and natural resource managers, with particular attention to reasons for the deficit in engineering professionals.
5. Periodically review timber-sale policies to verify that sale procedures lead to maximum benefits for the tribe.
6. Develop auditing procedures to document the competitiveness of forest products enterprises.
7. Fund and conduct an accurate inventory of allotment lands to define their acreage and condition.
8. Broaden and deepen assessment of the ability of management plans to sustain tribal forests and their benefits. This suggested that “achieving the tribal vision on a continuing basis” as the definition of “sustainability”.
9. Convene a task force to further define sustainability on Indian forest in operational terms that can be readily translated to management realities.
10. Each tribe should continue to explore the benefits of using certification programs to help tribal members and leaders to understand and evaluate their forest management programs and practices.
11. Revise federal regulations and enact legislation to eliminate requirements for tribes to adhere to mandates that are unfunded.