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Case 3.4. Indian Forest; Land in Trust (Philip H. Rigdon)

INTRODUCTION

Forests are a vital part of Indian communities due to the social, economical, and cultural values that the forests provide to tribal people. Reservation forest provides opportunities for, economic development, employment and income, traditional hunting, fishing and food gathering places, and religious and cultural sanctuaries. Since time immemorial tribes have utilized and managed their forest for the resource they need.

Today, across the United States, tribes continue to use the forest resources in both modern and traditional ways. The uses of these forests are as diverse as the people that live on these lands. Indian forests range from the rainforest in Washington, the palms of Florida, the hardwoods of the Midwest and Northeast, the juniper stands of the Southwest, and to the mix conifer of the interior mountain west. With the diversity of forest, individual tribes have different goals and objectives for their land. In some areas traditional foods and medicines are principle, while at others wildlife, fish and recreation are vital, and still others income and employment are the primary driving forces (Morishima, 1997).

BACKGROUND OF NATIVE FORESTS

In the continental United States 193 Indian reservation in 33 states have 6.9 million hectares or 17.1 million acres of forestland. Out of the 6.9 million hectares, 3.8 million hectares or 9.3 million acres are woodland (forested land with less than 5% crown cover of commercial timber species) and 3.2 million hectares or 7.8 million acres are timberland. The timberlands contain a standing inventory of more than 44 billion board feet and support an annual allowable harvest of 810 million board feet (Morishima, 1997; Petruncio, 1998).

In the Pacific Northwest, the annual allowable sale quantity from Indian forest is about 500 million board feet, almost half of the volume available from the Forest Service and Bureau of Land Management lands under the Northwest Forest Plan (Morishima, 1997). From 1992 to 1996, 706 million board feet were harvested annually (Petruncio, 1998). Utilization of forests resources provides the backbone of economic activity for many tribes. In 1991, the Bureau of Indian Affairs (BIA) estimated that, Indian forest and related programs generate over \$465 million and supported over 40,000 jobs for Indian communities and over 9,000 jobs and \$180 million contributed to non-Indian neighbor communities (IFMAT, 1993; Morishima, 1997; Peterson, 1998).

The commercial forestry on Indian reservations have immense potential for generating economic gain for tribes, but Native American values provide a unique context within which forestry must be conducted. On most tribal lands, the utilization of forest resources is balanced with important resource values such as, religious and culture, water quality, and wildlife and fish (Morishima, 1998). Meeting these objectives can be difficult and often impossible due to inadequate funding and the complex ownership pattern in Indian country. During the last 25 years the Intertribal Timber Council and the

BIA have been advancing toward self-management and tribal government “Self-Determination”, but the funding needed to develop these goals are greatly inadequate (IFMAT, 1993). The direction of Indian forestry has been unclear and the future entails redefining the US government’s role and its trust responsibility in relation to tribal forestry. Understanding the historical policy and direction of Indian forests management is vital to understanding how tribes manage their lands today.

HISTORICAL OVERVIEW OF INDIAN FORESTS

Indian reservations are federal lands held in trust for the benefit of Indian tribes. This trust responsibility is rooted in the Justice John Marshall 1830s court decisions involving the Cherokee Nation in Georgia. In *Cherokee Nation v. Georgia*, Marshall found that tribes existed as “domestic dependent nations” within the United States. This created a ward-guardian relationship between tribes and the United States. With the treaties, establishment of reservations and statutory mandates by Congress, a trust responsibility relationship has been developed and continues today (Newell, 1998).

For much of the nineteenth and twentieth century, policy toward native communities has sought to make them self-sufficient (Newell, 1998). Within this framework, the idea was to assimilate Indians by making them into farmers. The first policy of forest management on Indian land was established in 1873 when the Supreme Court ruled in *U.S. vs. Cook*. The ruling stated that Indians on the Tulalip Reservation in Washington State had no legal right to sell timber unless the clearing was for agriculture purposes; otherwise the logs belonged to the United States. The court viewed Indian rights to the reservation and the timber upon them as rights of occupancy only. This

narrow view was based on rulings in *Johnson vs. McIntosh* and *Cherokee Nation vs. Georgia* that free title to tribal lands belongs to the United States (Schlosser, 1992; Peterson, 1998; Newell, 1998). While this established that timber on Indian lands could not be sold unless it was being cleared for agriculture, many Indian agents strongly disagreed with the outcome. Prior to this action many western tribes were already utilizing forest resources and many were already dependent on timber for employment and income. This case was the basis of policy on Indian forest and it took fifteen more years before Congress would address this issue (Peterson, 1998).

The major policy of the federal government was to assimilate tribes and Indian people; so, one approach was to move land out of communally held tribal land into land that is owned by individual people. In 1887, the General Allotment Act was passed by Congress, which gave individual Indian people, the ownership of 80-acre parcels and made all remaining unused lands available for claim by non-Indians. This eventually caused millions of acres to leave Indian Ownership (Morishima, 1998). Today, coordinated management on many reservations must contend with a checkerboard of ownership patterns, where free, tribal, and individual allotment lands are distributed across a landscape. Nationally, approximately ten million acres of trust lands are held in 80 to 160 acre parcel by allottees. Due to inheritance, some allotments have hundreds of owners, which further intensify the problems of integrating management (Morishima, 1998; Historical Research Associates, 1998).

In 1889 Congress passed the “Dead and Down Act”, granting tribes the right to salvage dead timber for commercial purposes. Green timber could not be harvested unless it was being cleared for agriculture. This was the first time Congress or the federal

government recognized the Indians' right to use their forest for commercial purposes (Schlosser, 1992; Peterson, 1998).

Two acts established the Division of Forestry in the Bureau of Indian Affairs. In 1909 the first act appropriated \$100,000 for forestry on reservations. The second, in 1910 authorized the Secretary of Interior to approve timber harvesting on a sustain yield basis (Peterson, 1998; Motanic, 1998). Even with the new approach, Congress refused to address the failing allotment policy or the possibility that reservation resources should be tribal rather than individual (Newell, 1998). By failing to address this issue, Congress missed an opportunity to reconsider how Indian communities can reach economic stability. The laws were minimal at the least, covering less than two pages and one short paragraph on tribal timber and another on sustained yield management (Motanic, 1998; Newell, 1998).

In 1934, the passage of the reform-minded Indian Reorganization Act moved Indian policy in a new direction. The federal Indian policy shifted to a new emphasis on tribal political reconstruction (Newell, 1998). The act directed the "*Secretary of Interior to make rules and regulations for the operation and management of Indian forest units on the principles of sustain-yield management*" (Schlosser, 1992). The act also signified that tribes generally are the real owners of the land and resources. The act also gave tribal governments the power to stop unwanted activities (Schlosser, 1992). Furthermore, tribal constitutions and governments were developed, giving tribes their first opportunity to set policy and direction on their reservations. Many tribal governments began reacquiring lands that they had lost during the "Allotment Era". The act also allowed all forestry activities including clearcutting as a silvicultural tool (Schlosser, 1992; Newell, 1998).

This was a new era for Indian communities and was called the “Indian New Deal” (Newell, 1998).

The ultimate goal of the new deal was to develop tribes into independent self-governments. Within the extreme of this self-governance, various western congressmen moved toward a federal policy of termination during the 1950s. President Eisenhower wanted “out of the Indian Business” and the approach at that time was to terminate tribes if they could economically and socially sustain themselves. This policy lasted until the mid 1950s, when nearly everyone involved recognized this path was not working (Newell, 1998).

Following the failure of termination policy, the executive branch embraced a policy of “Self-Determination”. In 1975 Congress and Richard Nixon passed the Self-Determination Act. Under the Act, federal agencies and Congress supported tribes assuming the responsibility of managing many of the programs once staffed by the BIA (Newell, 1998). Within this new approach, tribes began developing tribal goals and addressing severe problems with federal trust responsibility and inadequate funding and services on Indian forest.

Throughout the history of the BIA’s Division of Forestry, forest management was a forestry program wrapped inside a social service agency that continued to develop new programs aimed to help Indian communities. With much respect, the foresters and staff working in the BIA Division of Forestry had a difficult task during the first 100 years. They were developing an Indian forest industry during a time when the role of the federal government was constantly changing, which was further intensified by inadequate funding to meet the ultimate goal of sustainable forestry. Also during this time, tribes had

developed a mistrust of the federal government due to poor management, little tribal involvement, and in some cases outright corruption (*United States vs. Mitchell I* and *United States v. Mitchell II*). Throughout Indian country tribes were questioning if the federal government was meeting their trust responsibilities and if the government was not meeting these responsibilities, was the government liable (Reynolds, 2001; Schlosser, 1992). Indian leaders throughout the country began gathering to discuss forestry policy and develop future policy that would combine both tribal visions and meet federal trust responsibilities.

INTERTRIBAL TIMBER COUNCIL

As tribal governments moved toward “Self-Determination”, many tribes were questioning the direction and past management of their forest. Tribes were considering two options to address the Indian forest policy; the first was litigation, which would have cost both sides considerable amount of time and money and the risk of not addressing the forestry and trust responsibility issues. The second option was the development of an organization that brought all the players to the table (Reynolds, 2001). It was a forum for tribal leaders and the BIA Forest Division to gather and develop strategies to meet tribal resource goals and management objectives. In 1976, Ken Smith of Warm Springs, Joe DeLaCruz of Quinalt, Gary Morishima of Quinalt, Bill Northover of Yakama, and Ernie Clark of Colville brought BIA and tribal leaders together and established the Intertribal Timber Council (ITC) (Reynolds, 2001).

There were several important developments that came out of the organization; the first was the development of an annual symposium that covered a wide range of forestry

issues across Indian land. The annual symposium has enabled tribal and BIA resource managers from across the country to get together, share information, and discuss concerns about resource management on Indian land (Reynolds, 2001).

The other development was a new collective voice in Washington D.C. In the past, individual tribes were having difficult times addressing issues on funding, policy, and trust responsibility but, collectively, leadership in Washington D.C. began paying attention. Throughout its history, ITC has been influential in national Indian forest policy direction by advocating vital shortcomings of Indian resource management and the trust responsibility of the United States government. During the 1980s Congress appropriated more money to Indian (BIA and Tribal) forestry programs than at any time in history (Petersen, 1998; Reynolds, 2001; Motanic, 1998, 2001).

This influx of attention on Indian forest by Congress finally culminated with the passage of the National Indian Forest Resource Management Act in 1990. This was a great step in the right direction but it was also at a time when the federal government was beginning to downsize, as a result the many of the funding requirements initially identified in the bill were stripped before final passage (Newell, 1998). Although the Act is a shift in the right direction, forestry programs were and are still understaffed and inadequately funded (IFMAT, 1993). ITC continues to work on defining trust responsibilities and advocating the shortcomings of forest management on Indian lands. Its leadership position in Congress was secured by its involvement in a landmark investigation of forests and forestry on Indian lands called An Assessment of Indian Forest and Forest Management in the United States (Peterson, 1998). The ITC influence has been immense and vital, without the ITC, the National Indian Resource Management

Act and its direction would have been minimal and funding problems would have been worse than they currently are.

CONCLUSION

Although the Indian Forest Management Assessment Team report identified many shortcomings within Indian forestry, the report also recognized the potential for Indian forest to serve as models of sustainability for society as a whole. Tribal philosophies are grounded in traditions that reveal a fundamental respect for all the resources that share the earth. Due to the unique communal ownership, Indian lands must be used in ways that protect and enhance the resources for the generations of children yet unborn because they will bear the environmental and economic consequences of today.

The history of Indian forestry is important, it tells us where we have come from in dealing with these issues and displays some appreciation for the leaders and organizations that have worked so hard for Indian resources. It has also detailed the deficiencies and problems facing Indian forest and forestry today. The future should be a balance that will incorporate native culture and beliefs into resource utilization and economic development, a very difficult task. The outlook remains unclear with the dynamic federal-tribal trust relationship, but a model of sustainability forestry is possible if Indian communities continue to work together to solve these very difficult issues.