

A STUDY OF MANAGEMENT POLICIES AND PRACTICES OF THE BUREAU  
OF INDIAN AFFAIRS ON LANDS HELD IN FEDERAL TRUST  
ON THE QUINAULT INDIAN RESERVATION

by

NICHOLAS POPOFF

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Reasons for Discontinuing Allotment

It was realized by federal government officials at an early date that certain Indian reservations were best suited for timber production. These same reservations could not in fact support grazing or agriculture. On June 29, 1911, regulations were approved to allow the Bureau of Indian

Affairs to make provisions for the conservative cutting of timber from such areas (Kinney, 1921, 1927). As a result of these provisions and the realization of the value of certain areas for timber production, the allotment of all lands on the Quinault Reservation was stopped in 1914.

The stoppage was based on an interpretation of the original Allotment Act of 1887. The original Act and subsequent Acts amending the original Act specify allotment of land for agricultural or grazing purposes. Since much of the Quinault was timbered and more valuable for timber purposes than grazing or farming, the land was considered not to be under the jurisdiction of the Allotment Acts.

The original goal of the allotment policy was to civilize the Indians. The allotment of land to individual Indians for the purpose of grazing or agriculture thus became the means, established by the Congress of the United States, to attain this goal. Once this means of achieving an end was pursued, it was realized by the federal authorities that to use the land for grazing or agriculture did not correspond to the physical parameters of the land. The land was forested and was of soil best suited for timber production.

The federal authorities charged with allotting land (the means of achieving an objective) for the purpose of civilizing the Indians (the desired objective) decided that if the allotted lands were not suitable for grazing or agriculture, this objective could not be attained. Thus in

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A decision by a local court and later confirmed by the Circuit Court of Appeals and the Supreme Court required the resumption in 1924 of the allotment of the remaining lands on the Quinault Reservation (284 Fed. Rep. 827; 264 U.S. 446; Kinney 1937). The Supreme Court ruled that the General Allotment Act "was not meant to preclude an allotment of timbered lands, capable of being cleared and cultivated, but simply to differentiate between lands adaptable to agricultural uses and lands valuable only for grazing purposes" (264 U.S. 446). The Court's decision upheld the belief that the allotment of land, even though timbered, was still an appropriate means of attaining the goal established by Congress. This decision of the courts opened the entire Quinault Reservation to subdivision into small parcels. This resulted in multi-ownership that was to affect the future land use up to the present day.

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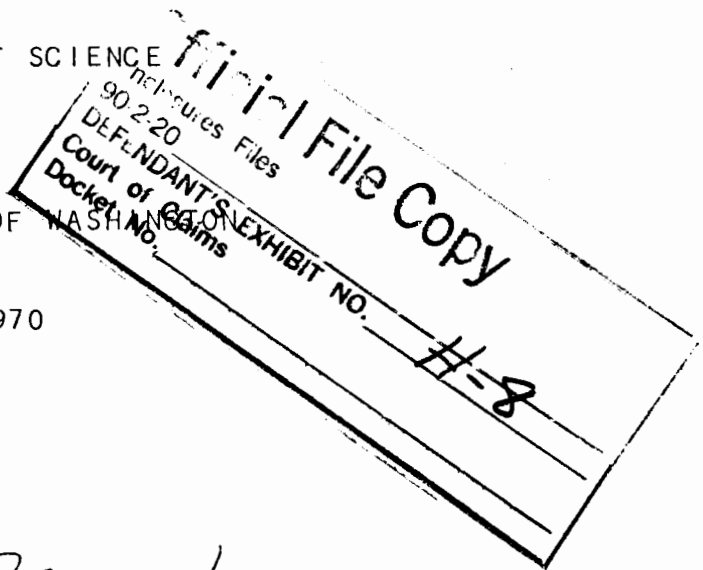
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## CHAPTER I

### INTRODUCTION

On July 13, 1967, a forest fire started within the Quinault Indian Reservation. Initial attack was underway within the first hour after fire start. However, the size of the fire had spread to six acres by this time. The fire was not under control until July 17 and was finally declared out on October 10. The Raft River Fire burned 4509 acres in total and suppression costs totaled \$344,640.57. At once there was concern of an extreme slash hazard on the Quinault Indian Reservation. Speculation was that if the hazard were not reduced, fires of this nature would occur again.

It was the initial objective of the author to analyze the physical aspects of slash presence on the Quinault Indian Reservation, to define present and future slash related problems if they existed, and to suggest possible solutions. However, as the research progressed it became evident that a problem exists on the Quinault Reservation overriding the question of whether or not there was a physical problem created by the presence of logging slash. Indian-owned lands are managed by the federal government's Bureau of Indian Affairs. The regulations by which the Bureau manages Indian-owned lands seem to be outdated and are stated such that inefficiencies in land management are possible.

### Objectives of the Thesis

It is the objective of this thesis to analyze established policies and actual forestry practices for the management of Indian-owned land by the Bureau of Indian Affairs on the Quinault Indian Reservation. Some economic effects resulting from this type of land management will be pointed out.

It is not within the scope of this thesis to analyze any land management practices or their related implications on lands within the Quinault Reservation but not under the jurisdiction of the Bureau of Indian Affairs.

### Outline of the Thesis

This thesis will first describe the area to be studied. The history of the development of the Quinault Indian Reservation, as well as the land disposal policies affecting it, will be reviewed. The origin of federal land use policies and their objectives affecting the Quinault Reservation will be given. Present objectives and land use policies will be cited and the progress that is being made toward the realization of these objectives will be discussed. Some of the economic effects both on the general tax-paying populace and the Indian landowner resulting from these policies and their enactment will be stated.

## Area Included in Study

This study is restricted to lands on the Quinault Indian Reservation owned by Indians but held for them in trust by the federal government. The original boundaries of the Quinault Reservation encompass 189,621 acres in western Washington. The Pacific Ocean borders to the west. To the north and east are the Olympic National Park and Olympic National Forest. Private land holdings border the south and southeast boundaries.

## Status of Land Ownership on the Quinault Indian Reservation

### Indian Land Held in Federal Trust

There are several categories of land ownership status on the Quinault Indian Reservation today. One type of land status is tribal ownership. The Quinault Indian Tribe as a whole owns title to the land. However, the title to the land is held in trust for the Tribe by the United States. Certain restrictions pertaining to land use are attached to the land while in trust. Bureau of Indian Affairs approval is required before a decision is made affecting its use. Land on the Quinault Reservation is also owned in severalty by Indians. In this case the title to the land is owned by an individual Indian as apart from the ownership of the total tribe. The title to this land is also held in government trust for the Indian. The Bureau of Indian Affairs has

established objectives as to how the land is to be used when in trust. To deviate from these land-use objectives to pursue individually desired objectives the Indian first needs the approval of the Bureau of Indian Affairs.

#### Fee-Patent Land Not Held in Federal Trust

Another form of land ownership is one of ownership in fee-patent. In this case Bureau of Indian Affairs objectives and regulations are not enforceable. This type of land ownership is the same as in the case of having a fee-simple title. The landowner may be an Indian or a non-Indian. There are avenues open for an Indian to convert the status of his land from one under federal government trust to the status of fee-patent. Once this change is made the Indian becomes a free agent equivalent to his non-Indian counterparts and is no longer affected by special federal Indian land-use regulations. Once this form of land ownership is achieved, the land no longer falls within the scope of this study.

#### Distribution of Land Status as of December 31, 1968

As shown in Table 1, of the total 189,621 acres, 62,059 acres (32.7% of the Quinault Reservation) were in fee-patent ownership at the end of 1968. The remaining area was in Quinault Tribal or severalty Indian ownership, both of which were still in government trust. A small portion of the land (only 18 acres) was leased to the United States

Government by the Quinault Tribe for the purpose of housing a Loran station, operated by the United States Coast Guard for long-range navigational purposes. Tribal land holdings not under government lease (4,279 acres) comprised 2.3% of the reservation. The remaining 123,265 acres constituted 65% of the reservation and were owned in severalty by Indians.

TABLE I  
 LAND STATUS OF QUINAULT INDIAN RESERVATION  
 EXPRESSED IN ACRES

	1958 - 1968			
	Private	Tribal	Allotted in Trust	Government Lease
1958	33,747	4,064	151,777	33
1959	39,727	3,857	146,004	33
1960	46,056	3,873	139,674	18
1961	49,318	3,872	136,413	18
1962	50,740	3,872	134,991	18
1963	52,041	4,037	133,525	18
1964	54,735	4,159	130,709	18
1965	57,629	4,159	127,815	18
1966	59,828	4,159	125,616	18
1967	61,340	4,159	124,104	18
1968	62,059	4,279	123,265	18
Absolute change between 1958 & 1968	+28,312	+215	-28,512	-15
Percentage change between 1958 & 1968	+83.9%	+5.3%	-18.8%	-45.5%

Source: U. S. Department of the Interior, Bureau of Indian Affairs. Agency Annual Report, Branch of Forestry, 1958-1968.

## CHAPTER II

### HISTORICAL PHILOSOPHIES AND EVENTS LEADING TO PRESENT LAND OWNERSHIP PATTERNS ON THE QUINAULT INDIAN RESERVATION

Treaty of July 1, 1855, and January 25, 1856

The Quinault Indian Reservation originated out of a treaty between the United States and the Quinault and Quillayute Indian Tribes. The treaty was signed in the Territory of Washington on July 1, 1855, and January 15, 1856. The treaty was ratified by the Senate on March 8, 1859, and was proclaimed by the President of the United States, James Buchanan, on April 11, 1859 (12 Stat. 971).

Under this treaty the Quinault Indians ceded, relinquished, and conveyed to the United States all their right, title, and interest in and to the lands and country occupied by them. In consideration of the cession, the United States agreed to pay to the tribes the sum of twenty-five thousand dollars over a period of years. The President was to select a reservation for the Indians.

#### Reservation Establishment in 1873

The area for the reservation was selected and surveyed in the early 1860's. However, it was not until November 4,

1873, that President U. S. Grant issued an executive order establishing the boundaries of the Quinault Indian Reservation (I Kappler 923). In accordance with the provisions of the treaty the land was withdrawn from sale and set aside for the exclusive use and occupation of the Indians. From the time the reservation was originated its land use was supervised by the federal government. At this early date there were no specific policies affecting methods of land use.

#### Passage of the General Allotment Act of 1887

The next major event affecting land ownership patterns on the Quinault Reservation was the passage of the General Allotment Act of February 8, 1887 (24 Stat. 388). This Act authorized the President to allot lands on Indian reservations to Indians in severalty for the single purpose of grazing or agriculture. The Quinault Reservation was subdivided for the purpose of agriculture. The land allotment on the Quinault Reservation was at no time greater than one-eighth of a section to each family head. Other individuals were allotted smaller segments of land. The title to the land was given to the individual Indian but it was held in trust for him by the government for twenty-five years during which time the allottee could not dispose of the land. The President of the United States was also authorized to extend this trust period at his discretion.



### Purpose of the Allotment Act

The allotment policy had not been generally successful before 1887 (Otis, 1934). In most cases the allottee fell victim to the advancement of the white settlers and lost his lands. For this reason the land was placed in trust for such a long period. In spite of the history of the allotment policy it was favored by many. The main purpose of land allotment was to civilize the Indians and to convert them to self-sufficient citizens no longer dependent upon the government. It was believed that very little degree of civilization was possible without individual ownership of land. Through allotment the tribes would be broken up, the individual Indian would no longer continue his native customs, and would more readily accept civilized manners.

### Factors Leading to Passage

An important factor favoring the allotment policy was the demand for land by settlers. Arriving in the West, they found that cattlemen had already established monopolistic control over non-Indian lands through leases. On the other hand, large portions of the reservations were not occupied by Indians. Because of their history of a nomadic life, the Indians were not as possessive of their newly acquired reservation lands as the settlers might have been. The Indian lived in centralized villages and the reservations seemed unoccupied. Having possession of title to the land

did not seem important to an Indian as long as the land was available for his use. However, as settlers occupied these lands, they soon tried to exclude the Indians' use of it (Otis, 1934). Federal agents in authority over these reservations were too few to provide adequate supervision of the settlers. Lack of protection of Indian land ownership resulted. Thus reservation lands not occupied by Indians fell easy prey to encroachment by settlers.

The western settlers wished to have legislation passed to legalize and ease the occupation and possession of title to reservation lands by non-Indians. However, the populace of the East maintained that the land was rightfully the Indians' and would not support any legislation to dispose of it. Nevertheless, the Eastern populace realized that it was just a matter of time before such legislation would be passed. It also believed that if the individual Indian held a land patent from the government he would have greater security than through tribal possession. As a result, the allotment policy was a compromise between East and West. Eastern supporters received assurance that the individual Indian would receive a patent to a specific piece of land. The Western settlers received an option to purchase title to the remaining Indian land. The land which was not allotted after the Indians received their due amount was considered "surplus." The Secretary of the Interior was authorized by the General Allotment Act of 1887 to negotiate with Indian tribes for

the purchase of such surplus land that the tribe consented to sell. Once the land was bought the United States held the land for the sole purpose of securing homes for actual settlers. The "surplus" land was then disposed of on terms prescribed by Congress.

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allotments of reservation land in severalty to any Indian (48 Stat. 984). This Act, known as the Howard-Wheeler Act, also extended the trust period placed upon Indian lands until Congress directed otherwise. It was realized that the allotment policy had been a mistake. The intent originally had been to convert the Indian into a stable settled farmer or rancher. To do this would be to change the entire cultural background of the Indian. This could not be done by merely allotting him land. The Indian was not adapted to this type of life and would dispense with the land as quickly as possible for immediate material return. The General Allotment Act of 1887 stated that an Indian could not alienate his land from Bureau of Indian Affairs relations through sale of the land. However, after the initial Allotment Act was passed, provisions were enacted to allow for the leasing of the land. This resulted in the Indian leasing his land, spending the lease revenues, and ending up without resources.

The Howard-Wheeler Act was passed during the office of President Franklin D. Roosevelt. The President, an avowed conservationist, was joined by the new Commissioner of Indian Affairs, John Collier, also interested in conserving for the Indian any resources that remained on reservation lands (Kinney, 1937). After extensive hearings and wide publicity the bill passed into law. This Act provided for the conservation and development of Indian lands and resources. However, in the case of the Quinault Reservation it came at a

time when the land was already subdivided and owned in severalty. The land owner was not necessarily interested in conserving or developing existing resources. In addition, economies of scale resulting from land management in continuous units would no longer be realized unless all landowners cooperated in land management.

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regarded as constant for all practical purposes.

The various categories of ownership are not consolidated. The northwest quarter of the reservation has very little trust or tribal land; the majority of it is held in fee-patent. The remainder of the ownership on the reservation is distributed at random with consolidated fee-patent ownerships beginning to appear.

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## CHAPTER III

### FEDERAL AND STATE REGULATIONS APPLICABLE ON TRUST LANDS ON THE QUINULT RESERVATION

The responsibility of managing Indian land held in federal trust has been placed in the Bureau of Indian Affairs. At the end of 1968 a total of 127,562 acres of tribal lands and land held in severalty were under the Bureau's management. The administration of these lands is governed by Title 25 of the Code of Federal Regulations. The regulations which are pertinent to the conditions on the Quinault Indian Reservation will be cited. The regulations which will be examined are a foundation for discussion and analysis in later chapters.

In viewing these regulations it must be kept in mind that section 1.2 of Title 25 authorizes the Secretary of the Interior "to waive or make exception to his regulations . . . in all cases where permitted by law and . . . that such waiver or exception is in the best interest of the Indians."

#### Regulations Governing Land Ownership Status

##### Issuance of Patents in Fee

The regulations governing land status are found in part 121 of Title 25 of the Code of Federal Regulations. Any Indian 21 years of age or over may apply for a patent in fee

for land which is held in trust for the individual by the government (25 CFR 121.1). In accordance with section 121.2 the Secretary of the Interior may, at his discretion, issue patents in fee to Indians applying if the applicant is "competent" and capable of managing his or her own affairs. In order to qualify under the above section an Indian must first apply for a certificate of competency. The paternalistic aspect of these regulations is further brought out by section 121.4 which reads in part, "The issuance of a certificate of competency is discretionary with the Secretary of the Interior" (25 CFR 121.4). This procedure of obtaining a certificate of competency and then a patent in fee has been reduced to a formality today. Challenging an individual's competency rarely occurs.

Once an Indian receives a patent in fee to his land, the relationship with the Bureau of Indian Affairs is severed. At this time the Indian is subject to State of Washington property laws. The owner may manage the land at his discretion or dispense with it. Lands presently in fee-patent ownership are not within the scope of this study.

#### Direct Land Sale without First Obtaining a Patent in Fee

If the Indian owner's sole objective is to sell his trust-held land, he need not first receive a patent in fee. He may apply to the authorities of the Indian Agency having jurisdiction over the land in question for direct sale of his

trust property (25 CFR 121.11). "Sales will be authorized only if, after careful examination of the circumstances in each case, a sale appears to be clearly justified in the light of the long-range best interest of the owner(s)" (25 CFR 121.11). Once the sale is authorized the land is appraised and advertised for sale by the Bureau of Indian Affairs. The Bureau accepts bids for the party and has the option to reject any bids "when . . . determined such action to be in the best interest of the Indian owner(s)" (25 CFR 121.16). According to section 121.20 the purchaser of the land is required to pay \$22.50 in addition to the purchase price of the land. This additional money is collected for the purpose of paying, at least in part, for the work of the Bureau incident to the sale.

### General Forest Regulations

#### Sustained Yield Forest Management.

Part 141 of the same Title of the Code of Federal Regulations contains the General Forest Regulations for the Bureau of Indian Affairs.

The following objectives are to be sought in the management of unallotted Indian forest land in accordance with the principles of sustained yield:

(1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silvicultural and economic

principles to the harvesting of the timber, and by making adequate provision for new forest growth as the timber is removed . . . . Similar objectives are sought in the management of allotted Indian forest lands but, in addition, the sales of timber shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things, . . . (3) the present and future financial needs of the owner and his heirs. (25 CFR 141.3)

Regulation of Annual Harvest. In the case of timber production on a sustained yield basis there exists a long time span between one harvest and the next on the same tract of land. During this time span the whole area in question is subject to protective measures, taxation, general maintenance expenditures, and possible land improvements. Therefore, in order for timber production to be economically self-sufficient during any specific time period there must exist a certain portion of the land that is producing gains to offset these expenditures. In order to obtain an even flow of these expenditures and gains, the land being managed on a sustained yield basis is usually harvested on an area method of regulation of harvest or on a volume method of regulation (Smith, 1962). The area method of regulation

consists basically of subdividing the total forest land area into as many equally productive units as there are years to the planned rotation and harvesting one unit each year. The volume method of regulation of harvest is used by determining the periodic harvest in terms of volume of wood with due regard for the rate of growth, current and potential, and for the volume of growing stock.

It is evident by section 141.4 of Title 25 that the Bureau of Indian Affairs has as its objective the regulation of timber harvest to achieve sustained yield by the volume method of regulation. Section 141.4 reads in part:

Cutting schedules shall be directed toward the salvage of timber that is deteriorating as a result of fire damage, insect infestation, disease, over-maturity or other cause; and toward achieving an approximate balance between maximum net growth and harvest during each cutting cycle.

#### Requirement of Management Plans

Section 141.4 goes on to mention the requirement of management plans for the forest resources:

For all Indian reservations of major importance from an industrial forestry standpoint, management plans for the forestry resources shall be prepared by the Bureau of Indian Affairs, and revised as needed. The plans shall contain a statement of the manner in which the policies of the Bureau of Indian Affairs are

to be applied on the forest, with a definite plan of silvicultural management and a program of action, including a cutting schedule, for a specified period in the future.

Regulations Pertaining to State Forestry Statutes and Agreements with the State of Washington

Enforcement on Indian Trust Lands. Section 1.4 of the same Title excludes all property held in government trust from all State and local laws, ordinances, or regulations. However, the same section authorizes the Secretary of the Interior to adopt all or part of the State or local laws and regulations if it is in the best interest of the Indian owner or owners. The law or regulation in question may be applied in only specific geographical areas if that is found to be in the best interest of the Indian.

In conjunction with this section, section 141.21 reads in part, "The Secretary may enter into reciprocal agreement with any fire organization, maintaining fire protection facilities in the vicinity of Indian reservations, for the mutual aid in fire protection . . . ."

Cooperative Fire Protection Agreement: Fire Protection Responsibility. In accordance with the above two sections of the Code of Federal Regulations, the Bureau of Indian Affairs maintains a Cooperative Fire Protection Agreement with the State of Washington. The responsibility of fire protection is

transferred to the Department of Natural Resources of the State of Washington. For this responsibility transfer, the Bureau of Indian Affairs pays the Department of Natural Resources nine cents per acre per year. This amount is equal to the charge placed upon all fee-patent lands west of the Cascade Mountains which are protected by the State. The Bureau of Indian Affairs pays the full amount for all Indian lands in its trust and the individual owner of these lands is not billed any portion of this cost.

Cooperative Fire Protection Agreement: Payment of Fire Suppression Costs due to Unabated Logging Slash. A State of Washington statute (RCW 76.04.370) presently authorizes the State to recover the cost of fire suppression made necessary by reason of logging slash not having been abated. This cost is levied upon the land owner or the person creating the slash and applies only to fee-patent lands. If the cost is not paid the State places a lien upon the land. This statute does not apply to Indian trust land; however, the Bureau of Indian Affairs has agreed through the Cooperative Fire Protection Agreement to pay this suppression cost on trust lands. The Bureau pays this cost from an open fire fighting account and the individual Indian landowner does not see any of the cost. In the event slash has been abated and fire suppression costs are incurred on this land in the future, the State bears the cost. One-half of any suppression

costs assumed by the Bureau of Indian Affairs either due to non-abatement of slash or otherwise are transferred to the purchaser of the timber on the land in question. This is done through the General Timber Sale Regulations and the Standard Timber Contract Provisions of the Bureau which are written into all timber sale contracts on trust lands.

On land which is under a timber harvesting contract, the timber purchaser has the option of abating slash or leaving the slash unabated and taking the risk of possible fire suppression costs. If the contract provisions were to be enforced this option would not be open to the timber purchaser. The present practices of the Bureau of Indian Affairs which make this option available will be discussed in Chapter IV.

Regulation Authorizing Deductions from Gross Receipts from Timber Sales. One additional regulation needs to be cited at this time. This regulation authorizes deductions from the gross amount received from timber sales on all trust lands to pay for administrative expenses incurred by the Bureau (25 CFR 141.8). This deduction is 10% of the gross amount received for the timber or 5% when the timber is sold in such a way as not to cause high administrative expenses.



## CHAPTER. IV

### FOREST MANAGEMENT PRACTICES ON QUINAULT RESERVATION TRUST LANDS

In this chapter present forest management practices on the Quinault Indian Reservation will be presented. These practices will be examined in relationship to their compatibility with established federal land use regulations. To examine the merits of such regulations or their consistency with each other could take an entire work in itself and will not be attempted in this thesis. It should be noted, however, that Waggener (1966) has shown that traditional concepts of forestry, including sustained yield, are insufficient to assure maximum returns under changing economic conditions.

The merits of these federal regulations in achieving individually desired goals would be dependent upon the individual's time horizon of completing an objective. If the individual's objective is to derive an income or profit, his anticipated rate of return from his venture versus his risk preference needs to be taken into account. Also, the availability of information to the landowner concerning various alternative actions demands consideration. The above information concerning the individual landowners on the Quinault Reservation is not available to the author and

an analysis of the merits of the goals and objectives stated by the Bureau of Indian Affairs will not be attempted.

#### Practices to Achieve Sustained Yield

One of the above-stated objectives of the Bureau of Indian Affairs is the management of Indian trust lands in accordance with the principles of sustained yield. The harvest within a designated time period is regulated by the volume regulation method by the Bureau in which the volume of timber harvested is equal to the net growth. This is to be done on allotted and unallotted tribal lands.

As stated by one of the Bureau's regulations, management plans shall be prepared in which it will be stated in what manner the policies of the Bureau are being applied. A definite plan of action is to be specified. With such a plan one could determine the time period used in which the harvest and growth are equalized. This type of plan does not exist for forested lands on the Quinault Reservation (Clark, 1969). As a result this time period is unknown.

In addition it is not known how much timber growth is taking place on either an annual or longer time basis. There exists no inventory of trust lands in order to compute this type of data. The state of reproduction on harvested lands is unknown. The acreage in any state of reproduction is unknown let alone the age of reproduction and the amount of it on certain acres (Clark, 1969).

Without such an inventory to compute timber growth values, one cannot equalize growth and harvest. However, timber harvesting operations were under way on the Quinault Reservation with several large timber sales in the early 1920's (Kinney, 1950). Today approximately three-fourths of the entire reservation has been logged (Clark, 1969). A portion of the remaining one-quarter of the area which is unharvested is under two long-term logging contracts which will expire in 1979 and 1986 (Contracts No. 1-101-Ind.-1766 and No. 1-101-Ind.-1902). The present rate of harvest under each of these contracts is approximately 1000 acres per year (Clark, 1969). At this rate of harvest there will remain approximately 20,000 acres of unharvested land on the entire Reservation at the end of 1986 when the last long-term harvesting contract is completed.

Thus it can be seen that a major portion of the Quinault Reservation has been harvested before the amount of timber growth is known. There is no plan of action to equate the volume of timber harvest to the amount of timber growth within a specified time period. Yet the Bureau of Indian Affairs has as its objective the practice of sustained yield by the volume method of regulating its harvest. This leads to the conclusion that the Bureau of Indian Affairs is not in fact practicing sustained yield on the Quinault Reservation. On the contrary, harvesting methods on the Quinault Indian Reservation seem to follow a program of liquidation in which

the present standing timber is harvested and little or no attempt is made to insure a future timber harvest.

#### Slash Abatement Practices

As stated in the previous section, there exist two long-term timber harvesting contracts still in effect on trust lands on the Quinault Reservation. One expires April 1, 1979, and the other expires April 1, 1986.

The contract expiring in 1979 is with the Aloha Lumber Corporation of Aloha, Washington. The contract went into effect in April, 1950. The area involved encompasses 237 acres of tribal land and 30,034 acres of allotted land (Contract No. 1-101-Ind.-1766). At the time the contract went into effect it was estimated that there were 545 million feet, B.M. of timber to be cut.

The second long-term contract went into effect in June, 1952, with Rayonier Incorporated of Hoquiam, Washington (Contract No. 1-101-Ind.-1902). The estimated timber volume at the time of enactment was 614 million feet, B.M. The area in question consists of 166 acres of tribal land and 35,216 of allotted land.

Logging under both contracts is specified by the contracts to be done in such a way as to have a steady flow of timber from the land. Because of this requirement and the time of the contract duration there are approximately 1000 acres of logged land resulting each year under each

contract. The timber is composed of more than 50% old growth Western Red Cedar. Old growth cedar contains a large amount of cull and unusable material. As a result a large amount of slash is created on a yearly basis. The exact amount of slash created is not known; no inventory exists to gather this type of information (Clark, 1969).

Two documents that the Bureau of Indian Affairs encloses with all timber sale contracts are the General Timber Sale Regulations approved April 10, 1920, or the Standard Timber Contract Provisions of March, 1960. In the case of contracts approved prior to 1960, the former document applies; the latter applies to any contract approved since 1960. These regulations are written into all contracts and are applicable to all unexpired timber sale contracts. Any contracts being presently approved have these regulations attached. Sections 25 and 26 of the Regulations and section 9(b) of the Provisions specify that any slash created as a result of logging operations will be burned in such a manner as the Bureau of Indian Affairs officer in charge may require.

However, these regulations are not enforced on any trust land which is presently under timber harvesting contracts (Clark, 1969). Since the start of logging operations in the 1920's these regulations have not been enforced by the Bureau of Indian Affairs officials on the Quinault Indian Reservation. When logging activities were initiated at this early date on the Quinault Reservation, the primary

reason for slash abatement was to help prevent wildfires caused by large areas of available fuel created by the presence of slash. However, logging activities on the Quinault were widely separated and there had been no large wildfires because of slash; therefore, no one considered wildfire as a great threat. It was concluded that the abatement of slash was not needed (Clark, 1969).

The reason for not enforcing slash abatement regulations today is unknown to the author. The reason for non-enforcement cannot be that they could not be enforced. Both of the above-named contract regulations have sections (52 and 2-f) which authorize the suspension of any or all of the timber purchaser's operations if there are violations of any of the requirements of the contract. There have been no suspensions of operations in the past because of non-slash abatement because the officer in charge has not presented the purchaser with any slash-burning procedures or required any procedures to be followed (Clark, 1969).

#### Forest Regeneration Practices

Another stated objective of the Bureau of Indian Affairs is to regenerate harvested land (25 CFR 141.3). No general policy of artificial regeneration on lands under government trust exists within the Quinault Indian Reservation. As funds and time allow, artificial regeneration is done on a limited basis (Clark, 1969). A large percentage of

the land is regenerated by natural means. The large amount of slash present might hinder natural regeneration on a large portion of the land. This would leave the land unproductive and therefore would not be pursuant to the established policy. Current inventories would be necessary to determine whether or not this problem presently exists on the Quinault Reservation.

This inventory may help to determine if the slash needs to be abated through the use of prescribed fire in order to make the land more amenable to natural reproduction. Areas needing slash abatement could be defined. Likewise, areas containing sufficient natural reproduction and not needing slash abatement would be known.

The possible problem of establishing regeneration due to the absence of slash treatment on trust land under unexpired timber sale contracts can be solved by presenting the contractor with a prescribed burning plan. The adherence to such a plan could be enforced with the threat of closure of all operations. It is possible that this may very well be applied to slash created in the past on long-term contracts still in effect. In the case of lands subject to expired timber contracts, it is questionable as to whether or not the purchaser is legally responsible for the slash abatement since there was no abatement plan in the past when the contract was still in effect. In this event the Bureau of Indian Affairs would have to absorb the cost if this land were still in trust

and slash abatement were done on this land.

In view of the stated objectives of "preservation of such lands in a perpetually productive state" (25 CFR 141.3), the non-enforcement of the above-stated contract regulations, and the slash and reproduction problem, one would further conclude that the Bureau of Indian Affairs has not been managing the land on the Quinault Reservation in accordance with its stated objectives and policies.



## CHAPTER V

### POSSIBLE EFFECTS OF ADHERENCE TO PRESENT FORESTRY REGULATIONS ON THE QUINAULT INDIAN RESERVATION

The forestry regulations as stated in the Code of Federal Regulations specify that sustained yield timber management is required and that the volume method of regulating the annual harvest is to be used. This has been discussed in Chapter III. In addition, management plans are required which state in what manner the policies of the Bureau of Indian Affairs are to be carried out.

It has been shown in Chapter IV that the Bureau of Indian Affairs is not practicing forestry in accordance with federal regulations on the Quinault Indian Reservation. In this chapter the author wishes to discuss the established regulations for the management of Indian-owned lands held in federal trust on the Quinault Indian Reservation. Some of the inefficiencies that might result if the forestry regulations are abided by will be brought out.

#### Necessity of Forest Inventory

The stated forestry regulations requiring sustained yield and adequate provisions for regeneration imply many possible forestry practices. It has already been pointed out in Chapter IV that an inventory would be necessary to determine

what management practices need to be followed. As a result of an inventory stating general forest conditions, the amount of slash abatement desired could be determined. In addition, the amount of natural reproduction would be known and this amount could be compared to the desired amount of reproduction. Then a decision could be made as to how much artificial regeneration is to be established. Another result of this type of inventory would be a better knowledge as to which more intensive forestry practices would best increase timber production.

Performance of Forestry Practices by the  
Bureau of Indian Affairs

The performance of any forestry practice by the Bureau could be interpreted as being within the Bureau's responsibility of managing Indian-owned land in accordance with its stated objectives. If the Bureau of Indian Affairs were to absorb the cost of any forestry practices or any land improvements in addition to costs of administrative services in conjunction with timber sales, this would become a form of a direct subsidy to the Indian landowner.

The actual cost of any possible subsidy as seen by the public is not only expressed in the form of immediate costs involved. The cost of foregoing the next best alternative public project is implied when forestry practices are performed with public funds. Once the monetary resources are

designated for forestry practices on Indian lands, these resources are no longer available for supporting an alternative project. Which undertaking is financed would depend upon established priorities.

Financing of Forestry Practices through  
the Use of Administrative Fees

The statement that financing of forestry practices by the Bureau of Indian Affairs would create a subsidy could be challenged on the basis that the Indian landowner already pays a fee to the government. This fee is 5 or 10% of gross timber sale receipts (25 CFR 141.8). If money from this source could be used for forestry practices by the Bureau, then a subsidy would not occur.

However, according to regulations this payment is specifically intended to cover administrative costs necessitated by the Bureau of Indian Affairs in the supervision of timber sales. In addition these regulations specify that if sales are conducted in such a way as to result in low costs of administration, the landowner is assessed only 5%. Nowhere is it stated that this money is to be used for forestry practices by the Bureau. If additional information indicates that the administrative fees are greater than actual costs, the amount of the fees should be reduced.

Performance of Forestry Practices through  
Contractual Agreement

Many forestry practices could be financed by the timber purchaser through contractual agreement. This is the manner in which slash can be abated on trust lands of the Quinault Indian Reservation. As stated in Chapter IV, slash abatement provisions and regulations are specified in timber sale contracts. Slash abatement procedures are required if the Bureau of Indian Affairs official in charge presents such procedures to the purchaser.

If the timber purchaser is required to abate slash through the use of prescribed fire, the cost to the purchaser will go up. This increased cost can be transferred from the timber purchaser to the landowner in the form of a decreased timber price. Likewise, the cost of slash abatement can be passed forward to the person who converts the timber into finished products. The cost can again be transferred forward until it may reach the ultimate consumer of the finished product.

The party to whom the added cost of slash abatement would be transferred is dependent upon market conditions at any given time throughout the production process. Since these conditions are unknown in advance, it is difficult to predict what would happen to the cost of slash abatement if abatement were performed on the Quinault Reservation.

In the event that the cost of slash abatement is absorbed by the timber purchaser or is passed forward to the consumer, the landowner is not affected by this cost. However, the cost may be transferred back to the landowner in the form of decreased timber sale revenues. This reduced revenue is the cost of adhering to the forestry practice of slash abatement through the use of prescribed fire. The landowner's objective may be to carry out this forestry practice through the sacrifice of reduced timber revenues. In this case the landowner is having his objective performed for a price by the timber purchaser.

In the event that the Indian landowner's objectives are to maximize revenues from his timbered lands and let the land lie idle thereafter, it may be to his disadvantage to enforce slash abatement contract clauses on his land. The cost of slash abatement may be transferred to the landowner when in fact he does not wish to have this practice performed on his lands.

In the event slash is abated on trust lands the general populace is not faced with a possible future fire suppression cost. Through the Cooperative Fire Protection Agreement discussed in Chapter III, the State of Washington assumes the fire suppression cost if slash has been abated. This benefit, avoidance of future suppression costs, that is received by the Bureau of Indian Affairs and the timber purchaser, may create a cost to the Indian landowner. If the slash abatement

contract clauses are enforced and the cost of slash abatement is transferred backward to the landowner, then this does become a cost to the landowner. This cost may be placed with the landowner without his consent if the Bureau of Indian Affairs officials in charge enforce the timber sale contract clauses. These above situations do not presently exist, since the slash abatement clauses are not enforced on the Quinault Reservation.

## CHAPTER VI

### SUMMARY AND CONCLUSIONS

The Quinault Reservation was subdivided after 1887 into small tracts of land of a maximum size of one-eighth of a section. These tracts of land were allotted in severalty to Indians for the purpose of civilizing the Indians. Civilization of the Indians was desired by the federal authorities and was believed to be in the best interest of the Indians. The belief was that civilization was best accomplished through acquiring pride of land ownership. Once the Indians obtained pride of land ownership, it was concluded, the Indians would maintain their newly acquired land in a manner acceptable to the federal authorities.

However, the federal authorities realized that the pride of ownership and "proper" use of the land would not come about immediately once the Indians received title to the land. Therefore, the land was placed within federal trust for twenty-five years. During this period of federal trust the Indians could not dispose of the land. It was assumed that the Indians would develop pride of ownership and acceptable land management practices.

During this early period of federal trust, the means of accomplishing the established goal of civilizing the Indians were changed. The original means of accomplishing the goal

were through agriculture and pride of ownership. The federal authorities realized that some land was best suited for timber production. Traditional forestry management practices were incorporated into federal land-use regulations. The land was to be managed by the federal government in the best interests of the Indian landowner. However, the establishment of forestry regulations was based upon a physical parameter of the land and was not necessarily based upon the desires or best interests of the landowner.

The present practices of the Bureau of Indian Affairs on the Quinault Indian Reservation are not in accordance with federally established forestry land-use regulations. Traditional forestry practices such as sustained yield are incorporated into the regulations but are not being performed. In addition, the objective of managing the land in the best interests of the landowner is possibly not being realized.

In Chapter V some possible effects of modifying present forestry management practices on the Quinault Indian Reservation were discussed. It was pointed out that if the Bureau of Indian Affairs were to assume the additional costs of more intensive management a subsidy to the Indian landowners would result. On the other hand, if costs were to be assumed by the timber purchaser several effects would be possible. Revenues to the landowner may be lowered or costs may be passed on to the consumer.

It is difficult at present to trace the effects due to



added costs of forestry practices on the Quinault Reservation. Additional research needs to be done to update land-use regulations. Regulations such as competency clauses which may be no longer necessary need to be reevaluated. A revised system of land-use regulations could be more responsive to the landowner's objectives. Also, the regulations would be best if they were responsive to changing economic conditions. In this event it would not be necessary to adhere to a constraint such as sustained yield if alternative managerial policies are in the best interest of the landowner.

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