

INDIAN FOREST MANAGEMENT HANDBOOK

53 IAM 7-H



FOREST TRESPASS

INDIAN FOREST MANAGEMENT HANDBOOK

Volume 7

Trespass
Table of Contents

Page 1

| | <u>Page</u> |
|---|-------------|
| Chapter 1 - Introduction | 4 |
| 1.1 Purpose. | 4 |
| 1.2 Policy. | 4 |
| 1.3 Scope. | 4 |
| 1.4 Authority. | 5 |
| 1.5 Regulation. | 5 |
| Chapter 2 - Prevention | 7 |
| 2.1 Survey/Boundary Marking. | 7 |
| 2.2 Timber Marking. | 7 |
| 2.3 Education. | 7 |
| 2.4 Patrol. | 7 |
| 2.5 Contract language. | 7 |
| 2.6 Convictions. | 7 |
| 2.7 Tribal Involvement and Ordinances. | 7 |
| Chapter 3 - Detection | 8 |
| Chapter 4 - Investigation | 9 |
| 4.1 Introduction. | 9 |
| 4.2 Purpose of Trespass Investigation. | 9 |
| 4.3 Identification of Trespass Area. | 9 |
| 4.4 Alternatives. | 9 |
| 4.5 General Investigation Procedures. | 9 |
| A. Promptness. | 10 |
| B. Completeness. | 10 |
| C. Preservation of Evidence. | 10 |
| D. Witnesses. | 10 |
| E. Communications. | 10 |
| 4.6 Wildfire Investigation. | 10 |
| A. Initial Attack. | 11 |
| B. Investigator Qualifications. | 11 |
| C. Investigation Kit. | 11 |
| D. Graphic Evidence. | 11 |
| E. Procedure. | 11 |
| F. Criminal Activity. | 11 |
| Chapter 5 - Enforcement | 13 |
| 5.1 Action to Take Upon Verification of Trespass. | 13 |
| A. Timber Trespass on Indian Land. | 13 |
| B. Timber Trespass on Non-Indian Land. | 13 |
| C. Fire Trespass. | 13 |
| 5.2 Confronting the Perpetrator. | 13 |
| 5.3 Trespass Notices. | 13 |
| 5.4 Seizure of Materials. | 14 |
| A. Products Found on Indian Land. | 14 |
| B. Products Removed Form Indian Land. | 14 |
| C. Sale of Products. | 14 |
| 5.5 Demand Letters. | 15 |
| 5.6 Appeals. | 15 |
| 5.7 Prosecution. | 16 |
| A. Tribal Prosecution. | 16 |
| B. Federal Prosecution | 16 |
| C. Obtaining Concurrent Jurisdiction. | 16 |

| | |
|--|----|
| Chapter 6 - Appraisal | 17 |
| 6.1 Introduction. | 17 |
| 6.2 Timber. | 17 |
| A. Appraisal Format. | 17 |
| B. Volume Measurement | 18 |
| C. Accuracy. | 18 |
| D. Immature Stands | 18 |
| 6.3 Other Forest Products. | 18 |
| 6.4 Improvements. | 18 |
| 6.5 Inventory Standards. | 18 |
| 6.6 Costs. | 19 |
| Chapter 7 - Reports | 20 |
| 7.1 Format. | 20 |
| A. Trespass Report. | 20 |
| B. Narrative Statement. | 20 |
| C. Investigation Report. | 20 |
| D. Product Appraisal. | 20 |
| E. Damages Worksheet. | 20 |
| F. Costs Worksheet | 20 |
| G. Interest. | 20 |
| H. Map. | 20 |
| 7.2 Detail. | 20 |
| 7.3 Intelligibility. | 21 |
| Chapter 8 - Referrals to Solicitor's Office | 22 |
| 8.1 Solicitors Office Role. | 22 |
| 8.2 Procedure for Referral. | 22 |
| Chapter 9 - Alternative Remedies | 23 |
| Chapter 10 - Settlement | 24 |
| 10.1 Authority. | 24 |
| 10.2 Administration. | 24 |
| 10.3 Negotiations. | 24 |
| 10.4 Appeals. | 24 |
| 10.5 Payments from the Trespasser. | 24 |
| 10.6 Civil Penalties, Recovery Costs, and Full Recovery. | 24 |
| 10.7 Interest. | 24 |
| 10.8 Statute of Limitations. | 24 |
| 10.9 Distribution to Owners. | 25 |
| A. Collections up to Highest Stumpage Value. | 25 |
| B. Collection Exceeding Triple Stumpage | 25 |
| C. Trespass by Indian Owners | 25 |
| 10.10 Forest Management Deductions. | 25 |
| 10.11 Closing the Case | 25 |
| 10.12 Promissory Note Guidelines | 25 |
| A. Payments. | 25 |
| B. Settlement Authority. | 26 |
| C. Payment Default. | 26 |
| D. Promissory Note | 26 |
| E. Security Suggestions. | 26 |
| F. Acceleration Clause. | 26 |
| Chapter 11 – Jurisdictional Background | 27 |

Illustrations

- 1 - Notice and Poster of Seizure
- 2 - Notice of Trespass
- 3 - Notice of Seizure
- 4 - Timber Trespass Report, Items to Include
- 5 - Narrative Statement - Example
- 6 - Trespass Report - Example
- 7 - Demand Letter to Trespasser
- 8 - Tender of Payment of Trespass Obligation
- 9 - Promissory Note - Single Payment
- 10 - Promissory Note - Installment
- 11 - Transmittal Letter - Promissory Note
- 12 - Transmittal Letter - Approved Promissory Note
- 13 - Timber Trespass Settlement Agreement
- 14 - 25 CFR § 163.29
- 15 - Comments Relating to 25 CFR § 163.29 as Published in the Federal Register
- 16 - List of Federal Codes Relating to Trespass
- 17 - 31 CFR § 901.2
- 18 - Treasury Current Value of Funds Rate
- 19 - Recommended Fire Investigation Kit Contents
- 20 - Fire Investigation Forms List
- 21 - Fire Field Investigation Organizer (BIA-FINV-FORM1)
- 22 - Fire Investigation Report (BIA-FINV-FORM2)
- 23 - Consent for Fire Scene Evaluation (BIA-FINV-FORM3)
- 24 - Voluntary Statement (BIA-FINV-FORM4)
- 25 - Juvenile Fire Report (BIA-FINV-FORM5)
- 26 - Juvenile and Adolescent Interview Permission (BIA-FINV-FORM6)
- 27 - Product Appraisal, Costs & Damages Worksheet (BIA-FINV-FORM7)
- 28 - Evidence Log (BIA-FINV-FORM8)
- 29 - Evidence Form (BIA-FINV-FORM9)
- 30 - Tire Track Report (BIA-FINV-FORM10)
- 31 - Shoe Print Report (BIA-FINV-FORM11)
- 32 - Supplemental Investigation Report (BIA-FINV-FORM12)
- 33 - Damage and Costs Worksheet Example
- 34 - Fire Trespass Appraisal, Costs and Damage Worksheet Example
- 35 - Procedures for Preparation of Criminal/Civil Fire Trespass Case
- 36 - Civil versus Criminal Trespass
- 37 - BIA Forestry Collections and Distribution Handbook
- 38 - Economic Guides for Managing Forest Resources

CHAPTER 1 - INTRODUCTION

1.1 **Purpose.** The purpose of trespass actions on Indian forest lands (25 CFR § 163.1) is to insure that the assets associated with these lands are protected for the benefit of the Indian owners. It is a responsibility of the Federal government, acting through the Bureau of Indian Affairs or through tribal programs that have delegated or contracted authority from the Secretary, to protect these assets and recover damages. The punishment of individual and/or corporate wrongdoers is as important as the recovery of damages because it serves as a deterrent to trespass activities. The Forest Trespass Handbook is referenced in 53 IAM 7, which provides for its use in trespass actions on Indian forest lands.

Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts, permits or from fire. A timber trespass is the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Fire trespass is the act of willfully or accidentally causing to be kindled or setting of fire, without authority, any timber, underbrush, grass or other inflammable material on Indian land by another. Fire trespass can occur on Indian forest lands and Indian agricultural lands, among others. This handbook will address trespass on Indian forest land as covered under 25 CFR § 163.29. Trespass on Indian agricultural lands covered under 25 CFR § 166.8 is addressed in Chapter 7 of the BIA Agricultural and Range Management Handbook.

A trespass committed intentionally will be prosecuted as a civil and/or criminal offense. In addition, there will be actions taken for civil recovery of damages. Whether the trespass was intentional or unintentional, civil penalties apply and include treble stumpage, costs associated with damage to land and/or resources, costs associated with the enforcement of regulations, and interest. This handbook will address the policy, procedure, and documentation necessary for recovery of damages, and the procedure to follow when enforcing collections up to the point where action in court becomes necessary.

Most criminal prosecutions are handled by the U.S. Attorney through the Department of Justice, with assistance from the FBI. The initial investigation of timber or fire trespass, however, is the responsibility of the organization having day-to-day management responsibility. Normally the individuals who carry out these functions are BIA or tribal forestry personnel stationed on reservations.

Criminal prosecutions may also be handled through State Courts with assistance from a variety of law enforcement organizations on those reservations in which Public Law 83-280 (Pub. L. 280) applies. Pub. L. 280 confers criminal and some civil jurisdiction over certain locations in Indian Country to the state in which they are located. Contact the Regional Solicitor to determine the applicability of Pub. L. 280 to particular situations.

1.2 **Policy.** Forest resources on all Indian lands shall be protected from trespass. The policy of the Bureau of Indian Affairs is to:

- Proceed in every reasonable manner to detect all acts of trespass;
- Assure that acts of trespass are properly investigated, reported, payment demanded and, when appropriate, recommend prosecution to the proper authorities;
- Develop and maintain adequate records of each case;
- Furnish complete, immediate and vigorous support in handling trespass cases at all levels of the Bureau.;
- Obtain suitable and sufficient training for Bureau and Tribal staff to carry out this policy;
- Issue and maintain detailed procedural guidelines in the form of handbooks for processing cases;
- Promote and support tribal concurrent civil jurisdiction as defined in 25 CFR §163.29(j);
- Obtain full recoverable damages when possible.

1.3 **Scope.** The directives contained in this Handbook apply to all Federal agencies and programs participating in the management, accountability, or protection of Indian forest land. Regardless of the means of program execution, the

appropriate Federal official shall assure that the practices and procedures prescribed herein are followed. This handbook should be followed unless otherwise negotiated in a Tribal Compact.

1.4 **Authority.** The Federal law governing Indian timber is the National Indian Forest Resources Management Act, 25 U.S.C. §§ 3101 to 3120 (NIFRMA). In particular § 3106 governs Indian timber trespass. The Federal regulations promulgated under NIFRMA are found at 25 CFR, Part 163 (2005), and the provisions specifically addressing timber trespass are in § 163.29. Authority is also derived under the broad statutes that prohibit the theft, removal or burning of federal and/or tribal property. Refer to 18 USC §§ 641, 1163, 1853, 1855 and 1856. Refer to Illustration 16.

1.5 **Regulation.** 25 USC, Section 3106(a), deals with civil penalties for timber trespass, and also required the Secretary of the Interior to promulgate regulations that would establish civil penalties which would provide for the collection of:

1. The value of the forest products illegally removed plus a penalty of double the value of the products;
2. The costs associated with the damage to the Indian forest land which was caused by the trespass; and
3. The costs associated with the enforcement and survey, damage appraisal, investigation assistance and reports, witness expenses, fire suppression costs, demand letters, court costs, and attorney fees.

The Secretary promulgated the regulations (as required under the law) in 25 CFR § 163.29. The regulations read basically the same as the law, but with some differences. First, the regulations use the term “treble damages” (the value of the timber plus the penalty of “double their value” *Id.* § 163.29(a)(3)(i)). Treble damages must “be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.” *Id.* Charging treble damages is mandatory even when the trespass is unintentional. Only the Solicitor’s Office can negotiate settlement for amounts less than the full treble damages.

Second, the payment of costs is further defined in the regulations. These costs include, but are not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources. *Id.* § 163.29(a)(3)(ii).

Third, the payment of enforcement costs has also been more fully defined. These must be “reasonable” costs, beginning with detection of the trespass and continue all the way through prosecution and collection of damages. *Id.* § 163.29(a)(3)(iii).

Finally, the regulations also allow for interest to be added on to the treble damages. The interest is based upon tribal law, or Federal law if no tribal law exists. (*Id.* § 163.29(a)(3)(iv)). If there is no Federal law, then the appropriate law of the state in which the trespass occurred will be applied. Interest must be calculated from the date of trespass until payment is rendered and must be based upon the highest value of the trespass forest products. Appeals made by the trespasser to the Interior Board of Indian Appeals (IBIA) do not stop interest accrual or collection efforts.

It should be noted that some costs may not be firmly known until collection efforts are practically completed. For example, the costs of sending demand letters, accumulated interest, or enforcing the penalties in a civil action may not be finally known until the final payment is received. Language should be inserted in the initial demand for payment, which notes that “the damages will be increased by reasonable collection and prosecution costs (if any)”. This will give advance notice to the trespasser. Cost should be projected out to the due date. Payment after the due date may include additional collection cost as well as the additional interest.

In addition to the recovery of trespass damages against the person who entered upon the land and cut the trees or who caused the entry upon the land, there may be a civil action against a purchaser of the logs cut in trespass. The damages in this form of action were determined in the case of *E. E. Bolles Woodenware v. U.S.*, 106 U.S. 432 (1882). Prior to the passage of the National Indian Forest Management Act these damages could vary, depending on whether either or both

the trespasser and converter (a converter is the party purchasing forest products removed in trespass, refer to Chapter 9, Alternative Remedies) had acted intentionally or unintentionally. Under the new law the recovery of civil damages is set at triple stumpage in either circumstance.

CHAPTER 2 - PREVENTION

Programs and procedures can be implemented at the local level to prevent the loss or damage of Indian resources. These can range from passing tribal ordinances restricting certain activities such as burning or firewood cutting, to establishing clear procedures, rules or guidelines for these types of activities when issuing burning or gathering permits. Other things that can be done to help prevent a trespass from occurring are described in the following sections.

2.1 **Survey/Boundary Marking.** Clear, well defined boundaries around sale units can help prevent unintentional trespass as well as make monitoring and administration of the sale easier. The colors used should be easy to see and the marks large enough to be easily seen even in adverse conditions. The marks should be located facing into the unit close enough together so there will be no question as to the location of the boundary. When marking the boundary be sure to include a good stump mark that goes to ground level, and is positioned on the bole in a spot that is unlikely to be rubbed off in the harvesting operations.

2.2 **Timber Marking.** When products are individually marked for cutting, make sure the mark is of a color and size that is easily visible and preferably on at least two sides of the bole. When marking timber for cutting be sure to include a good, wide stump mark that goes to ground level, and is located on the downhill side of the bole in a spot that is protected from scuffing or abrasion during harvesting operations. Loose bark or moss should be scraped off the stump before paint is applied. Avoid using paint that is easily purchased from local stores and, if possible, use marking paint that contains a tracer element that is unique to the project.

2.3 **Education.** Local citizens, allotment owners, tribal officials, businesses and contractors working with resources that are held in trust should be made aware of the responsibility of the Federal Government to protect Trust assets and the process required before any harvesting can occur. They should also be informed as to the types of activity that could result in trespass charges. For example, they should be informed that harvesting timber held in Trust without the Secretary's approval, or damaging it through negligence or deliberate action, will result in a trespass action against the individual(s) responsible. In periods of high to extreme fire danger local citizens, allotment owners, tribal officials, businesses and contractors should be made aware of the fire danger levels and the associated fire precautionary measures.

2.4 **Patrol.** Periodic patrols, especially during weekends and at times outside normally scheduled work hours, can be effective in finding trespassers and deterring potential trespassers. Patrolling during periods of high to extreme fire danger coupled with public contact is also an effective practice in reducing human caused fires. Patrol times and routes should vary.

2.5 **Contract Language.** A contract or permit written for the sale of forest products should contain a clear and accurate description of the pertinent boundaries, resource and/or products to be cut or extracted, its operating provisions, and the penalties or trespass charges for cutting or damaging products not covered in the document. Carefully worded, clear contract documents minimize confusion and misunderstanding. In addition to the printed documents an open line of communication should be established and maintained with the contractor or other responsible party, and on-site visits by contract administrators should be frequent and thorough.

2.6 **Convictions.** A conviction in a trespass case can serve as an example that could help prevent future trespasses. A judgment by a court, or even the prospect of going to court, may give potential trespassers cause to reconsider their course of action. When a trespass goes unpunished the behavior is reinforced and can even spread to others who could view it as an opportunity to make money at the expense of the resource owners.

2.7 **Tribal Involvement & Ordinances.** The involvement of tribal officials in patrol, investigations and prosecution can have a positive impact on preventing trespass. Tribal governments should be encouraged to adopt ordinances addressing trespass and those that wish to prosecute cases involving non-member individuals in lieu of federal prosecution can adopt "concurrent jurisdiction" with the approval of the Secretary (25 USC 3106; 25 CFR § 163.29(j)).

CHAPTER 3 - DETECTION

Any information suggesting that a trespass may have occurred creates an alleged or possible trespass. Sources of this kind of information include, but are not limited to:

- Tips, anonymous or otherwise;
- Complaints by Indian landowners that allege trespass;
- Daily movement of BIA or tribal personnel throughout the reservation, or any other Trust property;
- Frank and open admission of guilt by a trespasser. A typical situation is a logger who inadvertently trespasses and voluntarily reports the incident;
- Inspection of aerial or satellite photography;
- Observations by personnel responding to a fire call or by local residents.

In addition to helping in prevention activities, periodic patrols can be effective in finding trespassers as well as deterring potential trespassers. To make effective use of patrols in trespass detection they should be conducted using varied schedules and routes. Aerial detection of fire starts by patrol flights has been effective in helping intercept the individuals responsible for arson in many locations. In situations where access is restricted to one or two entry points (harvest units for example) camouflaged motion activated cameras could be installed to document unauthorized movement of products.

When a trespass has been detected it is important to document the conditions at the time of discovery including the location, individuals present on or near the trespass area, vehicles or equipment on the site, kind of products and an estimate of volume or a count of products by type. Products such as saw logs, veneer and cabin logs, pulpwood, etcetera, should be marked, branded or otherwise identified, and seized by posting a Notice and Poster of Seizure (Illustration 1) for the products when appropriate. If the trespass is ongoing an attempt should be made to stop it. (Refer to Chapter 5, Enforcement.) In some cases there may be physical evidence present that can be preserved for use in prosecuting the case. Illustration 28 in the Appendix is an Evidence Log that should be used in fire trespass cases. Anything that can be identified as potentially important to the outcome of the case should be documented and protected if possible.

CHAPTER 4 - INVESTIGATION

4.1 **Introduction.** Adherence to the procedures in Chapters 4 through 7 of this handbook are necessary to assure a solid case if the trespass charges are appealed to the Interior Board of Indian Appeals or the case is referred to the Solicitor's office.

Whether the case turns out to be a civil or criminal case affects a number of aspects of an investigation. The standard that must be met in a criminal case is proof beyond a reasonable doubt that the trespass was willful. The standard in a civil case is proof by a preponderance of the evidence. In a civil case, documentation must also be submitted showing the extent of damages to the Government. Refer to Illustration 36, Civil vs. Criminal Trespass.

4.2 **Purpose of Trespass Investigation.** The purpose of a trespass investigation is to determine who did it, what was done, how much damage was incurred, from whom the damages can be recovered (both legally and practically), disposition of the proceeds and products, and whether it can be proved in court.

When investigating a trespass it is advisable to be accompanied by another person, if possible, and avoid contentious or threatening situations. If threats are made, however, they should be reported immediately to appropriate law enforcement authorities. Bureau or tribal personnel should report threats to BIA or tribal police, and/or to the Federal Bureau of Investigation (FBI). FBI Field Office contact information can be obtained at www.fbi.gov.

Most forestry staff are not trained in police science matters such as interviewing witnesses and may wish to limit their involvement to preserving evidence, determining damages, and documenting the incident. Interviewing hostile witnesses and confronting suspects that could pose a threat should be left to professional law enforcement personnel. For instance, if a case appears to be "criminal in nature" due to egregious circumstances or high dollar value, it should be referred to the local FBI agent for their determination as soon as possible. (A "crime" is defined as a violation of law in which there is injury to the public or a member of the public and which carries a term in jail or prison, and/or a fine as possible penalties.) Involvement in a trespass case by the FBI does not, however, relieve the BIA of obligations required under 25 CFR § 163.29, to ensure protection of the interests of the beneficial owners of Indian forest products.

4.3 **Identification of Trespass Area.** Property and/or cutting unit lines should be checked. If a fire trespass, the fire perimeter should be checked. In the majority of cases, and particularly when interior sub-divisions are involved, it will be necessary to conduct a survey in order to locate the trespass area. Usually the survey work can be done to acceptable standards with hand compass and tape, or suitable handheld GPS unit. If property line location is in doubt, they may have to be determined by a licensed surveyor. When the area of concern is a cutting unit boundary, the lines should be checked to make sure they were clearly marked or otherwise identified.

4.4 **Alternatives.** Any given trespass may present a variety of alternative remedies against a number of potentially liable parties. Therefore, the investigator should not confine his/her work to facts necessary to prove a preconceived opinion as to the most logical procedure. As an example, the trespasser may go broke, die, or become unavailable for some other reason and it may be necessary to proceed against the converter (third parties such as mill owners who purchase the timber) of the forest products. Accordingly, the investigation should thoroughly analyze the details of all alternative procedures, as well as the one which appears most logical at the time of the investigation. Refer to Chapter 9 – Alternative Remedies.

4.5 **General Investigation Procedures.** Every trespass is a potential court case. A complete investigation and substantiation of each trespass is necessary. Important investigative points and procedures to remember are: (1) promptness, (2) completeness, (3) preserve evidence, (4) witness statements, (5) communication.

A. **Promptness.** The importance of promptness in investigating and reporting cannot be overemphasized. Each case should be approached with the intent to complete the investigation and reporting in the shortest possible time. The statute of limitations may act to prevent the case from being heard if long delays occur. Timely investigations also

help insure that physical evidence and the memories of witnesses are still fresh. The case is likely to be received better by the Solicitor's Office, the U.S. Attorneys Office, and the court if it is processed promptly.

B. **Thoroughness.** The investigation should be as complete as possible. Generally if the investigation is lacking in a minor element that is not essential in prosecuting the case, it is better to submit the case "as is" rather than spending the time required to obtain the information.

The investigation should include all information obtained, weak points as well as strong ones. It should also include any information that could alert the Government attorneys to possible defenses that the defendant may advance. Any information that could refute a possible defense should be included in the report.

C. **Preservation of Evidence.** In some cases physical evidence can be preserved for later introduction in court (a stump top and a matching end sawn from a log for example). Other times the only effective way to preserve evidence is through photography, obtaining a signed statement from a witness, or by having several people observe a situation and record their observations. All evidence collected should be stored in a secure area with proper documentation completed to ensure the "Chain of Custody" has not been broken.

All evidence found at the scene of the incident should be properly collected, recorded and preserved. For example, if the evidence is a scale ticket, receipt or other document, it is important that no changes, additions, or deletions be made on the document that would destroy or impair its value as evidence.

Photographs or digital images are a very important investigative tool, and in some instances can be used to record evidence to prove facts and may show things not noticed at the time of the initial investigation. All evidence deemed to be pertinent to the case should be photographed. A photograph log should be utilized to number each photograph and should include: the name(s) of the individual(s) who took them, date taken, where they were taken, descriptions of the subjects, type of camera used, and other relevant information (refer to Illustration 21). However, photographs should not be used as a substitute for other methods of documentation. To improve the usefulness of photographs as evidence, try to get witnesses into the picture or include violators and/or their equipment when possible. Pictures showing fire origin, burn patterns, the type of damage done, stump heights, size of trees cut, breakage in felling, felling notch or other distinguishing cutting characteristic, or damage done to land or other property are all useful evidence. Identify relevant items by placing a number or other identifying mark on or near them and provide something to indicate scale where it may be important to the case (rutting depth, stump height, etcetera). Establish reference points for evidence that is found and document them through written descriptions and through pictures.

Pictures can be legally taken of any subject from a public highway. Participants may object to having their picture taken, but they cannot legally prevent them from being taken or suppress their use. Private property owners have the legal right to prevent anyone from taking pictures while on their property. If a private property owner gives verbal consent to check for evidence on their property it is a good idea to have them sign a consent form documenting the permission. There is a consent form in the BIA Fire Investigation Forms package (Illustration 23).

D. **Witnesses.** Identify witnesses and document any information received from them. Signed witness statements are best; however, witnesses should never be pressured into signing. Refer to Illustration 24 for a sample form.

E. **Communications.** Normally in trespass cases communication will be with two broad groups of people: suspects and witnesses. These people will exhibit varying degrees of cooperation, reluctance, and hostility. Information gathered through interviewing is critical to the successful completion of an investigation.

4.6 **Wildfire Investigation.** When a trespass involves a wildland fire, the suspected area of origin should be protected and preserved and a qualified wildland fire investigator should be requested to conduct the investigation. This does not mean delaying suppression operations until the investigator arrives, but only that reasonable care be taken to

preserve as much physical evidence as possible. All suppression forces should be provided with basic training in site preservation (NWCG fire training course FI-110, Fire Cause Determination for First Responders) when possible.

When practical, thorough wildland fire origin and cause determinations should be conducted on all wildfires suspected to be human caused, consistent with National Fire Protection Association (NFPA) 921 – Guide for Fire and Explosion Investigations (2004 edition) standards and procedures, and with NWCG Handbook 1, Wildfire Cause Determination Handbook. A cursory, less thorough investigation may be necessary when large numbers of starts occur within short time frames. A thorough discussion of fire investigation procedures is included in the BIA Wildfire Investigation Handbook.

A. **Initial attack.** A qualified fire investigator should be requested by the initial attack incident commander whenever a wildfire is suspected to be human caused. If one is not available the incident commander should be informed as soon as possible. There are actions the incident commander can initiate to collect or protect evidence for later court admissibility or other follow up actions. Initial attack forces on a trespass fire should record descriptions, locations and times when encountering any people, vehicles or other notable things while en route. Vehicle license plate numbers are the fastest way to track vehicles and should be recorded whenever possible. If circumstances permit a discussion with vehicle occupants, they should be asked to identify themselves and whatever they say should be recorded. Initial attack forces should be trained to carefully observe their surroundings upon approaching a fire, and to document conditions that could be of use to the fire investigator upon arrival. Examples of observations that could prove valuable to the fire investigator include: vehicle tracks or footprints on roads and trails; open or broken gates; the color and volume of the smoke column; an estimate of wind speed and direction. Refer to Illustration 21.

B. **Investigator qualifications.** The fire investigator must be trained on how and what to look for in determining origins and causes. Other skill requirements for investigations include: knowledge of fire behavior (S-190, Introduction to Fire Behavior), knowledge of the legal system, effective court preparation and documentation of cases, interview skills, and physical evidence collection and evidence storage. If the investigator is also a staff member of a law enforcement agency, interrogation skills will be necessary. National Wildfire Coordinating Group Incident Operations Standards (red card qualifications) for the position of Fire Investigator (FINV) are established and must be met by the investigator. The investigator should attain a minimum pack test score of “light” each year.

C. **Investigation kit.** Access to, and use of, an investigation “kit” is imperative for the fire investigator. Supplies for evidence collection and securing the crime scene are included in the kit; it should be fully stocked at time of dispatch. An itemized list of materials for the kit can be found in Illustration 19. The investigator is responsible for completing a fire investigation report. The minimum requirements for the report are found in Illustration 22.

D. **Graphic evidence.** The investigator should make every effort to photograph the scene and evidence as fairly and accurately as possible. Advice from local prosecuting attorneys should be sought on photography format (digital, 35mm, or both). Careful records of each photograph must be kept, using the photo log form (Illustration 21). A clear sketch of the fire scene consistent with part 62 of the NWCG Handbook 1, Wildfire Cause Determination Handbook, must be completed.

E. **Procedure.** The fire origin area should be searched in segments (grids) as illustrated in part 53 of the aforementioned Wildfire Cause Determination Handbook. The investigator will also be responsible for providing the voluntary statement form, consent form for fire scene examination, and other forms when appropriate. Refer to Illustration 20, Fire Investigation Forms List.

F. **Criminal activity.** When the investigator encounters evidence of criminal activity, the appropriate law enforcement office should be notified. Ideally, the fire investigator and law enforcement officer will work together in preparing a case for civil or criminal action. A National Memorandum of Understanding has been developed and approved between BIA Fire Management and BIA Office of Law Enforcement Services to address this specific issue.

Legal assistance is available from the Department of the Interior Solicitor's office.

CHAPTER 5 - ENFORCEMENT**5.1 Action to take Upon Verification of Trespass.**

A. **Timber trespass on Indian land.** On Indian land, when there is reason to believe that forest products from Indian lands were unlawfully removed or damaged the following steps should be taken:

(1) Stop the trespass. If an individual is caught in the act of trespassing, the situation must be controlled at once. The individual should be given written notice to cease any ongoing operations immediately. This is an informal notice and can be prepared on any paper that may be available at the time. A timber sale inspection report form or a blank sheet of paper would suffice. The notice should include the statement that the trespass is on Indian land. If the individual refuses to comply with the notice to cease operations, local law enforcement should be notified and requested to stop the trespass. Once this action is taken it should be followed up with a formal written notice (Illustration 2). Local law enforcement officials should be notified of the trespass if they were not notified previously.

(2) Take possession of forest products by physically ensuring their safe keeping. This could include having the forest products skidded, decked and hauled to a safe location.

(3) Issue a Notice and Poster of Seizure to the possessor or claimant (see Illustration 1). If the possessor or claimant is not known, the Notice shall be posted on the trespass property. (25CFR § 163.29(e)).

B. **Timber trespass on non-Indian land.** When forest products removed from Indian land in trespass are found on lands not under Government supervision, a notice must be provided to the owner of the land or the party in possession of the trespass property (25CFR § 163.29(f)). Refer to Illustration 3.

C. **Fire trespass.** When the trespass involves fire one of the first priorities after protecting life and property will be to locate and protect the origin. If there is a qualified fire investigator on staff they should be notified, and if not, a resource order should be placed for one as soon as possible.

5.2 **Confronting the Perpetrator.** Suspected trespassers should not be confronted if there is reason to believe that the individual could react violently. In such cases trained law enforcement personnel should be asked to talk to the suspected trespasser. When talking to suspected trespassers regarding the trespass, it is always best to have at least one other person with you for your protection and to verify any statements that may be made. Use trained law enforcement personnel such as police, game wardens or Public Safety Officers when possible.

5.3 **Trespass notice.** Once a trespass action has been initiated a "Notice of Trespass" (Illustration 2) shall be sent as soon as possible by the responsible Bureau office to alleged or suspected trespassers. The Notice must be sent before a demand letter is sent requesting payment. The Notice should include all the information required by the regulations (25 CFR § 163.29(g)(1)-(5)). This information includes:

- that a determination has been made that a trespass has occurred;
- the basis for the determination;
- an assessment of the damages, penalties, and costs;
- the seizure of forest products, if applicable;
- the disposition or removal of Indian forest products taken in trespass may result in civil and/or criminal action by the United States or tribe.

The notice can contain a determination of the product values, penalties and costs, as stated in the regulations. Usually, however, there is no damage amount or penalty included in the Notice of Trespass since it is issued immediately and that information is not available (M. Kenworthy, Regional Solicitor's Office, Portland, July, 2005). The Bureau has some flexibility in determining whether or not to include a demand for payment in the Notice. Normally the demand letter will be delivered some time after the Notice of Trespass when a more accurate determination of damages, costs, and penalties is obtained.

5.4 **Seizure of materials.** Forestry personnel, acting on behalf of the Superintendent or other representative of the Secretary, may mark and forbid the removal of forest products from Indian lands or direct its removal to a point of safekeeping when there is reason to believe that such forest products were unlawfully damaged or removed (25CFR § 163.29(e)).

A. **Products found on Indian land.** When there is reason to believe that Indian forest products are involved in a trespass the products may be seized if they are located on Indian lands under Federal or tribal supervision. The person seizing the products must issue a Notice of Seizure to the possessor or claimant of the products (25CFR § 163.29.e). The Notice of Seizure must include:

- date of seizure;
- description of forest products seized;
- estimated value of forest product seized;
- indication of whether the products are perishable;
- name and authority of person seizing the products;
- statement of seizure authority (Federal or Tribal Law);
- appeal rights (Refer to 5.6 below).

Seizure of materials is accomplished by issuing a "Notice and Poster of Seizure" (Illustration 1) to the possessor or claimant if known and available, or by posting the notice on or near the products if the party is not known or is unavailable. When the possessor or claimant is unknown or unavailable a copy of the notice shall be kept with any incident report generated by the official seizing the products. In situations where the possessor or claimant is known but was unavailable when the products were seized, a copy of the posted document should be hand-delivered to them or sent by certified mail. This action should be accompanied by the delivery or mailing of a "Notice of Trespass" (Illustration 2).

There are no appeal rights to the "Notice and Poster of Seizure" – the posting only informs people of the decision that the Bureau made to seize the products (Id. M. Kenworthy).

A "Notice of Seizure" (Illustration 3), signed by the Superintendent or other authorized representative of the Secretary, should be delivered to the trespasser (and purchaser if applicable) after the determination has been made that the products seized were the result of a trespass. The notice should be hand delivered if possible. If hand delivery is not possible the notice should be sent by CERTIFIED MAIL - RETURN RECEIPT REQUESTED. This document must contain appeal rights as specified in the regulations.

B. **Products removed from Indian land.** If forest products have been moved to lands not under Federal or tribal supervision, the federal official or tribal representative responsible shall immediately provide a "Notice of Potential Trespass" to the owner of the land or the party in possession of the trespass products. This notice must include:

- a statement that products could be involved in a trespass;
- a statement that removal or disposition of the products may result in criminal and/or civil action by the United States or tribe as appropriate.

Prompt investigation must follow such a notice and if it is determined that a trespass has occurred the appropriate representative of the Secretary will issue an official Notice of Trespass to the possessor or claimant of the products and, when relevant, to the potential buyer of the product.

C. **Sale of products.** If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the authorized federal or tribal official may sell the forest products. The property shall be appraised (incorporating any additional value added by the trespass) and sold competitively at not less than the appraised value through a forest product permit issued to the highest bidder. The permit can incorporate mitigating measures as

long as they are included as part of the damage penalty to the trespasser.

5.5 **Demand letters.** Once the “Notice of Trespass” has been delivered, the volume and value determined, and the damage and costs calculated, a demand letter must be sent to the trespasser before the trespass case can proceed. The letter must comply with the regulations and standards for the administrative collection of claims cited in 31 CFR § 901.2 (Illustration 17). If it is known or suspected that criminal trespass has been committed, no demand letter should be sent until advised by the Solicitor’s Office through the BIA Regional Office. There is no prescribed format for demand letters, only that agencies should exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. These letters should be sent by certified mail, return receipt requested. Once the demand letter is sent, there is a 100-day time period to settle the case. If the case is not settled within the 100 days, it must be referred to the Solicitor’s Office. The demand letter should:

- inform the trespasser of the consequences of his/her failure to cooperate;
- identify the basis for the indebtedness;
- identify applicable requirements for charging interest, penalties or administrative costs;
- give the name, address and phone number of a BIA contact person;
- state the applicable requirements for reporting delinquent debts to commercial credit bureaus;
- specify the date by which the payment is to be made (date due) which should not be more than 30 days from the date of the initial notification;
- be sent “Certified Mail - Return Receipt Requested” or hand-delivered;
- contain appeal rights
- include three copies of “Tender of Payment of Trespass Obligation” (Illustration 8).

Three progressively stronger written demands should be made at not more than 30-day intervals unless a response to the first or second demand indicates that further demands would be futile, and the trespasser’s response does not require rebuttal (Illustration 7). If the trespasser disputes the amount of the debt the office issuing the demand letter should advise the trespasser to furnish available evidence to support his/her contentions.

If the Superintendent or designated tribal official has not made a collection within 30 days after mailing the second letter and it appears that the trespasser is not going to respond to the demand letter for payment, a complete file containing all original signed documents plus one complete copy will be transmitted to the Regional Director, attention of the Regional Forester. It should be referred earlier if the case is of a criminal nature or unusual in character.

Agencies should respond promptly (within 30 days whenever feasible) to all communications from the trespasser. If the trespasser is disputing the debt, they should be asked to furnish available evidence to support their contentions.

5.6 **Appeals.** The “Notice of Seizure” (Illustration 3) and the “Demand Letter” (Illustration 7) must contain appeal rights language. These are decisions that potentially impact the rights and property of the trespasser and may be considered final for the Department (Id. M. Kenworthy). When the authority used to seize products is from Federal law the reference is 25 CFR Part 2 § 2.3(a) and when the authority is from tribal law the reference is the tribal law under which the decision may be challenged. Note that even when a case is under appeal the Bureau or tribe is free to continue with timber trespass enforcement and collection activities.

The “Notice and Poster of Seizure” (Illustration 1) and the “Notice of Trespass” (Illustration 2) are not appealable (id. M. Kenworthy). Usually the monetary values listed in the “Notice of Trespass” are only estimates because it is issued immediately and more precise values will not be available until sometime later. The “Notice and Posting of Seizure” is merely a document intended to inform the public of the decision to seize the products.

5.7 **Prosecution.** Indian tribes that adopt the regulations set forth in 25 CFR § 163.29 which have been conformed as necessary to tribal law shall have Concurrent Jurisdiction to enforce trespass (25 USC § 3106 and 25 CFR § 163.29(j))

against any person. When prosecuting under concurrent civil jurisdiction, the Secretary and the tribe are jointly responsible to coordinate prosecution. A tribe must request concurrent jurisdiction. They do not have it until it is granted by the Secretary.

A. **Tribal Prosecution.** The tribe must request the Secretary to defer prosecution to the tribe on a case-by-case basis.

B. **Federal Prosecution.** A designated Bureau forestry trespass official MUST coordinate with an authorized tribal forest trespass official on each trespass. These officials must:

- review each case;
- determine in which forums to recommend bringing an action (tribal or Federal);
- provide their recommendations to Federal officials responsible for initiating and prosecuting trespass cases (Regional Solicitor).

Under concurrent jurisdiction, the Federal prosecutor has the option of filing and prosecuting the action in the tribal court when the tribe does not wish to prosecute the action itself.

C. **Obtaining Concurrent Jurisdiction.** The following steps must be followed for a tribe to obtain concurrent jurisdiction (25 CFR § 163.29(j)):

- (1) A tribe must submit a formal tribal resolution documenting the adoption of 25 CFR § 163.29 to the Secretary.
- (2) The tribe must notify the Regional Director that:
 - a. the tribal court system has the ability to properly adjudicate forest trespass cases;
 - b. the tribal court will enforce the Indian Civil Rights Act or enforce a tribal civil rights law that contains provisions for due process and equal protection that are similar or stronger than those contained in the Indian Civil Rights Act.
- (3) The Secretary must acknowledge the receipt of the above information.

CHAPTER 6 - APPRAISAL

6.1 **Introduction.** Appraisal methods used to determine damages should be those normally used within the region to establish the commercial value of the resource prior to sale on the open market. Those methods that include an allowance for “profit and risk” should exclude the allowance when determining commercial value for trespass actions. Regardless of the appraisal method used, a trespass appraisal is likely to be challenged by the trespasser or their attorney and may have to be defended in court. Because of the high probability the appraisal will be challenged at some point in the settlement process there are several things the appraiser should be aware of:

- Actual costs and market values must be verifiable, current, and applicable to the geographic area;
- Mechanistic methods or procedures, and mathematical formulas used to calculate values are generally viewed skeptically by courts and will be challenged (this includes the method used to determine volume as well as monetary value);
- Estimates used in calculations must be proven relevant and factually supportable.

The appraiser must be able to clearly demonstrate that the methods, procedures, estimates and calculations used to determine volume and value of forest products are applicable, used appropriately, and meet professional standards generally accepted by the profession (foresters and/or appraisers).

6.2 **Timber.** Appraisal of seized materials will take into account any enhanced values due to costs previously incurred in logging or in transportation. This will be compared with the fair market value of materials as adjusted for their present location and condition. Fair market value is defined as: The highest price estimated in terms of money which the property would bring, if exposed for sale for a reasonable time in the open market, to a seller willing but not compelled to sell, from a buyer willing but not compelled to buy, both parties being fully informed of all purposes for which the property is best adapted and is capable of being used.

In cases where the products or material are not seized, the “residual value appraisal” method that is often used in determining base values for contract sales of timber, shall be used to obtain a tentative stumpage value. However, this stumpage value should either be supported by, or adjusted on the basis of, transaction evidence. Estimated values should be compared between trespass timber and those of timber sales. Differences in species, timber quality, production costs and market conditions must be properly evaluated. When the trespass involves high value timber, the volume should be appraised by grade. Stumpage values obtained from publications issued by state agencies are often low and should only be used if better information is not available. Production costs used in the appraisal of timber cut in trespass should be approximately the same as those incurred in the harvest of a similar stand of timber. These costs will usually be different from those involved in removing only the timber that was cut in trespass. Costs of production are affected by size of the timber, topographic conditions, skidding and hauling distance, amount of road construction, etcetera. Remember that the appraisal reflects the value of the raw material only. The amount billed to the trespasser will also include interest and other costs.

A. **Appraisal format.** The appraisal should include:

- A statement describing the topography and location of the trespass area and their effect on logging costs.
- An explanation of volume determination. If timber is scaled in accordance with normal procedures, a statement of this fact is all that is necessary. If volume is determined from a stump cruise the method used to convert stump diameters to DBH along with the factors used to convert from gross to net scale should be described.
- The source of product quality information should be indicated. If log grade percentages were obtained from comparable timber stands, then a statement describing this should be included.
- Logging costs (less profit and risk) and product values should be those that were in effect at the time of the trespass. It is not appropriate to include an allowance for profit and risk when

appraising timber that has been cut in a trespass.

B. **Volume measurement.** An accounting should be made for all merchantable material on the trespass area whether removed or not. Logs and/or other forest products remaining on the ground are to be scaled, graded, measured, or counted according to standard procedures and reported in appropriate units (board feet, cords, pieces, etc.). Where products have been removed, volume often must be estimated from a stump cruise. In some cases it may be possible to obtain information on trespass volume from the forest product manufacturers who received the material from the trespasser. All stumps and products remaining on the trespass area should be painted or otherwise identified to prevent confusion and provide for an accurate accounting.

C. **Accuracy.** Accuracy for a trespass cruise should be 100 percent. When a 100 percent cruise is not practical, the statistical accuracy of volume estimation for a trespass should be a minimum confidence interval of 95% at one standard deviation. Refer to Section 6.3 below.

D. **Immature stands.** Appraisals of damage to immature stands should account for the value of the resource at the time of the trespass and the costs likely to be incurred in bringing the stand(s) back to pre-trespass condition. Timber stands containing products that were not mature at the time of the trespass that were irrecoverably harmed, degraded, or destroyed as a result of the trespass should be appraised by calculating their value per acre (or per stand) at their planned rotation age, and then discounting this future value back to the present. A real discount rate (market rate minus the annual inflation rate) of four percent is normally used. When calculating future stumpage begin with today's fair market value for the species and product expected at the end of the rotation, then determine the value of the product at the year of harvest using the discount rate. When "growing" these products forward in the appraisal, costs and/or returns from intermediate treatments or products must be included. All costs and returns are discounted back to the present. A cost for the delay in reaching rotation caused by the trespass should be included where applicable (it may take two or more years to reestablish a destroyed conifer plantation for example). Costs for site preparation and stand establishment (planting, weed control, release, etc.) are included in the appraisal when appropriate. A more thorough discussion of the procedure and formulas used to calculate future value can be found in the Economic Guides for Managing Forest Resources, 1991 Update, Branch of Forest Resource Planning, October 1991 (Illustration 38).

6.3 **Other Forest Products.** There are many products besides timber (or in conjunction with timber) that may be affected by a timber or fire trespass. Agricultural lands may be impacted along with forest lands by the same event. Use local experience when putting a value on these resources. A simple spreadsheet can be used to calculate damages and document them for the file. Refer to Illustrations 33 and 34 for possible templates for damage assessment spreadsheets. Agricultural and range trespass is outside the scope of this handbook but is covered in the BIA Agricultural and Range Management Handbook and in 25 CFR § 166, Subpart 1.

6.4 **Improvements.** When a trespass results in damage to improvements such as roads, fences, gates, bridges and other property that is held in trust, they should be included in the trespass appraisal. The value attached to improvements must be based on their condition at the time of the trespass and not replacement value. When the affected improvement is a structure, the local realty branch should be contacted for assistance in determining damages.

6.5 **Inventory Standards.** When unauthorized use or damage of the resource is reported, a determination of extent and value is made using scientific inventory methods to substantiate claims for compensation in the courts. The nature of the damage and the physical evidence present will influence the design of the inventory as described in the soon-to-be-published Volume 8 of the Indian Forest Management Handbook, 53 IAM 8-H. An inventory shall be performed to the following standards:

| | |
|--|---------------------|
| | For All Occurrences |
|--|---------------------|

| | |
|--------------------|--|
| Scheduling | Promptly upon reported detection. |
| Design | 100% sample; if impractical utilize a regionally approved sampling method. |
| Accuracy | 5% Sampling Error at 1 standard deviation if using a regionally approved sampling method. |
| Data | All physical evidence will be mapped and photographically documented. All measurements necessary to yield quality and value will be recorded. |
| Analysis | Full documentation of quantity and value calculations, cost of site rehabilitation, and loss of intrinsic values. |
| Quality Control | Regional direction. |
| Document Retention | Consistent with BIA Files and Maintenance Handbook. |

6.6 **Costs.** Costs are charges other than stumpage, interest or penalties that can be charged to the trespasser to recover expenses resulting from the trespass. There are a wide variety of these kinds of costs and each trespass will likely have different ones. Examples could include loss of value due to tree damage, costs to rehabilitate the site, costs to repair or replace damaged improvements, investigation expenses, vehicle or mileage expenses, administrative costs, etcetera. These should be included as approximate values when sending a demand for payment since the amount could change if there are delays in settlement, challenges regarding the validity of the data or other aspects of the case that will require more field or office time.

CHAPTER 7 - REPORTS

7.1 **Format.** The investigating Forest Officer will prepare a written, formal report which will normally contain, at a minimum, a trespass report, a narrative statement, an appraisal, and a map. Depending on the situation, additional reports, worksheets or other supporting documents may be necessary.

A. **Trespass Report.** A trespass report (Illustrations 4 and 6), should be filled out as completely and accurately as possible. It is important to remember that testimony relating to information on the report may have to be given in court. All reports, narratives, worksheets, appraisals, maps, photos and other relevant documents should be kept together in a case file at the office handling the trespass case.

B. **Narrative Statement.** A narrative statement by the investigator (Illustration 5), should expand upon items in the Timber Trespass Report and should cover the circumstances which led to the commission of the trespass. It must be detailed enough so that other people dealing with the case can become as fully informed as the investigator.

C. **Investigation Report.** Investigation reports for wildland fire that have been determined to be trespass cases should be prepared using the format in Illustration 22 and included with the other documentation in the case file.

D. **Product Appraisal.** Cases that include the loss or damage of forest or other products must include an estimate of the product's value. A product appraisal on forest land normally documents the calculation of a stumpage value for each major product category by species or species group. The appraisal should include an explanation of volume determination (if obtained from a stump cruise include the method used to convert stump diameters to DBH), logging costs and any influence of topography or location may have had on them, and other applicable information such as grade studies or comparable sales studies. When products have been removed from the site and the trespass is determined to be deliberate or egregious the higher value of the manufactured product can be used. For example, use the value of logs in the yard at a mill.

E. **Damages Worksheet.** Damages are defined as the net reduction in dollar value of the trust resources existing at the time of the trespass. A worksheet documenting the cost of damages associated with lost revenue, lost profit, loss of productivity, decrease in product quality, etcetera, should be prepared when appropriate. Refer to Illustrations 27, 33 and 34.

F. **Costs Worksheet.** A worksheet should be prepared that documents the costs incurred in restoration, rehabilitation, fire suppression, investigation, enforcement, vehicle use, per diem, time and wages by date. This may be an open ended process that will not be finalized until the trespass is settled because appeals or requests for additional information or documentation could continue until the case is closed. Refer to Illustrations 27, 33 and 34.

G. **Interest.** A worksheet that calculates the interest incurred from the date of the trespass until settlement is determined from the treble damage charge against product value. The interest rate to be used in the calculation is the statutory rate prescribed by the law of the tribe within whose jurisdiction the trespass was committed or, in the absence of tribal law, the *Treasury Current Value of Funds Rate (CVFR)* obtained from the Treasury Department and used to calculate the interest on overdue Federal Government receivables. Refer to Illustrations 33 and 34 for worksheet examples and Illustration 18 for the interest rate. Also refer to 25 CFR §163.29(a)(3)(iv).

H. **Map.** Provide a detailed map that clearly identifies the trespass location and pertinent surrounding features.

7.2 **Detail.** A complete, detailed report will facilitate the recollection of additional particulars of the case many months later when the case comes to trial. A good witness can recall with precision and confidence all details relating to the case.

7.3 **Intelligibility.** A trespass report should be easily comprehensible to people not familiar with the local situation

INDIAN FOREST MANAGEMENT HANDBOOK

Volume 7
Chapter 7

Trespass
Reports

Page 21

or with BIA or tribal operations. It must be written so that officials in the Regional Solicitor's Office and U.S. Attorney's Office, as well as Bureau/Tribal staff and line officials can understand exactly what occurred and who was involved.

CHAPTER 8 - REFERRALS TO SOLICITOR'S OFFICE

8.1 **Solicitor's Office Role.** The relevant legal agencies of the Government are the Office of the Regional Solicitor, a part of the Department of the Interior, and the United States Attorney's Office, administratively a part of the Department of Justice. Attorneys in the Office of the Regional Solicitor are charged with furnishing legal advice to the Bureau of Indian Affairs, and they also provide the first legal review of any proposed lawsuit which might be filed by the United States to vindicate a restricted landowner's rights. Lawyers in the United States Attorney's Office are responsible for representing the United States before the courts. Any case approved and prepared for filing by the Solicitor's Office must be sent to the Department of Justice, which has discretion as to whether or not it will be filed, and if so, what remedies will be sought.

There are several possible reasons that a trespass case might require involvement of an attorney:

- when advice on some unusual fact situation might be required, for example perfecting a settlement agreement involving a promissory note and creation of documents evidencing creation of security interests for the purpose of insuring payment of the note;
- when a referral for filing a lawsuit when BIA collection efforts prove unsuccessful;
- when a criminal prosecution is considered justified by the nature of the trespassers conduct.

8.2 **Procedure for Referral.** Formal requests for the advice or initiation of litigation are to be submitted to the Regional Solicitor's Office only through the BIA Regional Office, and submitted as soon as all the information is available.

The Department of Justice now requires that agencies submit a Claims Collection Litigation Report to the Department as part of a litigation referral process. Contact the Regional Solicitor's Office for local procedures in this process. A copy of this report is available on the internet at the following site: www.osec.doc.gov/ofm/credit/cclr.doc

When legal assistance in collecting a debt is desired, the BIA Regional Office's request will be reviewed by the Regional Solicitor's Office to determine what action is appropriate. In some instances another demand letter or other contact with the trespasser by the Solicitor's Office may be sufficient to prompt a settlement. But if not, it is the attorney's responsibility to decide whether commencement of litigation by the United States is justified. Factors considered include the amount of damages, the certainty of establishing liability, and the likelihood of collecting on the judgment.

CHAPTER 9 - ALTERNATIVE REMEDIES

In some instances, it may be necessary for the Government to accept something less than the maximum recovery because obtaining the maximum amount may not be practical. Such a situation could develop if the trespasser were insolvent or could not be located. It is important to note, however, that only the Solicitor's Office can negotiate a trespass for less than full recovery.

Another instance in which the Government may have to resort to alternative measures is when a logger inadvertently or willfully cuts beyond a boundary line and markets the entire cut from private and Indian lands to two or more mills. In order to recover damages from a second party (the mill) the investigator must be able to show that Indian timber was received (e.g. truck tickets, scale tickets, payment records, trucker as witness) by the second party. It is not necessary to prove that the party receiving products cut in trespass knew they were illegally harvested. The United States may proceed to recover damages from purchasers receiving stolen timber in an action for conversion. Conversion is defined as the act of using forest products without having legal title. For example, a mill buys trespass timber and "converts" it to their own use (turns the logs to boards). Prior to the passage of the National Indian Forest Management Act the damages sought could vary, depending on whether either or both the trespasser and converter had acted intentionally or unintentionally. Under the new law the recovery of civil damages is set at triple stumpage in either circumstance, not the enhanced value resulting from conversion.

A clarification of the terms "unintentional" and "intentional" may help in understanding what recovery will be sought. Such a clarification involves an interpretation of the laws of the state in which the timber trespass occurred. Different states and solicitors may have different views on this subject. For example, based on his analysis of the pertinent Alaska laws and precedents (particularly *Matanuska Electric Association vs. Weissler*, No. S-738, Alaska Supreme Court, 1986) an attorney with the Solicitor's Office determined that a trespass is intentional if the person who cuts or damages the resource intended to do so (the cutting or damage was not accidental). An unintentional trespass would be one that occurred by accident, like a plane crash landing in a plantation, hitting trees and damaging them. It's the intent to cut or damage the resource that is important, not the intent to trespass.

Former court cases validate the practice of using enhanced value for willful trespass and collecting damages from the purchaser of the raw product when the trespasser is insolvent. Under the facts of a willful trespass the United States may recover the enhanced value of the logs at the time of purchase by a mill or other converter. *Watkins v. Siler Logging Co.*, 9 Wash 2d 703, 116 P.2d 315, 329 (1941). Damages sought by the United States therefore were not limited to the single stumpage value paid by the mills, but would include the value of the logs as enhanced by such activities as cutting and hauling prior to sale to the converter. *Bolles Woodenware Co. v. United States*, 106 U.S. 432 (1882); *Glaspey v. Prelusky*, 36 Wash.2d 592, 219 P.2d 585 (1950); *Watkins*, 116 P.2d at 329. The cost of cutting and hauling would normally be deducted from the calculation of damages recoverable in an innocent conversion. Such costs are not deducted in a conversion action where the underlying trespass is willful.

Courts will normally attempt to ensure that the owners suffering a loss from a trespass recover damages. When a trespasser is only financially able to pay part of the total damages the receiving mill can be required to make up the shortfall. Other options could include collecting installment payments on a set schedule or garnishing wages until the judgment is paid.

With advisement from the Regional Solicitor's Office, the Line Officer may initiate the demand letter process described in Section 5.5 of this handbook. See the sample letter in Illustration 7, Letter of Demand to Trespasser.

CHAPTER 10 – SETTLEMENT

10.1 **Authority.** Line Officers or designated tribal officials are only authorized to accept full damages in a trespass case (triple damages plus associated interest). Anything less than full recovery is a compromise and only the Solicitor's Office is authorized to handle such situations (31 USC § 3711(a)).

10.2 **Administration.** Any case involving a compromise settlement (including negotiations of a payment schedule) or a case that may be of a criminal or willful nature will be administered by the Solicitor's Office. After a case has been referred to the Department of Justice, no settlement should be made or even attempted by the agency, field office or tribe.

10.3 **Negotiations.** Only the Solicitor's Office has the authority to negotiate and accept an offer for less than full value. The Solicitor's Office normally will not accept compromise offers for trespasses on Indian land without the approval of the landowner.

10.4 **Appeals.** If the case has been appealed, no further discussions should be conducted with the alleged trespasser regarding the case. Even when a case is under appeal the Bureau or tribe is free to continue with timber trespass enforcement and collection activities.

10.5 **Payments from the Trespasser.** With the exception of resource costs and enforcement costs, all civil penalties collected are viewed as proceeds of forest products (stumpage) and are deposited as such. Receipts of trespass damages in civil cases are Trust funds and must be deposited through the Office of the Special Trustee for American Indians (OST) Collection Officer (refer to Illustration 37). Receipts from criminal penalties may be deposited in the U.S. Treasury, or applied towards restitution to the landowner, as ordered by the court.

10.6 **Civil penalties, recovery costs, and full recovery.** Civil penalties are broadly defined to include, among other things, the recovery of costs and compensatory damages. "Recovery cost" is compensation not meant for general distribution to the owners and includes: (1) the cost to restore damaged land, and (2) the cost to enforce trespass regulations. The cost for damage to forest land includes rehabilitation, reforestation, lost future revenue, lost profits, loss of productivity, damage to other forest resources, etc. (25 CFR §163.29(a)(3)(ii)). The cost for the enforcement of trespass regulations includes expenditures for detection, field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, attorney fees, etc. (25 CFR §163.29(a)(3)(iii)). Forest Management Deductions are not withheld from these funds. "Compensatory damages" include triple stumpage and accrued interest. These funds are subject to Forest Management Deductions. "Full Recovery" is the full payment of civil penalties including both recovery costs and compensatory damages.

10.7 **Interest.** Interest is calculated on treble the highest stumpage value from the date of the trespass (not necessarily the date the trespass was discovered) until collections are made (25 CFR §163.29(a)(3)(iv)). The interest rate to be used in the calculation is the statutory rate prescribed by the law of the tribe within whose jurisdiction the trespass was committed or, in the absence of tribal law, the *Treasury Current Value of Funds Rate (CVFR)* obtained from the Treasury Department to calculate the interest on overdue Federal Government receivables (Illustration 18). The rate in effect at the time of the trespass does not change and is used for the duration of the collection effort.

10.8 **Statute of Limitations.** Every action for money damages, with certain exceptions, brought by the United States or an officer or agency thereof, which is founded upon a tort (a wrongful act, injury, or damage, for which a civil action can be brought) shall be barred unless a complaint is filed within six years and 90 days of the date upon which the action accrues (28 USC § 2415(b)). The case can also be pursued more effectively by the Regional Solicitor's Office, the United States Attorney's Office, and by the court if it is processed promptly. Some delays may be necessary in order to obtain additional evidence, to procure a boundary survey, or to find and interview witnesses. Each case should be approached with the intent of completing the investigation and processing of reports in the shortest possible time.

10.9 **Distributions to Owners.** Section VII in the Forestry Collections and Distributions Handbook clearly outlines the procedures for distributing Trust funds obtained in trespass cases. Because of recent organizational changes within the Office of the Special Trustee the section was updated for inclusion in this handbook. The updated Section VII can be found as Illustration 37 in the Appendix. These procedures may change when the Trust Asset and Accounting Management System (TAAMS) is implemented.

A. **Collections up to highest stumpage value.** When the amount collected from the trespasser is up to the “highest stumpage value” of the trespass products the proceeds shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the land (25 CFR § 163.29(b)(1)). Highest stumpage value is the maximum supportable rate for the products on which the trespass is based. The rate for saw timber for example could be the highest legitimate local price per unit volume by species for the time period in which the trespass occurred. For immature timber the value should be calculated by “growing” it forward to its planned rotation age, applying the maximum stumpage rate per unit volume adjusted to reflect future value, and discounting the result back to the present.

B. **Collections exceeding highest stumpage value.** When the amount collected from the trespasser exceeds the highest stumpage value, but is less than the amount necessary to cover all damages and costs (Full Recovery), the proceeds shall be proportionally distributed pro rata between the Indian beneficial owners, the enforcement agency and the costs to restore the land (25 CFR § 163.29(b)(2)).

C. **Trespass by Indian owners.** Indian beneficial owners who trespass, or who are involved in trespass on their land or land in which they have an undivided interest, are not eligible to receive the share of civil penalties and damages that would otherwise go to them. Their share will instead be distributed first to cover restoration costs, with any remainder going toward enforcement costs. If anything is left after these distributions, the remaining money will go into the reservations Forest Management Deduction account. If the trespasser holds an undivided interest with other owners, the trespasser is limited to receiving single stumpage from the compensatory damages based on his ownership interest, with the remainder distributed as described previously.

10.10 **Forest Management Deductions.** Forest Management Deductions shall not be withheld where less than “highest stumpage value” has been recovered (25 CFR § 163.29 (b) (2)). When “highest stumpage value” is collected in full, the amount subject to Forest Management Deductions includes all Civil Penalties except “costs” (refer to 10.6 above) provided this is greater than or equal to \$5001 (25 CFR § 163.25 (c)). This means that Forest Management Deductions are withheld from triple stumpage (when it is collected) and on the interest earned on triple stumpage when the combined amount exceeds \$5000.99. Refer to 25 CFR §163.29 (d) and 25 CFR §163.25 (a) and (b).

10.11 **Closing the Case.** After payment has been received for the trespass, the responsible office will close the case by sending a letter, similar to Illustration 13, to the trespasser. A copy of the letter must also be sent to the Regional Director.

10.12 **Promissory Note Guidelines.** If a trespasser is sincere in desiring to settle the matter but cannot pay the bill immediately the following procedures may be utilized:

A. **Payments.** If immediate payment cannot be made the trespasser should be requested to execute an original and three copies of a promissory note either on the form “Promissory Note - Single Payment” (Illustration 9) or “Promissory Note - Installment Payment” (Illustration 10). They should also complete an original and three copies of “Transmittal Letter - Promissory Note” (Illustration 11). An approved copy of the note and transmittal letter will be returned to the trespasser. The original note will be kept in the agency case file and one copy in the Regional file until all payments are made. The additional copy is for the Washington Office if the case is within their approving authority. The letter transmitting the approved copy of the note to the trespasser should be in the form of Illustration 12.

B. **Settlement Authority.** If the trespass is not within the scope of the Superintendent to settle (each

Regional Director determines the limits of their Superintendent's approval authority), the completed promissory note forms and transmittal letters shall be sent to the Regional Office for approval by the Regional Director or for submission to the Washington Office. The officer who has authority to settle the trespass has the authority to approve the promissory note and should retain the original of the note as a part of the case file. It is always prudent to contact the Solicitor's Office through the Regional Forester when unsure of the proper settlement procedure.

C. **Payment Default.** The acceptance by the Bureau of a promissory note does not preclude the Bureau from suing on the trespass or against the purchasers. If a trespasser defaults on a note and further payments are not forthcoming, it will be the decision of the Bureau, upon recommendation by the Regional Solicitor's Office, as to whether suit will be brought on the note, or for action against the trespasser, or for action against the purchaser. Such a decision will take into consideration the financial status of the trespasser, the amount still due on the note, the possibilities for collection from the purchaser of the trespass timber, the circumstances surrounding the trespass, and the general information contained in the file.

D. **Promissory note.** The signing of the promissory note by the trespasser and acceptance by the Government does not prevent the trespasser from doing business with the Government provided the payments are kept current.

E. **Security suggestions.** In order for the promissory note executed by the trespasser or other responsible party to meaningfully advance the collection effort for damages, it is recommended that whenever possible, the note be secured by a pledge, mortgage, or deed of trust against real property, some form of personal property, or other collateral. Security instruments relating to real estate should be recorded with the State Recorder's Office, and any documents evidencing a pledge of personal property should also be evidenced by a UCC (Uniform Commercial Code) Financing Statement which can be recorded in a like manner. Although a promissory note executed without any form of security provides much less assurance that the amount owed will be paid, it may still be desirable to obtain such a note, and to allow the debtor the opportunity to meet the resulting installment payment obligations. As a general rule, however, it is preferable to insist that a security interest adequate to assure performance of obligations under the promissory note be executed and recorded.

F. **Acceleration clause.** Regardless of whether or not the promissory note is secured by a pledge of collateral, it should include a provision calling for an acceleration of the amount due in the event that the note maker defaults on one or more payments. Such an acceleration clause will permit immediate filing of a legal action to recover the entire unpaid balance of the note, rather than being limited to collecting payments as they come due.

CHAPTER 11 - JURISDICTIONAL BACKGROUND

This section is taken from the statement of Mark Richard, Deputy Assistant Attorney General to the Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, U.S. House of representatives, concerning Federal Bureau of Investigation (FBI) Law Enforcement on Indian Reservations, March 31, 1982.

The complex jurisdictional background surrounding Indian law has contributed to the problems of criminal law enforcement on Indian Reservations.

The overlapping of criminal jurisdiction in Indian country results in investigative authority being vested in several law enforcement agencies. Investigations of states and local offenses are generally conducted by state and local officers. Primary investigative jurisdiction for most Federal crimes rests with the FBI, while tribal police monitor violations of tribal ordinances, and officers of the Department of the Interior's Bureau of Indian Affairs provide law enforcement services on many reservations.

The FBI has investigative jurisdiction over violations of 18 USC 1152 and 1153. Frequently by the time the FBI arrives on the reservation some investigation will have been undertaken by tribal or BIA police. It is recognized that the ability of the tribal and BIA police can vary from reservation to reservation, and the United States Attorneys are free to ask for FBI investigation in all cases where it is felt that such is required. However, U.S. Attorneys are encouraged and authorized to accept investigative reports directly from tribal or BIA police and prepare a case for prosecution without FBI investigation in all cases where they feel a sufficient investigation can be undertaken by BIA or tribal law enforcement officers.

The policy of the Department of the Interior, while encouraging the use of Indian police investigative work, nevertheless recognizes that in the last analysis it is the responsibility of the U.S. Attorney to conduct the prosecution successfully. By virtue of his familiarity with the case and the personnel, he is also in the best position to evaluate the capabilities of the individual officers and units involved, and to determine the kinds of cases that can be left to their primary investigative jurisdiction. It is therefore necessary to leave to his discretion the decision whether the quality of investigation the local officers of the BIA or tribe are capable of performing is adequate to the needs of the prosecution.

INDIAN FOREST MANAGEMENT HANDBOOK

| | |
|-----------------|---|
| Illustration 1 | Notice and Poster of Seizure |
| Illustration 2 | Notice of Trespass |
| Illustration 3 | Notice of Seizure |
| Illustration 4 | Timber Trespass Report, Items to Include |
| Illustration 5 | Narrative Statement - Example |
| Illustration 6 | Trespass Report - Example |
| Illustration 7 | Demand Letter to Trespasser |
| Illustration 8 | Tender of Payment of Trespass Obligation |
| Illustration 9 | Promissory Note - Single Payment |
| Illustration 10 | Promissory Note - Installment |
| Illustration 11 | Transmittal Letter - Promissory Note |
| Illustration 12 | Transmittal Letter - Approved Promissory Note |
| Illustration 13 | Timber Trespass Settlement Agreement |
| Illustration 14 | 25 CFR § 163.29 |
| Illustration 15 | Comments Relating to 25 CFR § 163.29 as Published in the Federal Register |
| Illustration 16 | List of Federal Codes Relating to Trespass |
| Illustration 17 | 31 CFR § 901.2 |
| Illustration 18 | Treasury Current Value of Funds Rate |
| Illustration 19 | Recommended Fire Investigation Kit Contents |
| Illustration 20 | Fire Investigation Forms List |
| Illustration 21 | Fire Field Investigation Organizer (BIA-FINV-FORM1-2005) |
| Illustration 22 | Fire Investigation Report (BIA-FINV-FORM2-2005) |
| Illustration 23 | Consent for Fire Scene Evaluation (BIA-FINV-FORM3-2005) |
| Illustration 24 | Voluntary Statement (BIA-FINV-FORM4-2005) |
| Illustration 25 | Juvenile Fire Report (BIA-FINV-FORM5-2005) |
| Illustration 26 | Juvenile and Adolescent Interview Permission (BIA-FINV-FORM6-2005) |
| Illustration 27 | Product Appraisal, Costs & Damages Worksheet (BIA-FINV-FORM7-2005) |
| Illustration 28 | Evidence Log (BIA-FINV-FORM8-2005) |
| Illustration 29 | Evidence Form (BIA-FINV-FORM9-2005) |
| Illustration 30 | Tire Track Report (BIA-FINV-FORM10-2005) |
| Illustration 31 | Shoe Print Report (BIA-FINV-FORM11-2005) |
| Illustration 32 | Supplemental Investigation Report (BIA-FINV-FORM12-2005) |
| Illustration 33 | Damage and Costs Worksheet Example |
| Illustration 34 | Fire Trespass Appraisal, Costs and Damage Worksheet Example |
| Illustration 35 | Procedures for Preparation of Criminal/Civil Fire Trespass Case |
| Illustration 36 | Civil versus Criminal Trespass |
| Illustration 37 | BIA Forestry Collections and Distribution Handbook |
| Illustration 38 | Economic Guides for Managing Forest Resources |

{Bureau Letterhead}
NOTICE AND POSTER OF SEIZURE
GOVERNMENT PROPERTY

Date _____

To:

Address:

AND TO ALL OTHERS WHOM THIS MAY CONCERN:

YOU ARE HEREBY NOTIFIED that I have on this date , for and on behalf of the United States of America, seized and taken into my possession the following-described property of the said United States to wit:

{Description of volume/number of trees/logs by species, etc.}

_____ on the grounds more or less; that said property has been heretofore unlawfully cut, severed or extracted from lands of the said United States by trespassers; that said property is now in my possession as an officer of the United States, and is situated on the following lands, to wit:

{Legal description, Allotment, Reservation}.

The removal or disposition of any of the products resulting from this trespass may result in criminal and/or civil action being filed by the United States against the parties involved.

NOW THEREFORE, TAKE WARNING: that any person, either in his own behalf or as agent, servant, or employee of another, who shall in any manner remove, damage, destroy, or exert control over any of said property will be prosecuted in the United States courts and/or _____ tribal court to the full extent of their civil and criminal liability.

Authorized Representative

{This notice should be posted on the site where the seized products are located and a copy of it given to the alleged trespasser and to the purchaser (if any) by hand or Certified Mail. If the name of the trespasser is not known at the time of discovery, the name and address are left blank and the notice posted on or near the products seized.}

NOTICE OF TRESPASS

{Bureau or Tribal letterhead}

Certified Mail No. _____
Return Receipt Requested

NOTICE OF TRESPASS

Dear:

Notice is hereby given, by the United States Department of the Interior, Bureau of Indian Affairs, that a determination has been made that a trespass has occurred on Indian forest land located on the _____, based on the following evidence:
(reservation)

{Description of evidence. Include location.}

The damages, penalties and costs associated with this trespass have been estimated to be:
\$ _____ .

The following forest products are hereby seized by the United States Department of the Interior, Bureau of Indian Affairs:

{Description of products seized: volume/ number of trees/logs by species, etc.}

The removal or disposition of any of the products resulting from this trespass may result in criminal and/or civil action being filed by the United States against the parties involved.

If you have anything to add to these facts please contact *{contact persons name, address and phone number}* within 10 days.

Superintendent/Regional Director

Enclosures

{Bureau Letterhead}

NOTICE OF SEIZURE

Certified Mail No. _____
Return Receipt Requested

Dear:

Notice is hereby given that on _____ {date} the following described forest products are seized by the United States Government:

{List products by type.}

The products seized are are not perishable. *(Choose one)*

These products are seized by the Bureau of Indian Affairs under authority of 25 USC 3106 and 25 CFR part 163.29: *{or cite applicable tribal law if Tribe has concurrent jurisdiction}*

{Description of volume, number of trees/logs by species, etc.}

on the grounds more or less; having an estimated value of:

{Estimated value of forest products seized}

that said property has been heretofore unlawfully cut, severed or extracted from lands of the said United States by trespassers; that said property is now in my possession as an officer of the United States, and is situated on the following lands, to wit:

{Legal description, Allotment, Reservation}

The removal or disposition of any of the products resulting from this trespass may result in criminal and/or civil action being filed by the United States against the parties involved.

NOW THEREFORE, TAKE WARNING: that any person, either in his own behalf or as agent, servant, or employee of another, who shall in any manner remove, damage, destroy, or exert control over any of said property will be prosecuted in the United States courts and/or _____ tribal court to the full extent of their civil and criminal liability.

The Bureau of Indian Affairs is charged with the administration of Indian lands, and is required to collect damages resulting from timber trespasses committed on such lands.

Federal statutes impose treble damages whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass (25 CFR § 163.29 (a)(3)(i)).

In accordance with the regulations in 25 CFR Part 2, this decision may be appealed to: *{Regional Director, Mailing Address}*. Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must

include your name, address, and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "Notice of Appeal." Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address given above.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Enclosures

Authorized Representative

TIMBER TRESPASS REPORT

The following items are recommended when preparing the trespass report.

1. Describe when the trespass was discovered, by whom, and under what circumstances.
2. Describe who investigated the trespass and when.
3. List the name, address, and occupation of suspected persons involved in the trespass.
4. List the date of trespass.
5. Describe the trespass area, land status, and approximate acreage of trespass.
6. List the amount, kind and appraised value of products.

| <u>Species</u> | <u>Product</u> | <u>Volume</u> | <u>Appraised price/unit vol.</u> | <u>Stumpage single value</u> | <u>Stumpage triple value</u> |
|----------------|----------------|---------------|----------------------------------|------------------------------|------------------------------|
|----------------|----------------|---------------|----------------------------------|------------------------------|------------------------------|
7. List the disposition of above volume.
 - Marketable material remaining on area: Species, Volume
 - Scalable waste material remaining on area (long butts, etc.): Species, Volume
 - Products removed and sold: Purchasers name, Species, Volume
8. If timber was sold list: (1) the name of purchaser, (2) their address, (3) type of company, (4) price per unit volume paid to the trespasser, (5) evidence of the transaction and other pertinent information.
9. Describe the method of estimating volume.
10. If the timber was seized: List when, where, by whom, title, quantity seized.
11. List witnesses, their address, copies of their statements (or reason why there are none).
12. List facts to which the examining officer will testify.
13. Describe what effort did the person suspected in trespassing take to avoid trespass.
14. Describe who established the boundary lines, if they were clearly marked and what instructions were given to the fallers
15. If the person suspected of trespassing indicated he/she thought they had a right to take the timber, describe the basis for that belief.
16. Describe the financial status of all parties concerned.
17. List other pertinent information.
18. Have demand letters been sent to the trespasser, the purchaser?
19. Has the trespasser or the purchaser offered settlement?
20. Comments and recommendations.

NARRATIVE STATEMENT

Bill Brown, owner of the fee patent land adjoining Bad River tribal land described as SW1/4 SW1/4, Sec. 20, T47N, R3W, 5th P.M., sold the timber on his land to the E. Z. Doe Logging Company. The attached agreement between Mr. Brown and the company shows that Mr. Brown was paid \$60.00 per MBF for the white spruce and \$12.00 per cord for the aspen. Scale was based on mill truck scale of the Jones Lumber Company who purchased the logs from the E. Z. Doe Logging Company. Mr. Brown states he was paid those rates for 125,000 board feet of white spruce. These volumes include the logs cut in trespass. Additionally, 3,000 board feet of aspen and another 2,000 board feet of spruce were left on tribal land where it was cut. On June 30, 2005, I discovered the trespass and scaled the stumps and the remaining timber that was cut. All of the logging had been completed and equipment removed.

I contacted Mr. Brown and he informed me who the logging contractor had been on his property. I then contacted Mr. Doe at his home and we went to talk to the individual who was falling timber for Mr. Doe on another piece of land. On the way we stopped at the above described land and Mr. Doe checked the trespass himself. He could see no reason an experienced woodsmen could have missed the boundary line. He talked to the faller and he was noncommittal, saying he must have just missed the line. Mr. Doe told him that he couldn't have men working for him who could not stop cutting at a boundary line and that he was through working for him.

We discussed possible settlement but I made no commitments. I did tell him that settlement would have to be made in accordance with Federal statute and that he would be contacted, probably by letter, in a few days.

Dick Fossberg, Forester

Date

TRESPASS REPORT

The following information is recorded by the investigation official and is to the best of his or her knowledge the accurate facts as they occurred.

Reporting Information & Codes

| | | | | | |
|----------|---------------------------------------|----------|-------------------------|----------|-----------------|
| 1 | Federally Recognized Tribe/Consortium | 2 | Agency Reservation Code | 3 | Trespass Number |
| | | | | | |

General Information

| | | | | | |
|----------|--|----------|--|-----------|---|
| 4 | Investigating Officer for BIA | 5 | When was the trespass discovered | 6 | Who discovered the trespass |
| | | | | | |
| 7 | What were the circumstances under which the trespass was discovered. | | | | |
| | | | | | |
| 8 | Have tribal law enforcement been contacted? | 9 | Was a witness report-statement completed? | 10 | Name of tribal law enforcement officer assigned to case |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | | YES <input type="checkbox"/> NO <input type="checkbox"/> | | |

Location of Trespass

| | | | | | |
|-----------|------------------------------------|-----------|-------------|-----------|---------------------------------|
| 11 | Legal Description of Trespass Area | 12 | Land Status | 13 | Approximate Acreage of Trespass |
| | | | | | |
| 14 | Description of Trespass Area | | | | |
| | | | | | |

Estimated Forest Product Removed

| 15 | Species | Product | Net Volume Cords/BF/Pieces | Appraised price/unit vol. | Stumpage single value | Stumpage triple value |
|-----------|--|-----------|-------------------------------|------------------------------|--------------------------|-----------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 16 | Disposition of Above Volume | | | | | |
| | | | | | | |
| 17 | Method of Estimating Volume | | | | | |
| | | | | | | |
| 18 | Was the Product Sold? | 19 | Name of Purchaser | 20 | Address of Purchaser | |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | | | | | |
| 21 | Price/unit vol Paid to Trespasser | 22 | Evidence of Transaction | 23 | Type of Company | |
| | | | | | | |

| | | | | | |
|-----------|------------------------------------|--|--|--|--|
| | | | | | |
| 24 | Other Pertinent Information | | | | |
| | | | | | |

Trespasser

| | | | | | |
|-----------|--|-----------|---|-----------|--|
| 25 | When did trespass occur? | 26 | Has a suspect been identified? | 27 | Did trespasser enter site/trespass more than once? |
| | | | YES <input type="checkbox"/> NO <input type="checkbox"/> | | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| 28 | Name of person who is suspected of trespassing | 29 | Trespasser's Address | 30 | Trespasser's Occupation and Financial Status |
| | | | | | |
| 31 | Has a demand letter been sent to the suspected trespasser and/or purchaser? | 32 | Has the suspected trespasser or purchaser offered settlement? | 33 | Has payment for damages been made in full? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | | YES <input type="checkbox"/> NO <input type="checkbox"/> | | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| 35 | If payment has not been made in full, what are the reasons and state when payment may be expected? If payment has been made in full what was the date that the payment was received. | | | | |
| | | | | | |
| 36 | What effort did the suspected trespasser make to avoid trespass? | | | | |
| | | | | | |
| 37 | If the trespasser indicated he/she thought he/she had the right to take the products, what is the basis of their belief? | | | | |
| | | | | | |
| 38 | Who established boundary lines of area trespassed? | 39 | Were the boundary lines clearly marked? | 40 | What instructions were given to fellers/contractors/employees? |
| | | | YES <input type="checkbox"/> NO <input type="checkbox"/> | | |

Seizure of Forest Products

| | | | | | |
|-----------|--|-----------|----------------------|-----------|--|
| 41 | Was product seized? | 42 | Date of seizure | 43 | Quantity seized |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | | | | |
| 44 | Who seized it? | 45 | Where was it seized? | 46 | If not all seized, what happened to the rest of product taken? |
| | | | | | |

Witnesses

| | |
|-----------|--|
| 47 | Were there witnesses? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> |

| | | | |
|--|------|---------|--------------|
| | Name | Address | Phone Number |
|--|------|---------|--------------|

| | | | |
|-----------|--|--|---|
| W1 | Name | Address | Phone Number |
| | Have they been contacted? | Has tribal law enforcement officer interviewed them? | Is there a statement from this witness attached to this report? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> |

| | | | |
|-----------|--|--|---|
| W2 | Name | Address | Phone Number |
| | Have they been contacted? | Has a tribal law enforcement officer interviewed them? | Is there a statement from this witness attached to this report? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> |

(For further witness references see attached page)

Other People Involved

| | |
|-----------|---|
| 48 | Were there other people who were involved and may have some pertinent information related to the investigation? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> |

| | | | |
|-----------|--|--|--|
| P1 | Name | Involvement | Phone Number |
| | Have they been contacted? | Has a tribal law enforcement officer interviewed them? | Is there a statement from this person attached to this report? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> |

| | | | |
|-----------|--|--|--|
| P2 | Name | Involvement | Phone Number |
| | Have they been contacted? | Has a tribal law enforcement officer interviewed them? | Is there a statement from this person attached to this report? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> |

| | | | |
|-----------|--|--|--|
| P3 | Name | Involvement | Phone Number |
| | Have they been contacted? | Has a tribal law enforcement officer interviewed them? | Is there a statement from this person attached to this report? |
| | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> | YES <input type="checkbox"/> NO <input type="checkbox"/> |

Comments and Suggestions

| | |
|-----------|--------------------------|
| 49 | Comments and Suggestions |
| | |

Examining Officer's Testimony

| | |
|----|---|
| 50 | I, _____, the examining officer, agrees to testify to the following facts: |
| | <ul style="list-style-type: none">• Location of trespass• Stump diameters and estimations of timber removed• Dates upon which the trespass was first visited and a description of the area on that visit. |

NARRATIVE

The following narrative is a cumulative description of the facts and events surrounding trespass

Demand Letter to Trespasser
United States Department of the Interior
Bureau of Indian Affairs
[LOCAL UNIT AND ADDRESS]

CERTIFIED MAIL No. _____
RETURN RECEIPT REQUESTED

Dear:

The Bureau of Indian Affairs (BIA) is responsible for carrying out the duties and responsibilities of the Department of Interior regarding Indians, Indian tribes, and Indian resources. This includes overseeing and managing Indian timber resources pursuant to the National Indian Forest Resources Management Act, 25 USC Parts 3101 to 3120 (NIFRMA) and the regulations promulgated thereunder at 25 CFR Part 163.29.

A recent investigation establishes that timber has been cut by (you)(your company) or by persons for whose actions (you)(your company) (is)(are) responsible, on Indian owned lands administered by the United States located insert legal description along with reservation name. The BIA has valued the timber removed at \$ _____ based on the enclosed timber appraisal. The NIFRMA and the regulations allow for triple stumpage damages and penalties for a timber trespass (Refer to 25 USC, Part 3106(a) and 25 CFR §163.29(a)(3)(i)). The timber you illegally removed had a single stumpage value of \$ _____. Treble stumpage damages are in the amount of \$ _____. Additionally, the regulations allow for recovery of interest on the treble stumpage value (25 CFR § 163.29(a)(3)(iv))calculated from the date of trespass until payment is rendered, which through insert date - thirty days from the date of this letter, amounts to \$ _____.

The regulations also allow the recovery of reasonable investigation costs and the cost of restoring the land (25 CFR § 163.29(a)(3)(ii) and (iii)). These costs have been determined to be \$ _____ and \$ _____, respectively.

The BIA's appraisal of the fair market value of the timber you removed is reasonable and based upon local area rates in effect at the time of the trespass. **Therefore, this letter constitutes a demand for payment in the amount of \$ _____ payable by insert date - thirty days from the date of this letter**. Be aware that the payment amount could increase due to interest charges if payment is remitted at a later date. Please send a certified check for \$ _____ made payable to the Bureau of Indian Affairs and mail it to the BIA's name Agency Office at the address at the top of this letter. Reference forestry in your submittal. If you wish to arrange a payment schedule, you may contact Agency Forester, Agency name, phone number. **You must pay the full \$ _____, or contact the BIA by insert date - thirty days from the date of this letter**.

If you fail to take advantage of the options mentioned, the BIA is prepared to refer this matter to the United States Department of Justice and ask that they initiate a lawsuit against you to collect the damages which resulted from your timber trespass. The disposition or removal of Indian forest products taken in trespass may result in civil and/or criminal action by the United States.

Illustration 7

Page 1 of 2

In accordance with the regulations in 25 CFR Part 2, this decision may be appealed to the:
Regional Director, _____ Regional Office
Address

Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address, and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "Notice of Appeal". Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address given above.

If your appeal is not filed within the time stated above this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely Yours,

Superintendent

Enclosure: *{Enclose Trespass Product Appraisal and Damage and Costs Worksheet (see Illustration 33), or similar document(s) showing damages and costs.}*

TENDER OF PAYMENT OF TRESPASS OBLIGATION

United States Department of the Interior
Bureau of Indian Affairs

I, _____, of _____, hereby offer and tender the amount of
\$ _____ (by money order or certified check) payable to the Bureau of Indian Affairs in full satisfaction of
my obligation to the United States arising out of the following act:

Description of the lands involved:

The trespass was committed (with) (without)* knowledge that such lands were government lands or lands under its jurisdiction.

This offer is made in acknowledgment of the rights of the United States and of the civil liability of the undersigned, and for the purpose of avoiding litigation. The payment may be deposited for collection and the money held in special deposit until a final determination of my liability is made by the United States.

I (do) (do not)* agree that in the event this tender of payment is not accepted, and the amount due the government exceeds the amount hereby tendered, this payment may be applied on the total indebtedness.

I certify that the statements made by me in this tender of payment are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

(Witness)

(Signature)

* *Cross out one.*

Promissory Note - Single Payment

\$ _____ Place _____

Date _____

For value received, I, we, or any of us promise to pay the sum of _____ dollars to the Bureau of Indian Affairs at the _____ Agency Office on or before _____ with interest after maturity at _____ percent per annum.

In the event that prior to the above maturity date any one or more of the undersigned shall become insolvent, or shall make a general assignment for creditors, or shall file a voluntary petition in bankruptcy, or if a petition of involuntary bankruptcy shall be filed against any one or more of the undersigned, or if a receiver shall be appointed for the property or assets of any one or more of the undersigned, the full principle balance remaining unpaid immediately shall become due and payable and shall bear interest as after maturity.

For good cause shown, the Superintendent, {Agency name} may, at his discretion, extend the time of maturity of this note. Each of the undersigned hereby waives demand, protest, and notice of protest and nonpayment of the same notwithstanding any extensions of time that may be granted or allowed to the maker for payment.

Signed:

Address:

Witness:

(Address)

Promissory Note
(Installment payments)

\$ { amount }

Place: {town, state of payee}

Date _____

For value received, I, we, or any of us promise to pay the sum of \$ { amount } dollars to the Bureau of Indian Affairs at the { name of agency } Agency Office on or before { date of last payment } in installments in the amounts and on or before the dates as follows:

Subject to the following conditions:

1. In the event of failure of the undersigned to pay any one or more of the specified installments when due, the Superintendent, {Agency name} may, at his/her option, declare this note to be in default and the full amount of the unpaid installments immediately due and payable.

Such option shall be exercised in written notice of default, mailed to the undersigned at the address herein below shown, or other address known to the Superintendent, {Agency name}.

2. In the event that any one or more of the undersigned shall become insolvent, or shall make a general assignment for creditors, or shall file a voluntary petition in bankruptcy, or if a petition of involuntary bankruptcy shall be filed against any one or more of the undersigned, or if a receiver shall be appointed, then this obligation shall be in default, and all unpaid principle amounts immediately shall be due and payable.

3. Upon notice of default given under the provisions of paragraph 1 hereof or default occurring under paragraph 2 hereof, the full remaining principle balance shall bear interest at {interest percent} percent per annum from the time of default until paid.

4. For good cause shown, the Superintendent, {Agency name} may, at his discretion, extend the time of maturity of this note. Each of the undersigned hereby waives demand, protest and notice of protest and nonpayment of this note, and guarantees payment of the same notwithstanding any extensions of time that may be granted or allowed to the maker in paying any one or more of such installments, either expressly or by not exercising the option under paragraph 1 hereof.

Signed: _____ Address: _____

Witness: _____ Address: _____

TRANSMITTAL LETTER
(Promissory Note)

Dear Sir:

I (we) have signed the enclosed note in the amount of \$ _____ as a tender of payment for trespass obligation due the United States. It is understood and agreed by me (us) that acceptance of the tendered note by the United States will not constitute a release, satisfaction or discharge of the trespass obligation until the note has been paid in full.

Sincerely Yours,

Approved:

(Date)

Sample Transmittal Letter to Trespasser
for an Approved Promissory Note

United States Department of the Interior
Bureau of Indian Affairs

Mr. J. K. Black
P.O. Box 17
Embarrass, WI

Dear Mr. Black:

Enclosed is a copy of the approved promissory note signed by you in connection with the timber trespass you committed on the Oneida Reservation in NW1/4NW1/4 Sec 16, T25N, R23E, Brown County, Wisconsin. The note provides for payment of \$990 in installments of \$100.00 a month, payable on the same day each month, commencing July 10, 2005, and continuing until the total obligation is paid.

Please make your checks payable to the Bureau of Indian Affairs, and transmit them to the Superintendent, Great Lakes Agency, Ashland, Wisconsin.

Sincerely,

Superintendent

Enclosure

Timber Trespass Settlement Agreement

This Settlement Agreement is made and entered into by and between *{ trespassers name }*, and the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, by *{Line Officer's name and title }*.

WHEREAS, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, asserts that employees of the BUREAU OF INDIAN AFFAIRS *{or tribal employees of a tribe}* discovered that a timber harvest had occurred on *{ reservation }* in *{state }* on *{ name of allotment if pertinent }* which is Indian trust land owned by the United States for the benefit of *{ tribe }* more particularly described as follows:

{property location}

WHEREAS, an investigation revealed that *{trespassers name, state what he/she did}* without permission or consent by the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, or the BUREAU OF INDIAN AFFAIRS determined to be valued at *{single stumpage value}*; and

WHEREAS, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, demanded *{ trespassers name }* pay civil penalties, including treble stumpage damages, investigative costs, and interest, in the amount of *{ total trespass damages }* and

WHEREAS, *{ name trespasser and what he/she contends happened and finally what he/she is agreeing to pay }*; and

WHEREAS, THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, has determined *{ what do we think of what the trespasser is agreeing to pay. At this point we are agreeing that it is in the best interest to settle, the date that we will receive the settlement, and that it is in the best interest of the Tribe }*; and

WHEREAS, the parties wish to settle this dispute.

NOW THEREFORE, in consideration of the promise and mutual covenants contained herein, it is agreed as follows:

1. The UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, agrees to release and discharge *{ the trespasser }* for all matters arising to date from the timber trespass that occurred to the real property described above.

2. *{ Trespasser }* agrees to release and discharge the UNITED STATES DEPARTMENT OF THE INTERIOR, and its employees and assigns for all matters arising to date from the timber trespass that occurred to the real property described above.

3. Each of the parties has entered into this Settlement Agreement of his/her own volition, without threat from the other under no duress.

IN WITNESS WHEREOF, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, and *{ trespasser }*, have caused this Settlement Agreement to be executed.

{ Line Officer and address }

DATE

{ Trespasser and address }

DATE

Code of Federal Regulations, Title 25, Volume 1, Revised as of April 1, 1999

TITLE 25--INDIANS

CHAPTER I--BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 163--GENERAL FORESTRY REGULATIONS--Table of Contents

Subpart B--Forest Management and Operations

Sec. 163.29 Trespass.

(a) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) Cases in Tribal Court. For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this Sec. 163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) Cases in Federal Court. For trespass actions brought in Federal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this Sec. 163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to: (i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in Sec. 163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under Sec. 163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in Secs. 163.29(a)(3) (ii) and (iii) of this part, shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to Sec. 163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent

tribal seizure authority under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to Sec. 163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

- (1) That such products could be Indian trust property involved in a trespass; and
- (2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to Sec. 163.29(j) of this part will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

- (1) That a determination has been made that a trespass has occurred;
- (2) The basis for the determination;
- (3) An assessment of the damages, penalties and costs;
- (4) Of the seizure of forest products, if applicable; and
- (5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction pursuant to Sec. 163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have

concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in Sec. 163.29(j)(1) of this part, the Secretary and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, but does not request deferral of prosecution, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

Comments: 25 CFR § 163.29, Trespass.

The following were taken from published comments relating to the drafting of regulations for PL 101-630 (National Indian Forest Resources Management Act). Only those dealing with trespass are covered here.

90. *Comment:* § 163.29 of the rule should allow the Federal government to recover the expense of trespass investigation.

Response: § 163.29 of the rule has been revised to provide for recovering trespass associated expenses of the Federal government and tribes.

91. *Comment:* § 163.29 (a) (3) (i) of the proposed rule appears to limit trespass to trees, timber or shrubs. In light of the comprehensive list of products as listed in the definition of forest products in § 163.1 of the rule, such a limitation is inconsistent with the intent of 25 U.S.C. § 3106.

Response: § 163.29 (a) (3) (i) of the rule has been revised to include all forest products as listed in the definition of forest products in § 163.1 of the rule to ensure providing for the broad scope of trespass protection intended by 25 U.S.C. § 3106.

92. *Comment:* Determining trespass damages will be difficult and controversial if the highest valued product obtainable as called for in § 163.29 (a) (3) (i) of the proposed rule must be used.

Response: § 163.29 of the rule has been revised to require using the highest stumpage value of raw materials rather than the highest valued product obtainable for the purpose of establishing trespass damage.

93. *Comment:* Does the Secretary have seizure authority on lands not under the government's supervision in the absence of a court order as provided for in § 163.29 (e) of the proposed rule?

Response: Indian forest products are real property owned by the United States in trust for individual Indians and Indian tribes. In the National Indian Forest Resources Management Act, Congress has directed the Secretary to promulgate regulations which establish civil penalties for the commission of forest trespass and provide for collection of the value of the products. Seizure of forest products owned by the United States and situated on Indian land is one such civil penalty. The proposed language regarding the seizure of forest products off-reservation and seizure of property and equipment is too broad and not supported by law as drafted in the proposed rule. Therefore, the seizure regulations as drafted in §163.29 (e), (f) and (g) of the proposed rule have been revised and clarified to comport with existing federal, tribal and state law.

94. *Comment:* Does the Secretary have authority to seize and sell equipment belonging to someone else in the absence of a court order?

Response: The seizure regulation as drafted in the proposed rule is too broad and raises questions as to the Secretary's private property seizure authority both on and off Indian land. § 163.29 of the rule has been revised to reflect two categories of seizure: Seizure of trespass Indian forest products on or near Indian land and notice of possible trespass where such products are not on or near Indian land and now includes specific notice provisions. Provisions for seizure of property and equipment situated on or off-reservation which was used in committing trespass have been deleted from §163.29 of the rule because such seizure actions lack Federal statutory authority. However, if tribal law provides for seizure of property and equipment situated on-reservation which was used in committing trespass, tribes may take such action under their own law and jurisdictional authority.

Listing of Federal Codes Relating to Trespass

Title 18, Part 1, Chapter 91, Section 1853 – Trees cut or injured:

Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, and lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined under this title or imprisoned not more than one year or both.

Title 18, Part 1, Chapter 91, Section 1855 – Timber set on fire:

Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined under this title or imprisoned not more than five years or both. This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment.

Title 18, Part 1, Chapter 91, Section 1856 – Fires left unattended and unextinguished:

Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or executive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined under this title or imprisoned not more than six months or both.

Title 18, Part 1, Chapter 31, Section 641 – Public money, property, or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted – Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both. The word “value” means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Title 18, Part 1, Chapter 53, Section 1163 – Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled,

stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another – Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title, or imprisoned not more than one year, or both. As used in this section, the term “Indian tribal organization” means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

Title 18, Part 1, Chapter 19, Section 371 – Conspiracy to commit offence or to defraud United States

If two or more persons conspire either to commit any offence against the United States, or to defraud the United States, or any agency thereof on any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however the offence, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 25, Chapter 33, Section 3106 – Forest Trespass

(a) Civil penalties; regulations

Not later than 18 months from November 28, 1990, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of forest trespass which provide for—

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) Treatment of proceeds

The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) Concurrent jurisdiction

Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) of this section shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau of Indian Affairs and other agencies of the Federal Government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section.

TITLE 31--MONEY AND FINANCE: TREASURY

CHAPTER IX--FEDERAL CLAIMS COLLECTION STANDARDS (DEPARTMENT OF THE
TREASURY--DEPARTMENT OF JUSTICE)

PART 901--STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS--Table of Contents

Sec. 901.2 Demand for payment.

(a) Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), agencies should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with Sec. 904.1 of this chapter or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under parts 900-904 of this chapter, including immediate referral for litigation.

(b) Demand letters shall inform the debtor of:

- (1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;
- (2) The applicable standards for imposing any interest, penalties, or administrative costs;
- (3) The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered; and
- (4) The name, address, and phone number of a contact person or office within the agency.

(c) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see Sec. 901.3). The availability of funds or money for debt satisfaction by offset and the agency's determination to pursue collection by offset shall release the agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, agencies should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency

determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from their agency counsel to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from their agency counsel to determine whether recoupment is available.

Treasury Current Value of Funds Rate

The Current Value of Funds Rate (CVFR) is **used to calculate interest on overdue Federal Government receivables and to determine the effectiveness of taking cash discounts** (I TFM 6-8040.40) on Government payments. Interest charged is simple interest at the rate in effect at the time the debt becomes overdue. The rate of interest remains fixed for the duration of the indebtedness (I TFM 6-8025.20). See Treasury's Cash Management Regulations I TFM Chapter 6-8000 for more information.

The CVFR is based on the Treasury Tax and Loan (TT&L) rate for the 12-month period ending the previous September 30, rounded to the nearest whole percent. Published quarterly until 1986, the CVFR is now published annually in the Federal Register by October 31. The rate is calculated quarterly on a 12-month rolling average of the TT&L rate and is subject to revision only if the published rate changes by 2 percentage points at the close of the prior calendar quarter. Changes in the CVFR will be published in a TFM Bulletin.

Rate History

Prior to 1978, Federal agencies determined their own interest rates for overdue debt. Following are the rates in effect during the specified periods from March 1978 to date:

| Time Period | Rate | TFM Bulletin Number | Federal Register (Volume / Date / Page) |
|------------------------------|-------------|----------------------------|--|
| Jan. 1, 2005 - Dec. 31, 2005 | 1.00% | 2005-02 | Vol. 69 / Nov. 2, 2004 / 63570 |
| Jul. 1, 2004 - Dec. 31, 2004 | 1.00% | | |
| Jan. 1, 2004 - Dec. 31, 2004 | 1.00% | 2004-03 | Vol. 68 / Oct. 30, 2003 / 61865 |
| Jan. 1, 2003 - Dec. 31, 2003 | 2.00% | 2003-02 | Vol. 67 / Oct. 23, 2002 / 65187 |
| July 1, 2002 - Dec. 31, 2002 | 3.00% | 2002-05 | Vol. 66 / Apr. 24, 2002 / 20203 |
| Jan. 1, 2002 - June 30, 2002 | 5.00% | 2002-02 | Vol. 66 / Oct. 25, 2002 / 54060 |
| Jan. 1, 2001 - Dec. 31, 2001 | 6.00% | 2001-02 | Vol. 65 / Oct. 31, 2000 / 65040 |
| Jan. 1, 2000 - Dec. 31, 2000 | 5.00% | 2000-03 | Vol. 64 / Oct. 29, 1999 / 58467 |
| Jan. 1, 1999 - Dec. 31, 1999 | 5.00% | 1999-03 | Vol. 63 / Oct. 30, 1998 / 58457 |
| Jan. 1, 1998 - Dec. 31, 1998 | 5.00% | 1998-05 | Vol. 62 / Oct. 28, 1997 / 55848 |
| Jan. 1, 1997 - Dec. 31, 1997 | 5.00% | 1997-02 | Vol. 61 / Oct. 30, 1996 / 56086 |
| Jan. 1, 1996 - Dec. 31, 1996 | 5.00% | 1996-02 | Vol. 60 / Oct. 26, 1995 / 54911 |
| July 1, 1995 - Dec. 31, 1995 | 5.00% | 1995-08 | Vol. 60 / Apr. 28, 1995 / 21024 |
| Jan. 1, 1995 - June 30, 1995 | 3.00% | 1995-06 | Vol. 59 / Nov. 1, 1994 / 54672 |
| Jan. 1, 1994 - Dec. 31, 1994 | 3.00% | 1994-03 | Vol. 58 / Oct. 28, 1993 / 58037 |
| Jan. 1, 1993 - Dec. 31, 1993 | 4.00% | 1993-02 | Vol. 57 / Oct. 27, 1992 / 48651 |
| Jan. 1, 1992 - Dec. 31, 1992 | 6.00% | 1992-03 | Vol. 56 / Oct. 28, 1991 / 55521 |
| Jan. 1, 1991 - Dec. 31, 1991 | 8.00% | 1991-02 | Vol. 55 / Oct. 30, 1990 / 45710 |

Website address: <http://fms.treas.gov/cvfr/index.html>

Fire Investigation Kit - Recommended Items

| | |
|--|---|
| Various types of evidence sealing tape | Various types of evidence labels |
| Evidence collection paper bags | Re-closable evidence plastic bags |
| Evidence slide boxes | Glass evidence jars |
| Arson evidence metal cans | Disposable tweezers |
| Plastic hemostats | Finger print kit (optional) |
| Hand held magnifying glass | Photo gray rulers and reference kits for photography |
| Photo tents or other evidence labels for photography | Clipboard |
| Drawing paper | Pencils |
| Pens | Flagging tape of various colors |
| 100 foot metal measuring tape | Crime scene barrier tape |
| Nitrile gloves | Stringing kit for on site grids |
| Large flashlight | Tape recorder |
| Magnetic compass | Curved metal forceps |
| Permanent markers | Large magnet |
| Soap cleaner | Binoculars |
| 35 mm camera with flash | Optional digital camera with flash |
| Set of investigation forms | Yellow, blue, white, and red flag stakes |
| Aluminum nails (3 inch) for establishing reference | Hatchet |
| 12 inch ruler | Yardstick |
| Metal trowel | 14 inch stakes for lane search grids (at least 4) |
| Carpenters tape 20 foot | Lumber crayon |
| Spray paint | Secure storage bins for transport of evidence to evidence locker or crime lab |

The investigator is responsible to ensure that batteries, film, and all other incidentals are stocked in the kit at time of dispatch. The evidence collection tools should be cleaned and sealed in the kit prior to dispatch. The sealed kit should be photographed upon arrival at the fire scene.

Fire Investigation Forms List
Bureau of Indian Affairs
Wildland Fire Investigation Forms, 2005:

| Form Number | Form Name | Description |
|----------------------|--|---|
| BIA-FINV-FORM1-2005 | Wildland Fire Field Investigation Organizer (Includes Photo Log) | Fill this out in the field; this may be used as a “short form” if not completing a full written report. May need additional attachments such as evidence log. |
| BIA-FINV-FORM2-2005 | Fire Investigation Report | This is a template to follow in creating the final written report. |
| BIA-FINV-FORM3-2005 | Consent Form for Fire Scene Examination | Use on private property, or re-entering a site after initial attack |
| BIA-FINV-FORM4-2005 | Voluntary Statement Form | Use for witness, suspect, or anyone wishing to make a statement |
| BIA-FINV-FORM5-2005 | Juvenile Fire Report Form | Fill out for every suspected juvenile caused fire |
| BIA-FINV-FORM6-2005 | Juvenile and Adolescent Interview Permission Form | Use when ever speaking to juveniles or their parents |
| BIA-FINV-FORM7-2005 | Fire Trespass Product Appraisal, Costs, Damages Worksheet | Cost recovery as required by 25CFR § 163.29 and civil penalty on non forest lands |
| BIA-FINV-FORM8-2005 | Evidence Log | Fill out every time evidence is collected and include in final report or attach to Investigation Organizer if not doing long report |
| BIA-FINV-FORM9-2005 | Chain of Evidence Form | Use every time evidence changes hands |
| BIA-FINV-FORM10-2005 | Tire Track Report Form | Use in addition to photos and casts |
| BIA-FINV-FORM11-2005 | Shoe Print Report Form | Use in addition to photos and casts |
| BIA-FINV-FORM12-2005 | Supplement to the Investigation | Any supplemental facts, data, or pertinent information relative to the case that is not contained in the Report |

Note: All forms are in Microsoft Word format except the Investigation Organizer which is in Microsoft Excel (8 worksheets). Forms are in the Draft Wildland Fire Investigation Handbook.

Fire Field Investigation Organizer

Confidential / Protected Investigation Work Product Not For Public Release

Bureau of Indian Affairs

**Wildland Fire Field
Investigation Organizer**

Date:

Incident Name:

Incident Number:

Time:

Type of Incident:



Township: _____
Range: _____
Section: _____

Lat : _____
Long : _____

| Weather Readings and Size Up | | | | |
|------------------------------|--|--|--|--|
| Date | | | | |
| Time | | | | |
| Temp. Wet Bulb | | | | |
| Temp. Dry Bulb | | | | |
| RH percent | | | | |
| Wind Direction | | | | |
| Wind Speed | | | | |
| Elevation | | | | |
| Cloud Cover % | | | | |
| Thunderheads present? | | | | |
| Collected by: | | | | |

| Safety Checklist | |
|----------------------------------|-----------------------------|
| Safety must never be compromised | |
| | L ookouts |
| | Awareness |
| | Predicted Weather |
| | Fire Behavior |
| | Plan |
| | C ommunications |
| | E scape Routes |
| | S afety Zones |
| Y N | Police backup needed |

| Telephone Numbers | |
|-------------------|-------------------------|
| Person / Function | Telephone / Cell Number |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

| Fire Size Class | |
|-----------------|-------------------|
| Class | Size |
| A | 0-2 |
| B | .3-9 |
| C | 10 - 99 acres |
| D | 100 - 299 acres |
| E | 300 - 999 acres |
| F | 1000 - 5000 acres |
| G | 5000 + acres |

| RADIO NETS | | |
|---------------|-----------|------|
| Net | Frequency | Tone |
| Command | | Mhz |
| Support | | Mhz |
| Air-to-Ground | | Mhz |
| Air-to-Air | | Mhz |
| Tac | | Mhz |
| Tac | | Mhz |
| | | Mhz |
| | | Mhz |
| | | Mhz |

| Fire Complexity Level |
|-----------------------|
| 1 |
| 2 |
| 3 |
| 4 |

| Fuel Type |
|-----------|
| 1 Grass |
| 2 Shrub |
| 3 Timber |
| 4 Slash |

Nearest RAWS Unit: _____

Completed By: _____

Date: _____

BIA-FINV-FORM1-2005a

Fire Field Investigation Organizer

Bureau of Indian Affairs



FIRE INVESTIGATION FIELD REPORT

| | | | |
|---|-------------------------|--|--|
| 1. INCIDENT NAME | 2. DATE | 3. INCIDENT # | 4. # OF FIRES (Ignitions) |
| 5. INVESTIGATOR ARRIVAL DATE AND TIME: | | INVESTIGATOR DEPARTURE DATE AND TIME: | |
| 6. TIME FIRE WAS REPORTED: | | REPORTED BY: | |
| 7. ENROUTE TO FIRE, INFORMATION: | | | |
| a) Gates encountered: | Yes | No | Open Locked Forcible Entry |
| b) Vehicle/ People Descriptions: | Licenses Plate # | | # People |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| 8. LAW ENFORCEMENT / INVESTIGATOR REQUESTED: | | Yes | No |
| Law Enforcement Involved with the investigation Name(s)/Badge #: | | | |
| 9. FIRE SCENE INFORMATION: | | | |
| a) Vehicle Description: | Licenses Plate # | | # People |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| b) Witness Description: | Name | DOB | Drivers Lic # |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| 10. ORIGIN IDENTIFIED: | Yes | No | ORIGIN PROTECTED: Yes No |
| 11a. ORIGIN LOCATION (Specific): | | | |
| 11b. State or US Hwy | County Road | Tribal Road | Private Road |
| Trail | Parking Area | Distance from road or trail (in feet): | |
| 12. IGNITION SOURCE FOUND: | Yes | No | |
| 13. WHAT IS THE IGNITION SOURCE: | | | |
| 14. FIRST IN INITIAL ATTACK UNIT: | | | |
| 15. LAND STATUS: | Tribal Land | Private Land / Owner: | |
| Tribal Allottee: | | | |
| Other: | | | |
| 16. EVIDENCE DESCRIPTION: | Was Evidence Collected? | Yes | No (Attach Evidence Log if necessary) |
| | | | |
| | | | |
| | | | |

Completed By:

Date:

BIA-FINV-FORM1-2005c

Fire Field Investigation Organizer



Bureau of Indian Affairs

| FIRE INVESTIGATION FIELD REPORT Continued | | |
|--|------------------------------------|----------------|
| Fire Name: | Fire Number: | |
| 17. FIRE CAUSE / GENERAL: Enter "X" if possible cause or "O" if eliminated as a cause. | | |
| State reason for determination. | | |
| | X/O | Reason: |
| 01 / Lightning: | | |
| 02 / Campfire: | | |
| 03 / Smoking: | | |
| 04 / Debris Burning: | | |
| 05 / Incendiary: | | |
| 06 / Equipment Use: | | |
| 07 / Railroad: | | |
| 08 / Children: | | |
| 09 / Miscellaneous: | | |
| 10/ Unknown | | |
| 18. FIRE CAUSE / SPECIFIC: Circle the most probable cause. | | |
| Vehicle/ burn | Exhaust/ Power Saw | Exhaust- Other |
| Warming fire | Smoking | Trash / burn |
| Land clear | Slash / burn | Fireworks |
| Arson | Other: List if known or suspected) | |
| 19. Sketch OF GENERAL ORIGIN: | | |
| | | |
| Is follow up for cost recovery or damage assessment needed? Yes No | | |
| (Resource, physical property, personal injury, etc.) | | |
| Summary of Actions and recommendations: | | |
| | | |
| 20. INVESTIGATED BY: Name(s) Title(s) | | |
| Completed By: | | Date: |
| 21. COPIES OF THIS FORM DISTRIBUTED TO: | | |
| Name: | Date: | |
| Name: | Date: | |
| Name: | Date: | |

BIA-FINV-FORM1-2005d

Fire Field Investigation Organizer



Bureau of Indian Affairs Photo Log Wildland Fire Investigation

Incident Name: _____

Incident Number: _____

Date of Incident: _____ Person who took pictures: _____


Person who completed this form: _____

Camera Type: _____ Film Type: _____

ASA: _____ Roll Number: _____

| Photo Number | Description of Photo | Date | Time |
|--------------|----------------------|------|------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Fire Field Investigation Organizer

| | | |
|---|---------------------------------|-------|
|  | MAP SKETCH | |
| | Bureau of Indian Affairs | |
| Fire Number: | Fire Name: | |
| Not to Scale | | |
| Prepared By: | Position | Date: |

BIA-FINV-FORM1-2005f

Illustration 21

Page 6 of 7

Fire Field Investigation Organizer



Bureau of Indian Affairs

Field Investigation Checklist

Fire Name:

Fire Number:

| | |
|------------------------------|---|
| INVESTIGATORS AT SCENE | Lead Investigator: <input type="text"/> |
| | Others: <input type="text"/> |
| | <input type="text"/> |
| | <input type="text"/> |

ASSIGNMENTS

| | | |
|--------------------------|--|--|
| <input type="checkbox"/> | Record Date and Time of Dispatch | |
| <input type="checkbox"/> | Collect Dispatch Log and Location information | |
| <input type="checkbox"/> | Log Time when you arrived at the Scene & Identify those present | |
| <input type="checkbox"/> | Secure Scene | |
| <input type="checkbox"/> | Interview Witnesses | |
| <input type="checkbox"/> | Check Ingress and Egress routes, check for tire tracks and foot prints | |
| <input type="checkbox"/> | Identify Land Owner and secure permission to search | |
| <input type="checkbox"/> | Interview Renter / Owners | |
| <input type="checkbox"/> | Interview Firefighters | |
| <input type="checkbox"/> | Interview person calling in the alarm | |
| <input type="checkbox"/> | Take and Record Weather Conditions | |
| <input type="checkbox"/> | Check outside of Scene | |
| <input type="checkbox"/> | Photographs | |
| <input type="checkbox"/> | Photo Log | |
| <input type="checkbox"/> | Field Sketch | |
| <input type="checkbox"/> | Flag Burn Indicators | |
| <input type="checkbox"/> | Define Origin | |
| <input type="checkbox"/> | Rule out the Cause Classes | |
| <input type="checkbox"/> | Flag All Evidence | |
| <input type="checkbox"/> | Photograph Evidence | |
| <input type="checkbox"/> | Collect & Process Evidence | |
| <input type="checkbox"/> | Maintain Evidence Log | |
| <input type="checkbox"/> | Lane Search & Magnet | |
| <input type="checkbox"/> | Establish Reference Points | |
| <input type="checkbox"/> | Permission Forms | |
| | | |
| | | |
| | | |

Completed By:

Date:

BIA-FINV-FORM1-2005g



--CONFIDENTIAL--

U.S. Department of the Interior
Bureau of Indian Affairs
Fire Investigation Report

Confidential/Protected Investigation Work Product
Not for Public Release

(Suggested template, there may be several pages per heading)

INCIDENT NAME:

INCIDENT NUMBER:

DATE OF INCIDENT:

TIME INCIDENT REPORTED:

LOCATION:

PERSON WRITING REPORT:

SUMMARY:

DISPATCH INFORMATION:

CONTACT INFORMATION:

INVESTIGATION:

PROPERTY AND EVIDENCE:

FINDINGS:

(These are examples, will need to expand on these for each incident)

1. The local forestry/fire staff reports no lightning in the areas of the suspicious fires on the ignition dates.
2. There were no campfires in the fire areas.
3. There were no railroad tracks in the area of any of the suspicious fires.
4. There was no evidence of a power line caused ignition in or near the area of the fires.
5. No heavy equipment or farm equipment was observed in use around the fire scene at the time of the fires.
6. There was no evidence of people in the area burning debris.
7. The points of origins were near main or secondary highways or often traveled roads, however the fuel conditions and pattern of ignition do not indicate a brake fire (compression brakes or converter caused).
8. There were no electric fences in or near the fire area.
9. Based on site visits and interviews, the fires appear to be man-caused, deliberate ignition.

This case should remain open pending the development of suspect(s) and motive(s) for these fires.

OBSERVATIONS AND CONJECTURE:

RECOMMENDATIONS:

DAMAGES AND COST RECOVERY:

ATTACHMENTS: (modify as needed):

SUBMITTED BY:

I certify that the information in this investigation report and related attachments is true and accurate to the best of my knowledge and belief.

Name and Title of Investigator, Address, and Phone

BIA-FINV-FORM2-2005

Page 1 of __

Illustration 22

Page 1 of 1



**U.S. Department of the Interior
Bureau of Indian Affairs
Consent Form for Fire Scene Examination**

**Confidential/Protected Investigation Work Product
Not For Public Release**

I, _____, HAVE BEEN REQUESTED TO CONSENT TO AN EXAMINATION OF MY PROPERTY LOCATED AT

(FULL DESCRIPTION AND EXACT ADDRESS OF PROPERTY)

THE FIRE SCENE EXAMINATION WILL BE CONDUCTED IN ORDER TO DETERMINE THE ORIGIN, CAUSE AND CIRCUMSTANCES SURROUNDING A FIRE / EXPLOSION WHICH OCCURRED ON THIS PROPERTY ON

_____ (MONTH) (DAY) (YEAR) (Time)

I AM THE LAWFUL OWNER / OCCUPANT OF THIS PROPERTY. I HAVE BEEN ADVISED OF MY CONSTITUTIONAL RIGHTS TO REFUSE ANY FURTHER ENTRY, AND TO REQUIRE THAT A SEARCH WARRANT BE OBTAINED PRIOR TO ANY EXAMINATION.

I HAVE BEEN FURTHER ADVISED THAT IF I DO CONSENT TO AN EXAMINATION ANY EVIDENCE FOUND AS A RESULT OF SUCH EXAMINATION CAN BE SEIZED AND USED, IN A COURT OF APPROPRIATE JURISDICTION, AND THAT I MAY WITHDRAW MY CONSENT AT ANY TIME PRIOR TO THE CONCLUSION OF THE FIRE / EXPLOSION SCENE EXAMINATION, AND I AUTHORIZE:

_____ (NAME) (RANK OR TITLE) (BADGE OR STATION)

TO CONDUCT A COMPLETE FIRE / EXPLOSION EXAMINATION OF THE HEREIN DESCRIBED PROPERTY. FURTHER PERMISSION IS GRANTED TO REMOVE FROM THIS PROPERTY ANY DOCUMENTS, PAPERS, OBJECTS, OR MATERIALS DEEMED PERTINENT TO THE INVESTIGATION OF THE FIRE / EXPLOSION.

_____ (SIGNATURE OF PERSON GRANTING CONSENT) _____ (DATE) _____ (TIME)

WITNESSES:

_____ SIGNED DATE

_____ SIGNED DATE _____ CASE # OR FIRE #



**U.S. Department of Interior
Bureau of Indian Affairs
Juvenile Fire Report Form**

**Confidential/Protected Investigation Work Product
Not For Public Release**

*Report each fire incident that involved a juvenile
This form accepts information on a maximum of 4 juveniles per incident.*

Update **Check if this is an update of a prior report**

Person completing Report _____ Title _____
 Date of incident ___ / ___ / ___ Time of incident _____ Date of report ___ / ___ / ___
 Incident Location _____ Fire # _____

Juvenile #1 Name _____ Age _____ Gender **M** **F**
 Juvenile #2 Name _____ Age _____ Gender **M** **F**
 Juvenile #3 Name _____ Age _____ Gender **M** **F**
 Juvenile #4 Name _____ Age _____ Gender **M** **F**

| | |
|---|---|
| <p>Where did the incident take place?</p> <p>Yard near home Vacant lot Mailbox <input type="checkbox"/> Wildland <input type="checkbox"/> Vehicle <input type="checkbox"/> Steet/alley/sidewalk <input type="checkbox"/> School <input type="checkbox"/> Dumpster/trash <input type="checkbox"/> Structure, identify _____ <input type="checkbox"/> Other, identify _____</p> | <p>What was ignition source?</p> <p>Fireworks <input type="checkbox"/> Matches <input type="checkbox"/> Lighter <input type="checkbox"/> Candles <input type="checkbox"/> Flares <input type="checkbox"/> Explosive device (bomb) <input type="checkbox"/> Electrical device Other _____</p> <hr/> <p>Accelerant used? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Where was the ignition source obtained?</p> <p>Home <input type="checkbox"/> Convenience store <input type="checkbox"/> Grocery store <input type="checkbox"/> Other store <input type="checkbox"/> School <input type="checkbox"/> Other person, identify _____ <input type="checkbox"/> Other _____</p> | <p>What material was ignited or attempted?</p> <p><input type="checkbox"/> Paper, tissue, cardboard <input type="checkbox"/> Part of a building <input type="checkbox"/> Fireworks/explosives <input type="checkbox"/> Toys <input type="checkbox"/> Trash/leaves/grass/twigs <input type="checkbox"/> Bushes/trees/shrubs <input type="checkbox"/> Agricultural crops <input type="checkbox"/> Animals <input type="checkbox"/> Other _____</p> |
| <p>Were parent(s) interviewed? Yes <input type="checkbox"/> No <input type="checkbox"/> Evidence of previous firesets? Yes <input type="checkbox"/> No <input type="checkbox"/> Was a fire prevention/safety message given to Juvenile(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No Parents(s)? Yes No</p> | <p>Recommend counseling? Yes <input type="checkbox"/> No <input type="checkbox"/> Recommend legal action? Yes <input type="checkbox"/> No <input type="checkbox"/> List any referrals:</p> |

Other comments and observations:



U.S. Department of Interior
Bureau of Indian Affairs
Juvenile and Adolescent Interview Permission Form

Confidential/Protected Investigation Work Product
Not For Public Release

I give permission for _____ to discuss events and circumstances
(Name of interviewer/investigator)

relating to the wildland fire(s) which occurred on or about _____,
(Date)

with _____.
(Name of child)

(Signature of adult) (Date)

(Printed name of adult)

Parent Guardian Grandparent Other _____

I give permission for release of information from this interview to child's teacher, counselor, or other authorities as appropriate.

(Signature of adult) (Date)

I **do not** give permission for release of information from this interview to child's teacher, counselor, or other authorities as appropriate.

(Signature of adult) (Date)



**Bureau of Indian Affairs
Fire Trespass Product Appraisal, Costs, Damages Worksheet**

**Confidential/Protected Investigation Work Product
Not For Public Release**

| Damage or Cost Category | Description | Affected Timber Species, Resource, Activity | Resource Product | Unit of Measure | Net Measure | Appraised Price | Value | Total Costs* |
|---|--------------------|--|-------------------------|------------------------|--------------------|------------------------|--------------|---------------------|
| Forest Products (Triple Damages) | | | | | | | | |
| Interest on Triple Damages to Forest Products | | | | | | | | |
| Cost Recovery on Forest Products | | | | | | | | |
| Forest Resources | | | | | | | | |
| Non-Forest Products on Non-Forested acres | | | | | | | | |
| Loss of Non-Timber Forest Resources | | | | | | | | |
| Detection | | | | | | | | |
| Suppression | | | | | | | | |
| Post-Suppression | | | | | | | | |
| Investigation & Report | | | | | | | | |
| Damage Collection | | | | | | | | |
| Erosion Control/Stabilization | | | | | | | | |
| Site Preparation | | | | | | | | |
| Planting/Seedlings | | | | | | | | |
| Lost Future Revenue (discounted to time of trespass) | | | | | | | | |
| Lost productivity | | | | | | | | |
| Other Rehabilitation | | | | | | | | |
| Other Damages | | | | | | | | |
| Total Penalty | | | | | | | | |

* Total Costs should include overhead, setup, administration, other prep costs. Itemize these on separate sheet



**Bureau of Indian Affairs Fire Scene
Evidence Log**

**Confidential/Protected Investigation Work Product
Not For Public Release**

Fire Number _____

Fire Ignition Date _____

Location where evidence was collected _____

Purpose for which evidence was collected _____

Evidence/property owner _____

| Evidence item Number | Quantity | Description of Evidence | Date of Collection | Time Collected | Collected by | Date signed into Evidence Control |
|----------------------|----------|-------------------------|--------------------|----------------|--------------|-----------------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |



**Bureau of Indian Affairs Chain of
Evidence Form**

**Confidential/Protected Investigation Work Product
Not For Public Release**

Fire Number _____ Date of Fire _____ Fire Location _____

| Property Number | Date | Time | Relinquished By (Name & Agency) | Received By (Name & Agency) | Description of Property & Purpose for Change of Custody |
|-----------------|------|------|---------------------------------|-----------------------------|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |



U.S. Department of Interior
Bureau of Indian Affairs
Tire Track Report Form

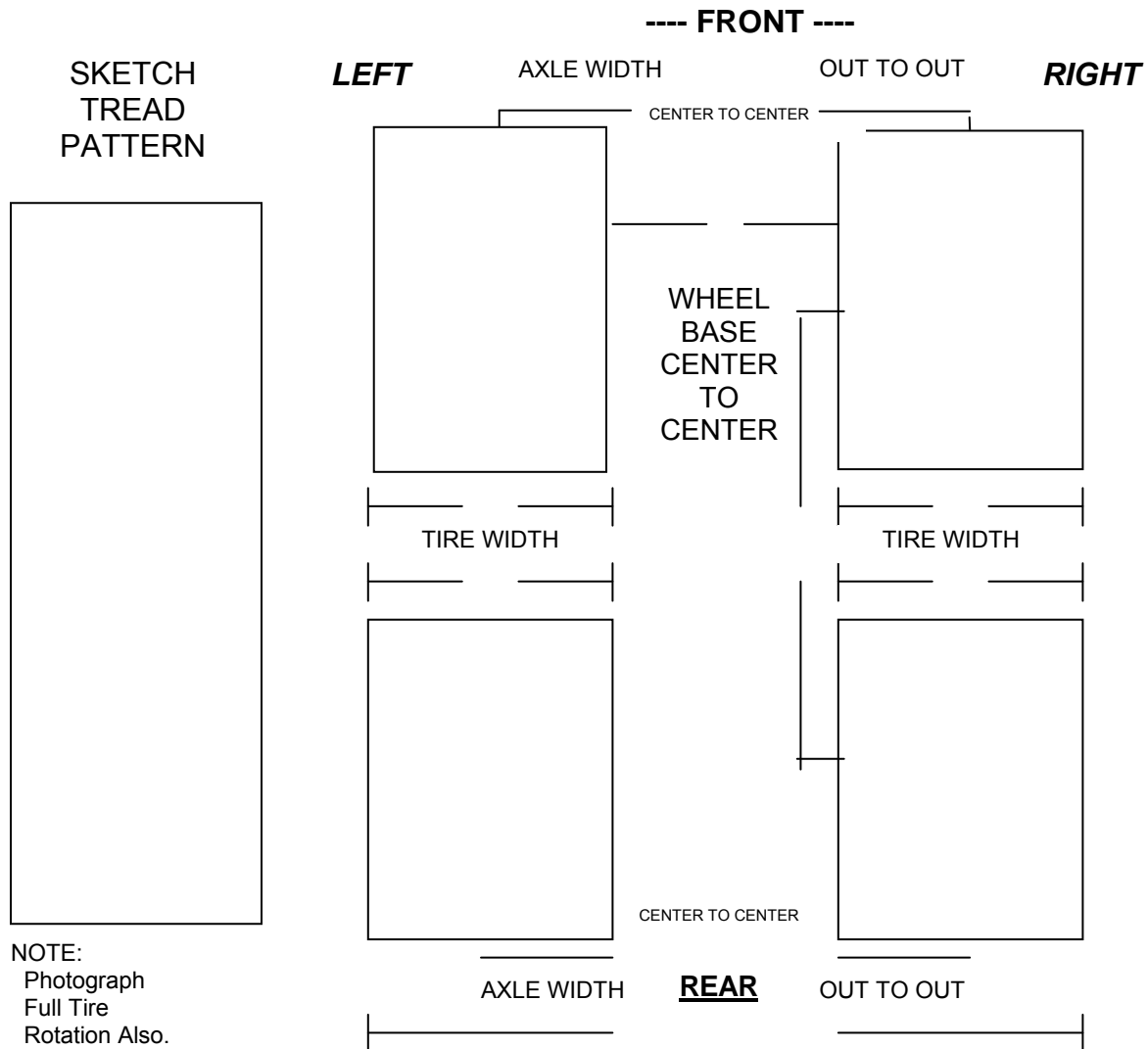
Confidential / Protected Investigation Work Product
Not For Public Release

FIRE NUMBER: _____

FIRE NAME: _____

DATE: _____

INVESTIGATOR: _____



NOTE:
Photograph
Full Tire
Rotation Also.



U.S. Department of Interior
Bureau of Indian Affairs
Shoe Print Report Form

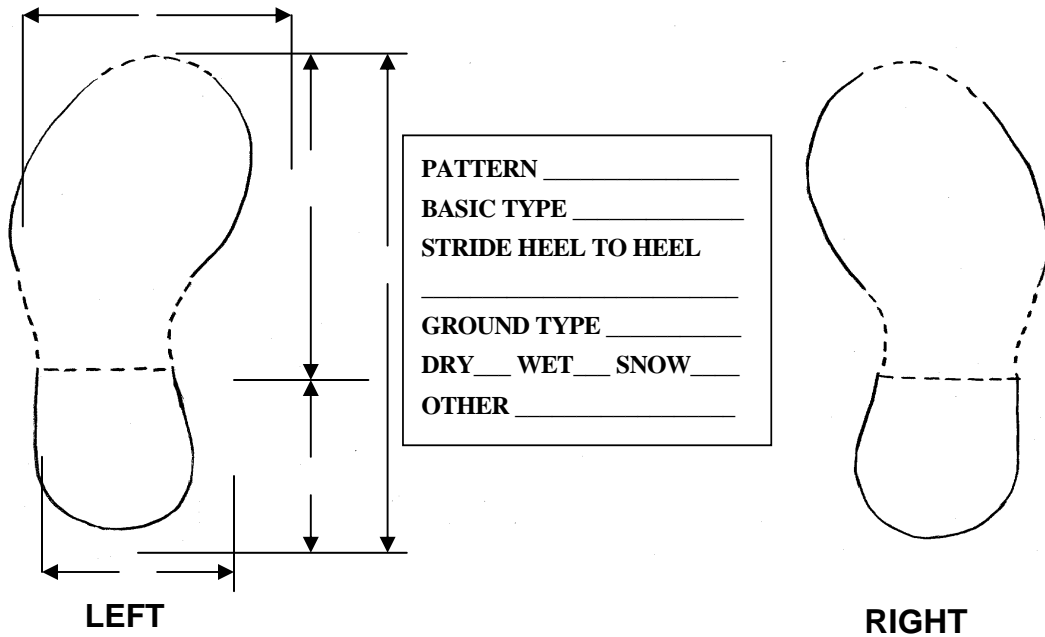
Confidential / Protected Investigation Work Product
Not For Public Release

Fire Number: _____ Date of Fire: _____

Date and Time of Data Collection: _____

Location of Print: _____

Investigator: _____



REMARKS:



**U.S. Department of Interior
Bureau of Indian Affairs
SUPPLEMENTAL INVESTIGATION REPORT**

**Confidential/Protected Investigation Work Product
Not For Public Release**

INCIDENT NAME:

INCIDENT NUMBER:

LOCATION OF INCIDENT, Section: ___ Township: ___ Range: ___ Lat: ___ Lon: ___

DATE OF INCIDENT:

INCIDENT COMMANDER:

INVESTIGATOR:

LANDOWNER:

SUPPLEMENTAL INVESTIGATION/INFORMATION:

LIST ATTACHMENTS:

SUBMITTED BY:

I certify that the information contained in the foregoing investigation supplemental report is true and accurate to the best of my knowledge and belief.

Signature

Date

Address:

Phone:

Trespass Damage and Costs Worksheet

Trust Asset Value:

Species/Product 1, fair market value\$ _____
 Species/Product 2, fair market value\$ _____
 Total, fair market value\$ _____

Triple value (total fair market value plus double value penalty).. Subtotal \$ _____

Interest (based on treble stumping)¹ : _____%/day X _____ days X \$ _____ = \$ _____

Resource Costs:

Rehabilitation:

Roads \$ _____
 Skid trails & landings \$ _____
 Soil Stabilization \$ _____

Reforestation:

Site preparation \$ _____
 Seedlings \$ _____
 Planting \$ _____
 Release \$ _____
 Other (specify) \$ _____

Lost future revenue \$ _____

Lost profit \$ _____

Loss of productivity \$ _____

Damage to other resources \$ _____

Subtotal \$ _____

Enforcement Costs:²

Field examination/survey \$ _____

Damage appraisal \$ _____

Investigation \$ _____

Investigation Reports \$ _____

Witness expenses \$ _____

Demand letters \$ _____

Court costs determined by others

Attorney fees determined by others

Subtotal \$ _____

Total \$ _____

1. This is an estimate applied to the triple value of the trust asset. The true value will be calculated at the time of settlement.
 2. Wages used in calculations should not include employee benefit costs.

FIRE TRESPASS Product Appraisal, Costs and Damages Worksheet Example

| Damage, Loss or Cost Category | Description | Affected Species Resources, Activity | Resource Product | Unit of Measure | Number of Units | Appraised Price | Value | Total Cost ¹ |
|--|--|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|-------------------------|
| Forest Products ² | Fire killed green timber | Spruce | Saw logs | MBF | 2 | \$450.00 (tripled) | \$900.00 | \$900.00 |
| Ag. Products, non-forest acres ² | Hay field | Mowed brome/fescue hay | Cut hay | Acre | 5 | \$100.00 (tripled) | \$500.00 | \$500.00 |
| Interest on Triple Damages ³ | Interest from time of trespass @ 3%/yr | Spruce & Mowed Hay | Saw logs Hay | Days | 90 | .00822 % /day x \$1400 | \$10.36 | \$10.36 |
| Value Recovered - Product sales | Salvaged dead tmbr (1/3 the green rate) | Spruce | Saw logs | MBF | 2 | \$50.00 | \$100.00 | (\$100.00) |
| Other Forest Resources | Seed orchard – lost production | Fir | Cones | Bushel | 50 | \$100.00 | \$5,000.00 | \$5,000.00 |
| Non-Timber Forest Resources | Berry gathering – 1 year lost production | Huckleberries | Permit income | Quart | 500 | \$2.00 | \$1,000.00 | \$1,000.00 |
| Detection ¹ | Witness expenses | Lost wages & travel costs | NA | Hour | 5 | \$15.00 | \$75.00 | \$125.00 |
| Suppression ¹ | Ground attack & mop-up | Engine & crew | NA | Hour | 20 | \$25.00 | \$500.00 | \$500.00 |
| Post Suppression ¹ | Mapping, analysis & prescription prep. | Unplanned work | NA | Hour | 20 | \$20.00 | \$400.00 | \$600.00 |
| Investigation and Report ¹ | Origin and cause determination | Fire Investigator and LEO | NA | Hour | 40 | \$20.00 | \$800.00 | \$2,000.00 |
| Damage Collection ¹ | Various admin costs, damage appraisal | Demand letters, reports , etc. | NA | Hour | 2 | \$20.00 | \$40.00 | \$40.00 |
| Erosion Control and Stabilization | Aerial grass seeding, road work | Soil stabilization | NA | Acre | 6 | \$75.00 | \$450.00 | \$450.00 |
| Site Preparation | Fuel load reduction prior to plant | Improve survival, reduce hazard | NA | Acre | 5 | \$200.00 | \$1,000.00 | \$1,000.00 |
| Immature Timber - Seeding/Sapling | Reestablish fire killed plantation | Pine @ 400/ac | Seedlings | Acre | 10 | \$400.00 | \$4,000.00 | \$4,000.00 |
| Lost/Delayed Future Revenue ⁴ | Lost revenue due to extended rotation | Pine -14 years discounted @ 3% | Wood products | Acre | 6 | \$785.00 | \$4,710.00 | \$4,710.00 |
| Lost Income | Range permit canceled – 1 yr | Range use | Grazing | Unit permit | 1 | \$500.00 | \$500.00 | \$500.00 |
| Other Site Rehabilitation | Install check dams | Surface water quality | Water | Structure | 4 | \$300.00 | \$1,200.00 | \$1,200.00 |
| Damage to Improvements & Other | Fence restoration – repair damage | Barbed wire fence | NA | Contract | 1 | \$1,000.00 | \$1,000.00 | \$1,000.00 |
| Total | //////////////////////////////////// | //////////////////////////////////// | //////////////////////////////////// | //////////////////////////////////// | //////////////////////////////////// | //////////////////////////////////// | //////////////////////////////////// | \$23,435.36 |

NOTE: This worksheet is based on BIA-FINV-FORM7-2005 in Illustration 27 of this handbook.

1. Total costs should include overhead, setup, administration and other prep. costs. Itemize these on a separate sheet.
2. Apply triple damages for Appraised Price (highest appraised rate plus a penalty of twice the highest appraised price).
3. Use appropriate Current Value of Funds Rate as published in the Federal Register or obtained from the Department of the Treasury website:<http://fms.treas.gov/cvfr/index.html>. Also refer to Illustration 18 in this Appendix.
4. Future revenue discounted to the time the trespass occurred. Calculate on a separate sheet.

Procedures for preparation of a criminal and/or civil case of fire trespass
occurring on tribal trust land:

1. *A qualified investigator should complete a thorough and accurate origin and cause investigation as soon as possible after ignition, consistent with National Fire Protection Association (NFPA) 921 standards and procedures.*
2. A qualified natural resource staff member should make a forest resource damage determination and an accurate damaged acreage assessment.
3. The investigator should complete an origin and cause report including suspect(s) name.
4. A timber trespass report should be completed by a qualified natural resource staff member, or by the origin and cause investigator in consultation with a qualified staff member. Reference to the Federal law governing Indian timber can be found in the National Indian Forest Resource Management Act (NIFRMA), 25 U.S.C. §§ 3101 to 3120.
 - A. An analysis of re-establishment treatments and costs for the damaged portion of the stand should be made.
 - B. When a fire kills or damages forest products prior to maturity, growth must be calculated up to the date when the stand would have been deemed economically “mature”, appraised at that point to arrive at a total stand value, and then discounted back to the time of the trespass.**
 1. Site Index data for the damaged stand will be needed, projected tree heights can be calculated from this data.
 2. Rotation age (if even age management) and final harvest method should be determined for the managed stand if it had not been damaged.
 3. Intermediate harvests such as commercial thinning that would have occurred in the managed stand if it had not damaged should be determined.
 4. Reasonable current market, stumpage and pulpwood prices should be determined for the timber damaged.
 5. Managed stand yield tables should be developed for the damaged portion of timber stand.
 6. Calculations of volume and value removed through one rotation should be made on the damaged portion of the stand.
 7. A stumpage inflation factor should be used to project future values of damaged timber.
 8. Calculate present net values of damaged timber, discounted back to the time of trespass, using the formula $PV = \text{Expected future value} / (1 + \text{interest rate})^n$, where $n = \text{years}$. For example, a managed stand destroyed at age 12 that would have first commercial entry projected for stand age 30, would use $n = 44$. The stand will not be available for harvest until 44 years (12 years of stand growth plus two years of establishment time plus age 30).
 - C. A summary of recoverable damage costs should be calculated.
 1. Plantation re-establishment costs, Triple discounted timber value loss in damaged portion of stand, timber value loss due to delayed establishment, all wildfire suppression costs associated with the unauthorized ignition, all investigation and trespass report preparation costs, and other related costs should be calculated.
 2. A summary report of the trespass calculations, methodology, and assumptions should be completed and signed by a qualified forestry staff member.
 - D. In consultation with the federal solicitor, a demand letter of recoverable costs should be sent by certified mail to the suspect(s) identified in the origin and cause investigation.

CIVIL versus CRIMINAL TRESPASS

A. Determination. In determining whether to charge a trespasser with civil or criminal liability remember that one is not a substitute for the other. In appropriate cases, the Government may want to proceed with both a criminal charge and a civil suit.

A fine, when levied in a criminal case by the Government, is a *punishment*. The fine is received and held by the Government in its sovereign capacity. It is *not* an offset against the civil liability of the trespasser. Money obtained by the Government in a civil suit is to compensate for *damages*. Damages claimed by the Government because of its position as trustee of Indian property and are generally then paid to the landowner whose property rights were violated. If both a criminal charge and a civil suit are pursued, the criminal case will usually be prosecuted first. If a conviction can be made under the higher standard of proof applicable to the criminal case, the judgment will legally establish the defendant's liability in a subsequent civil case.

Successful prosecution of a civil trespass case requires proof by a preponderance of the evidence that the defendant committed the trespass and caused a specific and demonstrable amount of damage to the owners. The intent of civil prosecution is to recover damages suffered by the injured party. Damages may be recovered from the trespasser and/or the purchaser of forest products cut in trespass. The solvency of the trespasser is of great concern in the civil case. The government cannot collect from a trespasser who has no assets, regardless of how guilty or liable the latter may be.

Successful prosecution of the criminal trespass case requires proof beyond a reasonable doubt that the defendant(s) committed the criminal act(s) with which charged. The intent of criminal prosecution is to punish the trespasser and act as a deterrent for similar offences. Any money receipts taken in fines or damages go to the U.S. Treasury or go towards restitution to the Indian land owner as ordered by the court. In order for the Indian owner(s) to recover damages, a civil action must be filed.

B. Who Investigates. Investigation of civil damages will be undertaken by the agency responsible for the management of Indian Trust lands in which the trespass occurred (Bureau or tribe under contract/compact). In criminal cases the investigation will usually be undertaken by the FBI. In some instances, particularly those involving smaller cases, the FBI may take a criminal case that was investigated primarily by the Bureau or tribe. In any event, the office that first investigates a case should continue to exercise responsibility for the investigation until it is clearly relieved of that responsibility by another agency.

C. Privilege Against Self-Incrimination. In a criminal case, a defendant has the privilege against self-incrimination. In a civil case, a defendant has the burden of rebutting the presumption that he/she was responsible for unlawful cutting. In a criminal case the Government must establish all of the elements of the offence, including the element of willfulness, by its own investigation, and must establish it beyond a reasonable doubt.

D. Establishing Damages. In a civil case the Government must establish its damages by a preponderance of the evidence with reasonable certainty. This means that to get a judgment it must be shown that the defendant cut timber without authority and that the Indian owners suffered damages in the amount submitted. In a criminal case it is not necessary to show the precise degree of damages suffered by the Indian owners. There are occasions in a criminal case however, when a judge will impose a sentence and then suspend it on the condition that the defendant makes restitution in the amount of damages.

E. Solvency of the Trespasser. In a criminal case it does not matter whether the defendant is solvent or not. In a civil case solvency is a matter of great concern. The government cannot collect from a trespasser who has no assets, no matter how liable he might be.

F. Extradition of the Trespasser. The criminal defendant can be apprehended in any state in which he can be found, and be returned to the scene of his crime to stand trial. A civil defendant, however, cannot be brought back to the court district of the trespass.

G. Election of Remedies. In a criminal case the Government's remedy is limited to those parties that are willfully and criminally at fault. Remedies cannot be obtained from parties that were innocent converters of trespass property or unjustly enriched adjacent landowners. In a civil case the Government frequently can obtain a fairly wide variety of remedies from a number of these alternative parties.

VII. TRESPASS (TR) – Trust Funds

- A. TR COLLECTIONS** - See Flow Chart (*TR-9*). Trespass funds are usually associated with timber trespass payments. Trespass payments from adjudicated actions or undisputed settlements where the amount is known are deposited in a Trust Funds Accounting System (TFAS) account. These funds are held in an “TR__FR_” account and may be in the form of a cash payment or funds transferred from an Federal Finance System (FFS) account or another TFAS account/asset when the trespass resulted from an active timber sale on an adjacent trust property.

(Note: Trespass funds collected pending final adjudication or under appeal are not considered trust funds and must be deposited in a non-trust Escrow account in FFS.)

The Office of the Special Trustee (OST) establishes one Trespass (TR) account for each trespass – even if there are multiple parties responsible for the trespass.

Forest Management Deductions (FMD) are assessed against the gross proceeds (amount recovered less restoration and enforcement costs) collected on a trespass.

1. Cash Collections

If payments are made after the trespass occurs, the responsible party/parties pay the assessed damages in full, and there are no restoration and/or enforcement charges; then it may be possible to pay the beneficial landowner (tribal lands only) without depositing the funds in a TR account. Payments for allotment trespasses cannot be disbursed directly to the landowners and must go through a TFAS account.

There are two options for depositing cash payments; either 1) Make direct distribution to a tribe without utilizing the TR account (Tribal lands only), or 2) deposit funds into the TR account before making disbursements. Forestry determines which option to use.

a. Direct Distribution Option (Tribal Lands only).

(Note: If there is no Agency OST office, then the Regional OST office also performs Agency OST functions.)

- 1). Payer mails remittance to Lockbox. Image of check, envelope and contents are made. Images available next day to Agencies by accessing Trust Funds Receivable (TFR) system via Extranet. BIA Agency prints copies of checks and worksheets and gives to Forestry.
- 2). Forestry identifies the amount of money to be deposited in the Tribal FM account for the Forest Management Deductions portion of the payment and the amount of the remaining portion of the payment to be deposited directly into the Tribal PL account (both to be accomplished without going through the TR account). Forestry adds this disbursement information to the Account section of the worksheet, has BIA Collection Officer sign, makes copy for trespass file and submits it to the OST Collection Officer.

- 3). The OST Collection Officer enters the payment information into CSS, or if CSS not available, prepares work tickets. OST faxes collection package to Albuquerque for further processing.
- 4). Local OST and Forestry should check the posted transaction screens on the computer system to verify the accuracy of deposits.

b. Deposit into a TR account in TFAS.

(Note: If there is no Agency OST office, then the Regional OST office also performs Agency OST functions.)

- 1). Payer sends remittance to Lockbox. Check, envelope and contents is imaged. Remittance images available next day to Agencies by accessing Trust Funds Receivable (TFR) system via Extranet. Agency prints copy of check and worksheet, gives to Forestry to prepare collection for posting to TFAS.
- 2). Forestry determines if there is a Trespass (TR) account setup for the respective Depositor (each trespass must have a separate account or accounts. If no TR account(s), then Forestry requests a new account(s) from OST by providing the information contained in Section II.A.3 of this handbook by email or hard copy.
- 3). Forestry identifies the money to be deposited in the TR account and adds this disbursement information to the Accounting section of the worksheet, BIA Collection Officer signs, Forestry makes copy for trespass file and submits it to the OST Collection Officer.
- 4). The OST Collection Officer enters the payment information into Customer StrataStation (CSS), or if CSS is not available, prepares work tickets. OST faxes collection package to Albuquerque for further processing in TFAS.
- 5). Local OST and Forestry should check the posted transaction screens on the computer system to verify the accuracy of the deposits.

2. **Transferred from FFS to an Trespass (TR) TFAS Account** - Funds may be transferred from a Performance Bond (PB) account when a trespass occurs on trust property adjacent to a trust timber sale and is caused by the actions of the purchaser. Funds may also be transferred from an Escrow (ES) account in FFS after adjudication or settlement of a trespass.

(Note: If there is no Agency OST office, then the Regional OST office also performs Agency OST functions.)

- a. Forestry requests a new account from OST by providing the information contained in Section II.A.3 of this handbook to OST by email or hard copy. OST will establish one account for the trespass – not an account for each trespasser.
- b. Forestry prepares the Voucher and Schedule of Withdrawals and Credits (SF-1081) (**Appendix 2**), to transfer funds. Add the following statement to

BIA Forestry Collections and Distributions Handbook, Section VII, Sept. 2002; (Jan. 2006)

the top of the form, "For IPAC Processing." Forestry also attaches a copy of the original Bill for Collection (DI-1040) and a copy of the FFS Suspense Deposit Record showing the original deposit. The preparer, Forester, and BIA Line Officer sign the SF-1081.

Note: Describe the transfer in the "Details of Charges" section of the SF-1081, add the date next to the "Approved By" line, and add your FAX number to the telephone line.

- c. Forestry gives copies of SF-1081, backup documents and attachments to local OST. OST prepares work tickets/or enters into CSS. Puts package into pending IPAC/OPAC file, until notified by Albuquerque of PC#, date. Local OST adds PC#/date onto work tickets or into CSS. Faxes package to Albuquerque for further processing.
- d. Forestry completes the Authorization to Disburse section of the Suspense Deposit Record in the SDS Lotus Notes Database – which will serve as the notification to the Deputy Assistant Secretary - Management (DASM) office. If Lotus Notes is not accessible, then the Agency/Field Station must fax the notification to the DASM Deposit Fund Desk at 703-390-6570 or wait until the system is available again.
- e. The Intergovernmental Payroll and Collection (IPAC) Unit will process the IPAC transfer through entries in the IPAC System, record the disbursement in FFS, and notify OST by FAX (505-248-5700) or email of the transaction amount and IPAC Bill number.
- f. DASM will update the Lotus Notes Database by completing the FFS Verification of Disbursement section of the Suspense Deposit Record screen with the FFS disbursement data. Once the transfer is complete the Suspense Deposit Record is no longer available for viewing by Forestry.
- g. Each month, the Regional Director or designated representative will reconcile information from the Agency disbursement notification and the BIA 450 report to ensure that both FFS and the BIA 450 report accurately reflect actual disbursements.

- B. TR Distributions** - See Flow Chart (*TR-10*). Trespass funds (less forest management deductions and rehabilitation/restoration/enforcement costs) are paid to the beneficial landowners through a transfer to either the Tribe's PL account or to the allottees IIM accounts.

Trespass rehabilitation/restoration and enforcement costs are paid to the enforcement agency as provided for in 25 CFR § 163.29.

This account is a dual cash account and interest should follow principal at the time of distribution for the forest Management deductions and payments to the landowner(s); however, the rehabilitation/restoration/enforcement payments should not include interest. The proper percentage of principal and interest for Forest Management Deductions (FMD) are based on the gross proceeds of the trespass; however, FMD will not be withheld if less than the highest stumpage value is recovered.

1. **Disburse rehabilitation/restoration and enforcement costs (without interest) to the enforcement agency (if applicable) – TFAS to FFS transfer.**

- a. Forestry prepares the Voucher and Schedule of Withdrawals and Credits (SF-1081) (**Appendix 2**), to transfer funds. Add the following statement to the top of the form, “For IPAC Processing.” The preparer, Forester, and BIA Line Officer sign the SF-1081 and send it and a copy of the original Bill for Collection (DI-1040) to the Agency/Regional OST Office.

Note: Describe the transfer in the “Details of Charges” section of the SF-1081 and add the date next to the “Approved By” line and include the FAX number with the Telephone number.

- b. The Agency/Regional OST Office will either certify the SF-1081 or forward the package to the appropriate OST Officer to certify the SF-1081.
- c. The authorized OST officer will sign/certify the SF-1081 and FAX the transfer package to the DAM Intergovernmental Payment and Collection (IPAC) Unit at 703-390-6570. OST will also fax a copy of the certified SF-1081 to the originating Forestry office.
- d. Upon receipt of the certified SF-1081, Forestry enters the collection information in the Suspense Deposit Record in the Lotus Notes SDS Database. If Lotus Notes is not accessible, then the Agency/Field Station must fax the notification to the DAM Deposit Fund Desk at 703-390-6570 or wait until the system is available again.
- e. The DASM IPAC Unit will process the IPAC transfer through entries in the IPAC System, record the collection in FFS, and notify OST and the originating Forestry Office by FAX or email of the transaction amount and IPAC Bill number.

2. **Disbursement for Tribal Trust Lands** - The proper percentage for Forest Management Deductions (FMD) are transferred to the appropriate “FM ___ FR ___” account (*See Section IX pages FM-1 to 8*) and to the Tribes’ Proceeds of Labor (PL) account as described below.

(Note: If there is no Agency OST office, then the Regional OST office also performs Agency OST functions.)

- a. Forestry prepares the Intra Bureau Cash Transaction Authorization form (BIA-4285/BF-349) (**Appendix 6**). The completed form is signed by the BIA line officer and forester and provided to Agency OST along with copies of the Transaction Record (TR) and Holding (HO) screens from TFAS. If the total trespass amount has not been received, then the transaction description under the Information section must include instructions to, **“Include overnight interest to payment date.”**

(NOTE: If all funds have been received and it is the final payment from the account, then the Transaction description under the Information section must include instructions to, **“Include overnight interest to payment date and close account.”**)

(Note: The BB number may be assigned by either the Agency Regional Office – depending on established procedures.)

- b. Agency OST checks CT #'s, balances, and calculations. If all in order, the BIA-4285 is signed by OST Fiduciary Trust Officer. (If not correct, package is returned to forestry for correction).
- c. Agency OST prepares work tickets and faxes the form and work ticket to Albuquerque OST.
- d. Albuquerque OST adds interest, processes the disbursements, and closes the account (if applicable).
- e. Agency OST verifies the interest amounts for the transactions, adds them to the copies of the certified BIA- 4285 and provides copies to Forestry.

3. **Disbursement for Allotments** - The proper percentage of principal and interest for Forest Management Deductions (FMD) is transferred into the appropriate “FM___ _FR_” account (*See Section IX pages FM-1 to 8*). The remaining principal amount and interest is transferred into the beneficial landowners IIM accounts. An attached sheet identifies the beneficial heirs, their IIM account numbers, their beneficial interest, and the associated amount of principal.

(Note: If there is no Agency OST office, then the Regional OST office also performs Agency OST functions.)

- a. Forestry prepares the Intra Bureau Cash Transaction Authorization form (BIA-4285/BF-349) (*Appendix 6*). An attached sheet identifies the beneficial heirs, their IIM account numbers, their beneficial interest, and the associated amount of principal. The completed form is signed by the BIA line officer and forester and provided to Agency OST along with copies of the Transaction Record (TR) and Holding (HO) screens from TFAS. If the trespass is not settled, then the transaction description under the Information section must include instructions to, “**Include overnight interest to payment date.**”

(NOTE: If it is the final payment from the account, then the Transaction description under the Information section must include instructions to, “**Include overnight interest to payment date and close account.**”)

(Note: The BB number may be assigned by either the Agency or Regional Office – depending on established procedures.)

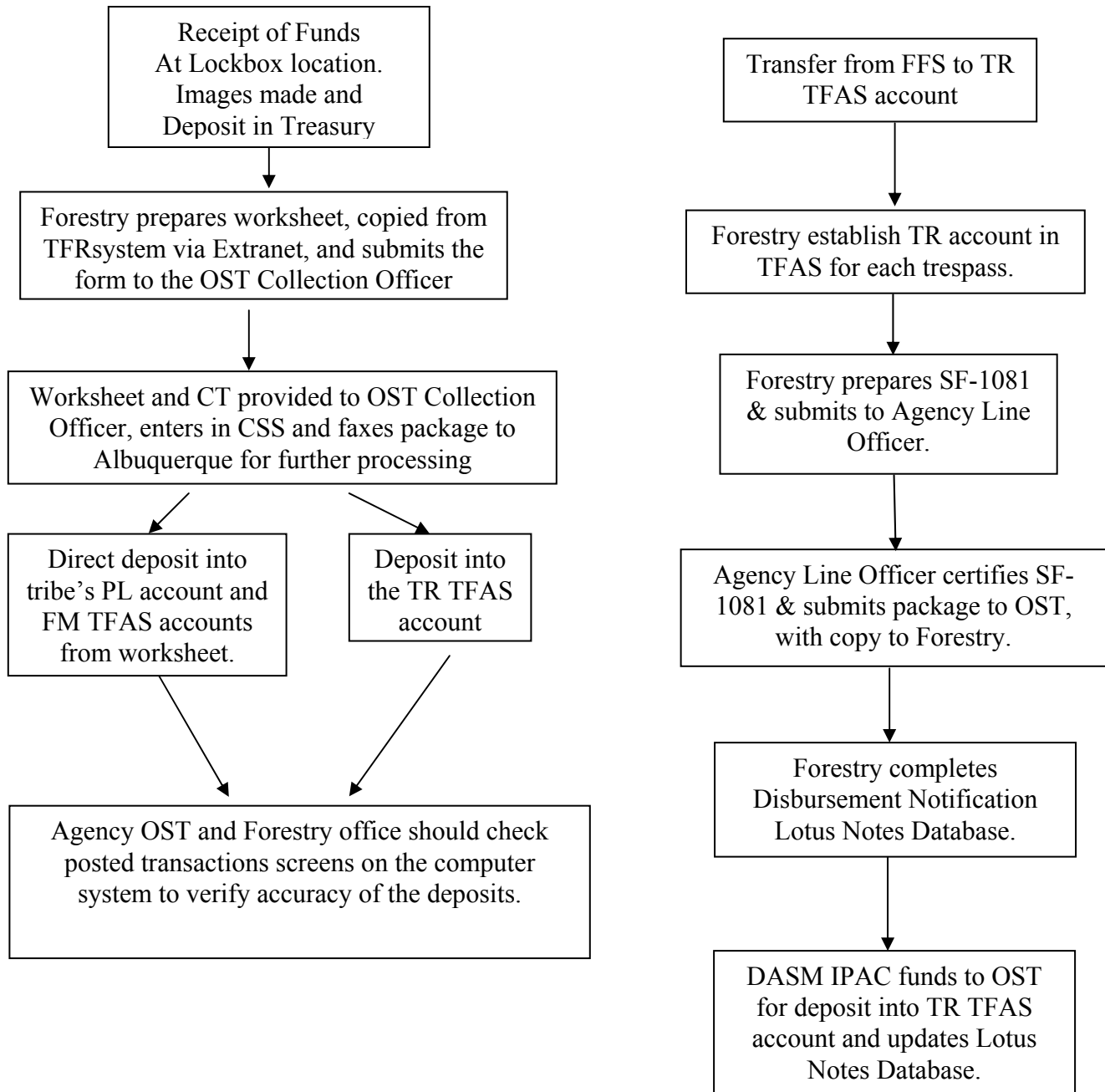
- b. Agency OST checks CT #'s, balances, and calculations. If all in order, then submits the BIA-4285 to the Agency OST Fiduciary Trust Officer. (If not correct, package is returned to forestry for correction).
- c. Agency OST certifies the form by signature.
- d. Agency OST prepares work tickets and faxes the form and work ticket to Albuquerque OST.

BIA Forestry Collections and Distributions Handbook, Section VII, Sept. 2002; (Jan. 2006)

- e. Albuquerque OST adds interest, processes the disbursements, and closes the account (if applicable).
- f. Agency OST verifies the interest amounts for the transactions, adds them to the copies of the certified BIA- 4285 and provides copies to Forestry.

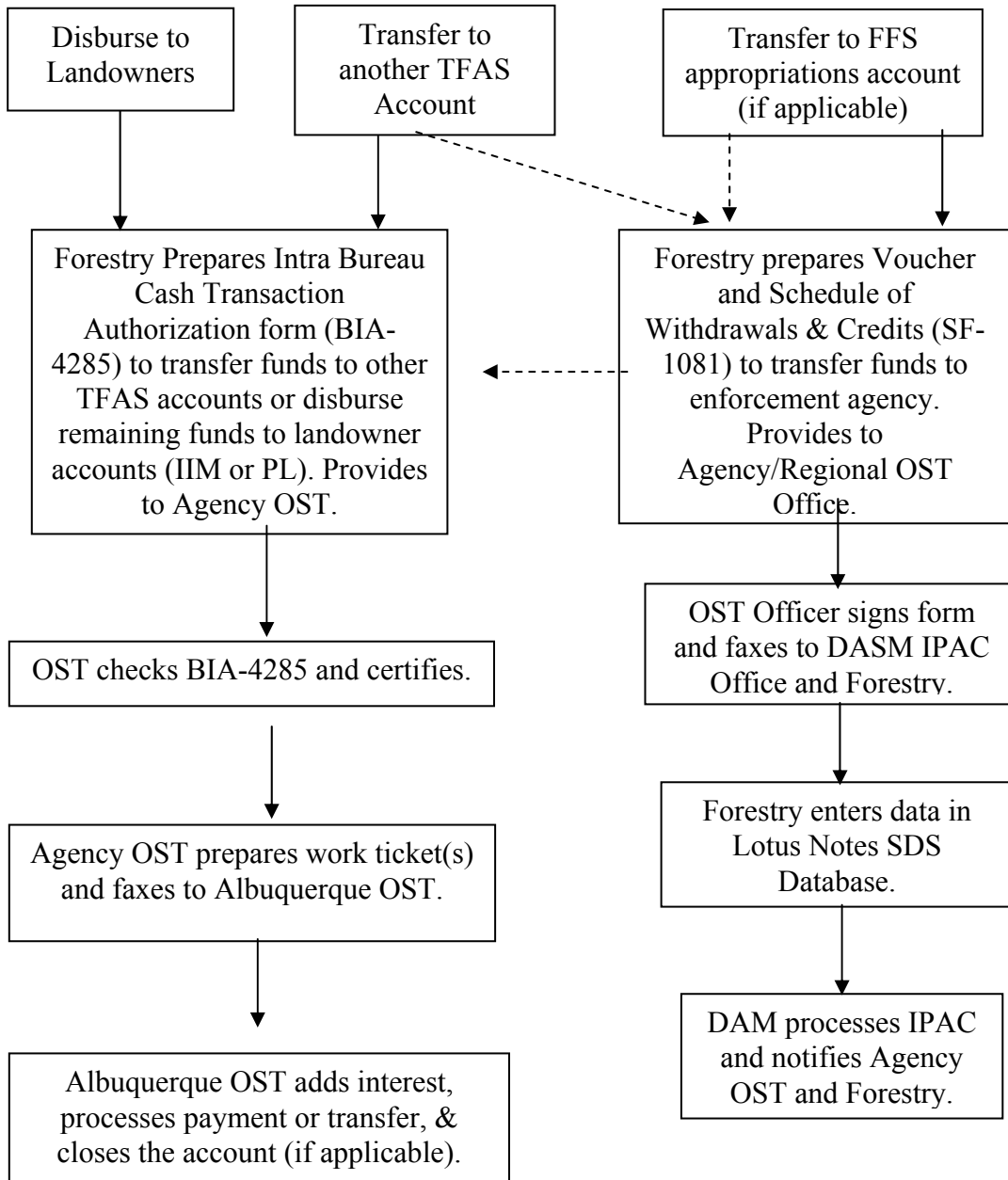
September 2002

Trespass (TR) Collections for Forestry



September 2002

Trespass (TR) Distributions for Forestry



Economic Guide No. 1: How to deal with inflation
(in economic analysis of forest management activities)

When conducting economic analyses of proposed forest management activities, keep inflation out of the:

- 1) projected price
- 2) projected costs
- 3) discount rate

By following this approach, and using consistent assumptions with all of the proposed activities that are competing for funding, the economic analysis will be greatly simplified without a loss of credibility. This will be the case, since only real changes in value (those above inflation) will be included in the future costs and benefits, and of equal importance, the analysis will be conducted with a real discount rate (market rate minus annual inflation rate). Refer to “Economic Guide No. 2” for help on how to select an appropriate discount rate.

Economic Guide No. 2: How to select the proper discount rate

(If funds are “in the bank”, i.e. not borrowed)

Use a 4% real discount rate.

A real discount rate (market rate minus annual inflation rate) is used to exclude inflation from the analysis (refer to “Economic Guide No. 1”). A four percent real discount rate is appropriate for economic analysis of forest management activities, because it approximates the average real long-term return on corporate capital before taxes according to Paul Boltz, Senior Economist of the Federal Reserve Board. Refer to Clark Row, et al., June 1981, J. of Forestry article.

(If dollars are borrowed)

Use a real discount rate that is equivalent to the interest rate the bank would charge the landowner to borrow the money minus the current annual rate of inflation.

Economic Guide No. 3: How to estimate future stumpage prices

Numerous methods are available for estimating future stumpage prices. Each have some positive and negative aspects that depend on the circumstances in which they are used. None is universally recognized as “the best” method. Three are described here that are acceptable for use in benefit/cost analyses for ranking forest management alternatives. The availability of adequate local data will be a major determinant in which method is used.

METHOD NO. 1. Local 5 to 10 Year Average.

- 1) Obtain local stumpage price data (Agency or local market)
- 2) Express data in real dollars (see step 2 of next method)
- 3) Calculate a 5 or 10-year average
- 4) Project average price forward with a 0, 1, or 2-percent annual real rate of increase

METHOD NO. 2. Local Stumpage Value Trend Analysis..

1. Obtain (from Agency or local/regional market data) the annual average stumpage values (\$/MBF) for a major species (or group of similar species) for the period 1950 to present. Record (as shown for the Bureauwide sample data) in Column 2 of Table 3-1.
2. Convert these stumpage values from current (nominal) to constant (real) dollars to adjust for inflation, and record the constant-dollar values (as shown for the sample data in Column 3 of the Table 3-1). Use the implicit GNP price deflator index values¹ (listed in Table 3-2, Column 2)² and the following formula³, to calculate the constant dollar values.

$$\text{Real Dollar Value} = \frac{\text{Base Year Index Value}}{\text{Index Value for Year Converted}} \times \text{Dollar Value}$$

Column 3 of Table 3-2 shows the price conversion factor portion (base year index value divided by the index value for year converted) of the formula. When the stumpage price for a given year is multiplied by the price conversion factor for that year, the stumpage value is converted to constant (base year) dollars.

3. Conduct a linear regression analysis of the calendar year data (Column 1, Table 3-1) and the constant dollar (real) average Stumpage values (Column 3, Table 3-1), to determine the “A” and “B” values (slope and Y intercept) for the stumpage value trend equation: Stumpage value = A (calendar year of harvest) + B.

The “A” and “B” values for the Bureauwide sample data (Table 3-1) are:
A = 2.3455, and B = - 4,513.56.

4. Estimate the stumpage value for a future year by inserting that calendar year in the equation with the “A” and “B” coefficients determined in step 3. Values obtained with this equation make up the real stumpage value trend line for the average annual stumpage prices for 1950 to present, expressed in constant dollars. Sample Bureauwide data from Table 3-1, and its associated trend line, calculated with the equation, stumpage value = 2.3455 (calendar year of harvest) – 4513.56, are shown on the graph following Table 3-2.

METHOD NO. 3 Bureauwide Stumpage Value Trend Analysis

If data is lacking at the local level, methods No. 1 and 2 will not be applicable. One approach would be to substitute regional data for local data in either method 1 or 2. A simpler way would be to use the Bureauwide stumpage trend line and equation (that was calculated with the Bureauwide sample data in Method No. 2 above) to estimate future stumpage prices for your analysis. This is an acceptable approach when your objective is to rank forest management alternatives for funding at the local level.

1 Source: Economic Report to the President (published annually in January by the U. S. Government Printing Office).
2 Or use an alternative index, such as CPI (Consumer Price Index).
3 USDA Forest Service Economic and Social Analysis Handbook (FSH 1909.17), Section 13.5.

Economic Guide No. 3

STUMPAGE VALUE TREND ANALYSIS PROCEDURE

Table 3-1. Bureauwide Average Stumpage Values (\$ per MBF)

| (1) Year | (2) current | (3) 1990 \$ |
|-------------|----------------|----------------|
| 1950 | 8.81 | 48.46 |
| 1951 | 10.74 | 56.28 |
| 1952 | 12.71 | 65.58 |
| 1953 | 13.74 | 69.80 |
| 1954 | 14.11 | 70.55 |
| 1955 | 15.50 | 74.87 |
| 1956 | 19.50 | 91.26 |
| 1957 | 17.11 | 77.34 |
| 1958 | 17.89 | 79.25 |
| 1959 | 17.64 | 76.20 |
| 1960 | 17.40 | 74.12 |
| 1961 | 13.54 | 57.00 |
| 1962 | 13.23 | 54.51 |
| 1963 | 13.63 | 55.34 |
| 1964 | 14.70 | 58.80 |
| 1965 | 14.52 | 56.28 |
| 1966 | 17.53 | 65.91 |
| 1967 | 18.32 | 67.05 |
| 1968 | 24.93 | 87.01 |
| 1969 | 33.26 | 109.76 |
| 1970 | 33.17 | 103.82 |
| 1971 | 37.58 | 111.24 |
| 1972 | 47.39 | 134.11 |
| 1973 | 76.31 | 202.98 |
| 1974 | 78.93 | 192.59 |
| 1975 | 61.83 | 137.26 |
| 1976 | 84.60 | 175.97 |
| 1977 | 97.89 | 190.89 |
| 1978 | 114.86 | 209.05 |
| 1979 | 143.15 | 239.06 |
| 1980 | 120.97 | 185.08 |
| 1981 | 107.13 | 149.98 |
| 1982 | 75.98 | 99.53 |
| 1983 | 93.66 | 118.95 |
| 1984 | 88.69 | 108.20 |
| 1985 | 74.45 | 88.60 |
| 1986 | 86.65 | 100.51 |
| 1987 | 94.05 | 105.36 |
| 1988 | 101.56 | 109.68 |
| 1989 | 108.03 | 112.35 |
| 1990 | 119.95 | 119.95 |

Economic Guide No. 3

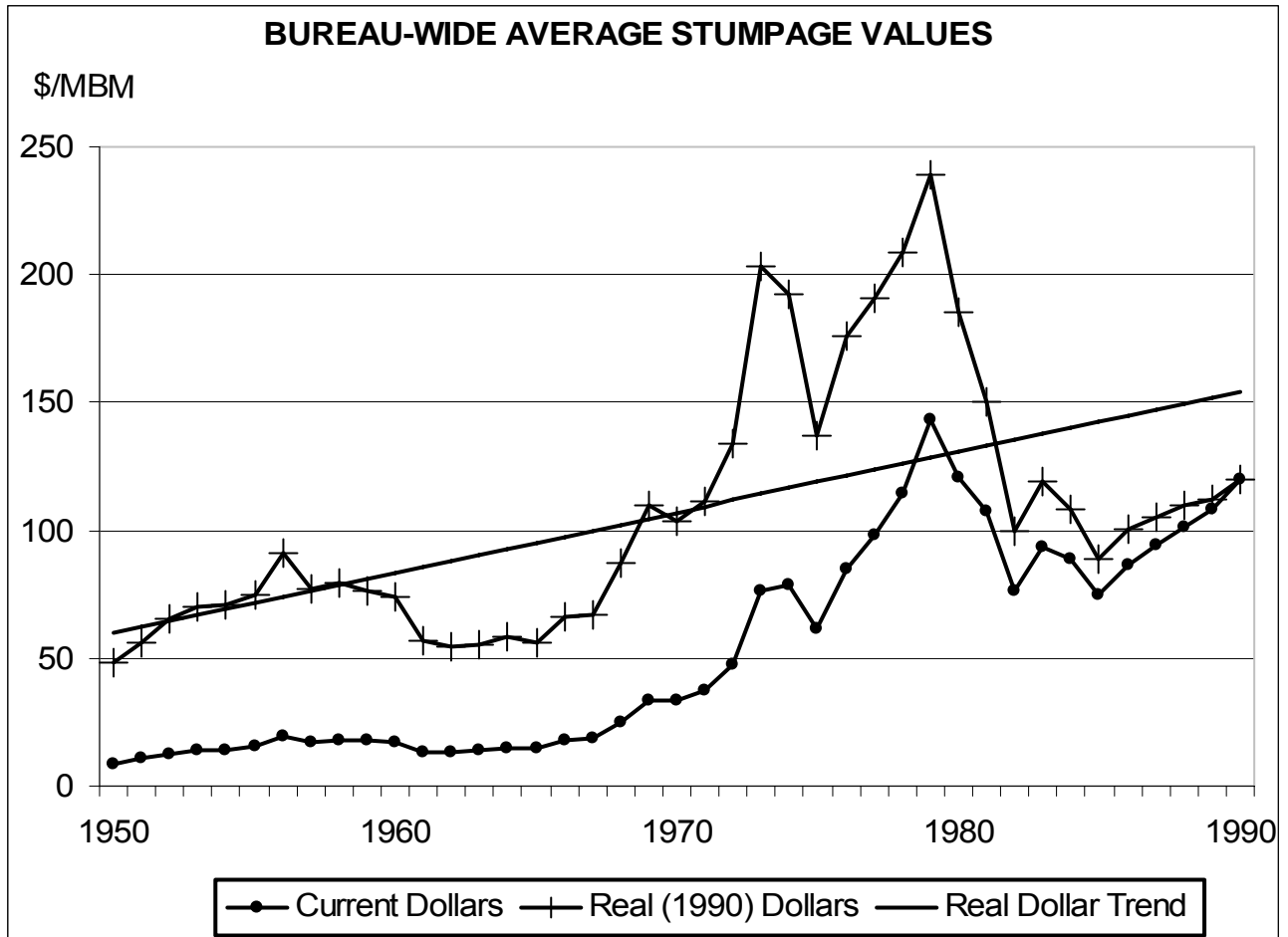
STUMPAGE VALUE TREND ANALYSIS PROCEDURE

Table 3-2. GNP Implicit Price Deflator Index and Price Conversion Factors

| Year | GNP Implicit Price Deflator Index | Price Conversion Factors (Base Year Index/ Index for Year Converted) |
|------|-----------------------------------|--|
| 1950 | 23.9 | 131.5 / 23.9 = 5.50 |
| 1951 | 25.1 | 131.5 / 25.1 = 5.24 |
| 1952 | 25.5 | 131.5 / 25.5 = 5.16 |
| 1953 | 25.9 | 131.5 / 25.9 = 5.08 |
| 1954 | 26.3 | 131.5 / 26.3 = 5.00 |
| 1955 | 27.2 | 131.5 / 27.2 = 4.83 |
| 1956 | 28.1 | 131.5 / 28.1 = 4.68 |
| 1957 | 29.1 | 131.5 / 29.1 = 4.52 |
| 1958 | 29.7 | 131.5 / 29.7 = 4.43 |
| 1959 | 30.4 | 131.5 / 30.4 = 4.32 |
| 1960 | 30.9 | 131.5 / 30.9 = 4.26 |
| 1961 | 31.2 | 131.5 / 31.2 = 4.21 |
| 1962 | 31.9 | 131.5 / 31.9 = 4.12 |
| 1963 | 32.4 | 131.5 / 32.4 = 4.06 |
| 1964 | 32.9 | 131.5 / 32.9 = 4.00 |
| 1965 | 33.8 | 131.5 / 33.8 = 3.89 |
| 1966 | 35.0 | 131.5 / 35.0 = 3.76 |
| 1967 | 35.9 | 131.5 / 35.9 = 3.66 |
| 1968 | 37.7 | 131.5 / 37.7 = 3.49 |
| 1969 | 39.8 | 131.5 / 39.8 = 3.30 |
| 1970 | 42.0 | 131.5 / 42.0 = 3.13 |
| 1971 | 44.4 | 131.5 / 44.4 = 2.96 |
| 1972 | 46.5 | 131.5 / 46.5 = 2.83 |
| 1973 | 49.5 | 131.5 / 49.5 = 2.66 |
| 1974 | 54.0 | 131.5 / 54.0 = 2.44 |
| 1975 | 59.3 | 131.5 / 59.3 = 2.22 |
| 1976 | 63.1 | 131.5 / 63.1 = 2.08 |
| 1977 | 67.3 | 131.5 / 67.3 = 1.95 |
| 1978 | 72.2 | 131.5 / 72.2 = 1.82 |
| 1979 | 78.6 | 131.5 / 78.6 = 1.67 |
| 1980 | 85.7 | 131.5 / 85.7 = 1.53 |
| 1981 | 94.0 | 131.5 / 94.0 = 1.40 |
| 1982 | 100.0 | 131.5 / 100.0 = 1.31 |
| 1983 | 103.9 | 131.5 / 103.9 = 1.27 |
| 1984 | 107.7 | 131.5 / 107.7 = 1.22 |
| 1985 | 110.9 | 131.5 / 110.9 = 1.19 |
| 1986 | 113.8 | 131.5 / 113.8 = 1.16 |
| 1987 | 117.4 | 131.5 / 117.4 = 1.12 |
| 1988 | 121.3 | 131.5 / 121.3 = 1.08 |
| 1989 | 126.3 | 131.5 / 126.3 = 1.04 |
| 1990 | 131.8 | 131.5 / 131.8 = 1.00 |

Economic Guide No. 3

STUMPAGE VALUE TREND ANALYSIS PROCEDURE



Real Dollar trend line values were calculated with the formula: Value = 2.3455 (calendar year of harvest) + (-4513.56)

Economic Guide No. 4: How to conduct a Benefit/Cost Analysis

A benefit/cost analysis is a marginal analysis. That means it deals with only the net benefits and costs associated with a proposed management activity.

Each benefit/cost analysis should include a measure of economic efficiency and equity. Efficiency may be calculated by the benefit/cost ratio. Equity refers to economic impacts, including the social effects and the nonmarket benefits, that are represented by changes in employment, income, and personal use benefits.

To promote consistency, benefit/cost analyses of forest management practices should use a format similar to the one outlined below.

- (1) Describe the untreated stand condition.
- (2) Describe the planned treatment and objective.
- (3) For both the untreated and treated stands:
 - (a) Estimate the timing of the harvest(s). If even-aged management is assumed, estimate the time of the final harvest and commercial thinnings. If uneven-aged management is assumed, estimate the timing and number of cutting cycles. This time period represents the investment period and should be approximately the same for all forest management projects that will compete for funding.
 - (b) Estimate the volume of the harvest(s). Use consistent data assumptions with the alternative projects.
 - (c) Estimate the value of the harvest by multiplying the estimated volumes by the estimated stumpage prices for the years of the planned harvests. Refer to “Economic Guide No. 3” for a description of three methods for estimating future stumpage prices. All are acceptable for use here, however, the availability of adequate local data will be a major factor in which method you use. Once a method is selected, be consistent, use it for all projects that are competing for funding.
 - (d) Calculate the present value of the projected harvests. Present value = future value divided by $(1.0 + \text{discount rate})$ raised to the n power, where n = years between base and future year. Use a 4 percent real discount rate (except when funds are borrowed). Refer to “Economic Guide No. 2” for a discussion of discount rates.
- (4) Determine the present value of the benefits of the proposed project by deducting the present value of the untreated stand harvests from the present value of the treated stand harvests. The result is the numerator of the benefit/cost ratio.
- (5) Estimate the cost and timing of the treatment.
- (6) Calculate the present value of the treatment costs. Use the same discount rate used in (3)(d) above. The result is the denominator of the benefit/cost ratio.
- (7) Compute the benefit/cost ratio by dividing the present value of the project benefits, calculated in (4) above, by the present value of the project costs, calculated in (6) above.
- (8) Identify the important economic impacts (nonmarket benefits and social effects) of each project. Include the employment and wages of the treatment crew. Estimate the changes in future employment, income distribution and community welfare associated with the anticipated increase in future timber harvest (i.e. the “multiplier effect”, expressed in jobs and income per million board feet). And if an immediate increase in timber harvest is planned, based on expected increases in growth (i.e., the allowable cut effect), include the expected immediate increases in employment and income associated with it.
- (9) Rank the forest management projects by their benefit/cost ratios and their economic impacts

Economic Guides for Managing Forest Resources – 1991 Update – BOFRP

identified in (8) above.

- (10) Assign funding priorities to the projects according to their rankings in (9).

Economic Guide No. 4A: Example of a Benefit/Cost Analysis – Even-aged Management

1. Present stand condition: Unstocked
2. Planned treatments:
 - plant 450 stems per acre of ponderosa pine in 1991.
 - Precommercial thin at age 15
3. Value estimate: Untreated stand
 - a. Timing: 80 years
 - b. Volume (harvested): 0 MBF
 - c. Value of harvest: \$0
 - d. Present value (PV) of harvest: \$0
4. Value estimate: Treated stand
 - a. Timing: one rotation (80 years)
 - b. Volume: 20 MBF/Acre (harvest in 2071)
 - c. Value: \$6,879/Acre (calculation below)

Stumpage price = A (calendar year of harvest) + B
= A (2071) + B
= 2.3455 (2071) + (-4513.56)
= \$343.97/MBF¹

Value = Volume/acre X stumpage price
= 20 MBF/acre X \$343.97
= \$6,879.40/acre

PV of treated stand = \$6,879/(1.04)⁸⁰ = \$298.44/acre²
5. Treatment costs:
 - Planting cost at year 0: \$150.00/acre³
 - Stocking control at year 15: \$75.00/acre
 - PV of planting cost = \$150.00/acre
 - PV of stocking control - \$75.00/(1.04)¹⁵ = \$41.64/acre
6. Benefit/cost ratio: 1.55 (calculation follows)
$$\text{B/C Ratio} = \frac{\text{PV of treated stand} - \text{PV of untreated stand}}{\text{PV of treatment costs}}$$

B/C Ratio = \$298.44/(\$150.00 + 41.64) = 1.55
7. Identify and estimate the economic impacts associated with the planned treatments. Impacts may include:
 - employment and wages of the tree planting and thinning crews
 - employment and income associated with any planned allowable cut effect (an immediate increase in harvest due to an anticipated increase in growth).
 - future increases in employment and income tied to future increases in harvest.
 - other.
8. Rank the forest management project/treatment, along with alternative projects, according to benefit/cost ratio and the identified economic impacts.
9. Assign funding priorities.

1 A and B coefficients, calculated in “Economic Guide No. 3”, are based on data for all Indian lands.

2 A 4-percent real discount rate was used.

3 Expressed in constant 1991 dollars.

Economic Guides for Managing Forest Resources – 1991 Update – BOFRP

Economic Guide No. 4B: Example of a Benefit/Cost analysis – Uneven-aged Management

1. Present stand condition; Overstocked ponderosa pine.
2. Planned treatment: Precommercial thinning in 1991.
3. Value estimate: Untreated stand
 - a. Timing: 60 years (three, 20-year cutting cycles)
 - b. Harvest volume:
Cutting cycle 1: 3.0 MBF/acre in 2011
Cutting cycle 2: 3.0 MBF/acre in 2031
Cutting cycle 3: 3.0 MBF/acre in 2051
 - c. Harvest values: (Calculations follow)
Cutting cycle 1: \$609.72
Cutting cycle 2: \$750.45
Cutting cycle 3: \$891.18

Cutting Cycle 1:

$$\begin{aligned}\text{Stumpage price} &= A (\text{calendar year of harvest}) + B \\ &= \$2.3455 (2011) + (-4513.56)^1 \\ &= \$203.24/\text{MBF} \\ \text{Value} &= 3.0 \text{ MBF/acre} \times 203.24/\text{MBF} \\ &= \$609.72/\text{acre}\end{aligned}$$

Cutting Cycle 2:

$$\begin{aligned}\text{Stumpage price} &= \$2.3455 (2031) + (-4513.56)^1 \\ &= \$250.15/\text{MBF} \\ \text{Value} &= 3.0 \text{ MBF/acre} \times 250.15/\text{MBF} \\ &= \$750.45/\text{acre}\end{aligned}$$

Cutting Cycle 3:

$$\begin{aligned}\text{Stumpage price} &= \$2.3455 (2051) + (-4513.56)^1 \\ &= \$297.06/\text{MBF} \\ \text{Value} &= 3.0 \text{ MBF/acre} \times 297.06/\text{MBF} \\ &= \$891.18/\text{acre}\end{aligned}$$

4. Value estimate: Treated stand
 - a. Timing: 60 years (three, 20 year cutting cycles)
 - b. Harvest Volume :
Cutting Cycle 1: 4.0 MBF/acre in 2011
Cutting Cycle 2: 4.0 MBF/acre in 2031
Cutting Cycle 3: 4.0 MBF/acre in 2051
 - c. Harvest values: (calculations follow)
Cutting Cycle 1: \$ 812.96
Cutting Cycle 2: \$1,000.60
Cutting Cycle 3: \$1,188.24

Cutting Cycle 1:

$$\begin{aligned}\text{Stumpage price} &= \$2.3455 (2011) + (-4513.56)^1 \\ &= \$203.24/\text{MBF} \\ \text{Value} &= 4.0 \text{ MBF/acre} \times 203.24/\text{MBF} \\ &= \$812.96/\text{acre}\end{aligned}$$

Cutting Cycle 2:

$$\begin{aligned}\text{Stumpage price} &= \$2.3455 (2031) + (-4513.56)^1 \\ &= \$250.15/\text{MBF} \\ \text{Value} &= 4.0 \text{ MBF/acre} \times 250.15/\text{MBF} \\ &= \$1,000.60/\text{acre}\end{aligned}$$

1. A and B coefficients, calculated in "Economic Guide No. 3", are based on data for all Indian lands.

Economic Guides for Managing Forest Resources – 1991 Update – BOFRP

Cutting Cycle 3:

$$\begin{aligned} \text{Stumpage price} &= \$2.3455 (2051) + (-4513.56)^1 \\ &= \$297.06/\text{MBF} \\ \text{Value} &= 4.0 \text{ MBF/acre} \times 297.06/\text{MBF} \\ &= \$1,188.24/\text{acre} \end{aligned}$$

5. Treatment cost: \$125.00/ac. (precommercial thinning at year 0)

6. Benefit/cost ratio: 1.38 (calculation follows)

$$\text{B/C Ratio} = \frac{\text{PV of treated stand} - \text{PV of untreated stand}}{\text{PV of treatment costs}}$$

$$\text{PV of treated stand} = \frac{\$812.96}{(1.04)^{20}} + \frac{\$1,000.60}{(1.04)^{40}} + \frac{\$1,188.24}{(1.04)^{60}} = \$692.39$$

$$\text{PV of untreated stand} = \frac{\$609.72}{(1.04)^{20}} + \frac{\$750.45}{(1.04)^{40}} + \frac{\$891.18}{(1.04)^{60}} = \$519.29$$

PV of treatment cost = \$125.00/acre (see step 5 above)

$$\text{Benefit Cost Ratio} = \frac{\$692.39 - \$519.29}{\$125.00} = 1.38$$

7. Identify and estimate the economic impacts associated with the planned treatments. Impacts may include:
- employment and wages of the tree planting and thinning crews.
 - employment and income associated with any planned allowable cut effect (an immediate increase in harvest due to an anticipated increase in growth).
 - future increases in employment and income tied to future increase in harvest.
 - other.
8. Rank the forest management project/treatment, along with alternative projects, according to the benefit/cost ratio and the identified economic impacts.
9. Assign funding priorities.

¹ A 4-percent real discount rate was used.