



March 22, 2021

The Honorable Heather Dawn Thompson, Director
Office of the Secretary
Office of Tribal Relations
1400 Independence Avenue, SW
Room 501-A Whitten Bldg.
Washington, DC 20250

RE: NFBC, IAC, and IFAI Comments for the Record - USDA-OTR Consultation on Consultations and Barriers/Inequities at USDA

Dear Ms. Thompson:

On behalf of our respective organizations, we appreciate the opportunity to provide input on the barriers we see across the U.S. Department of Agriculture (USDA) and to partner with the Office of Tribal Relations, and all USDA agencies, to provide solutions. In order to address these systemic, historical, and current barriers currently facing Indian Country agriculture, USDA must acknowledge Tribal Nations sovereignty through upholding its Nation-to-Nation relationship and furthering its trust and treaty responsibilities to Indian Country, as is called for in President Joe Biden's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. We look forward to working with USDA and moving forward together, in a true governmental partnership, as the federal government best serves Indian Country: "when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations."¹

Tribal agriculture production and food systems are essential economic development and community drivers in Indian Country. According to the 2017 Census of Agriculture, nearly 80,000 tribal producers are operating on over 59 million acres of land and generating over \$3.5 billion in economic activity.² Due to lack of equitable access to USDA programs, credit, and infrastructure, this activity represents a producer share of the food dollar that is historically less than 10 cents. Removing the barriers at USDA will help to triple, or even quadruple that impact for Indian Country economies. Spurring economic growth that will contribute to the physical infrastructure necessary while providing the pathway to tribal self-determination, tribal food sovereignty, while empowering the first keepers of our ecosystems to yet again lead the way towards climate recovery through regenerative agriculture systems that sustain our peoples and lands.

¹ President Biden, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, Jan. 26, 2021, available at:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

² USDA - National Agricultural Statistics Service, 2017 Census of Agriculture Highlights - American Indian/Alaska Native Producers, Oct. 2019, available at:

https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_AmericanIndianAlaskaNative_Producers.pdf.

1. Consultation on Consultation

Nation-to-Nation consultation between Tribal Nations and the United States federal government has been a principle of the Tribal-federal partnership for the last twenty years. On November 6, 2000, President Clinton signed Executive Order 13175 reaffirming that the U.S. “continues to work with Indian tribes on a government-to-government basis,” and “recognizes the right of Indian tribes to self-government” while requiring consultation with Tribal governments on “policies that have tribal implications.”

In a Presidential memorandum in November 2009, President Obama directed the heads of all executive agencies to develop consultation policies that would set forth, in writing, how each agency would engage in meaningful consultation with Tribal Nations. This memorandum led to the creation of the existing USDA Departmental Regulation, DR-1350-002, which outlines USDA's consultation policies. Shortly after taking office, on January 26, 2021, President Joe Biden issued the “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships” which reaffirms “Tribal Nations are sovereign governments recognized under the Constitution” and that it is the responsibility of the U.S. government to have “regular, meaningful, and robust consultation with Tribal Nations”.

President Biden's memorandum follows up on President Obama's 2009 memorandum and asks all federal departments to consult on their consultation practices, which triggered USDA to schedule these consultation events. The existing consultation policy was written by then-USDA Office of Tribal Relations Director, Janie Simms Hipp (Chickasaw), and her staff, and put into effect by Secretary Tom Vilsack. The policy has been in effect since 2013. This policy has opened significant avenues for meaningful dialogue between Tribal Nations and USDA officials, but there are areas where the policy could be updated and improved. These comments highlight some of those areas.

a. Consultation Notice

Tribal leaders and participants have expressed that notice regarding consultation has been insufficient to thoroughly communicate and prepare for the consultation. Specific Issues raised by Tribal leaders include: the absence of consultation, consultation that is not meaningful i.e. after the decision has been made, frequent consultations but without opportunity for meaningful input, and a lack of follow up consultation to address questions and requests for additional information. Advance notice well before the scheduled date must occur in order for tribes to staff, schedule and prepare for consultation accordingly. Thirty (30) business days is sufficient, but only if notice actually reaches Tribal Leaders in time for them to plan and respond, or designate a proxy.

Additionally, notice regarding consultation has been insufficient to thoroughly communicate and prepare for the consultation. Issues raised by tribal leaders include the absence of consultation, consultation that is not meaningful i.e. after the decision has been made, frequent consultations but without opportunity for meaningful input, and a lack of follow up consultation to address questions and requests for additional information. Advance notice well before the scheduled date must occur in order for tribes to staff, schedule and prepare for consultation accordingly. 30 business days is sufficient, but only if notice actually reaches Tribal Leaders in time for them to plan and respond, or designate a proxy. Notice should clearly lay out expectations and indicate

the focus of the regulatory issue in advance of the consultation including timelines, goals, and sources for tribes to seek or receive additional information regarding the consultation topic.

A variety of formats of notice would be helpful to address challenges. Tribal Administration and Tribal Leader turnover occurs regularly and contacts should be also regularly updated by OTR to ensure accurate information. A database of tribal areas of interest (like ancestral lands indicated in treaty rights and/or culturally significant sites) and tribal points of contact should be developed to additionally target consultation efforts.

OTR should work across the Department to ensure that notice of consultations reaches Tribal Nations, and also coordinate with intertribal organization partners at the national and regional level to help transmit notice as well. Regional or local USDA offices of agencies implicated in consultations should also be distributing notice. Additionally, consultation notice letters should not just be addressed to elected Tribal Leaders but also cc'd to appointed cabinet level Tribal Secretaries of State or the Nation as well as tribal management/directors over the pertinent subject matter area.

Notice letters should be distributed via mail and email, in order to assure that executive leadership may redistribute the consultation letter to appropriate tribal staff or that leaders unfamiliar with the subject matter area targeted for consultation can be apprised of the particular issue by tribal staff. During the Obama administration, the Council for Native American Farming & Ranching made a recommendation to the Secretary that any mailings to Tribal headquarters about USDA programming be sent to the most pertinent Tribal office where possible. The Council's members noted in that recommendation that mail arriving at Tribal headquarters covering agricultural programming may take weeks to be routed to the appropriate person or department within the Tribe, because of the volume of mail coming to headquarters.

Similarly here, where possible consultation notices for USDA programs should come not only to headquarters, but also directly to Tribal governance entities like departments of agriculture, natural resources, and/or health and human services. This ensures that those subject matter experts within each Tribal Nation also have notice of consultations and enables them to work within their own governance structure to elevate consultation notice to elected officials and even potentially brief them on issues most relevant to the Tribe prior to consultation.

While posted notice is insufficient to meet the Nation-to-Nation obligations of consultation, it may be beneficial for USDA (or federal government at large) to host a website specifically targeted towards tribal consultation, posting information in a centralized location providing details about USDA proffered consultations and also provide a format for electronic submission for tribally initiated consultation requests, comments, and feedback. Live comment updates during the consultation process can increase information for tribal leaders who were unable to attend or join late.

b. Consultation Best Practices

Our organizations would like to specifically highlight some consultation best practices that we have seen in practice that USDA can build upon. First is to focus on Substance and Solutions. The USDA consultation policy currently defines consultation as something that is "timely, substantive, and meaningful." Consultation is its most effective when it is a real conversation

and dialogue between elected Tribal officials and federal officials. Tribal consultation has a high risk of being little more than a “listening session” without dialogue or efforts to find solutions. Agencies need to recognize that meaningful dialogue can only occur when Tribal Nations have complete information on a topic, and when the federal agency is represented by decision-makers who are empowered to discuss issues in detail. The “framing papers” prepared for this consultation are a best practice that all agencies should implement. To the extent allowable by law, agencies should be sharing materials about pending decisions with Tribal leaders in advance, as well as requiring agency personnel empowered to change policy be at the table, so that the time and energy of both tribal leaders and federal officials is used effectively. Federal staff participants should be well-informed, part of the decision making chain, and able to speak openly regarding internal agency concerns. Senior agency officials should attend. Tribal leaders should be encouraged to not only become informed about the details of an issue but be accompanied by tribal employee subject matter experts/technical staff.

Further, USDA must consult as early in the process as possible, communicate openly and consistently and consult as frequently as needed. Pre-consultation caucuses for participating tribes and tribal leaders should occur prior to the consultation, scheduled in close temporal proximity to the consultation, and staffed by tribal experts over the consultation subject matter.

USDA should also consider a variety of formats for consultation to take into account affected Tribes, locations, ability to travel or host by both the agency and/or interested Tribes, funding availability to tribes to host, whether there is a need for consultations to occur across multiple locations, the practicability of virtual consultations, and timeliness considering annual tribal schedules and events, tribal election cycles, and existing consultation calendars.

Delineate when confidentiality of Tribal communications is legally allowed and under what circumstances. Multiple agency consultation should be discouraged with the exception of targeted issues that involve two or three agencies. Agencies with overlapping authority or oversight of particular issues or agencies addressing issues resulting in differing outcomes per agency regulation should jointly consult. Address the lack of consent requirement. Failed consultations have no recourse barring limited litigation after the fact.

c. Virtual Consultation During Pandemic

The COVID-19 pandemic has disrupted the ability for both Tribal Leaders and federal government counterparts to travel safely. While in-person consultations are preferred in non-pandemic environments, virtual consultations are a convenient platform to establish regular and meaningful consultation on programs, policies, and resources with tribal implication. Broadband is not universally accessible in Indian Country. Virtual consultations must allow for participation over phone to ensure that Tribal Leaders in all areas are able to participate. Consultation through any platform must be early, meaningful, and substantive to facilitate effective deliberation on how USDA fulfills its trust responsibility.

USDA must take this responsibility seriously for the viability of tribal agriculture enterprises. An Intertribal Agriculture Council survey of tribal producers finds that 52% saw losses of at least \$10,000. Looking at the Census of Agriculture, almost 74.65% of tribal producers saw less than \$10,000 market value sales in 2017. USDA must respect the principle of mutual concurrence where both participating Tribal and federal leadership must both agree that an event is

government-to-government consultation before and during discussion. If Tribal Leaders no longer affirm that an event is consultation at any point, USDA must respect these statements and no longer reference the session(s) as government-to-government consultation. Virtual consultation does not absolve USDA of timely notice to Tribal Leaders on consultation, no less than 30 days before a session is scheduled.

d. Post-Pandemic Consultation

Indian Country has been disproportionately impacted by COVID-19, with cases for tribal citizens around 3.5 times more than non-Hispanic whites (source: U.S. Center for Disease Control, August 2020). Only 65% of the COVID-19 vaccinations distributed through the Indian Health Service have been administered (source: Indian Health Service, February 26, 2021). If and when the U.S. vaccination rate meets herd immunity, Tribal Leaders travelling to consultation events may strain vital government dollars that may otherwise support services for tribal citizens. Tribal Leaders may also feel pressures to remain with their communities as their nations rebuild from ongoing COVID-19 impacts. While future USDA policies may support in-person events, USDA should also facilitate alternative methods for Tribal Leaders participating, including teleconferences and virtual meetings. Tribal Leaders must be notified of any constraints to participating through these methods, such as limits to the number of virtual attendees.

e. Revisiting the Current Consultation Policy

All USDA agencies and employees need training on how to fulfill the requirements of government-to-government consultation. The Office of Tribal Relations should lead on that training, and it should be required for all USDA employees who will attend a consultation or work with Tribal Nations. The policy initially required an initial round of education in 2010 in addition to “[a]dditional training and education” provided to “senior managerial staff and senior policy staff at the local/field office level.” USDA should require all staff to undergo basic training on the government-to-government relationship, to make those training materials public so they can be commented on and improved by Tribal Nation comment, and to ensure additional training occurs for those positions most commonly involved in tribal consultation.

USDA must also fulfill the current policy's Commitment to have an internal Working Group on Tribal Consultation and Collaboration. Fulfill the policy's commitment to “create a new internal Working Group on Tribal Consultation and Collaboration” with “representatives from all USDA agencies (each agency and mission area represented)” to “work across the Department to monitor and advise the Secretary and Office of Tribal Relations regarding ongoing needs in relation to tribal consultation, programs and services.” This requires the agency to be transparent about who is on the Working Group and what its role is.

Reporting must be required after all consultation sessions. The current policy discusses reporting requirements with respect to internal reporting and reporting to other government agencies, but is silent on reporting to Tribal Nations other than the reports that are made public to everyone. USDA should develop a mechanism and appropriate policies for reporting on all tribal consultations in a timely manner. These reports should summarize what took place, how tribal input has been resolved, and what the next steps—if any—in the consultation process look

like. These reports should also allow Tribal Nation feedback, including questions on items that need further clarification.

There must also be mechanisms for violation of USDA's consultation policies. The plan currently is silent on what action Tribal Nations can take if they believe that the consultation policy has been violated by USDA. Create a mechanism and appropriate policies to ensure there is a reporting mechanism for violations of the USDA consultation policy, including the ability to file a report indicating a Tribal Nation's belief that consultation should have triggered but did not under USDA's internal policies. To the extent possible under law, create remedies for possible violations and be transparent about how the process is supposed to function.

2. Tribal Consultation on USDA Barriers and Solutions

a. Trade, Food Security, and Safety

i. Animal and Plant Health Inspection Service (APHIS)

Cooperative Agreements

USDA should make every effort to increase the number of cooperative agreements between the Animal and Plant Health Inspection Service (APHIS) and Tribal Nations, strengthening these authorities as necessary to enhance these relationships. Tribal nations often reside in remote locations of the country where accessing veterinarians can be challenging, so it is imperative that APHS be available to support tribal initiatives in monitoring animal and plant disease.

Tribal Youth Programming

APHIS' Safeguarding Natural Heritage Program provides a meaningful way for tribal youth to see Tribal Colleges and Universities and other Native-serving institutions in a 2-week experiential learning opportunity on agriculture, animal sciences, wildlife, and agri-business management. Only 5 of 38 Tribal Colleges and Universities have collaborated with APHIS to support this program, at no cost to these land-grant universities which often operate under strained budgets. USDA should prioritize these and other programs that support direct engagement, outreach, and education for tribal youth on agriculture and food systems management.

ii. Foreign Agricultural Service

In the Foreign Agricultural Service programs, the federal lexicon of acronyms and terms are often confusing and unfamiliar to those who have not yet encountered them. Participants sometimes report feeling confused by the information. Outreach to participants needs to take this lack of familiarity with specialized terminology into account. Additionally, increased education is necessary to the availability of resources on export steps and requirements, as well as marketing strategies and business planning. For those who lack experience in foreign markets, it is plausible that prices may not match product values. It is also possible that unique products that fare well may be replicated by competitors or unethical sellers take advantage of producers' lack of knowledge. Participants with minimal resources may be irreparably harmed by failed business deals and the support to navigate these issues. Foreign trade participants may not understand the certification, licensing, and registration protocol in the U.S. and various

countries (for exports). Oftentimes, producers do not have the cash flow to cover packaging, repackaging, or labeling costs.

iii. Food Distribution Program on Indian Reservations (FDPIR)

638 Authority and Support for Legislative Extension of Tribal Self- Governance and Increased Flexibility for Tribes in Operating Nutrition Programs

The 2018 Farm Bill authorized a demonstration project that enables Tribes/Indian Tribal Organizations (ITO's, the entities administering FDPIR) to directly source foods for their FDPIR programs through self-determination "638" contracts with USDA. This is the first time that 638 authority has applied to USDA. Expanded 638 access across the Department would require a legislative change. Congress has appropriated a total of \$6 million for this project: \$3 million in FY2020 appropriations, and a further \$3 million in FY2021 appropriations. The first \$3 million must be spent by Sept. 30, 2021, or those funds will expire, making it very important for USDA to fund applications quickly. USDA has opened applications for this project and the application period closed on March 15, 2021.

Although applications were finally open, unfortunately, USDA has reported in previous consultations that it may take the Department until the fall to process applications and make awards. This makes it very challenging for applicant ITOs to determine what foods to offer in their applications, because growing seasons are different for different varieties of products. It also delays FDPIR participants receiving locally, Indigenous grown foods, and delays Native producers in seeing an economic benefit from these contracts.

Recommendations for FDPIR 638 Program

Expediting application review for this FDPIR 638 process will put Indigenous grown and raised foods in the food packages of FDPIR participants faster and provide a critical market opportunity for Native producers. Ideally, the review process would be complete by June 1, 2021. Provisions like this 638 opportunity make it easier for Tribes to get traditional and culturally appropriate foods to their citizens, something Tribal leaders have asked USDA to do for years because of the health benefits of these foods. That is even more important now as our country continues to fight the coronavirus pandemic.

USDA can support any expanded 638 authority in future legislation. 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. This includes USDA support for full Tribal administration of FDPIR, but also SNAP, TEFAP, and Child Nutrition Programs. Even in the absence of 638 authority, USDA can take administrative actions to support furthering tribal self-determination in all federal food nutrition assistance programs. Fully implementing Section 6 of Executive Order 13175 and providing Tribal Nations waivers of statutory or regulatory provisions where requested would significantly support Tribal sovereignty and reduce barriers to equity at USDA for Tribes across the entire Department.

b. Economic Development

i. Rural Development

Background on Importance in Indian Country

USDA's Rural Development (RD) agency has programs that support a wide range of opportunities for Indian Country, including: rural business and community programs; housing; rural infrastructure, including electric and telecommunications services; rural water and sewer infrastructure; and rural hospitals and healthcare, and many. USDA is the only agency within the federal government that focuses solely on the needs of rural America, including those who live within Indian Country.

Rural Development funds are critical to Indian Country's agriculture and economic development. The infrastructure and investment needs in Indian Country are needed to help support this growing sector of Tribal economies. Tribal agriculture production and food systems are essential economic development and community drivers in Indian Country: nearly 80,000 tribal producers are operating on over 59 million acres of land and generating over \$3.5 billion in economic activity.

Tribal entities are often under included or have difficulty accessing RD programs due to issues with lack of information, application scoring systems, matching requirements, and programmatic requirements that do not adequately address the unique business entities and structures. There is a systemic lack of understanding of specific tribal government and business structures, and lack of priority access and technical assistance for tribal entities in Rural Development programs.

Issues in RD Programs and Funding

USDA RD offers many grant and loan programs to support rural communities, however Indian Country remains underserved. Tribes often lack large scale planning resources but are in critical need of the resources USDA RD offers. Tribal Nations encounter difficulty accessing credit through lending institutions which currently have very little incentive to extend credit and capital services onto tribal lands. Native Community Development Financial Institutions (CDFIs) work in areas which service Tribal Nations and citizens to provide capital and facilitate investment in Indian Country.

Solutions

- Implement the Tribal Technical Assistance Office at Rural Development provisions from the 2018 Farm Bill to support Tribes and Tribal entities have access to the agency Rural Development (RD) programs, as well as provide need support and connection with partner organizations on training and guidance within RD on Tribal business structures and entities to clear up any misunderstandings of ineligibility.
- Federal grants requiring substantial matching funds which inherently prohibits many Tribes, organizations, and municipalities from accessing these resources. A potential solution is to reduce match requirements on federal programs, offer set asides in grant opportunities for Tribes and limited-resource communities in RD programs and all authorities.
- Increased access to Rural Development's Community Facilities (CF) program is needed for food systems infrastructure, like value-added, preservation, and storage infrastructure.
- USDA must support expanding the Substantially Underserved Trust Areas (SUTA) designation beyond just the 5 Rural Utilities Service programs to the entirety of RD's programming. With all of the barriers to access issues, we believed that this would be an

effective mechanism to ensure Tribal priority for much-needed infrastructure in Indian Country.

- Address the discrepancies in access to credit by implementing a pilot program authorizing CDFIs to administer Farm Service Agency and Rural Development direct funding to illustrate the efficacy of fully exercising the flexibility in existing statutes.
- Amend the Community Facilities Direct Loan program re-lending regulations to accommodate Native CDFIs.
 - In FY 2016, USDA's Rural Housing Services (RHS) amended its Community Facility (CF) Direct Loan regulations to allow USDA to make loans to qualified CDFIs and other community lenders – that would in turn re-lend USDA funds to applicants to finance qualified community facilities in or serving areas of high or persistent poverty. While using a re-lending model that allows Native CDFIs to operate as intermediaries is an effective way to encourage more USDA CF lending in Native communities, the eligibility requirements set forth in the FY 2016 application made it difficult for qualified Native CDFIs to apply. Of the 30 states identified with Persistent Poverty counties over the last three decades, ten of them (one third) were states with resident American Indian/Alaska Native communities. Of those ten states, nine of them have several Native CDFIs that were not able to meet the program eligibility requirements. Of those Native CDFIs that were eligible to apply, two of the three failed to have an adequate AERIS score.
- Additional support and outreach to Tribal producers on the Value-Added Producer Grant (VAPG) is essential, especially the need for technical assistance and information on how to access it.

ii. Broadband

Background on Importance in Indian Country

According to a 2019 Federal Communications Commission (FCC) report, individuals residing on tribal lands are nearly 4.5 times as likely to lack any terrestrial broadband internet access as those on non-tribal lands. COVID-19 has driven more activities online putting tribal communities at a distinct health, educational, and economic disadvantage.

The Rural Utilities Service (RUS) at the U.S. Department of Agriculture (USDA) houses two critical broadband programs to address broadband deployment and support technologies: the ReConnect Program and the Distance Learning and Telemedicine (DLT) grants. The ReConnect Program provides loans and grants to fund the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in eligible rural areas. The Reconnect Program is open to governments, including Tribal Nations, corporate entities, and non-profits, and has a matching contribution equal to 25 percent of the overall project cost. The DLT Program provides grants for telecommunications equipment and software acquisition to rural end-users of telemedicine and distance learning applications. The DLT Program is open to governments, including Tribal Nations, corporate entities, and non-profits, and has a 15 percent matching contribution.

Issues in Broadband Programs and Access

While Tribal Nations are eligible for these funds, they are required to compete against larger governments, and more resourced corporate and non-profit entities. For example: Priority points

were successfully included in the 2018 Farm Bill's ReConnect broadband program which, in the first round of funding, was helpful in supporting Tribal applications. However, in the second round, Tribal priority points were not included in applicant scoring arguably harming Tribal applicants. Further, matching requirements put Tribal Nations at a distinct disadvantage because state and local grant applicants can rely on tax revenues and other financing options that are not available to tribal governments.

The 2008 Farm Bill authorized Substantially Underserved Trust Areas (SUTA) to direct resources to assist Native communities underserved by water, power, waste and telecommunications infrastructure and authorized the Secretary to employ innovative regulatory and financing strategies to increase infrastructure access to Native communities affected from disparities in these services. SUTA provisions never received the highest granting priority within USDA.

Solutions

- Create a 15 percent tribal set aside in the USDA Broadband Grant Programs and waive matching fund requirements
- Where the Administration is unable to provide a set aside amount of funding in parity to tribal applicants, the Administration must create grant application environments that give preference to tribal governments and eligible tribal government-owned businesses.
- USDA should create "highest grant" attention and prioritizations for tribal applications in the Department's SUTA provisions within its programs.
- USDA should adopt a set of Guiding Principles for Federal Agencies Providing Broadband Funds in Indian Country:
 - Require applicants for federal broadband funding on tribal lands to have the Tribal Nation's support.
 - Ensure Tribal Nations are allowed maximum flexibility possible when interpreting statute and interpret limitations on "duplication" as flexible as possible so Tribal Nations can better serve their communities.
 - Include Tribal Nations in certifying whether their communities are defined as served or underserved.
 - Require compliance with tribal laws in all USDA grant and loan agreements.

c. Farming, Ranching, and Conservation

i. Farm Production and Conservation

Background on Importance in Indian Country

The USDA Farm Production and Conservation (FPAC) mission is the heart of USDA's agriculture and food production programs, and all of these programs are intertwined together. This interconnectivity of the programs mean that when Tribes or Tribal producers are not able to access one, they are often barred from many of the others. Unlocking the barriers and opportunities in conservation, production, and marketing will help provide unbefore seen support for Tribal conservation, credit, and food systems. These programs also can help empower producers to implement practices to address climate changes through the existing streams of production income, instead of the how to extract capital out of the system. Tribal producers and all producers are tending to our resources and are the very foundation of our food system, but the extraction of capital from our food system forces ever more extraction from our soil, and

results in abstract or disjointed strategies dependent on outside forces and funding, such as long-promised carbon credits, or incentive payments.

Barriers and Solutions

- USDA must consider addressing climate change by rethinking agriculture finance. We must find a way to finance climate change efforts through existing production income which requires reimagining of agriculture finance. A system of finance like the one being implemented at Akiptan, Inc., a Native Community Development Financial Institution, created by the IAC, enables producers to consider climate-based, consumer-focused solutions. There is enough capital within the food system to begin this change, if we take a longer term approach to deployment. Too often we think of addressing climate change as a separate issue that stands alone, but it must be a part of everything we do. With the agriculture finance system by its definition providing funding to so many producers across the country, including a climate focus in agriculture finance can have one of the largest impacts and footprints on climate change.
- Lack of exposure to the intricacies of Indian Country dynamics and needs among USDA agency staff—more Working Effectively with American Indians Trainings are needed.
- The Grasslands Reserve Program has some issues with leaving out permit style range leases that aren't in contract form. It leaves out a lot of acreage in Indian Country Eligible acreage has to be in a producers operation for a year prior to eligibility which causes a barrier to 5 year lease contracts with the BIA, and has verbiage that excludes federally controlled lands.
- NRCS Tribal Advisory Councils were established and Tribes were actively participating in meetings with the State Conservationists and their staff. Tribal Advisory Councils started well, during the first five years of existence there was great collaboration between NRCS and the Tribes. The last two spring meetings the Farm Production and Conservation mission areas required 2018 Farm Bill listening sessions with the Tribes nationwide to be held at the state level. Often Tribal Advisory Councils have been used as hosts for these meetings. Due to the prescribed nature of the information that is to be shared at the listening sessions turn out to be agency updates and information sessions without true interaction with the USDA agencies and Tribes.
- More Tribal representation is needed on local, county, and state boards that make critical decisions on allocation of funding and resources.
- Inconsistencies between USDA Agencies on how they handle control of land issues. For example NRCS in North and South Dakota will approve an EQIP or CSP contract that is planned beyond a BIA Grazing Permit as long as the BIA Superintendent and Tribal Chairman or designated signatory sign off on the contract. On the other hand, FSA will not approve program participation, contracts, for land under a permit or lease that runs outside of the term dates on the lease or permit agreements. For example, there is not one acre of BIA managed land eligible for the CRP Grasslands program to this point due to the inconsistency.
- Lack of infrastructure to support producers getting food to market - some of the identified needs and investment opportunities include, increased processing capacity and access to certified facilities; preservation and storage infrastructure investment such as cold storage for traditional foods and perishable goods, and the logistics and distribution infrastructure for food.
- Additional funding and specific Tribal set asides in the Local Agricultural Marketing Program (LAMP) and other marketing programs are essential to ensure that Tribal

producers can build out their local production which will help support strong food system development.

- The Farm service Agency ownership loans requirement to have a signed offer to purchase before initiating the loan review process up to 30 days to wait to be approved for financing; most producers are uninterested in waiting so long for approval. A pre-approval process, like ones available under most commercial credit scenarios, is needed. Another solution could be using cash flow prior to closing to demonstrate repayment ability.
- AMS check-off dollars do not make it back to Tribal producers, and it is a cumbersome process and challenging for Tribal producers to navigate. Specific support, capacity building, and technical assistance is needed.
- NRCS payments, and other cost payment schedules for reimbursement, need to be updated to fund projects as many currently do not align with actual costs.

ii. Agricultural Marketing Service

Background on Importance in Indian Country

The Agricultural Marketing Service, AMS, is the USDA agency responsible for sourcing domestically produced food for USDA. AMS also oversees Farm Bill programs that support local food production and expand markets through marketing opportunities, like local food promotion programs, the national organic program, and specialty crops programs.

Unresolved Barriers

- Commodity Procurement, including Farmers to Families program:
 - The current Federal Acquisitions Regulations (FAR) present a barrier to Tribally produced foods finding a place in USDA Foods sourcing, and if adjusted, could potentially open up another market opportunity for Native producers.
 - Part 26-1 of the FAR provides an Indian Incentive Program (52.226-1), which relaxes some of the burdensome application requirements for potential Native contractors.
 - Unfortunately, the current AMS interpretation of this provision is that it only applies to Native subcontractors, not prime vendors, so the only way a Native business could take advantage of this provision is to find a prime vendor to work with.
 - As we saw with the Farmers to Families program, which was a similar circumstance, Native producers struggled to work with those prime vendors, often because of preexisting disparities in market access. If this provision were altered it would truly allow for the flexibility Native producers need to access more USDA Food markets, not only for primarily Native-serving programs like FDPIR, but also for the whole range of USDA Commodity Food program opportunities.

Recommendations and Solutions

- On Commodity Procurement:
 - USDA likely will not be able to amend the FAR, but USDA could support that amendment.
 - USDA can also work better with Indian Country when it comes to food procurement by providing better technical assistance.

- If AMS works with intertribal organizations to provide technical assistance to producers who are interested in seeking subcontracts with prime vendors, we can better connect those producers to new market opportunities, move more locally and Native produced foods into USDA programs, and provide Tribal economies with much-needed economic development drivers and relief from the disastrous market impacts of the ongoing COVID19 crisis.
- President Biden's executive order on buying American products could be put into action here at USDA. When President Biden signed that order, he specifically mentioned sourcing products from Black and Native-owned businesses.
 - Creating a Native set-aside in any future Farmers to Families food sourcing opportunities would fulfill the promise of this executive order and get Native-grown food products onto the tables of Tribal citizens who need them.
- On Organic Standards:
 - Ensure government parity by including Tribal Nations as state authorities in the Organic Foods Production Act so they can operate their own organic certification programs.

iii. Risk Management Agency

The 2018 Farm Bill requires the Secretary of Agriculture and the Federal Crop Insurance Board to use available resources and information to evaluate whether insurance policies and plans currently available in each state are adequately serving “underserved producers,” which includes individual Tribal producers. Upon 30 days of completing this report, the Board is to make it publicly available and submit it to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, detailing recommendations for executive and legislative actions necessary to improve coverage options for these individuals. Under the legislation, a follow-up report researching this matter is required every three years. Researching whether crop insurance is adequately serving Tribal producers will assist in determining if existing resources are effectively reaching targeting audiences, such as limited resource, beginning, and veteran producers receiving a waiver of administrative fees for catastrophic risk protection under Section 508(b)(5)(E) of the Federal Crop Insurance Act.

For over two years after the signing of the 2018 Farm Bill, no public information about this report is available. This information is vital for tailoring agency programs, where necessary, to alleviate any existing administrative issues inhibiting Tribal producer participation in crop insurance. Any action to correct these deficiencies would be premature without an accurate inventory of existing issues to be addressed. RMA should begin conducting this study in collaboration with Tribal stakeholders and technical assistance providers, so that these issues are reported in a nature that is inclusive, comprehensive, and builds toward practical solutions from those with on-the-ground perspectives regarding production agriculture. To fully ensure that participation rates with Tribal producers are measured accurately, any findings on Tribal participation within the larger data sets of underserved producers should be delineated when publishing these findings. The agency should also consider hiring a designated Tribal liaison for any necessary outreach to address these deficiencies, once reported.

d. Forestry and Public Lands Management

i. Forestry

Background on Importance to Indian Country

Tribal forests provide revenues for many tribal governments and employment opportunities for Indian people and rural communities. The 2018 Farm Bill created the Tribal Forest Management Demonstration Project which authorizes USDA and the Department of the Interior to enter into “638 contracts” on a demonstration basis, whereby a tribe or tribal organization may perform the administrative and management functions of programs implementing the Tribal Forest Protection Act. To date, only one Tribal Nation has reached a formal agreement with the Forest Service on a 638 agreement under the 2018 Farm Bill authority.

Solutions

- Support greater tribal participation in Tribal Forest Protection Act (TFPA) projects through the application of 638 contracting authority to TFPA projects on Forest Service or Bureau of Land Management (BLM) lands.
- Make these 638 authorities permanent and dedicate funding to TFPA 638 contracts. Use of 638 authority provides a funding mechanism through the Forest Service to cover the cost of tribal staff and resources (prior to the 2018 Farm Bill, those costs would have to be covered by the Tribal Nation in question). However, no funding for this purpose was allocated in the 2018 Farm Bill, so USFS is limited by available funding at the individual National Forest level.
- Support tribal participation in early planning efforts to integrate tribal management priorities in Forest Service five-year work plans.

ii. Public Land Management

Background

Federal, state, and private lands are carved from the ancestral territories of Tribal Nations. Between 1776 and 1934, Tribal Nations lost more than 1.5 billion acres of their homelands. The United States has a unique political and “trust” relationship with Tribal Nations through its acquisition of tribal lands and resources and is defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. The United States’ trust relationship includes safeguarding tribal lands, and resources.

Despite significant land loss, traditional homelands are at the heart of tribal governance. Tribal Nations maintain deep and ongoing physical, cultural, spiritual, and economic relationships with those places. Tribal Nations and their citizens suffer when their traditional homelands are mismanaged.

This is particularly true in light of off-reservation development and management of federal lands that do not adequately include tribal interests and ignore impacts to tribal cultural heritage and natural resources. Management of tribal traditional homelands, including those within federal public lands, is currently not holistic, inclusive, and does not incorporate the fundamental principles and practices of tribal co-management.

Solutions

- Issue a joint Secretarial Order by the Secretaries of the Interior and Agriculture on tribal co- management of federal public lands that recognizes existing authorities to support these activities inter and intra department.
- Co-management opportunities should be created to further, and support, intergovernmental partnerships. These opportunities must, among other things:
 - Advance and support Tribal sovereignty;
 - Integrate and protect Tribal traditional knowledge into federal decision-making; Meaningfully integrate Tribal management decisions at all levels of government and planning processes;
 - Expand existing co-management authorities such as self-governance compacts and self- determination contracts;
 - Enhance protections for Tribal sacred places;
 - Provide for consultation enforcement mechanisms; and
 - Adhere to the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples, especially obtaining tribal free, prior and informed consent.

e. Education and Research

i. National Institute for Food and Agriculture

Background

Monitoring and exploring old and new knowledge, 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 Tribal Colleges and Universities, and supporting educational institutions within communities are critical to stabilizing Tribal agriculture and food systems, supporting our Tribal producers, and Tribal communities. USDA must provide the support and funding necessary for our technical assistance networks and institutions who are on the ground everyday in Indian Country and working to support traditional knowledge, which is best done at tribally owned and managed organizations and institutions. Research and education programs at USDA 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 USDA must support these youth through providing additional access to opportunities.

Barriers and Solutions

- Historic funding in the Federally Recognized Tribes Extension Program (FRTEP), which has been at \$3 million since its inception in 1990, and forced our hard working FRTEP agents to do more for less money.
 - All other extension service programs have seen budget increases over time to at least keep up with inflation.
 - Further, the 2018 Farm Bill, rightfully so, included eligibility for 1994 land grants to the FRTEP, however no additional funding was provided.
 - With our extension services stretched beyond belief already, USDA must step up and provide adequate funding for our existing FRTEP programs and additional

money to add more sites to ensure that our Tribal producers have access to educational resources and opportunities.

ii. National Agricultural Statistics Service

Background

The National Agricultural Statistics Service (NASS) is responsible for conducting the National Census of Agriculture every five years. The data collected in this national snapshot of our country's food production capacity and needs are utilized in a variety of contexts, but one of the most significant is their usage to set program levels at USDA. Native producers have been consistently undercounted in the National Census of Agriculture, and though through partnerships between NASS and intertribal organizations like IAC, the reported numbers are finally beginning to reflect a more accurate picture of Indian Country agriculture, there is still work to do. The NASS designation of what constitutes a "farm" as being an enterprise that has sold or could have sold \$1,000 of product in a given year leaves a lot of Traditional/subsistence growers/gatherers out of the equation. They are not counted, however, these producers may very well be utilizing NRCS and other USDA services and resources. They are being undercounted in the Census of Agriculture and therefore not informing prioritization of funding decisions where NASS data is referenced for these purposes. Additionally, while NASS does work with Indian country to count producers on reservations, this has consistently left out Tribal producers in Oklahoma, where statistical areas that included Tribal lands were still not considered "reservation areas" until the Supreme Court's recent ruling in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

Solutions

- If NASS Oklahoma area statisticians are not already working with Tribal Nations in Oklahoma and subject matter experts in federal Indian law to determine how the *McGirt* decision affects data collection for Tribal Nations there in the next Census of Agriculture, they should begin immediately. The Office of Tribal Relations should be included in that discussion to guide the process and connect NASS staff with external subject matter experts on the issue if needed.
- NASS should work with Tribal Nations to create and pilot questions for the Census of Agriculture that account for subsistence so that all Tribal citizens engaged in agriculture are counted. There was some work on this done in the Obama administration, but the work should be resumed.
- USDA should ensure that Indigenous people sit on the NASS federal advisory committee that advises the Secretary about NASS data collection activities, including the Census of Agriculture. More broadly, USDA should provide better access to high-quality data and facilitate data management and the efficient submission of data across all USDA programs and authorities.
- Data collected by USDA, to the extent permissible under federal privacy laws, should always collect and disaggregate data in a way that includes Native people, rather than literally othering them.
- Tribal Nations should be able to take a more active role in improving data collection from USDA. This is an issue that the Tribal Advisory Committee for USDA could take up specifically if the Secretary will move swiftly to seat that committee created by the 2018 Farm Bill.

f. USDA Cross Agency Coordination and Interagency Consistency

Background

With the U.S. Department of Agriculture (USDA) having its trust responsibility to Tribal focusing on rural issues and agriculture and the U.S. Department of the Interior (DOI) overseeing Tribal lands and leases, the potential both agencies jointly hold for Indian Country is boundless. However, the historical lack of coordination between the departments is one of the biggest barriers facing Tribal governments and producers. It impacts everything from land control, appraisals, conservation, funding, and program access. USDA must lead the way in creating permanent committees and structures to allow the for coordinating between land programs and consistency across authorities and application of programs. USDA has the opportunity to address these systemic injustices and promote equity and inclusion by modernizing the federal government's approach to working with Indian Country.

Barriers and Solutions

- The best way to uphold the trust relationship and responsibility is by institutionalizing the mechanisms to support tribally driven solutions at the Departmental level, and implementing them in a manner consistent with the intent of Tribal leaders and Tribal producers.
 - USDA Office of General Counsel must provide a opinion that honors and acknowledges the Department's trust and treaty responsibilities to Tribal Nations, the Nation-to-Nation relationship, and how federal Indian law principles and standards require that the when USDA is reviewing its programs and authorities it must do so under the Indian Law Canons of Construction which requires deference, decisions, and ambiguities come out in favor of Tribes.
- Lack of coordination on land and leasing makes it difficult to access USDA programming. Bureau of Indian Affairs (BIA) leasing timelines do not correlate with USDA program timelines and cause producers to be ineligible for some programs.
 - BIA leasing regulations require crop insurance to ensure landowners are receiving annual crop payments, and USDA should change their crop insurance coverage to cover possibly a two-year establishment period to make it easier to get these approvals.
 - Inconsistencies between USDA Agencies on how they handle control of land issues. For example, NRCS in North and South Dakota will approve an Environmental Quality Incentives Program (EQIP) or Conservation Stewardship Program (CSP) contract that is planned beyond a BIA Grazing Permit as long as the BIA Superintendent and Tribal Chairperson or designated signatory sign off on the contract. On the other hand, FSA will not approve program participation, contracts, for land under a permit or lease that runs outside of the term dates on the lease or permit agreements.
 - Additionally, there are zero acres of BIA managed land eligible for the Conservation Reserve Program (CRP) Grasslands program due to this inconsistency.
- USDA must Establish and Seat the USDA Tribal Advisory Committee (TAC) as required by the 2018 Farm Bill.
 - The TAC will provide a consistent interface between agency programs, including the Department of the Interior and BIA; advise the Secretary of Agriculture on administrative policy changes; ensure Tribes and Tribal producers are serviced in

- a timely manner; develop solutions to interdepartmental barriers; and provide recommendations on policy issues and tribal consultation.
- However, due to a Presidential signing statement, it has not been implemented.
 - Not only does the TAC mirror existing federal/Tribal advisory committees, like the Tribal Treasury Advisory Committee at the U.S. Department of the Treasury, but it holds substantial potential for coordination and collaboration between tribal leaders, Tribal producers, USDA, and DOI.
 - USDA must start to seat the TAC immediately, and to jump start this process and make up for the delays in implementation, USDA, working with DOI, can begin coordinating regional meetings with Tribal leaders and producers, to hear exactly what is going on to best inform the work of the TAC.
- USDA and DOI must explore new memoranda of agreement focusing on coordinating on land control, conservation, and sharing of resources and funding, as DOI has a very underfunded role to oversee trust lands and other trust assets necessitates an opposite approach.
 - While memoranda of agreement/understanding between the Departments at various subagencies levels have been executed in the past, but they fall short in implementation. Cross-agency collaborative processes and interdepartmental funding agreements must include, at a minimum, coordination on:
 - Agriculture Resource Management Plans (ARMPs) (USDA/DOI) to strengthen their development, support additional funding, including for tribal conservation districts. Setting standards between BIA and Natural Resources Conservation Service (NRCS) regarding compliance, practices, and length of time for conservation practices, including the respective approval processes for easements.
 - USDA paying fair market value for archeological inspection services provided by Tribal Historic Preservation Offices.
 - Applying Categorical Exemptions under the National Environmental Protection Act (NEPA) at DOI, USDA, and the U.S. Environmental Protection Agency (EPA) for all agriculture- related approvals and actions as no other farmer or rancher has to go through NEPA; waive deadlines and timeline requirements.
 - Support for swift land appraisals, mortgages, and Tribal agricultural leasing regulations. Coordination and support on Tribal rights-of-way issues, especially regarding undivided allottee interest issues—they should not need to be chasing down every signature to get to 51 percent of owners; the Superintendent of the Agency should be able to sign off for structural agricultural resource improvements on the land that enables conservation practice management.
 - Address Issues with land Valuation Rates and Funding Allocations.
 - Apply uniform timeframes, approvals, and sign-offs for control of land at BIA to ensure that tribes and individual producers can rely on it and focus on their ag production.
 - There are multiple definitions of “Tribal lands” through the entirety of the USDA which lead to confusion as well as inequitable and inconsistent access to programs creating barriers and uncertainty.
 - USDA must administratively apply a standardized definition of Tribal lands that sits in all of its agencies and missions that not only honors the unique status of Tribal lands, but the various types that exist throughout Indian Country. This includes the important distinction that Tribal lands are not federal lands, but held

in Trust for Tribal governments and individuals, with the rights to exercise Tribal authority and jurisdiction consistent with authorities in the Department of the Interior and USDA. Clearing up this confusion will not only open up additional opportunities for conservation and production, but honor the Nation-to-Nation relationship that exists between Tribes and the federal government, and that Tribal land must be appropriately included and concerned through the agency.

- USDA's Office of General Counsel must provide an opinion that clarifies and standardizes the definition of Tribal lands across all of USDA.

Support accurate data collection to enable funding to address the needs of Indian Country

USDA should provide better access to high-quality data and facilitate data management and the efficient submission of data. Both Tribal Nations and the USDA should recognize the importance of improving the flow of Tribal data and information. Tribal Nations should be able to take a more active role in improving data collection. The Office of Tribal Relations should compile authoritative data on federal funding for USDA programs affecting American Indians and Alaska Natives and data on Tribal Nations who currently receive services in order to responsibly and adequately provide the necessary metrics to evaluate and improve services

Address Issues with Valuation Rates and Funding Allocations

Abandon the rental rate methodology currently being used, and recognize that the single biggest comparable rental rate in Indian Country is tribal land rented by the tribal government at a set rate. The BIA currently compares apples to oranges in determining this valuation, artificially inflating the rental rate beyond the reach of cash-strapped Indian producers, putting Indian land in the hands of non-Indians, who seek to take as much forage as possible every single year without regard for soil health. By ensuring that rental rates and leasing practices favor Indian use of Indian land, a long term approach centered around soil health and local economic development can be implemented.

NRCS funding allocations are nearly as disjointed as the BIA practices. South Dakota as a positive example, allocates NRCS program dollars by the proportion of tribal land within the state. Other states, such as Nevada and Arizona take decidedly different approaches. An analysis of the most effective approach taken by State Conservationists for getting conservation dollars on Indian land is needed, and that approach needs to be adopted across the nation.

Empower Production and Conservation through Supporting Agriculture Resource Management Plan Development

When Congress passed AIARMA, a visionary bill supporting tribes to develop Agriculture Resource Management Plans (ARMPs), tribes were intended to assert greater control over the development and conservation of tribal lands and enhance self-determination in agriculture. However, the extensive community focused planning component included in AIARMA has served as a financial hurdle for tribal governments. The Biden-Harris Administration must support its full implementation and fund the planning process for tribes seeking to realize its true potential for tribal agriculture and resource protection.

The DOI, coordinating with USDA, should prioritize specific funding to assist tribes (including technical assistance resources) to develop ARMPs and fund the educational opportunities under AIARMA. The collaboration between DOI and USDA is essential to supporting not only the success of the AIARMA, but also for deploying conservation practices and programs on

tribal lands. The USDA should be required to accept any conservation plan or forest management plan conducted pursuant to an approved ARMP, by the NRCS, or U.S. Forest Service as equivalent to any environmental assessment deemed necessary. Guidance should be issued that such practices and plans shall receive a categorical exclusion from NEPA requirements, because they, by their very definition, improve the environment.

Finally, the creation of and implementation of an ARMP created pursuant to the AIARMA should be included as eligible for Alternative Funding Arrangements passed in the 2018 Farm Bill.

Modernize Conservation Programs and Processes, Enhance DOI and USDA Collaboration

To support a focus on healthy and productive agriculture lands, both DOI and USDA-NRCS must update their accepted conservation practices and processes. While most of the currently acceptable practices support the deployment of the conservation practices, many of the enhancements no longer apply, limiting producers' ability to adapt and modernize their conservation practices to fit their needs. Standardization of GIS data across the departments is also essential to facilitate the enrollment of Indian Land in programs. In addition, a uniform system of NRCS funding allocation must be adopted that sets aside funding for tribal conservation efforts based on land-base.

Permanently Establish the Land Buy-Back and Enhance the Highly Fractionated Indian Land Loan Program

The consolidation of individual trust land holdings into tribal ownership by virtue of the Land Buy- Back program continues to save the taxpayer money; while increasing the amount of trust land in Indian Country, supporting agriculture growth, and alleviating potential costly jurisdictional disputes that stem from land leaving trust status. In addition, over 90 percent of the land purchased under the program is in agriculture production. Consolidating trust land and reducing the number of stakeholders will stimulate ag production, economic development, and conservation practices. USDA's Highly Fractionated Indian Land Loan Program (HFIL) can help support these efforts and provide a strong place for cross agency collaboration o address land fractionation issues which hamper tribal jurisdiction, agriculture production, conservation, and economic development.

Thank you for the opportunity to provide these comments as part of USDA's Tribal consultation, as well as your partnership with Tribal governments, Tribal producers, and Tribal organizations to work with us on addressing and solving these issues.

Sincerely,



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