



Rethinking Forest Regulations

Overview and Introduction

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- 1) Rethinking regulations in the world
- 2) History and overview of the different types of land ownerships in the USA
- 3) Why Montana?



RETHINKING REGULATIONS IN THE WORLD

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- 1) Regulations: Problems, causes, history
- 2) Emerging new approaches and “principles”



WHAT DO WE MEAN BY "REGULATION"?

- A legal term
 - General definition: *“Specific rules to enable implementation and enforcement of a law, has legal weight”*
 - Regulations differ from:
 - Laws: sometimes laws are passed and new regulations not developed
 - Policies: policies may be announced and treated as if laws or regulations – but they are not
- ➔ “Rethinking regulations” is largely about how to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, jobs, etc.)

Why “Rethink” Regulations?

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- 1) Forestry’s record, in many places, is very disappointing, and clear that existing regulations are part of cause:
 - Continuing deforestation and degradation
 - Widespread illegal logging and trade of illegal products
 - Fostering corruption, conflict, undermining governance and development
 - Unintended effects
 - Forestry is also one of the most socially regressive: e.g. rewarding large, penalizing the small – large/wealthy able to benefit **despite, or because of** regulations
 - Diminishing respect for law and judicial systems
- 2) Many regulatory frameworks do not respect customary or statutory land, civil or political rights, are unjust and lead to resistance.



Direct & Indirect Reasons for Failure (1)

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- 1) Sometimes real purpose is to raise revenue or control land for government– not to promote sustainable forest management
 - 2) Contradictions or **inconsistencies** between different laws, policies and regulations.
 - 3) Often regulations **are unrealistic**, too cumbersome (costly), or difficult
- ➔ Focus on enforcement often misplaced



Direct & Indirect Reasons for Failure (2)

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- 4) Regulations often inconsistent with property rights:
 - Public land (and different types of public land)
 - Private land
 - Indigenous peoples/ community land
- 5) Governments often don't have the capacity to monitor and enforce,
- 6) Often consider only the role of government and emphasize "command and control" (i.e. do not recognize, and take advantage of the rights, interests and incentives of each actor).

- Logging bans (e.g. Asia)
 - FLEGT – using trade to improve forest governance
 - REDD – global effort to stop deforestation
 - Latest ITTO Report: < 10% tropical forest managed sustainably – after 25 years of effort and hundreds of millions of dollars
- ➔ **Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining, investment)**

How This Has Played Out in the “Developed” World?

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Phases (Meidinger 2005):

- 1. 16th – 19th century:** state, industrial control of public and private forests
 - *Degradation, “elite capture”, corruption – economic growth*
 - 2. 20’s - ‘70’s:** focus on “enforcement” command and control – prescriptive regulations and management plans
 - *Gradual strengthening of civil society and rule of law*
 - 3. 80’s – now:**
 - *Public participation in governance (e.g. British Columbia)*
 - *Simpler rules, limited use of state power, educating stakeholders(e.g. Montana)*
 - *Market-based approaches (e.g. certification)*
- ➔ *Continued tension, learning, revision and reform, courts often the venue for setting direction*

How This Has Played Out in the “Developing” World?

1. **Lots of laws, fewer regulations**
 2. **Regulation** - mostly of public forests, often industrial concessions
 3. **90’s – now:** some innovation:
 - *Independent certification (e.g. all over, but limited)*
 - *Independent monitoring and transparency (e.g. Global Witness)*
 - *New policy regulatory approaches:*
 - *Of private and community lands (Brazil, China, Mexico)*
 - *Of access to public land (Indonesia, Brazil)*
 - *Regulating chainsaw sawmilling (Liberia)*
- ➔ *Yet, in many places, still focus on **enforcement** (e.g. FLEGT)*

Historical Premises to Conventional Approach

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1. Forest land ownership:

- Public, usually by the **central government** (king, crown, country)

→ increasingly owned or administered by **private households, communities or Indigenous Peoples**

2. Governance authority:

- Central **government** all powerful (and expert)

→ increasingly **decentralized to local** government authorities and **devolved to civil and private** sectors

3. Forest people/ communities:

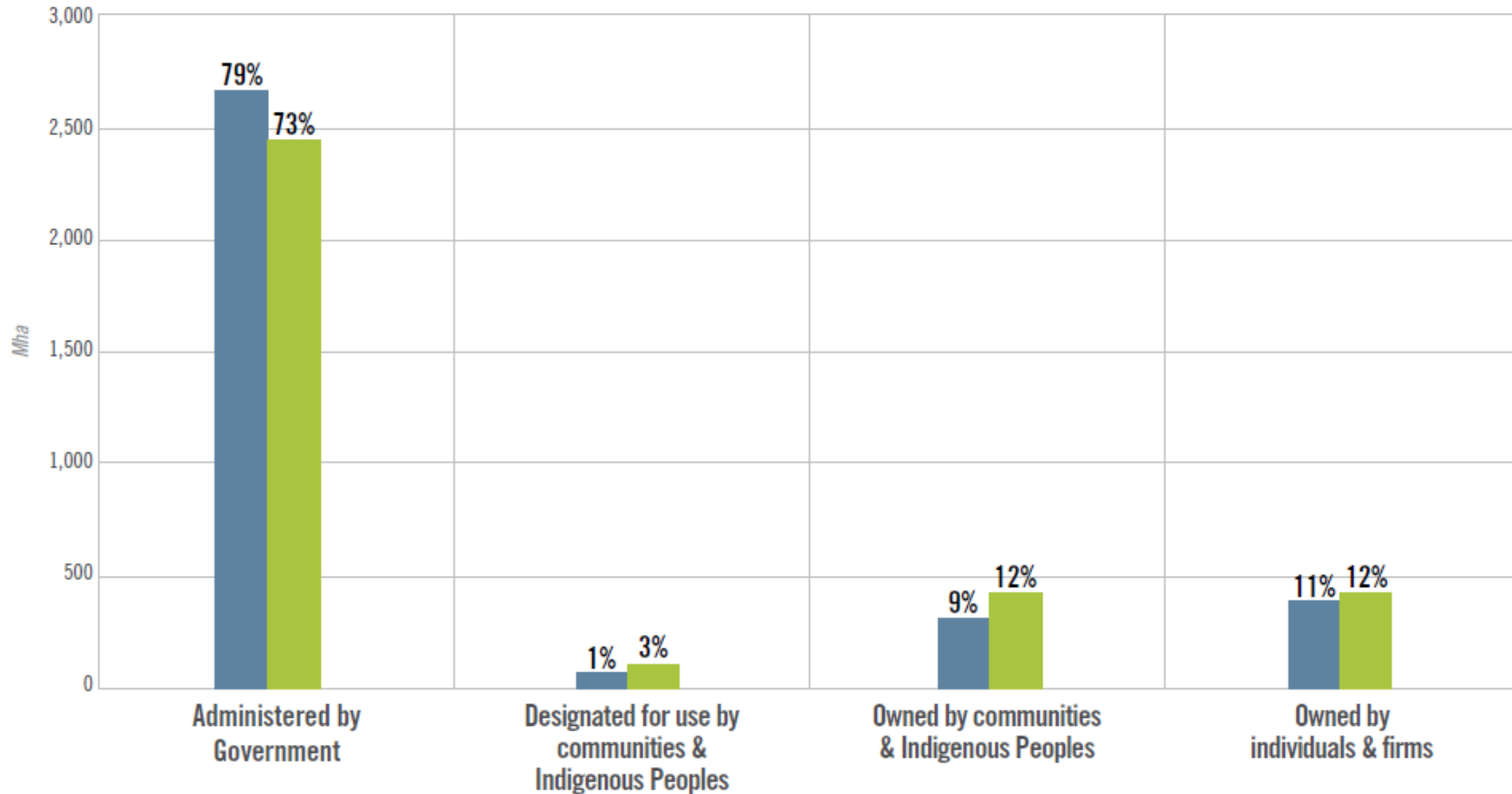
- **limited rights**, voice and political power

→ **increasing rights, voice** and capacity – with democratization

Some Promising Trends in Forest Tenure

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■ 2002 ■ 2012

Note: The countries included here cover 85 percent of the world's forests.
For full details see: www.rightsandresources/tenuredata.

- Certification
- Voluntary “best management practices” (BMPs for timber harvesting and management).
- Independent, non-government monitoring and verification
- Transparency – of forest use, monitoring, impacts
- Education and dissemination of standards, positions, issues, impacts;
- Stakeholder interactions: conferences, committees, boards and other interactions to reach consensus.
- Corporate codes of conduct – self-policing
- Joint management and partnerships between government and non-governmental organizations

THE FOUR PRINCIPLES

1. Recognize ***land rights*** and design different systems for each type
2. Carefully ***identify priority problems*** and then ***prioritize action***
3. Governments create ***favorable conditions*** for key rights holders and *only do what no other entity can do*
4. Focus on ***desired outcomes***

1. Recognize tenure and design different regulation systems

Must examine:

- Constitution, land laws, forest laws, customary rights
- Laws and treaties regarding Indigenous Peoples and other special groups
- Other sector laws (mining, transport, environment) (for overlaps)
- International commitments (e.g. ILO 169 UNDRIP)

2. Prioritize

Focus on:

- most important values/resources
- most important and critical locations and habitats; demonstration effect considered
- most relevant operators – those with potential to cause most damage



3. Do What Only Governments *Should* Do: Create Favorable Conditions

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- Build systems that reflect and take advantage of stakeholder rights, interests and incentives
- Develop or ensure political support across key constituencies
- Develop an inclusive process that will involve all stakeholders in decision making, encourage adaptation and learning
- Ensure full transparency, so stakeholders monitor each other's behavior and encourage progress
- Find the adequate mix between regulations and voluntary guidelines

3. And what governments *can* do

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- Catalyze and facilitate process to identify priority problems and new standards
 - Ensure transparent processes -- encourage action by civil society and private sector
 - Ensure respect of property and civil rights
 - Limit, and judiciously use coercion (regulations)
 - Facilitate processes to compensate for “market failures” (e.g. ecosystem services)
 - Ensure education of all key stakeholders (on standards, costs, benefits)
- ➔ **Don't have to “DO” all of these things, just need to make sure that they are done.**

4. Focus on Desired *Outcomes*

- ➔ Regulations that describe ***desired outcomes*** or results – as opposed to prescriptive ***how to's*** -- can be more effective and often less expensive.
- ➔ Show a picture, literally, or paint it with words:

Provide steamside buffers where needed to provide breeding habitat for migratory birds

VS

Provide 50 foot buffers on all class 3 streams

Maintain a stand density to enable restorative fires to burn and enough sunlight and nutrients to support a healthy stand

VS

Cut only trees under 28 inches and only lodge pole or white fir.

1. How must political will to revise regulations despite resistance and perceived risks?
 - Within agencies: Overcoming internal resistance/vested interests in current system
 - Across the government: developing constituencies for reform
 - Across stakeholder groups: building understanding and relationships
2. How to make use of current global attention to “illegal logging” and REDD?



OWNERSHIP TYPES AND HISTORY

- TRIBAL LANDS <3%
- PUBLIC LANDS (Federal, State, Local) 34%
- PRIVATE (Industrial, Small Woodlots) 66%





For this week in Montana

Major Themes of US Tenure History

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1. Tenure policy emerged from our history as a nation, has evolved over centuries.
2. A National Forest System (70 M h) formed 100 years ago out of public outrage over land degradation; management from industrial to community model.
3. State forests formed to generate revenue for education/infrastructure; managed differently by each State's unique regulations.
4. Private forests (170 M h) have a produced wealth for the individuals and the nation. Each state in US has different regulations for private lands management.
5. While small, tribal forests today are well-managed, using innovative ideas, and key sources of wealth for tribes and the country.

U.S. Westward Expansion

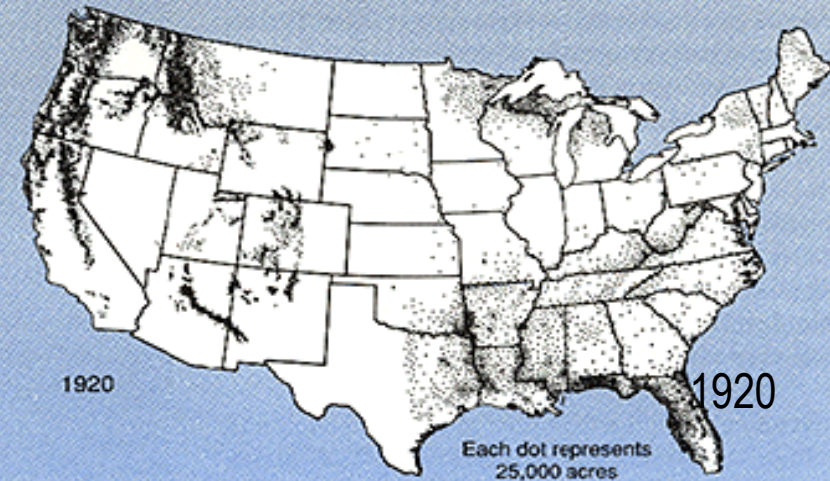
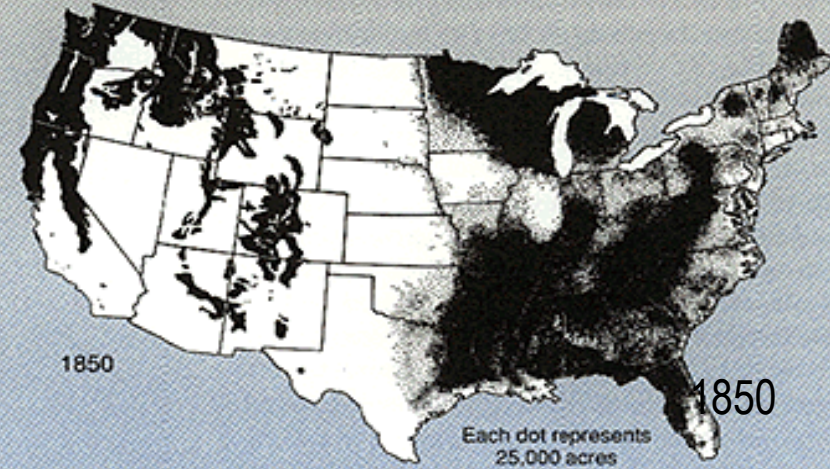


Early History





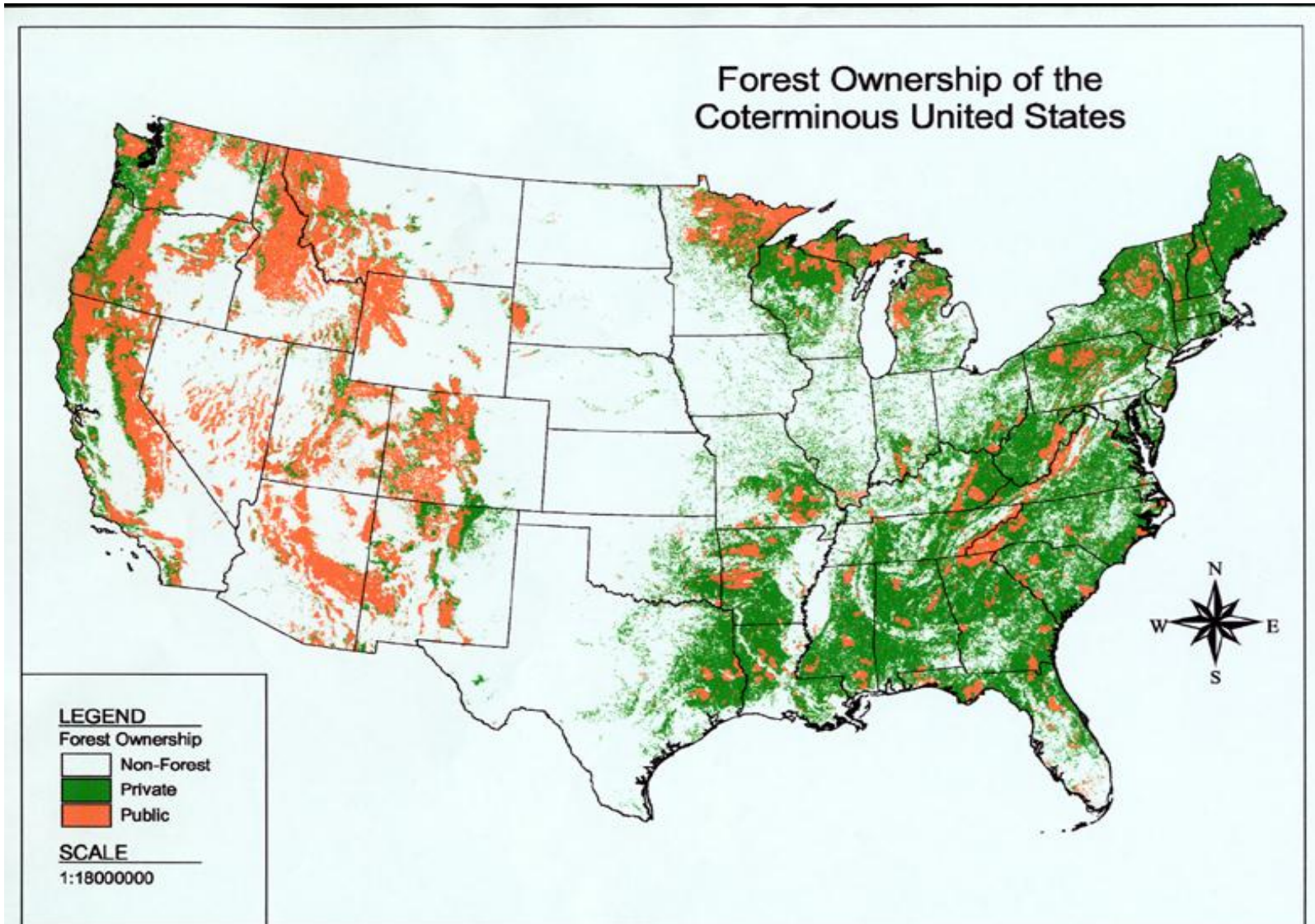
Forest Land in US: 1620, 1850, 1920



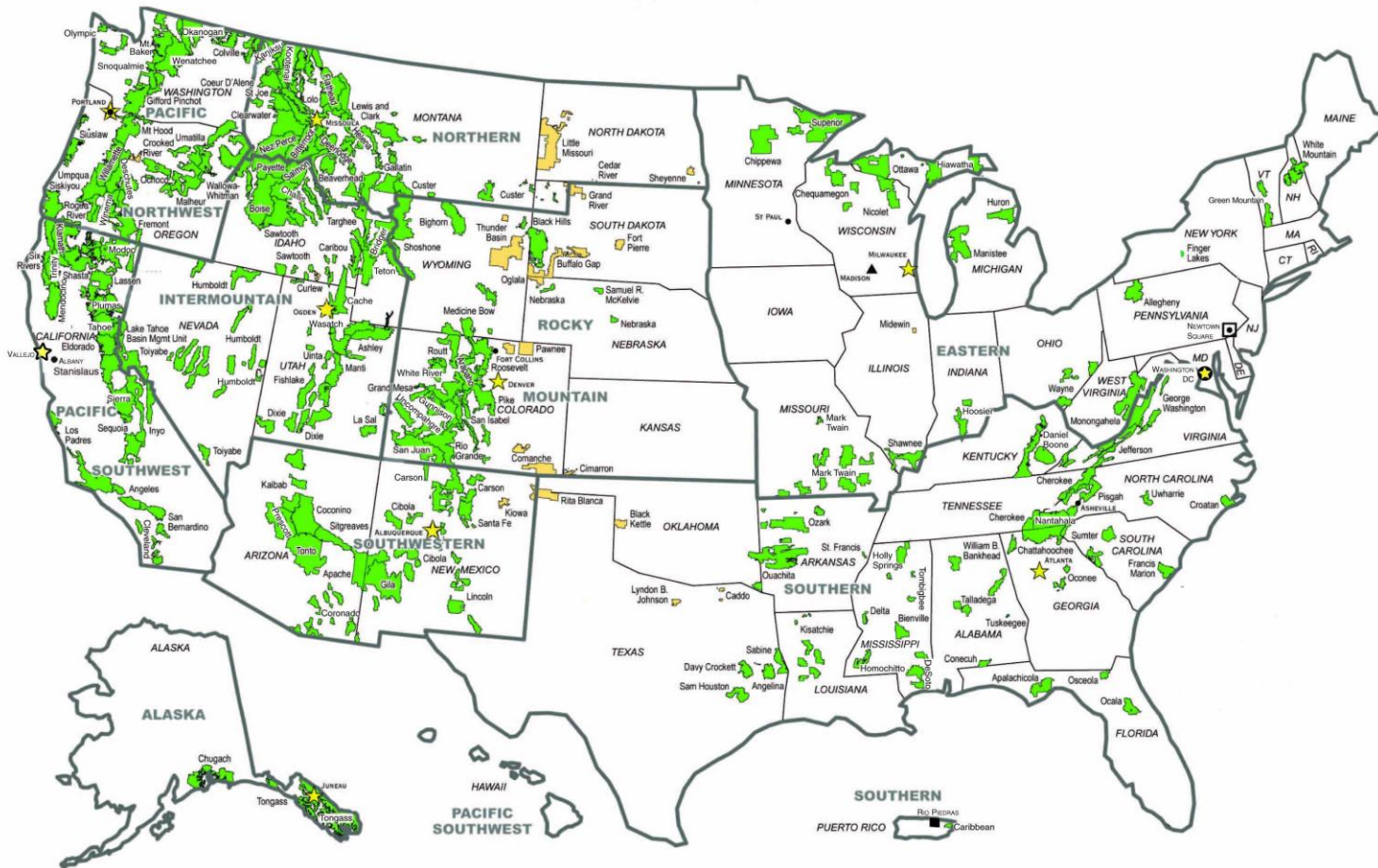
The US Forest Estate Today

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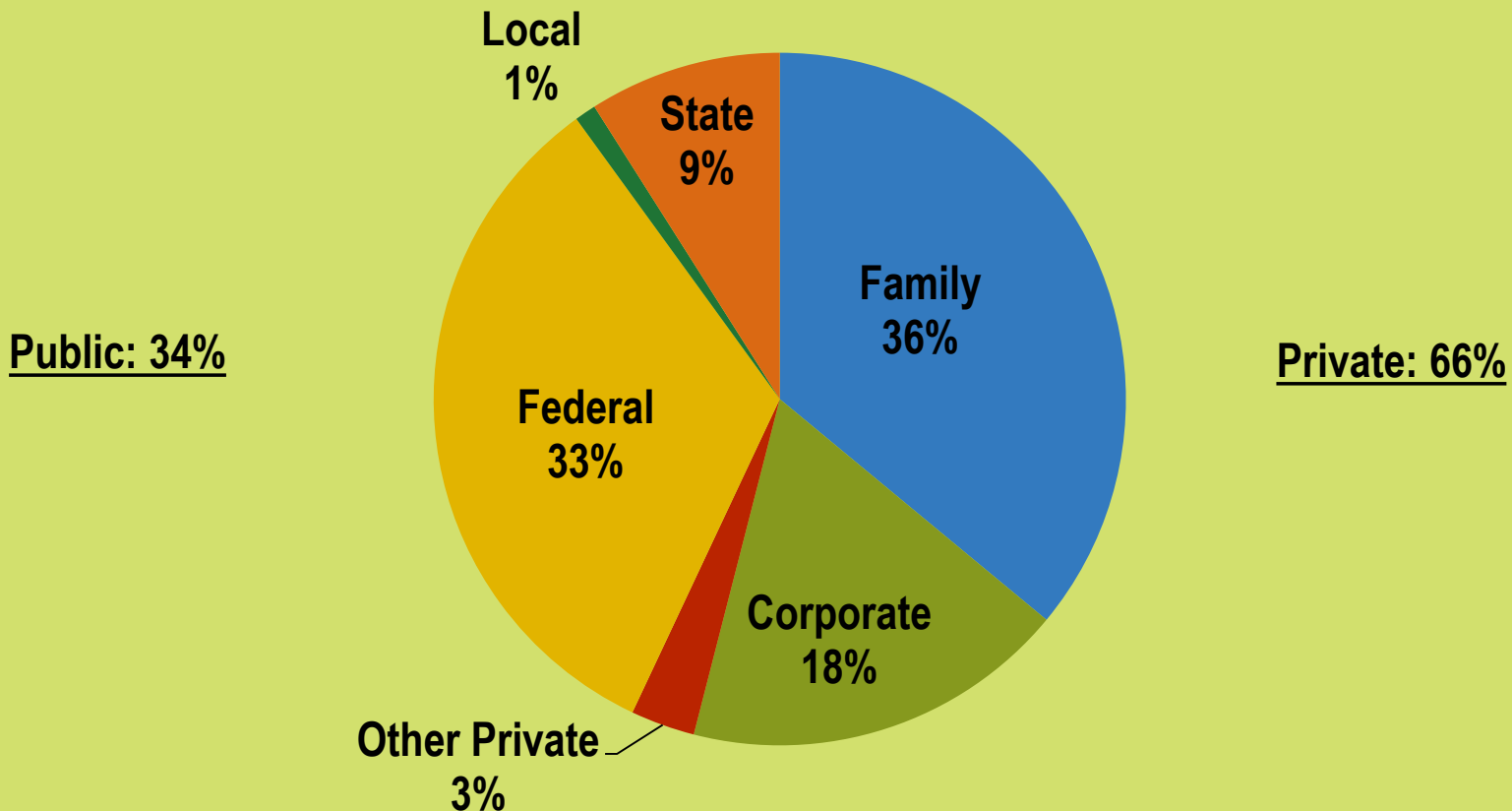
National Forests



- 192 Million Acres/70 Million Hectares
- Boundaries continually changing; acreage added each year

★ National Headquarters
 National Forests
 National Grasslands
 Regional Boundaries
 International Institute of Tropical Forestry
★ Regional Headquarters
 • Research Station Headquarters
 ▲ Forest Products Laboratory
 □ State and Private Forestry Area Headquarters
 (In other Regions these activities are directed from Regional headquarters)

Distribution of Forest Land Ownership in the United States, 2006



*Includes nongovernmental conservation organizations, unincorporated partnerships, and Native American lands.



Changes in National Forests Management

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Historical Approach

- *Large scale*, long-term (30-50 yr) timber concessions
- *Purpose*: timber production
- *Primary product*: commercial timber
- *Who benefits*: highest bidder in timber industry
- *Methods*: Top-down agency prepares and executes

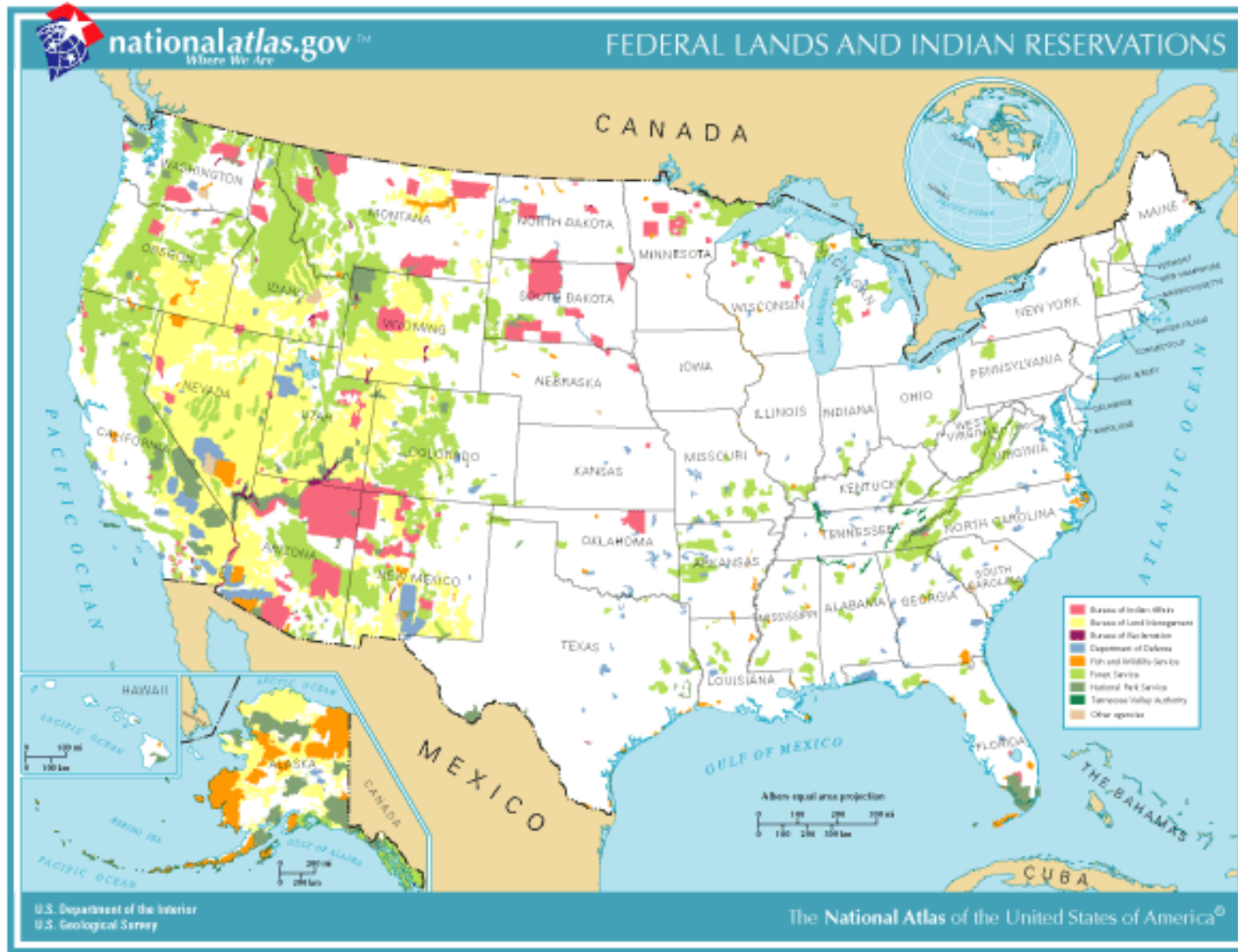
Today's Approach

- *Small scale*, shorter-term stewardship contracts
- *Purpose*: forest restoration
- *Primary products*: recreation, wildlife, wood for biomass, small diameter wood
- *Who benefits*: communities, tribal groups, new restoration industries.
- *Methods*: collaboration with public.

- No federal law directs private forest management –that is left to State government—each with their own forest protection laws.
- Private Land owners have immense rights
- Results are overall very positive
 - Wealth was created for private owners and nation: Contribution to GDP: \$277/per acre more than public lands (\$318 vs \$41).*
 - Provided important recreation, wildlife, and watershed resources to the nation.
 - Future Challenges: managing whole landscapes

* 2009 Forest2Market, Inc

Tribal Reservation Lands



- Treaties signed and promises broken
- *Reservations* created and Indians re-located in 1800's
- Last 30 years: new assertion of *Customary Rights* for fishing, hunting, small enterprises from/on public lands
- Indian Forest Lands are well-managed and make significant contributions to livelihoods of tribal members, the nation:

“Striking a balance between quality wood products and ENVIRONMENTAL PRIDE” (Warm Springs Forest Products Industries)



1. Different types of tenure - public, private, tribal – have all played critical, often complementary roles
2. The overall success is best measured by the stable forest land base for the past 100 years
3. National Forest management today is focused not on revenue generation but on restoration and protection of ecosystem services, like source water protection, wildlife, recreation
4. Both the Indian lands and private lands have been largely well-managed and contributed to the ecological and financial wealth of the nation
5. Management of state lands, in several US states like Montana, may be a good model for emerging economies



WHY MONTANA

Promising regulatory systems

Main characteristics:

- One regulatory system for each ownership type
- Stimulated collaboration across landscapes and ownerships
=> Transparency and inclusion
- Federated stakeholders around a shared goal





Innovations on State and Federal Lands

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Montana State Trust Land Management

- The Federal Government granted these lands to the state under the Enabling Act at the time of Montana 's statehood in 1889. The lands were granted for the sole purpose of generating income for support of the common schools and other public institutions.
- The state's responsibility: managing those lands to maximize long-term revenue while promoting healthy and diverse forests.

Stewardship Contracting on Federal Lands (Public Law 108-7):

- The section of this law allow the Forest Service and Bureau of Land Management to enter into long-term contracts (up to 10 years) with communities, private organizations or businesses to meet land-management objectives (for example, to reduce wildland fire risk and improve forest and rangeland health).
- Innovative way to achieve land management goals while meeting local and rural community needs.



Voluntary approach to regulate Private Lands

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- Non-Regulatory Approach: set of voluntary practices to improve Forest Practices and minimize impacts to water, soil and other forest resources.
- Establishment of Water Quality Best Management Practices for Montana Forests with specific guidelines construction, timber harvesting, stream crossings, hazardous substances use, etc.
- Focus on Landowner and Logger Education programs.
- Monitoring of the state through biannual field audits.
- Proof of Success: a 97% compliance rate!
- Reason for success: credible threat of imposition of high-cost, enforced regulations



One of the best organized and well managed Indian Lands in the US

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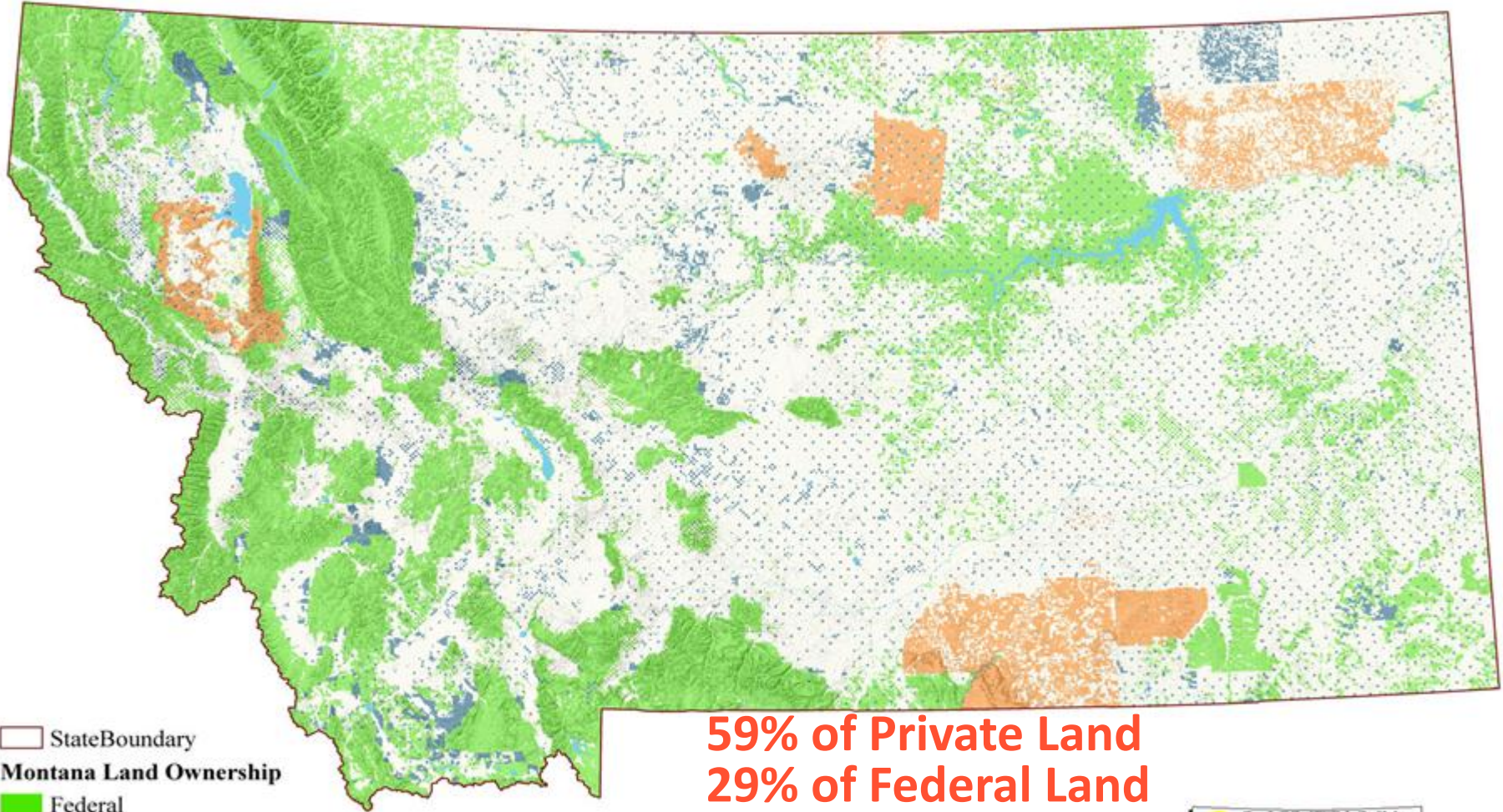
- Under the supervision of the Bureau of Indian Affairs, tribes have the power to regulate the use of resources within the boundaries of their reservations.
- Example of the Confederated Salish and Kootenai Tribes (one of the ten tribes nationwide to participate in a Self-Governance Demonstration Project initiated in 1988):
 - More progressive forest management plans developed for the Flathead Reservation every 10 years (current focus on ecosystem management).
 - Management of 70 Tribal programs and of more than one hundred federal, as well as state programs on the Reservation.
 - More than two hundred forty-five thousand acres (99 thousand hectares) of Reservation land repurchased since 1944.



Land Ownership in Montana

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- StateBoundary
- Montana Land Ownership**
- Federal
- Private
- State
- Tribal
- Water

**59% of Private Land
29% of Federal Land
6% of State Land
5% of Tribal Land
1% of Water**



THANKS VERY MUCH

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