



# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

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## Regional Policy Memorandum

### Bureau of Indian Affairs Midwest Region Office of the Regional Director

**Number: RPM-MW-TRUS-4**

**Effective: 05/24/06**

**Expires: 05/24/07**

**Title: Forestry Policy - Midwest Region Branch of Forestry Authority – Technical Assistance on Tribally Owned Fee Lands**

### 1. Purpose

This memorandum clarifies and sets forth Regional policy for providing technical assistance in the management of tribal fee lands. It also addresses the use of self-governance and 638 contract funds for the management of those same lands.

### 2. Scope

This policy applies to all BIA Midwest Region Forestry personnel, and Tribal Forest Management Programs within the Midwest Region that receive self-governance or 638 contract funds in order to manage tribal trust forest lands.

The issue of the Bureau's trust obligation to manage tribal fee lands has been discussed within the Midwest Region since tribes began purchasing large tracts of land in the early 1990's. The Field Solicitor issued an opinion on November 19, 1993 regarding this issue and cited the Ninth Circuit Court of Appeals decision of October 1, 1993 in the Lummi Indian Tribe v. Whatcom County as a catalyst for the opinion. The Ninth Circuits decision in the Lummi case was that parcels the tribe recently purchased, which at one time had been subject to restrictions against alienation, were alienable and therefore taxable. The issue which is important to the management of forests on tribal fee lands is whether 25 USC § 177, the Nonintercourse Act, applies to recently purchased tribal lands which have not been placed in trust for the tribe. The Ninth Circuit held that the protections of 25 USC § 177, do not apply to a tribe's modern land purchases held in fee patent status.

### 3. Policy

The Midwest Region hopes to promote the spirit of cooperation and understanding between the Bureau of Indian Affairs and the tribes and bands of the Midwest Region. It is the responsibility of the forestry programs, both Bureau and Tribal, to protect and manage forest resources held in trust for the tribes by the federal government. It is further understood that since the funding to provide these services is limited, the primary focus and commitment is providing the trust services defined in 25 CFR § 163.

Forestry programs within the Region are encouraged to assist tribes with certain forestry related matters, relating to fee lands, upon request. The assistance provided in the management of non-trust resources shall be limited to technical matters that will not incur a liability to the government or obligate time and fiscal resources that threaten fulfillment of the proper management of trust resources.

**The following guidelines are prescribed for providing assistance:**

- Maintain a courteous and professional relationship with tribal programs and governments.
- Provide technical input and advice as requested by tribal governments.
- Foster communication and understanding between forestry and tribal programs and governments.
- Do not mandate conditions or supervise projects or employees.
- Do not cruise, locate boundaries, scale or perform other projects that could incur liability or take substantial time away from trust management duties.

In the event that a tribal forestry program is directed by their employer to perform forest management duties on fee land, the use of federal funds for this purpose is not authorized.

When tribal fee land is intermingled with trust land some latitude can be given when a silvicultural treatment is proposed across ownership boundaries. The extent of this latitude should be discussed with the Line Officer. In the area of hazardous fuels treatments, when tribal fee land is intermingled with trust land and the implementation of a joint hazardous fuels treatment is advisable for public safety and economic reasons, a Cooperative Agreement between the Tribe and the BIA is required for project development and implementation. The agreement will be approved by a Line Officer and specify exact lands involved, overall objectives and required actions of each party.

### 4. Role and Responsibilities

This policy memorandum will be followed by all line officers within the Midwest Region delegated forest management responsibilities. It is the responsibility of the line officer to ensure that all forestry personnel adhere to this policy.

### 5. Approvals

s/Terrance Virden  
Terrance Virden  
Midwest Regional Director

05/24/06  
Date