

# Contemporary American Indian Land Issues



## Standard Three

### Curriculum Summary

Grades:



Sixth - Eighth

Students will develop knowledge and understanding of the myriad of issues affecting American Indian lands and the abilities of tribes and tribal communities to exercise sovereign powers.

#### RATIONALE

The third standard grapples with a variety of issues concerning Indian land that are relevant today. The evolution of federal Indian land policy has created a special “trust relationship” between the US federal government and American Indian tribes and tribal communities which extends to the lands they occupy. This trust relationship has created a complex set of issues that must be thoroughly understood by Indian communities in order for them to effectively exercise their sovereign powers and prevent further land loss, regain lost lands, realize benefits from good land stewardship and revitalize traditional connections to the lands. While contemporary challenges tribes face are very complex, these lessons will introduce the students to some basic concepts and knowledge that will stimulate their thinking about the importance of land to their community. Contemporary issues include continued land losses, land management problems, jurisdictional conflict, natural resource disputes, infrastructure shortcomings and the protection of sacred sites.

**Lesson 1:** Develop knowledge of ways of using natural gifts in a manner that either restores or balances environmental impact and support traditional relationships with the land.

**Achievement Goal:** Study the works of several tribal natural resource management practices and determine how they work to protect the natural gifts of the tribe.

In this lesson, students will participate in a short research project in which they will find information about a tribal department, an Indian non-profit organization or a federal agency devoted to care of tribal lands. They will summarize their findings in a short article about the groups they research and help create a map that shows these tribal environmental activities across the United States. Finally, they will brainstorm and write about what sort of

environment and stewardship activities they would like to see done on Indian lands by a tribe or non-profit organization.

**Lesson 2:** Gain an understanding of the various types of Indian land ownership and management by tribe, tribal members, and federal and state agencies.

**Achievement Goal:** Obtain maps and study various reservations that demonstrate the checkerboard pattern of land ownership by tribes, individual Indians, non-Indians, federal government, churches and other entities. 1 class period

This lesson will provide the outlines of an in-class lecture that seeks to explain to students the relevance of the Dawes Act to tribal sovereignty and Indian community well-being today. Although the lecture centers on exploring the allotment of Fond du Lac Reservation, the educator who chooses to teach this lesson should explore the possibility of using as the example the reservation on which most or all of the students live, if this is the case. The goal of this lesson, regardless of which reservation is examined, is for the students to understand the relevance of the Dawes Act and allotment today on many Indian reservations and why it is important for tribes to consolidate their landbases.

**Lesson 3:** .

**Achievement Goal:** Learn and explain, in one's own words, fractionation on Indian lands, the importance of the probate process, and how these things affect Indian self-determination. 1 class period

This lesson will teach students about fractionation and probate. If the students live on or near a reservation, they will find out more about the tribal land office or the BIA realty office. They will perform a thought-experiment to learn about exponential growth and fractionation. They will learn about some of the ways fractionation can be prevented and they will learn about probate records.

**Lesson 4:** .

**Achievement Goal:** Research tribal constitutions and laws and explain how tribes exercise sovereign control over their lands.

In this lesson, students will compare and contrast the tribal governments of three tribes. If the students are members of a particular tribe, they should include their own in this comparison. After comparing and contrasting the tribal governance of these tribes, the students will then create and present to the class a basic tribal constitution of their own.

## Contemporary American Indian Land Issues

### Achievement Goal:

Study the works of several tribal natural resource management practices and determine how they work to protect the natural gifts of the tribe

### Time:

Multiple class periods

### Core:

Science



Grades: 6<sup>th</sup> – 8<sup>th</sup>

## Standard Three – Lesson One

Indian Land Education

# Contemporary American Indian Land Issues



### Background:

Close spiritual and physical connection to the land and environment is a traditional value for indigenous peoples throughout the world. The belief that all people are merely a part of the land and have a place within the environment is common among most American Indian tribes as well. Careful management of natural resources is therefore essential in protecting not only the health and well-being of tribal members, but also protecting our culture.

The greatest challenge to the protection of natural resources is conservation on private land on the reservation. To meet this challenge, we must accept stewardship as a shared responsibility between tribal governments, tribal members, and the US federal agencies which should be called upon to help tribes due to the trust responsibility.

Fortunately, many tribes and Indian organizations have already begun to assert their right to be effective stewards of their lands in manners consistent with and driven by traditional values. Also, many of these departments and organizations work with other tribes, government agencies, and tribal colleges in partnerships, which ensures that efforts are broad based and rooted in consensus. In this lesson, students will participate in a short research project in which they will find information about a tribal department, an Indian non-profit organization or a federal agency devoted to care of tribal lands. They will summarize their findings in a short article about the groups they research and help create a map that shows these tribal environmental activities across the United States. Finally, they will brainstorm and write about what sort of environment and stewardship activities they would like to see done on Indian lands by a tribe or non-profit organization.

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## **Preparation:**

- Internet access for student research. Some websites of tribes, non-profits, and government agencies that may be of interest to students in this lesson are found in the resources section below.
- Map of the United States.
- Paper, envelopes and stamps for letter writing.

## **Student Activity:**

- Begin the lesson by describing to students how the environment is protected and improved on tribal lands. You may want to review with the students the authority tribes have to take care of their lands due to their inherent sovereignty and the role of the federal government due to their trust responsibility to tribes.
- Inform the students that they will be participating in a brief research project looking at various groups that conserve and protect Indian lands across the United States. The following groups are suggested subjects for the students research:

Tribal natural resource groups	Native Non-Profit Organizations	Federal Agencies
Nez PerceTribe (ID) Hoopa Valley Tribe (CA) Tulalip Tribe (WA) Coeur D'Alene Tribe (ID) Wampanoag Tribe (MA) Nooksack Tribe (WA) Ho-Chunk Tribe (WI) White Earth Tribe (MN) Seminole Tribe (FL) Osage Tribe (OK) Pueblo of Sandia (NM) Sitka Tribe (AK) Central Council of Tlingit and Haida Indian Tribes of Alaska	Northwest Indian Fisheries Commission Intertribal Bison Cooperative Great Lakes Indian Fish and Wildlife Commission Native American Fish and Wildlife Society	Environmental Protection Agency – American Indian Environmental Office

- Ask the students to choose a department or organization above. While performing a simple internet query, ask the students to answer the following questions:
  - Which tribe or tribes does this organization serve? In what geographic area does this organization or department work? What is the mailing address of this department or organization?
  - What kind of natural resources is this department or organization protecting? How do they do this?
  - Does this department or organization take into consideration traditional tribal values? If so, how?
- After this preliminary research is complete, ask the students to identify where the department or organization is headquartered on the national map.
- Have the students write their selected department or organization and ask for more information on the work they do. Review how to write an effective letter of inquiry with the students. Ask the students to include a brief note about how they will use this information and the date by which they would appreciate a response. As an alternative, you may permit some students to arrange for a telephone interview with someone from the department or organization. If this is done, work closely with the students to ensure adequate preparation for an effective interview.
- After the students receive mail back from the organization or complete their telephone interview, have them write a brief summary of their findings and present them to the class. Ask them to

write a brief paragraph that they may place on the national map. If the students would like to use pictures from publications they were sent, encourage them to do so. Have the map up on a wall during parent-teacher conferences or class open house events.

- Lastly, have the students brainstorm and write about activities they would like to see implemented on Indian reservations in order to conserve and protect tribal lands. Such ideas might include a native plant seed cooperative or native food and medicine garden, a big brother/sister project teaching children how to hunt and fish while maintaining proper numbers of fish and wildlife, or a water quality monitoring group. Have the students describe this organization in a one-page paper specifying why there should be a group or department performing these activities, where these activities will be held, who will be involved, and how this will help conserve and protect tribal lands and natural resources.
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## Evaluation:

- The goal of this lesson is for students to become aware of the various activities and organizations on tribal lands devoted to the protection and conservation of the tribal environment. Assess their understanding of the importance of such activities and organizations, and their ability to perform simple internet research, letter of inquiry writing, and research synthesizing from their brief report.
  - Through the students' paragraph describing their imaginary tribal environmental program or organization, assess the students' understanding of how groups and organizations can address the challenge of environmental stewardship.
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## Resources:

1. List of Tribal Environmental organizations, Intertribal Environmental Council  
<http://www.ntec.org/envgroup.html>
2. Bureau of Land Management, Cultural and Fossil Resources, and Tribal Consultation on the Public Lands, <http://www.blm.gov/heritage/>.
3. Tribal Natural Resource Departments:
  - o Nez Perce, [http://www.nezperce.org/Programs/department\\_of\\_natural\\_resources.htm](http://www.nezperce.org/Programs/department_of_natural_resources.htm)
  - o Hoopa Valley, <http://www.hoopa-nsn.gov/departments/naturalresources.htm>
  - o Tulalip, <http://www.tulalip.nsn.us/>
  - o Coeur D'Alene, <http://www.cdatribe-nsn.gov/depts/nr/>
  - o Wampanoag Tribe, <http://www.wampanoagtribe.net/resource/>
  - o Nooksack Tribe, <http://www.nooksack-tribe.org/Natural%20Resource.htm>
  - o Ho-Chunk Tribe, [http://www.ho-chunknation.com/government/executive/heritage\\_pres.htm](http://www.ho-chunknation.com/government/executive/heritage_pres.htm)
  - o White Earth Tribe, <http://www.whiteearth.com/naturalresources.htm>
  - o Seminole Tribe, <http://www.seminoletribe.com/services/water.shtml>
  - o Osage, <http://www.osagetribe.com/>
  - o Pueblo of Sandia, [http://www.sandiapueblo.nsn.us/environment\\_department.html](http://www.sandiapueblo.nsn.us/environment_department.html)
  - o Sitka Tribe, <http://www.sitkatribe.org/>
4. Indian organizations and consortiums:
  - o Northwest Indian Fisheries Commission, <http://www.nwifc.wa.gov/>
  - o Intertribal Bison Cooperative, <http://www.intertribalbison.org>
  - o Great Lakes Indian Fish and Wildlife Commission, <http://www.glfwc.org/>
  - o Native American Fish and Wildlife Society, <http://www.nafws.org/>
5. If you wish to include or explore other tribes, visit a helpful list of Tribal Governments at State and Local Government on the Net, <http://www.statelocalgov.net/other-na.htm>.

**Achievement Goal:**  
Obtain maps and study various reservations that demonstrate the checkerboard pattern of land ownership by tribes, individual Indians, non-Indians, federal government, churches and other entities.

**Time:**  
One class period

**Core:**  
Geography, Civics/Government



**Grades:** 6<sup>th</sup> – 8<sup>th</sup>

## Standard Three – Lesson Two

Indian Land Education

# Contemporary American Indian Land Issues



### Background:

Due to colonization, there has been a dramatic decline in native land holdings. Even the land base reserved for the exclusive Indian use and occupation by treaties has been greatly eroded.

One of the most destructive things to happen to Indian Country was the Dawes Act (also known as the General Allotment Act) of 1887, which divided up tribal lands and placed them in individual ownership. Although this legislation was enacted over a century ago, its effects are still one of the greatest challenges facing many Indian communities today.

Grade 6-8, Standard Two, Lessons Four and Five introduced students to the Dawes Act and the effect it had on Indian lands. This lesson will continue examining this important part of Indian land tenure history by exploring further how the Dawes Act continues to affect the Indian land base. This lesson will provide the outlines of an in-class lecture that seeks to explain to students the relevance of the Dawes Act to tribal sovereignty and Indian community well-being today. Although the lecture centers on exploring the allotment of Fond du Lac Reservation, the educator who chooses to teach this lesson should explore the possibility of using as the example the reservation on which most or all of the students live, if this is the case. The goal of this lesson, regardless of which reservation is examined, is for the students to understand the relevance of the Dawes Act and allotment today on many Indian reservations and why it is important for tribes to consolidate their landbases.

### Preparation:

- Print a copy of the Fond du Lac Reservation Landownership and Fond du Lac Ceded Lands map found on the tribal website on an overhead transparency. Or, use another means to present the map to students in class. This map is found at <http://www.fdlrez.com/nr/maps.htm>.

- Review the Indian Land Tenure Foundation's allotment pages and “tribe/reservation specific information” section for more information about allotment generally and the allotment of Fond du Lac specifically.
- Have an overhead projector available.
- Obtain a large poster board or paper for class map project.
- Create a land ownership vocabulary list using the terms you will introduce in the lesson, such as trust land, individual trust land, allotment, fractionation, fractionated interested, jurisdiction, etc. There is a glossary found on the Indian Land Tenure Foundation's allotment pages (see Resources section of this lesson), but you may want to make up your own definitions that will better engage the students.

## **Student Activity:**

- Begin the lecture with a basic history of the Fond du Lac reservation using maps to illustrate land cessions and modern day reservation size. Through treaties, many tribes ceded portions of their homelands to the U.S. government. This is the case of the Fond du Lac Band of Lake Superior Chippewa Reservation. The LaPointe Treaty of September 24, 1854 (10 Stat. 1109) was the last principal U.S. treaty between several bands of Chippewa inhabiting Northern Minnesota, Northern Wisconsin, and the Western Upper Peninsula of Michigan. In this treaty, the various bands of Lake Superior and Mississippi Chippewa ceded approximately 25% of the land areas of the present states of Minnesota and Wisconsin plus the balance of the Upper Peninsula of Michigan to the United States. The LaPointe Treaty established the Fond du Lac Reservation at 100,000 acres.
- The instructor should then tell the students how Fond du Lac was allotted by the Act of Jan 14, 1889, highlighting that while the Dawes Act was the main vehicle for allotting Indian lands nationally, many tribes were allotted according to tribe- or reservation-specific legislation. In telling the students about the allotment act, the instructor should focus on results: significant land loss, checkerboarding, and fractionation. The instructor should also review the terms on the vocabulary list so students are able to follow the remainder of the lecture.
- Land loss: In 1887, the Fond du Lac reservation was 100,121 acres. When the reservation was opened for allotment, 56,817 acres of the reservation were considered “surplus” and opened to non-native settlement. By 1935, 956 allotments were made, totaling about 40,903 acres. By 1935, 15,601 allotment acres had been alienated to non-natives by sales, patent in fees, and certification of owner competency. Today, only 23,077.22 acres of the reservation are in tribal trust (managed fully by the tribe). 16,823.04 acres are in individual trust. This mean allotment caused 60,220.72 acres to be alienated to non-Indians. The tribe only owns 23% of the land on their reservation!
- Project the landownership map of the Fond du Lac Reservation on the wall. The instructor should point out what the different colored parcels of land mean, reviewing the difference between tribal trust, individual trust, and fee lands.
- Checkerboarding: The most obvious thing about the landownership pattern on Fond du Lac is the fact that most tribal trust parcels are not consolidated or contiguous. Ask the students to brainstorm about what challenges this poses to the tribe in terms of jurisdiction, access to natural resources and wildlife, and tribal housing.
- Fractionation: Fractionation is a difficult concept to explain, but begin by pointing out one of the individual trust parcels on the map and explain to students that at least one of these single allotments on Fond du Lac has over 1,400 owners. Ask them to imagine how they would come to a decision on how to use the land with more than 1,399 other people! Explain that this problem is a result of a process called fractionation, whereby ownership of a parcel of land is divided between people (“heirs”) once an owner of interests in the parcel passes on. The chart at the Indian Land Tenure Foundation website depicting fractionation may help you illustrate this for the students:  
<http://www.indianlandtenure.org/ILTFallotment/introduction/fractionation.htm> . Explain to the students that highly fractionated lands are nearly unusable because it is so difficult for interest owners to decide how to use the land because there are so many of them. During the lecture, ask students to think about why fractionation is detrimental to Indian communities.
- At the end of the lecture, give the students time to indicate their understanding of this issue through a class discussion. You may begin by asking about the students' personal experiences with allotment in their family, or whether they live on an allotment. Or, you may ask the students to imagine what reservation life may be like if all the land within reservation boundaries was tribal trust land. The goal

of this discussion is to have the students relate the allotment of lands to their own life and have them think about what they can do about this issue to improve the future of their tribe.

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### **Evaluation:**

- At the end of this lecture, students should be able to name and describe the different types of land ownership on reservations, at least three major effects of allotment, and how allotment affects tribal well-being today.
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### **Resources:**

1. <http://www.fdlrez.com/> Fond du Lac Reservation
2. Indian Land Tenure Foundation, [www.indianlandtenure.org](http://www.indianlandtenure.org) .

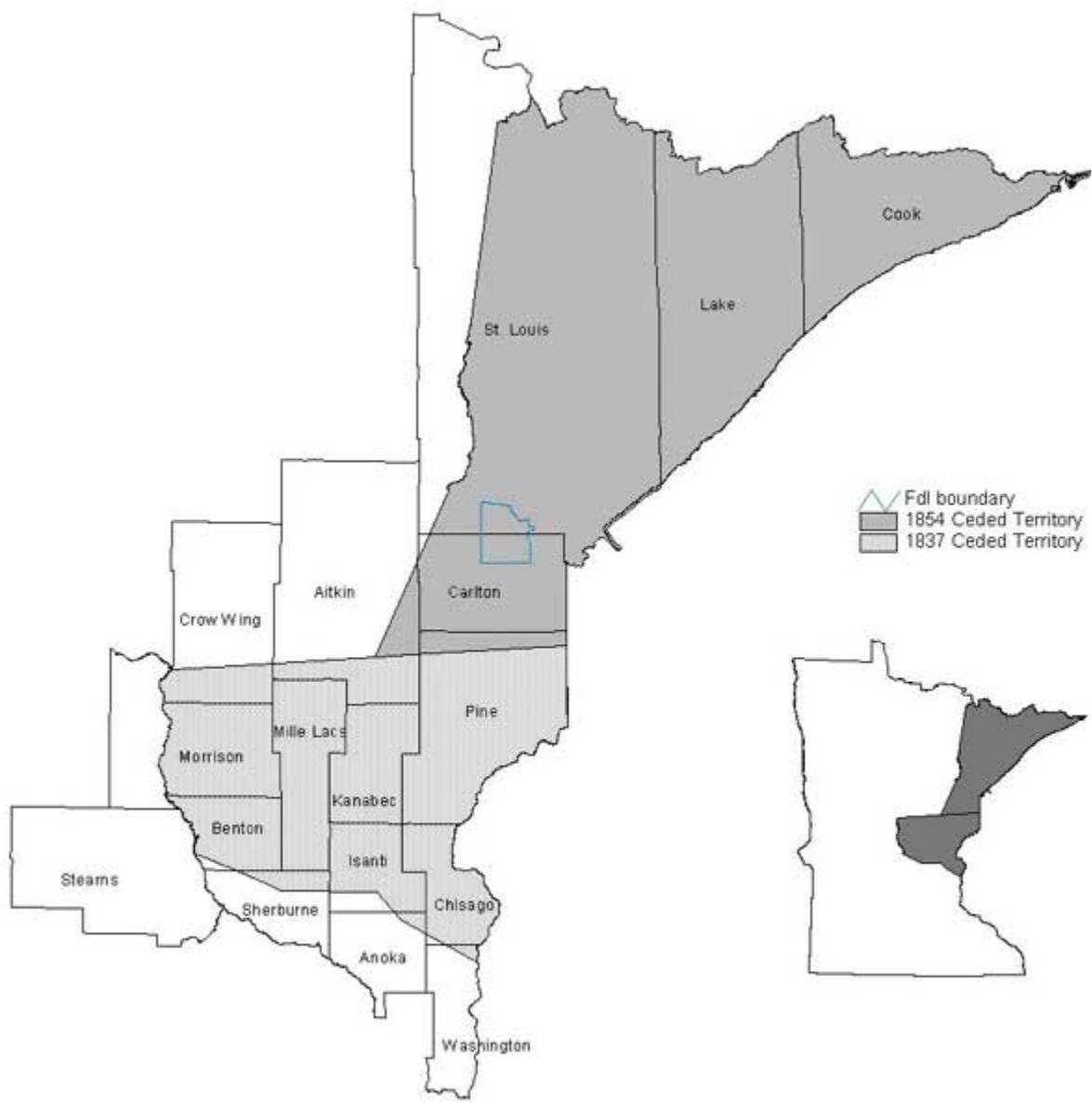
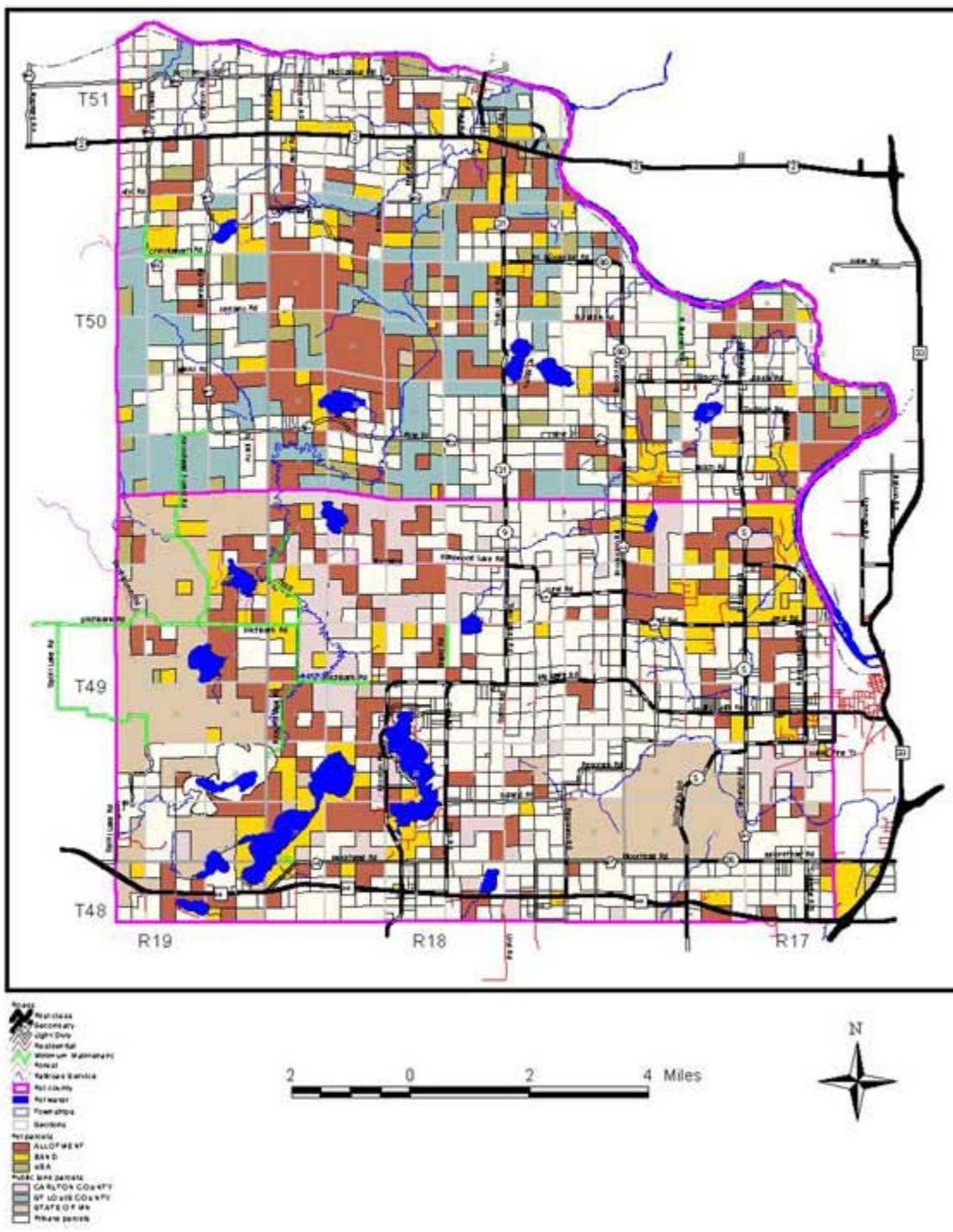


Figure 1 - 1854 and 1837 Ceded Territories in Minnesota

From Fond du Lac Reservation web:  
[www.fdlrez.com](http://www.fdlrez.com)

### Fond du Lac Land Ownership 1999



**Achievement Goal:**

Learn and explain, in one's own words, fractionation on Indian lands, the importance of the probate process, and how these things affect Indian self-determination.

**Time:**

One class period

**Core:**

Geography, Civics/Government



**Grades:** 6<sup>th</sup> – 8<sup>th</sup>

**Standard Three – Lesson Three**

Indian Land Education

# Contemporary American Indian Land Issues

**Background:**

This lesson continues the students' exposure to the history of the Dawes Act and how it continues to affect the Indian land base today. (See lesson four and five from Standard Two (grades 6-8) and lesson two of standard three.)

Not only did the Dawes act cause millions of acres on reservations to be opened for non-native settlement, but the act created the foundation for a huge bureaucracy necessary to record and track the individual ownership of native lands. The act also applied "probate law" to individuals who held allotments. Probate is the legal process by which state laws are applied to the property of deceased Indians to determine "who gets what", or the distribution of trust and restricted property of the deceased. (After the Indian Consolidation Act of 1983, tribal laws could also be applied to determine the distribution of property if the tribe created a probate code.)

This may seem like a very dry, boring issue to teach students. However, this application of state probate laws to Indian allotments has created one of the biggest threats to tribal sovereignty and one of the biggest challenges facing native people: fractionation.

Fractionation is the division of ownership in a piece of land between multiple people. Imagine having to come to an agreement on how to use a piece of land with a dozen or so co-owners, many of whom are your family members, and you being to understand the problems associated with fractionated land.

In more technical terms, once the person who was originally allotted a piece of land dies, if he or she did not write a will spelling out how the land will be given to heirs (or died "intestate" as this is called), state laws usually say that all the heirs of the original allottee

(such as remaining spouses and children) are given an “undivided interest” in the land. Undivided interests are ownership shares in an allotment. They are “undivided” because they do not correspond to an on-the-ground partition of land. In other words, everyone with an “undivided interest” co-owns every square inch of the allotment with other undivided interest holders.

Why should this be of interest to students? If young people care about tribal sovereignty and the meaningful use and stewardship of lands, they should care about fractionation. Fractionation makes it very difficult to do anything at all with land because the decision requires consent of all co-owners, which may result in family disagreements or division. Instead of being used for homes or spiritual or recreational purposes, land is either ignored or the owners depend on the Bureau of Indian Affairs as a clearinghouse for land leases which usually go to non-Indian interests. As a result, Indian landowners usually experience alienation from the land. To strengthen Indian self-determination, native people must find a way to prevent this. The students - the next generation of heirs and stewards of the land - must know about this challenge they will inherit.

This lesson will teach students about fractionation and probate. If the students live on or near a reservation, they will find out more about the tribal land office or the BIA realty office. They will perform a thought-experiment to learn about exponential growth and fractionation. They will learn about some of the ways fractionation can be prevented and they will learn about probate records.

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### **Preparation:**

- The format and activities of this lesson will be largely dependent upon the whether the school is on or near a reservation. Furthermore, it is dependent upon the realty functions within the tribe. If possible, a visit to the nearest Tribal Land Office or BIA realty office should be arranged for the students. The goal of the visit is for students to gain insight into the administration and record-keeping anchoring land in tribal or individual trust. Alternatively, a teleconference could be arranged between students and land office staff (with questions prepared beforehand) or a staff member could be invited into the classroom.
- If the educator is teaching about or within a reservation that was allotted, they should request a color map of landownership on the reservation to show students the degree of checker boarding on the reservation. These may be obtained from the tribal land office, GIS shop or BIA realty office. In requesting the map, emphasize that this is for the classroom only. If the teacher does not have access to such a map, a map that depicts checker boarding on Fond du Lac reservation in Minnesota is available at <http://www.fdlrez.com/nr/maps.htm>.
- To help illustrate the seriousness of fractionation, ask the students to come in with a family tree based on their own family. This need not be extensive, but there should be at least three generations depicted in this family tree beginning with a pair of grandparents. Aunts, uncles, cousins, brothers and sisters should be included in this family tree, preferably with dates of birth and death if possible.
- For this lesson, you may want to consider creating a fractionation role-play situation for the students. You may do so by dividing up the students into groups of 6 to 8 co-owners of an allotment. Create a land description of the students’ parcel, including size, where it is located in relation to town and roads, the type of land it is (arid pasture, forest, near a river, etc.), whether it has a family home or burial site, etc. Then, for each of the students, have them draw a description of their “role” from a hat. Ideas include a head of a family, a person living off the reservation, a person moving back to the reservation, a person involved in ranching or agriculture, an elder, a spiritual leader, a non-tribal member, and a person whose “whereabouts are unknown” (this person will be silent throughout the discussion and would not vote if a decision is being made.) Based on all of this information, have the students attempt to make a decision about the land in a certain period of time, perhaps 5 to 10 minutes. At the end of this role-play, have the student groups present their situation to the class, including a brief description of the land, who the land owners are, if they came to a decision, and what issues came out during the discussion. Encourage the students to use their imagination in their role – they may want to imagine they are in a dispute with a sibling, or they are well-off or need cash,

etc. Regardless of the role they create, however, encourage students to negotiate respectfully with each other, even if they desire to “drive a hard bargain”. The goal of this exercise is to reveal to students how difficult it may be for fractionated interest holders to make decisions about land.

- In this lesson, students should also be introduced ways in which fractionation can be further prevented. This is done through estate planning. A section of the Indian Land Working Group’s (ILWG) Estate Planning and Probate manual is attached to the end of this lesson as a reference for teachers. After reviewing this, consider assigning the task of estate planning to the students. Instead of parcels of land, have the students write about their “estate” – their bikes, or basketballs, or books, and other possessions. Or, the students may describe estates they may have in the future. While they may invest some creativity into describing these estates, ask them to include some realistic elements, such as interests they may inherit, or property they may share with siblings. After the students write a description of their estates, ask them to write up a one or two page estate plan to ensure their families and loved ones don’t end up divided over who gets what. Ask them to use the strategies listed in ILWG’s manual and think creatively about this.
- Review PBS’s lesson plan on probate at <http://www.pbs.org/kbyu/ancestors/teachersguide/episode11.html>. While not directed at native students, this lesson may provide an interesting way to introduce probate to the class.

#### Student Activity:

- To start this lesson, review with the students the Dawes Act and how it helped create a “checkerboard” of land ownership on many Indian reservations. Use the landownership map of the reservation to illustrate this.
- Review with the students what fractionation is. You may want to use the fractionation graphic and the Indian Land Tenure Foundation’s website to illustrate this to students. To further illustrate fractionation, have the children examine their family tree. Have them imagine one of their grandparents as an original owner of a 160-acre allotment who did not write a will. Based on the students family, ask the students to calculate how many owners of that allotment there are today if none of the family members drew up a will. Ask the students to calculate their share of the allotment based on this figure. Ask the students to share these numbers in class if they wish. Introduce the concept of exponential growth to students through this exercise.
- Ask the students to participate in the co-owner role-play exercise described in the “preparation” section of this lesson. Again, have the students share their thoughts and experiences after they complete this role play. Discuss why fractionation prevents land from being used or cared for in ways that promote self-determination, well-being, and sovereignty.
- Introduce to the students the process of probate, which is the process of legally determining “who gets what” of a persons trust assets after they die. Explain that if the person has a will and has done estate planning, this process is relatively easy and resolved relatively quickly. If the person dies without a will and has not done any estate planning, the probate is taken over by the BIA, and it may take years (and in some cases, decades) for the probate to be completed. Fractionation occurs, in part, because people do not write wills, which in the past was an alien or culturally inappropriate activity to many Indian landowners. If appropriate, introduce probate records to students by following the lesson plan at PBS’s website mentioned above.
- Ask the students to create an estate plan for their real or imaginary “estate”. Ask them to produce a one to two page paper outline their estate plan using the strategies mentioned in ILWG’s Estate Planning and Probate Manual.
- After the students complete these exercises, have them visit the local tribal land office, BIA realty office, or participate in a teleconference with a staff person. Alternatively, have the staff person visit the classroom. After their participation in the activities, they should have a better idea as to what is involved in managing land records and trust assets and thus, should have more informed questions to ask the staff person.

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#### Evaluation:

- The goal of this lesson is for students to understand how fractionation occurs, why it is detrimental to Indian self-determination, and some ways it can be avoided. Additionally, the activities provide opportunities for students to demonstrate negotiation skills and the ability to create plans for the

future. Within the role-playing activity, observe the student's ability to work within a small group and express his or her opinions respectfully to others. From the student's imaginary estate plan, evaluate their understanding of how people may avoid the continued fractionation of Indian land.

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## **Resources:**

1. Information on fractionated ownership of Indian lands, Tribal Court Clearinghouse, a project of the Tribal Law and Policy Institute , [http://www.tribal-institute.org/lists/fractionated\\_ownership.htm](http://www.tribal-institute.org/lists/fractionated_ownership.htm)
2. <http://www.indianlandtenure.org/ILTFallotment/introduction/fractionation.htm> Indian Land Tenure Foundation, Fractionation
3. "Probate Records", PBS.org, <http://www.pbs.org/kbyu/ancestors/teachersguide/episode11.html>
4. Indian Land Working Group, <http://www.ilwg.net/>.
5. Tribal Land Office.
6. BIA Realty Office.
7. BIA/DOI Tribal Land Regulations.

## **What you can do? Become involved in estate planning**

Estate Planning is deciding what you want to do with your land possessions. There are several options available to Indian landowners which not only prevent the land from being further divided, but enable landowners to consolidate their land interests into economically viable pieces of land in which they are the sole owner, or where the number of owners in a tract of land is greatly reduced. These options are explained in this manual.

### **Writing a Will (43 CFR 4.260)**

Do you have a will? Does your mother or father have a will? Does your brother or sister have a will? What will happen to your family's estate (land, possessions) if you don't have a will? These are important questions that need to be answered in order to be better prepared and to manage the affairs of your family in a healthy way.

The purpose for writing a will is to allow you to determine who will get your property.

1. The State laws if intestate succession (when there is no will) determine who will receive a person's property if he or she does not have a will. If there is a tribal inheritance code in place, this takes the place of the State law on your trust property. Many tribes do not have inheritance codes, so the State law is applied when there is no will. State Law:

- May give property in ways you would not choose;
- May divide property in amounts different than you would like;
- May result in property being taken out of trust or restricted status, for example when property passes to a non-Indian spouse by state law
- May cause further fractionation of property. This means more and more people own small pieces or "fractions of land." Because of the federal regulations in place today, this makes it difficult for any one of the owners to use the land, or for all the owners to lease the land, or for anyone to buy and sell any of the interests of land.

If you die without leaving a will, two people will decide how to divide your property among your heirs – the Administrative Law Judge (ALJ) of the Interior Board of Appeals (IBIA) and the state probate judge. The ALJ will decide how to divide your trust property – your interests in trust land on the reservation and any money you have in BIA trust accounts such as Individual Indian Money Accounts, better known as "IIM" accounts.

The state judge will divide up the rest of your property, also known as your estate, such as fee lands, automobiles, furniture, etc. They will divide your property between your heirs (your relations) according to the laws of the state in which your estate is located, the tribal inheritance code if there is one, and the Code of Federal Regulations. If you want to control how your property is divided among your heirs, you must write a will.

2. By writing a will, a person (testator: male person who writes a will; testatrix: female person who writes a will) can decide for themselves:

- Who gets his/her property
- In what amounts

- Under what conditions, if any
3. Wills can be used to:
- Change the distribution established under State or Tribal laws for intestate succession (dying without a will)
  - Provide a life estate for non-Indian spouse, friends, or relatives while keeping the property in trust or restricted status.
  - Determine the amount of property received by each individual
  - Impose conditions on the receipt of property
  - Prevent escheat of property (this means property going to the Tribe) if an individual has no legal heirs. For example – no spouse, no children, no parents/grandparents, no sister/brothers, no cousins, etc
  - Reduce fractionation
- Example: A testatrix has 4 children – Helen, Dave, Tom, and Paula. The testatrix decides to devise (will) all her interests in Allotments 134 and 141 to Helen. Helen already owns interests in these allotments; all interests in allotments 143, 144, and 156 to Dave an interest in allotment 234 to Tom because this is farmland and Tom is a wheat farmer; and all her interest in allotments 257 and 258 to Paula who is hoping to acquire enough land in either of these allotments for grazing purposes.
4. Life Estate
- A Life Estate gives someone use of property, and income from the property, during her/his/their life, with full title to the property going to someone else – the remainderman – the person(s) who will inherit the property. Oftentimes, this is the children. A Life Estate:
- Can protect the property from being sold or wasted
  - Provides for someone whom the testatrix/testator feels a sense of responsibility but does not want to leave property outright, e.g. a non-Indian spouse
  - Provides for family members – such as a non-Indian spouse – during their life time, while permitting property to pass to others – such as your children – who are Indian, which keeps the land in trust status, which means it will not be taxed, and will remain in Indian ownership.
5. Who can write a will?
- An individual who is 18 years or older
  - An individual who has testamentary capacity. This is a person who knows who their heirs are; what land they own; understands what a will does; and is not intoxicated or drugged
  - Someone who is not under undue influence. Undue influence means the person, who is having their will written, is being “dominated” by another person. This means that they might be threatened; promised something, or controlled in some way to write their will in a way that they do not want to write it
6. A legal Indian Will must meet the following criteria under 43 CFR 4.260:
- Written by an individual 18 years or older;

- Individual must have testamentary capacity;
- Must put the will in writing;
- Must declare the document as their “Last Will and Testament”;
- Must sign and date the will;
- The will must be witnessed, signed by two people and dated;
- The will should be notarized

## 7. Who can prepare a will?

The person who prepares a will is called a scrivener. A will can be entirely written by the testatrix/testator in their own handwriting – holographic will – however it must be witnessed by 2 people, signed, and dated.

A note on handwritten wills: The BIA and the ALJ will accept handwritten wills that have been properly witnessed. Properly witnessed means that two “disinterested persons” - this means two people that will not benefit from the will – witness and sign the will document.

Each state has unique requirements as to when they will accept a handwritten will. So, if your will passes on anything other than trust property, check the state laws where you reside.

- A relative may prepare a will for the testatrix/testator if they do not benefit from the will
- An attorney may prepare the will

If a relative or attorney prepares your will they need to follow federal guidelines covering Indian wills.

Sometimes there is an appointed Tribal employee who helps tribal members write Indian wills. It is preferred that you get help from this person to insure that the regulations covering Indian wills are followed.

## 8. Who keeps the will after it has been prepared?

Tribal probate and planning offices, or BIA probate offices who oftentimes have fireproof safes to store wills to prevent loss or destruction. These departments keep the original and give the individual a copy, if they desire. If you use someone else to prepare your will, you should provide these departments with a copy of your will to make sure it is read at the probate hearing.

## 9. Can a will be changed?

An individual can request to change their will. Wills changes are made by 1.) completely rewriting, 2.) or making minor changes with the use of a form called codicil. This depends on the amount of change which needs to be made.

## 10. A will becomes legal/official upon the death of the individual.

No property changes hands until the individual's death. The will must also go through the probate process to be reviewed by the Administrative Law Judge to determine if it is legal. Property does not change ownership, and income from the property is not distributed, until the probate has been completed. An exception to this is the use of monies from the decedent's estate to cover funeral costs.

Information and assistance for will-writing is provided by the local BIA agency or by your Tribal Probate, Land, or Realty Office. Often, the staff of the "Legal Aid Services" which are located within each state will assist you.

## NEGOTIATED SALE/GIFT CONVEYANCE (25 CFR 12.25)

An owner of an interest in trust land may acquire other interest from other co-owners, so that the interest the individual currently owns, plus the interest acquired, increases an owners share within a tract.

This may be accomplished by negotiated sale, where a purchase the interest from another owner. Or this may be accomplished through gift conveyance – the transfer of property, or title to property, from one person to another by means of a written instrument.

Gifts can be made without an exchange of money. Gift deeds are good way to avoid having your estate tied up in probate court while your relatives argue about "who should get what" after you have passed away. Gift deeds are also a good way to help fight the fractionation of your land by allowing you to give your undivided interests to your relatives in a way that prevent your interest from being further divided when you pass away.

Many people are afraid that misfortune will fall upon them if they write a will. Gift deeds are a way to avoid this fear. You can gift deed (give the title in land to someone else) while you are alive. But you can continue to use and benefit from your land. It is only when you die; that this use is passed on to the person to whom you gift deeded our land.

## LAND EXCHANGES

There are no regulations in 25 CFR for exchanges; however, most regulations for negotiated sales, however, most regulations for negotiated sales, acquisitions and partition may apply depending on the exchange to be accomplished.

Many owners hold small interest in more than one parcel of land. Another method of consolidation is to exchange your interest in one parcel for someone else's interest in another, so that you end up with a larger interest share in a parcel. For instance, look at the example on the following page. Co-owner A and B each own interests in allotment #100 and #101. Co-owner A exchanges their interest in allotment #101 for co-owners B's interest in Allotment #100. Co-owner A now has 2 shares in Allotment #100; co-owner B now has 2 shares in Allotment #101.

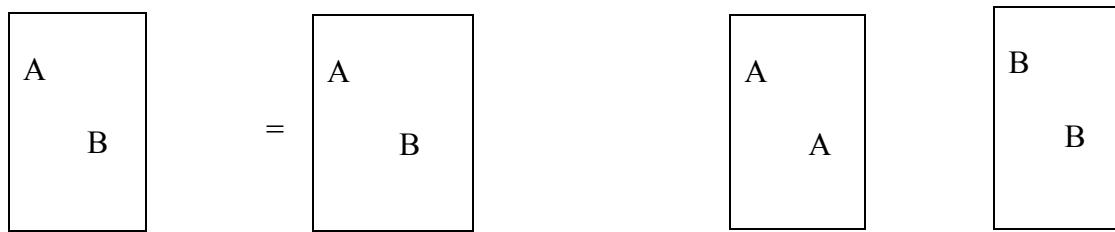
Example:

#100

#101

#100

#101



These co-owners were able to make value for value exchanges – trading interests of equal value – so as to increase and consolidate their interests within a tract(s). If the interests are not equal in value, money may be used to cover the additional value. Or one of the owners may choose to gift deed to the other co-owner for less than fair market value.

Currently, programs such as the Tribal Land Enterprise (TLE) of the Rosebud Sioux Nation offer exchange and consolidation options for tribal members. The TLE has developed the policy and procedures which allow a person to trade-in their fractionated interests for a consolidated tract equal in size and value to what was traded.

An Indian landowner has the option of receiving an assignment of land with title held by the tribe; or a trust deed where the individual holds the title. In both scenarios, the individual must designate one person, who is a tribal member, as heir to the assignment or trust deed. This prevents the land from once again becoming fractionated. Since many individuals are trading interests which they already own, lack of financing for acquisition of fractionated interests does not limit activity under this program.

## **PARTITION (25 CFR 152.33)**

If you own an individual interest in a large parcel of land, e.g. 80 acres, it may be possible for you and the other co-owners to divide the land. In a partition all co-owners should be in agreement as to the specific parcel each will eventually own when the transaction is final.

An Example: Acreage: 80 acres  
 Owners: 40 co-owners  
 You own: 10% of 80 acres

10% of 80 acres would be approximately 8 acres. If all the other co-owners are in agreement with the 8 acres your select, partitioning will make you the sole owner of these 8 acres. Partition can be difficult, because often co-owners cannot agree on who should own what; especially when there are a large number of co-owners. But in situations where there are a minimum number of co-owners, this option can work.

If it is possible to work out a partition, you could end up with 100% ownership of a tract of land instead of owning an undivided share. This can prove very beneficial, if, for example, this enables you to become sole owner of acreage which is also an approved home site.

## **JOINT TENANCY**

If there are a number of owners who each have interests in the same allotments – which often happens with brothers and sisters – all of these owners can place their interests either in Joint Tenancy or Joint Tenancy with Right of Survivorship.

Joint Tenancy with Right of Survivorship means that if one of the owners dies, his or her interest will automatically go to the surviving owners.

**EXAMPLE:**

5 brothers and sisters each owning a 2% interest in an 80 acre tract would own a total of 10 of 80 acres or 8 acres. These brothers and sisters could agree to draft a deed to place the 8 acres in Joint Tenancy with Right of Survivorship. Upon the death of 1 owner, the other 4 would own the 8 acres until eventually there would be 1 owner of the 8 acres. This is an anti-fractionation tool because you end up with just the owner on the 8 acre tract.

Joint Tenancy without right of survivorship would mean that upon the death of one of the owners, that person's share would pass to her/his heirs, which would not do as much to alleviate fractionation.

Both types of tenancy can get landowners thinking about forming family trusts or lease councils, where the assets are owned in common and one person(s) may be given power of attorney on matters such as land management and leasing. This could reduce the number of signatures required for leases and other matters on tracts that have multiple owners.

## **REVOCABLE LIVING TRUSTS/FAMILY TRUSTS**

A revocable living trust is an arrangement in which the grantor places property in a trust naming himself or herself or some other person a Trustee or Co-Trustee. Generally the trust agreement provides that upon the death of the grantor the property shall go to the named beneficiaries.

This automatically avoids all probate or the property. A revocable living trust can also be used to place income producing property in the trust to be managed by professional managers. However, the grantors can actively manage the trust property if it is appropriate at any time.

The use of revocable living trust avoids delays that are always involved in the probate courts, and prevents disruption that may occur where management of assets shifts after death. A trustee can distribute the assets of the estate immediately after death and needs no lawyer, judges or other legal experts.

Although this concept is largely untried in Indian country, members of the San Xavier District and the Couer d'Alene Tribe are using this option to manage assets and pass on property. Contact persons are identified in the Resource List in this manual.

## **WHERE DO I GO FOR ESTATE PLANNING HELP?**

The Legal Services Organization located within your state, your local BIA agency; your Tribal Enrollment and Planning Office, Tribal Realty Office or Tribal Probate Office. Be sure to check the Resource List located in this manual.

**Achievement Goal:**  
Research tribal constitutions and laws and explain how tribes exercise sovereign control over their lands

**Time:**  
One class period

**Core:**  
Civics/Government



**Grades:** 6<sup>th</sup> – 8th

## Standard Three – Lesson Four

Indian Land Education

# Contemporary American Indian Land Issues



### Background:

Tribal constitutions and codes are the heart of self-government. Each of the approximately 550 Indian tribes in the United States has a unique form of government. Some tribes have chosen to develop their form of self-government in accordance with their political and cultural history. Some tribes have adopted a governmental similar to that of the United States. Still others, such as the Pueblos of New Mexico, have chosen to retain their traditional forms of government. In order to understand how the different tribes are able to maintain sovereignty, an understanding of their specific constitutions and laws is required.

In this lesson, students will compare and contrast the tribal governments of three tribes. If the students are members of a particular tribe, they should include their own in this comparison. After comparing and contrasting the tribal governance of these tribes, the students will then create and present to the class a basic tribal constitution of their own.

### Preparation:

- Review the document: “The Evolution of Tribal Governments and Constitutions: A look at ten modern Tribal Governments and their Constitutions or Codes” produced by Humboldt State University’s Center for Indian Community Development. This document is found online at <http://www.humboldt.edu/~cicd/>. As sifting through multiple tribal constitutions may be too difficult for students, consider printing out and making multiple copies of Appendix A, Tribal Constitution Information Sheets. These sheets summarize the governance of several tribes, which may be of help to students when comparing and contrasting tribal governments.
- If the students’ tribe is not addressed by “The Evolution of Tribal Governments and Constitutions”, find the tribe’s constitution using the websites listed in the resources section below. If the tribe’s constitution is lengthy and written in too complicated a manner for students, prepare a sheet that summarizes the tribal governance that is similar to the sheets that are in the appendix of The Evolution of Tribal Governments and Constitutions.

- To help students with organizing their comparative analysis, see the Compare/Contrast Matrix graphic organizer example at <http://www.ncrel.org/sdrs/areas/issues/students/learning/lr1grorg.htm>. Note that for this exercise, there will be more than three columns.

## **Student Activity:**

- Begin the lesson by explaining to the students that because tribes are sovereign entities, they have tribal governments. Furthermore, each tribe has a unique form of tribal government which is either modeled on the United States government, based on traditional forms of government, or some combination of these. Explain that many tribes adopted or modified their governments and tribal constitutions due to the Indian Reorganization Act of 1934 which, the student should recall, ended the allotment era of American Indian land tenure history.
- On the board, write the basic parts of a tribal constitution (as specified by “The Evolution of Tribal Governments and Constitutions”):
  - Name or title
  - Preamble
  - Territory
  - Membership criteria
  - Governing body organization and duties
  - Election scheduling and voting criteria
  - Vacancies and removals
  - Powers of the General Council or Tribal Council/Executive Committee
  - Bill of Rights, civil rights of members pursuant to the Civil Rights Act of 1968 (82 Stat. 73)
  - Amendments, referendum, recall, or initiatives
- Have students select two tribes from The Evolution of Tribal Governments and Constitutions appendix. Hand out the tribal constitution of the students’ tribe or a sheet summarizing the constitutional provisions. Ask them to compare and contrast the tribes’ constitutions. Suggest that they create a compare/contrast matrix to help them with their analysis.
- After the students complete their comparative analysis, assign the students the task of creating their own tribal constitution in small groups. These tribal constitutions should include all of the components listed above except for amendments, referendum, and initiatives (but they should explicitly decide whether the constitution can be amended or not in their constitution.)
- The students will present their constitutions to the class. This can be in the form of an oral presentation, a poster presentation or other creative way of presentation.

## **Evaluation:**

- Evaluate the student’s tribal government comparative analysis. Does it cover the basic aspects of tribal government?
- Evaluate the constitution presentations to determine if they meet criteria for tribal sovereignty and self-governance.

## **Resources:**

1. “The Evolution of Tribal Governments and Constitutions: A look at ten modern Tribal Governments and their Constitutions or Codes”, Center for Indian Community Development, Humboldt State University, <http://humboldt.edu/~cicd/>
2. Native American Tribal Constitutions, University of Oklahoma, <http://thorpe.ou.edu/const.html>
3. Tribal Documents, National Indian Law Library, Native American Rights Fund, <http://www.narf.org/nill/tribaldocs.html>

4. Links to Tribal Constitutions, Codes, and Laws, Wisconsin's Judicare's Indian Law Office, <http://www.judicare.org/triballaw.html>
5. Native American Rights Fund, National Indian Law Library, Resources About Native American Tribal Enrollment, <http://www.narf.org/nill/enrollment.htm>
6. Tribal Constitutions and Bylaws, National Tribal Justice Resource Center, <http://www.tribalresourcecenter.org/tribalcourts/codes/constdirectory.asp>
7. North Central Regional Educational Laboratory, <http://www.ncrel.org/>.