

Business Management Curriculum

Module 5: Introduction to American Indian Land Tenure

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Acknowledgments: Vicki Hebb, reviewing content, and Russ Tronstad (University of Arizona) and Stuart T. Nakamoto (University of Hawaii), content.

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Module 5: Introduction to American Indian Land Tenure

This module is set up as two sections, with each section consisting of about 1–2 hours of instruction.

- Module 5.1: Understanding How American Indian Reservations Were Established
- Module 5.2: American Indian Land Tenure

The information covered in this module will review the background information on American Indian Land Tenure. However, each reservation has a unique government structure with their own rules and regulations about starting up a business. It is highly suggested to bring in a local representative to help guide your students through the issues that are brought up in this module.

Module 5.1: Understanding How American Indian Reservations Were Established

Teaching Notes:

The Doctrine of Discovery stated that the first European country to discover new lands unknown to others gained the property and sovereign rights over the land. When first discovery occurred, American Indians lost their property rights and ownership to the lands they had occupied in addition to some of their rights to free trade and international relations.

Manifest Destiny, the 19th-century belief that the United States should exist as a nation from coast to coast, resulted in the displacement of several American Indian tribes to allow expansion west of the Mississippi River. Federal policy during this era was to acquire all Indian lands on a firmly held belief that American Indians were inferior to that of Americans of European ancestry.

The office of Indian Affairs was created in 1824. The Indian Removal Act of 1830 authorized the president of the United States to grant unsettled lands west of the Mississippi River to American Indians in exchange for lands that American Indians were already occupying within existing state borders. Relocating American Indians to specific established areas would theoretically resolve the disputes between Indians and settlers. While some American Indian tribes went peacefully, many resisted being relocated from their homelands.

Federal trust responsibility has evolved over time and was clarified in what is called the Marshall Trilogy, a series of court cases (1823, 1831, and 1832) asserting the legal and political standing of American Indians in the United States:

- Johnson v. M'Intosh (1823) held that private citizens could not purchase lands from Native Americans.
- Cherokee Nation v. Georgia (1831) held that the Cherokee Nation was a “domestic dependent nation” subject to the sovereignty of the United States.
- Worcester v. Georgia (1832) held that American Indian tribes, as separate nations, had defined territorial boundaries and state law did not have regulatory or tax jurisdiction.

Educational Objectives:

- Understand the Doctrine of Discovery
- Examine Manifest Destiny and its impact on American Indians
- Understand the creation of American Indian Land Bases
- Comprehend the concepts of the Trust Doctrine and Trust Responsibility

Discussion Topics:

- How would you describe a reservation land base?
- Think about a reservation that you are familiar with. Do you know how the reservation land base was established? Treaty? Executive Order? Congressional Action?

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- Where reservations land bases established before or after the formal tribal government was set up under the Indian Reorganization Act of 1934?
- How did the rulings under the Marshall Trilogy affect tribal sovereignty and the ability of an Indian tribe to govern their land base? What is your definition of trust responsibility?
- Do you believe that the federal government should maintain a trust responsibility to Indian tribes in the United States?

Available Materials:

1. PowerPoint Presentation (1) – can be printed and used as a handout
2. Other Resources
 - a. Miller, R. (2008). *Native America Discovered and Conquered: Thomas Jefferson, Lewis and Clark and Manifest Destiny*. Lincoln, NE: Board of Regents of the University of Nebraska.
 - b. Emm, S. & Singletary, L. (2009). *People of the Land: Sustaining American Indian agriculture in Nevada, Oregon, and Washington*. (CM-09-01). Reno, NV: University of Nevada Cooperative Extension. (pp.89). Retrieved from <http://www.unce.unr.edu/publications/files/ag/2009/cm0901.pdf>
 - c. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Tribal Government (FS-10-10)*. Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1010.pdf>
 - d. Singletary, L. & Emm, S. (2011). *Working Effectively with American Indian Populations: A Brief Overview of Federal Indian Policy (FS-11-34)*. Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/ag/2011/fs1134.pdf>

Outline:

1. Objectives
2. Federal Policy Eras:
 - a. Doctrine of Discovery
 - b. Plenary Power
 - c. Trade and Intercourse Era: 1790–1830
 - d. Removal Era: 1830–1850
 - e. Reservation Era: 1850–1887
 - f. Allotment and Assimilation Era: 1887–1934
 - g. Indian New Deal Era: 1934–1945
 - h. Termination Era: 1945–1965
 - i. Self-Determination Era: 1965–present
 - j. Indian Gaming Act
3. Tribal Governance and the Federal Relationship
 - a. Separation of Ideas
 - b. Miriam Report
 - c. Evolution and Structure of Tribal Governance
 - d. Federal Trust Responsibility
 - e. Tribal Sovereignty

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Module 5.2: American Indian Land Tenure

Teaching Notes:

Every reservation is unique with each tribal government having its own specific structure. Written and unwritten policy affect tribal decision making. Make sure that you know how a tribal government is set up, when it was established, and governing power. This can be done by finding a mentor within the tribe or researching the tribe online or in a library.

How the reservation was established and whether or not it was impacted by the General Allotment Act (Dawes Act) of 1887 will determine the land tenure on a reservation. Definitions of different land tenure on reservations can be found in the People of the Land Curriculum. The Indian Land Tenure Foundation also provides message runners and information about the different types of land on their website at <https://www.iltf.org>.

American Indian trust land is unique in that the United States Government holds title to the land and it is held in a “trust status” for a tribe or individual member. In essence, the trustee has beneficial use of the land and can decide land use only if they hold 51% interest of the land base. In the case of allotments, this becomes a problem when there is fractionation of Indian allotments resulting in hundreds of owners for a single parcel of land.

In some cases, trust allotments have reverted to fee simple states for various reasons. This can impact jurisdiction related to land use (building permits, flood plains, etc), policing, and property taxes. It is important to identify land status to realize who has jurisdiction. In some cases, both a tribe and a county/state will say they have jurisdiction.

Indian water rights can be a contentious issue. The Winters Doctrine set precedent for an Indian water right at the date the reservation was established for agricultural purposes. Today there are Indian irrigation systems, each with a unique structure. There are also Indian irrigation projects still under the jurisdiction and control of the Bureau of Indian Affairs that provide water to reservation lands. It is difficult to use Indian trust land as collateral for Indian land. Only tribes or the United States Department of Agriculture have traditionally provided loans to purchase or develop Indian land parcels. Leases are usually given for housing units and run through the tribe’s housing authority utilizing United States Department of Housing and Urban Development funds. The tribe also can lease for agricultural production and/or other commodities. Depending on whether or not the tribe has compacted or contracted out programs, there still may be oversight by the Bureau of Indian Affairs.

Educational Objectives:

- Realize every reservation is unique.
- Understand the different types of American Indian land tenure.
- Type of American Indian Land dictates jurisdiction.
- How trust responsibility and beneficial use of land impacts ownership.
- Collateral and ownership of American Indian lands.

Discussion Topics:

- How would you begin to work with an Indian tribe in starting a business?
- What different types of land make up the reservation land base? Tribal land, Allotments, Fee Simple

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- Determine and discuss the jurisdictions on the land base and how that impacts personal and/or tribal business.
- How were the water rights for the tribe determined?
- **Determine the irrigation infrastructure or what water rights were designated for?**
- What type of water rights does the land have and does this impact business activities, business startup, and future development?
- Discuss if the tribe is compacted or if they have just contracted specific programs and how does this impact business development.

Available Materials:

1. PowerPoint Presentation (1) – can be printed and used as a handout
2. Other Resources:
 - a. Emm, S. & Singletary, L. (2009). *People of the Land: Sustaining American Indian agriculture in Nevada, Oregon, and Washington*. (CM-09-01). Reno, NV: University of Nevada Cooperative Extension. (pp.89). Retrieved from <http://www.unce.unr.edu/publications/files/ag/2009/cm0901.pdf>
 - b. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Contracting and Compacting* (FS-10-14). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1014.pdf>
 - c. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Indian Water Rights* (FS-10-13). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1013.pdf>
 - d. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Gaining Perspectives* (FS-10-09). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1009.pdf>
 - e. Emm, S. & Singletary, L. (2012). *American Indian Farmer and Rancher Outreach and Improvement Project* (CM-12-06). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/ag/2012/cm1206.pdf>

Outline:

1. Objectives
2. American Indian Land Tenure
3. Forced Trust to Fee Conversion
 - a. Restricted Indian land
 - b. Trust allotments and fractionation
 - c. Checkerboard Lands
 - d. Trust responsibility
 - e. Trust land ownership and collateral
4. Water Rights on Reservation
 - a. Water right definitions
 - b. Indian water rights
 - i. Winters Doctrine
 - c. Indian irrigation works
 - i. Water rights and future
5. Questions?

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American Indian Land Tenure

- General Allotment Act (1887) [Dawes Act] divided reservation lands into parcels, allocated parcels to household heads/families--160 acres standard but parcel sizes varied
- Later, 20 to 320 acres parcels---water
- Indians who farmed allotments for 25 years would receive US citizenship
- 1924 Act granted US citizenship to Indians
- **This is what makes every reservation land base unique.**

Slide 3:

- a) Settle Indians upon their own homesteads
- b) Incorporate Indians into national life
- c) Deal with Indians not as tribes or bands but as individual citizens
- d) Break up reservations

American Indian Land Tenure



In 1891, Congress approved leasing allotments to non-Indians to farm, so that leasing rather than farming allotments became the norm.

Forced Trust to Fee Conversion

- Burke Act (1906) issued fee patents to Indian allottees classified as “competent”
 - Competency based on education, social habits, physical appearance and blood quantum
 - Indians with less than ½ Indian blood deemed competent
 - Speak English, perform basic math, and handle farm related business affairs
 - Social and economic motives

Slide 5: Often, Indians did not even know their allotment had been converted to fee simple and that taxes were owed on it until the land was lost due to nonpayment of taxes

Restricted Indian Land

- Restricted Indian land title is held *in trust* by the federal government
 - Indian tribes have use of the land, but title to land remains in trust with federal government
 - Federal government is *trustee* for Indian tribes and *guardian* of Indian affairs

Restricted Indian Land Examples

- Tribal lands - land owned by a particular Indian tribe or organized confederation of bands and tribes
 - Tribal governments manage the land but tribal politics can impede management
 - And, federal trust restrictions *may* include:
 - Prohibit leasing for various purposes
 - Prohibit use as collateral for loans

Restricted Indian Land Examples

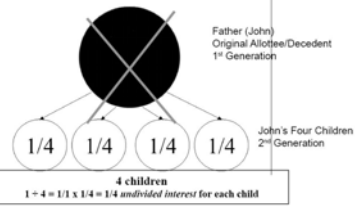
- Assigned lands and/or land leases - tribal governments allow individual tribal member to live on for lifetime or specified time period. Usually this involves a home site.
- Trust allotment - land parcel granted through General Allotment Act...certifies *beneficial ownership*--legal title in federal trust
 - Restrictions imposed include fate of lands upon death of Indian landowners
 - BIA officiates probate
 - Estate planning not cultural norm

Trust Allotments and Fractionation

- With each generation, number of undivided interests in trust allotment increases
- Highly fractionated parcel is one with 50 to 99 co-owners with no individual holding an undivided interest greater than 10 percent....or 100 or more owners
- Some allotments can have as many as 500 or more co-owners

Trust Allotments: Fractionation

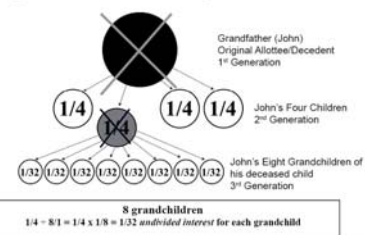
Figure 3.4. *Undivided Interest in an Allotment Passing From First to Second Generation (John passed away leaving four children)*



Source: Goetting & Ruppel, 2007.

Trust Allotments: Fractionation

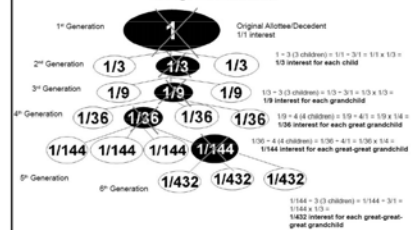
Figure 3.5. *Undivided Interests—Passing from 2nd to 3rd Generation*



Source: Goetting & Ruppel, 2007.

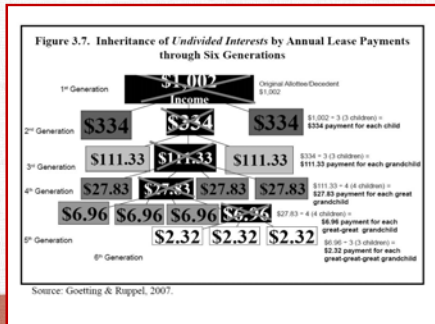
Trust Allotments: Fractionation

Figure 3.6. *Inheritance of Undivided Interests by Fractional Values through Six Generations*



Source: Goetting & Ruppel, 2007.

Trust Allotments: Fractionation



Slide 13: Fractionation impossible for BIA to manage effectively

Reduces the value of the land for the individual interest

In order to make effective land management decisions, majority of interests must agree (51%)

Trust Allotments: Fractionation

Table 3.1. Fractionated Interests on Indian Allotment and Tribal Tracts in the U.S.

BIA Region	Number of allotment/tribal tracts	Average number of ownership interests per allotment
Great Plains	59,093	21.1
Midwest	9,042	26.1
Southern Plains	11,142	17.4
Rocky Mountains	37,982	24.2
Southwest	1,941	5.7
Western	13,291	24.2
Navajo	5,883	37.2
Northwest	34,040	10.7
Pacific	3,838	10.9
Alaska	4,790	2.9

Source: Indian Land Tenure Foundation, 2006.

Trust to Fee Conversion

• **Fee simple** - land tenure in which an individual owner holds legal title-- can be sold, donated, bequeathed with conditions, assessed for property taxes, used as loan collateral

- To convert trust land to fee simple, is proof of competency still needed?
- Advantages and disadvantages?

Checkerboard Lands

- Reservation land tenure pattern randomly combines restricted Indian (trust) lands and fee simple lands
 - Creates complex jurisdictional issues
 - Who provides local, state, and federal law enforcement? Public services?
 - Right-of-way to fee lands surrounded by trust allotments?
 - Do natural resources care about political boundaries?

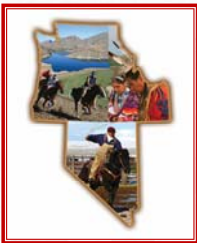
Trust responsibility and land tenure

- If the land has a trust title, whether owned by the tribe and/or individual allottee, the federal government still has some jurisdiction
 - The Individual Indian/Tribe does have beneficial use and can make land use decisions if they hold a 51% interest in said property.
- Fractionation creates several owners on one parcel. The Bureau of Indian Affairs has the responsibility of managing those interests in the parcel as a trust asset

Ownership and Using Indian Trust Land as Collateral

- Ownership of Indian land is complicated because of fractionation, trust titles, and land leases/assigned lands.
- If Indian land has a title held in Trust, it is very difficult to use it as collateral on a loan. There are exceptions to this rule, but the Bureau of Indian Affairs may have to approve the transaction.
 - Tribal lending programs
 - USDA, Farm Service Agency
 - USDA, Rural Development (Guaranteed Loans)

Questions?



Water Rights on Reservations

Water Right Definitions

- Water Right
 - Encompasses who has the right to use water, what it is use for, and where it is used.
- Prior Appropriation Doctrine
 - Allocated water rights based on seniority, "First in time, first in right."
- Beneficial Use
 - Water right holders have to make continuous good (beneficial) use of their water in order not to lose it.

Indian Water Rights

• Winters Doctrine

- The result of a Supreme Court ruling in the case of *Winters v. U.S.* (1908) involving the Fort Belknap Reservation in Montana's Milk River Valley.
 - The Federal Government filed the claims on behalf of the Fort Belknap Reservation.
 - Diversion of water by upstream off-reservation irrigators had hampered the development of agriculture on the reservation.
 - The Winters Doctrine, in simplistic terms, reserved federal water rights to fulfill the purpose of why the federal government established Indian reservations.

Winters Doctrine

A Court ruling concerning *Winters v. U.S.* (1908) asserted that it was the policy of the federal government to create the Ft. Belknap reservation and develop agriculture.

The development of agriculture was intended to change the cultural habits of Indians and enable the Indians, through training and encouragement, to conform to habits of industry and to promote civilization and improvement.

Since 1889, the United States and the Indians on the Ft. Belknap reservation diverted river waters. It is alleged with detail that all of the water of the river are necessary for the purpose for which the reservation was created. The government's power to reserve waters is not denied and is exempt from appropriation under state laws.

-Winters v. U.S. Case Number 158: WyoState Law Library, 2007

Indian Water Rights

• Adjudication,

- when referring to water rights, is the quantification and distribution of water resources through a judicial decision or Congressional action.
 - Indian reserved water rights, through the Winters Doctrine, does not necessarily guarantee that the water has been adjudicated on a given reservation.
 - Indian water rights that have not been adjudicated complicate increasing demands for water.

Can you think of a reservation where water rights have not been adjudicated?

Indian Irrigation Works

- BIA refers to agricultural irrigation works on reservations as...
 - Irrigation Systems
 - Irrigation Projects
- Irrigation works were created to help Indians on reservations with low precipitation become reliant on farming as a major source of income and food.

Indian Irrigation Works

- Irrigation System (Over 100 systems)
 - Operated collaboratively by the BIA, tribes and various water users. BIA does not collect operation and maintenance (O&M) fees.
- Irrigation Project (16 projects)
 - Operated by the Bureau of Indian Affairs. BIA collects irrigation fees for operation and maintenance (O&M).

Funding for the irrigation projects were often commingled with other federal legislation or earmarked appropriations. There was not much thought about long-term economic feasibility.

Indian Agricultural Irrigation Projects

Reservation	Acres in Project	Acres irrigated	Indian	Non-Indian
Chiu Chu, AZ**	3,445	290	\$26.00	\$250.00
Duck Valley, ID/NV	12,000	9,396	\$5.20	\$22.73
Fort Belknap, MT	13,320	10,427	\$6.25	\$12.50
Pyramid Lake, NV	6,427	1,179	\$3.60	\$16.56
San Carlos, AZ	2,326	527	\$5.00	\$17.81
San Xavier, AZ**	2,026	296	\$60	\$100
Walker River, NV	4,980	1,846	\$7.32	\$15.29

Indian Irrigation Projects Fee Schedules Per Acre (up to 2006)

Source: National Irrigation Committee, 1988

**Denotes area not irrigated since 1982 due to lack of water.

Indian Agricultural Irrigation Projects

Rate adjustments for Indian Irrigation Projects Per Acre

Reservation	Final 2006 rate per acre	Final 2007 rate per acre	Final 2008 rate per acre
Duck Valley	\$5.30	\$5.30	\$5.30
Fort Belknap, MT	Trust land - \$8.50	Trust land - \$13.88	Trust land - \$20.00
	Fee land - \$17.00	Fee land - \$18.50	Fee land - \$20.00
San Carlos (Joint Works)	\$30.00	\$30.00	\$21.00
San Carlos (Indian Works)	\$77.00	\$70.00	\$-To be determined
Unitah	\$12.00	\$12.00	\$12.50
		Minimum bill \$25.00	Minimum bill \$25.00
Walker River	Indian - \$7.32	Indian - \$10.00	Indian - \$13.00
	Non-Indian - 15.29	Non-Indian - \$16.00	Non-Indian - \$16.00

Source: U.S. Federal Register, 2007; 2008.

Indian Agricultural Irrigation

- Contribute substantially to reservation economies, in some instances generating millions of dollars in crop value annually.
- The obvious issue involves increases in demands for water among diverse water users.
 - Indian farmers
 - Tribal farming operations
 - Non-Indian farmers
 - Municipal developers
 - Wildlife agencies and natural resource agencies.

Water Rights & Future

- Indian Water Right Settlements
 - Increasing negotiated settlements are sought to mitigate conflict involving Indians water rights.
 - During the past four decades, a number of Indian tribes have filed legal claims in an effort to have water rights either restored to a reservation or protected for Indian use. Indian water claims involve substantial water resources with the potential to exceed 45 million acre-feet of water per year.

Questions?

