



EXTENSION
College of Agriculture,
Biotechnology & Natural Resources

Indian Land Tenure

Utilizing Indian land in your agricultural operation



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Legal vs Social Structure



Just because something is legal, does it mean its right? Is there a difference between what is right and/or wrong?

American Indian Policy Eras

- Trade and Intercourse Era: 1790 to 1830
- Removal Era: 1830 to 1850
- Reservation Era: 1850 to 1887
- Allotment and Assimilation Era: 1887 to 1934
- Indian New Deal Era: 1934 to 1945
- Termination Era: 1945 to 1965
- Self-Determination Era: 1965 to Present Day



Reservation Land Tenure & Jurisdictions

- Possible jurisdictions can include one or more of the following below...
 - Specific tribe
 - Bureau of Indian Affairs
 - Individual Allotment Holder
 - Tribal member
 - Non-Indian
 - State
 - County
 - Town or City




Indian Land and Ag Operations

- Where is your land located?
- What type of land title does the land have (trust, fee, allotment, lease)?
- What jurisdictions are you under?
- What access to land do you need to have a viable agricultural operation?

Why do these questions matter?

- Financial and property risk is involved when your business or leasing options depend on different types of Indian land
 - Options for financing are limited on lands with a trust title
 - Fractionation in a trust allotment land title increases risk
 - Harder to lease
 - Land becomes idle
 - Implementation of USDA programs is dependent upon land title and jurisdictions
 - Local politics can be involved and determine agricultural land access risk

Trust Title on Indian Land

- Restricted Indian land title is held *in trust* by the federal government
 - Indian tribes and individual Indians have beneficial use of the land, but title to land remains in trust and in the name of the United States government
 - Federal government is *trustee* for Indian tribes and individual land owners, and *guardian* of Indian affairs
 - Tribal governments can have active land departments
 - Land departments work on all facets of land on the reservation.
 - Jurisdictions can be convoluted, especially when dealing with individual Indian allotments and fee-simple parcels on the reservation.
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Restricted Indian Land Examples

- **Tribal lands** - land owner is 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
- Land Lease (Assigned lands) - tribal governments allow individual tribal member to live on, farm or use for a lifetime or specified time period per tribal land codes and/or tribal regulations.

Restricted Indian Land Examples

- **Trust allotment on reservation** - land parcel granted through General Allotment Act of 1887; certifies *beneficial ownership*-- legal title in federal trust for beneficiaries.
 - Restrictions imposed include fate of lands upon death of Indian landowners
 - Probate jurisdictions: Estate planning not cultural norm
 - Can be tribal jurisdictions under several different scenarios
 - Does the reservation where your allotment reside have tribal land codes?
- Fractionated interests? Real life circumstances...
 - Several beneficial undivided interest owners
 - Tribe can own interests
 - Can have some of an allotment fee and some in Trust

Restricted Indian Land Examples

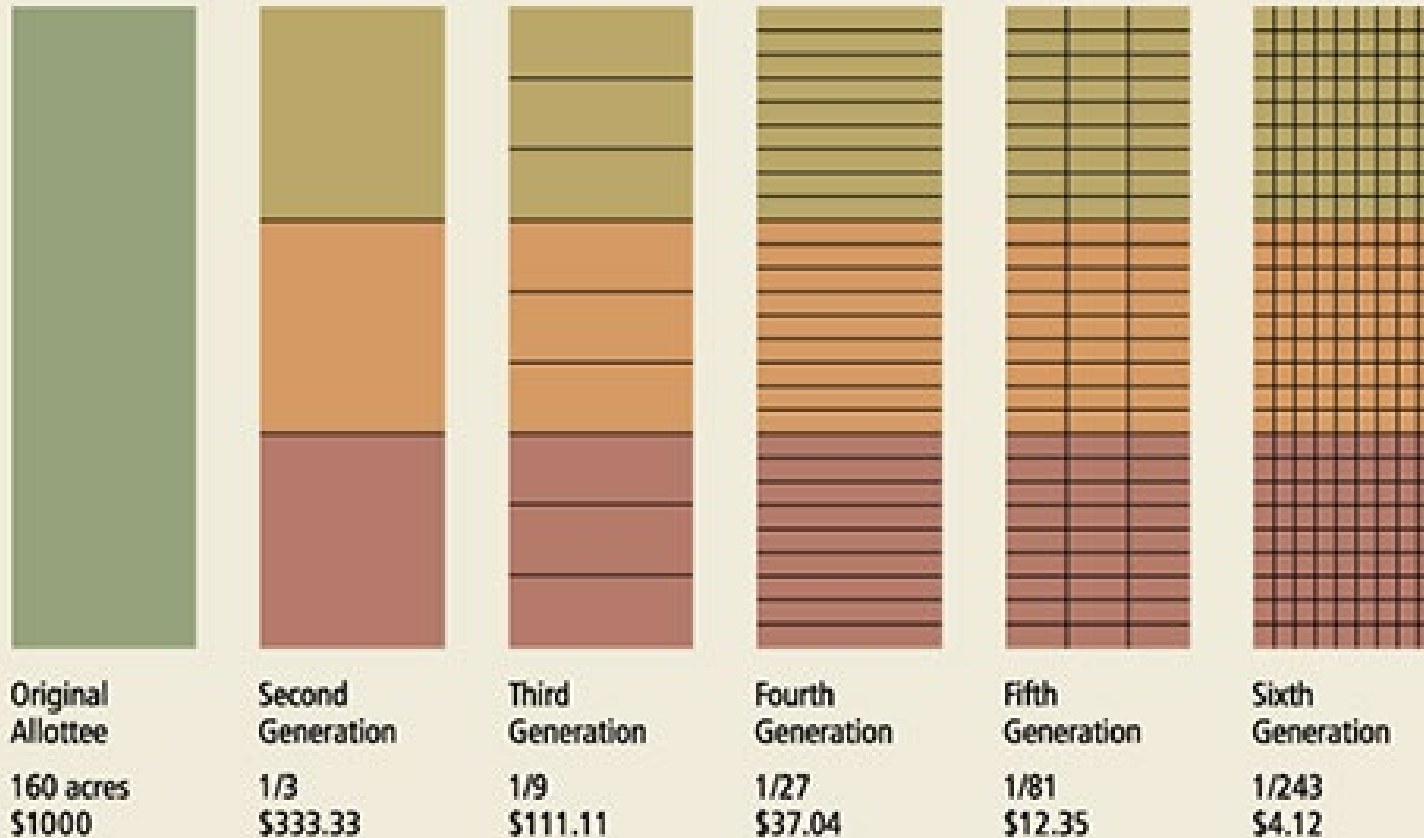
- **Trust allotment outside reservation boundaries in the “Public Domain”**- land parcel granted through General Allotment Act of 1887; certifies *beneficial ownership*--legal title in federal trust for beneficiaries.
 - I call them “Public Domain Allotments”
 - Restrictions imposed include fate of lands upon death of Indian landowners
 - Probate jurisdictions: Estate planning not cultural norm
 - Tribal jurisdictions are limited as land is outside reservation boundaries.
 - Federal jurisdictions apply

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

A Simplified Six-Generation Example of Undivided Heirship

*Fractionated Values and Lease Payment Values of Undivided Interest**



**Presumes only three heirs per person per generation.*

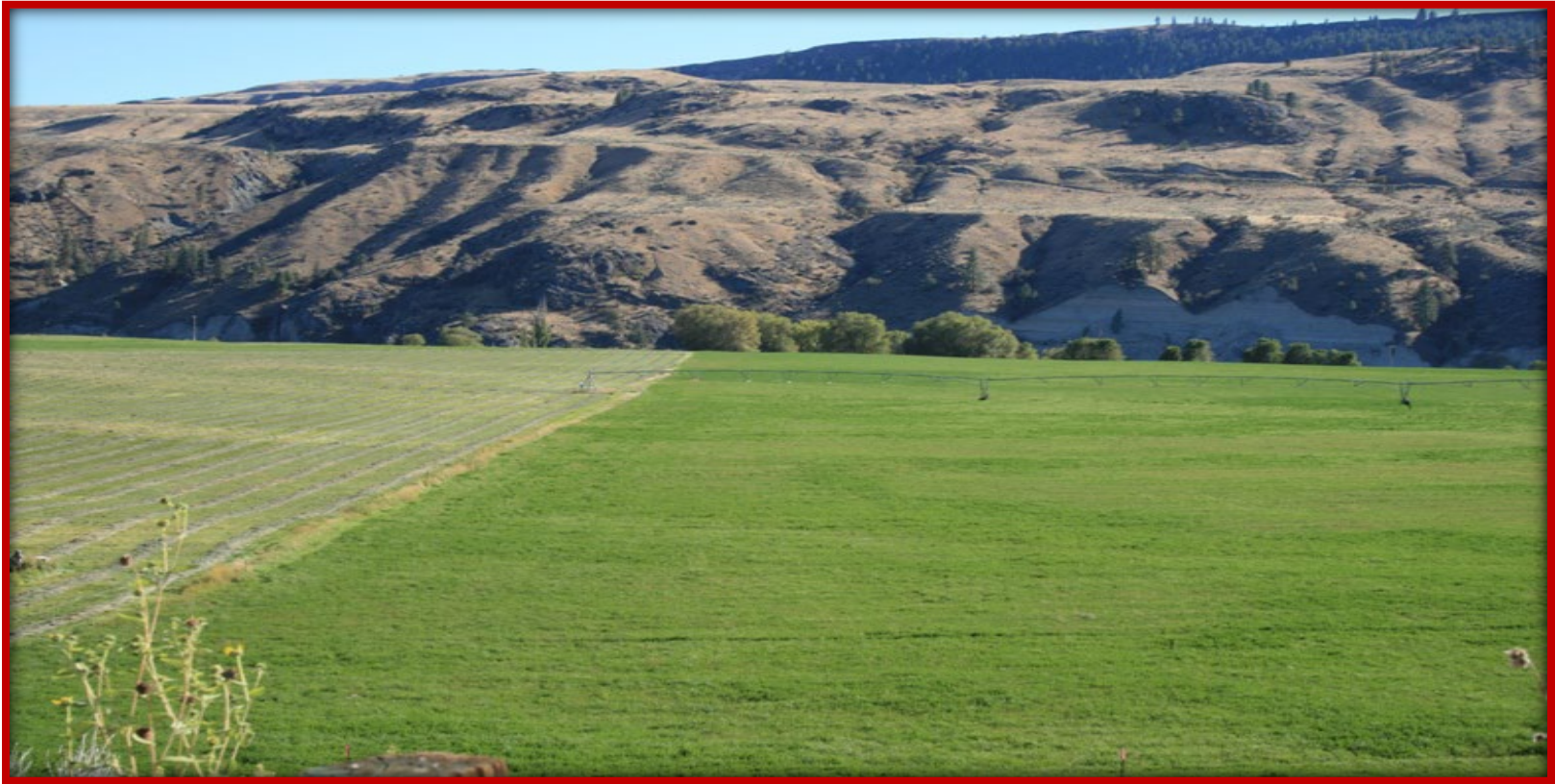
Trust to Fee Conversion

- 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?
 - How does the Tribal government fit into enforcement?
- Right-of-way
 - Fee lands surrounded by trust allotments
 - Tribal land, trust allotments, and federal jurisdictions

Land Tenure and Land Leasing




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

Title 25: Sec. 2218. Approval of leases, rights-of-way, and sales of natural resources

- **(3) Definition**
- In this section, the term “allotted land” includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.
- **(1) Percentage interest**
 - The applicable percentage referred to in subsection (a)(1) of this section shall be determined as follows:
 - (A) If there are **5 or fewer owners** of the undivided interest in the allotted land, the applicable percentage shall be **90 percent**.
 - (B) If there are **more than 5 such owners, but fewer than 11** such owners, the applicable percentage shall be **80 percent**.
 - (C) If there are more than **10 such owners, but fewer than 20** such owners, the applicable percentage shall be **60 percent**.
 - (D) If there are **20 or more such owners**, the applicable percentage shall be a majority of the interests in the allotted land.

Land Tenure & Jurisdictions

- Historical federal policy has created convoluted and multi-facet jurisdictional issues
 - Nevada has some reservations that are more convoluted concerning land tenure than others.
 - Each tribe should have a land department or a person that deals with land tenure on the reservation.
 - Nevada Tribes can consider pooling resources with other reservations to deal with land management.
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25 U.S. Code Chapter 24 - INDIAN LAND CONSOLIDATION

owner-managed status

- (2) For purposes of this section, the term “**owner-managed status**” means, with respect to a trust or restricted interest, that— (A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d); (B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and (C) no revocation has occurred under subsection (h)(2).

Secretarial Approval

- Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

Review: Land and Your Ag Lease

- If land is tribal land (land lease/assignment), then you are under the jurisdiction of the tribe and its laws and policies.
- If land is a trust allotment, then you are under the jurisdiction of the Bureau of Indian Affairs and/or tribe, specific procedures will depend on BIA region and tribal government.
 - Is the land parcel fractionated?
 - If it is fractionated, how many interest holders are there?
 - Are all interests in the land title in trust status or are there interests in fee simple?
- If your land is in a lease or you want to lease, then what type of land title will determine the procedures and jurisdictions that are involved in a lease agreement?

Questions?

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