



# COQUILLE INDIAN TRIBE

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July 16, 2012

Secretarial Commission on Indian  
Trust Administration and Reform  
Office of Regulatory Affairs and  
Collaborative Action  
Department of the Interior  
1001 Indian School, NW, Suite 312  
Albuquerque, NM 87104  
[trustcommission@ios.doi.gov](mailto:trustcommission@ios.doi.gov)

Dear Trust Commission:

I am the Chairperson of the Coquille Indian Tribe, located in Southwestern Oregon. I have received a copy of Ms. Fawn Sharp's May 3, 2012, letter introducing the Secretarial Commission on Indian Trust Administration and Reform (the "Commission") and soliciting tribal input on a number of topics.

This letter is the Coquille Indian Tribe's initial response to your letter. We hope to supplement this response as your process moves forward and we have better opportunities to interact.

We are sending a copy of this letter to the Secretary's Indian Forest Management Advisory Team, and we suggest that you contact them as part of your process to develop recommendations.

Below we restate some of your questions along with our initial responses.

**1. Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries, including matters related to financial management / accounting and natural resource management functions?**

Based on our extensive natural resource activities and experience, we have a number of comments to this question.

Modern Federal Indian policy is based on the principle of tribal self-determination. Tribes are viewed as the focal point for Federal Indian policies and Federal agencies are geared toward strengthening tribal government to carry out these functions.

Some aspects of trust land ownership support this principle, and some do not. For example, the non-taxability of trust land supports the sovereign self-determinative aspect of tribal governments. Unfunded trust mandates, and non-alienation of trust land interests do not support self-determination, and are based on an early 20<sup>th</sup> century perspective of Indian people and tribes as Federal dependents.

This is not to mean that the Indian Reorganization Act has realized its original vision and should not be abandoned. I am interested in how your Commission might be able to suggest how to adapt the IRA's original vision to the 21<sup>st</sup> century and the challenges faced by modern Indian tribes. Trust land management cost more than that of fee lands. As a consequence, tribes are second guessing whether trust ownership really serves their self-determination goals.

Take for example the Coquille Forest, placed into trust in 1998 by Public Law 104-208, Title V (the "Coquille Forest Act").

The Coquille Forest Act is, admittedly, unique, because it authorizes the U.S. Department of the Interior to write the tribe's forest management standards and guidelines. 25 USC § 715c(d)(5).

The Secretary of Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act, **and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future.**

(Emphasis added).

Since 1998 the Coquille Forest has been managed subject to the Bureau of Land Management's (BLM) Northwest Forest Plan, drafted for Federal forest lands "nearby and adjacent to" the Coquille Forest. In 2006 through 2008, Tribal representatives participated on the Western Oregon Plan Revision (WOPR) Steering Committee, an effort to rewrite the Northwest Forest Plan. On January 8, 2009, the Department of the Interior published a notice in the *Federal Register* that adopted the Records of Decision of the WOPR Resource Management Plans of the Western Oregon BLM. In July of 2009, Secretary Salazar administratively withdrew the WOPR Records of Decision. On March 31, 2011, in *Douglas Timber Operators et al. v. Salazar*, the United States District Court for the District of Columbia vacated and remanded the administrative withdrawal decision, thereby reinstating the WOPR RODs/RMPs. On May 16, 2012, in *Pacific Rivers Council v. Shepard*, the United State District Court of Oregon, vacated the WOPR RODs/RMPs and returned BLM to management under its 1995 RODs/RMPs.

On July 22, 2010, the BLM published the results of a task force review of the WOPR process. That review concluded that "[t]o satisfy obligations under the Coquille Restoration Act, the Task Force recommends that priority be given to the initiation of a planning process for the Coquille Forest and the proposed Tribal Cooperative Management Area. We recommend that the planning effort would result in an amendment to the 1995 Coos Bay RMP."

Unfortunately, the Department of the Interior does not adopt these standards in accordance with their overriding The trustee duties, as mandated in Mitchell CITE.

The story of the Coquille Forest exemplifies a common theme in Indian country, that Federal agencies exercising management control often make management choices based on criteria other than the best interests of tribal beneficiaries, and, like boats in an ocean storm, tribal trust assets are flung about amidst the crashing and surging of federal politics, even those completely unrelated to Indian country.

***Our first recommendation is for you to explore how to insulate the trust asset management regime from political influence or from the needs of self-serving bureaucracies. Solutions here might involve disengaging some management decisions from Federal agencies, creating a lower standard of judicial review for tribes contesting agency decisions involving their own trust assets***

For years DOI has been unable to provide adequate staff to fulfill its environmental responsibilities in our forest. As noted above, our forest is subject to a number of environmental laws and policies. Compliance with these laws is a priority of the Tribe. A failure to comply could increase our costs and the time required for us to conduct forest management projects, both of which substantially affect Tribal government funding. The Bureau of Indian Affairs currently provides our Tribe very limited Endangered Species Act compliance assistance, and we have not yet worked with a BIA official who is familiar with the Northwest Forest Plan to the degree we require. To date, Self Governance funding available for environmental compliance work has been far inadequate to suit our compliance costs. As a result, our tribe pays for and performs many of these responsibilities, and BIA is left with good, but inadequate staffing to review and approve tribal efforts. This also puts the BIA in an uncomfortable position of having to review and sign off on work that they might not completely understand.

***We request that you consider whether to recommend that the BIA provide adequate funding or staffing necessary to perform this obligation.***

Tribal land and water restoration efforts do not occur in a vacuum. Many trust lands lie within a landscape of larger Federal lands, and management of those nearby Federal lands is rarely consistent with tribal land management efforts. Federal land management practices affect water and air quality, species restoration and protection, cultural resources restoration and protection, wildlife, and timber resources. The Federal government has a comprehensive responsibility to manage the harvesting of Indian timber. *United States v. Mitchell*, 445 U.S. 535, 542 (1980). If the Federal government fails to meet these responsibilities, it can be held liable for money damages for its breach of trust responsibility.

Federal government administration of nearby and adjacent lands can also have a dramatic effect on Indian trust assets, including Indian forests.

Tribes currently have limited options to manage Federal lands lying near or adjacent to Indian trust assets. Tribes could pursue cooperative management agreements, but the funding and scope of those projects are limited and do not ensure that tribal trust assets will be protected. Tribal

Stewardship Contracting is another tool, but again the scope of those projects is limited and many tribes have not viewed this option as a useful tool (note: the Intertribal Timber Commission is exploring ways to improve stewardship contracting).

***We request that you explore policy changes that expand the management role of tribal governments in nearby and adjacent Federal lands.***

Although the Self Governance and Self Determination programs have been positive steps away from failed Federal paternalism, Congress should do away with all or some of the “inherently Federal function” restriction on contracting / compacting programs. Again, take for example our Coquille Forest. This 5,400 acre forest lies in the heart of Coquille ancestral lands. The Coquille Tribe is the only land manager to meet all social, economic and environmental goals of the Northwest Forest Plan. The forest is certified by the Forest Stewardship Council, an international sustainable forestry standard. The Tribe co-authored the Coquille Sub-basin Watershed Restoration Plan, and has been instrumental in carrying out that plan, both on and off tribal lands. The Tribe participates in, and funds the Coquille Watershed Association and other local conservation organizations. In other words, the Tribe is an excellent and pro-active land manager and an agent of positive change in their aboriginal region.

But Federal policy does not think that the Tribe is the appropriate entity to execute timber sale contracts or approve NEPA-related documents. Tribes are currently unable to contract or compact functions that are “inherently Federal.” This policy relinquishes control and responsibility to Federal agencies that are often hundreds of miles away from the proposed action.

Moreover, Federal policy grants members of the general public the same rights as tribal members when commenting during NEPA, even though trust lands are not public lands and the Federal trust responsibility would otherwise likely preclude general public involvement.

***We recommend that you consider policy changes to empower tribes to perform trust-related functions currently classified as “inherently Federal.” We believe that some of these functions would be better performed by tribes themselves. We also recommend that you review changes to NEPA and related Federal environmental review laws to reflect the fact that trust lands are not Federal lands. Perhaps these laws could be amended to allow tribes to perform these functions and to limit involvement of parties who have no real interest in trust land management.***

**2. Are there any other trust administration models the ITC should examine as it looks towards improving the Department of the Interior’s trust administration and management?**

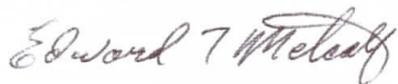
**3. Given that the sunset provision in the American Indian Trust Fund Management Reform Act of 1994 was predicated on OST’s oversight and reform responsibilities, and that OST now has additional operational duties, should the Commission recommend sunseting the OST?**

**4. Do you have any recommendations and/or suggestions that would improve the nation-to-nation relationship between DOI and Tribes with respect to trust administration?**

**5. Do you have any recommendations to improve or strengthen trust management / administration based on information gathered in the course of litigation and settlement of the recent tribal breach of trust cases announced in early April of this year.**

We reserve the right to comment on questions 2-5 listed above. Thank you for the opportunity to provide our perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Metcalf". The signature is written in a cursive style with a large, stylized initial "E".

Edward L. Metcalf, Chairperson  
Coquille Tribal Council

cc: John Gordon, Indian Forest Management Advisory Team.