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### A Violation of Trust: Federal Management of Indian Forest Lands

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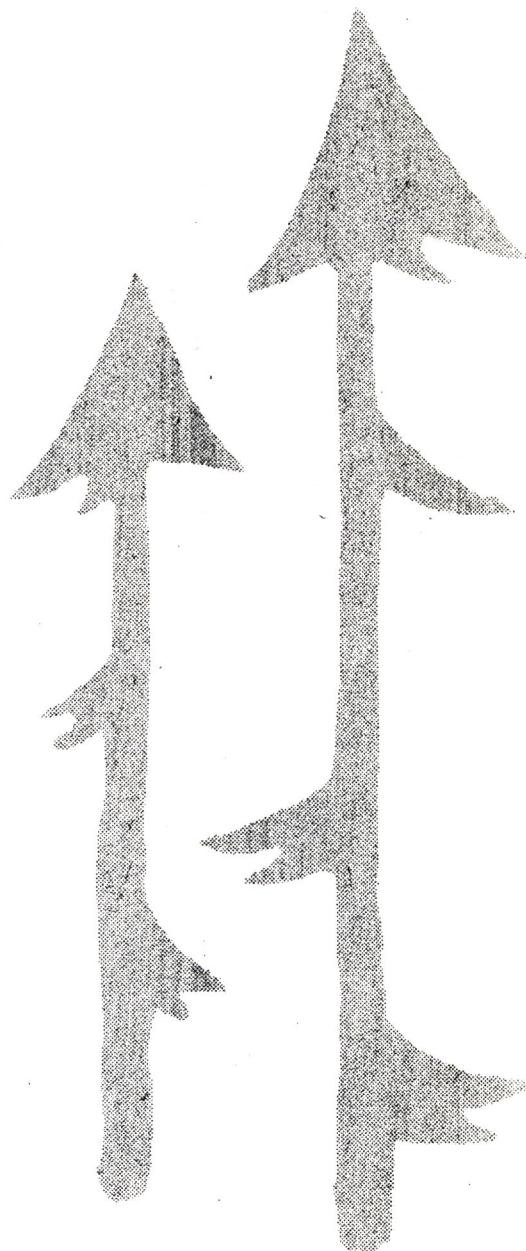
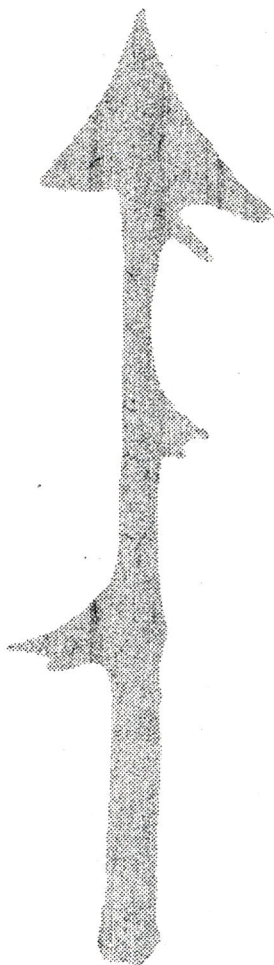
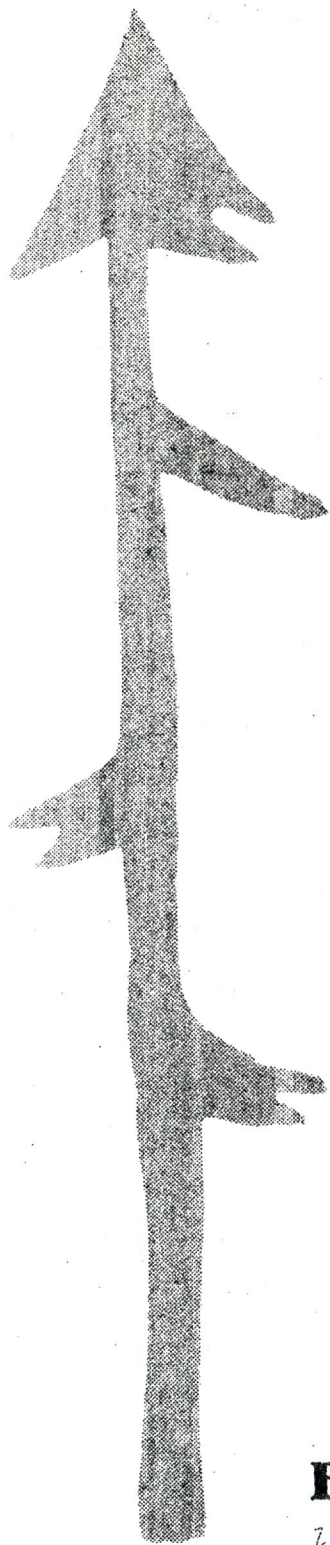
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**AIO RED PAPER**

# **A VIOLATION OF TRUST**

## **FEDERAL MANAGEMENT OF INDIAN FOREST LANDS**



**BY RICH NAFZIGER**

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## PART I

### CHAPTER I: Economic Importance of Indian Timber

Indian forests are the largest private holding of forested land in the country. There are 200 forested or partially forested reservations in the country<sup>1/</sup> totaling 13 million acres of forest land, 5.5 million acres of commercial forest and an estimated timber stand inventory of 47 billion board feet.<sup>2/</sup>

For 57 Indian reservations this forestry resource is of major importance, contributing 25 to 100 percent of their total annual revenues from stumpage alone. Eleven reservations derive 80 percent of their revenues from timber stumpage and twenty-three derive 60 percent<sup>3/</sup>. Total tribal revenues in 1974 amounted to 73 million dollars<sup>4/</sup> (see Table 1), again from stumpage alone. Add this to the fact that 25 percent of all tribal lands are forested and timber is a renewable resource we can clearly see that the effects of proper or improper management on the community can be quite significant.

In order to gain the greatest long-term economic benefits from timber it is necessary to:

(a) maximize the rate of return from the land by using sound silviculture methods and current economic management techniques; and,

(b) maximize the return from the forest capital (the tree) by utilizing this capital to create as much additional capital as possible, that is by participating in as many of the steps in the milling, processing, and retailing as is possible and insuring that the community benefits from consequent employment, training and feeder industries.

At this point it is clear that sound silviculture and management practices are not being carried out by the Federal government. This point will be elaborated on in Chapter IV. It is also clear that tribes are not participating maximally in wood processing operations. Several tribes are operating sawmills and a few are involved in wood products industries but still 80 percent of the Indian timber harvested was purchased by non-Indian firms and individuals and was processed in processing plants owned by non-Indians.<sup>5/</sup> Additionally, "Non-Indians make up the majority of people who participate in the stabilized employment opportunities created by the management of Indian forests. In wages earned from the primary wood using industry alone, the total benefit to non-Indians is estimated at 20 million dollars per year. This is almost three times the amount of wages earned by Indians from the same source."<sup>6/</sup> We can safely say that most of the income tribes derive is from stumpage and stumpage is the bottom dollar in the timber industry. Like most industries, the price timber companies pay for their raw products is minimal compared to the final dollar they get out of the finished product. According to William Duerr, in Forestry Economics, "In general, rates of return (from timber) are more comparable with those on more conservative bond issues."<sup>7/</sup> Duerr goes on to explain that combining forest management with timber processing makes the investment more attractive. A colonial relationship can be seen here. Indian tribes own the

resource of which the "Mother" country needs or wants for the benefit of its economy. The colony gets a fixed price for their timber but do not share to any great degree in the final profits from their timber even through they bear the full extent of the high risks associated with forestry management and owning forest capital.

Indian forests contribute significantly to the nation as a whole by supplying one and one-half percent of the nation's timber needs.<sup>8/</sup> The importance of this timber will further be accentuated since the demand for timber is rapidly increasing and there is some concern as to whether or not timber supplies will be adequate in the future. A 1975 Forest Service report entitled Assessment of the Nation's Renewable resources states that demands for timber will increase two-fold by the year 2020.<sup>9/</sup> Indian timber will also provide the nation with indirect benefits such as watershed value to non-Indian downstream users of water. Indian timber provides improvement of fish and game habitat, preservation of recreation potential and in the extremely arid Southwest region, timber reservations provide some of the few areas in the region cool enough and lush enough for any recreational potential.



## CHAPTER II: Trust Responsibility and Indian Forests

The unique relationship existing between Native Americans and the Federal government has been analogized to that of a ward to his guardian. (Cherokee v. Georgia, U.S.C. 1, 15, 30-1831) This is a trust relationship which was accepted by the Federal government when it made treaty agreements with Native Americans. It should be made clear that this responsibility is not a conveyance (or gift) to Indian people but rather an interest that has been retained by Indian people. The responsibility to manage Indian timberlands is not a public service but a legal obligation owed to Indian people for granting away title to huge areas of land which had been theirs; it is also a moral obligation owed to Indian people for the disruption of Indian trade and economic systems and the imposition of an alien system by force.

The resulting fiduciary duty imposes upon the Federal government as trustee, "the responsibility to administer the Indian forest resource with a high degree of care, diligence and skill commensurate with its ability or if will have to face possible recourse by Indian owners."<sup>10</sup> The American Law Institute "Restatement Trusts" Sec. 174 states, "The trustee (guardian) is under a duty to the beneficiary (ward) in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has greater skill - (here engineers, hydrologists, soil scientists, contract negotiators (Note -- something the BIA has not only not done but also something it has never thought of) administrators, lawyers) than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has."<sup>11</sup> In the Menominee timber blow-down case<sup>12</sup> the court determined that Indian timber operations are to be managed as commercial or industrial enterprise and that the U.S. has an obligation to prudently manage Indian forest land and connected enterprises in a manner consistent with accepted professional standards of silviculture and business techniques. In that court decision Congress, along with declaring that the Federal government could be sued for such mismanagement, also declared that proper management is the law. The BIA, the Economic Development Administration (EDA), and the USDA Forest Service cannot argue that it is not their fault that timber stands, mill and enterprises are neglected and improperly managed, it is their responsibility to see that they are properly managed or to compensate the tribes for their failure to do so.

### CHAPTER III: Management Responsibilities

In carrying out its trust responsibility towards Indian people's forest lands, Congress enacted the general forest regulations U.S.C. 25, Part 141, and the following objectives were set:

- (1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silvicultural and economic principles to the harvesting of the timber and by making adequate provision for new forest growth as the timber is removed.
- (2) The regulation of the cut in a manner which will insure method and order in harvesting the tree capital, so as to make possible continuous production and a perpetual forest business.
- (3) The development of Indian forests by the Indian people for the purpose of promoting self-sustaining communities, to the end that the Indians may receive from their own property not only the stumpage value, but also the benefit of whatever profit it is capable of yielding and whatever labor the Indians are qualified to perform.
- (4) The sale of Indian timber in open competitive markets in accordance with good business practices on reservations where the volume that should be harvested annually is in excess of that which is being developed by the Indians.
- (5) The preservation of the forest in its natural state wherever it is considered, and the authorized Indian representatives agree, that the recreational or aesthetic value of the forest to the Indians exceeds its value for the production of forest products.
- (6) The management of the forest in such a manner so as to retain its beneficial effects in regulating water run-off and minimizing erosion.
- (7) The preservation and development of grazing, wildlife, and other values of the forest to the extent that such action is in the best interest of the Indians.
  - (a) Similar objectives are sought in the management of allotted Indian forest lands, but, in addition, the sales of timber shall be based upon a consideration of the needs and best interests



of the Indian owner and his heirs. The Secretary shall take into consideration, among other things:

- (1. The state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs.
- (2. The highest and best use of the land, including the advisability of devoting it to other uses for the benefit of the owner and his heirs.
- (3. The present and future financial needs of the owner and his heirs.

In meeting these objectives, the Bureau is responsible for carrying out the following activities:<sup>13/</sup>

A. Forest Management Activities as Authorized by Congress

1. Timber Inventory

The Forestry organization operating under existing laws and departmental regulations, carries on continuous examinations of reservation forests to:

- a. Classify and map the forests into commercial, non-commercial, reserve and special-use areas; and to identify land ownerships as tribal, trust allotted, and non-Indian forest lands.
- b. Delineate the forest into timber types, species, age classes and virgin or cut-over stands.
- c. Determine the condition of the stands for maturity, mortality, stocking, planting and seeding needs, insect and disease prevalence, and fire hazards.
- d. Inventory the forest types for timber volumes.
- e. Identify and evaluate areas significant for watershed, stream flow, recreation and other values.

2. Growth Studies

The Forestry organization measures the growth of the Indian forests, both gross and net, to calculate the permissive harvest under sustained-yield principles. This harvest is normally referred to as the "allowable cut."



### 3. Management Plans

Based on the data collected, the Forestry organization prepared long-range, forest management plans, with calculations of annual allowable cuts, developmental programs, harvest progression, special treatment areas, and potentials for improvement. The Bureau submits and explains these plans to tribal leaders and discusses procedures or adjustments necessary to meet the wishes and objectives of the tribes.

### 4. Timber Sales

On reservations where the volume of timber available for cutting exceeds that being used by the Indians themselves, open market sales are authorized by regulation, provided consent is given by the tribe for tribal timber, or by owners of timber held in trust on allotted lands.

#### a. Sale Procedures

Most sales of Indian timber are made under timber cutting contracts which are publicly advertised. The sales may be made either at public auction, by sealed bids, or a combination of both. The advertisement may limit sales to members of the tribe, or may grant tribal members the right to meet the higher non-Indian bid. The Tribal Council on each reservation determines if such Indian preference is to be permitted. Contract sales may be made without advertising to provide a right-of-way or prevent undue waste. Sales for less than \$500 in stumpage value may be executed without advertising.

#### b. Bureau Participation

The Forestry organization normally participates in sales of Indian timber through the following operations:

(1) Selection of the specific sale area, delineation of sale boundaries, location of roads, and cruises of volume and quality of timber to be designated for cuttings.

(2) Preparation of detailed forest officers' reports, including appraisal of timber stumpage for presentation to and approval of Indian owners.

(3) Preparation of sale prospectuses, publication of advertisements, acceptance of bids, selection of purchasers and execution of contracts.

(4) Supervision and administration of sale contacts, including but not limited to, marking and scaling of timber, checking of property lines, practices of logging, accountability of logs, disposal of brush, and protection of streams.

(5) Assistance with collection of payments from purchaser and distribution of stumpage returns to tribe, allottees, or Federal Treasury.

(6) Periodically reappraising stumpage prices under long term contracts in order to update obsolete data and provide realistic payment for timber sale.

c. Purchasers Obligations

The primary obligations of the purchasers of Indian timber are to cut and remove the timber, and to pay the purchase price as stipulated in the contracts. Purchasers may also be required by contract to build their own logging roads, to observe safety measures to avoid fires, to post fire lookouts, to replant the logged-over area, and/or to clean up slash and other debris at the end of logging operations. Operators are also required to maintain fire control equipment equal to specified minimum standards. In some instances, timber sales contracts have required the purchasers to construct and operate wood utilization facilities on or near reservations in order to provide more local job opportunities for Indian people.

5. Forest Protection

The Forestry organization is responsible for protecting Indian forest lands in the following respects:

a. Fire

- (1) Preparing detailed wildfire action plans.
- (2) Developing active educational programs in fire prevention.
- (3) Planning and conducting annual fire-training programs.
- (4) Negotiating cooperative fire protection agreements with other forest protection agencies.



#### CHAPTER IV: Adequacy of Federal Management of Indian Forests

Recent reports indicate that the Federal government is not performing its function as well as it could and is negligent in many cases. A 1973 GAO study reports that: "The Bureau of Indian Affairs does not have adequate assurance that Indian forests are adequately protected and properly developed as required by law. In several areas of forestry management, Bureau field personnel are making important decisions without adequate criteria, guidelines or sufficient resource information."<sup>14/</sup>

The report stated that the Bureau does not adequately:

- determine annual harvest volumes;
- update timber management plans to accurately reflect annual accomplishments in the areas of reforestation and timber stand improvement;
- identify timber management plans to accurately reflect annual accomplishments in the areas of reforestation and timber stand improvement;
- identify and establish priorities for those areas that need reforestation and timber stand improvement;
- obtain advice of appropriate resource specialists as to minimize the impact of timber harvesting and road construction on other forest resource; and,
- increase the harvest volume of dead and dying timber.

Lack of inventories and plans is unheard of in the corporate timber world and has led to miscalculations which have cost tribes millions of dollars. The Coeur d'Alene tribe stated in a report to Congress (1976) "The BIA does not have a forest management plan and cannot insure the sustained cut of timber for the future. Their cutting cycle is based on incomplete and outdated information, making it impossible for Bureau foresters to determine if our forest is being over or under cut. Without a management plan, our forests are only growing at half of their potential, thus producing only half the income that could be derived. In addition, forest information is needed by the tribe to plan for its logging enterprise which provide employment to tribal members, generates additional income to the tribe and allows the development of tribal resource by tribal members."<sup>15/</sup>

Inadequate protection of Indian forests has caused uncalculated losses to Indian owners. Former Chief Forester Wilcox stated



before the Senate Appropriations Committee in 1974, that in the area of prevention and presupposition, "We (BIA) have been much weaker in these latter activities than either the Forest Service or BLM.<sup>17/</sup> Wilcox in an earlier intra-agency memo stated "Indian forest lands are managed less intensely than the government manages its own national forest properties and compares even more poorly with the management of industrial tree farms." He added, "The question might well be asked 'Should a trustee manager treat a property less intensively than he does his own forest land?'"<sup>18/</sup>

A 1975 GAO report the Senate Interior Committee (unreleased) reiterating the same points of the 1973 report, as well as others, concluded that the Bureau has not adequately:

- increased the volume of timber harvested to the level permitted under the principles of sustained yield;
- improved the effectiveness of pre-commercial thinning;
- harvested adequate levels of dead and dying timber;
- performed commercial thinning;
- established specific goals and action plans for identifying and accomplishing needed forest management work;
- improved the effectiveness of reforestation programs; and,
- made substantial effort to acquire the personnel and funds needed to fully manage the Indian forest.<sup>19/</sup>

To make sure that a sustained yield (defined as the same amount of timber that becomes mature every year, is harvested every year) of timber on Indian lands is reached, the Bureau sets an allowable cut (defined as the volume of timber that can be cut every year.) The minimum potential yield for a forest in terms of economics is achieving the allowable cut; if the cut is not reached it is considered a dollar loss. Chief Forester Stevens, in his 1975 Forestry Report, stated that in the past five years of cutting on all forested reservations, the Annual Allowable Cut (AAC) has not been attained in eight out of ten area offices. The estimated dollar loss for the calendar years 1970-1974 is \$25,486,767.<sup>19/</sup>

COMPARISON OF ANNUAL ALLOWABLE CUT DEFICIENCIES AND LOSS OF  
INCOME FOR CALENDAR YEARS 1970-1974  
(Table 2)

<u>AREA</u>	<u>AAC PAST 5 YRS.</u>	<u>ACTUAL CUT</u>	<u>PERCENT DEFICIENT</u>	<u>ESTIMATED DOLLAR LOSS</u>
Aberdeen	3.9 MMBM	1.1 MMBM	71.8	\$ 25,400
Albuquerque	207.4	161.5	21.7	2,353,554
Billings	486.4	374.1	23.1	2,249,000
Eastern	59.5	30.8	48.2	1,703,931
Juneau	62.5	60.7	2.9	0
Minneapolis	730.0	219.2	68.6	4,413,600
Navajo	223.0	217.5	2.5	259,501
Phoenix	507.5	353.9	30.3	3,584,000
Portland	2,743.0	2,547.4	7.1	12,441,486
Sacramento	200.0	200.0	0.0	0
TOTALS	5,223.2	4,165.8	20.2	\$25,486,767



The 1975 GAO report looked at this problem on three reservations -- Yakima, Colville, and Fort Apache (Arizona). On these reservations, there was an estimated dollar loss for calendar years 1969-1973 of \$5,414,897. On the 12 major timber reservations, at least 110 MBF of harvestable timber is left in the forests each year; this is a loss of income for the tribes and a loss of timber for the country.

Yakima, for example, has a listed AAC of 186 MBF for the year of 1974. However, only 127 MBF of timber was harvested. At Colville, the AAC is listed at 120 MBF AAC and in 1974 121 MBF was cut. The GAO report stated that recent timber inventory and new allowable forest harvest computations indicate that the AAC should be increased from 16 MBF to 136 MBF. This could be true of other reservations where AAC listings are much lower than they should be, indicating that dollar losses could be higher.

The failure to meet the annual allowable cut means more than a temporary loss of revenue. Rather, it increases the risk of damage and destruction due to fire, insects or wind. Trees also can become over-mature thus less valuable and in the case of some species, worthless. Leaving mature trees in the forest does not mean stored capital.

Pre-commercial thinning (defined as the thinning of trees that are of no value or to make room for productive growing trees) and reforestation is also not being performed on Indian forest lands. The report stated that engaging in these practices would result in additional timber, thus raising the AAC to a higher level.

In 1973, "thinning accomplishments for all reservations equaled only about 3 percent of the total amount of pre-commercial thinning needed (backlog) and the reforestation accomplished equaled only about 4 percent of reforestation needs."<sup>21/</sup> GAO blamed the lack of reforestation and thinning on insufficient inventory data and lack of plans and goals. Reports estimating the backlog are based on personal observations and experiences rather than objective inventories. The backlog figures are also outdated by many years.

Indian forests are overstocked with young trees that could be sold and processed into wood products. This kind of thinning not only leads to increased future AAC's, but also revenue from harvesting and selling the young trees that would be thinned. GAO reported "on the three reservations we visited, the Bureau has not determined the extent of commercial thinning opportunities, nor has the Bureau developed plans and goals for performing commercial thinning. On Yakima, an insect epidemic near the end of the last century destroyed much of the original timber stand and now dense, overstocked, stagnated stands of pole and sawtimber sized trees cover most of the area. No commercial thinning has been done and none is planned."<sup>22/</sup>



In order to assess the value of doing commercial thinning, the GAO examined the results of a private timber company who performs this function: "The company representatives said that about 2,000 acres of its land is commercially thinned each year and a portable small log sawmill has been built to process the logs. In addition to increasing timber growth from the thinning, the company is making a profit from operating the small log sawmill."

The Bureau again fails to perform a similar function in not harvesting dead and dying timber: "On the Colville Reservation, 47 MBF, which is equal to 39 percent of the AAC harvest, dies annually and on Yakima, 12 million MBF dies annually. The Bureau has no program for systematically harvesting this timber, and therefore, a large volume is not harvested and deteriorates to the point where it can no longer be used."<sup>23/</sup>

An overstocked forest due to lack of thinning and not meeting allowable cuts amounts to overcrowded forests with resulting loss of growing space, decreased soil nutrients etc. thus creating smaller trees or a loss of total MBF for a forest. It also creates damaged trees which grow in unfit manners for most wood processing operations. By not performing thinning and cutting tasks at proper times, all the timber in the forest, present and future is affected.

Another problem brought out by the GAO study was that the Bureau lacks the necessary staff to perform required forest management functions; according to a Portland area analysis of their staff needs, "Additional Bureau staff would annually cost about \$300,000 but would provide an increase in timber income to the Indian owners of 4.2 million dollars." A field study proves their point -- Wenatchee National Forest has an AAC of 177 MBF; neighboring Yakima has an AAC of 186 MBF; Wenatchee has a staff of 104 employees and Yakima a staff of 43. "With a large forestry staff, the Wenatchee National Forest has been able to harvest a larger volume of timber and has accomplished more intensive forest management work which increases the volume of timber available for future harvesting."<sup>24/</sup>

	<u>Wenatchee National Forest</u>	<u>Yakima Reservation</u>
Average annual timber (harvest, 1969-1973)	180 million board feet	144 million board feet
Pre-commercial thinning (5-year average)	1,615 acres per year	1,720 acres per year
Reforestation (5-year average)	2,757 acres per year	138 acres per year
Commercial thinning	2 sales in progress 4.2 million board feet	None



Chief Forester Stevens pointed out, "Forestry personnel total 325 for the entire Bureau operations. We note there are more personnel (358) in the Medford and Salem Districts (Oregon) of the Bureau of Land Management working in forestry than there are in the entire BIA forest program and with a lesser annual allowable cut (BLM 518 mmfbm: BIA-1,044 MMFBM)".25/

The basic posit of Forestry Economics is that the capital the forest capital is also the timber growing machine, or, the factory is also the product. Production is dependent upon maximum management of cutting schedules, thinning, etc., or managing the trees' growth. Failure to manage properly by undercutting, lack of thinning and reforestation not only means an inefficient factory but also permanent damage to the factory itself and future reduction of its production capabilities.

## CHAPTER V: Costs of Management

Trust responsibility costs for managing Indian forests are paid by the Federal government through appropriations, and by Indian timber owners through the Federal government's collection of administrative fees from Indian timber sales receipts. These administrative fees are deductions from the gross proceeds of timber sales made by the Federal government in order to cover in whole or in part the cost of management and protection of forest lands. The authorization for timber fees was provided by the Act of February 14, 1920, 41 Stat. 415, U.S.C. 25: 141.8 as amended by the Act of March 1, 1933, 47 Stat. 1417, 25 U.S.C. 141.8, which states, "Deduction for Administrative Expenses,:

"In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands including the cost of timber sales administration but not including costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction or the manner in which it is to be made, there shall be deducted 10% of the gross amount received for timber sold under regular supervision and 5% when the timber sold in such a manner that little administrative expenses by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner."

This regulation was interpreted, until 1972, to mean that up to 10% (usually 10%) of all gross timber sale revenues would return to the U.S. Treasury as a charge for service performed in managing Indian timber. In fiscal years 1963-1967, approximately \$5,000,000 was returned to the Treasury.

Former Chief Forester Wilcox, in his 1970 memo, "Use of Administrative Fees for Intensifying Management of Indian Forests," argued that Indian Forest lands are grossly underfunded in comparison to private or Federal forest lands. He maintained that one way to increase funding would be to invest the timber sale fee into intensive development of Indian forest lands, thus putting the money to immediate and meaningful use in local Indian communities. Mr. Wilcox used the special tax breaks given to private timber companies (capital gains tax breaks) as an analogy to the administrative fees. Since Indian



tribes lack a tax base from which it would be possible to encourage good forestry practice for Indian owners, the Federal government could forego revenue by not collecting the 10 percent of gross timber sales receipts for the Treasury. This would be possible if the tribes contributed an amount equal to the 10 percent of gross timber sales receipts towards paying the cost of the forestry program on their reservation.

In this light, the timber fees can be seen as a tax, and the provision for reinvestment can be viewed as the equivalent of a capital gains tax break.

On June 15, 1972, Harrison Leasch, Assistant Secretary of Public Land, issued a memo on the subject of "Amendment to Special Instruction for Deduction for Timber Sales Administrative Expenses

"When Indian tribes contribute toward paying the cost of the forestry program on their respective reservations by authorizing expenditures from their existing tribal accounts, the amount of the administrative fee deduction that is to be collected from receipts from the sale of such tribal timber that is paid for, cut and scaled during the fiscal year in which such expenditures from such tribal accounts are made, shall be determined by reducing the administrative fee deduction that would otherwise be collectable under these instructions in the absence of any tribal contribution by the actual amount of the tribal contribution."

A basic problem resulted in the requirement that the funds be obligated in the same year that timber sales receipts were ended. Consequently, some tribes had failed to obligate the full 10% of timber sales receipts and the timber fee money was returned to the Treasury. (In 1974 nearly one million dollars of Indian money was returned to the Federal treasury.)

The 1975 GAO report criticized this practice and recommended that the BIA set up a task force to investigate the problem. The task force recommended that the tribes be allowed a longer period in which to obligate the fee money. The task force recommendation has recently been implemented; now tribes are given two years to plan for the use of funds. The money lost by tribes because they were not provided with adequate funds, and the time and technical assistance, to obligate the timber fee money, is out of the hands of Indian people for good, (unless they can get it back through litigation.)



The wisdom of collecting timber fees from tribes for any purpose should earnestly be questioned. Former Chief Forester Wilcox clearly pointed this out, "Any dilution in the total income received by Indian people from stumpage or contribution of tribal funds to finance the forestry program aggravates the economic distress of the community and furthers the need for Federal funds to offset such distress. One must therefore seriously question the wisdom of withdrawing funds from economically distressed communities either through payment of either administrative fees or through budgeting tribal funds, while at the same time contributing large amounts from Federal funds (other than those appropriated for forestry) to stimulate the economies of the same communities. Such fiscal manipulation contributes toward the burgeoning dominance of Federal government over government of the local Indian communities."

Many tribes maintain that the Federal government should not be deducting administrative costs from stumpage returns because all forestry functions are a trust responsibility and should be Federally funded.

Mr. Wilcox also pointed out that such a tax as the administrative fees are not charged for carrying out trust responsibilities for other Indian resources. Fees are not charged for mineral, water, business assistance, fishery, or farming assistance. "To establish the proper perspective for judging the equitability of (charging) administrative fees it must be recognized that the authorizing act does not confine such charges to forestry management alone. The lack of consistency in the manner in which this authorization has been exercised has resulted in inequities in the methods for funding of various services provided to Indian people. Accordingly, the Indians have resented the 10% fee for forestry services and have responded with an understandable reluctance when requested to pay for an ever-increasing part of those services. They question the reason for paying for forestry when most other government services are provided with little or no such payment." The fee in reality is a carry-over from forest service practices which many Bureau practices mimic.

The Federal government has failed to adequately utilize fees collected from timber sales. According to Chief Forester Stevens, "The Secretarial order in 1972 returning administrative deductions to tribes has created a management control situation that has yet to be resolved. The past three years has seen an estimated 500% increase in funding by tribal governments. This funding amounts to 40% of the total Bureau forestry program for the past three years. There was no corresponding increase in Federal positions to either monitor, coordinate, or effectively control this increase."



The Federal Government has used Indian money collected from timber fees to finance the worst major timber program in the country. Until recently, Indian people have been denied the technical knowledge of timber management necessary to manage their own forestry resources. Due to the deficiency of forestry and forestry management skills and lack of capital, Indian people have been forced to rely on the Federal government to carry out these functions. This reliance has been both expected and encouraged. The U.S. Government has failed to properly manage the forests for them, and because of this, Indian people have suffered great economic harm. Only with the advent of Indian people educating themselves on forestry management has any real accountability been demanded of the Federal government. Now Indian people are taking the Government government to court. The Menominee Tribe has won litigation suits for mismanagement, and their situation is by no means unique. Currently, the Klamath Tribe, the Quinault Allottees, Hoopa Valley and Menominee are involved in mismanagement litigation with the Federal government. The facts seem to bear out that the Federal government owes Indian tribes millions millions of dollars for failing to carry out fiduciary duties. It is clear that the government has no business collecting badly needed revenues from, tribes whose economic situation has been caused by Federal disruption of Indian economy and Federal failure to adequately carry out trust responsibilities.

Total expenditures for the Indian forestry programs are meager in comparison with the Government's participation in the intensive management of large private timber companies for which it has no trust responsibility. The only valid argument for taking the 10% fees is that it provides additional revenue for forestry development. The Federal Government, however, gives away tax breaks to the eight major timber companies at an amount of 134 million dollars per year. Weyerhaeuser, the second largest private timber owner, received 50 million dollars in tax breaks in 1975. According to former Treasury Department Assistant Secretary, Stanley S. Surrey, "the effect of giving specific taxpayers a great - and foregoing revenue - is the same as providing direct Federal expenditures." Emil Sunlee, former Treasury Department Tax Analyst, stated in a paper prepared for the Society of American Forester Convention in 1975, that "When it comes to subsidizing timber, the Treasury Department runs a larger program through the tax system than the direct programs administered by the Department of Agriculture, Interior, and Transportation."

These capital gains tax breaks represent contributions of the Federal government to encourage intensified forestry management on private forest lands. Such participation offsets the negative effects on forest management which results from the long term nature of investments in forestry. It may well be asked why the



trustee provides these huge financial benefits to large companies and not to Indian tribes for which they have a direct responsibility. The Federal government is concerned with escalating timber production and are willing to give timber companies incentive to produce more timber but they are unwilling to provide adequate allocations for Indian forestry land management in order to increase allowable cut or even meet the present allowable cut. In analyzing this problem, Mr. Wilcox argued "It seems obvious that the government, as trustee manager of the Indian forest properties, should be willing to extend the same degree of encouragement for good forestry on Indian trust properties that it has been willing to extend to the private land owner. Without a tax base from which it would be possible encourage such management through tax concessions, it appears that the only available alternative is through direct appropriation from Federal funds. Such appropriations should be of a magnitude commensurate with the Government's participation through tax concessions in the management of other private forest lands."

In some cases the collection of the fees for use in timber stand development is economically absurd. Indian timber stands in less arid areas grow very slowly, thus the management of these stands for future growth and harvesting is totally uncompetitive with more moist Northwest and Southern timber regions. The amount invested in improving stands is hardly returned. The tree as a factory is totally inefficient. That is not to say one cannot harvest the timber that is already there; rather, it is economically unsound to manage the forest for future growth. This means that the timber revenues could reap a higher rate of return if it was used in a different economic development capacity which has a higher rate of return.

A corresponding argument is that for all timber stands in some years, the revenue generated from timber sales could produce more income in other economic development areas. The requirement that these fees be used in certain areas creates a great amount of inflexibility in economic planning.

## CHAPTER VI: Conclusion

The Federal government's failure to participate equitably, and adequately, in the management of Indian forests is economically, legally and morally irresponsible. Economically, the timber supply and related benefits are diminished for the Nation as a whole and the subsequent loss of revenue for Indian people will necessitate further government spending through other programs. Legally, inequitable participation and inadequate participation is a violation of trust responsibility. Morally, it is wrong for a wealthy trustee to withhold from an economically deprived trustor the management and financial assistance that it provides to those of which it has no trust responsibility; especially, a trustor whose economic deprivations was created by the trustee.



## PART 2

### A PROPOSAL FOR CHANGE

The responsibility to manage Indian timber lies within the Federal government, according to mandates of Congress. Different from other Federal programs, policies or agencies, the management must be guided by the trust responsibility which the Federal government has obligated itself to tribes.

Underlying the Federal failure to properly manage tribal forests lie two basic problems: (1) There is little tribal control of the programs, and (2) the program is operated as a Federal program rather than as a business. Indian people have little input or impact on the branches of government which make the decisions and policies on their forests. They have no direct line of control over the management.

The forest service serves as a model for the management program. Unfortunately, its entire design and purpose is totally different. Management of Federal forests is not intended to be a profit-making venture. Additionally, the Bureau program has too many burdensome channels for decision making to serve the purpose of making money.

One alternative which has been suggested is for tribes to individually contract their timber programs through the provision of the Indian self-determination act. This could work for tribes who have well-trained management and adequate timber assets to develop feeder industries to be competitive in the timber industry. Individually, tribes probably cannot compete with the lumber barons.<sup>1/</sup>

Another alternative which has been proposed would be the formation of an Indian Inter-Tribal Timber Cooperative.<sup>2/</sup> The cooperative membership would consist of all tribal timber owners or tribes involved in wood processing enterprises. It could serve several functions.

A. Monitoring government timber management programs and acting as an advocate for Indian timber owning tribes by influencing Federal policies and management practices.

B. As a clearing house for information on timber companies, prices, contracts and marketing.

C. As a holding company, to which tribes could "sell" their timber at a minimum or agreed upon market value price. The co-op would sell when the price is high and stockpiling otherwise. At

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<sup>1/</sup> The eleven largest timber companies each own from 1.1 to 5.4 million acres of commercial timber and they process most of the timber off 500 million acres.

<sup>2/</sup> An idea formulated from discussions with Tribal leaders' staff research.

the end of the year, dividends could be paid based on the original value compared to the finally sold at value or by any method selected by a board of directors made up of tribal members. The cooperative could obtain funds by contracting out of the portion of the Bureau funding now used to administer timber sales.

D. As a marketing organization; hiring top-notch expertise in national and international marketing could assist in locating sales outlets or in assisting tribes who want to go into timber products utilization; it could help them determine what kind of wood products to manufacture by monitoring market needs and could help find markets for wood products industries that already exist.

E. As a pool for technical and managerial expertise. The cooperative would be able to hire experts in various fields of forestry economics and management and would maintain communication with other consultants on a regular basis.

The cooperative could increase the power of each individual member by providing functions which most would not be able to do on their own and by multiplying the political and economic effect each tribe would have on the timber industry and Federal policy. Essential to the success of the program would be an increase of funding for the forestry program. Presently, appropriations are inadequate to even minimally fund the program that exists now. Trust responsibility would in no way be changed since the Federal government still must assure that Indian rights are protected and are responsible to see that the program does not fail.

The cooperative could have the option in the future of setting up an Indian timber bank. The bank could provide loans to tribes to help set up timber enterprises and operate management systems. At the same time it would provide any needed technical assistance and marketing and holding services. The bank could start in a way similar to the Farmers' Credit Administration (FCA), which originally was a government program but after a period of time became totally self-sustaining.

Many variations of cooperatives ideas are being considered by many different tribes and groups. This is only one of those being considered.



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