

# More Tribal Protection Act Work Now Possible Under 638 Authority

By Andrea Watts and Don Motanic

The Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill, signed on December 20, 2018, included two provisions that expanded the ability of tribes to develop forest management projects on national forests. (To learn more about the 2018 Farm Bill, visit <https://www.fs.usda.gov/managing-land/farm-bill>.)

These provisions are crucial because “Indian tribes and the U.S. Forest Service share 2,100 miles of contiguous boundary,” writes Cynthia Harris in the article “Reasserting Tribal Forest Management Under Good Neighbor Authority.” (Harris is the director of tribal programs and the deputy director of the Center for State, Tribal, and Local Environment Programs at the Environmental Law Institute, and the article is available at <https://tinyurl.com/35wrr6hc>.) Additionally, the Forest Service itself recognizes the value in working across jurisdictions with its “All hands, all lands” approach to managing landscapes since wildfires and insect outbreaks don’t remain confirmed within property boundaries.

One of the provisions widely touted in the news was the expansion of the Good Neighbor Authority to tribes, along with states and counties. Since there was already administrative infrastructure in place to approve Good Neighbor Authority projects, tribes could begin applying for projects and implementing the work. The other lesser-known provision in Section 8703 Tribal Forest Management Demonstration Project permits the Forest Service to “enter into ‘638 self-determination demonstration project agreements’ with Tribes to take over the management and functions of the Federal government under the Tribal Forest Protection Act (TFPA) with certain conditions.”

## What is the 638 Authority?

The 638 is shorthand for the Public Law 93-638 Indian Self-Determin-



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According to Molly Alves (pictured), a wildlife biologist with the Tulalip Tribes, the three-year funding provided by the 638 agreement will allow the Tulalip Tribes to expand the reach of their beaver relocation project into the neighboring Stillaguamish watershed.

ation and Education Assistance Act. Passed in January 1975, Sec. 900.2

(a)(1) of the act outlines its purpose:

Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of edu-

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cational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities.

(<https://tinyurl.com/5wrf5tda>)

At the time, the law applied to the Department of Interior and Health and Human Services. Now, as a result of the 2018 Farm Bill, the law applies to the Forest Service.

With this new authority came the need to develop an infrastructure around the 638 authority process. After a year and a half development, of which the ITC was a key partner, last summer the Forest Service and ITC held two webinars to introduce the 638 authority process. To supplement the webinar, the Forest Service published *USDA Forest Service 638 Webinars Questions & Answers*.

### 638 Authority in action

Under the 2018 Farm Bill, the Forest Service is permitted to implement 10 pilot projects that are eligible under the TFPA; the purpose of the TFPA is succinctly described by the Intertribal Timber Council (ITC) as “to protect tribal trust lands at risk and restore lands administered by the Forest Service and Bureau of Land Management such as catastrophic fires, insects and disease.”

The Tulalip Tribe in Washington State has the distinction of being the first tribe to sign a 638 agreement with the Forest Service in support of expanding their current beaver restoration project.

In the joint press release announcing the 638 agreement, which was accompanied by a virtual joint signing ceremony, Tulalip Tribes’ Chairwoman Teri Gobin said, “Tulalip has been working collaboratively with the Mt. Baker-Snoqualmie National Forest to steward our ancestral lands for quite a few years. The beaver reintroduction effort is our first project

under the Tribal Forest Protection Act. We are glad to be the first tribal nation to utilize USDA’s new 638 authority in funding this project.”

The Tulalip Tribe Beaver Project relocation program is restoring and creating salmon habitat where the beaver dams provide; a conflict-free place for beavers to live, plus habitat improvements that support increased plant and animal biodiversity diversity, other wetland animals, including birds and other fish. The beaver ponds also help control soil erosion, lower stream temperature, store fresh water and recharge aquifers, mitigate

missible for state agencies and other approved organizations to relocate beavers.)

At the project’s beginning, The Tulalip Tribes relocated beavers within the Skykomish watershed on the Mount Baker-Snoqualmie National Forest. A couple years later, Alves says they expanded to relocate beavers in the entirety of the Snohomish watershed. And “under this 638 agreement, this [three-year] funding is allowing us further expand the project into the South Fork of the Stillaguamish watershed,” she said.”

Through earlier grant funding, they



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**Reintroducing beaver back onto the landscape can result in a number of ecosystem benefits, such as reduced flooding, controlling soil erosion, and recharging aquifers.**

draught and reduce flooding, among numerous other benefits.

Molly Alves, a wildlife biologist with the Tulalip Tribes, has been involved with the project since its beginning. “We started relocating beavers in 2014, which at that time it was actually illegal to relocate beavers in western Washington,” she explained. “There’s actually a piece of legislation called the Beaver Bill, believe it or not. We were operating under the sovereign rights of the tribes to create and restore salmon habitat.”

(In 2017, the bill was amended by the state legislature, and it is now per-

had conducted habitat assessments to identify potential relocation sites, and this summer, they expect to begin the beaver relocation. “We’ve been very honored to pave the way for other tribes to have an agreement with the Forest Service,” Alves said. “We know it’s a very big deal so we’re trying to do everyone proud.” *WF*

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