



**The Future of Trust Administration
October 3, 2014, 8:30 a.m.-5:45 p.m.**

Cosponsored By
The Center for Indian Law & Policy, Seattle University School of Law
and
The Intertribal Timber Council

AGENDA

- 8:00-8:30 a.m. Registration
Complimentary Coffee and Pastries
- 8:30-8:45 a.m. Welcome and Overview of the Program

Eric Eberhard, Distinguished Indian Law Practitioner in Residence;
Faculty Co-Director, Center for Indian Law & Policy, Seattle University
School of Law
- 8:45-9:00 a.m. Welcome from *Dean Annette Clark*
- 9:00-9:30 a.m. **Keynote** –The Evolving Nature of the Federal Tribal Relationships and
the Trust Responsibility

Professor Robert Anderson, Director, Native American Law Center,
University of Washington School of Law
- 9:30-10:30 a.m. **Panel I** – Case Study: *The 2013 Assessment of Indian Forests and
Forest Management in the United States.*
The United States has been responsible for managing 18 million acres of
forest land held in trust for Indians for over a century. During most of that
time, federal law required tribal forests to be managed for sustained yield.
Following an extensive review of the management of tribal forests in
numerous oversight hearings, in 1990 the Congress enacted the National
Indian Forest Resource Management Act in an effort to shift the
management of the resources to multiple use, to promote greater tribal
control and to address the chronic underfunding of every aspect of the
management of Indian forest resources.

In 2013 the third independent assessment of the status of Indian forests
and forestry practices (IFMAT III) documented the continuing
shortcomings of federal policies. IFMAT III provides an excellent case
history of on-the-ground changes and remaining challenges for federal
fiduciary administration. A review of the impacts of allotment and a
comparison of timber sales administration by the BIA and private industry

provide insight into unique aspects of trust administration and the ability to participate in competitive markets.

Moderator:

Gary S. Morishima, Natural Resources Technical Advisor, Quinault Indian Nation

Panelists:

Phil Rigdon, President, Intertribal Timber Council

John Gordon, Chair, IFMAT I & II and Co-Chair IFMAT III; Dean, Yale School of Forestry (1983-1992)

Vincent Corrao, Member, IFMAT III; President, Northwest Management, Inc.; Certified Forester; Past President, Western Forestry Conservation Association

10:30—10:45 a.m. Break

10:45a.m.-12:00p.m. **Panel II – *Federal and Congressional Perspectives on Future Trust Administration.***

How do the Department of Interior and the Congress view the recommendations of Secretary Salazar's Trust Reform Commission? Has the implementation of TERA and HEARTH been satisfactory? If not, what needs to change? If so, can legislation be enacted to provide for more direct Tribal administration and management of other trust assets? Is there any near term prospect for increased funding for trust asset management and administration?

Moderator:

Eric Eberhard

Panelists:

Kevin Washburn, Assistant Secretary – Indian Affairs, United States Department of the Interior

Mary Pavel, Staff Director and Chief Counsel, United States Senate Committee on Indian Affairs

Chris Fluhr, Staff Director, Subcommittee on Indian and Alaska Native Affairs, Committee on Natural Resources, United States House of Representatives

All panel members are confirmed but may have to change their plans on very short notice due to their official duties.

12:00 – 1:30 p.m. **Lunch Keynote – *Termination, Self-Determination, Contraction – Navigating a New Era of Austerity***
Box Lunch Provided

Mark Trahant, Attwood Journalism Chair, Department of Journalism and Communication, University of Alaska

1:30-2:45 p.m. **Panel III – *Emerging Models for Trust Administration.***

Tribal Energy Resource Agreements (TERA) and leasing arrangements under the HEARTH Act provide new approaches for management of trust assets. How widely are these new approaches being used? What problems have been encountered? Are there other ways to provide for more direct tribal administration and management of trust assets and to reduce the federal administrative burden on the use and development of those assets?

The Trust Reform Commission recommended the establishment of an Independent Trust Administration Commission (ITAC). How would the Commission improve the administration and management of trust resources? Will new funding be needed? How would ITAC be different than OST or the BIA in carrying out its duties?

Consistent with the historical and sovereign role of tribes as self-governing managers of their own resources and assets, the current federal policy of self-determination and long standing theories of public trust, the time may be right for Indian tribes to be accorded their full authority as co-managers of their trust resources. How would this be accomplished? Do tribes have the fiscal resources and trained personnel to effectively discharge their duties as co-managers?

Moderator
Eric Eberhard

Panelists:

Professor Elizabeth Kronk Warner, Associate Professor of Law, Director, Tribal Law & Government Center, University of Kansas School of Law
Professor and Dean Stacy Leeds, University of Arkansas School of Law
Douglas Maccourt, Partner, Ater Wynne LLP, Chair, Tribal Business Group; Author, [Renewable Energy Development in Indian Country: a Handbook for Tribes](#) (2010)

Professor Mary Christina Wood, Philip H. Knight Professor of Law, Faculty Director, Environmental and Natural Resources Law Program, University of Oregon School of Law

2:45-3:00 p.m.

Break

3:00-4:15 p.m.

Panel IV – Challenges and Opportunities.

Panelists will discuss seminal challenges and opportunities for re-forming trust administration.

Following the United States Supreme Court's landmark ruling in *Mitchell v. United States* in 1983 (*Mitchell II*), the conventional wisdom was that the federal courts would enforce the trust responsibility through damage awards when the United States failed to act in accordance with common law standards applied to private fiduciaries. More recent decisions of the Court have narrowed and limited *Mitchell II* holding in ways that suggest that the trust responsibility toward tribes bears no resemblance to the duties of a private fiduciary, except in the very limited instances where the

Congress has affirmatively expressed its intention that the United States should be held to that duty of care. Are the federal courts still viable forums for resolving claims of breach of trust and enforcing the trust responsibility through the award of damages for its breach by federal officials?

What can be done to restructure the federal role in the administration and management of trust assets? Can federal involvement be decreased without undermining the trust and/or exposing the US to new liability for mismanagement?

Can direct tribal control over the development, administration and management of trust resources be enhanced? What tools do the tribes need in order to provide for effective management and administration of trust resources? Is there an inherent conflict between the trust responsibility and direct tribal control over trust resources?

Does the trust responsibility provide for effective management and protection of tribal resources and assets or is it an aspect of federal policy that serves federal interests better than it serves tribal interests?

Moderator – *Eric Eberhard*

Panelists:

Professor Robert Anderson

Thomas P. Schlosser, Partner, Morisset, Schlosser, Jozwiak & Somerville

Professor Alex Skibine, University of Utah S.J. Quinney School of Law

David Mullon, Chief Counsel, National Congress of American Indians

4:15-5:30 p.m.

Round Table Discussion – *Looking Forward.*

Moderator:

Catherine O'Neill, Professor, Faculty Co-Director, Center for Indian Law & Policy, Seattle University School of Law

Panelists:

Fawn Sharp, President, Quinault Indian Nation

Robert Anderson

Elizabeth Kronk Warner

Mary Christina Wood

Phil Rigdon

Alex Skibine

Stacy Leeds

Gary Morishima

Douglas Maccourt

5:30-5:45 p.m.

Concluding Remarks

Eric Eberhard

6:00-7:30 p.m.

Reception