

# Indigenous Nations' Engagement in Federal Land Management Planning



*Photo: Venturing down slot canyons of Southern Utah. Credit: Dr. Len Necefer.*

# Indigenous Nations' Engagement in Federal Land Management Planning

December 16, 2022

*This report was funded by The Pew Charitable Trusts*

Submitted by:

Karla Brollier  
Founder & Managing Director  
Saghani Consulting  
karla@saghani.com



Miriam Jorgensen  
Research Director  
Native Nations Institute  
The University of Arizona  
mjorgens@arizona.edu



*Strengthening Indigenous Governance*

Len Necefer  
Founder & CEO  
NativesOutdoors  
len@natives-outdoors.org



# **Indigenous Nations' Engagement in Federal Land Management Planning:**

## **EXECUTIVE SUMMARY**

### **Project Aims**

The aims of this project were to better understand tribes' general priorities in Bureau of Land Management (BLM) and U.S. Forest Service (USFS) public lands planning processes and whether those processes allow for, and are effectively implemented to ensure, the inclusion of tribal preferences. Findings point to several lessons for The Pew Charitable Trusts and other nongovernmental organizations, for federal government agencies, and for Congress about how to be better partners with tribes in federal land management planning and, in particular, how to better ensure full consideration of tribal interests in land stewardship.

### **Findings and Themes**

#### **Many tribes strongly desire co-management arrangements and opportunities.**

- ▶ The tribes in this study viewed co-management as a preferred approach to public land management. While they did not always use this term—some opted for “co-stewardship”—their point was nonetheless clear. Interviewees were interested in arrangements that provided their nations with the highest degree of authority possible over federal land management.

#### **Consultation processes need improvement, and better overall communication would aid in better consultation practices and outcomes.**

- ▶ Interviews surfaced a number of “usual suspect” complaints about current federal consultation efforts, including planning processes that begin without them; a lack of respect for tribes' status as sovereigns engaged in government-to-government relationships; limited tribal resources (money, time) for meaningful participation in consultation processes; inconsistency in how consultation occurs within and between federal agencies; and a lack of continuity and institutional memory on the part of federal agencies with respect to their knowledge of tribes, tribes' challenges, and the specific federal-tribal relationship.

#### **Some tribes need capacity to facilitate consultation, co-management, and investment in the implementation and preservation of existing traditional knowledge systems.**

- ▶ Interviews pointed to capacity as a critical element of successful consultation and of effective co-management. Both financial resources and expertise—including expertise in

preserving, developing, and implementing Traditional Ecological Knowledge—are required. Especially with regard to consultation and limited-term co-management agreements, outside contractors can help fill capacity gaps. But for tribes to take on more comprehensive consultation activities (as are needed for co-management) and more active co-management roles, longer-term approaches to the capacity challenge are required.

#### **BLM and USFS special designations receive mixed reviews from tribes and other experts.**

- ▶ Special designations are directives that require the BLM and USFS to manage identified parcels of public land in a particular way or for a particular purpose. Theoretically, designations provide opportunities for tribes to ensure that their preferences govern the ways federal agency staff manage a particular portion of a BLM region or National Forest. Yet interviewees’ reviews of special designations were mixed, and overall, point to an understanding of designations as useful but not ideal tools that can require tribes to place a tremendous amount of trust in their federal partners.

#### **Best Practices / Recommendations**

##### **For The Pew Charitable Trusts and the NGO sector overall:**

- ▶ Use NGO sector resources to help build tribal management capacity. Importantly, investments in tribal capacity building should be focused not only on legal and Western science skills and knowledge as they related to land management capacity, but also on Native language and cultural revitalization and on efforts to better operationalize TEK within co-management.
- ▶ Provide financial and in-kind resources to directly support tribal participation in federal land management planning processes; this could include coverage of travel expenses, legal fees, and other participation costs, or it might involve taking on a convening role so that tribes can meet with multiple agencies or partners at once; support could mean supplying data and information about the characteristics of the public lands in the planning area that tribes might not otherwise be able to gather or access.
- ▶ Develop information-sharing tools concerning BLM and USFS special designations; one immediate need may be for information-sharing concerning the ways that special designations intersect with the 2021 “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters” issued by the U.S. Department of the Interior and U.S. Department of Agriculture.

- ▶ Undertake organization-wide diversity, equity, and inclusion work to improve board, leadership, and staff understanding of Indigenous Peoples and Indigenous issues, and consider developing an organization-wide Indigenous strategy.

**For federal agencies:**

- ▶ Work consistently to increase tribes' confidence in federal land management planning processes, in the plans themselves, and in the federal partners; this includes being aware of tribes' histories with the processes and committing time and resources to building trust. Consider creating more dedicated tribal liaison roles.
- ▶ Identify or create sources of funds that could be used to support tribal co-stewardship or co-management; this includes completing any and all preliminary work necessary to implement funding arrangements available under current regulations (PL 93-638, for example) and identifying and setting aside other agency resources for this purpose.
- ▶ Led by the 2022 White House Memorandum on Uniform Standards for Tribal Consultation, seize every opportunity to improve consultation; steps might include providing early information and appropriate notice, keeping quality records, working to build institutional memory, collaborating across agencies to reduce the consultation burden for tribes, and clarifying how tribes can participate in plan revision during the long period between plans.
- ▶ Invest in tribal natural-resource management capacity, but with the understanding that tribes will determine their own capacity development needs; options for capacity building may include training, direct funding for personnel, and opportunities to gain experience through contracting with federal agencies.
- ▶ Work with tribes on developing designations, while also respecting their reasons for lands protection and their desires for information privacy; know the designation options available to tribes and work with them to determine what would work best.
- ▶ At BLM, work to promulgate new regulations to govern ACECs; regulations should recognize tribes' interest in permanence, landscape-scale conservation, and co-stewardship, and should provide ways for RMPs to be made consistent with tribal land management plans.
- ▶ At USFS, encourage parallel efforts in support of designation permanence, landscape-level conservation, co-stewardship, and tribal land management plans.

**For Congress:**

- ▶ Create authorizing legislation that directs BLM and USFS to undertake regulatory reform to support broader co-management processes within BLM and USFS, and appropriate funding for tribes to be able to undertake greater co-stewardship and co-management.
- ▶ Appropriate funding for tribes to be able to undertake greater co-stewardship and co-management. Apart from the P.L. 93-638 funding processes, consider mechanisms that allow for greater shared decision making at the landscape level, create explicit incentives to integrate TEK into land management, and provide dedicated funding streams to support tribal-federal co-management on public lands.
- ▶ Modify the General Mining Act of 1872 to involve tribes in decisions concerning mining on ancestral lands, assure appropriate environmental oversight during extraction and mandate remediation post-extraction, and end the current patenting process, which does not appropriately weigh tribal and taxpayer interests against corporate interests.

# **Indigenous Nations’ Engagement in Federal Land Management Planning**

## **TABLE of CONTENTS**

I.	Introduction .....	1
II.	Information Gathering Plan and Process.....	2
III.	Themes and Findings .....	4
A.	Co-Management .....	5
B.	Consultation and Communication .....	8
C.	Capacity Building.....	9
D.	Special Designations .....	11
IV.	Best Practices and Recommendations Indicated by This Study.....	13
A.	For The Pew Charitable Trusts / the NGO sector more generally .....	13
B.	For Federal Agencies.....	15
C.	For Congress.....	18
	Appendix A: Special Designations and Federal Agency Land Management Planning.....	21
A.	“Designated Areas” and “Special Designations”—Definitions and Distinctions .....	22
B.	High-Level Special Designations .....	23
C.	Agency-Level Special Designations .....	28
D.	BLM and USFS Policies and Processes .....	36
E.	Putting the Pieces Together.....	50
	Appendix B: Additional Data on BLM Areas of Critical Environmental Concern .....	53
A.	Data on the Prevalence of ACECs .....	53
B.	List of Rules and Prescriptions in ACECs for Tribal and Non-Tribal Purposes .....	53
	Appendix C: Additional Information Concerning USFS Engagement with Tribes.....	60
	References and Resources .....	62

# Indigenous Nations' Engagement in Federal Land Management Planning

Karla Brollier, Miriam Jorgensen, and Len Necefer

## I. Introduction

Beginning in the 19th century and continuing through the present, the U.S. government has used treaties, purchases, land allotment, legalized squatting, flood control programs, mineral development, and numerous other appropriative policies and processes to remove most Western land from Indigenous stewardship and control.<sup>1</sup> While a large proportion of these lands were made available for settlement—and eventual ownership—by European immigrants, and other lands passed from federal control to a mixture of corporations and sub-national governmental entities for development purposes, the U.S. government retained ownership of hundreds of millions of acres.<sup>2</sup> Today, there is a vast network of federally managed public lands that primarily are located in the American west and largely are managed by two federal agencies—the Bureau of Land Management (BLM) within the U.S. Department of the Interior and the U.S. Forest Service (USFS) within the U.S. Department of Agriculture.<sup>3</sup>

---

<sup>1</sup> Some evidence and estimates of these transactions are shown in Table 1.1, “Acquisition of the Public Domain, 1781-1867,” in Bureau of Land Management, 2021, “Public Land Statistics 2020,” volume 205, U.S. Department of the Interior, [https://www.blm.gov/sites/default/files/docs/2021-08/PublicLandStatistics2020\\_1.pdf](https://www.blm.gov/sites/default/files/docs/2021-08/PublicLandStatistics2020_1.pdf), accessed November 7, 2022. Transactions from the Louisiana Purchase onward relate to western land.

<sup>2</sup> As an example, approximately one third of former reservation land in the continental U.S. (comparing areas that were designated as federal reservations in 1880 and in 2020) remains under federal government management and control. The USFS manages 16% of this land, and the BLM manages 14%. See Laura D. Taylor, 2022, “Predatory Paternalism: The Changing Rights to Water, Enforcement, and Spillover Effects on Environmental Quality in the American West,” doctoral dissertation, Department of Economics, University of Arizona, publication # 29169588, ProQuest Dissertations and Theses Database; and Laura D. Taylor and Miriam Jorgensen, 2022, “Considerations for Federal and State Landback,” Landback Policy Brief Series, Harvard Project on American Indian Economic Development, Harvard Kennedy School, Harvard University, [https://ash.harvard.edu/files/ash/files/land\\_back\\_policy\\_brief180.pdf?m=1666224970](https://ash.harvard.edu/files/ash/files/land_back_policy_brief180.pdf?m=1666224970), accessed November 7, 2022. Washburn and Mills and Nie put it even more succinctly. “The historical record shows that all of the current federal public land base was once tribal lands”; see Kevin K. Washburn, 2022, “Facilitating Tribal Co-Management of Federal Public Lands,” *Wisconsin Law Review* 2022(2), p. 265. And, “But for the removal and exclusion of tribes from large swaths of their traditional territories, there would be no public lands”; see Monte Mills and Martin Nie, 2021, “Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands,” *Public Land & Resources Law Review* 44, p. 54.

<sup>3</sup> Approximately 640 million acres of surface land are managed by the U.S. federal government. The BLM manages 244 million acres of public lands (38% of the total) and the USFS manages 193 million acres in the National Forest System (30% of the total). Smaller portions are managed by other federal agencies. See Katie Hoover, Laura B. Comay, R. Eliot Crafton, and Carol Hardy Vincent, 2021, “The Federal Land Management Agencies,” Congressional Research Service, February 16, <https://sgp.fas.org/crs/misc/IF10585.pdf>, accessed November 7, 2022.



In the 20th century, at the behest of Congress,<sup>4</sup> both agencies developed formal systems of land management planning, which provide for the periodic reassessment of land and resource management practices and the adoption of new or revised priorities. Input from the general public, state governments, and tribal governments is sought in these processes, where engagement with tribal governments is a matter of formal government-to-government consultation.<sup>5</sup>

This project, conducted by Saghani Consulting, the Native Nations Institute at the University of Arizona, and NativesOutdoors and funded by The Pew Charitable Trusts, sought to better understand tribes' general priorities in BLM and USFS public lands planning processes and whether those processes allow for—and are effectively implemented to ensure—the inclusion of tribal preferences. It took a particular interest in “special designations,” statutorily or administratively identified areas that BLM or USFS must manage in a certain way or for a given purpose, as an opportunity for tribes to ensure the implementation of their preferences over time. Ultimately, the project was intended to generate lessons for intermediary organizations, federal partners, and tribes.

## **II. Information Gathering Plan and Process**

Information gathering for the project occurred along two separate but related tracks. The first track focused on case studies of Native nations' engagement with two specific plans—one BLM resource management plan (RMP) and one USFS land and resource management plan (“forest plan”). The second track gathered information more widely, through interviews with Native nation leaders, staff, and connected experts engaged with a range of BLM RMPs and USFS forest plans, and through a review of policies and regulations.

---

<sup>4</sup> “The Federal Land Policy and Management Act of 1976, as amended, is the Bureau of Land Management’s “organic act,” which establishes the agency’s multiple-use and sustained yield mandate to serve present and future generations.” (See Bureau of Land Management, 2016, “The Federal Land Policy and Management Act of 1976, as amended,” U.S. Department of the Interior, inside cover page, [https://www.blm.gov/sites/default/files/AboutUs\\_LawsandRegs\\_FLPMA.pdf](https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf), accessed December 13, 2022.) The Multiple-Use Sustained-Yield Act and the National Forest Management Act play a similar role for USFS. (See Gerald Williams, 2000, “The USDA Forest Service—The First Century,” Publication FS-650, U.S. Forest Service, U.S. Department of Agriculture, July pp. 105-107, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprd3795279.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3795279.pdf), accessed December 13, 2022; and U.S. Forest Service, no date, “Planning Rule Overview Page,” U.S. Department of Agriculture, <https://www.fs.usda.gov/planningrule>, accessed December 16, 2022).

<sup>5</sup> Historically, engagement with tribal governments in agency land management planning processes may not have been considered a matter of formal government-to-government consultation, but it is the contemporary standard and expectation. See, for example, Bureau of Land Management, 2016, “Tribal Relations,” Manual (MS) 1780, U.S. Department of the Interior, p. 1-1, <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>, accessed December 16, 2022.

Track one research centers on the BLM Winnemucca Resource Management Plan in Nevada and the Inyo National Forest Plan in both California and Nevada. Both were completed plans that included tribal engagement. The case studies were designed to learn more about tribal engagement in past BLM and USFS planning efforts, to understand what the agencies had done well to facilitate tribal engagement and what they could do better, and to identify whether additional policy mechanisms are needed to facilitate this engagement going forward.

Track two efforts initially focused on the Idaho-Montana border and the Four Corners region, with the goal of gathering qualitative information from Native nations in two distinct geographical regions where federal land management planning was ongoing, under the assumption that tribal interests in federal land might be informed by geography.<sup>6</sup> Additionally, the plan was to focus on areas where BLM RMP and USFS forest plan revision or development had begun *after* the most recent BLM and USFS guidance concerning tribal engagement (so that the entirety of tribes' engagement occurred under the most up-to-date planning regimes possible)<sup>7</sup> and where planning efforts were likely to reach completion within five years of the project research period (so that the research effort might have near-term benefits to Native nations and federal agencies).

Track two efforts also involved a review of the BLM and USFS policy and regulatory environment that prevailed during the study period. Overall, these efforts included a literature review, an analysis of the guidance provided by the federal agencies to tribes, and other documents and information available concerning the agencies' land management planning processes.

Outreach to tribes both for the Winnemucca RMP and Inyo National Forest Plan case studies and for the regional-level information gathering began in late 2021 and continued into December 2022. Outreach occurred via email and telephone calls to personal contacts, emails

---

<sup>6</sup> The Idaho-Montana region encompassed planning processes for the Bitterroot, Lolo, Nez Perce-Clearwater, and Salmon-Challis National Forests and for the Challis, Four Rivers, Salmon, and Upper Snake BLM Field Offices and indicated outreach to the Confederated Salish and Kootenai Tribes, Eastern Shoshone Tribe, Nez Perce Tribe, Shoshone-Bannock Tribes, and Shoshone-Paiute Tribes. The Four Corners region encompassed planning processes for the Carson, Cibola, "GMUG" (Grand Mesa, Uncompahgre, and Gunnison), Manti-La Sal, and Santa Fe National Forests and the Cedar City and Farmington BLM Field Offices and indicated outreach to the Hopi Tribe, Jicarilla Apache Tribe, San Juan Southern Paiute Nation, Southern Ute Tribe, Ute Indian Tribe, Ute Mountain Ute Tribe, and all of the Pueblos.

<sup>7</sup> At the time the study was conceived, the 2012 USFS Planning Rule and 2016 BLM Tribal Relations Handbook were the most recent regulations and guidance relating to tribal engagement in federal land use plans for the agencies. Thus, the study hoped to engage tribes affected by USFS plans on which revisions were initiated in 2012 or later, or by BLM plans on which revisions were initiated in 2016 or later.

to contacts through partner introductions, and “cold-call” emails to tribal staff who were identified as potentially engaged in BLM and USFS land management planning and included repeated outreach. Many outreach attempts yielded no response, some early responses did not survive past the first returned email or call, and others resulted in conversations where we were asked to hold off or not pursue information gathering. Tribal contacts most frequently cited the lingering impacts of the pandemic as their reason for not participating, impacts that included health effects, the ongoing process of catching up after pandemic closures (such that many other demands took priority over a project interview), and the impossibility of responding to “one more thing” when they already were working at capacity (a stressor independent of the pandemic but exacerbated by it). In other instances, tribes indicated that engaging in such discussions was not legally or politically prudent. Significantly, it did not appear that the “proximity” of a contact (a personal contact, a contact made via a colleague introduction, or a cold contact) affected tribes’ and interviewees’ participation.

We compensated for the relatively low response rate by broadening track two’s geographic scope (which in turn implicated a wider array of BLM and USFS plans) and by reaching out to several experts who had engaged in BLM and USFS land management planning processes with or on behalf of tribes but who were not “tribal representatives” per se. Ultimately, we conducted 14 total interviews with 15 individuals across the two tracks including three current or former tribal elected leaders, nine tribal program staff, and two experts.<sup>8</sup> Additionally, we met with an expert advisory committee—composed of five Indigenous leaders from academia, nonprofit organizations, and the legal field, many of whom also had relevant federal government experience—a total of three times over the course of the project (in May, September, and October 2022) for guidance and feedback.<sup>9</sup>

### **III. Themes and Findings**

While acknowledging that the total number of interviews conducted for this project is relatively low, the information-gathering effort nevertheless highlighted several themes, or ideas that arose repeatedly in our conversations with tribal leadership, natural resource staff, and experts. As indicated below, some findings are strengthened by references to the broader literature.

---

<sup>8</sup> One interview was conducted with two tribal program staff members. We also interviewed two USFS staff members at the direction of tribal contacts. While these conversations provided us with valuable insights about how centrally conceived policies operate on the ground, they were out of scope for the project and thus were not included in the interview total.

<sup>9</sup> The members of this committee were Karen Diver, Chris Deschene, John Echohawk, Honor Keeler, and Pilar Thomas.

## A. Co-Management

### ***Many tribes strongly desire co-management opportunities and arrangements.***

The tribes in this study viewed co-management as the favored approach to public land management. While they did not always use this term (some opted for “co-stewardship,” which is the language of the 2021 Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters<sup>10</sup>), their point was nonetheless clear. Interviewees were interested in agreements or arrangements that provided their nations with the highest degree of authority possible over federal land management.<sup>11</sup>

Most mentioned that they’d been hearing more about co-management and expressed a desire for future management of federal lands to take that form. Several specifically mentioned Bears Ears as inspiring them to consider what might be possible. Several tribes in the interview pool

---

<sup>10</sup> Deb Haaland and Thomas J. Vilsack, 2021, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,” Order No. 3403, U.S. Department of the Interior and U.S. Department of Agriculture, November 15, <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>, accessed December 14, 2022.

<sup>11</sup> Significantly, there is no standard or widely understood and accepted definition of “tribal co-management.” Mills and Nie provide at least six definitions found in federal statutory law and in agency regulations and guidance. (See Mills and Nie, “Bridges to a New Era,” Table 2, pp. 155-157.) Tribal (and tribe to tribe) definitions likely vary as well. The common-sense definition forwarded by Goodman is closest to our understanding of interviewees’ conceptions: “Comanagement embodies the concept and practice of two (or more) sovereigns working together to address and solve matters of critical concern to each. Comanagement is not a demand for a tribal veto power over federal projects, but rather a call for an end to federal unilateralism in decision making affecting tribal rights and resources. It is a call for a process that would incorporate, in a constructive manner, the policy and technical expertise of each sovereign in a mutual, participatory framework.” (See Ed Goodman, 2000, “Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right,” *Environmental Law* 30(2), pp. 284-285.) A more practical conceptualization given the diversity of written definitions comes from Mills: “Co-management can take all kinds of forms, from substantive, meaningful, timely consultation with tribes all the way to Congress delegating authority to a tribe or tribes to jointly make decisions for a piece of land with Congress. ...The important thing is the actual work of meaningfully engaging tribes, so that they have real influence.” (Quoted in Miyo McGinn, 2022, “How Tribal Co-Managing Movements are Transforming the Conservation of Public Lands,” *Popular Science*, October 10, paragraph 3, <https://www.popsci.com/environment/native-tribes-public-land-management/>, accessed December 16, 2022). While interviewees tended to use the terms “co-management” and “co-stewardship” interchangeably, closer scrutiny suggests that for federal actors, they may be different concepts. For example, in remarks to a Congressional committee on March 8, 2022, National Park Service (NPS) Director Charles Sams said, “The NPS works cooperatively with Tribes in the stewardship of national parks. This co-stewardship takes many forms, including co-management obligations in law, collaborative and cooperative agreements, and self-governance agreements.” (See Charles Sams, 2022, “Statement of Charles F. Sams III, Director, National Park Service, U.S. Department of the Interior before the House Committee on Natural Resources, Regarding Tribal Co-Management of Federal Lands,” U.S. House of Representatives, March 8, p. 2, [https://naturalresources.house.gov/download/director-charles-sams\\_-testimony\\_-nr-fc-ovr-hrg-30822](https://naturalresources.house.gov/download/director-charles-sams_-testimony_-nr-fc-ovr-hrg-30822), accessed December 16, 2022.)

had experience with limited co-management on BLM or USFS lands and said they preferred this type of arrangement.

This view is reiterated in other sources. In summarizing comments from a citizen of the Northern Arapaho Tribe working to protect the Red Desert in Wyoming, an article in *WyoFile* notes, “One of Soldier Wolf’s goals is tribal co-management of lands historically stewarded by tribes. ...she wants to see tribes brought to the table in a meaningful way—not just as a token.”<sup>12</sup> In 2020, the National Congress of American Indians passed a resolution calling on “Congress to pass legislation and direct federal agencies to include tribal nations in land management decisions at every level of the government based on incorporation of tribal co-management principles and practices.”<sup>13</sup>

Despite interviewees’ desire for co-management, our information-gathering efforts also suggested that tribes’ optimism was tempered by at least two factors—funding and the scope for co-management as conceived by federal partners.

Turning first to finance, the tribes interviewed noted that funding was necessary to undertake co-management. One interviewee argued that if an agency had financial resources for cultural resources protection, it should transfer those funds to local tribes as a matter of course. In so doing, the agency could help ensure that the tribe had a prominent role the resource protection process: “It should be the obligation of the federal entity to protect the area and do close consultation with the tribe on how to do that. And in the best case, the tribe would be part of instituting that and get funding from the federal entity [to do it].” While mechanisms do exist that enable funding to flow from agencies to tribes, it is worth observing that the interviewee described the situation as if it were not the norm and not a standard option offered in the planning process.

An approach mentioned in the interviews, contracting or compacting under the authority of Public Law 93-638 (as amended), may in fact require agency staff to reach beyond current organizational culture. As legal scholars such as Washburn, Mills, and Nie have pointed out, federal land management agencies have not tended to rely on 638 contracting or compacting

---

<sup>12</sup> Katie Klingsporn, 2022, “Red Desert Cultural Sites Reflect Broader Tribal Frustrations,” *WyoFile* (November 15), paragraph 18, <https://wyofile.com/red-desert-cultural-sites-reflect-broader-tribal-frustrations/>, accessed December 16, 2022.

<sup>13</sup> National Congress of American Indians, 2020, “Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands,” Resolution PDX-20-003, Annual Conference, p. 2, [https://www.ncai.org/attachments/Resolution\\_FamhBAHVFLnQfgvKBsgXjzIrdYAbDzKlaVtsEdSjWibSZtJDkFR\\_PDX-20-003%20SIGNED.pdf](https://www.ncai.org/attachments/Resolution_FamhBAHVFLnQfgvKBsgXjzIrdYAbDzKlaVtsEdSjWibSZtJDkFR_PDX-20-003%20SIGNED.pdf), accessed December 16, 2022.

with tribes much at all<sup>14</sup>—let alone for purposes that might be understood as “co-management.” One interviewee explained that while 638 financing was a familiar process for tribes, their agency counterparts were still learning about the mechanism.

That said, both tribes and agencies are learning about the ways that the mechanism works in public lands domain as opposed to the “Indian services” domain overseen by the agencies such as the Bureau of Indian Affairs, Bureau of Indian Education, and the Indian Health Service. One important difference is that land management agencies are not obliged to pay contract support costs.<sup>15</sup> One interviewee noted that he was well aware of this, and going forward, wanted to make sure that the tribe’s costs were covered. But if tribes push hard for contract support costs, their resoluteness could become a reason for resistance by agencies, who risk losing significant slices of their own administrative cost budgets to tribes.

Timelines are another difference between 638 contracts in the social services domain and 638 contracts in the lands management domain. In the Department of the Interior and the Department of Health and Human Services, self-determination contracts and self-governance compacts are more or less automatically renewed absent significant mismanagement or a request from the tribe to end the agreement. By contrast, when a land management contract or management plan ends, federal agencies may opt to revise or even not renew the arrangement.<sup>16</sup>

Turning next to scope, several interviewees expressed the opinion that federal agencies have a narrower management focus than tribes. Agency staff often seemed more concerned about individual species, land parcels with special characteristics, and extractable resources than about the overarching ecosystem. The lack of an ecosystems approach, which considers how all the parts of the environment and landscape work together broadly reflects the lack of a Traditional Ecological Knowledge (TEK) perspective in public lands management.

On the one hand, co-stewardship is an antidote—with tribal staff in a shared drivers’ seat, they automatically bring TEK into the management equation. On the other hand, the transition is not that simple. It is much easier for tribal co-stewards or co-managers to implement TEK management practices when they have willing partners—and even better if those partners understand TEK approaches themselves. Such change demands a significant investment of

---

<sup>14</sup> Washburn, “Facilitating Tribal Co-Management of Federal Public Lands,” especially pp. 289-290; Mills and Nie, “Bridges to a New Era,” especially pp. 105-111.

<sup>15</sup> Washburn, “Facilitating Tribal Co-Management of Federal Public Lands,” p. 315.

<sup>16</sup> See several examples in Washburn, “Facilitating Tribal Co-Management of Federal Public Lands,” pp. 289-311.

resources. One cost driver is the time and effort required to break down biases, as reflected in the general undervaluation of Indigenous knowledge systems versus western systems, and the perceived incommensurability of TEK and western scientific knowledge. It is only after “enough” people confront their biases that an appropriate integration and translation of traditional knowledge into decisionmaking and policy can occur.<sup>17</sup> Once partners are on board, another challenge is the inconsistent definition of TEK, which can cause further difficulties in policy applications.<sup>18</sup> Yet another is the task of gathering and applying information. For example, TEK often exists in oral traditions only, which can present barriers in applying the information to environmental management. A shift towards ecosystem-based management that meaningfully incorporates TEK—which is what interviewees hoped to achieve with greater co-stewardship and co-management—must overcome these challenges.<sup>19</sup> That may require the development of new theory and practice for planning and management, legislation and policy, education, and public consultation.

## **B. Consultation and Communication**

***Consultation processes need improvement, and better overall communication would aid in better consultation practices and outcomes.***

The interviews surfaced a number of “usual suspect” complaints about current federal consultation efforts including planning processes that begin without them (so that consultation becomes an after the fact engagement); a lack of respect for tribes’ status as sovereigns engaged in government-to-government relationships; limited tribal resources (money, time) for meaningful participation in consultation processes; inconsistency in how consultation occurs within and between federal agencies; and a lack of continuity and institutional memory on the part of federal agencies with respect to their knowledge of tribes, tribes’ challenges, and the specific federal-tribal relationship.

Interviewees pointed toward positive outcomes in tribal relationships around federal land management planning processes that were based upon a strong relationship between tribes and agencies at the “most local” USFS or BLM office (district or forest office level, respectively).

---

<sup>17</sup> See Paul Nadasdy, 1999, “The Politics of TEK: Power and the ‘Integration’ of Knowledge,” *Arctic Anthropology* 36(1-2): 1-18; and Henry P. Huntington, 2000, “Using Traditional Ecological Knowledge in Science: Methods and Applications,” *Ecological Applications* 10(5): 1270-1274.

<sup>18</sup> See Stephen C. Ellis, 2005, “Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision Making,” *Arctic* 58(1): 66-77, and Marc G. Stevenson, 1996, “Indigenous Knowledge in Environmental Assessment,” *Arctic* 49(3): 278-291.

<sup>19</sup> David Adam Lertzman, 2010, “Best of Two Worlds: Traditional Ecological Knowledge and Western Science in Ecosystem-Based Management,” *BC Journal of Ecosystems and Management*, 10(3): 104-126.

Interviewees described strong relationships with this level of agencies as ones where communication is more “free-flowing” and there seems to be a sense of joint problem solving further enabling trust to be built. Regarding special designations and other collaborative land management solutions that require follow-on effort by the agency, these relationships seem to be particularly critical; “local” USFS or BLM employees can make things happen or not (like an MOU or a funding agreement). Some tribes have relationships with more than one BLM and USFS office, and these relationships can be completely different. Interviewees criticized this outcome, underscoring the lack of common approaches, training, and infusion of best practices across agency offices. Historical problems can plague relationships with federal agencies, and harms are long-remembered, which can make it difficult for a new person to know what to do. Turnover, both within agencies and tribes, was also highlighted as a challenge to positive outcomes in this arena. One interview highlighted the impacts of this within the BLM during the Trump administration and COVID-19 and how things have not quite recovered; turnover can result in the loss of relationships and effective communication between tribes and federal agencies.

One area of focus for improving future consultation is investing in relationships, reducing employee turnover at local levels, and addressing inconsistencies across regional office. One suggestion was regional meetings at which agencies worked together to inform Tribes of plans and to strategize about the work that needed to get done. As noted, Tribes sometimes would prefer to deal with other agencies in one place, at one time to avoid wasting time, and avoid redundancy. One Native nation found that it was able to get more done through a group convened by FEMA, which helped organize all the actors.

### **C. Capacity Building**

***Some tribes need capacity to facilitate consultation, co-management, and investment in the implementation and preservation of existing traditional knowledge systems.***

Capacity to participate in co-management was identified as a critical element of any future co-management regimes. Several interviewees spoke to the role and importance of outside contractors in filling the current capacity gaps that exist in their ability to meet current tribal consultation requirements. The ability for tribes to take on active co-management roles will require both expertise and financial resources to execute. These efforts to build capacity also need to ensure a focus on preserving, developing, and implementing Traditional Ecological Knowledge. There is not currently a substantial amount of research into “how” Traditional Ecological Knowledge is practically brought into management within the United States. Where this does exist, it tends to be on a piecemeal basis, where government agencies accept the knowledge that aligns with western scientific frameworks.



A significant amount of TEK exists in communities and individuals in forms that are not recognized as equal by western institutions (i.e. oral traditions, place-based understandings).<sup>20</sup> The knowledge of these communities often is not accepted at face value and must be filtered through western methods to be deemed “valid” within western rulemaking processes.<sup>21</sup> Community members who hold this knowledge and are embedded within traditional knowledge systems often contend with the realities of poverty facing many native communities in the United States. Language revitalization and ensuring the well-being of knowledge holders is a key piece of ensuring the knowledge needed for co-management is not lost.<sup>22</sup> One interviewee highlighted that any effort to develop, support, and include this knowledge in co-management processes must ensure that they adequately compensate and support these community members where they are at. Additionally, the current threats to the preservation of language and TEK also threaten the ability to incorporate these understandings into future management.

Existing laws on federal management of public lands were described by interviewees to bind the actions of agencies and be a potential complication for the co-stewardship with Tribes. A specific example given in several interviews was the General Mining Law of 1872, which governs the extraction of economically valuable hard rock minerals on public lands.<sup>23</sup> Under this law, an individual or corporation can stake claim to public land for mining with no advanced notice, public comment, or tribal consultation. In the view of these interviewees, the law had created—and will continue to create—conflict between tribes and federal agencies in three main areas: (1) the protection of sacred landscapes and sites located on public land; (2) provisions for cleanup for abandoned mines; and (3) the patenting of mining claims, a process through which the federal government passes title to the claimant, giving them exclusive title to minerals and in many cases the surface and all resources. In context, this law can place federal officials in a position where they cannot fully consider the wishes of tribes in consultation, nor the broader ecosystem impacts of their decisions, and instead are bound by

---

<sup>20</sup> Leonard J.S. Tsuji and Elise Ho, 2002, “Traditional Environmental Knowledge and Western Science: In Search of Common Ground,” *Canadian Journal of Native Studies* 22(2): 327-360.

<sup>21</sup> See Len Necefer, Gabrielle Wong-Parodi, and Mitchell J. Small, 2020, “Governing Energy in Conflicted Resource Contexts: Culture, Cost, and Carbon in the Decision-Making Criteria of the Navajo Nation,” *Energy Research and Social Science*, 70: 101714, and Paul Nadasdy, 1999, “The Politics of TEK: Power and the ‘Integration’ of Knowledge,” *Arctic Anthropology* 36(1-2): 1-18.

<sup>22</sup> Robin Kimmerer, 2011, “Restoration and Reciprocity: The Contributions of Traditional Ecological Knowledge,” in Dave Egan, Evan Hjerpe, and Jesse Abrams (eds.), *Human Dimensions of Ecological Restoration: Integrating Science, Nature, and Culture*, Island Press, Washington, DC, pp. 257-276.

<sup>23</sup> 30 U.S.C. §§ 22-42.

statutory mandates and land management plans. Increased demand for minerals used in electric vehicles, low-carbon energy applications, and electronics, combined with federal efforts to bolster domestic supply chains, is already creating an intensification of mining claims prospecting across the western United States.<sup>24</sup>

#### **D. Special Designations**

##### ***BLM and USFS special designations receive mixed reviews from tribes and other experts.***

“Special designations” are statutorily or administratively identified areas that the BLM and USFS must manage in a certain way or for a given purpose. Some designations are made by Congress and high-ranking Executive Branch officials, while others can be created by federal land management agencies during the land management planning process. Thus, the planning period is a key timeframe, and agency-created designations may be a key tool for tribes with conservation or related lands protection goals. Importantly, once a designation is made, the BLM or USFS is obliged to take account of it in the RMP or forest plan and to execute the plan in accordance with the designation’s intentions and requirements.<sup>25</sup>

Theoretically, BLM and USFS special land management designations, like “Areas of Critical Environmental Concern” (ACECs) provide opportunities for tribes to ensure that their preferences govern the ways federal agency staff manage a particular portion of a BLM region or National Forest. Yet interviewees’ reviews of special designations were mixed; there were reports of good, less good, and even very bad experiences with these demarcation opportunities.

On the positive side, several interviewees noted that when designation opportunities fit with their tribes’ desires for land and resource protection, they pursued them. They found that doing so could both protect their ancestral lands and waters and allow their tribes to reclaim a degree of decision-making authority over off-reservation spaces. Nonetheless, there is a caveat with regard to these good experiences: federal and tribal reasoning did not always match. At least for some Native nations, the specific federal justification for an ACEC or USFS designation was somewhat irrelevant as long the designation allowed the tribe to reach its own goals.

---

<sup>24</sup> Turley, B., Cantor, A., Berry, K., Knuth, S., Mulvaney, D., & Vineyard, N. (2022). Emergent landscapes of renewable energy storage: Considering just transitions in the Western United States. *Energy Research & Social Science*, 90, 102583.

<sup>25</sup> A more complete discussion of special designations is provided in Appendices A-C.

In fact, one interviewee noted that it was frustrating that tribes must fit their desires for protection of sacred and ancestral landscapes into the options and rules offered by the federal government. In the best case, Native nations can find a match between federal options and tribal goals. In the worst case, the search for a best match opens the door to bad experiences—a possibility made even more likely by the limited information available to tribes about BLM and USFS land management planning processes and land-status designations. As one interviewee described, “[When] the superintendent turned around and asked, ‘What kind of protections do you want here?’, they [the tribal representatives] were not sure because they hadn’t had those conversations enough.” Similarly, another interviewee observed that both BLM and USFS designations require the tribes to understand exactly what they are getting into: “It still takes the tribal engagement piece to make sure that those considerations are being made when the designation is made and that tribal preferences are upheld... [For example], there have been wilderness designations that have prevented tribes from undertaking their own management practices on their own lands.”<sup>26</sup> Both interviewees suggest that if tribes could operate more control over the design of the land management regimes, they would not be surprised later as to what they *really* had agreed to.

Relatedly, the most common factor behind poor tribal experiences with land designations was the federal government’s inability to follow through in the manner expected by tribes. Several interviewees described how special designations (the specific types were not indicated) had resulted in the federal government marking culturally significant sites on publicly available maps, which in turn exposed these sites to trespass and put them at risk—the exact opposite of what each tribe had intended to achieve. Whether these bad experiences occur because of good intentions gone wrong, a lack of agency funds to follow through on commitments to protection, or changes in agency staff that lead to different management procedures for designated lands, the result is the same: spaces that Native nations identified as in need of more careful management are instead harmed. One interviewee summarized the situation as follows: “We just operate on hope and trust that agencies will do what’s right, and that hasn’t always happened.”

The interviews also suggested unevenness in tribal staff knowledge about special designations. This may be inevitable. Capacity constraints may limit some tribal staff members’ knowledge

---

<sup>26</sup> This comment points to something mentioned by several interviewees, which is that Indigenous conservation management differs from western conservation management. Tribes may wish to preserve land through renewal and regeneration as opposed to non-use. They may wish to hunt, fish, harvest, and gather, within regeneration limits. They may wish to engage with spaces for ceremonial purposes that involve activities that non-Indigenous people may consider “harmful.” In other words, Indigenous ideas of protection do not always align with western ideas, and it is bad to find that out too late.

about special designations to what they can learn from their BLM and USFS counterparts, who may themselves have little information. Specialist nomenclature can add to the confusion about what is a special designation and what is not. And, given some tribes' view that designations are simply one of many tools that can help them assemble broader authority on off-reservation ancestral lands, the attempt to narrow conversations to these few things alone may not make sense. After brief discussions of special designations, interview conversations often quickly shifted to the overarching relationships that tribes have with the BLM and USFS, to tribes' views on consultation in federal land management planning, and to tribes' desires for co-management and co-stewardship.

Finally, with the caveat that our interviewee pool is relatively small, no interviewees were aware of Indigenous Protected Areas (IPAs), an option described in international law that might serve as an alternative to options available under U.S. law. In response to a brief (and highly stylized) description of the option, several interviewees expressed interest, especially if IPAs could lead to greater landscape-level authority within reservation boundaries, on reservation-adjacent lands, or over a broader ancestral territory.

Overall, interviewees' responses point to an understanding of designations as useful tools, but narrow, perhaps not ideal from a tribal standpoint, and can require a tremendous amount of trust on behalf of tribes.

#### **IV. Best Practices and Recommendations Indicated by This Study**

##### **A. For The Pew Charitable Trusts / the NGO sector more generally**

###### ***Use NGO sector resources to help develop tribal capacity.***

NGOs often have access to resources that tribes could use, especially regarding capacity for consultation and co-management. If Pew or related entities were able to provide supplemental staff support (loaned staff, for example), funding that allowed tribes to hire more support on their own, or search assistance that helped identify promising candidates for tribal consultation or co-management-related jobs, their efforts would serve to build tribal staff capacity until such a time when the tribal government was able to fund these activities itself. Importantly, if co-stewardship opportunities come with financial support (as they should), NGO investments in tribal capacity are an interim measure: NGO resources can help advance a tribe to a position where it can participate effectively in co-management agreements, and then funding from these agreements could supplant NGO support. Importantly, investments in tribal capacity building should be focused not only on legal and Western science skills and knowledge as they

related to land management capacity, but also on Native language and cultural revitalization and on efforts to better operationalize TEK within co-management.

***Provide financial and in-kind resources to directly support tribal participation in federal land management planning processes.***

Tribes expressed concerns about their financial capacity to effectively participate in BLM and USFS land management planning when meetings were held away from their home communities; when appropriate preparation and participation required them to pay outside contractors, including counsel, with expertise in federal land management planning; or when other participation costs challenged their engagement. Non-governmental entities might consider providing funds to cover these expenses or provide support in-kind. When multiple consultations are required for similar purposes, support might involve taking on a convening role so that tribes can meet with multiple agencies or partners at once. Or, support could mean supplying data and information about the characteristics of the public lands in the planning area that tribes might not otherwise be able to gather or access; for example, an NGO could scrape information from a variety of federal and state databases and align it with tribal priorities so that tribal participants in federal land management agency planning processes were as well informed as their agency counterparts.

***Develop information-sharing tools concerning BLM and USFS land management planning policies and options, including special designations.***

Tribes may not have access to complete or even adequate information concerning the options for partnerships and resource protection available to them through formal BLM and USFS land management planning processes—and what is possible outside of those timelines. This includes the menu of options available under BLM and USFS policy to pursue land designations for conservation and conservation-adjacent purposes (such as cultural heritage protection). The Pew Charitable Trusts and other NGOs could help by providing this information generally and to individual Native nations that are party to land management planning processes. Clear, concise, and usable information (fact sheets, memos, and briefings, for example) and, if possible, information that is delivered just in time to those who need it, can help tribes better position themselves to use federal policies for their ends.

One immediate need may be for information-sharing concerning the ways that special designations intersect with the 2021 “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters” issued by the U.S. Department of the Interior and U.S. Department of Agriculture.

***Undertake organization-wide diversity, equity, and inclusion work to improve board, leadership, and staff understanding of Indigenous Peoples and Indigenous issues, and consider developing an organization-wide Indigenous strategy.***

If tribes see organizations—not just a few people from that organization—working to get up to speed on Indigenous issues, the activity signals trustworthiness as a partner. Oftentimes work must begin with basic information, including the facts that (1) in the United States, Indigenous issues are political issues (based on tribal governments’ status as separate sovereigns) and not simply racial issues, and (2) Native nations have inherent rights as First Peoples, as recognized in the UN Declaration on the Rights of Indigenous Peoples. As deeper knowledge and understanding develop, an organization-wide Indigenous strategy can help ensure that proper relationships with Indigenous Peoples, as well as Indigenous perspectives and knowledges, are sustained as important inputs into the organization’s work.

## **B. For Federal Agencies**

***Work consistently to increase tribes’ confidence in federal land management planning processes, in the plans themselves, and in the federal partners.***

Some tribes have had bad experiences with BLM and USFS concerning consultation, designations, other aspects of cultural resource protection or conservation, or on other issues, and as a result, some lack trust in BLM and USFS. Importantly, even if an individual agency representative is an on-the-level actor, they must be aware of tribes’ histories of engagement with the agency, as they represent not just themselves and a given point in time, but the agency as a whole. On-the-ground staff up through top agency staff should commit time and resources to building trust with Native nations, so that land management overall—including but not limited to consultations and land management planning processes—proceed smoothly. Having tribal liaisons who are not also the cultural heritage representatives—a structural feature which existed in at least one of the regions where we conducted interviews—was reported to be an effective strategy.

***Identify or create sources of funds that could be used to support tribal co-management or co-stewardship.***

Significantly, there are positive examples of co-management through agency designations and in partnerships, but funding is always an issue. Even without further appropriations from Congress, agencies can address funding concerns by completing any and all preliminary work necessary to implement funding arrangements available under current regulations (PL 93-638, for example) and by identifying and/or setting aside resources when possible. The USFS has now successfully implemented 638 funding agreements for a variety of purposes across the

agency, which offer important learnings, and at least some of these are explicitly intended as “co-stewardship.”<sup>27</sup> Likewise, in late 2022, the BLM entered into a first-of-its-kind 638 agreement with Kawerak, Inc., a consortium of small tribes in Alaska, to transfer a portion of the BLM’s cultural resource activities to Kawerak.<sup>28</sup> By intentionally monitoring, assessing, and learning from such efforts, both USFS and BLM can position themselves to increase their engagement in co-management activity.

A caveat in this discussion is that 638 arrangements in the form of self-determination compact or self-governance compacts are *funding arrangements*. They are not co-management or co-stewardship arrangements in and of themselves; rather, they are ways to fund co-management or co-stewardship. More than that, however, these funding arrangements may bring the otherwise semantic distinction between co-management and co-stewardship to the fore. Often such arrangements are undertaken to accomplish a particular task that a federal agency has deemed necessary; at worst, this is “self-administration” in an effort to “steward” a particular aspect of care for a forest or land resource, and at best it is “self-governance” over a small slice forest or land management decisionmaking. But it is not co-management in the sense of budget parity or fully shared decisionmaking over the whole of the forest or land resource.<sup>29</sup>

***Led by the 2022 White House Memorandum on Uniform Standards for Tribal Consultation, take every opportunity to improve consultation.***

Providing early information and appropriate notice, keeping appropriate records, working to build institutional memory, clarifying how tribes can participate in plan revision during the long period between plans, and collaborating within and across agencies to reduce the consultation burden for tribes are all actions consistent with the guidance that progress relationships on the ground. The latter step may be especially important as tribes reported that it is not uncommon for multiple federal agencies to issue requests for consultation or other engagements for the

---

<sup>27</sup> U.S. Forest Service, 2022, “USDA Forest Service Signs 11 New Agreements to Advance Tribal Co-Stewardship of National Forests,” U.S. Department of Agriculture, <https://www.fs.usda.gov/news/releases/new-agreements-advance-tribal-co-stewardship>, accessed December 16, 2022.

<sup>28</sup> Kawerak, Inc., 2022, “Kawerak, Inc. Signs Groundbreaking Cultural Resources Co-Stewardship Funding Agreement,” October 25, <https://kawerak.org/kawerak-inc-signs-groundbreaking-cultural-resources-co-stewardship-funding-agreement/>, accessed December 16, 2022.

<sup>29</sup> Washburn makes a similar point in his case studies. With respect to the Council of Athabascan Tribal Governments (CATG) case study, for example, he argues, “After years of cooperation and ISDA contracting, CATG has successful relationships with the FWS and the BLM. Neither of those relationships, however, could be characterized as ‘land management,’ and CATG’s roles with both, though they have grown, remain quite modest. The CATG has served an important ancillary role but cannot be said to be ‘co-managing’”; see Washburn, “Facilitating Tribal Co-Management of Federal Public Lands,” p. 305.

same times—which foists a coordination problem caused by federal agencies onto the tribal government.

***Invest in tribal natural-resource management capacity, but with the understanding that tribes will determine their own capacity development needs.***

As noted in the recommendations to NGOs, tribes expressed concerns about their financial capacity to effectively participate in BLM and USFS land management planning when meetings were held away from their home communities; when appropriate preparation and participation required them to pay outside contractors, including counsel, with expertise in federal land management planning; or when other participation costs challenged their engagement. To the extent that the federal agencies can find funding to compensate tribes for these costs, they should do so. When that is not possible, federal partners should explore other options, such as holding consultation activities in tribes' home communities, providing for training and professional development opportunities, exploring tools such as Intergovernmental Personnel Act (IPA) agreements to provide on-site staff support, and creating stepwise contracting opportunities so that tribes can gain experience and move deliberately into larger public lands management roles.

The last option would have significant value for both federal agencies and tribes, and it would foster a major expansion of tribal responsibilities. The federal government has encouraged just such an expansion but has done a poor job of facilitating it. A thoughtful, practical, and collaboratively developed transition plan, complete with milestones, could soon prepare tribes to play leading, effective roles in managing public lands.

***Work with tribes on developing designations, while also respecting their reasons for lands protection and their desires for information privacy.***

Tribes need to be able to negotiate on an even playing field, which means knowing as much about federal land designation possibilities as the federal agencies do. Agencies should make that information available to tribes and task on-the-ground agency staff members, especially tribal liaisons, with making sure that tribes have the information they need to decide what meets their needs. This also means tribes should be in the driver's seat concerning the choice of designation. It's not appropriate for a federal partner simply to ask, "What do you want?" Agency efforts should be focused on facilitating informed decision-making by tribes. At the same time, agencies should not expect tribes to explain themselves or to agree with federal reasoning for designations. Tribes may not justify a designation on the same grounds the federal agency does, but that's perfectly acceptable (and it's none of the agency's business).



Critically, this recommendation includes a sub-recommendation concerning data privacy. Tribes have the right to have their information protected, whether that is TEK or data concerning the geolocation of sacred sites or other cultural resources. Agencies should develop—and follow—internal protocols for assuring tribal data privacy and, in particular, should be able to address Native nations’ digital data privacy.

***At BLM, work to promulgate new regulations to govern ACECs. At USFS promote parallel efforts that provide greater clarity and surety to tribes.***

The recent clarification and interim guidance from the BLM concerning ACECs is useful for still only part of what is needed: BLM should issue regulations that recognize tribes’ interest in permanence, landscape-scale conservation, and co-stewardship, and that provide ways for RMPs to be made consistent with tribal land management plans. As resolutions from both the Affiliated Tribes of Northwest Indians and National Congress of American Indians demonstrate, this is action that Indian Country wants.<sup>30</sup>

At USFS, parallel efforts in support of designation permanence, landscape-level conservation, co-stewardship, and tribal land management plans should be undertaken, especially if changes can be made to provide more clarity concerning designations options and duration to tribes.

### **C. For Congress**

***Create authorizing legislation that directs BLM and USFS to undertake regulatory reform to support broader co-stewardship and co-management processes within BLM and USFS.***

While federal agencies can make progress on their own toward co-management, significant disincentives remain, particularly with regard to funding. Congress should direct BLM and USFS to undertake reforms necessary to increase co-management, clarify confusions around the deputation of federal decision-making, and appropriate funds for contract support costs in federal land management contracting and compacting.

---

<sup>30</sup> See Affiliated Tribes of Northwest Indians, 2021, “Request the US Bureau of Land Management to Develop an Area of Critical Environmental Concern Regulation as Required by the Federal Land Policy Management Act of 1976,” Resolution #2021-38, Annual Convention, <https://atntribes.org/wp-content/uploads/2021/10/Res-2021-38.pdf>; and National Congress of American Indians, 2022, “Request the U.S. Bureau of Land Management to Develop an Area of Critical Environmental Concern Regulation as Required by Federal Land Policy Management Act of 1976,” Resolution #SAC-22-028, Annual Convention, <https://www.ncai.org/resolutions/2022-annual-convention-resolutions>, accessed December 16, 2022.

***Appropriate funding for tribes to be able to undertake greater co- stewardship and co-management.***

Apart from the P.L. 93-638 funding processes, Congress should create legislation that promotes more opportunities for co-stewardship and co-management on federal lands. For example, Congress could create mechanisms that allows for greater shared decision making at the landscape level, created explicit incentives to integrate TEK into land management, and provide dedicated funding streams to support tribal-federal co-management on public lands.

***Modify the General Mining Act of 1872 to better protect tribes' and taxpayers' interests.***

Tribes want greater protection of sacred landscapes and sites located on public land, but greater protection is not possible without amendments to the General Mining Act of 1872. Among other changes, Congress should make it mandatory for federal agencies and mining companies to involve tribes in decisions concerning mining on ancestral lands, assure appropriate environmental oversight during extraction, mandate post-extraction remediation, create a funding mechanism for the clean-up of abandoned mined, and end the current patenting process, which does not appropriately weigh tribal and taxpayer interests against corporate interests.

## **Appendices**

These appendices were authored by Miriam Jorgensen (Research Director, Native Nations Institute, University of Arizona) and Michael Lucas (PhD Candidate, American Indian Studies, University of Arizona).

## Appendix A: Special Designations and Federal Agency Land Management Planning

Currently, there are limited ways for American Indian and Alaska Native nations to influence the management of ancestral lands and other culturally significant places within the U.S. public lands system. This appendix reviews basic information concerning land and resource designations that the Bureau of Land Management and U.S. Forest Service oversee, and then situates these designations within the broader context of BLM and USFS tribal engagement and the more specific context of agency land and resource management planning. The intent of this review is to develop a better understanding of the opportunities that agency planning processes—and the options to address designations within those processes—offer tribes to advance their own resource protection and land management goals.

These discussions identify four categories of tools that are available through, or operate adjacent to, BLM and USFS land and resource management planning processes that tribes might use to forward their goals.

- ***High-level special designations:*** special areas within public lands with purposes or features that warrant land or resource protection, designated via statute or high-level executive branch action
- ***Agency-level special designations:*** special areas within public lands with purposes or features that warrant protection, designated by land management agencies, often through their land and resource management planning processes
- ***Land and resource management plan codes and affiliated directions:*** classifications of identified areas and resources and instructions concerning their care and use that are determined during the management planning process and listed in the land or resource management plan
- ***Frameworks and agreements:*** mechanisms for co-management and co-stewardship arrangements, such as memorandums of understanding and 638 contracting, that could facilitate greater tribal control on BLM and USFS lands

Two caveats apply to the material in this appendix. First, it does not include every land or resource designation or planning tool that tribes might use when working with the BLM or USFS on management planning. Rather, it focuses on options that Native nations might find effective for achieving their goals. Second, it is based on secondary source research and reflects the authors' interpretation of the regulatory environment and of secondary source commentary.

## A. “Designated Areas” and “Special Designations”—Definitions and Distinctions

The *U.S. Code of Federal Regulations* defines a “designated area” on federal public lands as:

An area or feature identified and managed to maintain its unique special character or purpose. Some categories of designated areas may be designated only by statute and some categories may be established administratively in the land management planning process or by other administrative processes of the Federal executive branch. Examples of statutorily designated areas are national heritage areas, national recreational areas, national scenic trails, wild and scenic rivers, wilderness areas, and wilderness study areas. Examples of administratively designated areas are experimental forests, research natural areas, scenic byways, botanical areas, and significant caves.<sup>31</sup>

For the purposes of this appendix, “special designations” are understood to result from the establishment of a designated area.

The *CFR* definition of a designated area emphasizes that the areas can be created by statute or through administrative action. A further distinction among types of designated areas is the “level” at which they are determined. Many can be established only by high-level entities such as Congress, the President, or Department Secretaries, while others can be established at a lower level instead—in particular, they can be established by land management agencies through land and resource management planning processes.

This distinction is significant. While RMPs and forest plans are key guidance documents for the management of federal public lands, designated areas determined by Congress, the President, and Department Secretaries sit “above” the plans. These high-level special designations externally constrain the land and resource uses that are available to BLM and USFS planners and, by extension, the activities that on-the-ground land managers may undertake. They also constrain the opportunities available to tribes to influence management planning. Certainly, agency-determined special designations similarly limit the language of land and resource management plans and the actions of on-the-ground land managers—but they leave open more opportunities for the assertion of tribal preferences concerning the care of public lands.<sup>32</sup>

---

<sup>31</sup> *Code of Federal Regulations*, Title 36, Chapter 2, §219.19—Definitions, <https://www.ecfr.gov/current/title-36/chapter-II/part-219/subpart-A/section-219.19>, accessed December 16, 2022.

<sup>32</sup> The terms “non-discretionary designations” and “planning designations” are sometimes used to make this same distinction; see Bureau of Land Management, 2016, “43 CFR Part 1600, Resource Management Planning,” *Federal Register* 81(238)(December 12): 89601, <https://www.govinfo.gov/content/pkg/FR-2016-12-12/pdf/2016->

The next sections examine these differences, paying particular attention to “Areas of Critical Environmental Concern” (ACECs), a BLM-determined special designation that Native nations already have identified as desirable for the protection of off-reservation ancestral lands.

## **B. High-Level Special Designations**

### **1. Named designated areas that sit “above” land and resource management plans**

Congress, the President, and Department Secretaries have created numerous designated areas that the BLM and USFS must take into consideration in land and resource management planning. Some of the most common types are listed below, along with the legal authority (typically a statute) that creates the given type of designated area, the entity that authorizes or establishes a new area, the characteristics of the given type of area, and an example.<sup>33</sup>

High-level special designations common to both the USFS and BLM include the titles:

- ***National Monument***

*Authorizing Entity:* Congress; President

*Authority:* Congressional designations—individual statutes; Presidential proclamations—Antiquities Act of 1906

*Description:* Natural areas and/or areas of cultural, historical, and archaeological significance. The area reserved must be “the smallest area compatible with the proper care and management of the objects to be protected.”<sup>34</sup>

*Example:* Petroglyph National Monument, New Mexico<sup>35</sup>

---

28724.pdf, accessed November 7, 2022. But those terms only take the perspective of the planning agency (from their perspective, higher-level designations *are* non-discretionary) and ignore the fact that other entities do have discretion over these set-asides. Thus, this appendix uses the terms “high-level designations” and “agency-level designations” to indicate where decisionmaking authority to determine a special designation rests.

<sup>33</sup> This information is sourced in its entirety from Laura B. Comay, et al., 2018, “Federal Land Designations: A Brief Guide,” Congressional Research Service, October 11, <https://sgp.fas.org/crs/misc/R45340.pdf>, accessed on December 15, 2022.

<sup>34</sup> *United States Code*, Title 54, §320301(b)—National Monuments, Reservation of Land, <https://www.govinfo.gov/content/pkg/USCODE-2014-title54/html/USCODE-2014-title54-subtitleIII-divsnC-chap3203-sec320301.htm>, accessed December 15, 2022.

<sup>35</sup> Public Law 101-313—An Act to establish Petroglyph National Monument and Pecos National Historical Park in the State of New Mexico, and for other purposes, <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg272.pdf>, accessed December 15, 2022.

- **National Recreation Area**

*Authorizing Entity:* Congress

*Authority:* Congressional designations—individual statutes

*Description:* Used for sites with a recreation focus, which generally falls to issues such as hunting, fishing, and boating. Contemporary planning with this designation has resulted in expansions of the definition of “recreation” from the narrow historical interpretation.

*Example:* Flaming Gorge National Recreation Area, Wyoming/Utah<sup>36</sup>

- **National Scenic Trail / National Historic Trail / National Recreation Trail**

*Authorizing Entity:* Congress; Secretary of the Interior; Secretary of Agriculture

*Authority:* National Trails System Act of 1968; individual statutes

*Description:* National recreation trails are often on state, local and private lands and for recreational use. National historic trails identify and protect travel routes of national historic significance. National scenic trails provide for the conservation of recreational trails with historic, natural, or cultural qualities.

*Example:* Old Spanish National Historic Trail, New Mexico

- **Wild and Scenic River**

*Authorizing Entity:* Congress; Secretary of the Interior

*Authority:* Wild and Scenic Rivers Act of 1968; individual statutes

*Description:* A recreation river is accessible by road and may have shoreline development. By contrast, a scenic river is generally undeveloped, free from dams, and accessible by road, and a wild river is free from dams, inaccessible other than by trail, and has undeveloped shorelines.

*Example:* Rio Grande and Red Wild and Scenic Rivers, New Mexico

- **Wilderness**

*Authorizing Entity:* Congress

*Authority:* Wilderness Act of 1964; individual statutes

*Description:* Undeveloped federal lands areas with management provisions subject to the administering agency. Hunting and fishing may be allowed, but most infrastructure and development activities are prohibited.

*Example:* Wheeler Peak Wilderness, New Mexico<sup>37</sup>

---

<sup>36</sup> Public Law 90-540—An act to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes. <https://www.congress.gov/90/statute/STATUTE-82/STATUTE-82-Pg904.pdf>, accessed December 16, 2022.

<sup>37</sup> Public Law 113-291—National Defense Authorization Act for Fiscal Year 2015, §3061—Columbine-Hondo Wilderness, <https://www.govinfo.gov/content/pkg/PLAW-113publ291/html/PLAW-113publ291.htm>, accessed December 15, 2022.

- **Wilderness Study Area**

*Authorizing Entity:* Congress; Secretary of the Interior

*Authority:* Federal Land Policy and Management Act of 1976; individual statutes

*Description:* Lands treated as if they are Wilderness until Congress formally designates them as such or releases them.

*Example:* Guadalupe Canyon WSA, Arizona

One high-level special designation primarily relevant for the BLM is:

- **National Conservation Area**

*Authorizing Entity:* Congress

*Authority:* Individual statutes

*Description:* The management emphasis of these areas of diverse natural, scientific, cultural, ecological, historical, and geological values is established by Congress in the individual statute. These areas may contain other designations within them such as an Area of Critical Environmental Concern, Wilderness, or a Wild and Scenic River.

*Example:* Gila Box Riparian National Conservation Area, Arizona<sup>38</sup>

Three high-level special designations primarily relevant for the USFS are:

- **National Scenic Area / National Scenic Research Area / National Scenic and Wildlife Area / National Scenic Recreation Area**

*Authorizing Entity:* Congress

*Authority:* Individual Statutes

*Description:* These scenic areas generally have outstanding resources and characteristics (for example, geologic, cultural, ecological characteristics) of importance. Congress has designated 11 different scenic areas within national forests, each with a unique and clear management direction.

*Example:* Mono Basin National Forest Scenic Area, California<sup>39</sup>

---

<sup>38</sup> Public Law 101-628, Title II—An Act to Provide for the Designation of Certain Public Lands as Wilderness in the State of Arizona, <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4469.pdf>, accessed December 15, 2022.

<sup>39</sup> Public Law 98-425, Title III—An Act Entitled the “California Wilderness Act of 1984,” <https://www.congress.gov/98/statute/STATUTE-98/STATUTE-98-Pg1619.pdf>, accessed December 15, 2022.



- **Special Management Area<sup>40</sup> / National Protection Area**

*Authorizing Entity:* Congress

*Authority:* Individual Statutes

*Description:* Each statute provides clear purpose and management direction. There are more than 50 areas within national forests under these categories.

*Example:* Kings River Special Management Area, California<sup>41</sup>

- **Inventoried Roadless Area**

*Authorizing Entity:* Secretary of Agriculture

*Authority:* National Forest Management Act of 1976; Roadless Area Conservation Rule of 2001

*Description:* Undeveloped areas typically exceeding 5,000 acres that meet the minimum criteria for consideration as Wilderness; originally designated through the Roadless Rule policy outside of the forest plan process.<sup>42</sup> The Roadless Area Conservation Rule and Forest Service policy guide and restrict management activities within Inventoried Roadless Areas.

*Example:* Inyo National Forest Inventoried Roadless Area, California

## **2. High-level special designations and agency land and resource management**

As noted, high-level special designations restrict both agency and tribal discretion in public lands and resources management planning: decisions concerning the boundaries and titles of these designated areas are out of their hands. Nonetheless, there is an important connection between these designations and agency-level land and resource management planning. If a designated area created by Congress, the President, or a Department Secretary lies within a BLM public lands area or a national forest, the relevant agency must take account of the designation in its RMP or forest plan and, thus, may make a range of management choices concerning these lands during the planning process. To the extent that tribes are able to engage in BLM and USFS planning processes, they at least may have opportunities to influence the specific directions provided in the plans for management of these areas.

---

<sup>40</sup> “Special Management Areas” also can be created at the planning level by the Bureau of Land Management and US Forest Service.

<sup>41</sup> Public Law 100-150, §2—An Act to Designate a Segment of the Kings River in California as a Wild and Scenic River, and for Other Purposes, <https://www.congress.gov/100/statute/STATUTE-101/STATUTE-101-Pg881.pdf>, accessed December 15, 2022.

<sup>42</sup> *Code of Federal Regulations*, Title 36, §294, Subpart B—State Petitions for Inventoried Roadless Area Management, <https://www.ecfr.gov/current/title-36/part-294/subpart-B>, accessed December 16, 2022.

With regard to Wilderness Study Areas (WSAs), the management choices available in the planning process even include the opportunity to make recommendations about prescriptions that could govern a WSA should it be deemed unsuitable as Wilderness. The Taos RMP, which encompasses two WSAs, notes that, “If either the Rio Chama or San Antonio WSA is released from further consideration as wilderness, it will be managed as part of Chama Canyons or Taos Plateau ACEC [Area of Critical Environmental Concern], respectively, and would be protected by restrictive land use prescriptions.”<sup>43</sup> The BLM and USFS planning mechanisms that support such directions are described in greater detail in section D.2 of this appendix.

Taking a step back from the planning process, two more opportunities for tribes become evident. The first concerns the creation of high-level special designations. Tribes can advocate that Congress, the President, the Secretary of the Interior, or the Secretary of Agriculture create a designated area and thereby create a mandate that agencies provide special management. In some cases where Congressional action is needed, Native nations also may be able to enlist the assistance of the Executive Branch. For example, though no new Wilderness Study Areas have been established on BLM lands since 2003, the option for the Secretary of the Interior to create more may remain available; if it is, tribes could advocate that the Secretary create a WSA, and if the Secretary did so, the action would constitute a formal request for Congress to act.<sup>44</sup>

Alternatively, if they disagreed with the uses a designation would allow—or disallow—tribes could also lobby against creation of a designated area by Congress, the President, or Department Secretaries. For example, some tribes might oppose the creation of a National Recreation Area or National Recreation Trail if they thought the designation would attract too much traffic or encourage uses they deem inappropriate. Or some tribes might oppose a Wilderness designation if they felt the title placed undue restrictions on land and resource use. (Wilderness must be maintained in a condition that does not show substantial impacts of human action.) Of course, opposition is possible only if Native nations know that designations are under consideration by Congress, the President, and Department Secretaries, which may not be a given, and is one more reason for robust agency consultation processes (which are discussed further in section D.1 of this appendix).

---

<sup>43</sup> Bureau of Land Management, 2012, “Taos Resource Management Plan,” May, p. 93, [http://www.sanpedroneighborhood.org/docs/Approved\\_Taos\\_RMP\\_-\\_5.16.12\\_\(print\\_version\).pdf](http://www.sanpedroneighborhood.org/docs/Approved_Taos_RMP_-_5.16.12_(print_version).pdf), accessed November 7, 2022.

<sup>44</sup> *United States Code*, Title 43, §1712—Federal Land Policy and Management Act §202, Land Use Plans, <https://www.govinfo.gov/content/pkg/USCODE-2009-title43/html/USCODE-2009-title43-chap35-subchapII.htm>, accessed December 15, 2022.

Opposite to this front-end strategy, using appropriate frameworks and agreements, Native nations can partner with agencies to execute various aspects of BLM and USFS land and resource management plans. In other words, if tribes can broker agreements to do the work themselves, they may not have to rely on the agencies to carry out instructions they helped develop. This option is discussed in section D.3 of this appendix.

## **C. Agency-Level Special Designations**

### **1. Special designations developed through land and resource management planning**

While Congress, the President, and Department Secretaries are able to create special designations using more than two dozen statutorily authorized titles (and in reality, Congress can designate any area and give it any name its members collectively desire), many fewer special designations are available for agency determination. Several that can be considered during agency land and resource management planning processes are listed below; as before, the legal authority that creates the given type of designated area, the entity that authorizes or establishes a new area of the given type, a description of the characteristics of the given type of designated area, and an example also are provided.<sup>45</sup>

Two agency-level special designations available to the BLM during the planning process are:

- ***Area of Critical Environmental Concern***

*Authorizing Entity:* BLM

*Authority:* Federal Land Policy and Management Act of 1976

*Description:* An area that requires special management attention to protect and prevent irreparable damage to important resources or systems.

*Example:* Sabinoso Area of Critical Environmental Concern, New Mexico

- ***Lands with Wilderness Characteristics***<sup>46</sup>

*Authorizing Entity:* BLM

*Authority:* Federal Land Policy and Management Act of 1976

*Description:* Under the FLPMA, the Secretary of Interior is required to “maintain on a continuing basis an inventory of all public lands and their resource and

---

<sup>45</sup> Unless otherwise noted, this information is sourced from Comay, et al., 2018, “Federal Land Designations: A Brief Guide.”

<sup>46</sup> Some descriptive information for this designation was sourced from: Bureau of Land Management, no date, “Special Planning Designations: Lands with Wilderness Characteristics,” U.S. Department of the Interior, <https://www.blm.gov/programs/planning-and-nepa/planning-101/special-planning-designations/lands-with-wilderness-characteristics>, accessed 16 December 2022.

other values,” which encompasses wilderness characteristics as a resource.<sup>47</sup> Inventoried separately from the Wilderness and Wilderness Study Area designations, Lands with Wilderness Characteristics generally are roadless public lands areas greater than 5,000 acres that retain a primitive and undeveloped character.<sup>48</sup>

*Example:* The Tongue OR 034-054 parcel of the Owyhee Geographic Management Area, Oregon<sup>49</sup>

Two agency-level special designations available to the USFS during the planning process are:

- ***Recommended Wilderness Area***<sup>50</sup>

*Authorizing Entity:* Forest Service

*Authority:* National Forest Management Act of 1976, U.S. Forest Service Planning Rule of 2012<sup>51</sup>

*Description:* Inventoried lands found suitable by the USFS for designation as Wilderness; lands are managed in a similar fashion to Wilderness, although under the prescriptions of the forest plan rather than under statutory guidelines, until Congress makes a final determination as to their status.

*Example:* Tonto National Forest Gun Creek Recommended Wilderness Area, Arizona<sup>52</sup>

---

<sup>47</sup> *United States Code*, Title 43, §§1701-1782—Federal Land Policy and Management Act of 1976, §201, <https://www.govinfo.gov/content/pkg/COMPS-1719/pdf/COMPS-1719.pdf>, accessed December 15, 2022.

<sup>48</sup> Bureau of Land Management, 2013, “San Juan National Forest and Bureau of Land Management Tres Rios Field Office Joint Land and Resource Management Plan, Appendix O—BLM Lands with Wilderness Characteristics,” U.S. Department of the Interior, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5435965.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5435965.pdf), accessed 16 December 2022.

<sup>49</sup> Bureau of Land Management, 2015, “Wilderness Characteristics Inventory Review: A Review of Vale and Lakeview District Conformance with Established Procedures for Maintaining the Inventory of Lands with Wilderness Characteristics, Final Report,” U.S. Department of the Interior, December 18, p. 20, <https://www.blm.gov/or/resources/nlcs/files/wcireview.pdf>, accessed December 16, 2022.

<sup>50</sup> Some descriptive information for this designation was sourced from: Martin Nie and Christopher Barns, 2014, “The Fiftieth Anniversary of the Wilderness Act: The Next Chapter in Wilderness Designation, Politics, and Management,” *Arizona Journal of Environmental Law & Policy* 5: 237-301, and U.S. Forest Service, 2018 (revised), “Tonto National Forest Wilderness Recommendation Process: Frequently Asked Questions,” U.S. Department of Agriculture, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd598922.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd598922.pdf), accessed December 16, 2022.

<sup>51</sup> U.S. Forest Service, 2015, “FSH 1909.12—Chapter 70 Wilderness,” *Forest Service Handbook*, U.S. Department of Agriculture, January 30, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd645665.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd645665.pdf), accessed December 16, 2022.

<sup>52</sup> U.S. Forest Service, 2018, “Tonto National Forest Wilderness Recommendation Process, Step 4: Recommendation,” U.S. Department of Agriculture, <https://usfs.maps.arcgis.com/apps/MapSeries/index.html?appid=fa64c3221fd84517b1d406ff24746170>, accessed December 16, 2022.

- **Research Natural Area**

*Authorizing Entity:* Forest Service

*Authority:* Forest Service Organic Administration Act of 1897

*Description:* "Any tract of land or water which supports high quality examples of terrestrial or aquatic ecosystems, habitats, and populations of rare or endangered plant or animal species, or unique geological study of the features, and is managed in a way that allows natural processes to predominate, with minimal human intervention."<sup>53</sup>

*Example:* Inyo National Forest Indiana Summit Research Natural Area, California<sup>54</sup>

## **2. Agency-level special designations and agency land and resource management**

The BLM and USFS have decisionmaking authority over relatively few designated area titles, but the fact that these determinations are made by the agencies themselves, and typically during regional planning processes, gives rise to a much wider set of opportunities for tribes to influence public lands care and use than is available when determinations made by higher-level decisionmakers (Congress, the President, and Department Secretaries). Rather than attempting to advocate to “distant” entities, tribes can have relatively direct and repeated access to agency-level decisionmakers. This access arises through the agencies’ mandated regular engagement with tribes in each regional and through tribes’ active participation in land and resource management planning processes.

While decisions concerning all aspects of agency-determined special designations rest with the federal government, tribes can provide input on whether or not a designation should be made, what the boundaries of the designated area should be, and when there is a choice, which designation under agency control is a better match with tribal needs. For example, Lands with Wilderness Characteristics may be a designation valuable to tribes seeking to achieve stronger conservation outcomes on BLM public lands, especially in areas that otherwise would be open to extractive or other forms of development. By contrast, an ACEC may be more effective for protecting a specific attribute in a BLM public lands area.

---

<sup>53</sup> U.S. Department of Agriculture and U.S. Forest Service, no date, “Research Natural Areas.” <https://www.fs.usda.gov/detail/r1/specialplaces/?cid=stelprdb5172218>, accessed December 16, 2022.

<sup>54</sup> Michèle R. Slaton, Jeffrey G. Holmquist, Marc Meyer, Raymond Andrews, and Jacqueline Beidl, 2019, “Traditional Ecological Knowledge Used in Forest Restoration Benefits Natural and Cultural Resources: The Intersection between Pandora Moths, Jeffrey Pine, People, and Fire,” *Natural Areas Journal* 39(4): 461-471, [https://escholarship.org/content/qt8n71g28d/qt8n71g28d\\_noSplash\\_4d8cdc1a50aae714461c491622b4971c.pdf](https://escholarship.org/content/qt8n71g28d/qt8n71g28d_noSplash_4d8cdc1a50aae714461c491622b4971c.pdf), accessed December 16, 2022.

Comparable to higher-level special designations, tribes are able to offer recommendations concerning RMP or forest plan management prescriptions for agency-determined designated areas too. For example, directives that may be written into plans to govern the management of ACECs include specifications on the closure of roads, requirements to acquire privately held areas, and employment requirements of site stewards for monitoring.<sup>55</sup> If desirable, tribes also can pursue the option of partnering with the BLM or USFS to implement the plan. In sum, agency-level special designations afford Native nations opportunities to be involved “from soup to nuts” and thus provide the greatest scope possible under current federal law for forwarding tribal priorities for public lands management.

### **3. At closer look at Areas of Critical Environmental Concern**

As indicated in the main text of this document, since at least 2021, Native nations have expressed particular interest in Areas of Critical Environmental Concern. A resolution of the Affiliated Tribes of Northwest Indians (ATNI) in September 2021 called on the Secretary of the Interior to develop a rulemaking and regulatory process for ACECs, and the National Congress of American Indians (NCAI) passed a similar resolution in 2022. Given this advocacy effort, it is reasonable to imagine that at least some tribes view ACECs as a valuable tool for promoting their interests and would like the BLM to move strongly forward with the creation of more ACECs. This section takes a closer look at ACECs, considers some of their specific advantages for tribes, and offers some countervailing observations on their weaknesses.

#### **a. An overview of ACEC policy**

Areas of Critical Environmental Concern are a conservation measure authorized by the Federal Land Policy and Management Act<sup>56</sup> (FLPMA) of 1976. This legislation defines ACECs as

areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.<sup>57</sup>

The diversity in the types of resources and needs that can lead to the creation of an ACEC and the intent of the law as a conservation measure mean that ACECs are “a unique land and

---

<sup>55</sup> For further examples, see Appendix B, part B, which provides the full list of specific management measures currently in use in ACECs designated in the Taos Resource Management Plan.

<sup>56</sup> *United States Code*, Title 43, §§1701-1785.

<sup>57</sup> *United States Code*, Title 43, §1702.

resource protection designation not found in any other federal land management statute.”<sup>58</sup>  
The designation criteria for ACEC is a simple two-prong test of relevance and importance:<sup>59</sup>

**Relevance:** There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

**Importance:** The above-described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

The BLM initially had robust directives concerning implementation of the FLPMA—but nearly all of the directives addressing ACECs were eliminated or significantly altered during the Reagan Administration. From a regulatory perspective, the changes resulted in non-existent administrative and management materials. Almost 40 years later, under the Obama Administration, the BLM issued new planning regulations commonly known as the “Planning 2.0” rule,<sup>60</sup> which were designed to reform and improve the effectiveness of Resource Management Planning. The regulations took effect at the beginning of 2017 but were in force fewer than three months before being rescinded by Congress following the election of President Trump. The ongoing absence of clear and effective regulations for ACECs has led to a situation where, as Sheldon and Baldwin summarize,

there is no standard format for reporting information about ACECs either within the agency or to the public. There is no prescribed approach for discussion of ACECs in Resource Management Plans (RMPs), creating disparities in how ACECs are treated in planning and management. BLM managers deal with ACECs inconsistently, often considering their protection as simply one possible management choice.<sup>61</sup>

---

<sup>58</sup> Karin P. Sheldon and Pamela Baldwin, “Areas of Critical Environmental Concern: FLPMA’s Unfulfilled Conservation Mandate,” *Colorado Natural Resources, Energy & Environmental Law Review* 28(1)(2017), p. 2.

<sup>59</sup> *Code of Federal Regulation*, Title 43, §1610.7-2—Designation of Areas of Critical Environmental Concern, <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-A/part-1600/subpart-1610/section-1610.7-2>, accessed December 16, 2022.

<sup>60</sup> The proposed regulations are available in Bureau of Land Management, 2016, “43 CFR Part 1600, Resource Management Planning,” *Federal Register* 81(238)(December 12): 89580-89671, <https://www.govinfo.gov/content/pkg/FR-2016-12-12/pdf/2016-28724.pdf>, accessed November 7, 2022.

<sup>61</sup> Sheldon and Baldwin, pp. 5-6.

As a result, the BLM has tended toward limited ACEC creation, limited ACEC funding, impaired ACEC enforceability, and the loss of Indigenous resources that Congress intended to protect.

BLM issued new guidance for the consideration of ACECs on November 30, 2022,<sup>62</sup> which may have been prompted in part by ATNI and NCAI. The guidance clarifies that BLM policy supports increased co-stewardship with tribes and Alaska Native corporations, provides for temporary special management when an area with potential for designation is identified outside the planning process, calls for annual reports on implementation actions (among other topics), and requires documentation of an “appropriate justification”<sup>63</sup> if agency staff determine that an existing ACEC is no longer necessary. Among tribes, these emphases may further raise the profile of ACECs as attractive options for resource protection. Among BLM land managers, they should promote an understanding of ACECs as areas where resource protection is a mandate not a choice.

#### **b. ACECs’ advantages for tribes**

While the legislation that authorizes ACECs provides a list of what they are intended to protect, the phrasing actually suggests that Congress was relatively agnostic about what ACECs could be used for. This latitude creates important advantages for tribes. For one, it means that tribes do not have to shoehorn their priorities into an inflexible system; they can identify resources, attributes, and values present in public lands that are meaningful to them and use an ACEC to protect them. Relatedly, the openness of ACEC policy to the protection of many kinds of resources, attributes, and values implies that while tribes need to gain BLM agreement on *what* to protect with an ACEC, they do not have to agree on *why*. In other words, tribes can use ACECs to embed their own culturally based worldviews into public lands management even if BLM land managers do not accept, understand, or even know about those worldviews.

Particularly in the current political environment, another advantage is the protection the ACEC designation system provides for tribal sovereignty. While opponents of tribal sovereignty might (accurately) view ACECs as instruments that increase tribal authority and control, they might also find it difficult to limit this form of tribal self-determination. The ACEC system is available

---

<sup>62</sup> Bureau of Land Management, 2022, “Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments,” Instruction Memorandum IM 2023-013, November 30, U.S. Department of the Interior, <https://www.blm.gov/policy/im-2023-013>, accessed December 16, 2022.

<sup>63</sup> Bureau of Land Management, 2022, “Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments,” paragraph 1 under “Special Management Attention.”



not just to tribes but to anyone: the BLM may take recommendations for the creation of ACECs from interested individuals, community groups, NGOs, state and local governments, and other federal agencies, among others. Thus, interest groups seeking to impede tribal self-determination and sovereignty by curtailing new and/or abolishing existing ACECs could face substantial opposition from the long list of other policy beneficiaries. Succinctly, tribal sovereignty exercised through the ACEC system has natural allies in other individuals or groups that might want to propose ACECs for *their* purposes.

Yet another advantage involves the possibilities ACECs present for co-management. With the Biden Administration's increased focus on tribal-federal co-management as the appropriate and just approach to public lands management, ACECs are a natural focal point for increased co-management activity. They allow co-management activity to "start small" (both in terms of the scope of the agreement and the geographic area under management), so that the parties can develop the capacities needed for co-management and gain experience working together. Tribes could then build on these engagements by taking on more responsibility for public lands management over time. This layered and staged approach to increased tribal authority over off-reservation lands is discussed in greater detail at the end of this appendix.

### **c. Potential issues with ACECs for tribes**

Despite certain unequivocal advantages, several issues limit the usefulness of ACECs as tools for the assertion of tribal priorities on public lands. The ongoing dearth of regulations is one. While BLM's November 2022 guidance indicates that new ACEC regulations are forthcoming, until they are in force, some BLM planning staff may continue to feel unprepared to consider ACEC designations and continue to discourage their use. And, even when ACECs are created, the poorly enunciated regulatory environment can lead to inadvertently harmful actions, such as the release of sensitive location data or inadequate trespass enforcement.<sup>64</sup>

Presumably, new regulations—ideally combined with effective tools for promulgating the new rules—will reduce or eliminate these kinds of problems. Yet other concerns persist. One is ACECs' uncertain durability. Each ACEC is tied to the RMP that governs the land on which it is located, and each RMP is in force for at least 10-15 years. A several-year period of review and renewal follows, during which BLM decisionmakers can alter an ACEC designation or even

---

<sup>64</sup> As reported in the main text of this paper, both types of implementation problems were raised during the interviews conducted for this project.

revoke it. An ACEC often lasts from plan to plan, but there is no guarantee that one will.<sup>65</sup> In other words, the BLM can use its discretion to designate ACECs—and to eliminate them.

Another limitation involves scope. Despite the fact that there is interest among tribes and advocates for landscape-scale protection, BLM has tended toward the smallest-size ACEC possible for protection of the identified attribute. If the Planning 2.0 rule is a guide to the kinds of changes to ACEC policy that the BLM might tolerate, there may be little U.S. government appetite for deviating from this approach. Particularly noticeable is the fact that the rule's proposed changes essentially clarify what already has been in place regarding ACECs; there is no change to emphasis or intent, and the understanding that ACECs should be managed under a western conception of conservation and restricted to specific sites persists. BLM has sent a somewhat different signal through two instruction memorandums in November 2022—the memo providing clarification and interim guidance for ACECs and another addressing habitat connectivity conservation on public lands.<sup>66</sup> In combination, they suggest that larger ACECs could be justified on grounds that they facilitate fish or wildlife movement.

A final limitation worthy of mention is related. ACECs are intended first and foremost as conservation instruments that protect significant areas and prevent irreparable damage from occurring. As such, there is no established way to shift from using an ACEC as a conservation measure alone to using an ACEC as an opportunity for implementing a co-management regime in which a tribe takes responsibility for a tribal resource on public lands, makes its own assessment of how that resource is best managed, and then implements those standards. If they existed, such protocols would support a shift from protection of a place through a western conservation scheme to protection of a place through direct tribal land management.

---

<sup>65</sup> In their study of RMPs for lands within the external boundaries of Colorado, Montana, Utah, and Wyoming, Ruple and Capone find that during the period 2003-2013, there was “an 18% reduction in the average acreage of ACECs designated during the RMP revision process” (see John Ruple and Mark Capone, 2016, “NEPA, FLPMA, and Impact Reduction: An Empirical Assessment of BLM Resource Management Planning and NEPA in the Mountain West,” *Environmental Law* 46(4)(Fall), p. 965). The BLM's proposed amendments to the Bakersfield and Bishop RMPs offers a specific example of possible ACEC diminishment (see BLM, 2021, “Notice of Availability of the Draft Desert Plan Amendment and Draft Environmental Impact Statement, California,” Department of the Interior, *Federal Register* 86(9)(January 14): 3181-3184, <https://www.federalregister.gov/documents/2021/01/14/2021-00579/notice-of-availability-of-the-draft-desert-plan-amendment-and-draft-environmental-impact-statement>, accessed December 16, 2022). We also note that The Pew Charitable Trusts has previously called attention to this issue (see The Pew Charitable Trusts, 2020, “BLM Ignores Own Findings in Proposed Management Plans,” Fact Sheet, January 23, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2020/01/blm-ignores-own-findings-in-proposed-management-plans>, accessed December 16, 2022).

<sup>66</sup> Bureau of Land Management, 2022, “Habitat Connectivity on Public Lands,” Instruction Memorandum IM 2023-005, Change 1, Department of the Interior, November 18, <https://www.blm.gov/policy/im-2023-005-change-1>, accessed December 16, 2022.

## **D. BLM and USFS Policies and Processes**

Both high-level and agency-level special designations are embedded in larger land management systems that mandate relationship building with Native nations. Consideration of these systems supports a more fulsome understanding of what special designations are, how they work, and how non-specialists may understand them. Consideration of this broader context also highlights other aspects of land and resource management planning that can be instrumental (or not) for achieving tribal goals on off-reservation lands.

### **1. Agency policies concerning tribal engagement**

#### **a. BLM policies**

The Bureau of Land Management (BLM), an agency of the U.S. Department of the Interior (DOI), engages with American Indian and Alaska Native tribes at the national level via a National Headquarters Tribal Liaison Officer and Federal Preservation Officer, at the state level via 12 state office tribal liaisons, and at the district and field office level through the office managers and line officers, whose job descriptions include the expectation to establish and sustain government-to-government relationships with the tribes in their areas and with the members of those tribal governments who have been authorized to engage in such relationships.

The agency's mandate to engage with tribes is described in its 2016 Tribal Relations Manual as deriving from numerous treaties, 19 statutes, 22 regulations, 8 Executive Orders/Presidential Memoranda, and 8 Secretarial Orders.<sup>67</sup> The purpose of the manual is to describe the agency policies that derive from these legal mechanisms, policies that "encourage the BLM to establish ongoing relationships with federally recognized tribes (American Indians and Alaska Natives) through engagement in open, continuous, and meaningful consultation."<sup>68</sup> These relationships are to have specific outcomes for BLM's work. Among them are to ensure "appropriate opportunities for tribal input regarding the management of non-trust assets on public lands managed by the BLM,"<sup>69</sup> and to "foster positive relationships and trust between the BLM and tribes through collaborative stewardship in management of tribal and public land resources."<sup>70</sup>

---

<sup>67</sup> Bureau of Land Management, 2016, "BLM Manual 1780 Tribal Relations (P)," U.S. Department of the Interior, December 15, <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>, accessed December 16, 2022; see especially pp. 1-3 through 1-7.

<sup>68</sup> Bureau of Land Management, "BLM Manual 1780 Tribal Relations (P)," p. 1-1.

<sup>69</sup> Bureau of Land Management, "BLM Manual 1780 Tribal Relations (P)," p. 1-2.

<sup>70</sup> Bureau of Land Management, "BLM Manual 1780 Tribal Relations (P)," p. 1-3.

In describing national, state, district, and field officer responsibilities, the manual points to numerous expectations for engagement. Two notable expectations are that BLM staff should “collect, evaluate, apply, and protect sensitive and confidential information relating to tribal concerns in a consistent manner”<sup>71</sup> and “acknowledge that tribes have different interests and capacities and to commit to working collaboratively with tribes to develop consultation procedures that meet the needs and capabilities of both the BLM and tribes.”<sup>72</sup> BLM also has published a companion handbook to the manual, which provides practical instructions for how to engage in consultation (for example, how to identify parties for consultation, how to deal with non-responses, and how to ensure that the good faith standard is met) and specific guidance relevant to each of the BLM’s disciplinary divisions.<sup>73</sup>

In the context of the current study, Secretarial Order 3342 and Joint Secretarial Order 3403 stand out among the many statutes, regulations, and orders that guide BLM’s work. The first, issued on October 21, 2016, directs DOI bureaus and agencies to identify opportunities for cooperative management agreements and collaborative partnerships with tribes “that will further shared interests in the management of Federal lands and resources.”<sup>74</sup> The second, also referenced in the main text of this paper, was issued jointly by the Secretaries of the Interior and Agriculture on November 15, 2021, and is the lead component of President Biden’s Tribal Homelands Initiative.<sup>75</sup> It directs DOI bureaus and agencies to “make agreements with Indian Tribes to collaborate in the co-stewardship of Federal lands and waters under the Departments’ jurisdiction,” and to “identify and support Tribal opportunities to consolidate Tribal homelands and empower Tribal stewardship of those resources.”<sup>76</sup> In September 2022, the BLM released

---

<sup>71</sup> Bureau of Land Management, “BLM Manual 1780 Tribal Relations (P),” p. 1-2.

<sup>72</sup> Bureau of Land Management, “BLM Manual 1780 Tribal Relations (P),” p. 1-3.

<sup>73</sup> Bureau of Land Management, 2016, “BLM Handbook 1780-1 Improving and Sustaining BLM-Tribal Relations (P),” U.S. Department of the Interior, December 15, [https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1\\_\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1__0.pdf), accessed December 16, 2022. The program-specific chapters of the handbook discuss the National Conservation Lands Program, Fire Management Program, Forest and Woodlands Program, Rangeland Management Program, Fish and Wildlife Program, Cultural Heritage Program, Renewable Energy Program, Fluid Mineral Program, Minerals Program, Cadastral Survey Program, and Realty Program.

<sup>74</sup> Sally Jewell, 2016, “Secretarial Order on Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources,” Order No. 3342, U.S. Department of the Interior, October 21, [https://www.doi.gov/sites/doi.gov/files/uploads/so3342\\_partnerships.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf), accessed December 14, 2022.

<sup>75</sup> Haaland and Vilsack, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters”; also see U.S. Department of Agriculture, 2021, “Agriculture and Interior Departments Take Action to Strengthen Tribal Co-Stewardship of Public Lands and Waters,” Press Release No. 0245.21, <https://www.usda.gov/media/press-releases/2021/11/15/agriculture-and-interior-departments-take-action-strengthen-tribal>, accessed December 16, 2022.

<sup>76</sup> Haaland and Vilsack, 2021, “Joint Secretarial Order,” p. 2.

the memorandum “Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary’s Order 3403,” which was directed to BLM State Directors and intended to guide on-the-ground implementation of co-stewardship.<sup>77</sup>

Robust agency-tribal engagement has the potential to support more effective advocacy by tribes when high-level special designations are under consideration by Congress, the President, and Department Secretaries. It can facilitate tribal-agency agreement (or at least minimize the need for dispute resolution) concerning the identification new agency- designated areas, the continuation of extant areas, and planned management prescriptions, and it can support appropriate performance of management activities. Further, it lays the groundwork for co-stewardship and co-management, which is imperative given the Department-wide directive that tribal-BLM collaboration should tend, as much as possible, toward higher levels of responsibility and control by Native nations. The challenge, of course, is achieving the degree of engagement and collaboration envisioned by Department and agency policy.

#### **b. USFS policies**

The Forest Service (USFS), an agency of the U.S. Department of Agriculture (USDA), engages with American Indian and Alaska Native tribes primarily through its Office of Tribal Relations (OTR).<sup>78</sup> This Office derives its mandate to engage with tribes through USDA Departmental Regulation 1350-002, a policy enacted by the Obama Administration in 2013.<sup>79</sup> Importantly, this policy sets forth minimum requirements for USDA engagement with tribes:

Each USDA agency shall provide an opportunity for Tribes to participate in policy development to the greatest extent practicable and permitted by law. Each Tribe will be provided the opportunity for timely and meaningful government-to-government consultation regarding policy actions which may have tribal implications.<sup>80</sup>

---

<sup>77</sup> Bureau of Land Management, 2022, “Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary’s Order 3403,” U.S. Department of the Interior, September 13, <https://www.blm.gov/policy/pim-2022-011>, accessed December 16, 2022.

<sup>78</sup> For information on the USFS Office of Tribal Relations, see <https://www.fs.usda.gov/working-with-us/tribal-relations> and <https://www.fs.usda.gov/spf/tribalrelations/index.shtml>, accessed December 16, 2022.

<sup>79</sup> U.S. Department of Agriculture, 2013, “Tribal Consultation, Coordination, and Collaboration,” Departmental Regulation 1350-002, [https://www.usda.gov/sites/default/files/documents/USDA\\_DR\\_Tribal\\_Consultation\\_Coordination\\_and\\_Collaboration\\_OTR\\_final\\_1\\_18.pdf](https://www.usda.gov/sites/default/files/documents/USDA_DR_Tribal_Consultation_Coordination_and_Collaboration_OTR_final_1_18.pdf), accessed December 16, 2022.

<sup>80</sup> U.S. Department of Agriculture Departmental Regulation 1350-002, p. 4.

As it did for DOI, Joint Secretarial Order 3403 has refocused USDA on co-so stewardship. Press announcements even describe the order as having “*codified* a policy to facilitate agreements with tribes to collaborate in the co-stewardship of federal lands and waters”<sup>81</sup> (italics added). In 2022, the USDA and USFS released several new resource guides to assist tribes in partnering with the USDA, including a “USDA Resource Guide for American Indians & Alaska Natives 2022.”<sup>82</sup> Similar to previous versions, the 2022 guide provides a tremendous amount of information, indicating more than 130 separate programs tribes can use across the USDA portfolio. This array of choices is a double-edged sword for tribes. On one hand, it provides numerous avenues for tribes to pursue flexible management arrangements and greater levels of control. Conversely, it sits within a defined (and complicated) bureaucratic system.

## **2. Agency land management planning processes and tribal opportunities**

### **a. The BLM resource management planning process**

Each BLM resource management planning process results in an authoritative document that establishes management goals and strategies for a given public lands area over a 10- to 15-year timeframe (and often longer, given inherent process delays). While there is some variability in the organization of RMPs, each plan follows a basic two-tier structure. The first tier is resource identification (e.g., air quality, riparian areas, fire management). The second tier is desired outcomes, which may be expressed as goals, objectives, allowable uses, or other actions that will guide management of the resource. Importantly, RMPs view both tangible aspects of the landscape (such as wildlife and paleontological sites) and special designations (higher-level and agency-determined) as resources to be managed.

Tribal priorities and preferences can affect both tiers. With regard to resource identification, Native nations can influence what resources are included in a BLM RMP. Further, by advocating for the inclusion of a strategically chosen set resources, they can work toward the creation of a scaffold to support a wide array of land and resource management goals. Several options that may be of particular interest to tribes include:

---

<sup>81</sup> U.S. Department of Agriculture, “Agriculture and Interior Departments Take Action to Strengthen Tribal Co-Stewardship of Public Lands and Waters,” Press Release No. 0245.21, <https://www.usda.gov/media/press-releases/2021/11/15/agriculture-and-interior-departments-take-action-strengthen-tribal>, accessed December 16, 2022.

<sup>82</sup> See U.S. Department of Agriculture, 2022, “USDA Resource Guide for American Indians & Alaska Natives 2022,” <https://www.usda.gov/sites/default/files/documents/usda-resource-guide-american-indians-alaska-natives.pdf>, accessed December 16, 2022.

- ***Management common to all resources:*** BLM land management plans can include a resource type known as “management common to all resources.” This resource allows for the identification and planning of actions that apply across the entirety of the planning area, thereby setting a minimum standard or baseline approach to land management. A tribe might approach this broader-scale planning tool by advocating that, for example, the BLM align its baseline standards for land and resource management with those used by tribe.
- ***Identifying area-specific resources:*** Every public land area is unique, and the list of resources identified in each RMP varies accordingly. While resources such as air quality, riparian areas, ecology are common across all plans, tribes can use the consultation and planning process to suggest specific resources for inclusion. Examples might include flora or fauna of importance or a culturally valuable landscape.
- ***Tribal or cultural resources:*** The “cultural” or “tribal” resource code can encompass a range of cultural management issues, including requirements based in legislation (NAGPRA, for example), requirements for developing separate Cultural Heritage Management Plans for areas of cultural sensitivity, and requirements concerning the use of areas of cultural significance. This “resource” provides tribes with a clear mandate to assert management and planning actions within public lands.

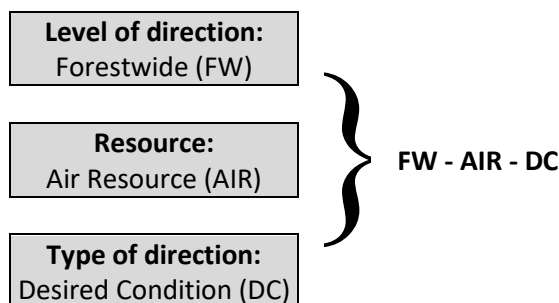
As has been discussed throughout this appendix, the second-tier task—setting individual goals, objectives, actions, and prescriptions for each resource—is an opportunity for tribes to assert their own interests or advocate for an alignment of tribal and agency priorities. Goals and directions are diverse and often highly specific, so that on-the-ground land managers can have a clear understanding of the intent of the plan. As an example, Appendix B provides a paraphrased but complete list of the prescriptions and resource uses associated with a particular resource (in this case, an ACEC) identified in the Taos RMP.

#### **b. The USFS forest planning process**

The USFS uses land and resource management plans (forest plans) as the primary guidance documents for managing national forests. Forest plans follow a three-tiered code system (see exhibit), making them similar in concept but somewhat different in structure than BLM resource management plans. The first tier of the USFS structure is the “level of direction,”

which sets boundaries on the management requirement;<sup>83</sup> the level/boundary can be a smaller management or geographic area or forestwide.<sup>84</sup> The second and third tiers of the USFS structure parallel the BLM structure, in that they specify the resource ( “all vegetation” or “wildlife, fish, and plants,” for example) and the type of direction (whether a shorter term “objective,” a clear “standard,” a more flexible “guideline,” or a longer-term “desired condition” or “goal”<sup>85</sup>).

#### Example of a Forest Plan Code



Native nations can seek to influence USFS land and resource management planning at any tier. They can advocate for a particular level of direction, for the inclusion of a strategically chosen resource or set resources, or for management directions that best match their goals. Options that may be of particular interest to tribes include:

- **Forestwide level of direction:** This planning level identifies a national forest itself as the boundary for management activity. Influence at this level allows a tribe to help set minimum standards for the entire forest in question.
- **Management area or geographic area levels of direction:** These planning levels identify parcel or similar parcels of a national forest as subject to management

<sup>83</sup> BLM incorporates this USFS tier (the “level of direction”) into its resource tier.

<sup>84</sup> A “management area” is “a land area identified within the planning area that has the same set of applicable plan components” and “does not have to be spatially contiguous.” A “geographic area” is “a spatially contiguous land area identified within the planning area” and “may overlap with a management area.” See *Code of Federal Regulation*, Title 36, § 219.19, Subpart A—National Forest System Land Management Planning, Definitions, <https://www.ecfr.gov/current/title-36/chapter-II/part-219/subpart-A>, accessed December 16, 2022.

<sup>85</sup> Lay definitions of these USFS terms of art are available in U.S. Forest Service, 2016, “A Citizens’ Guide to National Forest Planning,” U.S. Department of Agriculture, June, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd509144.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd509144.pdf), accessed December 16, 2022; see page 21.



directions that do not apply at the forestwide level; in other words, the ecology or other characteristics of these areas require differential management. When an agency-level special designation is not possible or not desired, tribes can consider using management or geographic areas in a similar fashion to protect important lands or resources; an example is the Caja Del Rio Wildlife and Cultural Interpretive Management Area in Santa Fe National Forest.<sup>86</sup>

- ***New resource codes:*** As every national forest is different, there are likely to be resources that exist in some and not in others. Furthermore, there may be elements, be they tangible or intangible, that tribes regard as resources to be managed that USFS staff do not. Tribes can use the consultation and planning process to suggest resources they wish to protect through the inclusion of new resource codes with their own sub-sections and actions within the plan.
- ***Tribal” or “Federally Recognized Tribe” resource codes:*** These USFS resource codes provide the clearest platform for tribes to engage in forest planning practices. They create a place in the forest plan where confidentiality issues can be addressed, culturally informed planning actions can be specified, and groundwork for post-plan agency-tribe cooperative management can be laid.

### **3. Agreement and partnership opportunities**

Separate from land and resource management plans, tribes can influence federal agency management regimes through partnerships. As the USFS puts it, “Tribal partnerships play an integral role in integrating diverse perspectives and knowledge into natural and cultural resource management activities on National Forest System (NFS) and NFS-adjacent lands.”<sup>87</sup> Critically, integration occurs not simply because tribes requested designations, plan elements, and management directives that reflect their priorities but because tribal staff are the actual parties responsible for implementing (aspects of) the plans.

Some partnership opportunities are available to the BLM and USFS specifically; others are more broadly available to federal government agencies but can be used by the BLM and USFS. Examples of each are offered below. Where noted, “frameworks” define the purposes that

---

<sup>86</sup> U.S. Forest Service, 2022, “Santa Fe National Forest Land Management Plan,” U.S. Department of Agriculture, July, pp. 200-202, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd1046331.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1046331.pdf), accessed December 15, 2022.

<sup>87</sup> U.S. Forest Service, 2022, “Tribal Partnership Comparison Matrix,” U.S. Department of Agriculture, p. 1., [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd1019068.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1019068.pdf), accessed December 16, 2022.

cooperation between the federal government and an external entity would serve; in so doing, they justify tribal-agency partnerships, provide legal authority for them, and in USFS's terminology, initiate partnership.<sup>88</sup> "Agreements" are the instruments that create partnerships; they document the terms to which the parties specifically agree and are intended to be mutually beneficial. A few agreement mechanisms are available only under given initiating frameworks.<sup>89</sup>

#### **a. Partnership opportunities specifically available to BLM and USFS**

Several legal frameworks and agreement tools that specifically support BLM and USFS land management partnerships with Native nations are:

- ***The Tribal Forestry Protection Act of 2004*** (framework): The Tribal Forestry Protection Act (TFPA) gives authority to Native nations to identify and request work on BLM, USFS, or BLM/USFS-adjacent land that would protect their rights and resources. Tribes propose projects, and the associated agency region must respond to each proposal within 120 days.<sup>90</sup> After signing off on a TFPA project, an agreement tool is needed for implementation. TFPA status does not obligate funds, so when a tribe needs funding for project implementation, the process is more complex: the BLM or USFS must determine the agreement tool that aligns best with both the work and the financial need. A relatively new option for the USFS, created through the 2018 Farm Bill, is a Public Law 93-638 funding agreement (more below).<sup>91, 92</sup>

---

<sup>88</sup> U.S. Forest Service, "Tribal Partnership Comparison Matrix," p. 5.

<sup>89</sup> While many other references are provided in this section, three are fundamental: (1) Bureau of Land Management, 2020, "Engaging with Communities in Public Land Stewardship A Toolkit for Building and Sustaining Effective BLM Partnerships with Friends Groups," February, U.S. Department of the Interior, [https://www.blm.gov/sites/blm.gov/files/documents/files/WEB-030620-EngagingWithCommunitiesInPublicLandStewardship.FINAL\\_.3.6.2020.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/WEB-030620-EngagingWithCommunitiesInPublicLandStewardship.FINAL_.3.6.2020.pdf), accessed December 16, 2022; (2) the U.S. Forest Service website landing page "Working With Us" (<https://www.fs.usda.gov/working-with-us>, accessed December 16, 2022), which provides links to information about shared stewardship, contracts and commercial permits, partnerships, tribal relations, and grants and agreements; and (3) U.S. Forest Service, 2022, "Tribal Partnership Comparison Matrix."

<sup>90</sup> U.S. Forest Service, 2022, "Tribal Partnership Comparison Matrix."

<sup>91</sup> United States Department of Agriculture, 2020, "Best Practices Guide to Execute a USDA Forest Service 638 Agreement Under the Tribal Forest Protection Act," August, <https://www.fs.usda.gov/sites/default/files/Best-Practices-Guide-20200909.pdf>, accessed December 22, 2022. While both the BLM and USFS can use 638 contracting and the TFPA, the 2018 Farm Bill only applies to the USFS.

<sup>92</sup> Despite the framework's utility as a means of forwarding tribal priorities, tribes and the USFS were slow to make and adopt proposals under the TFPA. Skill gaps concerning the creation and implementation of TFPA projects (that

- **Good Neighbor Authority** (framework): Good Neighbor Authority (GNA) allows the BLM and USFS to enter into agreements with states, counties, and tribes to implement land and resource management projects (such as pest treatment, fuel reduction, or wildlife habitat restoration) on public lands, especially where partnership increases the effectiveness of federal investments (for example, where cross-jurisdictional efforts will improve outcomes).<sup>93</sup> GNAs limit the maximum agreement term to 10 years, but allow for the USFS to hand over complete work authority to the tribal partner (except for managing timber revenue and determining whether NEPA standards have been met).<sup>94</sup>
- **638 Contracting under the TFPA** (agreement): The Tribal Forest Protection Act (PL 108-278) authorizes the Secretaries of Interior and Agriculture to contract with tribes for projects on USFS or BLM land bordering or adjacent to Indian trust land.<sup>95</sup> While BLM—as part of the DOI, the original U.S. government partner identified by Congress for P.L. 93-638 contracting activity—has long had the authority to use 638 contracts to engage with tribes under the TFPA, USFS only gained this authority until 2018, under stipulations of the 2018 Farm Bill.<sup>96</sup>
- **Stewardship Agreements** (agreement): Congress initially authorized BLM and USFS stewardship contracting through the Healthy Forests Restoration Act of

---

is, skill gaps on behalf of both tribal and USFS personnel) were one cause. In response, the Intertribal Timber Council worked with the USFS to develop a series of templates and training packages, and greater uptake has followed. See Stephanie A. Lucero and Sonia Tamez, 2017, “Working Together to Implement the Tribal Forest Protection Act of 2004: Partnerships for Today and Tomorrow,” *Journal of Forestry* 115(5): 468-472; and, Intertribal Timber Council, 2022, “Tribal Forest Protection Act (TFPA),” [https://www.itcnet.org/issues\\_projects/issues\\_2/tfpa/tfpareports.html](https://www.itcnet.org/issues_projects/issues_2/tfpa/tfpareports.html), accessed December 16, 2022.

<sup>93</sup> Anne A. Riddle, Congressional Research Service, 2020, “The Good Neighbor Authority,” October 5, <https://crsreports.congress.gov/product/pdf/IF/IF11658/3>, accessed December 16, 2022.

<sup>94</sup> See also U.S. Forest Service, “Tribal Partnership Comparison Matrix,” p. 5; and Bureau of Land Management, 2022, “Update and Reissuance of the Good Neighbor Authority Policy Guidance,” Instruction Memorandum 2022-023, U.S. Department of the Interior, March 4, <https://www.blm.gov/policy/im-2022-023>, accessed December 16, 2022.

<sup>95</sup> U.S. Forest Service, 2004, “Tribal Forest Protection Act in Brief,” U.S. Department of Agriculture, <https://www.fs.usda.gov/detail/r5/workingtogether/tribalrelations?cid=stelprdb5351850#:~:text=The%20Tribal%20Forest%20Protection%20Act,trust%20resources%20from%20fire%2C%20disease>, accessed December 16, 2022.

<sup>96</sup> As a result of this legislative action, the Intertribal Timber Council has again been instrumental in working with the Forest Service to co-developed resources and templates to facilitate a greater understanding and expansion of TFPA USDA Forest Service 638 Authority; see U.S. Forest Service and Intertribal Timber Council, 2020, “USDA Forest Service 638 Authority,” Joint statement, <https://www.fs.usda.gov/sites/default/files/638-FS-ITC-Joint-Statement-SEP2020.pdf>, accessed December 16, 2022.

2003; the Agricultural Act of 2014 makes this authority permanent, but also limits the duration of any agreement to 10 years.<sup>97</sup> These partnerships, known as Stewardship End Result Contracting Projects, allow federal agencies to exchange harvested goods (such as poles and saw logs) for services (such as restoration activities) that meet land and resource management goals.<sup>98</sup> (This is why “in the BLM forestry program, ‘Stewardship’ refers to the ability to trade forest products for land management and services.”<sup>99</sup>)

## **b. Broader approaches**

As alternatives to, or in addition to, the legal frameworks and agreement tools specifically designed for their use, BLM and USFS can use more broadly available mechanisms to create partnerships with tribal governments. These include:

- ***Memoranda of Understanding or Agreement*** (framework or agreement): MOUs (or MOAs) are basic but potentially powerful agreement mechanisms that can be used on their own or as framework documents to support other aspects of agency-tribal partnerships. They “are written agreements between [federal agencies] and other entities which confirm cooperative policies or procedures to promote mutual endeavors.”<sup>100</sup> Common sections include governing principles, purposes, and activities that constitute implementation.<sup>101</sup> MOUs are limited to

---

<sup>97</sup> See U.S. Forest Service, “Section 604 (16 USC 6591c) of Public Law 108-148 as amended by Section 8205 of Public Law 113-79, the Agricultural Act of 2014,” U.S. Forest Service website, no date, [https://www.fs.usda.gov/restoration/Stewardship\\_Contracting/section604.shtml](https://www.fs.usda.gov/restoration/Stewardship_Contracting/section604.shtml), accessed December 16, 2022. For agency-level information, see Bureau of Land Management, no date, “Stewardship Contracting,” U.S. Department of the Interior, <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/stewardship-contracting>, accessed December 16, 2022; and U.S. Forest Service, no date, “Stewardship Contracting Overview,” U.S. Department of Agriculture, [https://www.fs.usda.gov/restoration/Stewardship\\_Contracting/overview.shtml](https://www.fs.usda.gov/restoration/Stewardship_Contracting/overview.shtml), accessed December 16, 2022.

<sup>98</sup> For an example, see Lomakatsi Restoration Project, “Federal Land Stewardship,” 2022, paragraph 1, <https://lomakatsi.org/who-we-are/federal-land-stewardship/>, accessed December 16, 2022.

<sup>99</sup> Bureau of Land Management, no date, “Stewardship Contracting,” paragraph 1.

<sup>100</sup> See Bureau of Land Management, 2015, “MS [Manual Section] 1786, Memorandums of Understanding (Public),” *BLM Manual*, U.S. Department of the Interior, September 11, paragraph 1.1, [https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual1786.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual1786.pdf), accessed December 16, 2022. Note that this document is the primary BLM guidance on MOUs.

<sup>101</sup> For example, the MOU between the Leech Lake Band of Ojibwe and USFS states, “In addition to project-level engagement, the Band’s Division of Resource Management Director (DRM) shall meet at least once quarterly or as otherwise mutually agreed upon with the Forest Supervisor and/or District Rangers for the purpose of discussing issues of mutual concern regarding management of lands, waters and resources that impact the Band’s Treaty-protected rights on Forest Service lands”; see Leech Lake Band of Ojibwe and US Forest Service, 2019,

five-year periods, after which they often are amended or renewed. Importantly, MOUs cannot obligate either party to fund or require specific projects. Especially if regional BLM or USFS staff are hesitant to sign onto agreements with more substantial tribal decisionmaking, MOUs can be a useful onramp.

- **Financial Assistance Agreements**, also known as grants and cooperative agreements (agreement): These agreements are “used to transfer funds, goods, services, or anything of value to a partner that is not another federal agency.”<sup>102</sup> Grants are used when the partner has no program involvement with the agency, although the agency does provide oversight to ensure that funds are spent appropriately. Cooperative agreements also provide financial assistance but involve substantially more agency engagement; for example, the agency and its partner are working to accomplish a task together.
- **Non-Monetary Agreements** (agreements): These agreements support partnerships that do not require a transfer of funds from the federal government to the non-federal partner.<sup>103</sup> Cooperative management agreements and data sharing agreements are two examples relevant to the BLM and USFS. Cooperative management agreements can support tribal-agency engagement in joint land and resource management activities aimed at outcomes that are possible only through collaboration; in these agreements, each party funds its own efforts. Data sharing agreements make land management and environmental resource data more available to tribes and, in turn, may provide tribes with a better understanding of conditions on tribal lands and increased capacity to be effective partners in public lands management; nonetheless, the partnering agency may require cost-recovery for its data-sharing efforts.

#### 4. Concluding thoughts on the agency context

DOI-BLM and USDA-USFS tribal engagement policies underscore Departmental expectations that agency-tribal relationships be robust and consistent. With reference to special designations, a key focus of this appendix, when engagement policies are more than just words

---

“Memorandum of Understanding Between the USDA Forest Service Chippewa National Forest and the Leech Lake Band of Ojibwe of the Minnesota Chippewa Tribe,” October 4, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd672397.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd672397.pdf), accessed December 15, 2022.

<sup>102</sup> Bureau of Land Management, “Engaging with Communities in Public Land Stewardship A Toolkit for Building and Sustaining Effective BLM Partnerships with Friends Groups,” p. 19.

<sup>103</sup> For a more complete discussion, see Bureau of Land Management, “Engaging with Communities in Public Land Stewardship A Toolkit for Building and Sustaining Effective BLM Partnerships with Friends Groups,” p. 20.

on paper, tribes are better positioned to receive early information about proposals for high-level designations and craft strategic responses; to negotiate with agency staff concerning the creation of agency-level special designations that align with tribal goals; to be effectively involved in other aspects of BLM and USFS land and resource management planning; and to lay the groundwork for and participate in tribal-agency partnerships. Strong agency-tribal relationships, spanning all levels of the BLM and USFS, also progress implementation of the 2021 DOI and USDA Joint Secretarial Order on co-stewardship and the 2022 BLM Interim Guidance concerning ACECs—and increase the likelihood that tribes will benefit from them.

BLM and USFS land and resource management planning processes present significant opportunities for tribes to influence the care of public lands. They are periods during which tribes can have substantial input into whether or not agency-level special designations are created, what types are created (for example, an ACEC versus something else), and what the area’s boundaries are. Through engagement with BLM and USFS planners around the codes they use to embed management prescriptions into RMPs and forest plans, tribes can help direct uses, management activities, and goals over the life of the plan for land areas and resources of importance to them. These opportunities apply to both high-level and agency-level special designations, which are treated as resources to be managed in the planning processes. Further, tribes can work with agency planners to create “designation-like” components of RMPs and forest plans: they can identify unique-to-the-area resources to be managed via the plan or, in the USFS-specific context, identify a management or geographic area for special treatment.

Participation in a planning process also can help a tribe decide whether to partner with the BLM or USFS in implementing the plan. Statutory law and agency regulations provide many mechanisms for partnership, and the DOI’s and USDA’s renewed commitment to co-stewardship may even expand the set of options.

These things said, there are drawbacks to the BLM and USFS systems for land and resource management. For one, agency staff may be tempted to address tribal priorities only through “tribal” resource codes (as noted, both BLM and USFS have standard “tribal” or “federally recognized tribes” resource codes). A more comprehensive approach, one that weaves tribal priorities into the plan through a variety of codes, might be more beneficial to Native nations. Boxing tribal priorities into “tribal” resource codes becomes even more problematic for tribes if the directions that BLM and USFS planners tend to list for these resources are less concrete than the directions provided for other resource types. In USFS nomenclature, for example, if a forest plan directs management activities toward “desired conditions” for “tribal” resources and toward measurable “standards” and “objectives” for other resource types, tribes may realize comparatively few or limited results from agency activity.

A second drawback is the lengthy interval between planning periods. Done well, a planning process creates opportunities for significant tribal-agency engagement, but when the planning period ends, Native nations may have fewer opportunities to discuss public lands management with agency staff. Identified “planning periods” and the existence of a “completed plan” also communicate that agencies might not consider tribal input, or any resultant plan modifications, until the planning cycle begins again. While agency regulations actually do allow for RMP and forest plan revisions—based on the results of regular progress and performance evaluation<sup>104</sup> or as indicated by changes in policy or other circumstances<sup>105</sup>—it may be challenging for tribes to influence these internal processes. That said, if monitoring results or policy changes already involve tribal priorities, Native nations should need no other “in.” For example, while untested, it could be argued that the Biden Administration’s emphasis on co-stewardship is a new policy that empowers tribes to request revisions to existing land and resource management plans.

Third, the system for creating agency-tribal partnerships is complicated, not well funded, and in certain ways misleading:

- The sheer number of programs and associated authorities, frameworks, and agreements creates a complex web of opportunities and requirements that can stymie tribal partnership efforts. For its part, USFS published a “Tribal Partnership Comparison Matrix”<sup>106</sup> in 2022 to help cut through this complexity—yet the guide lists five initiating frameworks and four agreement tools, which in combination suggest 20 different partnership types. The text also notes, “this Matrix is a non-exhaustive tool, and Forest Service unit staff should consult their local Grants and Agreements (G&A) Specialist for additional information.”<sup>107</sup> In other words, even the “simplified” system is complicated and may force some

---

<sup>104</sup> Within the BLM, regular RMP performance and progress evaluation occurs every five years; within the USFS, it occurs every two years. See Bureau of Land Management, 2015, “Resource Management Plan 5-Year Evaluations,” Instruction Memorandum IM-AZ-2016-001, United States Department of the Interior, October 9, <https://www.blm.gov/policy/im-az-2016-001>, accessed December 16, 2022; and, *Code of Federal Regulations*, Title 36, §219.12(d)—Biennial Evaluation of the Monitoring Information, <https://www.ecfr.gov/current/title-36/chapter-II/part-219>, accessed December 16, 2022.

<sup>105</sup> *Code of Federal Regulations*, Title 36, §219.13(a)—Plan Amendment and Administrative Changes, <https://www.ecfr.gov/current/title-36/chapter-II/part-219/subpart-A/section-219.13>, accessed December 15, 2022; and, *Code of Federal Regulations*, Title 43, §1610.5-6—Revision, <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-A/part-1600/subpart-1610/section-1610.5-6>, accessed December 15, 2022.

<sup>106</sup> U.S. Forest Service, 2022, “Tribal Partnership Comparison Matrix.” See pp. 5-6 for the five frameworks and four agreement tools. These are reproduced verbatim in Appendix B.

<sup>107</sup> U.S. Forest Service, 2022, “Tribal Partnership Comparison Matrix,” p. 1.

tribes to depend on agency staff for programming advice. In turn, if those staff members' knowledge, capacities, and willingness to navigate the system is limited, collaboration may not occur.

- Many frameworks, agreement types, and programs do not guarantee funding for tribal partners, and instead, require Native nations to provide their own funds, petition the agency or Congress for special support, or even look to the private sector. Using the P.L. 93-638 funding mechanism wherever possible is one strategy—as funds an agency would have spent anyway can flow to a tribal government—but this is not a complete response to partnership funding needs. Tribes should receive indirect cost support for all of such contracts, and if tribal administrative cost rates exceed federal rates, these costs may exceed the corresponding line item in agency budgets. Tribes also may require training, technical assistance, and other kinds of unbudgeted capacity building support.
- A Presidential “Tribal Homelands Initiative” and follow-on Joint Secretarial Order are signals of policy heft. Thus, it is reasonable to interpret the initiative’s call for increased collaboration with Native communities in the stewardship of public lands as a federal government commitment to greater tribal control of off-reservation lands through co-management. For some agency staff, however, the word “stewardship” is a term of art; as defined on the BLM forestry webpage, “‘Stewardship’ refers to the ability to trade forest products for land management and services.”<sup>108</sup> And, as noted in footnote 11 in the main text of this report, “co-stewardship” may be understood by agency staff in still other ways that are different than co-management. But if agency actors view the “co-stewardship” referenced in the Biden Administration policy as something “less than” co-management as tribes understand it,<sup>109</sup> then the announcement constitutes little policy shift at all. In this interpretation, tribal-agency partnerships are not movements toward greater mutuality in land and resource management, nor opportunities for tribes to gain greater control over lands and waters with which they have long-standing relationships, but administrative cul de sacs. Given this

---

<sup>108</sup> Bureau of Land Management, no date, “Stewardship Contracting,” U.S. Department of the Interior, paragraph 1, <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/stewardship-contracting>, accessed December 16, 2022.

<sup>109</sup> While there is no consensus definition of the term “co-management,” tribal governments typically understand the term to mean “a process that would incorporate, in a constructive manner, the policy and technical expertise of each sovereign in a mutual, participatory framework”; Goodman, “Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights,” p. 285.



assessment, an important question that arises from the Biden policy on co-stewardship is whether the BLM and USFS are willing to commit to and implement co-management through resource management plans and forest plans, rather than through underlying program initiatives.

### **E. Putting the Pieces Together**

A reasonable conclusion to draw from this discussion of special designations and federal land management agency processes is that a multipronged approach—or put slightly differently, a layered and staged approach—has the potential to substantially increase tribal management control on public lands. In implementing this approach, tribal government staff might use the pre-planning phase to prepare the ground, making sure that agency partners understood and supported tribal priorities; use the planning phase to consult with agency staff on the creation of agency-level, tribally desired special designations and to advocate for the assignment of a tribally beneficial mix of resource codes across the planning area; and use the post-planning phase to secure a task-specific contractual relationship or a more overarching co-management agreement (where the former might be more valuable to tribes seeking to gain and then build on specific management experience) and then work to execute the plan.

Given this appendix's particular interest in special designations as mechanisms for embedding tribal preferences into public lands management and the Biden Administration's directives concerning ACECs and co-stewardship, it is useful to imagine multipronged (or layered and staged) approaches that use these tools. So how might ACECs be used in combination with co-stewardship and co-management options to better achieve tribal goals? A starting option might be to layer co-stewardship on top of an ACEC, providing the participating tribe (or tribes) with the protections of their agreement with the agency and the protections afforded ACECs under the FLPMA. Over time, as the exercise of co-stewardship increased their capacities, the tribal partners could build off that arrangement—they could negotiate to expand the geography or activities under co-stewardship, regardless of whether or not the geography and purposes of the ACEC changed. As the BLM became more comfortable with tribal management and Indigenous conservation approaches, the tribe and the BLM might even determine to eliminate the ACEC in favor of more fulsome Indigenous decision-making; the ACEC would have been used as a steppingstone on the pathway to genuine co-management. In sum, there are ways to use ACECs and BLM co-management provisions to reinforce each other, to complement each other, and to pipeline from one to the other.

The Table Rocks ACEC in Oregon provides a concrete example. Table Rocks is a land area to which the Takelma Indians maintain deep spiritual, cultural, and relational ties. While dispossession and relocation resulted in the Takelma becoming citizens of the contemporary

Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, and Cow Creek Band of Umpqua Tribe of Indians, they are the historical occupants and stewards of the lands and, via the 1853 Treaty of the Table Rock, have rights to them.<sup>110</sup> Originally designated as an ACEC in 1986,<sup>111</sup> tribal co-management became a possibility in the early 2010s, after The Nature Conservancy (TNC) had secured ownership of the last remaining private lands on both Upper and Lower Table Rocks. In 2011 and 2012, the BLM and The Nature Conservancy signed memorandums of understanding and formed partnerships with both the Confederated Tribes of Grande Ronde and the Cow Creek Band of Umpqua Tribe of Indians to collaborate in the management of Table Rocks.<sup>112</sup> These MOUs ensure that the tribes will have a role in “protecting the values of the Table Rocks for present and future generations.”<sup>113</sup>

Today, Table Rocks hosts a plentiful array of indigenous plants and wildlife, including special status species such as the dwarf wooly meadowfoam (a flowing plant) and fairy shrimp (which live in the ACEC’s topologically distinctive vernal pools). Contemporary Upland Takelma people have access to traditional resources and subsistence foods. Evidence of historic settler sites is mapped and interpreted. Hiking, trail running, wildflower observation, photography, bird watching, geocaching, and other recreational uses are increasing in a steady but well-monitored fashion. Together, the ACEC and co-management agreement provide the legal basis for resource protection and tribal control, which in turn create these positive outcomes.

While the emphasis in this appendix has been on the ways Native nations can use federal policies, rules, and procedures to assert tribal priorities of public lands, tribal policy also matters. To the point, a Tribal Land Management Plan (TLMP) can be a crucial tool for navigating the many twists and turns of federal administrative and management practice. Foremost, a TLMP provides space and opportunity for a tribe to develop its own strategy, goals, and intents for land management—so that even when a tribe is reacting to federal rules, it can

---

<sup>110</sup> Bureau of Land Management, no date, “Takelma Culture,” U.S. Department of the Interior, <https://www.blm.gov/programs/recreation/recreation-activities/oregon-washington/tablerocks/cultural-history/takelma-culture>, accessed November 8, 2022.

<sup>111</sup> Shasta Ferranto, 2015, “planningandnepa\_aceclist,” Bureau of Land Management, U.S. Department of the Interior, [https://www.blm.gov/sites/blm.gov/files/planningandnepa\\_aceclist.xlsx](https://www.blm.gov/sites/blm.gov/files/planningandnepa_aceclist.xlsx), accessed December 16, 2022.

<sup>112</sup> Bureau of Land Management, 2015, “Table Rocks (ACEC) Area of Critical Environmental Concern: Land Donation Environmental Assessment,” DOI-BLM-OR-M050-2014-0009-EA, U.S. Department of the Interior, [https://www.blm.gov/or/districts/medford/plans/files/Table\\_Rocks\\_Donated\\_Land\\_EA.pdf](https://www.blm.gov/or/districts/medford/plans/files/Table_Rocks_Donated_Land_EA.pdf), accessed December 16, 2022.

<sup>113</sup> Bureau of Land Management and The Nature Conservancy, 2013, “Table Rocks Management Area: Management Plan,” p. 6, <https://www.blm.gov/or/districts/medford/plans/table/files/TableRockManagementPlan.pdf>, accessed December 16, 2022.

clearly see where that work fits with its own plans. Second, a TLMP gives tribes a leg up in agency planning processes: the 2021 Joint Secretarial Order outlines that for landscape- or watershed-scale restoration and conservation planning, the agencies will, “to the maximum extent practicable,” incorporate TLMPs in federal land and resource management planning.<sup>114</sup> In other words, a TLMP (at least temporarily and in a circumscribed policy space) reorders the power dynamic: if a tribe has a plan, the federal agencies must react to it. Finally, a TLMP allows for the alignment of mutual land management issues and discussion of key differences, a process that can be educative, help build trust, facilitate the adoption of tribal priorities, and clarify which battles over land and resource management may be worth fighting.

---

<sup>114</sup> “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,” Section 3.d.

## Appendix B: Additional Data on BLM Areas of Critical Environmental Concern

### A. Data on the Prevalence of ACECs

As of October 19, 2022, the BLM National Data eGIS Database reports the following data concerning ACECs:

Total Number of ACECs:	1,085
Total ACEC Area Coverage:	22.5 million acres
Total BLM Land Ownership:	244.4 million acres
ACECs as %of BLM Land:	9.2%
Median ACEC size:	2,490 acres or 3.89 square miles
ACECs by State:	

Administering State Office	# of ACECs	Total Area of ACECs
Alaska	39	6,616,515 acres
Arizona	63	1,121,631 acres
California	231	7,812,405 acres
Colorado	92	778,755 acres
Idaho	112	713,959 acres
Montana	38	428,427 acres
Nevada	46	1,344,597 acres
New Mexico	112	1,171,954 acres
Oregon/Washington	226	886,707 acres
Utah	79	679,178 acres
Wyoming	46	993,190 acres
Florida	1	54 acres

### B. List of Rules and Prescriptions in ACECs for Tribal and Non-Tribal Purposes

The list found in the found in the Taos RMP (2012) provides an example of the types of prescriptions possible in an ACEC designation. All of the items listed were negotiated with the BLM by Taos Pueblo and appear in Appendix A, section 1.0, of the Taos RMP, entitled “Management Prescriptions for Special Designations.”<sup>115</sup>

---

<sup>115</sup> Bureau of Land Management, 2012, “Taos Resource Management Plan,” U.S. Department of the Interior, May, [http://www.sanpedroneighborhood.org/docs/Approved\\_Taos\\_RMP\\_-\\_5.16.12\\_\(print\\_version\).pdf](http://www.sanpedroneighborhood.org/docs/Approved_Taos_RMP_-_5.16.12_(print_version).pdf), accessed November 7, 2022.

## **1.1 Land Tenure**

- 1.1.1 Requirements to acquire identified areas that are private or state land through purchase or exchange
- 1.1.2 Acquire private land with significant cultural and natural resources from willing sellers
- 1.1.3 Acquire enclosed or adjacent available state land through exchange
- 1.1.4 Allow the sale of up to two acres in the central zone for a solid waste convenience center
- 1.1.5 The ACEC will be withdrawn from public land laws
- 1.1.6 Acquire private land with cultural sites from willing sellers (Ku, Posi, Nute, Sandoval, and Te'ewi sites)
- 1.1.7 The BLM will attempt to acquire all State Trust land by exchange and will work with private landowners to acquire properties, prioritizing undeveloped land

## **1.2 Land Use Authorizations**

- 1.2.1 Rights-of-way exclusion through the entire area
- 1.2.2 Identified key places and zones as rights-of-way exclusion areas
- 1.2.3 Allowing new rights-of-way in identified areas
- 1.2.4 Exclude new rights-of-way except for road improvements for safety or to provide access or utility service to non-Federal land where no practicable alternative exists
- 1.2.5 Allow maintenance or improvements of irrigation ditches and existing rights of way over grandfathered access ways, provided that changes are consistent with protection and exceptional value
- 1.2.6 New rights of way can be co-located within the utility corridors or for installation on existing structures if there is no impact
- 1.2.7 A quarter mile-wide rights-of-way corridor along a named road is designated.
- 1.2.8 Rights-of-way to be considered on a case-by-case basis

## **1.3 Livestock Grazing**

- 1.3.1 Grazing not permitted in riparian or scenic corridors
- 1.3.2 Grazing is not allowed at any pueblo ruins and areas where cultural resources become apparent
- 1.3.3 Lands in allotments (#518, #519, #520 numbered) are unavailable to grazing
- 1.3.4 Lands in allotment (521) will become unavailable at the end of the existing lease
- 1.3.5 BLM to install fences and enclosures to deal with livestock that are damaging ACEC resources
- 1.3.6 Grazing will be available across the trails but not the river corridor

#### **1.4 Minerals Leasable**

- 1.4.1 Leasability, locatability, and salability of resources as closed, open, etc.
- 1.4.2 Areas allocated for no surface occupancy and controlled surface use
- 1.4.3 Locatable resources withdrawn from the mineral estate for Traditional Cultural Property for tribal purposes; this is a clay and ash area within the ACEC

#### **1.5 Renewable Energy**

- 1.5.1 Requirement to close area to wind energy development
- 1.5.2 Wind and solar development excluded
- 1.5.3 Wind energy excluded, solar considered on a case-by-case basis

#### **1.6 Transportation and Access**

- 1.6.1 Closures or limitations on segments of existing trails
- 1.6.2 Full exclusion over an area
- 1.6.3 Vehicle access to pueblo ruins is limited to permitted users only
- 1.6.4 Acquire administrative access to critical rivers to enable better fisheries management
- 1.6.5 Undertake negotiations for administrative or legal access to specific sites
- 1.6.6 Work with the department of transportation to identify safe pullout areas along the highway
- 1.6.7 Access open to non-motorized travel
- 1.6.8 Access will be designated with one route for access to the trailhead and parking and several portions for permitted uses such as filming during certain times of year
- 1.6.9 Some re-routing to avoid and protect cultural sites is required
- 1.6.10 Request seasonal closures of specific roads

#### **1.7 Forestry**

- 1.7.1 Manage woodland and forest resources to enhance wildlife habitat, ecosystem health, and scenic values
- 1.7.2 Fuelwood and timber sales will not be allowed unless such action would enhance watershed resources

#### **1.8 Paleontological**

- 1.8.1 Coordinate with the State Museum to develop an inventory database for the ACEC

- 1.8.2 A qualified paleontologist will be required to survey any surface disturbing activities within the area that are known to occur; this expert may be necessary to monitor such activities

## **1.9 Fish and Wildlife**

- 1.9.1 In cooperation with State Government departments to manage rivers and tributaries to restore native aquatic fauna and reduce aquatic invasive species
- 1.9.2 Consider areas for the introduction, augmentation, or reestablishment of fish and wildlife species consistent with state departmental regulations
- 1.9.3 Protect habitat critical for migration of elk and mule deer
- 1.9.4 Conserve native fish populations in the Santa Fe River
- 1.9.5 No tree removal to protect gray vireo habitat
- 1.9.6 Employ mechanical removal methods to reduce non-native aquatic species from critical rivers
- 1.9.7 Cooperate with state government departments to reintroduce the Rio Grande cutthroat into the Agua Caliente watershed
- 1.9.8 Assess habitat in the Rio Agua Caliente for restoration of long nose dace, Rio Grande chub, and Rio Grande sucker and work with state government departments to implement
- 1.9.9 Work with the state government to introduce a specific population into the river system
- 1.9.10 Construct cable grates on mine entry and caves to protect bats

## **1.10 Vegetation/Soils**

- 1.10.1 Actively manage named rivers and tributaries in the area to restore native plant species and reduce the density of exotic vegetation
- 1.10.2 Prevent aquatic habitat degradation by prohibiting activities disturbing soil and vegetation in streams within the 100-year flood plain
- 1.10.3 Suppress noxious weeds with methods deemed most effective; herbicides would be used as a last resort
- 1.10.4 Reseed up to 100 acres of riparian habitat to restore productivity

## **1.11 Soils**

- 1.11.1 Cooperate with local NGOs on watershed restoration projects
- 1.11.2 Manage soils to protect their integrity and reduce erosion that damages cultural sites or impairs downstream water quality

### **1.12 Water Resources**

- 1.12.1 Secure water rights in perennial streams adequate to manage aquatic habitat and riparian vegetation
- 1.12.2 Manage named river in-stream hydrologic processes to maximize aquatic and riparian habitat area and condition and reduce excessive deposition or erosion
- 1.12.3 Secure minimum water rights in the designated wild and scenic river area necessary to manage for outstanding remarkable values designated by Congress

### **1.13 Lands with Wilderness Characteristics**

- 1.13.1 Manage the land adjacent to the wild scenic river to ensure the protection of wilderness characteristics
- 1.13.2 Remove abandoned telephone lines, poles, and equipment and rehabilitate associated road

### **1.14 Wildland Fire**

- 1.14.1 Implement limited fire suppression strategies to protect wilderness and wild and scenic river values
- 1.14.2 Fire suppression techniques that cause earth disturbance will not be used in [named places and zones]
- 1.14.3 Fire prescriptions and burn plans will be developed to meet vegetation management objectives; a full-suppression zone will be established around communities, and unplanned fires will be extinguished

### **1.15 Visual Resources**

- 1.15.1 Breakdown of Class I, Class II, and Class III resources

### **1.16 Activity Planning**

- 1.16.1 Prepare a management plan for the ACEC within five years of RMP approval
- 1.16.2 Prepare a management plan in cooperation with the USFS and the Jicarilla Apache for the management of the ACEC
- 1.16.3 A management plan for all sites (both public and privately owned) is mandated by enabling legislation of congressionally designated sites
- 1.16.4 Management of ACEC to occur under the guidelines established in the Rio Grande Corridor Plan (2000)
- 1.16.5 Agreements to manage key corridors under separate new or existing management plans
- 1.16.6 A fire use plan will be developed
- 1.16.7 Complete a wilderness management plan



### **1.17 Cultural Resources**

- 1.17.1 Take an inventory and record trail resources in detail (class III)
- 1.17.2 Nominate eligible cultural sites to the National Register of Historic Places
- 1.17.3 Protect specific trails segments and associated archaeological sites
- 1.17.4 Complete a 100% survey of all cultural resources
- 1.17.5 Complete an inventory and detailed recording of cultural features for each site
- 1.17.6 Six Tewa pueblo cultural sites are not shown on the management plan maps to protect them from human activity
- 1.17.7 Provide barriers (rocks or fences) to keep vehicles or cattle from cultural sites
- 1.17.8 Encourage excavation (no context given in the plan for this)
- 1.17.9 Extract archaeological data from vandalized areas and backfill disturbed areas

### **1.18 Recreation**

- 1.18.1 Develop interpretation and education projects where appropriate—either onsite or offsite
- 1.18.2 To manage the ACEC as part of a Special Recreation Management Area (i.e., separately from the RMP)
- 1.18.3 Close the specific place (i.e., River Canyon) and other cultural resource sites (i.e., petroglyphs) to target shooting and petition the State government department to close the same area to hunting
- 1.18.4 Primitive camping allowed except within 100 feet of rivers or streams
- 1.18.5 Provide improved access route for recreation activities (i.e., model airplanes)
- 1.18.6 Marked hiking trails in key regions created to limit surface disturbance
- 1.18.7 Agree that boating will be managed outside the Management Plan under the greater area corridor plan
- 1.18.8 Determine which hiking trails are open for hiking, biking, motorized use, and horseback riding, and pets
- 1.18.9 Close important habitat areas to camping
- 1.18.10 No gathering and removal of fuelwood for home use allowed
- 1.18.11 Gathering of fuelwood for campfires limited to dead and downed wood only
- 1.18.12 Boating managed to provide a primitive recreation experience through limits on the size of groups and the number of launches
- 1.18.13 Manage boating by limiting the number of commercial permits available for each river segment and for each season and time, etc.
- 1.18.14 Prohibit commercial fishing in significant areas
- 1.18.15 Provide public education and interpretation at key recreation zones

- 1.18.16 Construct recreation camping and seating areas to protect critical areas from erosion and manmade traffic
- 1.18.17 Management of the ACEC is designated to occur under a separate identified regional management

#### **1.19 Monitoring**

- 1.19.1 Monitor site condition using site stewards and BLM staff
- 1.19.2 Volunteer site stewards to be trained in site monitoring and reporting conditions
- 1.19.3 Conduct breeding bird surveys with key priority birds identified
- 1.19.4 Operate a volunteer site steward program to monitor sites on BLM land and those on private land with owner permission
- 1.19.5 Monitor key access sites to ensure boating limits are met
- 1.19.6 Monitor camping areas being used to determine whether temporary closures are required
- 1.19.7 Monitor rivers for trespass cattle or other livestock

#### **1.20 Other Designations**

- 1.20.1 Named river is eligible for designation as a wild and scenic river, and, until approved by Congress, will be treated as such
- 1.20.2 Applying for wild and scenic river eligibility where possible
- 1.20.3 Allow no resource use at sites other than for site recording and research

## Appendix C: Additional Information Concerning USFS Engagement with Tribes

The two charts below are reproduced verbatim from pp. 5 and 6 of the 2022 “Tribal Partnership Comparison Matrix,” which is intended to provide a clear comparison of the primary opportunities for tribes to engage with USFS on National Forest land.

	INITIATING FRAMEWORKS				
	Tribal Forest Protection Act	NATIVE Act	Tribal Biomass Demonstration	Good Neighbor Authority/ Agreement	Service First
<b>Purpose</b>	Provides process for tribes to propose projects that are of significance to tribal lands, culture, resources, etc.	Empowers tribes to engage in the recreation industry; Requires federal agencies with tourism and recreation elements to make their management plans and tourist initiatives inclusive of tribes	Promotes biomass (heat, biofuel, and electricity generation) as an effective way for tribes to develop energy sources, build tribal economies, and accrue revenue; Connects tribes to assistance with establishing a sustainable source of woody biomass through authorized projects	Allows USFS to enter into agreements with partners to pursue authorized restoration services. Can utilize Good Neighbor Agreements under Good Neighbor Authority	Established to promote Agencies' missions by implementing natural and cultural resource management programs, and pooling resources to achieve greater outcomes than any single agency could satisfy on their own
<b>Allowed Activities</b>	Proposed activities must take place on USFS or BLM administered lands. Projects should improve forest health by targeting fire, pathogen/disease/insect infestation, or other threats impacting tribal community and land; or they should address a need for restoration	Plans must: improve data collection and analysis of tourism; make public info and website more accessible; support national tourism objectives; identify programs to support tourism infrastructure in underserved tribal communities; develop tools that present and respect diversity of Native Americans; implement bilingual signage that honors local heritage; and/or improve transportation program access	Special consideration given to projects that: Increase dependability of local energy; benefit tribal economy; improve electric utility equipment and facilities serving the tribe; address forest health and/or watersheds on Federal or tribal land; invest in infrastructure development	Forest, rangeland, and watershed restoration services on NFS and NFS-adjacent lands; includes hazardous fuels, fish and wildlife, and insect/disease activities	Project must encourage implementation of 3 objectives: improving customer service; increasing operational efficiency; and enhancing stewardship of federal lands and resources
<b>Corresponding Authorities and Amendments</b>	Sec. 8703, 2018 Farm Bill; Sec. 202 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (P.L. 115-325)	P.L. 114-221	Project must be TFPA-approved (amended in section 8703, 2018 Farm Bill)	Agricultural Act of 2014 (P.L. 113-79); Sec. 8624, 2018 Farm Bill (P.L. 115-334)	Sec. 330 of the DOI and Related Agencies Appropriations Act of 2001, P.L. 106-291, 114 Stat. 996, 43 U.S.C. 1701 note, as amended by Section 428 of the DOI, Environment, and Related Agencies Appropriations Act of 2006, P.L. 109-54, 119 Stat. 555, as amended and extended through fiscal year 2012 and each fiscal year thereafter under Sec. 422 of the Consolidated Appropriations Act of 2012, P.L. 112-74
<b>Eligible Partner(s)</b>	Federally-recognized tribes and tribal organizations; Alaska Natives and Alaska Native Corporations not eligible	Federally-recognized tribes, tribal organizations, Native Hawaiian organizations, Alaska Native Corporations	Federally-recognized tribes and Alaska Native Corporations	Federally-recognized tribes, tribal agencies, states, counties	DOI, BLM, FWS, NPS, USFS (aka "Service First Agencies")
<b>Matching \$ (for SPAs)</b>	May be required depending on agreement tool selection	N/A	May be required depending on agreement tool selection	Not required, but recommended	Not defined in Service First MOU; must describe financial expectations of each agency in a project's funded Interagency Agreement
<b>Trust Land Adjacency</b>	Project meets adjacency requirement if it protects/restores traditional tribal resources, or if threat targeted could extend to tribal lands; tribes not required to have trust lands within national forests to be eligible	N/A	Adjacency not required, but special consideration given to trust land status	Adjacency not required, but project activities must be complimentary	N/A
<b>Engagement of Tribal Crews</b>	USFS not required to hire tribes for TFPA projects, but tribes can provide crews if it is best value; tribal members engagement usually determined through contract/ agreement with tribal government	NATIVE Act aims to establish jobs and encourage workforce development for tribes in travel and tourism industries	Tribes can contract work to perform functions of project	USFS can hand over complete work authority (except for managing timber revenue/receipt retention and NEPA) to the tribal partner	Tribal work authorization not explicitly defined
<b>Timber &amp; Biomass Utilization</b>	Forest product and timber production permitted with TFPA under certain agreements	N/A	Under Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, tribal biomass demonstration TFPA projects allows for the utilization of biomass; Merchantable timber cannot be utilized in project	Retained timber receipts cannot be used unless by State; non-revenue generating projects with tribes encouraged	Forest product removal not permitted
<b>Maximum Agreement Term</b>	Determined by agreement tool selected for project	N/A	20 years; potential for renewal for additional 10 years	10 years	5 Years

	AGREEMENT TOOLS			
	638 Agreement	Stewardship Agreements	Challenge Cost-Share	Participating Agreements
<b>Purpose</b>	Tool to fund and implement priority work under an approved TFPA project proposal by tribe on NFS land	Aids in accomplishing natural resource management objectives between cooperator and USFS	Enables USFS to plan, develop, and implement projects with partners that have mutual benefit and interest	Provides partners ability to perform work that yields non-monetary mutual benefits
<b>Allowed Activities</b>	Project should: address need for restoration; mitigate threats to trust land and/or surrounding community (e.g. fire and diseases); involve tribe-specific issues (e.g. cultural, historic, legal)	Must meet one of 7 Land Management Goals: Road and trail maintenance; soil productivity; Rx fire; vegetation removal for fire hazard reduction, forest health; watershed restoration/maintenance; fish and wildlife habitat; noxious and exotic weed control and native species reestablishment	Project must enhance FS activities. Allowable activities include habitat restoration, campground enhancements, conference development	Project must address: Pollution abatement; job training/workforce development; publication of forestry history materials; interpretive services; forest protection; Rx fire; watershed restoration
<b>Corresponding Authorities and Amendments</b>	Project must be TFPA-approved (amended in section 8703, 2018 Farm Bill)	Stewardship End Result; Contracting (P.L. 108-7); Agricultural Act of 2014 (P.L. 113-79)	Interior and Related Appropriations Act of 1992	Cooperative Funds and Deposits Act of 1975 (P.L. 94-148); Wyden Amendment (P.L. 111-11); Secure Rural Schools and Community Self-Determination Act of 2000
<b>Eligible Partner(s)</b>	Federally-recognized tribes and tribal organizations; Alaska Natives and Alaska Native Corporations not eligible	Any non-federal entity	Any non-federal entity	Any non-federal entity
<b>Matching \$ (for SPAs)</b>	Not required	At least 20% - Match can be waived for tribes engaging in stewardship agreements under TFPA	At least 20%	At least 20%
<b>Trust Land Adjacency</b>	Should reasonably satisfy adjacency of tribal trust lands; has to affect tribal land but doesn't need to directly border NFS lands	No adjacency requirement	No adjacency requirement	No adjacency requirement
<b>Engagement of Tribal Crews</b>	Tribes can contract work to perform functions of project	100% of the work can be subcontracted if TFPA authority is used	If USFS subcontracts tribal member(s) to complete work, tribe should provide significant cash contribution toward labor costs	Tribes can subcontract work
<b>Timber &amp; Biomass Utilization</b>	No authority in 638 that allows timber removal; retained receipts cannot be used	Forest product removal permitted and value can be traded to offset cost of services	Forest product removal not permitted	Forest product removal not permitted
<b>Maximum Agreement Term</b>	Typically 5 years	10 years; 20 years for select projects that address high fire risk	5 Years	5 years

## References and Resources

Affiliated Tribes of Northwest Indians. 2021. "Request the US Bureau of Land Management Develop an Area of Critical Environmental Concern Regulation as Required by the Federal Land Policy Management Act of 1976." Resolution #2021-38. Annual Convention.

<https://atnitribes.org/wp-content/uploads/2021/10/Res-2021-38.pdf>, accessed November 7, 2022.

Bureau of Land Management. 2022. "Habitat Connectivity on Public Lands." Instruction Memorandum IM 2023-005, Change 1. Department of the Interior. November 18.

<https://www.blm.gov/policy/im-2023-005-change-1>, accessed December 16, 2022.

Bureau of Land Management. 2022. "Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments." U.S. Department of the Interior. <https://www.blm.gov/policy/im-2023-013>, accessed December 16, 2022.

Bureau of Land Management. 2022. "Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403." Memorandum No. 2022-011. U.S. Department of the Interior. <https://www.blm.gov/sites/default/files/docs/2022-09/PIM2022-011%20+%20attachment.pdf>, accessed December 16, 2022.

Bureau of Land Management. 2022. "Update and Reissuance of the Good Neighbor Authority Policy Guidance." Instruction Memorandum 2022-023. U.S. Department of the Interior. March 4. <https://www.blm.gov/policy/im-2022-023>, accessed December 16, 2022.

Bureau of Land Management. 2021. "Notice of Availability of the Draft Desert Plan Amendment and Draft Environmental Impact Statement, California." Department of the Interior. *Federal Register* 86(9)(January 14): 3181-3184.

<https://www.federalregister.gov/documents/2021/01/14/2021-00579/notice-of-availability-of-the-draft-desert-plan-amendment-and-draft-environmental-impact-statement>, accessed December 16, 2022.

Bureau of Land Management. 2021. "Public Land Statistics 2020." Volume 205. U.S. Department of the Interior. [https://www.blm.gov/sites/default/files/docs/2021-08/PublicLandStatistics2020\\_1.pdf](https://www.blm.gov/sites/default/files/docs/2021-08/PublicLandStatistics2020_1.pdf), accessed November 7, 2022.

Bureau of Land Management, 2020, "Engaging with Communities in Public Land Stewardship A Toolkit for Building and Sustaining Effective BLM Partnerships with Friends Groups," February, U.S. Department of the Interior, [https://www.blm.gov/sites/blm.gov/files/documents/files/WEB-030620-EngagingWithCommunitiesInPublicLandStewardship.FINAL\\_.3.6.2020.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/WEB-030620-EngagingWithCommunitiesInPublicLandStewardship.FINAL_.3.6.2020.pdf), accessed December 16, 2022.

Bureau of Land Management. 2016. "43 CFR Part 1600, Resource Management Planning." *Federal Register* 81(238)(December 12): 89580. <https://www.govinfo.gov/content/pkg/FR-2016-12-12/pdf/2016-28724.pdf>, accessed November 7, 2022.

Bureau of Land Management. 2016. "BLM Handbook 1780-1 Improving and Sustaining BLM-Tribal Relations (P)." U.S. Department of the Interior. December 15. [https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1\\_\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1__0.pdf), accessed December 16, 2022.

Bureau of Land Management. 2016. "The Federal Land Policy and Management Act of 1976, as amended." U.S. Department of the Interior. [https://www.blm.gov/sites/default/files/AboutUs\\_LawsandRegs\\_FLPMA.pdf](https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf), accessed December 13, 2022.

Bureau of Land Management. 2016. "Tribal Relations." Manual (MS) 1780. U.S. Department of the Interior. December 15. <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>, accessed December 16, 2022.

Bureau of Land Management. 2015. "MS [Manual Section] 1786, Memorandums of Understanding (Public)." *BLM Manual*. U.S. Department of the Interior. September 11. [https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual1786.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual1786.pdf), accessed December 16, 2022.

Bureau of Land Management. 2015. "Resource Management Plan 5-Year Evaluations." Instruction Memorandum IM-AZ-2016-001. United States Department of the Interior. October 9. <https://www.blm.gov/policy/im-az-2016-001>, accessed December 15, 2022.

Bureau of Land Management. 2015. "Table Rocks (ACEC) Area of Critical Environmental Concern: Land Donation Environmental Assessment." DOI-BLM-OR-M050-2014-0009-EA. U.S. Department of the Interior. [https://www.blm.gov/or/districts/medford/plans/files/Table\\_Rocks\\_Donated\\_Land\\_EA.pdf](https://www.blm.gov/or/districts/medford/plans/files/Table_Rocks_Donated_Land_EA.pdf), accessed December 16, 2022.

Bureau of Land Management. 2015. "Wilderness Characteristics Inventory Review: A Review of Vale and Lakeview District Conformance with Established Procedures for Maintaining the Inventory of Lands with Wilderness Characteristics, Final Report." U.S. Department of the Interior. December 18. <https://www.blm.gov/or/resources/nlcs/files/wcireview.pdf>, accessed December 16, 2022.

Bureau of Land Management. 2013. "San Juan National Forest and Bureau of Land Management Tres Rios Field Office Joint Land and Resource Management Plan, Appendix O—BLM Lands with Wilderness Characteristics." U.S. Department of the Interior. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5435965.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5435965.pdf), accessed 16 December 2022.

Bureau of Land Management. 2012. "Taos Resource Management Plan." U.S. Department of the Interior. May. [http://www.sanpedroneighborhood.org/docs/Approved\\_Taos\\_RMP\\_-\\_5.16.12\\_\(print\\_version\).pdf](http://www.sanpedroneighborhood.org/docs/Approved_Taos_RMP_-_5.16.12_(print_version).pdf), accessed November 7, 2022.

Bureau of Land Management. No date. "lands/BLM\_Natl\_ACEC (MapServer)." U.S. Department of the Interior. [https://gis.blm.gov/arcgis/rest/services/lands/BLM\\_Natl\\_ACEC/MapServer](https://gis.blm.gov/arcgis/rest/services/lands/BLM_Natl_ACEC/MapServer), accessed December 16, 2022.

Bureau of Land Management. No date. "Special Planning Designations: Lands with Wilderness Characteristics." U.S. Department of the Interior. <https://www.blm.gov/programs/planning-and-nepa/planning-101/special-planning-designations/lands-with-wilderness-characteristics>, accessed December 16, 2022.

Bureau of Land Management. No date. "Stewardship Contracting." U.S. Department of the Interior. <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/stewardship-contracting>, accessed December 16, 2022.

Bureau of Land Management. No date. "Takelma Culture." U.S. Department of the Interior. <https://www.blm.gov/programs/recreation/recreation-activities/oregon-washington/tablerocks/cultural-history/takelma-culture>, accessed November 8, 2022.

Bureau of Land Management and The Nature Conservancy. 2013. "Table Rocks Management Area: Management Plan." U.S. Department of the Interior. <https://www.blm.gov/or/districts/medford/plans/table/files/TableRockManagementPlan.pdf>, accessed December 16, 2022.

*Code of Federal Regulations*. Title 36, §219.12(d)—Biennial Evaluation of the Monitoring Information. <https://www.ecfr.gov/current/title-36/chapter-II/part-219>, accessed December 16, 2022.

*Code of Federal Regulations*. Title 36, §219.13(a)—Plan Amendment and Administrative Changes. <https://www.ecfr.gov/current/title-36/chapter-II/part-219/subpart-A/section-219.13>, accessed December 15, 2022.

*Code of Federal Regulations*. Title 36, §219.19, Subpart A—National Forest System Land Management Planning, Definitions. <https://www.ecfr.gov/current/title-36/chapter-II/part-219/subpart-A>, accessed December 16, 2022.

*Code of Federal Regulations*, Title 36, §294, Subpart B—State Petitions for Inventoried Roadless Area Management, <https://www.ecfr.gov/current/title-36/part-294/subpart-B>, accessed December 16, 2022.

*Code of Federal Regulation*. Title 43, §1610.7-2—Designation of Areas of Critical Environmental Concern. <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-A/part-1600/subpart-1610/section-1610.7-2>, accessed December 16, 2022.

*Code of Federal Regulations*. Title 43, §1610.5-6—Revision. <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-A/part-1600/subpart-1610/section-1610.5-6>, accessed December 16, 2022.

Comay, Laura B., R. Eliot Crafton, Carol Hardy Vincent, and Katie Hoover. 2018. “Federal Land Designations: A Brief Guide.” Congressional Research Service. October 11. <https://sgp.fas.org/crs/misc/R45340.pdf>, accessed on December 15, 2022.

Ellis, Stephen C. 2005. “Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision Making.” *Arctic* 58(1): 66-77.

Ferranto, Shasta. 2015. “planningandnepa\_aceclist.” Bureau of Land Management, U.S. Department of the Interior. [https://www.blm.gov/sites/blm.gov/files/planningandnepa\\_aceclist.xlsx](https://www.blm.gov/sites/blm.gov/files/planningandnepa_aceclist.xlsx), accessed December 16, 2022.

Goodman, Ed. 2000. “Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right.” *Environmental Law* 30(2): 279-361.

Haaland, Deb and Thomas J. Vilsack. 2021. “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters.” U.S. Department of the Interior and U.S. Department of Agriculture. November 15. <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>, accessed November 7, 2022.

Hoover, Katie, Laura B. Comay, R. Eliot Crafton, and Carol Hardy Vincent. 2021. “The Federal Land Management Agencies.” Congressional Research Service. February 16. <https://sgp.fas.org/crs/misc/IF10585.pdf>, accessed November 7, 2022.

Huntington, Henry P. 2000. “Using Traditional Ecological Knowledge in Science: Methods and Applications.” *Ecological Applications* 10(5): 1270-1274.

Intertribal Timber Council. 2022. “Tribal Forest Protection Act (TFPA).” [https://www.itcnet.org/issues\\_projects/issues\\_2/tfpa/tfpareports.html](https://www.itcnet.org/issues_projects/issues_2/tfpa/tfpareports.html), accessed December 16, 2022.

Jewell, Sally. 2016. “Secretarial Order on Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources.” Order No. 3342. U.S. Department of – the Interior. October 21.



[https://www.doi.gov/sites/doi.gov/files/uploads/so3342\\_partnerships.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf), accessed December 14, 2022.

Kawerak, Inc. 2022. "Kawerak, Inc. Signs Groundbreaking Cultural Resources Co-Stewardship Funding Agreement." October 25, <https://kawerak.org/kawerak-inc-signs-groundbreaking-cultural-resources-co-stewardship-funding-agreement/>, accessed December 16, 2022.

Kimmerer, Robin. 2011. "Restoration and Reciprocity: The Contributions of Traditional Ecological Knowledge. In Dave Egan, Evan Hjerpe, and Jesse Abrams (eds.). *Human Dimensions of Ecological Restoration: Integrating Science, Nature, and Culture*. Island Press, Washington, DC. Pp. 257-276.

Klingsporn, Katie. "Red Desert Cultural Sites Reflect Broader Tribal Frustrations." *WyoFile*, November 15, <https://wyofile.com/red-desert-cultural-sites-reflect-broader-tribal-frustrations/>, accessed December 16, 2022.

Leech Lake Band of Ojibwe and US Forest Service. 2019. "Memorandum of Understanding between the USDA Forest Service Chippewa National Forest and the Leech Lake Band of Ojibwe of the Minnesota Chippewa Tribe." October 4. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd672397.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd672397.pdf), accessed December 15, 2022.

Lertzman, David A. 2010. "Best of Two Worlds: Traditional Ecological Knowledge and Western Science in Ecosystem-Based Management." *BC Journal of Ecosystems and Management*, 10(3): 104-126.

Lomakatsi Restoration Project. "Federal Land Stewardship." 2022. <https://lomakatsi.org/who-we-are/federal-land-stewardship/>, accessed December 16, 2022.

Lucero, Stephanie A. and Sonia Tamez. 2017. "Working Together to Implement the Tribal Forest Protection Act of 2004: Partnerships for Today and Tomorrow." *Journal of Forestry* 115(5): 468-472. <https://doi.org/10.5849/jof.2016-096R2>, accessed December 16, 2022.

McGinn, Miyo. 2022. "How Tribal Co-Managing Movements are Transforming the Conservation of Public Lands." *Popular Science*. October 10. <https://www.popsoci.com/environment/native-tribes-public-land-management/>, accessed December 16, 2022.

Mills, Monte and Martin Nie. 2021. "Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands." *Public Land & Resources Law Review* 44: Article 2.

National Congress of American Indians. 2020. "Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands." Resolution #PDX-20-003. Annual Convention.

[https://www.ncai.org/attachments/Resolution\\_FamhBAHVFLnQfgvKBsgXjzIrdYAbDzKlaVtsEdSjWibSZtJDkFR\\_PDX-20-003%20SIGNED.pdf](https://www.ncai.org/attachments/Resolution_FamhBAHVFLnQfgvKBsgXjzIrdYAbDzKlaVtsEdSjWibSZtJDkFR_PDX-20-003%20SIGNED.pdf), accessed December 16, 2022.

National Congress of American Indians. 2022. "Request the U.S. Bureau of Land Management to Develop an Area of Critical Environmental Concern Regulation as Required by Federal Land Policy Management Act of 1976." Resolution #SAC-22-028. Annual Convention.  
<https://www.ncai.org/resolutions/2022-annual-convention-resolutions>, accessed December 16, 2022.

Nadasdy, Paul. 1999. "The Politics of TEK: Power and the 'Integration' of Knowledge." *Arctic Anthropology* 36(1-2): 1-18.

Necefer, Len, Gabrielle Wong-Parodi, and Mitchell J. Small. 2020. "Governing Energy in Conflicted Resource Contexts: Culture, Cost, and Carbon in the Decision-Making Criteria of the Navajo Nation." *Energy Research and Social Science*, 70: 101714.

Martin Nie and Christopher Barns. 2014. "The Fiftieth Anniversary of the Wilderness Act: The Next Chapter in Wilderness Designation, Politics, and Management." *Arizona Journal of Environmental Law & Policy* 5: 237-301.

Public Law 88-639—An Act to Provide an Adequate Basis for Administration of the Lake Mead National Recreation Area, Arizona and Nevada, and for Other Purposes.  
<https://www.congress.gov/88/statute/STATUTE-78/STATUTE-78-Pg1039.pdf>, accessed December 15, 2022.

Public Law 90-540—An act to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes.  
<https://www.congress.gov/90/statute/STATUTE-82/STATUTE-82-Pg904.pdf>, accessed December 16, 2022.

Public Law 98-425, Title III—An Act Entitled the California Wilderness Act of 1984.  
<https://www.congress.gov/98/statute/STATUTE-98/STATUTE-98-Pg1619.pdf>, accessed December 15, 2022.

Public Law 100-150, §2—An Act to Designate a Segment of the Kings River in California as a Wild and Scenic River, and for Other Purposes.  
<https://www.congress.gov/100/statute/STATUTE-101/STATUTE-101-Pg881.pdf>, accessed December 15, 2022.

Public Law 101-313—An Act to Establish Petroglyph National Monument and Pecos National Historical Park in the State of New Mexico, and for Other Purposes.  
<https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg272.pdf>, accessed December 15, 2022.

Public Law 101-628, Title II—An Act to Provide for the Designation of Certain Public Lands as Wilderness in the State of Arizona. <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4469.pdf>, accessed December 15, 2022.

Public Law 113-291—National Defense Authorization Act for Fiscal Year 2015, §3061—Columbine-Hondo Wilderness. <https://www.govinfo.gov/content/pkg/PLAW-113publ291/html/PLAW-113publ291.htm>, accessed December 15, 2022.

Riddle, Anne A. Congressional Research Service. 2020. “The Good Neighbor Authority.” October 5. <https://crsreports.congress.gov/product/pdf/IF/IF11658/3>, accessed December 16, 2022.

Ruple, John and Mark Capone. 2016. “NEPA, FLPMA, and Impact Reduction: An Empirical Assessment of BLM Resource Management Planning and NEPA in the Mountain West.” *Environmental Law* 46(4)(Fall): 953-978.

Sams, Charles. 2022. “Statement of Charles F. Sams III, Director, National Park Service, U.S. Department of the Interior before the House Committee on Natural Resources, Regarding Tribal Co-Management of Federal Lands.” U.S. House of Representatives. March 8. [https://naturalresources.house.gov/download/director-charles-sams\\_-testimony\\_-nr-fc-ovr-hrg-30822](https://naturalresources.house.gov/download/director-charles-sams_-testimony_-nr-fc-ovr-hrg-30822), accessed December 16, 2022.

Sheldon, Karin P., and Pamela Baldwin. 2017. “Areas of Critical Environmental Concern: FLPMA’s Unfulfilled Conservation Mandate.” *Colorado Natural Resources, Energy & Environmental Law Review* 28(1): 1-66.

Slaton, Michèle R., Jeffrey G. Holmquist, Marc Meyer, Raymond Andrews, and Jacqueline Beidl. 2019. “Traditional Ecological Knowledge Used in Forest Restoration Benefits Natural and Cultural Resources: The Intersection between Pandora Moths, Jeffrey Pine, People, and Fire.” *Natural Areas Journal* 39(4): 461-471. [https://escholarship.org/content/qt8n71g28d/qt8n71g28d\\_noSplash\\_4d8cdc1a50aae714461c491622b4971c.pdf](https://escholarship.org/content/qt8n71g28d/qt8n71g28d_noSplash_4d8cdc1a50aae714461c491622b4971c.pdf), accessed December 16, 2022.

Stevenson, Marc G. 1996. “Indigenous Knowledge in Environmental Assessment.” *Arctic* 49(3): 278-291.

Taylor, Laura. 2022. “Predatory Paternalism: The Changing Rights to Water, Enforcement, and Spillover Effects on Environmental Quality in the American West.” Publication Number 29169588 [Doctoral Dissertation, University of Arizona]. ProQuest Dissertations and Theses Database.

Taylor, Laura, and Miriam Jorgensen. 2022. “Considerations for Federal and State Landback.” Harvard Project on American Indian Economic Development. Cambridge, MA. [https://ash.harvard.edu/files/ash/files/land\\_back\\_policy\\_brief180.pdf?m=1666224970](https://ash.harvard.edu/files/ash/files/land_back_policy_brief180.pdf?m=1666224970), accessed November 7, 2022.

The Pew Charitable Trusts. 2020. "BLM Ignores Own Findings in Proposed Management Plans." Fact Sheet. January 23. <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2020/01/blm-ignores-own-findings-in-proposed-management-plans>, accessed December 16, 2022.

Tsuji, Leonard J.S. and Elise Ho. 2002. "Traditional Environmental Knowledge and Western Science: In Search of Common Ground." *Canadian Journal of Native Studies* 22(2): 327-360.

Turley, Bethani, Alida Cantor, Kate Berry, Sarah Knuth, Dustin Mulvaney, and Noel Vineyard. 2022. "Emergent Landscapes of Renewable Energy Storage: Considering Just Transitions in the Western United States." *Energy Research & Social Science* 90: 102583.

U.S. Department of Agriculture. 2021. "Agriculture and Interior Departments Take Action to Strengthen Tribal Co-Stewardship of Public Lands and Waters." Press Release No. 0245.21. <https://www.usda.gov/media/press-releases/2021/11/15/agriculture-and-interior-departments-take-action-strengthen-tribal>, accessed December 16, 2022.

U.S. Department of Agriculture. 2022. "USDA Resource Guide for American Indians & Alaska Natives 2022." <https://www.usda.gov/sites/default/files/documents/usda-resource-guide-american-indians-alaska-natives.pdf>, accessed December 16, 2022.

U.S. Department of Agriculture. 2021. "Agriculture and Interior Departments Take Action to Strengthen Tribal Co-Stewardship of Public Lands and Waters." Press Release No. 0245.21. November 15. <https://www.usda.gov/media/press-releases/2021/11/15/agriculture-and-interior-departments-take-action-strengthen-tribal>, accessed December 16, 2022.

U.S. Department of Agriculture. 2020. "Best Practices Guide to Execute a USDA Forest Service 638 Agreement Under the Tribal Forest Protection Act." August. <https://www.fs.usda.gov/sites/default/files/Best-Practices-Guide-20200909.pdf>, accessed December 22, 2022.

U.S. Department of Agriculture. 2013. "Tribal Consultation, Coordination, and Collaboration." Departmental Regulation 1350-002. [https://www.usda.gov/sites/default/files/documents/USDA\\_DR\\_Tribal\\_Consultation\\_Coordination\\_and\\_Collaboration\\_OTR\\_final\\_1\\_18.pdf](https://www.usda.gov/sites/default/files/documents/USDA_DR_Tribal_Consultation_Coordination_and_Collaboration_OTR_final_1_18.pdf), accessed December 16, 2022.

U.S. Department of Agriculture and U.S. Forest Service, no date, "Research Natural Areas." <https://www.fs.usda.gov/detail/r1/specialplaces/?cid=stelprdb5172218>, accessed December 16, 2022.

U.S. Forest Service. 2022. "Santa Fe National Forest Land Management Plan." U.S. Department of Agriculture. July. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd1046331.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1046331.pdf), accessed December 15, 2022.

U.S. Forest Service. 2022. "Tribal Partnership Comparison Matrix." U.S. Department of Agriculture. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd1019068.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1019068.pdf), accessed December 16, 2022.

U.S. Forest Service. 2022. "USDA Forest Service Signs 11 New Agreements to Advance Tribal Co-Stewardship of National Forests." U.S. Department of Agriculture. <https://www.fs.usda.gov/news/releases/new-agreements-advance-tribal-co-stewardship>, accessed December 16, 2022.

U.S. Forest Service. 2018. "Tonto National Forest Wilderness Recommendation Process, Step 4: Recommendation." U.S. Department of Agriculture. <https://usfs.maps.arcgis.com/apps/MapSeries/index.html?appid=fa64c3221fd84517b1d406ff24746170>, accessed December 16, 2022.

U.S. Forest Service. 2018 (revised). "Tonto National Forest Wilderness Recommendation Process: Frequently Asked Questions." U.S. Department of Agriculture. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd598922.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd598922.pdf), accessed December 16, 2022.

U.S. Forest Service. 2016. "A Citizens' Guide to National Forest Planning." U.S. Department of Agriculture. June. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd509144.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd509144.pdf), accessed December 16, 2022.

U.S. Forest Service. 2015. "FSH 1909.12—Chapter 70 Wilderness." *Forest Service Handbook*. U.S. Department of Agriculture. January 30. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd645665.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd645665.pdf), accessed December 16, 2022.

U.S. Forest Service. 2004. "Tribal Forest Protection Act in Brief." U.S. Department of Agriculture. <https://www.fs.usda.gov/detail/r5/workingtogether/tribalrelations?cid=stelprdb5351850#:~:text=The%20Tribal%20Forest%20Protection%20Act,trust%20resources%20from%20fire%2C%20disease>, accessed December 16, 2022.

U.S. Forest Service. No date. "Planning Rule Overview Page." U.S. Department of Agriculture. <https://www.fs.usda.gov/planningrule>, accessed December 16, 2022.

U.S. Forest Service. No date. "Section 604 (16 USC 6591c) of Public Law 108-148 as amended by Section 8205 of Public Law 113-79, the Agricultural Act of 2014." U.S. Department of Agriculture. [https://www.fs.usda.gov/restoration/Stewardship\\_Contracting/section604.shtml](https://www.fs.usda.gov/restoration/Stewardship_Contracting/section604.shtml), accessed December 16, 2022.

U.S. Forest Service. No date. "Stewardship Contracting Overview." U.S. Department of Agriculture. [https://www.fs.usda.gov/restoration/Stewardship\\_Contracting/overview.shtml](https://www.fs.usda.gov/restoration/Stewardship_Contracting/overview.shtml), accessed December 16, 2022.

U.S. Forest Service. No date. "Working With Us." U.S. Department of Agriculture. <https://www.fs.usda.gov/working-with-us>, accessed December 16, 2022.

U.S. Forest Service and Intertribal Timber Council. 2020. "USDA Forest Service 638 Authority." Joint statement. <https://www.fs.usda.gov/sites/default/files/638-FS-ITC-Joint-Statement-SEP2020.pdf>, accessed December 16, 2022.

*United States Code*. Title 43, §§1701-1782—Federal Land Policy and Management Act of 1976, §201. <https://www.govinfo.gov/content/pkg/COMPS-1719/pdf/COMPS-1719.pdf>, accessed December 15, 2022.

*United States Code*. Title 54, §320301(b)—National Monuments, Reservation of Land. <https://www.govinfo.gov/content/pkg/USCODE-2014-title54/html/USCODE-2014-title54-subtitleIII-divsnC-chap3203-sec320301.htm>, accessed December 15, 2022.

Washburn, Kevin K. 2022. "Facilitating Tribal Co-Management of Federal Public Lands." *Wisconsin Law Review* 2022: 263-328.

Williams, Gerald. 2000. "The USDA Forest Service—The First Century." Publication FS-650. U.S. Forest Service. U.S. Department of Agriculture. July. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprd3795279.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3795279.pdf), accessed December 13, 2022.