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Building Indian Country's Future through Food, Agriculture, Infrastructure, and Economic Development in the 2018 Farm Bill Janie Simms Hipp, Colby D. Duren, & Erin Parker

Building Indian Country's Future through Food, Agriculture, Infrastructure, and Economic Development in the 2018 Farm Bill

By Janie Simms Hipp,* Colby D. Duren,** and Erin Parker***

Introduction

Agriculture is, and has always been, important to Indian Country. According to the data collected by the National Agricultural Statistics Service ("NASS") for the most recent Census of Agriculture, there are over 71,947¹ American Indian

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and Alaska Native ("AIAN") Farmers and Ranchers,² working on more than 57 million acres of land, with a market value of products producing reaching over \$3.3 billion—including \$1.4 billion in crops and \$1.8 billion in livestock and poultry.³ Indian Country operations are twice the size of non-Native operations, but with half the income and involvement in federal farm security programs.⁴ These numbers tell us not only what contributions Indian Country already makes to American agriculture, but also speak to the potential for future opportunities if current operations were expanded, and contemporary federal policy adjusted in a way that facilitates Tribes and individual AIAN operators to more fully take advantage of U.S. Department of Agriculture ("USDA") programming. Food and agriculture production could be a huge economic driver for Tribes, the entirety of Indian Country, and the rural communities in which their communities are found. Production could equal the revenue generated by gaming and create opportunities for Tribes that will never benefit from gaming because of their isolated location.

In order to realize this potential, we must re-calibrate USDA programs to capitalize on current successes in Indian Country agriculture and agribusiness and expand those opportunities throughout Indian Country, including feeding the people living in our most rural and remote places. Agriculture and agribusiness can create jobs and stabilize economies for Native

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¹ U.S. Dept. of Agric., 2012 Census of Agriculture: United States Summary and State Data Volume 1, Geographic Area Series, Part 51 65 (2014), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1, Chapter_1_US/usv1.pdf.

² Experts in this area suggest the total number of AIAN operators is undercounted by as much as half; focused attention and outreach in Tribal communities results in more accurate reporting. *See* William Iwig et al., *Multi-Cultural Outreach to Ethnic Farmers for the 2007 Census of Agriculture*, U.S. DEPT. OF AGRIC., https://unstats.un.org/unsd/statcom/statcom_09/seminars/innovation/Innovation%20Seminar/USA-AgriCensus-Abstract.pdf.

³ U.S. DEPT. OF AGRIC., 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: AMERICAN INDIAN FARMERS 1 (2014), https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/American_Indian_Farmers.pdf.

⁴ See id.

people who have deep connections to the land on which they live, to farming and ranching, and to the foods they produce every day. In addition, Tribal governments and Tribal communities have always been and are continuing to be the providers of essential governmental services in countless rural, remote, and isolated communities throughout the United States.

This essay focuses on several key provisions and themes that could have the greatest impact to support and grow agriculture and agribusiness in Indian Country if implemented in the 2018 Farm Bill reauthorization.

Acknowledgement and Parity for Tribal Governments Throughout the Farm Bill

One of the most substantial steps forward that can be taken in the 2018 Farm Bill is for Congress to permanently acknowledge the status and role of Tribal governments and Tribal Departments of Agriculture in setting and shaping agricultural policy. Similar to their State counterparts, Tribal Departments of Agriculture are created by their Tribal governments and are charged with administration of agriculture and food systems, yet Tribal Departments of Agriculture have not been recognized in the law with the clear authority to interface with all agencies within USDA and the Office of Intergovernmental Affairs at USDA. Recognizing Tribal governments, Tribal Departments of Agriculture, and Tribal law in the same manner as similar authorities defer to States, State Departments of Agriculture, and State law is a critical step towards improving USDA program delivery throughout Indian Country. This simple action would fully realize the existing trust responsibility and treaty obligations the federal government has to Tribal Nations, and would support the self-governance and self-determination that stabilize Tribal communities and accelerate the ability of Tribes to meet their economic, food, infrastructure, and health needs.

Most USDA programs have not begun to be seriously utilized by Tribes because, for the most part, the acknowledgement of Tribal governmental authority has not been clearly embraced

by USDA. Including "Tribal governments" in the existing intergovernmental approaches, through which many of the USDA programs are delivered, will acknowledge Tribal governments' inherent sovereignty and importance to rural America and will expand the reach of programs, create jobs, and build more food businesses in Indian Country.

Tribal Government Management of All Nutrition and Food Assistance Programs

In this Farm Bill, Congress must allow Tribal governments to directly manage all federal nutrition and food assistance programs, especially the Supplemental Nutrition Assistance Program ("SNAP"), and improve the ability for Tribes to manage and include traditional and Native grown foods in the Food Distribution Program on Indian Reservations ("FDPIR") food packages. Tribal governments are best positioned to serve food insecure citizens within their own communities making direct communication, outreach, nutrition education, and feeding program delivery more streamlined. Not only can this lead to greater program efficiency and customer service, it can also present Tribes with the opportunity to tailor these programs to suit their communities and build more robust food systems.

Tribal citizens have high usage rates of all federal feeding and nutrition programs. In some rural and remote reservation communities, nearly 25 percent of all community citizens are taking part in the feeding programs,⁵ and in other communities those numbers can climb as high as 60 to 80 percent.⁶ These participation rates remain high because of the relative unemployment rates of individuals in the communities that are directly caused by the lack of employment options,⁷ poor transportation to jobs and food

⁵ U.S. DEPT. OF AGRIC. FOOD AND NUTRITION SERV., ADDRESSING CHILD HUNGER AND OBESITY IN INDIAN COUNTRY: REPORT TO CONGRESS SUMMARY 1 (2012), https://fns-prod.azureedge.net/sites/default/files/IndianCountrySum.pdf.

⁶ Native Farm Bill Coalition, *December 18, 2017 Webinar*, SEEDS OF HEALTH (Dec. 18, 2017), http://seedsofnativehealth.org/webinars/.

⁷ Kenneth Finegold et al., U.S. Dept. of Agric., Background Report on the Use and Impact of Food Assistance Programs on Indian Reservations 1 (2005),

sources/retail facilities,⁸ the age and population characteristics of the individuals in the communities, and the prevalence of chronic health problems, among other issues.⁹ Because the rate of obesity, diabetes, chronic heart diseases, cancer, and rated health problems is so high in so many communities in Indian Country,¹⁰ participation rates in the feeding programs, when coupled with the prevalence of persistent poverty, create a fragile system of food security and food access across Indian Country. Yet, most feeding program participants live on the lands that could feed them, but, instead, grow foods that are destined for far away markets.

A consistent, comprehensive, and Tribal government-led approach tailored to the needs of Indian Country is paramount. Linking or "coupling" the feeding programs to the food production that occurs on Tribal lands will do two things simultaneously. First, it will ensure that, over time, the use of feeding programs in Indian Country could decline, and, in some regions, could disappear altogether because of the ability to link with local food production to meet the needs of tribal communities. Second, it will ensure that food produced on Indian lands are focused on three simultaneous goals: (1) retaining enough food products that Tribal citizens will be fed by food produced locally or regionally; (2) ensuring that fresher foods are available to Tribal citizens needing access to feeding programs; and (3) ensuring the stabilization of food businesses because the foods are being used to feed people who lack food access and, at the same time, offering a consistent, albeit federal, market or anchor contract that gives food producers the economic stability to continue access to additional markets off tribal lands.

However, key issues remain that are critical to the future of the feeding programs, and how those programs are delivered

https://www.urban.org/sites/default/files/publication/42906/411133-Background-Report-on-the-Use-and-Impact-of-Food-Assistance-Programs-on-Indian-Reservations.PDF.

⁸ Id. at 10.

⁹ *Id*. at 9.

¹⁰ *Id*. at 14.

to or serve Indian Country citizens and these must be addressed in the 2018 Farm Bill. In a report authorized by the 2014 Farm Bill, USDA reviewed the feasibility of Tribal administration of federal food assistance programs. Nearly all Tribes participating and more than 90 percent of all respondents expressed interest in administering federal nutrition assistance programs as an exercise of sovereignty and to provide direct service to Tribal citizens in need of assistance.¹¹ These respondents felt the ability to provide flexibility in the management of nutritional quality of the food provided and culturally appropriate programming and service delivery were also critical.¹²

While there are many additional infrastructure needs identified to achieve these interrelated goals of management of feeding programs, the report states that USDA, and its Food and Nutrition Service ("FNS"), does not have the requisite "638-like authority" that explicitly provides Congressional support for executing contracts between federal agencies and Tribes to coordinate the management of specific federal programs.¹³ This can be achieved by introducing legislative language modeled after the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638,¹⁴ as amended, or by providing treatment as a state/parity for Tribes to manage these programs in the Farm Bill.

Tribal governments must directly manage all the nutrition and feeding programs, because they are best able to ensure that food security needs in their reservation, rural, and very remote communities are met. They are also more capable of directly linking agribusiness food production to the long-term vision of removing people from feeding program participation and into

¹¹ Garasky, Steven et al., U.S. Dept. of Agric., Food and Nutrition Serv., Feasibility of Tribal Administration of Federal Nutrition Assistance Programs – Final Report 68 (2016) https://fns-prod.azureedge.net/sites/default/files/ops/TribalAdministration.pdf.

¹² Id. at vii.

¹³ See id. at 52, n. 68.

¹⁴ See Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638 (1975) (codified as amended at 25 U.S.C. § 5301 et seq. (2012)).

the local job market, which can and should include a strong and viable agribusiness economic development approach. For Tribal governments, marrying the food security needs of the people with food job opportunities at the Tribal level promotes both enhanced food security and economic diversification in Indian Country.

Improve Credit Access in Indian Country and Support Authority for Farm Service Agency and the Farm Credit System

Due to the capital-intense nature of farming, ranching, and agribusiness in general, many titles have long been important parts of the Farm Bill, including: credit, commodity, conservation, and crop insurance. Farming, ranching, and agribusiness are high-risk enterprises, and are linked to production systems that have unique regulatory requirements and challenges. Good times for agriculture can very quickly be followed by bad times. Having access to a lending entity willing to understand these financial realities is critical. During turbulent times, Indian Country is always hit as hard or harder than most other areas of the country, because of the remote and isolated nature of our farms, ranches, and agribusinesses and the reality that in most reservation communities a "credit desert" exists alongside food deserts.

First, our important partners in lending in rural areas, like those in the Farm Credit System ("FCS"), must have no questions concerning their authority to lend in Indian Country. Due to the nature of landholding and land ownership in Indian Country, which is a matter controlled by federal law, some clarification of the authority to lend is to help provide additional certainty for the FCS in lending within Indian Country. Tribal governments, tribal producers, and groups of producers must often organize their business engagement in ways not required of non-Tribal entities and governments due to unique issues associated with federal Indian law; making sure that they are able to borrow under FCS laws and regulations is important.

Additionally, the improvements the Farm Service Agency ("FSA") has made in the extension of credit to farmers and

ranchers in Indian Country in the post-Keepseagle era must continue, but separate programs that allow for unique training and technical assistance concerning financial issues and loan servicing for tribal producers must also be considered. Access to credit through FSA and Rural Development ("RD") must not be hampered by outdated program rules that do not match our credit needs. Further, we must make sure that the program officers at RD and FSA have deep awareness of the way in which Tribal governments, Tribal agribusinesses, and Tribal producers do business, and ensure they are not constrained by an additional regulatory burden nor shut out of lending opportunities available to all producers.

Many smaller or beginning producers who are not yet ready for FSA or FCS lending relationships utilize the services of local, smaller retail banking entities, community development financial institutions (or "CDFI"s), credit unions, or use other means of acquiring needed capital. Native CDFIs must be included in all FSA and Rural Development lending authorities in order to leverage access to credit for Indian Country producers and Tribal governments. Ensuring that Native-owned banks can easily interface with FSA, RD, and FCS lending institutions on agribusiness and agriculture infrastructure business opportunities will further support credit access and economic growth in Indian Country.

Ensure the Commodity, Conservation, Forestry, and Crop Insurance Farm Bill Titles Support Indian Country and Native Producers

The Commodity, Conservation, and Crop Insurance Titles of the Farm Bill all work together to provide not only farm security for producers, they also support the health of our Tribal lands. These programs must be updated to consider the unique jurisdictional and agribusiness/product needs of Tribal governments and Tribal producers.

First and foremost, many Tribal governments and Tribal farming, ranching, and food businesses produce covered

commodity crops of wheat, corn, and soybeans, and are deeply engaged in livestock operations impacted by the Commodity Title. We must ensure equitable access to these programs for Tribal producers, including ensuring federal or Tribally chartered corporations, especially those created under Tribal law, Section 17 of the Indian Reorganization Act of 1934, 15 or Section 3 of the Oklahoma Indian Welfare Act of 1936, 16 are explicitly eligible for programs such as the commodity disaster assistance programs. Additionally, the definition of "livestock" must be amended to include commonly raised livestock like "reindeer," "caribou," "elk," "horses," or other animals raised or harvested in Tribal communities. All of these animals must be recognized as livestock and their owners must be eligible for full protection and program participation Department-wide.

Since the Conservation Title programs are often the gateway to participate in other USDA programs, it is vital that Tribal governments and producers can access all program authorities and funding. Wherever there is a reference to "state", "local", or "regional" agricultural producers, the term "tribal" should be inserted into that section to ensure that any 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. This also includes making sure any reference to "state law" in the Conservation Title says "state law or tribal law" to acknowledge the conservation laws and codes our Tribal governments pass and enforce each day with regard to the lands over which they have jurisdiction. This change also needs to be extended to the Forestry Title programs, especially by adding "Tribes" to title of the State and Private Forestry program, and including Tribes explicitly in the Good Neighbor Authority" cooperative agreement program. Further, the Farm Bill must allow for greater Tribal participation

¹⁵ Indian Reorganization Act of 1934, ch. 576, 48 Stat. 988, Sec. 17 (1934) (codified as amended at 25 U.S.C. § 5124 (2012)).

¹⁶ Oklahoma Indian Welfare Act of 1936, ch. 831, 49 Stat. 1967, Sec. 3 (1936) (codified as amended at 25 U.S.C. § 5203 (2012)).

in Tribal Forest Protection Act of 2004¹⁷ ("TFPA") projects by authorizing the application of "638" contracting authority to TFPA projects on Forest Service lands at USDA or Bureau of Land Management lands at the U.S. Department of the Interior.

Crop insurance is an important tool of risk management and the products in place now must be examined to ensure they are suitable for Tribal food production systems. The Risk Management Agency ("RMA") must conduct a study to ascertain the efficacy and applicability of the current crop insurance products as they relate to Indian Country agriculture production. 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 to solve these concerns, and RMA should pursue unique crop insurance products and crop insurance administration systems. The goal must be to increase the utilization and remove any inadvertent barriers to access crop insurance products in Indian Country. Finally, USDA must engage Native-owned insurance companies and Native CDFIs and other entities to encourage the offering of crop insurance products in Indian Country. While many Tribes and Tribal producers maintain crop insurance, the current crop insurance research, product development, and policy sales areas are not developed for, and do not adequately reach, Tribal producers.

Apply the Substantially Underserved Trust Area designation to all Rural Development and USDA Funding Authorities

The Substantially Underserved Trust Area ("SUTA") designation authorized by the 2008 Farm Bill¹⁸ helps USDA's Rural Utility Service ("RUS") offer low interest rates; waive non-duplication, matching, and credit support requirements; extend

¹⁷ Tribal Forest Protection Act of 2004 Pub. L. No. 108-278 (2004) (codified at 25 U.S.C. § 3115a (2012)).

 $^{^{18}}$ $\it See$ Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 1196.

loan repayment terms; and provide the highest funding priority for SUTA projects.¹⁹ Currently, SUTA is only applied to a small segment of utilities infrastructure programs,²⁰ but more explicit instruction must be provided to allow the Secretary to exercise this discretion more broadly.

This change will help ensure more equitable access to Rural Development ("RD") programs and authorities in these substantially underserved areas, and can be used to provide much-needed support to Tribal citizens operating businesses and 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 applicant participation in RD business and infrastructure projects where remoteness and related lack of tax base is a problem. In the determination of eligibility and repayment ability, local school district social demographics should be utilized instead of county-wide data. A broader application of SUTA will recognize the unique and essential Tribal infrastructure needs and will help build rural America, as many tribal governments are the backbone of the rural infrastructure now and those trends appear to be unrelenting.

Establish a Permanent Rural Development Tribal Technical Service and Assistance Office

In additional to the SUTA provision above, establishing a permanent office providing technical service and assistance across all RD funding authorities, via a cooperative agreement with USDA, would help with two major issues of access to RD programs in Indian Country. 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,

¹⁹ Substantially Underserved Trust Area (SUTA): Overview, U.S. DEPT. OF AGRIC., https://www.rd.usda.gov/about-rd/initiatives/substantially-underserved-trust-area-suta (last visited Apr. 1, 2018).

²⁰ NATIVE FARM BILL COALITION, INDIAN COUNTRY PRIORITIES AND OPPORTUNITIES TITLE VI: RURAL DEVELOPMENT 2 (2017), https://seedsofnativehealth.org/wp-content/uploads/2017/09/Title-VI-Rural-Development.pdf.

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 would 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 would model some current RD practices, particularly in the infrastructure arena, where field staff assist agency staff and the applicant in analyzing financial viability, key engineering specifications, and related technical requirements for more complex infrastructure projects.

Equal Access to Research, Education, and Extension Funding for Tribal Colleges and Universities and the Federally Recognized Tribes Extension Program

All entities working within research, extension, and education in Indian Country, including Tribal Colleges and Universities ("TCU"s) and the Federally Recognized Tribes Extension Program ("FRTEP") must have the same access to research, education, and extension funding as all other entities. Further, FRTEP must maintain its unique program authorities and be protected from over-subscription by those who have access to other program funding like the 1862, 1890, and 1994 land-grant institutions and TCUs. FRTEP was created by Congress to address the needs of those Tribes not served by Tribal colleges.²¹ The funding for both extension for TCUs and FRTEP is very low.²² Entities serving Indian Country must be entitled to the same level of eligibility and access to National Institute of Food and Agriculture ("NIFA") funding as all other entities. Educating the next generation of producers, scientists, technical specialists,

²¹ See Federally-Recognized Tribes Extension Program, NAT'L INST. OF FOOD AND AGRIC., https://nifa.usda.gov/program/federally-recognized-tribes-extension-grant-program (last visited Apr. 1, 2018).

²² See Native Farm Bill Coalition, Indian Country and Opportunities for the 2018 Farm Bill, Title VII: Research 2 (2017), http://seedsofnativehealth.org/wpcontent/uploads/2017/09/Title-VII-Research.pdf.

business managers, engineers, lawyers, and related professionals who advise and support the agriculture and food sectors is vital and making sure that Native youth aspire to those career paths is important to the survival of Tribal communities and to creating viable occupations that support food and agriculture sectors in Indian Country. We are in an intergenerational shift in agriculture.²³ and Indian Country is no different. Our farmers are older and our young people are hungry for a meaningful career. With 12,000 Native students in FFA as of 2016,²⁴ we know many AIAN young people want that career to be in agriculture.

Agriculture research, education, and extension programs are critical to our food, health, and self-sufficiency. Agriculture research is important because it monitors and explores old and new knowledge regarding plant and animal health, explores the impact of science to solve food problems, tackles societal issues related to health, and ensures our food supplies are sound and resilient. Accessing research, building our own research systems within TCUs, and supporting educational institutions and faculty within Tribal communities is essential to stabilizing agriculture production and communities. Focusing on the importance of traditional knowledge and exploring its use in modern communities is best done at Tribal-owned and managed institutions. Extending knowledge and research outcomes into communities and onto tribal farms, ranches, and food businesses is critical to their growth and stabilization.

We must address these issues in a thoughtful and comprehensive manner; however, FRTEP cannot be opened up in such a way that it becomes available to larger institutions with no relationship to Tribes and Tribal communities and that already have access to thirty thousand students or more and billion-

²³ See Jennifer Mitchell, A Young Generation Sees Greener Pastures in Agriculture, NPR (Jan. 3, 2015), https://www.npr.org/2015/01/03/374629580/a-young-generation-sees-greener-pastures-in-agriculture.

²⁴ Wayne Maloney, Native American FFA Members Discuss the Future of Agriculture with USDA Officials, U.S. DEPT. OF AGRIC. (July.23, 2013), https://www.usda.gov/media/blog/2013/07/23/native-american-ffa-members-discuss-future-agriculture-usda-officials.

dollar endowment funds. FRTEP funding must be returned to a process that preserves the programs in place while continuing to grow. TCUs have a very low and totally inadequate funding level for extension services and research. Even with low funding levels, TCUs do an incredibly important job within their communities and need to be respected and fully eligible for all of the funding authorities within the Research Title of the Farm Bill and research programs at USDA. Stabilizing both programs while growing both programs should be the goal; pitting programs against one another will not improve the situation. Opening the full portfolio at NIFA to equitable access for Tribal-serving institutions is necessary.

Finally, we need data. A farmer, rancher, or food business has better productivity if they have good records and data access. We can use mobile technology in new ways with a new generation of farmers and ranchers, but we must make sure Tribes have greatly improved access to that technology as well. E-connectivity and rural broadband is incredibly important for all rural America and for Tribes—this access was among the first recommendations made to support prosperity for all rural America by the USDA Interagency Task Force of Agriculture and Rural Prosperity.²⁵ Their report to the President noted that e-connectivity is "a tool that enables increased productivity for farms, factories, forests, mining, and small businesses."²⁶ TCUs and FRTEP agents must be a part of the technological revolution in farming and ranching and agribusiness growth and be afforded access to improved research, education, extension funding.

Conclusion

The next Farm Bill presents an incredible opportunity to address the broad needs of a changing food and agriculture sector alongside the needs of our rural and remote communities

²⁵ U.S. Dept. of Agric., Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity 18 (2017), https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf.

²⁶ *Id*. at 17.

around the country. To take full advantage of the opportunities that Indian Country has in agriculture and agribusiness, as well as enhancing food sovereignty and securing the health of our people and communities, Tribal governments must be seen as equal governmental partners in delivering and accessing Farm Bill programs.

By adjusting, developing, and improving the Farm Bill's programs, we can build upon the great work already happening in Tribal communities surrounding food and agriculture. We can improve and expand our infrastructure. We can develop our Tribal food systems. We can provide the means for our agriculture businesses to thrive. We can continue to address and improve the health of our people. We can feed our communities in vibrant Native food systems with foods raised and grown by Tribal people. But equally important, the country can acknowledge the role Tribes have always played in our nation's food security and we can now become better partners in food security, food production, and the agriculture sector. Improving the Farm Bill for Indian Country will help bolster the important work ahead for us all.