



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title I: Commodities

Key Points and Recommendations

- Indian Country is heavily invested in commodity food production, especially livestock, which makes up nearly \$2 billion of agriculture income for tribal producers.
- Ensure tribal producers' eligibility for all disaster assistance programs in Title I, and increase payments to 90 percent of value to acknowledge their unique land and market issues.
- Create parity for tribal producers in Farm Service Agency Committees and decision-making.

Background Information and Context

Many tribes and individual Indian producers are deeply invested in commodity food production under Title I on their lands, either through leases to non-Natives or their own production systems. More than half of all income from agriculture in Indian Country – \$1.9 billion annually – comes from livestock production. Tribes and individual Indian producers need continued and improved access to price support and safety net programs, which meet the unique needs of tribal producers. This will ensure the continued growth and vitality of agriculture businesses during volatile market fluctuations and unpredictable environmental conditions.

Opportunities for Indian Country in the Commodities Title

Amend Definitions for the Supplemental Agricultural Disaster Assistance Programs

- Section 1501(a)(1)(B)(iv) must be amended to read: “a corporation, limited liability corporation, or other farm organizational structure organized under *Federal, State law and Tribal law*.” This addition creates parity for tribal governments and acknowledges the authority of entities organized under tribal law or under federal law such as Section 17 corporations.
- Update the livestock definition in Section 1501(a)(3) to include other commonly raised livestock like “reindeer,” “caribou,” “elk,” “horses,” or other animals raised or harvested in tribal communities. All of these animals must be further recognized as a livestock and eligible for full protection and program participation Department-wide.

Increase Livestock Indemnity Payments for Tribal Producers to 90 Percent

- The current 75 percent Livestock Indemnity Payment under Section 1501(b) to eligible producers who have incurred livestock death losses above the normal mortality rate, does not address the lack of land equity that exists for tribal producers on trust lands, and the unique challenges tribal livestock producers have in obtaining secure markets for their animals, which generally causes a lower rate of market return. To put tribal producers on equal footing, indemnity payments for tribally owned livestock should be increased to 90 percent.



Ensure Tribal Eligibility in the Livestock Forage Disaster Program

- A new provision under Section 1501(c) must be added to protect tribal producers' eligibility in the Livestock Forage Disaster Program through issues of federal government preclusion outside of their control. For example, instances relating to "normal carrying capacity" may inadvertently exclude some tribal producers if the Bureau of Indian Affairs does not negotiate or recognize the specific environmental or other variances that impact production.
- Due to the unique challenges facing tribal livestock and forage producers, all other provisions of the program shall ensure that payment rates are set at 90 percent levels (as opposed to any lower rates identified in the law for non-tribal producers).
- Explicitly exempt tribal producers from any limitations on receiving payments on any losses due to fire on "public managed land." Tribal lands are not "public" lands.

Farm Service Agency County Committee

- Amend the FSA County Committee determinations on normal grazing periods and drought monitor intensity to be established at the national FSA office to ensure that separate carrying capacities and normal grazing periods for each type of grazing land or pastureland are set at different rates for tribal lands and individual Indian-owned land after tribal consultation.
- Require FSA to do an assessment based on Census data and Agricultural Census data to determine the population makeup of the county and conduct tribal consultation with tribal governments to guarantee that tribal citizens are effectively and efficiently notified of the opportunity to be nominated and considered for county committee membership. All FSA county committees in predominantly tribal population areas and/or tribal land base areas should have predominantly Native membership and should reference the local administrative areas, which are the voting districts mapped by FSA county committees.

Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish

- Explicitly include tribes and individual Indian producers as eligible for Commodity Credit Corporation emergency relief funds for livestock, bees, and farm-raised fish under Section 1501(d).

Trees

- Make tribal producers eligible for 80-90 percent of the cost of replacement, salvage, pruning, removal, or preparing the land or replanting under Section 1501(e). This ensures that the higher cost of providing these remediation activities on tribal lands and individual Indian-owned land is accommodated within the limitations of the program and tribal governments.
- Recognize tribal business entities organized under tribal law and individual tribal producers as "legal entities" and "persons" allowed to participate in the program.

Rulemaking Related to Significant Contribution for Active Personal Management

- Amend Section 1604 regulations related to "active personal management" or "active engagement in farming/ranching" to recognize that tribal producers, tribal business entities, and tribal governments should not be excluded from any determination of "active personal management/engagement" simply by the existence of an active lease relating to their lands.
- Require the Secretary of Agriculture to engage in tribal consultation concerning the application of this requirement to tribal producers.

Geographically Disadvantaged Farmers and Ranchers

- Amend Section 1606 on "Geographically Disadvantaged Farmers and Ranchers" to ensure that tribal governments, tribal entities, and tribal producers are explicitly recognized as farmers or ranchers eligible to participate in the program, as they are often left out even in the "insular areas" provision.



Base Acres

- Require the Secretary to consult with tribal governments regarding the determination and election of “base acres” applicable to all programs under the Commodity Title.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title II: Conservation

Key Points and Recommendations

- U.S. Department of Agriculture (USDA) conservation programs must allow for the use of traditional, ecological, knowledge-based conservation practices.
- Cross-agency coordination between the Natural Resources Conservation Service (NRCS) and Bureau of Indian Affairs must be improved to ensure all tribal producers have access to conservation programs and other USDA programs that require an NRCS-approved conservation plan.
- Parity must be achieved throughout the Conservation title by explicitly including “tribes” or “tribal” where “state” or “local” or “regional” agricultural producers are mentioned to ensure tribal access to all NRCS programs.

Background Information and Context

Conservation planning is not only necessary for enrollment in crop insurance and other USDA programs and services, but conservation programs can be an essential part of land protection and product development. The lands within Indian Country are in significant need of intensified conservation practice implementation. Access to the NRCS conservation programs and services is essential to meet those needs. While previous Farm Bill negotiations provided improvements in the reach of NRCS programs onto tribal lands and individual Indian owned land, the NRCS program portfolio could still be more effective on tribal lands and individual Indian owned land. For example, many NRCS programs are difficult to implement on Bureau of Indian Affairs (BIA)-managed trust lands. This makes the process of getting approvals for practices or entering into conservation cost-sharing agreements unnecessarily difficult for tribal producers. In some instances, complications can occur based on the length of lease terms pertaining to the lands. In addition to cross-agency coordination issues, highly fractionated interests which are present on many of the lands in Indian Country can make it difficult to execute and accomplish conservation goals. It is essential to not only improve coordination between the USDA and BIA, but to continue to improve tribal access to conservation programs in the 2018 Farm Bill.

Opportunities for Indian Country in Conservation Title

Recognition of Traditional, Ecological, Knowledge-Based Conservation

- Develop a new section of the Conservation Title to explicitly allow a tribe or a group of tribes within a state or region to develop traditional, ecological, knowledge-based technical standards that will control the implementation of all conservation projects allowed under the Farm Bill. This new section would codify current NRCS practices that encourage traditional, ecological, knowledge-based conservation and would further recognize the fact that tribal jurisdiction and use of traditional practices to improve conservation project implementation are decisions best left to tribal governments and individual Indian producers who live on those lands and are engaged in ongoing activities that are designed to improve environmental conditions, habitats, and their lands for



agricultural purposes. These traditional, ecological, knowledge-based standards already have a solid scientific basis and are acknowledged by various federal research organizations and agencies.

Conservation Reserve Program (CRP) Land Availability for Beginning Tribal Farmers and Ranchers

- Create a new section of the Conservation Title to allow the use of CRP land or other lands engaged in conservation practices to be used by tribal citizens who are beginning farmers and ranchers in ways that do not damage the conditions of the land or resources.

Include Tribal Priorities in Definition of Priority Resource Concerns

- Amend the definition of “Priority Resource Concerns” in Section 1238D(5) of the Farm Bill to include any natural resource as determined by the Secretary that is identified at the national, state, tribal or local level as a priority for a particular area of a state or tribal area and to consider environmental disaster mitigation as a priority resource concern.

Allow Lands Held in Common and by Tribal Entities to Access Conservation Programs

- Create a new section of the Conservation Title or in sections related to eligibility determinations to ensure that lands held in common, such as reservation lands that are controlled and farmed/ranched by groups of individuals, can participate in all Conservation Title programs and that special provisions are enacted in regulations to ensure that any tribal government-allowed entity is the recognized conservation program participant (as opposed to specific individuals).

Priority for Enrollment of Tribal Lands in the Conservation Reserve Program

- Section 2001 of the 2014 Farm Bill establishes priorities for the Secretary to consider when implementing the Conservation Reserve Program and Conservation Priority Areas. Due to the prolonged periods that tribal lands and individual Indian-owned lands have been under-enrolled in conservation programs and due to the needs of those acres and watersheds to have focused attention on enrollment in conservation programs and utilization of conservation practices, all tribal lands falling under the jurisdiction of the Bureau of Indian Affairs, tribal governments, tribal agricultural entities, and individual tribal producers, landowners, or land operators should receive mandatory priority consideration for all conservation programs authorized in the upcoming Farm Bill. Further priority should be given to beginning farmers and ranchers seeking to establish or reestablish working land activities on tribal lands and commercial activities related to the reestablishment of working lands or the emergence of beginning farmers and ranchers who are tribal citizens utilizing those working lands. In any ranking activity conducted by USDA officials to determine which lands or resources to enroll in a conservation program allowed under this title, the Secretary and/or state conservationists or technical committees (state or tribal) shall give priority to tribal lands for enrollment in relevant programs, provided these lands or resources also meet requirements for inclusion in the programs.

Notice Regarding Conservation Activities and ARMP Compliance

- Ensure conservation activities will be required to be in conformance with the tribal government’s Agricultural Resource Management Plan, if one is in place, and that proper individuals or officials receive adequate notice of conservation activities.

Recognizing Tribal Law Parity

- Amend any reference to “state law” in the Conservation Title to say “state law or tribal law” and any reference to “state technical committee” to “state technical committee or tribal technical committee.”



Tribal Technical Committee

- Require each state conservationist to establish a separate tribal technical committee should any tribal headquarters exist within their state boundaries or any land exist under the jurisdiction of tribal governments or the BIA. These tribal technical committees shall be given the same respect and deference that is currently given to the state technical committee, and each tribal technical committee shall be able to establish separate technical standards utilizing traditional ecological knowledge and, to the extent that they do so, such standards shall be the technical standards under which conservation programming can be deployed on tribal lands. Require establishment of state-level inter-tribal, regional inter-tribal, and national tribal advisory committees regarding conservation matters.

No Additional Compensation for Expired Conservation Measures

- When a conservation practice installed on tribal or individual Indian-owned land expires, or when a lease/permit expires, do not require individual tribal citizens, tribal governments, or tribal entities to compensate the former lessee of the tribal lands for the installation or maintenance of such practice since those practices have already been the subject of cost share with the federal government. Any further payment to lessees or users of the lands would constitute a windfall or unjust enrichment to such user of the land.

NRCS Report on Natural Resource Inventory Investments Needs on Tribal Lands

- Require USDA-NRCS to immediately develop a report to be delivered to all tribal governments and individual Indian producers identifying which tribal lands still need proper Natural Resource Inventory funding support to perform soil and range surveys to create a baseline report of needs for said lands.

Traditional Ecological Knowledge Consideration for Conservation Compliance

- Consider traditional ecological knowledge whenever the Secretary determines the level of compliance of landowners who have lands or resources enrolled in any of the Conservation Title programs, particularly when determining whether a meaningful stewardship threshold has been reached.

BIA Actions Responsible for Non-Compliance

- Do not determine any tribal landowner or operator of lands in violation of any term of a conservation program enrollment requirement when the BIA can be established as the cause for any alleged non-compliance, whether through delay in action, other non-action in decision-making requirements, or any other reason.

Tribal Priority in Environmental Quality Incentives Program (EQIP)

- Give priority consideration to tribal governments, tribal entities, and individual tribal landowners and operators to participate in EQIP program activities, in addition to the 5 percent tribal set-aside. This priority shall be widely advertised throughout each state in which the lands are located, and each tribal headquarters in the state shall receive notice of all activities related to the EQIP program. Tribal and individual Indian landowners and operators shall be entitled to additional priority for any activities related to organic and organic transition practices on their farms and ranches. Each tribal government shall be invited to at least two meetings with the state conservationist in a government-to-government conversation concerning the implementation of NRCS conservation programs that could be beneficial to tribal lands. When requested by tribal headquarters, the state conservationist shall enter into cooperative agreements and other activities that will establish a plan

by which NRCS programming will be deployed on tribal lands for which the tribal government has an ongoing plan for conserving and protecting habitat, grasslands, rangelands, and other lands and land uses within tribal jurisdiction.

Tribal Parity in the Conservation Title

- Include a provision in all sections of the Conservation Title allowing tribal governments, tribal producers, and tribal entities or organizations created for conservation and natural resource protection purposes to have full access to every program allowed under the Conservation Title. Wherever reference is made to “state” or “local” or “regional” agricultural producer, the terms “tribal” should be inserted into that section to ensure that inadvertent failure to list tribal governments, tribal producers, or tribal organizations does not preclude them from participating or relegate them to a lesser importance or priority within the relevant section.

Technical Assistance Funding for Tribal Governments and Organizations

- Due to the relatively low use of all conservation programs on tribal lands and individual Indian-owned land, give the Secretary the authority to create a permanent fund within the available technical assistance funding authorities, appropriations, and programs to ensure that specialized technical assistance is made available on a continual basis to tribal governments, tribal organizations, and tribal landowners and producers throughout Indian Country, including in all tribal areas of Alaska and Hawaii. These targeted technical assistance funds shall be given priority to tribal organizations that have an established record of providing technical assistance to tribal audiences and shall demonstrate their knowledge of and ability to successfully complete projects involving conservation programming with tribal audiences. The funding shall not be provided to predominately non-Native organizations with little to no experience and knowledge of working with tribal audiences. Multi-year cooperative agreements should be authorized under such technical assistance programs.

Alternative Funding Arrangements – EQIP and Conservation Stewardship Program (CSP)

- The 2014 Farm Bill allowed for entering into alternative funding arrangements with tribal governments to carry out the intention of the EQIP program and the CSP if the Secretary determined that the goals and objectives of the law would be met by such arrangements and that statutory limitations on entering arrangements with individual producers would not be exceeded. This provision needs more attention and improved implementation to ensure that each tribal government is offered the opportunity for alternative arrangements.

Tribal Conservation Technical Committee

- Authorize the Secretary to work with the BIA and a technical committee made up of tribal government representatives from each of the BIA regions to formulate a set of initiatives and programs that can be carried out under existing laws as well as a set of programs that may be needed under future conservation program authorities to improve the conditions of tribal lands and individual Indian-owned lands throughout the United States. This interdepartmental entity shall be put in place no later than 12 months after the passage of the 2018 Farm Bill and shall issue its report no later than 24 months after passage of the 2018 Farm Bill. The interdepartmental efficiencies and improvements shall be undertaken immediately upon the issuance of the interdepartmental report, and annual reports of improvements and actions taken under this provision shall be made to Congress.

Conservation Reserve Program (CRP)

- Create a pilot program to explore the use of livestock to improve soil health in CRP fields, and allow for a rental rate over and above the CRP payment to be made to the producer. Scientific studies have demonstrated the effect that a lack of animal impact can have on the soil. This program would seek to determine the impacts and benefits of this pilot program, for consideration in subsequent iterations of the Farm Bill or conservation legislation. Preference in the use of this land would be afforded first to SDR producers, Young and Beginning Producers, and then to customary producers. The more need that is met through the rental agreement, the smaller the reduction in CRP payment.

Beginning Producers in Conservation Programs

- Encourage and allow all beginning producers to participate in conservation programs and amend all conservation programs to incentivize beginning producers by removing the “one year of control” requirement.

Rollback CSP Program to 2013 Standards

- Reinstitute the CSP program to 2013 standards.

Next Generation Easement

- Incorporate a new “next generation easement” in conservation programs. This “easement” should incorporate tax credits for landowners who are mentoring new and beginning producers and should include a death tax “write-off” for farm transfer to the next generation.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title III: Trade

Key Points and Recommendations

- Support and maintain tribal food and agriculture businesses' entry into foreign markets by expanding Indian Country's access to the Market Access Program (MAP) and protecting unique tribal foods against fraud.
- Improve interdepartmental coordination and tribal government and individual Indian producer inclusion on all U.S. trade missions.

Background Information and Context

The Trade Title programs are a vital part of food production for all food industries, especially in Indian Country. A growing number of tribes and individual Indian producers are engaged in trade of food and agriculture products and have participated in MAP via the Intertribal Agriculture Council's American Indian Foods Program, which provides export-readiness training assistance and the incorporation of products into international food trade shows. Tribal food products have high market demand in overseas markets; however, the hurdles necessary to engage in such markets are complex and limit tribal participation. Improvements to the Trade Title can help support and build tribal food businesses and provide new markets for unique and traditional tribal foods, while protecting producers and increasing economic development.

Opportunities for Indian Country in the Trade Title

Expand Market Access Program (MAP)

- Expand MAP by substantially increasing the funding available to the existing agreements that facilitate coordination and administration of the MAP program and result in increasing tribal food business participation in the program so that tribal audiences and more tribal food and agriculture businesses can benefit from the program. The impact of such engagement will further solidify local food economies and food businesses and stabilize tribal economies.

Supporting Unique Tribal Foods and Fighting Native Food Fraud

- Require the U.S. Department of Agriculture (USDA) to institute a system by which fraudulent foods that mimic tribal foods and tribal food businesses can be uncovered and prevented in the marketplace. Food fraud is on the rise throughout the world, and unscrupulous food business entities are already trying to mimic or replicate unique tribal food products. Those businesses should not be allowed to participate in programs that allow them to access markets with products that perpetrate frauds on tribal food producers or food businesses.

Interdepartmental Coordination to Support Tribal Trade

- Include Indian Country as the USDA develops a stronger relationship with the Department of Commerce on food and agriculture trade. A special interdepartmental coordination group with

USDA, Department of Commerce, Department of State, and other applicable agencies should be created to ensure that tribal food production is properly supported and encouraged on tribal lands and is thereafter made a part of the U.S. trade missions and efforts to promote agricultural trade.

Tribal Representatives on U.S. Trade Missions

- Include tribal governments, tribal food businesses, and individual tribal food producers on all foreign trade missions undertaken by the United States to further assist the access of tribal food products to such markets.

Study on Tribal Representation on USDA Advisory Bodies

- Require the Secretary to study all Trade Title programs to ensure that tribal representatives are included on all advisory bodies related to agricultural trade issues and concerns.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017





Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title IV: Nutrition

Key Points and Recommendations

- Approximately 25 percent of Native Americans receive some type of federal food assistance, and in some tribal communities, participation is as high as 60-80 percent.
- Indian Country needs a consistent, comprehensive, and tribal-led approach to tailor federal food assistance programs to the specific needs of tribal communities and citizens.
- Allow tribes the option to enter into Self-Determination Contracts pursuant to P.L. 93-638 for administration of the Supplemental Nutrition Assistance Program (SNAP) and all other federal feeding programs.
- Improve the funding, flexibility and infrastructure of the Food Distribution Program on Indian Reservations (FDPIR).
- Require a CBO or CRS inquiry into the impact of drastic cuts or elimination of food assistance programs on the overall agricultural economies of tribes.

Background Information and Context

With 25 percent of all Native Americans receiving some type of federal food assistance, and in some tribal communities as high as 60-80 percent, the importance of the Nutrition Title programs in Indian Country cannot be overstated. The Supplemental Nutrition Assistance Program (SNAP) provides benefits to 24 percent of American Indian and Alaska Native households; 276 tribes and 100 inter-tribal organizations administer the Food Distribution Program on Indian Reservations (FDPIR); and American Indians and Alaska Natives make up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), to name a few.

These participation rates hinge on limited meaningful employment opportunities, poor transportation options to food sources or food retail, lack of food retail locations in tribal communities, the age and population characteristics of the individuals in the communities, and the prevalence of chronic health problems, among other issues. Because the rate of obesity, diabetes, chronic heart diseases, cancer, and other health problems is so high in so many communities in Indian Country, participation rates in the feeding programs coupled with the prevalence of persistent poverty create a fragile system of food access across Indian Country. A consistent, comprehensive, and tribal-led approach that is tailored to Indian Country's needs is paramount.

Any cuts or changes to reduce direct participation in the programs diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our most vulnerable tribal citizens, should ever have to go without food. Tribal governments have consistently sought the authority to take over the administration of federal food assistance programs like SNAP, which they currently cannot run, to not only improve food access and efficiency of the programs, but to further tribal self-governance and serve the unique needs of their citizens and communities.

Programs like FDPIR must be improved to allow tribes to better respond to the infrastructure, storage and transportation challenges, and provide the means and support to purchase traditional, locally grown food in food packages. Traditional and locally grown foods from Native farmers, ranchers, fishers and producers encourage healthy living, cultural sustainability, and traditional practices. They also support economic development, food production, and agribusiness in Indian Country.

Opportunities for Indian Country in the Nutrition Title

Tribal Administration of the SNAP and All Federal Food Assistance Programs

- Provide tribal governments and tribal organizations the direct authority to administer SNAP and all other federal food assistance programs which they are currently not allowed to directly manage. This can be achieved by providing tribes with “638” self-governance contract authority for nutrition programs which exists for Department of the Interior and Indian Health Service programs. Allowing tribes to take over these functions from the federal government will improve efficiency, reduce regulatory burdens, and support tribal self-governance and self-determination.

Improvements to the FDPIR and Other Federal Feeding Programs

- Since 2015, several tribal leaders have consulted with the USDA Food and Nutrition Service (FNS) over significant improvements needed to FDPIR. While tribes have made some headway with USDA, significant legislative changes still need to occur within the FDPIR program, including:
 - Eliminating the matching funds requirement for each of the FDPIR program sites to participate, or limiting the matching requirement to 5 percent.
 - Providing tribal feeding sites with parity to state counterpart programs by allowing them to engage in carryover of unspent funds from year to year. This unequal treatment is problematic to tribal feeding programs whose funding needs, particularly for food distribution infrastructure (e.g., warehouses), could be met by allowing carryover funding.
 - Requiring FNS to continue to engage in tribal consultation.
 - Requiring FNS to engage in tribal consultation concerning reasonable alternatives to the regulatory-approved practice of “tailgating” at FDPIR program sites. No FDPIR program site should be allowed to engage in this demeaning practice.
 - Requiring FNS to consult with tribes and develop a written, public contingency plan in the event of any lapses in funding, disasters, government closures, or related incidents that might interrupt or cause the stoppage of food delivery.
 - Allowing those who participate in FDPIR to also simultaneously participate in SNAP. Neither program provides enough food for participants in remote places; by allowing simultaneous usage of the programs these two supplemental feeding programs can be combined to actually result in addressing food insecurity.
 - Requiring FNS to hire at least one national tribal liaison located in its Washington, D.C., offices and one regional tribal liaison located in each regional FNS office subject to a federal Native American hiring preference or high levels of experience with tribal communities.
 - Increase nutrition education funding to at least \$5 million per year and create an alternative to competitive funding so each tribal program receives support for nutrition education program materials through a coordinated approach.
 - Requiring FDPIR traditional food purchases (bison, wild rice, salmon, blue corn, and other products) to be a regular part of food package purchases and not require supplemental or special appropriations to purchase these foods.



- Requiring FNS to engage in tribal consultation to compile a budget for FDPIR warehouse and other infrastructure needs to be included in its entirety in each federal budget cycle and request until it is fully funded.
- Requiring all FDPIR purchasing and distribution to occur on a regional basis and include as much locally and regionally tribal-produced food as reasonably possible.
- Remove the “Urban Place” definition to allow tribes and the USDA to work collaboratively to serve even more tribal citizens who need nutritious food, regardless of where they live.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017





Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title V: Credit

Key Points and Recommendations

- Many tribal communities are located in “Credit Deserts,” where access to fair and reasonable credit terms is limited or non-existent.
- Improvements must continue to be made to Farm Service Agency (FSA) programs to address the availability, efficiency and application of credit programs in Indian Country.

Background Information and Context

During uncertain economic times, Indian Country is always hit as hard as or harder than most other areas of the country because of their remote and isolated nature and the reality that most reservation communities are located in “credit deserts.” While the Farm Service Agency (FSA) has made many improvements to credit and debt servicing to farmers and ranchers in Indian Country in the post-*Keepseagle* era, the 2018 Farm Bill must continue to address the longstanding issue of credit access for tribal producers, in addition to providing tribal-specific training and technical assistance on financial education and loan servicing programs.

This Farm Bill must also address the lingering administrative coordination issues experienced by tribal producers when seeking loans or loan servicing and dealing with both the Bureau of Indian Affairs (BIA) and U.S. Department of Agriculture (USDA). The Credit Title must create efficiencies and eliminate delays in approvals and the related failure to extend deserved credit to tribal producers. The USDA and BIA should be required to create an administrative team shared by both departments whose role is to review and update all federal practices and regulations that hinder tribal food production, tribal food system lending, and tribal loan servicing that support and maintain tribal food systems.

Opportunities for Indian Country in the Credit Title

Structuring Loans to Suit the Business

- Authorize several innovative loan structuring measures in the 2018 Farm Bill. For example, currently FSA will lend 100 percent the cost of bred livestock. It will then subordinate its lien position to a local commercial lender for annual production costs, increasing the amount of debt secured by the same amount of assets, sometimes by as much as 25 percent. If the first year of operating expenses could be included in the original loan, and amortized over the life of the secured asset, producers would end the year with cash in the bank, allowing producers to take advantage of pricing opportunities on input materials, replacement stock, or expansion opportunities. Such an approach would incentivize operating from available resources, instead of what could be borrowed on an annual basis.

Debt Restructuring for FSA Planning Prices

- When commodity price cycles run contrary to the mandated FSA Planning Prices, despite a producer's inclination to plan conservatively, producers are often faced with choice of accepting a plan based on those planning prices or shutting down their operation. In cases that FSA planning prices are more than 20 percent higher than the actual prices, a producer should be able to restructure their debt in a way that will not count towards lifetime limits on loan servicing.

Socially Disadvantaged Interest Rate

- Update the Socially Disadvantaged Rate (SDR) interest rate for FSA loans from a static number (currently 5 percent) to be indexed to the prevailing rate and set a commensurate proportion of that rate, 50 percent of the standard rate. The current rate was set years ago when the prevailing interest rate was in the double digits and should already have been revisited and revised.

FSA Food Loan Authority

- Under current program guidelines, there is some latitude for producers whose production will take a period to fully ramp up. Initial payments can be made at an 18-month mark rather than within the first year. This same methodology should be employed for producers wishing to take their raw product to the next step in the value chain.

Keepseagle-Class Forgiveness

- The *Keepseagle* litigation proved there was a systemic and deeply rooted history of discrimination at the USDA against Native and other producers. While Native Americans could avail themselves of the opportunity for debt settlement and a small monetary award to attempt to make them whole, some successful claimants also received a “clean slate” when dealing with the FSA in the future. With only 3,000 successful claimants of an anticipated 12,000 potential claimants, many Native producers, still feeling the disenfranchisement of decades of disparate treatment, did not take part in the claims process. Allowing the larger pool of potential *Keepseagle* claimants to experience a “clean slate” would be a no-cost change that would improve future opportunities for many tribal producers.

Remove the Graduation Requirement for FSA programs

- Due to the general lack of credit availability on and near Indian reservations, it is difficult to access viable credit rates for even experienced producers operating farms and ranches on trust lands. Removing the statutory requirement for producers on Indian reservations to have graduated from FSA programs would allow agriculture operations to be more stable and assist other producers who farm and ranch in areas where credit access is tenuous at best.

Remove the Requirement for Private Credit Denial

- Explicitly exempt tribal producers from the FSA requirement of obtaining three denial letters from private credit sources in order to participate in an FSA loan program. The general lack of private lending available in Indian Country renders the requirement onerous and unduly burdensome.

Create Common Definition of Land Owned by Indian Tribes Across All USDA

- Currently, there is no common definition of “land owned by Indian Tribes” across all USDA programs, creating inconsistent program access even within programs run by a single agency. An alternative to placing the definition in the Credit Title or another a section having application broadly across the entire Department, is to place it within the Definitions section of the Conservation Title, where many problems associated with lack of common definition are most

pronounced. Regardless of where such definition is placed, attention should be paid to consistency across the family of USDA programs and authorities.

GAO Study on Credit Access in Indian Country

- Conduct an in-depth analysis by the Government Accountability Office into the nature of credit in Indian Country; specifically examining compliance with the Community Reinvestment Act by banks on and near Indian reservations.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017





Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title VI: Rural Development

Key Points and Recommendations

- The Rural Development (RD) programs at the U.S. Department of Agriculture (USDA) are essential for rural and reservation tribal communities to develop and improve declining infrastructure systems while spurring economic development and job creation in tribal communities.
- Many ready-to-go (“shovel-ready”) tribal infrastructure and community development projects have gone unfunded over the past several years, leaving promises to Indian Country and rural communities unrealized.
- RD must have dedicated funding and technical assistance for tribal governments as part of the federal trust responsibility and to ensure that tribal communities and the rural communities around them thrive.
- Tribes must be consulted during the restructuring of the USDA’s RD agency due to its unique impact on tribal economies and tribal economic development. Any budget shifts must also receive tribal consultation before changes occur.

Background Information and Context

With more than 100 million acres of tribal lands and individual Indian owned land, located in primarily rural areas across 34 states, Rural Development (RD) Title programs and funding are vitally important to tribal governments, communities, individual Indian producers, and tribal businesses. In fact, the RD grant and loan programs are sometimes the only option tribes and their neighboring communities have for building new infrastructure or updating antiquated systems essential to spur and sustain economic development and growth in their rural communities. However, there are still issues with accessing and funding RD programs.

For example, U.S. Department of Agriculture (USDA) RD Water and Waste Disposal Program did not fund 28 tribal projects which submitted applications in Fiscal Year (FY) 2016. Of those, 15 were complete applications, which requested only \$18 million (\$16.8 million in grant funding and \$1.2 million in direct loan financing), which could have been approved if the agency had additional funding. The 13 incomplete applications requested \$37.1 million (\$18.8 in grant funding and \$18.3 in direct loan financing). In FY 2016, RD electric programs still had remaining loan funds at the end of the year. Yet, the High Energy Cost Grants Program, which provides grants to help decrease the cost of electricity in areas where energy costs are 275 percent of the national average or higher, received more than \$48 million in eligible requests with substantial representation from tribal entities and Native Alaskan corporations, yet only \$16.9 million was available. The high levels of need in Indian Country go unmet.

Making small adjustments to the RD Title will help tribes build strong economies, develop state-of-the-art infrastructure systems, support individual Indian producer businesses, and create jobs, all while

promoting and advancing tribal self-governance and tribal self-determination. These improvements in turn support the broader rural communities. In addition, steps should be taken to ensure that RD staff (and all USDA staff) have a thorough and modern understanding of how tribes and individual Indian producers do business so that interpretations of RD funding authorities do not inappropriately affect tribes, tribal producers, and tribal businesses.

Opportunities for Indian Country in the Rural Development Title

Implement SUTA Provisions Throughout all Rural Development Programs

- Further broaden the Substantially Underserved Trust Area (SUTA) provision across all RD programs. Currently, SUTA is only applied to a small segment of infrastructure programs, but more explicit guidance must be provided to allow the Secretary to exercise this discretion more broadly. This change will help ensure more equitable access to RD programs and authorities, and can be used to provide much-needed support to tribal citizens living in rural communities. The change would, among other things, allow the waiver of matching requirements for projects funded through RD, which can be a significant barrier to socially disadvantaged applicant participation in RD business and infrastructure projects.

Rural Development Tribal Set-Aside

- Provide a tribal set-aside in either terms of percentage of the funding portfolio or a specific funding level for tribal applications within each of the RD program authorities to address the inadequacy and general lack of rural infrastructure in Indian Country. The trust responsibility of the federal government to tribes provides the broad foundation for such set-aside. Without dedicated funding for tribal rural development, the promise of these places will never be realized and Indian Country's infrastructure will continue to decline. In many areas around the country, tribal governments are the strongest remaining rural government entity. In some locations, tribal governments have taken over the management of key infrastructure (such as water systems, electric, and other utilities) because there is no other sound governmental or non-governmental entity that can handle these functions.

Establish a Permanent Rural Development Tribal Technical Assistance Office

- Establish a permanent office providing technical assistance across all RD funding authorities via a cooperative agreement with USDA for two reasons. First, the complexities of lending and infrastructure establishment in Indian Country – tied to the nature of the trust land base – call for the establishment of such an office that can prepare and monitor lessons learned, establish user-friendly application systems, and assist staff at the tribal or business level in preparing applications. This is a function the federal government cannot readily undertake. Such assistance will also provide needed insight to federal staff in the ongoing execution of their roles by providing a single point-of-contact for all concerned. Second, the trust responsibility of the federal government to tribes supports the need to establish such assistance interventions. This is not unheard of, as RD (particularly in the infrastructure arena) has field staff who assist agency staff and the applicant in analyzing financial viability, key engineering specifications, and related technical requirements for more complex infrastructure projects.

Maintain the Under Secretary for Rural Development Position

- Maintain an Under Secretary for Rural Development in the 2018 Farm Bill and all additional sequent legislation and appropriations packages. Having an Under Secretary whose primary duties are to focus on RD programs and funding is critical for Indian Country and rural America. Any changes that would impact the Under Secretary role for Rural Development must be the subject of tribal consultation.

Uplift America by Supporting CDFIs Loan Authority

- Develop a process to allow small, new and emerging Community Development Financial Institutions (CDFIs) access to loan authority. The concept of batching and obligating all loan guarantee authority annually is a game changer. The requirements put upon CDFIs to participate in this endeavor are patently prohibitive. Only the largest CDFIs could secure any meaningful funding levels, and some had threatened litigation to do that.

Extend Rural Electric Loan and Grant Program Authority to CDFIs

- Rural electric cooperatives are uniquely poised to be economic development drivers in their communities. Often, they choose not to avail themselves of this opportunity. In cases where a rural electric cooperative chooses not to participate in this program in the past, local CDFIs should have the opportunity to carry out the function.

Maintain Rural Water Program Funding

- Rural water and wastewater systems are essential to community support and economic growth in Indian Country. The rural water and wastewater program funding in the RD Title should never be lost. Tribal governments, individual Indian producers, reservations, and remote and isolated communities will be severely undercut in the protection and growth of their food systems and their ability to access markets for their food production markets if access to funding for rural water systems is lost or diminished. This is a matter of food insecurity and economic and environmental justice.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title VII: Research

Key Points and Recommendations

- Research Title programs must allow for the development of tribal research, education, and Native youth in agriculture by making programs and funding more accessible to Tribal Colleges and Universities (TCUs), support a tribally led focus on traditional knowledges and practices, and provide additional opportunities for education.
- Fund the Federally Recognized Tribes Extension Program (FRTEP) at a minimum of \$10 million to address the persistent inequity in educating and developing Native American extension resource programming and Native youth in food and agriculture programming.
- Provide dedicated funding and tribal preference at National Institute of Food and Agriculture (NIFA) to build tribal research and educational capacity.
- Require all institutions (non-TCUs) that receive any funding for extension programming in states that have tribal lands and tribal producers to report and demonstrate their work with tribal governments, tribal communities, and tribal producers and their cooperative and respectful coordination with TCUs in close proximity. These institutions should be required to conduct a percentage of their overall work that is equal to the amount of land in the state held by Indians, the Indian farms in those states, and such extension programming must be done with Indian communities and done by staff experienced in and knowledgeable of issues important to Indian Country.
- Remove FRTEP from the Farm Bill requirements that all Smith-Lever programs be competitive and reinstate the consultative requirements for FRTEP implementation.

Background Information and Context

Monitoring and exploring old and new knowledge regarding plant and animal health, exploring the impact of science to solve food problems, tackling societal issues related to food and health, and ensuring our food supplies are sound and resilient through food and agriculture research is critical to our food, health and self-sufficiency. Accessing research, building tribal research systems within TCUs, and supporting educational institutions within communities are critical to stabilizing tribal agriculture and food systems, food production, and tribal communities. We must also continue focusing on the importance of traditional knowledge, which is best done at tribally owned and managed institutions. Research Title programs must allow for educating the next generation of tribal producers, scientists, technical specialists, business managers, engineers, lawyers, and related professionals who advise and support the agriculture and food sectors. There are many Native youth who aspire to these career paths, and the funding and programs in the Research Title must help support these goals.

Opportunities for Indian Country in the Research Title

Parity in Funding for FRTEP

- Increase funding for FRTEP to at least \$10 million, and preferably increased to greater levels of funding. FRTEP supports farmers, natural resources managers, youth (via 4-H youth programs), and communities by providing an agent to liaise with other USDA programs, provide training in farm and ranch business management, supervise 4-H and youth development activities, and coordinate special training programs, including the application of new agricultural technologies, among many other vital activities. While there are more than 3,100 extension offices available to farmers nationwide (through the institutions in the land grant system), the current \$3 million funding level provides only 36 FRTEP extension agents to serve more than 50 million acres of tribal lands, a growing number of tribal food producers, and 567 federally recognized tribal reservations as well as many state-recognized tribal communities. Providing more than \$10 million in funding would begin to address this persistent inequity by nearly doubling the FRTEP staff and the number of Native youth served by the program. Greater attention must be given to whether the land grant extension system funding is being used appropriately or in such a way that tribal communities and producers receive the resources they need in relation to the proportionate formula funding distributed. The current system of competitive funding is also in need of adjusting, as it results in long-standing and effective programs being cast aside in favor of new programs with no established track record and states like South Dakota, with nearly 19 percent of the land owned by Indians, not receiving funding at all. Consultative review of all FRTEP applications must be reinstated.

Research Title Funding Mechanisms

- Update funding systems to reflect the research and educational needs of tribal communities. The competitive and formula funding mechanisms within the Research Title can provide much-needed research and development, infrastructure development, education, and extension of knowledge, but the assumptions about the funding systems have outlived their usefulness.

TCU Eligibility for all National Institute of Food and Agriculture (NIFA) Funding

- Make TCUs eligible for all USDA-NIFA funding authorities. TCU extension professionals are not present among enough tribes, and they are currently not provided with even the minimum level of funding to accomplish their work. However, FRTEP, due to its unique history and implementation, must be excluded from this requirement as the circumstances of the FRTEP program is entirely different.

Additional Resources for Tribal College Extension, Research and Education Programs

- Increase non-FRTEP funding considerably for Tribal College extension programs so they can effectively address the needs for tribal research and education related to tribal food systems and food producers.
- Require extension programs funded at 1862 institutions to provide services to tribal food systems, so that there is not a gap in tribal educational scholarships, internships, and critical needs. The growth of Native food systems requires the improvement of access and parity within the Research Title.
- Commission a comprehensive study to explore the potential ability of 1862 Land Grant Institutions to share administrative functions, classroom and faculty resources, and other related support mechanisms.

Tribal Set-Aside, Preference, and Funding at NIFA

- Provide tribal set-asides and preferences within all non-FRTEP NIFA funding authorities while retaining the competitive nature of the funding, which is necessary to continue building capacity and strength.
- Amend the agricultural legal funding authority contained in the 2014 Farm Bill to ensure that competition for the funds occurs and funding is set-aside to be provided to organizations and entities that have a proven specialty and primary focus on Indian law issues that intersect with food and agriculture law.
- Require NIFA funding authorities to focus a portion of their work on building knowledge and capacity in business development unique to tribal lands and individual Indian owned land, and approach this work separately due to the unique complexities in tribal land use, law, regulatory burdens, and related issues. Since business training and the development of solid business planning tools are also necessary, funding would be best focused around risk management education programs and the funding authorities in this area.
- Allow tribal governments and tribal organizations full access to all nutrition education programs at NIFA, including SNAP-Ed, and all research programs related to building knowledge in nutrition, health, obesity, and diabetes prevention.
- Include a set-aside in Small Business Innovation Research projects funded through NIFA for tribal projects leading for commercialization of food products or food systems innovations.
- Ensure that the federal formula funding authorities that support basic research, education, and extension funding for 1862 institutions is revisited to ensure that the institutions receiving such funds based on the federal formula actually provide research, education, and extension services to the tribal communities, farms, ranches, farmers, and rural citizens who are counted in the formula that establishes funding allocations. At present tribal interests are considered in establishing formula allocations but there is no follow through to determine if actual projects result in such funding allocations.

Sustainable Agriculture Research and Education Program

- Reauthorize the Sustainable Agriculture Research and Education Program with a set-aside for tribal sustainable agriculture project funding.

Agricultural Research Service Projects on Traditional Ecological Knowledge

- Launch and support a significant number of research projects within the Agricultural Research Service that focus on the important role that traditional knowledge plays in the environmental, natural resource, ecological, food science, nutrition, and health arenas. Funding provided in these unique content areas must be done with full consultation with tribal governments and full compliance with modern cultural practices and recognition.

Multi-Tribal Funding for Research Title Programs

- Develop a separate funding authority, like the Sun Grant or Sea Grant authorities, to allow multi-tribal, multi-state, and consortium approaches to meeting the research, education, and extension needs of Indian Country.

Native Youth Grants

- Include a provision of grants for youth-focused organizations in Indian Country that focus on developing food and agriculture leadership and scientific knowledge in all grants for youth organizations.

TCU Center of Excellence

- Encourage, allow, and include the Centers of Excellence approach to funding in the next Farm Bill Research Title.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title VIII: Forestry

Key Points and Recommendations

- Tribal forests and woodlands make up one third of all tribal lands held in trust, and provide resources, jobs, and economic development opportunities for many tribal governments.
- Many tribal forests and adjacent federal forests contain sacred places and important trust and treaty-protected resources.
- Tribes must be provided parity throughout the Forestry Title to better access, manage and develop tribal and federal forests and woodlands to protect tribal resources while providing jobs and economic development.

Background Information and Context

Indian forests and woodlands comprise 18.6 million acres, or one third, of the total 57 million acres of Indian land held and managed in trust by the federal government. More than 300 tribes have forests, which are one of the principle renewable resources available to tribes. Across the country, Indian forests provide more than \$40 million in annual tribal governmental revenues, 19,000 jobs in and around tribal communities, wildlife habitat, and food and medicine sources for Indian people. The proper health and management of Indian forests are crucial to tribal and rural economies.

Further, many American Indian and Alaska Native tribes have long-standing and deeply spiritual relationships with the forests where they have lived for centuries. The U.S. Forest Service now maintains National Forests that coexist within and among the boundaries of current and historic tribal homelands. Since many tribes either live within the jurisdiction of federal agencies with forest responsibilities (primarily the U.S. Forestry Service at the U.S. Department of Agriculture), or have trust and treaty rights resources located on federal forest lands, the intensely specific and expertise-dependent issues around forests require a specialized focus on policy changes in the Forest Title.

Opportunities for Indian Country in the Forestry Title

Improve the Tribal Forest Protection Act (TFPA)

- Adopt the legislative text from the Sections 301 and 303 of the 114th Congress's H.R. 2642 (Rep. Westerman) in the new Farm Bill.
- Include the TFPA streamlining provisions to improve the timelines for review and implementation of forest restoration projects requested by tribes.
- Allow for greater tribal participation in TFPA projects by authorizing, as a discretionary pilot program, the application of "638" contracting authority to TFPA projects on Forest Service or Bureau of Land Management (BLM) lands.

Cooperative Management of Adjacent Federal Lands

- Since tribes continue to have legal, historic, and economic connections to adjacent federal forests, include a pilot program authorizing tribes and the Bureau of Indian Affairs (BIA) to conduct cooperative, discretionary forest restoration activities on Forest Service and BLM lands using existing regulations governing the management of Indian forests. Additional means and legal and financial arrangements that would support the cooperative management of forest lands with and through Tribes must be explored.

Tribal Forestry Workforce Development

- Authorize the U.S. Department of Agriculture (USDA) to fund a Native American forestry workforce coordination and development program through an intertribal organization familiar with Tribal forestry issues. The Indian Forest Management Assessment Team, an independent panel of scientists, has identified the need to recruit, train and retain a future forestry and fire workforce to address the growing shortage of trained workers for the management and operation of Indian forests. This shortage of forest workers constrains the ability of tribes and related federal agencies to effectively manage and protect tribal forests and forest-related natural resources and to participate in broader landscape-based forest management activities.

McIntire-Stennis Parity

- Allow Tribal Colleges and Universities (TCUs) offering a bachelor's degree in forestry or higher to perform tribally and state-relevant forestry research and develop a well-trained Native forestry workforce. The McIntire-Stennis Act of 1962 dedicates funds to states to pursue forestry research at state colleges and universities and to help train the next generation of forest scientists and professionals. All 1862 land grant institutions and, since the 2008 Farm Bill, 1890 Historically Black Colleges and Universities have access to funding, yet the National Institute of Food and Agriculture made just under \$32 million available under McIntire-Stennis. While tribal trust lands are included in the formula that allocates funding to the individual states, the 1994 Land Grant TCUs remain ineligible to receive research funding.

Fire Suppression Priorities

- Any federal wildfire suppression efforts in the Farm Bill should ensure that Indian forests are properly prioritized in fire suppression activities and funding. Current priorities place protection of private structures above protection of tribal forest assets held, managed and protected by the U.S. as trustee. As a result, in the 2015 fire season, suppression crews were removed from wildfires on Indian trust forests to protect private structures. The fires on Indian trust forests exploded, destroying hundreds of thousands of acres and millions of board feet of timber vitally important to tribal economies. These priorities, allowing federally protected trust assets essential to tribal communities to be sacrificed to protect private structures, needs review.

Support Anchor Forests

- Provide authority to develop more Anchor Forest initiatives. The Inter-Tribal Timber Council, its member Tribes, the U.S. Forest Service, and other forest resource stakeholders have recently completed a pilot study in Washington State and report on an "Anchor Forest" concept to foster landscape-scale forest collaboration and management projects intended to improve forest health while preserving local logging, milling, and other critical infrastructure. The pilot study was successful and many tribes in the Great Lakes states and Southwest are interested in developing Anchor Forest projects in their own regions.

Protection of Sacred Places

- Ensure that interdepartmental efforts to protect Indian sacred places are maintained and strengthened, and that the responsibilities of USDA and other federal departments to consult with tribes on an ongoing basis concerning sacred places continually occurs. The Memorandum of Understanding among departments of the federal government must be kept in place indefinitely.

Tribal Representatives on Forestry Advisory Bodies

- Require tribal representation on all local, regional and national planning and implementation bodies which serve in advisory capacities to USDA and the U.S. Forest Service.

Parity Between Forest Services and NRCS Land Language

- Create parity between Forest Service management agreement language and Natural Resources Conservation Service determination of land control language to preserve tribal sovereignty and rights to gather/manage traditional plant stands and enhance opportunities for tribes to leverage Environmental Quality Incentives Program (EQIP) assistance on traditional lands under Forest Service jurisdiction.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title IX: Energy

Key Points and Recommendations

- Tribal lands, individual Indian-owned land, and natural resources hold immense potential to develop bio-based energy economic development, energy infrastructure build-outs, and jobs in tribal communities and surrounding rural communities.
- Establish a Tribal Bio-Based Energy Development Grant Program to help tribal governments, tribal producers, and tribal business entities develop bio-energy businesses and production.

Background Information and Context

Energy projects in Indian Country hold immense potential for diversifying tribal economies while bringing essential energy infrastructure to remote communities. Growing crops for energy purposes or converting natural resources on tribal and individual Indian-owned lands to bio-energy projects is an important tool for economic development and self-sufficiency. The 2018 Farm Bill can further support tribal bio-energy projects focused on remote tribal food producers who embrace the importance of research and development of products and systems. This will help tribes reach their energy production and infrastructure goals and support surrounding rural communities in need of affordable energy, jobs, and economic development.

Opportunities for Indian Country in the Energy Title

Establish a Tribal Bio-Based Energy Development Grant Program

- Create a Tribal Bio-Based Energy Development Grant Program in the 2018 Farm Bill to help spark economic development and energy infrastructure development in tribal communities, while providing low-cost energy to tribal communities and surrounding rural areas. This grant program for tribal governments and wholly owned tribal entities would operate much like a grant in lieu of tax credit, similar to the existing Renewable Energy Production Incentive (REPI) Program. Further, the Tribal Bio-Based Energy Development Grant Program should specify the eligibility of tribally chartered and federally chartered tribal corporations for rural development programs, including for grants and loan programs, as well as any technical assistance programs available. Since the U.S. Department of Agriculture has made a policy statement that it will recognize federally chartered Section 17 Tribal Corporations as eligible entities for rural development programs, the program should codify this and clarify that tribally chartered tribal corporations are also eligible.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title X: Horticulture

Key Points and Recommendations

- Many traditional Native foods fall under the designation of horticulture crops and are necessary to support food sovereignty and healthy food access in Indian Country.
- USDA programs which oversee horticulture crops must engage in tribal consultation to ensure the unique needs of tribal producers are being met.
- The Farm Bill needs to include provisions to protect Native foods in the marketplace, as well as Native seeds and traditional foods.

Background Information and Context

The Horticulture Title supports specialty crop and organic farming operations with provisions that provide trade promotion and risk management assistance. Horticulture crops are extremely important to tribes and individual Indian producers for many reasons, and as a result, tribes and tribal producers must have equitable access to the programs authorized in the Horticulture Title. First, and most importantly, many of the traditional crops that are so important to the cultural and spiritual lives of Indigenous people are “produce” or “specialty crops” under federal law. Second, there are many individual and community acts of food sovereignty that are occurring throughout Indian Country that are critical to improving the health and wellness of tribal citizens. Indian Country health data is among the worst in the country. Chronic diseases, stroke, cancer, heart disease, obesity, and diabetes are at very high rates throughout Indian Country. One of the most important ways to address these health issues is to increase the amount of fresh fruits and vegetables available in our communities and to make those foods accessible locally and regionally. Third, as more of these foods are grown and raised in Indian Country, the surpluses are already finding their way into local and regional markets. Many tribes and tribal producers are improving their economic development alternatives by expanding into diverse food production systems.

Opportunities for Indian Country in the Horticulture Title

Tribal Consultation on Fruit and Vegetable Programs

- Require the U.S. Department of Agriculture (USDA) agencies primarily responsible for specialty crops to engage in ongoing tribal consultation concerning the impact and growth of the fruit and vegetable sector within Indian Country and the opportunities and challenges that can be positively impacted by changes in USDA regulations.

Tribal Inclusion in the Specialty Crop Block Grant Program

- Change the Specialty Crop Block Grant Program to ensure that tribal departments of food and agriculture are eligible for funding under this important program and that tribal projects are not required to go through state funding mechanisms at state departments of agriculture to receive support. There are very few tribal projects that currently receive support and, at the same time, the number of tribal departments of agriculture is likely to continue to grow over time. This



program is critical to the growth of this sector in Indian Country, and tribal sovereignty must be respected by allowing these new departments to receive funding parity.

Honey and Beekeeping Reports

- Include the growth and increase in beekeeping and honey operations in Indian Country in any reports on honey or beekeeping.

Tribal Farmers' Markets

- Require that a minimum of 10 percent of available funding in farmers' market and local food promotion programs grant funding authorities go to tribal and tribal producer farmer's markets and local food promotion activities. All definitions of farmers' market and local food promotion activities must ensure that tribal food systems and producers are not excluded from participation based on the unique ways that such markets and activities iterate in Indian Country.

Support for Tribal Organic Producers

- Launch a special program in USDA designed to increase technical assistance to those within Indian Country who are interested and prepared to transition to organic production.

Increased Support for FSMA Outreach

- Ensure that tribes and tribal producers receive adequate technical assistance from USDA and/or Food and Drug Administration (FDA) on the Food Safety Modernization Act of 2011 (FSMA) and that the ongoing implementation of FSMA does not inequitably or disproportionately negatively impact Indian Country food systems. The impact of FSMA implementation on tribal producers is different from the impact on any other U.S. producer due to the unique land base, legal jurisdiction, and production systems in Indian Country. At present, there is not enough funding to adequately reach tribal producers to ensure their knowledge of and compliance with FSMA requirements. In addition, the unique legal and political systems in Indian Country are not taken into consideration by USDA or FDA in fashioning approaches to FSMA compliance.

Protecting Native Foods in the Marketplace

- Require USDA to work with tribal governments, tribal organizations, and tribal producers to develop programs that are designed to protect the integrity of Native food products from fraudulent versions of their foods in the marketplace. The federal trust relationship requires that USDA work with tribal governments, tribal food companies, and tribal food producers to ensure that market regulatory mechanisms can be used to augment the ability and inherent legal authority of tribes to protect their unique food products. This can be done through geographic intellectual property mechanisms put in place by tribal governments to protect unique tribal foods or other appropriate legal mechanisms that must receive recognition by the federal government. These processes for protection should be fully supported and recognized by USDA.

Protect Tribal Seeds and Traditional Foods

- Require USDA to take steps after tribal consultation to ensure that tribal seeds are given the maximum protection available under federal law and not allowed to be accessed for commercialized purposes without the consent of tribal governments. Seeds of traditional foods are among the most sacred items to Indigenous peoples and the protection of those seeds, not only as food sources but as important cultural systems, must be required.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017





Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title XI: Crop Insurance

Key Points and Recommendations

- Due to the high risk of agriculture and food production, especially in Indian Country, crop insurance products must cover tribal producers in unique ways. In addition, livestock producers in Indian Country must be afforded the same risk protection as crop producers as well as the same payment options since livestock production makes up a significant percentage of tribal food production.

Background Information and Context

Agricultural risk management is critical for producers, especially in Indian Country, not only from the production side, but also from legal, financial, marketing, labor, and regulatory standpoints. Managing these risks takes a lifetime of attention, focus, dedication, and assistance. Decades ago few options existed for most producers in terms of insurance coverage of risks associated with agricultural production, and most producers sought relief from Congress when disasters occurred. With the continuing development of crop insurance as an important tool of risk management and disaster mitigation, the 2018 Farm Bill must ensure that crop insurance products approved by the U.S. Department of Agriculture (USDA) are suitable for tribal food production systems.

Opportunities for Indian Country in the Crop Insurance Title

Parity for Indian Country Ag Production

- With more than 50 percent of the \$3.4 billion Indian Agriculture Industry being comprised of cattle, it is critical to design risk management products that meet the need. Currently there are few options available, and those that do exist require up-front premium payments (LFP, LRP). Simply changing the timing of premium payment to coincide with production would ease the burden of participation for Indian producers. Increasing the federal subsidy rate for this type of programs has also been demonstrated to incentivize participation and mitigate federal outlay in times of disaster.

RMA Study on Crop Insurance in Indian Country

- Require the Risk Management Agency (RMA) to conduct a study to ascertain the efficacy and applicability of the current crop insurance products as they relate to Indian Country agriculture production as indicated by the 2012 National Agricultural Statistics Service Ag Census. If that study reveals that either the specific crop insurance products or the general guidance documents of RMA do not adequately consider unique tribal production issues, a separate administrative guidance or notice should be issued by RMA to solve these concerns, and unique crop insurance products and crop insurance administration systems should be pursued.



Development of Crop Insurance for Traditional Foods and Livestock

- Encourage RMA to develop a unique crop insurance policy product designed to cover the production systems associated with tribal food products, tribal livestock, and traditional food systems. The production systems associated with such products should be recognized as Good Agricultural Practices (GAPs), and tribal producers should also be afforded the same opportunity to pay premiums upon the sale of the crop or livestock instead of making an upfront payment.

Tribal Producer Education Programs

- Ensure that at least 10 percent of all projects funded through RMA's Risk Management Education Program are focused on tribal producer risk management training needs and tribal food production systems and the unique risks associated with those systems.

Allow Tribal Insurance Companies to Insure Tribal Producers

- Engage AMERIND Risk, a 100 percent tribally owned and operated insurance provider, to begin the process of offering crop insurance products in Indian Country because it has significant experience offering and underwriting insurance needs in Indian Country and serves a national intertribal audience. The current crop insurance research, product development, and policy sales areas are not developed for, and do not adequately reach, smaller tribal producers. Many of these unique problems can be addressed by working directly with AMERIND Risk.

Appoint Tribal Producers to FCIC Board

- Consider appointing tribal producers to fill future vacancies on the Federal Crop Insurance Corporation (FCIC) Board and thereby ensure that every FCIC Board has at least one, if not more, tribal producers on the board whose role will be to address the unique issues associated with tribal production systems.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017



Indian Country Priorities and Opportunities for the 2018 Farm Bill

Title XII: Miscellaneous

Key Points and Recommendations

- Covering a wide variety of topics, as well as issues which span multiple titles of the Farm Bill, the Miscellaneous Title is an important mechanism for Indian Country.
- Fully fund the Office of Tribal Relations and create a new Office of Tribal Agriculture to improve the service and coordination of USDA programs for tribes and tribal producers. The new Office of Tribal Agriculture should report to the Office of Tribal Relations and funding for both offices should be mandatory.
- Create a mandatory interdepartmental working group between agencies at USDA and the BIA to examine and determine solutions to areas where the two departments overlap, are requiring duplicative documentation or actions on the part of tribes and individual Indian landowners in order to access programs and services, or are generally lacking in coordination and efficiency for tribal agriculture. The identified barriers and problems must be addressed and resolved by sustained mandatory interdepartmental working groups.

Background Information and Context

The issues covered within the Miscellaneous Title cover a wide variety of areas ranging from veterans' services to specific grant-making programs, to authorities related to the Office of the Secretary. There are many areas of the Miscellaneous Title that touch on issues that impact tribal communities and that also support specific programs used by tribes and individual Indian producers. This overarching title of the Farm Bill can be used to coordinate work across all titles and all federal agencies, create new programs and authorities that can be either piloted or implemented, and address issues that do not fit neatly in other titles.

Opportunities for Indian Country in the Miscellaneous Title

Fully Fund the Office of Tribal Relations at USDA

- Fund the Office of Tribal Relations (OTR) at a minimum of \$1.5 million, because insufficient funding limits OTR's ability to provide the programs, technical assistance, content, or even the basic communications to tribes and tribal producers regarding USDA's education and training programs. Adequate funding is essential to carrying out OTR duties, including the oversight of all USDA tribal consultation.

Authorize the Establishment of an Office of Tribal Agriculture

- Establish a broad reaching Office of Tribal Agriculture within the Office of the Secretary to coordinate all USDA programs as those programs apply to tribes, maximize the value of the programs, address issues in compliance and access of programs that are carried out within USDA, and serve as a liaison between the USDA, tribes, and individual Indian producers. Among other requirements, the Office of Tribal Agriculture should periodically report to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry at least once each



fiscal year on the activities and progress in advancing tribal agriculture. The Office should also report annually to the Senate Committee on Indian Affairs. The Office of Tribal Agriculture should receive an appropriation of \$2 million for each fiscal year.

Tax Credits or other Tax Incentives for Buying Indian Food and Agriculture Products

- The 2018 Farm Bill should create a new “Buy Indian” tax credit or other tax incentives to encourage consumers and those within the food supply chain to buy American Indian and Alaska Native food products. This will not only help Native food products in the supply chain, it will also provide incentive for distributors, retailers, and related food purchasers to examine Native food product purchases to meet their food supply needs.

Increase Cooperative Agreements Between APHIS and Tribes

- Enhanced authority for the livestock and plant disease agency of the USDA – Animal and Plant Health Inspection Service (APHIS) – could dramatically increase the number of cooperative agreements it has with tribal governments and tribal organizations. Since tribal lands and individual Indian-owned land are among the most remote in the United States, it is important to ensure that animal and plant health is monitored closely and that animal and plant disease is dealt with properly and in ways that do not cripple Native agriculture and food production. Increasing the amount of funding of cooperative agreements is an important way to not only further the growth of agriculture management and governmental control at the tribal government level, but also meet the goals and concerns of APHIS.

Recognize Tribal Departments of Food and Agriculture

- Permanently recognize and incorporate Tribal Departments charged with administration of Agriculture and Food Systems into the ongoing interface of all agencies within USDA and the Office of Intergovernmental Affairs at USDA with other offices of government.

Country of Origin Labeling and Beef Checkoff

- Reinstate Country of Origin Labeling and create a set-aside within the Beef Checkoff funds that is devoted to the marketing and promotion of Native American Beef.

Education, Training and Scholarship Programs to Support Native Producers and Scientists

- Develop a new program that focuses on educating and training the tribal agriculture labor force, provides key scholarships to Native producers, and encourages Native scholars and scientists to focus on food and agriculture. USDA currently has multiple internship, scholarship, mentoring, and other programs focused on increasing the diversity of American agriculture by educating the next generation of tribal leaders in food and agriculture. However, Native representation is low, and outreach to Native communities is weak. A Native scholarship program should be adequately funded and coordinated throughout the land grant system. A minimum of \$10 million is needed to adequately endow a centralized scholarship fund for Native youth and scholars. This program should be managed by the Office of Tribal Relations and any new Office of Tribal Agriculture.

Maintain and Fund the Intertribal Technical Assistance Network

- Permanently maintain and fund the Intertribal Technical Assistance Network, which has been in place for more than five years through a cooperative agreement between USDA and the Intertribal Agriculture Council, through contributions from each of the agencies and offices of USDA. This effort should be funded at least \$3 million annually, and it must continue to maintain regional offices in each of the 12 BIA regions to ensure access for all Native producers.

Interdepartmental Task Force on Indian Agriculture

- Create an Interdepartmental Task Force on Indian Agriculture with the Office of Tribal Relations, the Office of the Secretary, and representatives of each of the agencies and offices of USDA, along with the BIA. The purpose of the Task Force shall be to develop administrative efficiency and regulatory changes needed to ensure Native agriculture is supported and allowed to increase. The Task Force must report annually to the Secretary of Agriculture and the Secretary of Interior.

OAO Outreach and Internships for Native Students

- Require the USDA Office of Advocacy and Outreach (OAO) to fund internships for Native students at a level equal to the number of internships the office supports for any other socially disadvantaged group (e.g., Hispanic, African American, Asian American, women, etc.). The OAO has been inconsistent in funding these internships for Native students, and they should be required to do so if they fund members of other groups. The Tribal Liaison position within the OAO that focuses on the relationship between the American Indian Higher Education Consortium (AIHEC) and USDA (and staffs the joint leadership council of AIHEC and USDA officials) should be moved to the Office of Tribal Relations.

Coordination with BIA on Agricultural Resource Management Plan

- Require the BIA to coordinate with USDA in all aspects of supporting any tribe or individual Indian landowner that wishes to draft and implement (including receiving Secretary of Interior support) an Agricultural Resource Management Plan (ARMP), authorized under the American Indian Agricultural Resource Management Act of 1993 (AIARMA). This act has never been fully implemented, and only a few tribes and individual Indian landowners have placed a plan in motion. The BIA, working in concert with USDA, should prioritize finding resources to assist tribes (including technical assistance resources) in establishing plans authorized under the act. The BIA should be required to accept any conservation plan or forest management plan conducted by the NRCS or USFS agencies within USDA as equivalent to any environmental assessment deemed necessary in implementing the AIARMA. Tribes and individual Indian landowner should not be required to conduct a full NEPA analysis to conduct food and agriculture operations on their lands. The requirement is far more excessive than any applicable law, and this interpretation violates principles of rights to food, food access, environmental or food justice, and food sovereignty. An ARMP created pursuant to the AIARMA should be allowed as a fundable EQIP practice, and exempted from full NEPA analysis.

Increase FSMA Technical Assistance Funding for Tribal Producers

- An increase in Food Safety Modernization Act (FSMA) training and technical assistance funding for tribal producers must occur. There are unique legal, jurisdictional, production, water, land use, and related issues and concerns regarding its implementation that will inhibit tribal food production if not addressed through enhanced food safety training and technical assistance. The Native American Outreach, Training, Technical Assistance, and Education cooperative agreement funded through the FDA attempts to reach the technical assistance and training needs of tribal producers, but USDA is not funding such efforts on a regular basis and FDA funding is not at the level necessary to cover the needs of producers in more than 30 states and with 567 tribes. The Farm Bill should require that the FDA and USDA double the amount of funding received by the Native outreach organization, since that organization is required to conduct activities that cover twice the land base that any other regional training center covers. The Farm Bill should also require that the USDA fund an additional equivalent amount of activities to ensure that tribal producers are reached with this information, which is vital to their compliance and their ability to reach markets for their products. USDA and FDA must conduct joint tribal consultation with regard to any current and



future interpretations of the FSMA rules in order to determine potential continuing impacts on Indian Country producers and food businesses. Produce Safety Alliance (PSA) at Cornell University designs all approved curriculum on FDA FSMA implementation but the curriculum is not appropriate to the legal, jurisdictional, land, and water resources or food systems in Indian Country and appropriate curriculum and resources must be focused on the needs of Indian Country producers.

Tribal Representation on All Federal Advisory Committees

- Require USDA to recruit and appoint tribal citizens to each of the more than 100 federal advisory committees it seats and supports. In addition, the Council for Native American Farming and Ranching should receive funding to support its work, and it should become a permanent FACA advising the Secretary and USDA.

Weather Reporting Stations

- USDA should be required to work alongside other relevant federal departments to ensure that weather reporting systems and stations are located on tribal lands and individual Indian-owned lands throughout the U.S., because the gathering of that information is vital to predicting production yields and assessing disaster impacts, among other weather-related needs. Currently, very few weather reporting stations are located on tribal lands, and USDA should take the lead in working with other departments to ensure this is addressed.

Buy Indian and Indian Preference for USDA Food Purchasing

- Amend the language that controls USDA contracting and procurement, including the language that controls the procurement of food, to not only recognize and support a “Buy Indian” provision, but also allow an “Indian preference” particularly when USDA is purchasing any product, including food, being utilized by Native people within their communities (such as food in the commodity food programs, like the Food Distribution Program on Indian Reservations).

Establish an Indian Agriculture Development Trust Fund

- Production agriculture has the potential to provide a private sector economy for rural tribal governments. Some of the highest unemployment rates in the country are located on tribal lands – several with chronic unemployment rate as high as 80 percent. Many of these tribal communities have land bases that can support production. A secure and stable source of technical assistance and expertise in the development of their agriculture-related economies could improve the quality of life for Indian peoples living on those reservations.

Make the Indian Agriculture Trust Fund Available to All Tribes

- Require that all funds used in the Indian Agriculture Trust Fund should also be available to tribes in other parts of the country and that a study be performed by USDA to find other similar sources of income to fund such a trust fund and report back to Congress as to the findings. The need for such a trust fund is pervasive throughout Indian Country, not just in the Midwest or Missouri River basins and watersheds.

USDA and BIA Work Group on Farming and Ranching

- Require USDA and the BIA to form a permanent working group that examines all aspects of the interface of farms and ranches on tribal lands and individual Indian owned lands, and reports annually to both the Secretary of Agriculture and the Secretary of Interior concerning administrative changes that should be made to further the access of tribal governments, tribal producers, and tribal food businesses to all programs and authorities of USDA.

Tax Extenders

- Extend the Indian Employment Tax Credit (26 U.S.C. § 45A) and the Accelerated Depreciation Tax Incentive for business property located on Indian reservations (26 U.S.C. § 168) because agriculture is increasingly dependent on financing and development tools. Both tax incentives expired at the end of 2012; however, many businesses operating on the reservation rely on these tax credits to help subsidize the cost of materials and workers. While these should be extended, the accelerated depreciation and Indian employment tax credits are inconsistent, because they continue to be renewed year after year instead of being made permanent or renewed for a longer duration (four to seven years). This uncertainty makes them unreliable as investment incentives to attract the multi-year, large-scale projects they were intended to attract. Making these incentives permanent does not increase costs on an annual basis, and would attract new businesses into Indian Country instead of only benefitting those non-Indian businesses already operating on the reservation.

For more information, please contact: Colby D. Duren, *Policy Director and Staff Attorney*, at cduren@uark.edu.

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship.

September 2017

