

CHAPTER 27
FOREST TRESPASS

27-1 TITLE, PURPOSE AND DEFINITIONS

27-1.01 This chapter shall be known as the Kootenai Tribe of Idaho Forest Trespass Ordinance.

27-1.02 The purpose of this chapter is to obtain concurrent civil jurisdiction with the federal government to enforce 25 U.S.C. § 3106 and 25 C.F.R. § 163.29.

27-1.03 For the purposes of this chapter definitions shall be as defined in 25 C.F.R. § 163.1.

27-2 CONCURRENT JURISDICTION

27-2.01 Trespassers will be liable for civil penalties and damages to the tribal or federal enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass in tribal or federal court.

27-2.02 For trespass actions brought in tribal court, the measure of damages shall be as set forth in § 27-5 of this chapter. All other aspects of a tribal trespass prosecution brought under this chapter shall be that prescribed in the applicable chapters of the Law and Order Code of the Kootenai Tribe of Idaho.

27-2.03 For trespass action brought in federal court pursuant to this chapter or 25 C.F.R. § 163.29, the measure of damages will be as set forth in 25 C.F.R. § 163.29 and this chapter.

27-3 DETERMINATION OF TRESPASS

27-3.01 An authorized tribal or federal official operating under this chapter shall investigate and promptly determine if a trespass has occurred and issue a Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products.

27-3.02 The Notice of Trespass shall inform the trespasser, buyer or possessor:

- (1) That a determination has been made that a trespass has occurred;
- (2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in criminal and/or civil action by the Tribe or the United States.

27-4 SEIZURE

27-4.01 On-Reservation Seizure. When authorized tribal or federal officials operating under this chapter have reason to believe that Indian forest products are involved in trespass, the officials may seize and take possession of the forest products involved in the trespass if the products are located on lands within tribal jurisdiction.

27-4.02 Notice of Seizure. The person seizing forest products involved in a trespass must at the time of seizure issue a Notice of Seizure to the possessor or claimant of the forest products indicating:

- (1) Date of the seizure;
- (2) Description of the forest products seized;
- (3) Estimated value of the forest products;
- (4) An indication of whether the forest products are perishable;
- (5) Name and authority of the person seizing the forest products; and
- (6) Notice that the seizure action may be challenged in the Tribal Court.

A copy of the Notice of Seizure shall be given to the possessor or claimant of the forest products at the time of seizure. If the possessor or claimant is unknown, the Notice of Seizure shall be posted on the trespass property and kept with the incident report.

27-4.03 Sale of Perishable Products. If the property seized is perishable and will lose

substantial value if not sold or otherwise disposed of, the authorized tribal or federal official may cause the forest products to be sold. Such sale action shall not stay a challenge of the seizure action.

All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

27-4.04 Off-Reservation Seizure. When authorized tribal or federal officials operating under this chapter have reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under tribal or federal government supervision, the tribal or federal official responsible for investigation of the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

- (1) That such products could be Indian trust property involved in a trespass; and
- (2) That removal or disposition of the forest products may result in criminal and/or civil action by the Tribe or the United States.

27-5 CIVIL PENALTIES AND DAMAGES

27-5.01 Civil penalties for trespass include, but are not limited to:

- (1) Treble damages, whenever any person, without lawful authority injures, severs or carries off from lands within tribal jurisdiction any forest product as defined in § 27-1.03. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

- (2) Payment of costs associated with damage to Indian forest land, including, but not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity and damage to other forest resources.
- (3) Payment of all reasonable costs associated with the enforcement of this chapter beginning with detection and including all processes through the prosecution and collection of damages, including, but not limited to, field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs and attorney fees.
- (4) Interest calculated at the rate of eighteen percent (18%). Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass and calculated from the date of the trespass until payment is rendered.

27-5.02 Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under this chapter. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

- (1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; and
- (2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency and the cost to restore the trespass land. Forest management deductions shall not be

withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

27-5.03 Indian beneficial owners who trespass or who are involved in trespass upon their own land or undivided land in which such owners have a partial interest shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the Tribe.

27-5.04 Civil penalties and other damages collected under this chapter, except for penalties provided for in § 27-5.01(2) and (3) of this chapter, shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

27-5.05 The Tribe may enter into settlements for the payment of any damages associated with a case brought under this chapter. In the absence of a court order, the Tribe shall submit such settlement to the Secretary for approval.