

Fulfilling the Promise  
of  
The Tribal Forest Protection Act of 2004

Volume I

An Analysis by the Intertribal Timber Council

in

Collaboration with

USDA Forest Service and Bureau of Indian Affairs

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**Intertribal Timber Council**

**1112 NE 21st Avenue, Suite 4, Portland, OR 97232**

**Ph: (503)282-4296**

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***“Indian Tribes are here to stay. We will not sell our land or shear down our forests during wavering economic times and relocate our operations elsewhere. Our ancestors - our culture - is committed to the land upon which we live. We have become new pathfinders searching for ways to revitalize our environment and thus our communities. When our work is done, our greatest honor is not in what we celebrate in ourselves today. The greatest honor lingers in the future when our grandchildren will stop and say, “Our elders, our grandmothers and grandfathers, did it right.” They will enjoy the success of our lifetime in their future.”***

Jaime A. Pinkham, Nez Perce Tribe.  
President, Intertribal Timber Council Senate  
Committee on Indian Affairs Oversight Hearing  
on the National Indian Forest Resources  
Management Act September 20, 1995

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Sequoia NF –Tule River Reservation Site Visit Photo by  
Dave Ernst July, 2012

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## Acronyms

ACHP	Advisory Council on Historic Preservation
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CFLRP	Collaborative Forest Landscape Restoration Program
DOI	Department of Interior
FS	Forest Service
FSH	Forest Service Handbook
FSM	Forest Service Manual
GIS	Geographic Information System
ITC	Intertribal Timber Council
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NFS	National Forest System
NGO	Non-Governmental Organization
TFFPA	Tribal Forest Protection Act
USDA	United States Department of Agriculture

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### **Analysis Coordinator and Report Lead**

Jim Erickson (ITC)

### **Administrative Oversight Team**

Gary Morishima (Intertribal Timber Council)

Bill Timko (Forest Service)

Bill Downes (Bureau of Indian Affairs)

Fred Clark (Forest Service)

### **Implementation Team**

Megan Roessing, Nicole Balloffet, Kara Chadwick, and Chris Farley (Forest Service)

Faline Haven (Bureau of Indian Affairs)

Sonia Tamez (Consultant)

### **Phase 1 On-line Survey Design and Analysis**

Adrian Leighton (Salish-Kootenai Tribal College)

### **Phase 1 On-line Survey Analysis and Report**

Ivan Eastin, Indroneil Ganguly, and Tait Bowers  
(Center For International Trade in Forest Products)

### **Success Stories, Training Modules, and Report Contributions**

Sonia Tamez (Consultant)

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## EXECUTIVE SUMMARY

In 2002 and 2003, extensive wildfires, originating on national forests or other federal land, swept across the West and devastated tribal communities. Lives were lost and resources held in trust by the United States for the benefit of Indians were severely damaged.

The Tribal Forest Protection Act of 2004, PL 108-278 (TFPA) was passed in the aftermath of these catastrophic losses in order to provide a means for Tribes to propose projects that would protect their rights, lands, and resources by reducing threats from wildfire, insects, and disease. The TFPA offered promise as a means of helping the United States fulfill its federal responsibilities to protect the trust corpus, while promoting restoration of healthy forest ecosystems on the landscape.

Under the TFPA, the Secretaries of Agriculture and Interior are authorized to enter into agreements or contracts, pursuant to tribal proposals to address hazardous conditions on Forest Service (FS) or Bureau of Land Management (BLM) administered lands that border on or are adjacent to tribal trust lands or resources. (This report focuses on

implementation of the TFPA by the FS and Tribes and does not include BLM.)

Information on the number of tribal TFPA proposals submitted, withdrawn, or rejected during the eight years since enactment of the TFPA was unavailable. The FS identified eleven proposals that were accepted by the FS. Of those only six projects have been successfully implemented, encompassing less than 20,000 acres of forest lands out of the 193 million acres of forests and grasslands administered by the FS. The promise of the TFPA remains unfulfilled.

To better understand why the TFPA has not been extensively employed, the Washington Office of the FS entered into a Cooperative Agreement with the Intertribal Timber Council (ITC) to identify impediments to the use of TFPA and to develop recommendations to improve its implementation. The study was undertaken by the ITC in collaboration with the FS and Bureau of Indian Affairs (BIA) through the use of surveys, interviews and site visits to Indian reservations and National Forests.

### Findings

- Perceptions and understanding regarding use of the TFPA authority, proposal development, review, and implementation process differ between Tribes, the BIA and FS.
- FS understanding of government-to-government relationships and agency trust responsibilities to Tribes is variable throughout national forests.
- Tribes frequently attribute their unwillingness to aggressively pursue TFPA projects to their lack of confidence that limited tribal resources invested to pursue TFPA proposals would be well spent. There is also concern over becoming embroiled in costly and protracted FS administrative processes that are fraught with uncertainties and cast doubt on timely implementation (e.g., funding availability, environmental clearances, impacts of restrictions to protect species listed under the Endangered Species Act, Wilderness designations, Roadless classifications, and litigation).
- Frequent turnover of leadership and staff hamper long-term, collaborative relationships at the local level between Tribes and the FS.
- FS policy guidance regarding the TFPA is unclear, incentives are lacking, and funding for implementation is uncertain.
- The ability to fund TFPA projects has largely been dependent on Congressional appropriations because opportunities to defray treatment costs (e.g., goods for services) are becoming increasingly scarce due to the decline of viable markets for forest products.

### Recommendations

- 1. Improve understanding of TFPA, government-to-government relationships and trust responsibilities** by conducting joint training (i.e., general tribal relations training currently in development by the FS and adaptation of modules produced by the ITC) and providing post-training technical support.  
  
Undertake a tribal outreach effort to inform Tribes about the TFPA and encourage its use, including notice of training opportunities and distribution of technical assistance materials, such as templates for preparation of TFPA proposals along with descriptions of FS administrative guidance and proposal review processes.
- 2. Strengthen the partnership between the FS and Tribes through formal agreements** to institutionalize working relationships, forums, exchanges, collaborative project planning, engagement in national forest plan revisions, coordinated federal hazard fuel funding, and collaborative efforts to maintain viable infrastructure for utilization of forest products
- 3. Promote Use of the TFPA.** Encourage FS use of TFPA through performance incentives and accountability measures, budget direction, monitoring, reviews, and development of direction and guidance.  
  
Develop and implement a collaborative FS-ITC -BIA strategy to implement the TFPA. Include information

sharing and interagency agreements to foster mutual understanding and use of administrative tools and authorities.

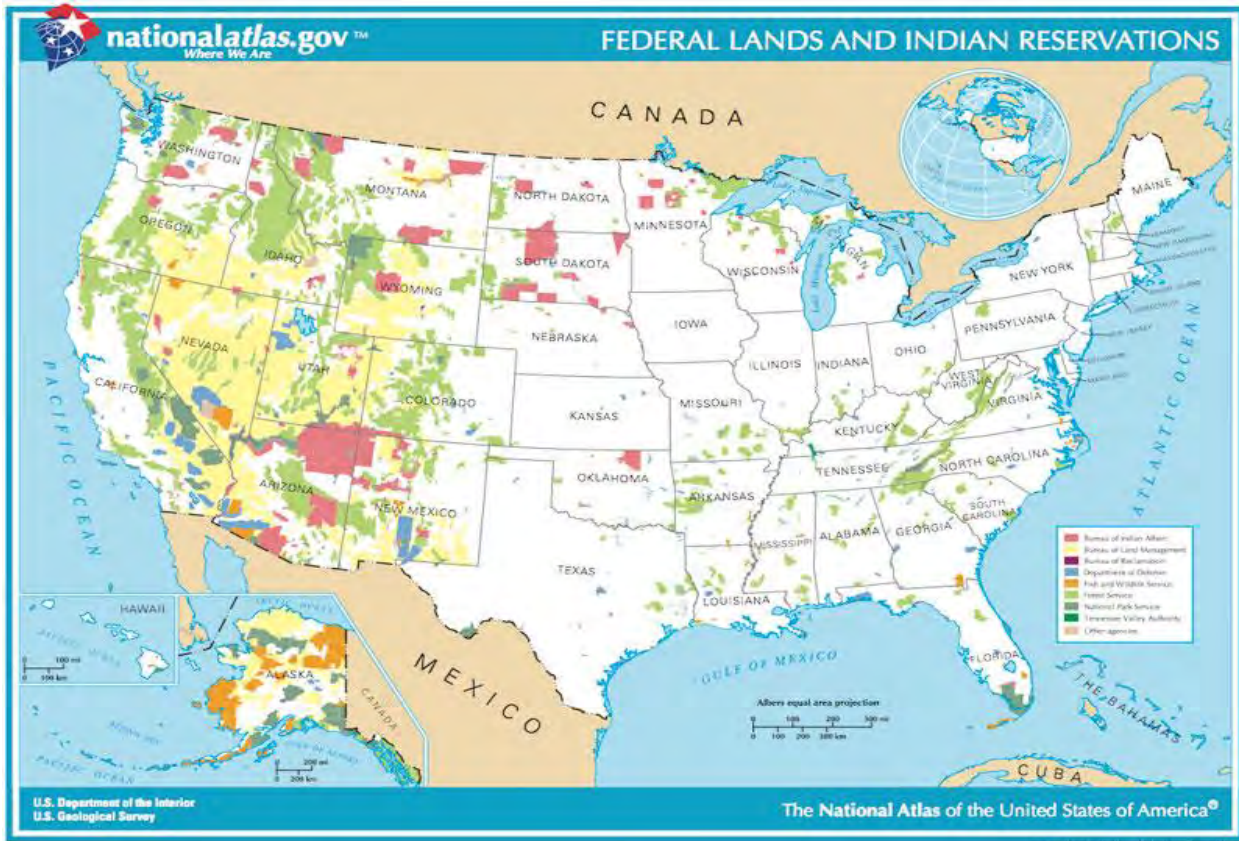
4. **The ITC and Tribes should explore ways to amend TFWA or other authorities** to expedite consideration, approval,

and implementation of TFWA projects by addressing environmental compliance categorical exclusions, alternative dispute resolution processes, and allowing for a greater range of management alternatives in specially designated land classification areas.

## BACKGROUND AND INTRODUCTION

As determined by the FS Geographic Information System, Tribes and national forests share approximately 2,675 miles of common boundary. Tribes have reserved rights to fish, hunt, and gather on millions of acres of land administered by

the FS. Tribes are becoming increasingly concerned that deteriorating conditions on FS lands threaten their ability to protect on-reservation resources held in trust by the United States on their behalf and to exercise reserved rights.



**Relationship between Tribal (red) and Federal lands (other colors excluding white, blue, and tan).**

In 2002, the Rodeo-Chedeski wildfire captured our nation’s attention when it burned approximately 280,992 acres on the White Mountain Apache Reservation in east-central Arizona, and some 167,215 acres on the neighboring Apache-Sitgreaves National Forest. In 2003, nearly 20 Indian reservations were devastated by wildfire that originated on adjacent federal lands, including those managed by the FS. In southern California alone, the hundreds of thousands of acres that were burned included several Indian reservations.

The Tribal Forest Protection Act, P.L. 108-278, (TFPA) was enacted in July 2004 following a series of wildfire conflagrations across the West. In recognition that the

United States has a fiduciary trust responsibility to protect tribal lands, resources, and rights, the TFWA enables Tribes to propose projects to address hazardous conditions on lands administered by the FS and the Bureau of Land Management (BLM), which border or are adjacent to tribal trust lands or resources. The TFWA could facilitate treatment and collaboration between the FS, Tribes and BIA to manage and restore healthy forests on the landscape.

Information on the number of tribal TFWA projects submitted, withdrawn, or rejected since enactment of the TFWA in 2004 could not be located. The FS was able to identify 11 projects that were accepted by the agency and,



of those, only six were successfully implemented. Given the small number of projects, it is clear the TFPA authority has been scarcely used.

The promise of the TFPA to provide a means for Tribes to work with federal agencies to restore forests and reduce forest health threats at a landscape level remains unfulfilled

In response to concern over the small number of TFPA projects, the Washington Office of the FS and the ITC entered into a Cooperative Agreement in 2011 to identify impediments to implementation of the TFPA on FS administered lands and to develop recommendations to improve its utilization. The analysis, undertaken in collaboration with the FS and Bureau of Indian Affairs (BIA) involved on-line surveys, individual interviews and site visits to eight Indian Reservations and nine National Forests. The findings and conclusions from this investigation led to a set of recommendations intended to overcome primary impediments to increased FS use of the TFPA.

This report is presented in two volumes. Volume I contains an executive summary, introduction, findings identifying impediments to use of TFPA, recommendations to overcome these impediments and enhance the use of the TFPA. There is also discussion on the value of the TFPA as a potential catalyst for landscape scale forest restoration. A proposed action plan to implement the report's recommendations is included.

Volume II contains several appendices that support and supplement Volume I: (A) the TFPA; (B) results of online surveys; (C) success stories; (D) site visit reports; (E) proposed training modules; (F) reference materials pertinent to TFPA implementation; and the (G) methodology used to conduct the investigation.



The TFPA can address hazardous conditions for wildfire which could damage lands and resources of concern to Indian Tribes. A series of three wildfires that originated on Forest Service lands affected the headwaters of Santa Clara Creek and contributed to severe monsoonal flooding, extreme erosion of the stream channel and sedimentation of water retention and fishing ponds of the Santa Clara Pueblo Tribe. Photo by Jim Erickson. July 2012.

## FINDINGS AND CONCLUSIONS

Surveys, phone interviews and site visits strongly indicate that Tribes, BIA, and FS share interest in learning more about the TFPA, its potential to address tribal concerns, and its value in helping to restore forest health at a landscape scale. Despite these commonalities, it is apparent that Tribes and

the FS have different perspectives and perceptions on impediments to the use of TFPA. Findings and conclusions comparing and contrasting Tribal/BIA and FS views are summarized below:

### Tribal and BIA Perceptions:

- **The TFPA authority and implementation process are not well understood by Tribes and the BIA.** The phase 1 survey (Appendix B) indicated 71 percent of Tribal/BIA respondents identified the need for *TFPA training* and subsequent *technical assistance* as very high priorities. Approximately 47 percent of these respondents indicated they did not know how to initiate a TFPA proposal.
- **Tribes are reluctant to invest limited staff and resources to prepare and pursue TFPA proposals because they are not confident they can be planned and implemented in a timely manner.** Findings and conclusions of site visit reports supporting this conclusion, include:
  - Tribes are reluctant to pursue projects because they are unfamiliar with FS administrative procedures, priorities, and operating restrictions (e.g., budgetary priorities, NEPA compliance, restrictions to protect ESA-listed species, land allocation processes and restrictions such as wilderness and roadless designations).
  - Where good working relationships exist, some Tribes and the FS may use authorities other than the TFPA to accomplish desired resource objectives. (Appendix C: Leech Lake Band of Ojibwe Indians and the Chippewa National Forest site visit report).



- Tribes have received mixed interpretations on how “adjacency,” “sole source” and “best value” will be locally interpreted and applied to TFPA proposals.
- Tribes are reluctant to become entangled in the litigious environment that the FS operates in, with protracted administrative appeals and long-term litigation
- Tribes lack staffing and funding to engage in developing proposals for FS lands.
- Tribes are uncertain how the Forest Service trust responsibility for Tribal treaty and reserved rights is weighed against land allocation designations, restrictions for protection of ESA listed species, and public stakeholder input.
- **Effective formal agreements are often not in place to institutionalize working relationships between Tribes and National Forests.** Coordination

*The Tule River Tribe has encountered complex, time-consuming, and costly FS administrative processes as it seeks to undertake a TFPA project to protect the giant sequoia trees, believed to be ladders to heaven.*

*The Tule River Tribe initiated a proposal within a few months of enactment of the TFPA in 2004. Today, in the spring of 2013, the project’s Environmental Impact Statement is still being prepared. The Tribe continues to accomplish forest health treatments on Reservation lands adjoining FS lands funded in part with FS grants.*

*A brief chronology of events from the perspective of the Tule River Tribe is appended to this report to illustrate the challenges that Tribes can face when attempting to undertake TFPA projects.*

between the BIA, FS and Tribes regarding the TFPA is highly variable and relationships are largely personality-dependent. In addition:

- Tribal staffs experience difficulty in establishing and sustaining working relationships with local FS personnel. Frequent FS staff turnover hinders the ability of Tribes to collaboratively identify, develop and implement TFPA projects.
- Coordination of land management and project planning between Tribes and National Forest is highly variable.
- FS funding constraints inhibit coordination of funding and project implementation between Tribes and agencies (e.g., federal hazard fuel funding formulas, resources to address climate change and use of special authorities such as the Collaborative Forest Landscape Restoration Program [CFLRP]).

## FS Perspectives on the TFPA:

- **Understanding of government-to-government relationships and agency trust responsibilities to Tribes is variable.** FS staffs are generally aware of tribal-federal policies, such as government-to-government relationships, self-determination, and consultation requirements and of concepts such as trust responsibilities. However, understanding of how those policies and concepts differ from general agency responsibilities for interacting with the general public or stakeholder groups is often lacking. At the local level, FS staff may not be familiar with the cultural, spiritual, and economic relationships Tribes have with the land. Uncertainty regarding protocols and processes to implement those policies within the context of unique tribal relationships and rights (e.g., language, appropriate interactions within tribal organizational structure, sacred sites, customs, ceremonies and practices, traditional foods and medicines, reserved and treaty rights, court decrees, agreements, etc.) may also be obstacles.
- FS personnel find it difficult to establish and maintain effective working relationships when frequent changes to

tribal leadership occur. There is also confusion about who has the authority and ability to speak and act on behalf of the tribal government. Where regular dialog occurs with Tribes, relationships tend to be more effective.

- **The TFPA authority is not well understood by FS personnel.** The Phase 1 survey (Appendix B) indicated 68 percent of FS personnel identified the need for TFPA training and technical assistance.
- **Policy support and guidance regarding use of the TFPA is unclear.** This is supported by several interviews and site visit reports, including:
  - Incentives and performance accountability tied to TFPA implementation are lacking.
  - The potential value of the TFPA and developing partnerships with Tribes to improve forest health is not fully understood or appreciated.
  - There is a lack of clear FS agency direction, guidance and support on implementation of TFPA. Processes for proposal development, review, resolution of any

disagreements, and project implementation with roles and responsibilities are not well defined. Consequently, use of the TFPA often rests with the knowledge and willingness of local and regional FS staff to exercise flexibility and assume responsibility. This relationship leads to variable interpretation of concepts such as “best value”, “sole source”, and “adjacency” as they apply to consideration and implementation of TFPA projects.

- The future availability of authorities, such as stewardship contracting, is unclear, creating concern for commitment to long term, large scale TFPA projects.
- The lack of prioritized funding for TFPA project planning and implementation serves as a disincentive. TFPA proposals must compete with other Forest/District projects for limited funding and staff. Related issues affecting TFPA implementation include:
  - ✓ The lack of viable markets for material removed by projects limit opportunity to defray treatment costs (Goods for Services).

✓ Tribal TFPA proposals are evaluated by the FS within the context of other priorities and initiatives. The potential for litigation and appeal of TFPA projects is factored in when prioritizing projects and allocating staff and fiscal resources.

- There is uncertainty regarding federal trust responsibilities toward Tribes and how those responsibilities may affect agency duties and processes. Some FS staff seem to believe only the BIA has a trust responsibility toward Tribes. Lack of understanding of special obligations and requirements for government-to-government discourse when dealing with tribal issues is reflected in various ways. For example, review and consideration of concepts such as “best value”, reserved rights, trust responsibilities, and government-to-government relationships when administering general contracting procedures; differential application of subcontracting standards when comparing tribal proposals with those provided by other firms; weighing trust responsibilities to protect trust resources of Tribal reserved rights in light of FS land allocations and administrative restrictions when considering TFPA proposals.

## RECOMMENDATIONS

### 1. Improve Understanding and Use of the TFPA

- **Provide TFPA training and technical support for project development and implementation.**
  - Adopt and deliver the training modules through an interagency training cadre.
  - Organize a TFPA technical support team with specialized skills and experience to assist FS and Tribes in developing and implementing TFPA proposals.
- **Undertake a tribal outreach effort to inform Tribes about the TFPA and encourage its use, including a notice of training opportunities and distribution of technical assistance materials, such as templates for preparation of TFPA proposals along with descriptions of FS administrative guidance and proposal review processes.**

### 2. Strengthen Tribal-FS Partnerships at the Local Level

- **Tribes and FS should establish mechanisms such as participatory agreements, MOUs or MOAs to formalize and institutionalize relationships.**
  - Clarify processes for regular exchange of perspectives and consultation protocols.
  - Promote collaborative Tribal and FS project planning and implementation.
  - Provide for, and support tribal participation in National Forest plan revisions and project review through membership on interdisciplinary teams, collaboration, special briefings to tribal councils, shared positions, and other ways.
- Coordinate federal hazard fuel funding systems to compliment fuel treatments across landscapes to improve their efficiency and effectiveness.
- Collaborate on efforts to develop and maintain infrastructure for management, harvesting, transportation, and forest products processing.
- **Create a FS/ITC/BIA Implementation Team to coordinate a TFPA initiative and related actions.**
  - Develop a Public and Agency information effort to increase awareness and support for tribal management and TFPA.

- Strengthen Tribal, FS and BIA Coordination by establishing national, regional and local processes.
- Explore opportunities to develop interagency agreements between FS and BIA to enable use of

authorities such as self-determination contracts or self-governance compacts.

### 3. Promote Use of the TFPA

- **Incorporate FS TFPA performance incentives, measures, and accountability.**
- **Develop FS budget direction to support TFPA, e.g., competitive set asides.**
- **Develop and implement a monitoring and reporting system and produce an annual TFPA report documenting proposals, withdrawn, rejected, or accepted, providing information on the status of TFPA project development or implementation, evaluation of project effectiveness in reducing threats to tribal trust lands, and identification of pending issues.**
- **Incorporate TFPA implementation into NFS, State and Private, and Chief Reviews. Invite tribal participation.**
- **Develop direction and guidance on federal trust responsibility as it relates to TFPA.**

- Clarify TFPA policy and place in appropriate FS Manuals and Handbooks.
- Identify TFPA implementation instruments and options (e.g., contracts and grants) and when they are appropriate under different conditions.
- Clarify sole source and best value contracting policy for TFPA projects.
- Provide guidance on interpretation of “adjacency”, highlighting the need for flexibility.
- Provide guidance on reconciliation when actions under TFPA proposals would conflict with FS land allocations, administrative processes or restrictions. (The mandatory Tier 3 training under the January 18, 2013 USDA Regulation 1350-002 on Tribal Consultation, Coordination, and Collaboration is expected to improve awareness and sensitivity of FS staff when considering a TFPA proposal.)

### 4. Pursue legislative authority

- **The ITC and Tribes should explore opportunities to amend TFPA or other authorities to expedite project development and implementation.**

While FS procedures and rules to implement its new proposed “objections-based” appeals processes are likely to help alleviate challenges to administrative decisions, the ITC and Tribes may wish to pursue other measures. These may include an alternative dispute resolution process to expedite appeals and litigation involving TFPA projects or measures to recognize tribal environmental reviews. The FS could assist in this process by identifying needed legislation and providing information and comments to the Administration.

- **Explore options and opportunities to advance use of tribal contractors who can promote economic development, use of goods and services and increase tribal employment.**

## DISCUSSION

America's forests are a sustainable, strategic asset instrumental in maintaining and enhancing a clean, abundant water supply, healthy air quality, economic vitality and community safety. Covering a third of the country's landmass, forests store and filter more than half of the nation's water supply and absorb 20 percent of the country's carbon emissions. But our nation's forests are in need of extensive restoration due to cumulative impacts from wildfire, insects and disease, drought, and lack of active management.

Tribes, states and federal agencies collectively recognize the need to address growing threats through collaborative efforts that cross forest ownership boundaries. Insect and disease outbreaks are occurring at an unprecedented frequency and scale. Wildland fires are increasing in duration and size. These challenges are further compounded by climate change, increasing land fragmentation from residential, rural, and urban development; and loss of the infrastructure necessary to provide economic benefits essential to the ability to maintain working forests on the landscape; help sustain forest-dependent communities; and reduce costs of treatment to restore forest health and ecological processes.

Current forest conditions result from fragmentation of ownership and regulatory jurisdictions, decades of a national fire suppression policy, and the inability to actively manage our national forests for stocking control and restore fire-adapted and fire-dependent forests.

Millions of dollars are spent annually trying to protect loss of lives and property and to minimize the environmental costs of wildfires (e.g., destruction of fish and wildlife habitats, degradation of soils and water quality, release of soot and carbon into the atmosphere). Close connections of Tribes with their lands and ancestral forests are being weakened as spiritual, cultural and traditional resources are lost. As the capacity of the environment to support Tribal use is reduced, the ability of Tribes to exercise treaty and other reserved rights are diminished.

The Secretaries of Agriculture and Interior, the FS, Tribes, and States recognize the need for collaborative "all hands, all lands" efforts to restore the health of our forests and their ability to provide a broad array of ecological and

economic benefits. To reduce fuel loads, lessen the adverse impacts of fires, restore forest health, protect the wildland/urban interface, provide habitats for fish, wildlife, and plants, combat incursion by invasive species, and support local economies, shared strategies are required.

Tribal, FS, BIA land managers recognize the importance of active landscape management to reduce the need for and cost of fire suppression. Treating the cause of the problem (overstocking, excessive fuel buildup, etc.) instead of the symptoms (through suppression) leads to more efficient and effective resource management. Implementing these treatments requires a wide range of actions, including timber harvest, biomass utilization, thinning, fuel treatments, and judicious use of prescribed and natural fire.

Tribes have much to offer in helping to find solutions to the pressing challenges confronting our nation's forests. Tribes have developed and practiced resource management strategies over thousands of years of experiential learning

and have adapted to changing conditions in local ecosystems. Tribes historically managed forests, woodlands and grasslands of North America using a wide array of tools to sustain ecosystems and their communities. Fire (natural and anthropogenic) historically played a predominant role in maintaining ecosystems of culturally desired plant and animal habitats (biodiversity). More recently, Tribes have adopted western science to complement indigenous knowledge and experience as they adapted management philosophies to changing societal conditions.

Tribal and federal laws, regulations, and processes such as public involvement, differ greatly. In general, tribal laws, regulations and processes are less cumbersome than their federal counterparts. This enables Tribes to achieve healthy forests that can endure the demands for multiple uses, changing climate and expanding urbanization. Tribal forest management can serve as examples of adaptability to changing climatic conditions, economic cycles, and societal change that balance traditional values to sustain healthy and resilient ecosystems for future generations.

The 2011 Wallow fire in Arizona provides a good comparison of how active management strategies affect fire behavior and impact resource values. In the case of the White

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*"Insects, disease and fire know no boundaries. Conditions on neighboring lands present both risks and opportunities to the Yakama Nation. Limited resources restrict our ability to engage with our National Forest partners, especially in light of all the restrictions they have limiting active land management. Investment of Yakama resources to address these issues of risk must have some assurance that significant action will be forthcoming. Tribes, including ours, have demonstrated that active land management is compatible with maintaining healthy, sustainable, resilient ecosystems."*

*Phil Rigdon, ITC President, Yakama Indian Nation  
Natural Resources Director*

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Mountain Apache Tribe, active timber harvests, fuel treatment and prescribe fire created a situation where treated tribal stands survive and thrive while neighboring lands and resources experience serious adverse impacts. Treatments applied on neighboring FS lands were effective in protecting communities and structures, but less effective in protecting resource values across the landscape.

The White Mountain Apache treatments of landscapes provided protection to communities and critical infrastructure as well as reduced suppression costs.

The following two pictures demonstrate the effectiveness of active management to produce fire-adapted forests that reduce adverse impacts of wildfire.



Wallow fire: an under-burned ponderosa pine forest on the Fort Apache Indian Reservation impedes fire advance. Photo by Chris Holbeck's Burned Area Emergency Response (BAER) Team.

Approximately two months after the Wallow Fire of August 2011, following the monsoon season, the treated forest in the Maverick Fuel Treatment exhibits a rapid return to a green understory with little evidence of tree mortality. Photo by Kim Kelly October 2011.

## National Landscape Strategies and TFPA

Tribal forest management approaches could prove to be an important means to address forest health on larger landscapes by complementing national and regional initiatives. The current “National Cohesive Wildland Fire Management Strategy” (NCWFMS) is a collaborative effort of diverse tribal, federal, state and private stakeholders working to develop an effective plan to address our nation’s wildland fire and forest health concerns.

The NCMFMS effort identifies three key goals:

- Restore and maintain resilient landscapes
- Create fire-adapted communities
- Respond to Wildfires

The first goal of “restoring and maintaining resilient landscapes” provides a sound basis for the TFPA implementation to address the core cause of today’s wildland fire issues, overstocked and unhealthy forest ecosystems. Addressing this cause will effectively lead to realizing the other two goals.

To compliment the NCWFMS, in February 2012 Tom Vilsack, Secretary of Agriculture, released the report, “Increasing the Pace of Restoration and Job Creation on Our National Forests.” In the report, he recognized the need to step up restoration activities, not only on National Forest lands, but across all ownerships.

The Secretary and the FS continue to identify strategies and innovative tools to work collaboratively with Tribes, other federal and state agencies, organizations and individuals to increase the rate and scale of restoration activities on the ground that will strengthen the resiliency of landscapes, provide clean and reliable water supplies, support local economies and secure communities.

While some very important tools exist to help agencies and stakeholders address these pressing concerns, some programs are not well coordinated across federal departments and tribal/private lands. Key among these is the various federal fuel funding programs that are administered by the USDA FS (National Forest System and State and Private Forestry) and the Department of Interior Office of Wildland Fire (Hazard Fuel Prioritization Allocation System (HFPAS)). These three programs independently allocate federal fuel funding to reduce wildfire threats to federal, tribal and private lands and communities. Efforts to coordinate these funding sources could provide efficiencies to address landscape scale threats and reduce impacts to valuable resources.

Another important program is the FS Collaborative Forest Landscape Restoration Program (CFLRP) designed to encourage collaborative landscape scale treatments to high risk areas. The 2012 CFLRP report lays out the FS program goals, identifies 23 selected projects, funding allocated during the first three years, and details project specifics and accomplishments. This program provides the opportunity to leverage and engage Tribes in TFPA projects. Tribes are currently participating in many of the projects.

### **NCWFMS Mission Statement**

*“Safely and effectively extinguish fire, when needed; use fire where allowable; manage our natural resources; and as a Nation, live with wildland fire”*

To sustainably manage forested landscapes and provide vital services, cross boundary collaboration is essential. Wildfire, insects and disease are not constrained by man-made boundaries. Property ownership and regulatory jurisdictions are fragmented. Current federal, tribal and state budgets cannot financially support large scaled efforts through Tribe/Agency

appropriated funds. The ITC, National Association of State Foresters, and Western Governors Association are among the organizations calling for concerted, collective efforts to restore the health of our nation’s forests.

There is increasing interest in forging collaborative active management strategies for public lands and other forests.

Sustainable solutions to the challenges confronting our collective ability to maintain forests on the landscape and achieve desirable ecological, economic and social benefits must include support to maintain viable management, harvesting, transportation, and forest products infrastructure. Diverse markets for forest products and services are essential to generate the revenue needed to provide incentives for management activities required for forest health.



*“American forests directly and positively influence the social, economic, and ecological conditions of the nation. The threats our forests face and the inadequacy of our current response to these threats have caused concern as to whether the nation’s forests are sustainable...The values at risk are not trivial – a clean and healthy environment for our communities, employment and economic opportunities for our citizens, and the energy self-sufficiency of our nation...Western states are experiencing a devastating economic downturn and must work together to be prepared to respond to increased risks to life, natural resources, and property...Western Governors recognize increased coordination is vital to maintaining an effective response to critical needs and can result in reduced financial impact to the taxpaying public.” Western Governors Association Briefing Paper on Forest Health and Wildfire*

*“There is increasing consensus that sustaining and enhancing the health of forests in the U.S. requires a collaborative, landscape-scale approach. Forests across the nation face an increasing host of threats, including climate change, wildland fire, and insect and disease infestations. The one commonality among these threats is that they cross forest boundaries and ownerships. In order to sustainably manage forested landscapes and maximize the vital services that they provide, including clean air and water, recreational opportunities, and forest products and jobs, it is crucial for all stakeholders to work together.” NASF Resolution 2011-2.*

Infrastructure for management, harvesting, transportation, and processing of forest products is rapidly deteriorating across the United States, increasing the difficulty of maintaining working forests and vital ecological functions across the landscape.

Region 6 of the FS provided a multi-year grant to the ITC to explore the potential use of Anchor Forests to balance economic and ecological needs to keep our forests healthy through collaborative efforts involving Indian Tribes, the FS, BIA, and other Federal, State, local agencies, NGO’s, and Universities.

Anchor Forests are large contiguous areas of land with four major characteristics:

1. A reasonable expectation for sustainable wood commodity production as a major management objective; and
2. Production levels sufficient to support economically viable manufacturing, processing, and work force infrastructure within accessible transportation; and
3. Long-term management plans, supported by inventory systems, professional staff, and geographic information systems; and
4. Institutional and operational capacity for

implementation.

Anchor Forests provide a framework to focus collaborative efforts and a wide array of programs and initiatives that could be brought to bear on forest restoration. By examining needs and capabilities on a landscape scale, priorities can be determined and strategic investments made through programs such as the USDA Economic Action Rural Community Assistance, Forest Land Enhancement, Rural Forestry Assistance and Rural Development Administration, Climate and Ecosystems Services, and Collaborative Forest Landscape Restoration.

The *Anchor Forest* concept is a sensible, multifaceted approach for retaining healthy working forests through partnership, collaboration and coordination. *Anchor Forests* will help focus financial resources for investments in infrastructure and improve ecological processes to address regional needs and priorities. They will also inform stakeholders of opportunities to collaborate.

Indian forests are prime candidates for *Anchor Forests* based on permanence of land tenure and tribal commitments to long-term stewardship that has proven to be successful in maintaining healthy forests.

Additionally, in some parts of the U.S. Tribes own the last operating sawmills.

*“Healthy working forests are essential to enable society to maintain clean air and water, and to protect our soils, fish, and wildlife. Economically viable infrastructure must be in place to reduce costs of forest management and minimize potential risks of loss to life and property from growing threats of wildfire, insect and disease. The integrated approach envisioned under the Anchor forests concept holds great promise as a means to focus scarce investments in infrastructure and environmental services, and as important, for helping diverse interests find a common path to the future.”*

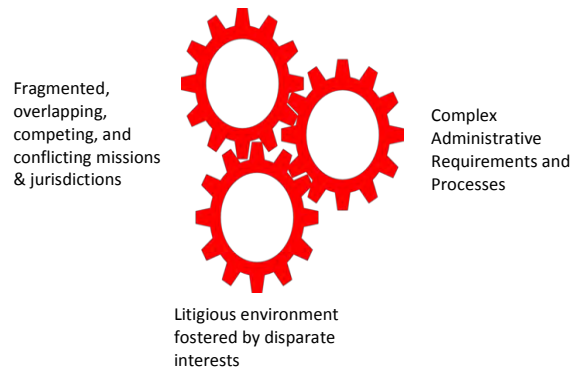
Gary Morishima. National BIA Conference on Forestry and Wildland Fire, San Diego, 2012.

## How the TFPA can help

The viability of the Anchor Forests concept depends heavily on the ability to treat problems of deteriorating health on FS lands. For the past several decades, the FS has frequently been unable to actively manage the lands and forests under its care because it has become gridlocked in a complex jurisdictional, administrative, and litigious environment.

The TFPA could prove to be crucial to the ability to implement the Anchor Forests concept by providing a tool to enable treatment of FS lands and make materials removed from national forests available to support sustainable harvesting, transportation, and processing infrastructure.

TFPA holds the potential to be a valuable tool to help identify, prioritize, plan and treat risks originating on National Forest lands by linking them to management activities on tribal lands, which opens the way for large landscape-scale treatments. By enabling Tribes to propose projects on neighboring NFS lands, opportunities are created to form effective partnerships between Tribes and neighboring NFs to address landscape risks (wildfire, insects, invasive species, and climate change). Moreover, experience demonstrates that tribal support and involvement in forest restoration efforts can be instrumental in overcoming opposition to necessary treatments (Volume II, Appendix D, Site visit Reports – Mescalero Apache Reservation/Lincoln National Forest Report; Appendix C, Success Stories – The McGinnis Cabin Project Case Study). When properly developed and implemented, TFPA projects have the potential to benefit tribal, FS and private forest lands.



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*“This bill will help make clear and identify our areas of responsibility and also raise the level of cooperation with all agencies involved.”*

*Dave Nenna, Administrator, Tule River Tribe, Testimony, House Committee on Resources, Subcommittee on Forests and Forest Health, Hearing on HR 3846, April 21, 2004*

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## A PLAN FOR ACTION

The TFPA is a tool that could be employed to help the United States fulfill its fiduciary trust responsibilities towards Indians and spur actions to restore the forest health on FS and other lands. To improve its use, an action plan is needed to implement the recommendations.

### **Formally Present the TFPA Report to Tribal and FS Leadership**

The findings and conclusions developed under this study are intended to inform the leadership of both Tribes and the FS about the impediments, challenges and solutions to increase use of the TFPA. Recommendations directed at Tribes, the FS and ITC identify a set of actions intended to overcome obstacles and help fulfill the promise of the TFPA as a

valuable tool that could be used to restore the health and productivity of our nation’s forests.

It is recommended the TFPA Report be formally presented to tribal Leadership at the 2013 ITC symposium in Menominee and the FS National Leadership Council in the spring or summer of 2013 to engage these leaders in the report implementation.

### **Establish a FS-Tribal-BIA Implementation Team**

A joint FS/ITC/BIA implementation Team should be established to refine and carryout the recommendations

included in this report, and to monitoring its timely implementation and effectiveness.

## ***Improve Understanding of the TFPA***

Provide TFPA training and subsequent technical support for Tribes, BIA and FS personnel on how to most effectively utilize TFPA. This challenge has already been partially addressed with the development of four training modules developed as part of this review targeting specific audiences with specific roles in the process (Volume II, Appendix D). To effectively implement the training, the FS, BIA and ITC need to identify a core interagency training cadre who can deliver instruction on:

1. What is TFPA;
2. How does federal trust responsibility factor into TFPA;
3. How do TFPA proposals get developed;
4. How do TFPA projects differ from other FS projects;
5. How does tribal consultation fit within the TFPA process;
6. What instruments are best suited to cost effective implementation; and
7. How will projects be monitored for effectiveness?

The lack of clear procedures is a barrier in developing TFPA proposals. In addition to formal training, the development of a qualified technical support team with specialized skills and experience to assist FS and Tribes with developing and implementing TFPA proposals is essential. Tribal, BIA and FS employees consistently identified the need for technical support to efficiently and effectively develop and implement TFPA proposals.

## ***Strengthen Tribal-FS Partnerships***

Sound, enduring working relationships between Tribes and the FS are needed to withstand changes in leadership, personnel, policy, funding, and environment over time. To address issues, share perspectives, communicate limitations and identify opportunities requires dedication and commitment by all parties if the efforts to implement TFPA are to be successful. Establishment of effective national, regional and local forums was identified as an essential step to the TFPA success. Formalizing these relationships through agreements that guide and support actions over time is essential to building and maintaining trust.

Implementation of the January 18, 2013 USDA regulations on "Government to Government Consultation with Tribes" will provide policy guidance and training to help build long-term, collaborative partnerships between the FS and Tribes.

An initial step in this process is to conduct training on federal trust responsibilities and obligations for consultation on matters affecting tribal rights and interests to Tribes; understanding the intent and opportunities provided by the TFPA; and beginning the journey locally to identify and begin addressing local issues common to both parties.

This team could include representatives from ITC, Tribes, FS and BIA who are available to guide local staff and assist with developing and implementing proposals. A template and other resource materials are provided in Volume II of this Report.

### Recommended Action

Establish a FS-ITC-BIA Implementation Team within six months from the date of this report. The Team would be responsible for developing and monitoring deliverables and timeframes for implementation of the recommendations for improving utilization of the TFPA.

### Responsibilities

- FS, working with ITC and BIA, adopt and deliver training through an interagency training cadre with post training assistance through a technical support team.
- FS-ITC-BIA develops, recruit and organize a training cadre and create a support team.
- Regional TRP Managers and Tribes to host local training, seek opportunities to integrate into existing meetings or other forums.

Effective TFPA training is best presented jointly to Tribes, BIA and neighboring FS districts as a first step in developing a collaborative TFPA relationship that can assist with the development of acceptable proposals. It is important Tribes understand the process, requirements and time frames associated with the development of FS projects. In turn, the FS needs to recognize and understand unique relationships and obligations of Tribal governments and value their time tested knowledge that Tribes bring to project planning and implementation. By working together, Tribes and the FS can promote public understanding and support for actions needed to restore and maintain forest health.

Successful partnerships must be based upon an established consultation communication mechanism to share perspectives that provide a clear understanding of roles and responsibilities. This relationship needs to be formalized and institutionalized through mechanisms such as Participatory Agreements, Memorandums of Understanding (MOUs), and Memorandums of Agreement (MOAs) to withstand leadership and staff changes over time.

The coordination of reservation and National Forest management plan updates provides an opportunity to

develop collaborative landscape resource plans to address issues that cross boundaries (overstocking, insects, disease, threatened and endangered species, invasive species, water quantity and quality, etc.). To reduce potential for conflict, Tribal consultation and coordination should be undertaken prior to decision making. FS decisions or recommendations regarding designation of special areas (e.g., wilderness, roadless, critical habitat) or constraints that limit management activities are of particular importance when considering TFPA proposals. Government-to-government dialogue would help avoid or resolve conflicts that arise when Tribal rights and interests are involved in the FS' administration of national forests for the general public. While the final decision may not be always under its control, the FS can and should include the results of Tribal consultation. Doing so documents the consequences of designation and prescribed management. A collaborative planning effort would identify and guide where specific TFPA landscape projects would best meet objectives for both Tribes and the FS.

Coordinating TFPA efforts on FS lands with tribal projects can lead to efficiencies in budget allocations for planning and implementation. Working together to synchronize FS National Forest System and State and Private Forestry fuel funds with DOI fuel funds can lead to economies of scale in treating landscape scale projects. Coordination of timber sales and fuel treatments can provide stability of product availability to help maintain current local wood processing infrastructure and encourage development of additional infrastructure. Maintaining and stimulating capacity for wood processing, harvest and transportation is essential for

### ***Encourage Use of the TFPA***

Under the TFPA, Tribes are responsible for initiating proposals to the FS. In addition to training, the "table must be set" to improve prospects for successfully undertaking TFPA projects. Tribal staff must become knowledgeable about the TFPA and FS administrative processes. Working partnerships between Tribes and the FS at the local level are needed to encourage collaborative planning and implementation of tribal and FS projects.

In order to encourage Tribes to submit TFPA proposals, it will be imperative for the FS to demonstrate a clear, strong commitment to utilizing the TFPA authority to address both tribal concerns and agency management objectives. FS leadership needs to provide guidance to National Forests that encourage local use of the TFPA, such as budgetary incentives, establishment of TFPA performance measures and accountability standards.

The lack of clear direction was repeatedly shared by FS personnel as a primary reason TFPA proposals did not receive priority over projects that were already "in the pipeline." Tribes also observed a lack of interest and commitment for their TFPA inquiries and proposals.

land managers to be successful in implementing cost effective treatments.

One opportunity to expedite TFPA projects would be to develop interagency agreements between FS and BIA to enable use of authorities such as self-determination contracts or self-governance compacting. Using this already established and tested DOI authority could both expedite project development and implementation, and provide opportunities to recognize tribal sovereign authority to govern wage determinations and employee benefits that influence implementation costs.

#### Responsibilities

- FS and BIA in collaboration with ITC

#### Recommended Tasks

- Take advantage of the momentum and training opportunities that will be created by the Department of Agriculture Regulation Number: 1350-002. SUBJECT: Tribal Consultation, Coordination, and Collaboration and the Interagency and ACHP Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites.
- Develop TFPA performance measures, monitoring report and incentives for FY2014 implementation.
- Incorporate TFPA implementation into NFS, State and Private, and Chief Reviews with tribal participation.
- Incorporate TFPA - trust responsibility information into FS national tribal relations training currently in development.

Identification of specific funding for TFPA is recommended as an important incentive for FS leaders to prioritize and compete for TFPA projects.

When considering and administering TFPA projects, field direction and guidance are also needed to ensure FS staff are familiar with administrative requirements, processes and protocols for ensuring consultation with tribal governments and addressing federal trust responsibilities. FS staff will need to be aware of the need to respect tribal protocols and processes when implementing the recent USDA Tribal consultation policy and FS TFPA policy. For FS field units and Tribes, attention is needed to identify and describe TFPA implementation instruments and options (e.g., contracts and grants) and when they are appropriate to meet project objectives. The FS needs to clarify sole source and best value contracting policy for TFPA projects, particularly as a trust responsibility. There is also need for clear agency guidance on the interpretation of "adjacency," highlighting the need for flexibility.

### Recommended Tasks

- Develop public and agency information to increase awareness and support.
- Establish national, regional and local forums for coordination.
- Promote coordination of Tribal and FS project planning and implementation.
- Explore opportunities to develop interagency agreements to enable the use of the Department of Interior authorities.

### ***Pursue legislative authority***

Pending the success of previous recommendations, there may still be the need for legislative measures to support TFPA implementation. The ITC and Tribes should consider the need to and options for amending TFPA or other authorities to expedite project development and implementation.

Expediting project development and implementation is critical to address risk to tribal and FS lands. The FS should consider this as needed legislation and make recommendations to the Administration. The ITC and FS should consider alternatives and identify opportunities to take advantage of tribal employment and subcontracting standards that provide efficiencies in implementing TFPA projects, potentially reducing costs.

The FS and ITC should evaluate alternative dispute resolution process, including the recently proposed FS “objection regulations” and the Department of Agriculture’s Tribal Consultation Policy to expedite TFPA proposals and

- Encourage tribal participation in national forest plan revisions and identify potential future application of TFPA. Plan revisions provide the opportunity to reconcile differences that arise when Tribal rights and interests are considered in light of general responsibilities, processes, and restrictions of the FS as it manages national forests.
- Coordinate funding and collaborate on infrastructure.
- Clarify processes for consultation, information exchange, and dispute resolution.

reduce appeals and litigation. Consideration of how trust responsibility factors into FS regulations governing TFPA projects should be elevated to the National ITC/FS/BIA forum for discussion.

### Responsibilities

- ITC and Tribes
- The FS-ITC-BIA Team should ensure awareness and evaluation of all administrative remedies (e.g., BIA and FS agreements to expand authorities) to support Tribal-ITC assessments of the need for legislative action.

### Recommended Tasks

Examine the need for amendments for TFPA and other authorities to expedite project development, implementation, per report recommendations and FS proposed rule on the objections-based appeals process.

## PUTTING THE PIECES TOGETHER

The engagement and involvement of Indian Tribes in collaborative forest restoration efforts could prove critical to the ability to restore the health and productivity of our nation's forests.

- Tribes are in a unique position to press for management actions to protect their rights and interests given the fiduciary trust responsibility of the United States and authorities such as the TFPA.
- As political sovereigns, Tribes are able to practice stewardship and apply traditions, practices, and accumulated wisdom to care for their resources, exercise co-management authorities within their traditional territories, and strongly influence and persuade other political sovereigns to protect natural resources under the public trust doctrine.
- As signatories to treaties, some Tribes are able to call upon the obligations of the United States to protect their reserved rights to fish, hunt, trap, and gather on FS lands.

- Lastly, several statutes and Executive Orders call for protection of sacred sites, cultural resources, religious freedoms, and consultation requirements for administrative actions that affect Tribal rights and interests.

Tribes have the ability to wield a diverse and impressive suite of powers and authorities to help restore healthy forests and ecological functions. The TFPA holds the promise of becoming a valuable tool to address specific concerns, perform on-the-ground projects, and will strengthen working partnerships with the FS and others.

This analysis has identified major impediments and challenges that must be overcome. It has also provided a comprehensive, yet achievable set of recommendations to make the promise of the TFPA a reality.

Tribal rights and Interests could get the gears turning





## APPENDIX

### TULE RIVER TRIBAL PERSPECTIVE ON THE HISTORY OF ITS TFPA PROJECT PROPOSAL

To the Tule River Tribe, sequoias are sacred, representing ladders to heaven. The culture, traditions, and practices of the Tribe are founded in the conviction that the sequoia can only be respected and honored by proper stewardship. Protection of the Black Mountain Grove of giant sequoias has been affected by controversies over federal land management and administrative processes involving the Sequoia National Forest (SNF) and Giant Sequoia National Monument. This brief chronology summarizes the challenges confronted by the Tule River Tribe as it has struggled to implement a Tribal Forest Protection Act (TFPA) proposal over the last decade.

**1990 – July:** The Sequoia National Forest and eighteen other parties, including the Tule River Tribe, signed a Mediated Settlement Agreement (MSA) which resolved those parties' administrative appeals of the 1988 Sequoia National Forest Land and Resource Plan. The MSA covered giant sequoia grove management, riparian area management, timber management, and wildlife species, as well as such procedural matters as the content of project analyses and monitoring.

**2001 – January:** Sierra Nevada Framework Plan (SNFP) amendment was adopted to direct the management of 11.5 million acres of California's national forest lands. The amendment includes restrictions on management activities, such as maximum diameter limits to restrict selective thinning to smaller trees, allowing logging only as a means for reducing the risk of catastrophic wildfire, and dedication of 4.25 million acres of land for old-growth emphasis.

**2002 – July thru September:** The McNally Fire ignited in the Kern River drainage, to the southeast of the Tule River Indian Reservation (TRIR). During the first several days the fire burned northwesterly toward the TRIR boundary, then suppression efforts turned the fire to the northeast. The fire burned over 150,000 acres of national forest and private lands.

**2003 – October:** The Cedar, Paradise and Old fires burned in southern CA. Among other lands and communities, the fires burned through Tribal communities and lands of 11 reservations.

**2003 – December 5 :** Dave Nenna, Tribal Administrator, provides oral testimony at a Field Hearing conducted by the House Subcommittee On Forests And Forest Health, held at Lake Arrowhead, CA. Mr. Nenna emphasized the need to move legislation that would help Tribes protect their land from wildfire hazards originating on nearby federal lands.

**2004 – January:** SNFP Amendment Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD), signed. Page 3 of the ROD included a statement by the Region 5 Forester:

*"I am making this decision in the aftermath of the tragic southern California fire season where 26 people died, over 3,600 homes were destroyed, and peoples' lives were turned upside down. In addition, precious wildlife habitat was destroyed. These catastrophic events, which I personally witnessed for 11 days, could also occur in the Sierra Nevada. I will not let that happen on my watch. These events may happen again anyway, because our forests are unnaturally overstocked. But there are reasonable changes that can be made to the SNFPA to help prevent them. I am determined to make those improvements."*

**2004 – February:** Average surface fuel loading in the Black Mtn. Giant Sequoia Grove (USFS) is estimated at 91 tons per acre, representing extreme fire risk to these stands. Snag density averages 35 snags per acre of varying sizes (Source: *Black Mountain Giant Sequoia Grove Inventory, Sequoia National Forest*).

**2004 – April:** Appeals of SNFP Amendment are filed.

**2004 – April:** Dave Nenna, Tribal Administrator, provided testimony at a congressional hearing on the proposed Tribal Forest Protection Act.

**2004 – July 22: Public Law 108-278, "Tribal Forest Protection Act of 2004" enacted.**

**2004 – August:** The "Deep Fire" burns on Monument lands north of TRIR, in the Middle Fork Tule River drainage. The fire started along Highway 190. The aqueduct that carries domestic water to the town of Springville was severely damaged.

**2004 – October 6:** The Tule River Tribal Council, in a letter from the Tule River Chairman to SNF Forest Supervisor, announces the Tribe's desire to use the authorities of the TFPA to begin addressing hazardous fuels and forest health issues along the USFS/Tribal common boundary.

**2005 – March 15-16:** Tule River Tribal representatives participated in a state-wide workshop on the TFPA organized by the Pacific Southwest Region of the FS and hosted by the Viejas Tribe in Alpine, California.

**2005 – August thru October:** A series of meetings were held with Tribal & FS District, Forest & Regional personnel regarding the development of a TFPA project on Sequoia National Forest/Giant Sequoia National Monument lands that border the Reservation's north boundary.

**2005 – November 1:** Tule River Tribal Council submitted a TFPA project proposal titled "*Tule River Reservation Protection Project*" (TRRPP) to Art Gaffrey, Forest Supervisor, Sequoia National Forest. The TRRPP proposal identified threats from adjacent Forest Service lands to Tribal forest

resources and the Reservation community from hazardous forest conditions surrounding the TRIR. These threats pertained to wildfire and forest health (insect and disease). Copies of the TRRPP proposal were also sent to the USFS Tule River District Ranger and the Region 5 Tribal Relations Program Manager.

**2005 – November 23:** Bernard Weingardt, Regional Forester, supported the TRRPP proposal in a letter to the Forest Supervisor, Sequoia N.F.

**2006 – January:** Tribal and USFS District staff begin meeting on the specifics of the TRRPP project: treatment types, locations, NEPA considerations, etc. Project level meetings continue periodically.

**2006 – March 2:** Sequoia NF, Tule River District sent letters to the public announcing the planning phase for the proposed project and requests general comments regarding the proposal. A vicinity map of the project area is included.

**2006 – July:** Tribal Natural Resources Dept focused fuels reduction and forest health field treatments on TRIR lands that border the TRRPP project area. The intent was to ‘mirror’ the proposed TRRPP treatments on the adjoining Tribal lands.

**2006 – September 2:** A public field trip to the TRRPP project was jointly organized and led by the FS and Tribe. Discussions centered on the proposed treatments. Approximately 30 people attended. The Tribe provided a shuttle bus.

**2008 – August 26:** A “Notice of intent to prepare an environmental impact statement” for the TRRPP was published in the Federal Register.

**2008 – September 22:** The Tule River Tribal Council responded to the Notice of Intent for the TRRPP by submitting a letter of support for the project.

**2009 – August:** Ninth Circuit Court found that the FS adoption of the 2004 SNFP revision unlawful and remands to the district court in Sacramento to decide whether the 2004 amendment should be set aside and the 2001 SNFP reinstated.

**2010 – August:** The Draft EIS for the Giant Sequoia National Monument (GSNM) states (p181) that 50 percent of the fires within the Monument are human-caused.

**2011 – February:** A Memorandum of Understanding (MOU) between the Tule River Indian Tribe and the Sequoia NF titled *Tule River Reservation Boundary Management* (FS Agreement No. 11-MU-11051352-039) was signed by Tule River Tribal Chairman and Sequoia NF Supervisor. The purpose of the MOU was to establish the framework for the Tribe and the SNF to work together in the development of projects to achieve mutual goals of community and resource protection and enable the Tribe to contract boundary project work.

**2011- December:** The 2012 Consolidated Appropriations Act replaces the appeal process for most FS actions with a pre-decisional objection process intended to decrease the time required for FS review and decision-making. Regulations to implement this new pre-decisional objection process are being drafted.

**2012:** The new SNF Supervisor made the Tule River Reservation Protection Plan (TRRPP) one of the Forest’s top three 2012 priorities. The forest is in the process of drafting the alternatives. The Draft EIS was projected to be issued by the end of the 2012 calendar year.

**2012 – August:** The Giant Sequoia National Monument Record of Decision and the final EIS were issued. Twelve Appeals were filed by stakeholder groups. The appeals went to the FS Chief’s Office for 160 day review. The decision to affirm, affirm with instructions, reverse, or dismiss is expected by May 15, 2013). The Sequoia NF’s preparation of the TRRPP Draft EIS is expected to be influenced by the outcome of the GSNM.

Even If the GSNM Decision is affirmed, there is still another decision to be made regarding the TFPA project, funding to implement the TRRPP still must be secured to enable on-the-ground implementation.

Despite the long delays in project planning and analysis, the Tule River Tribe, with grants from the Sequoia National Forest, have treated hazard fuels on the reservation side of their mutual boundary to provide protection from wildfires for both ownerships.

Frequent Forest staff changeover has also impacted the progress of this TFPA project. Since 2005, there have been five different Forest Supervisors, three different District Rangers, and four different lead planners.