



## **Indian Country Priorities and Opportunities for the 2018 Farm Bill**

### ***Title II: Conservation***

#### **Key Points and Recommendations**

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

#### **Background Information and Context**

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

#### **Opportunities for Indian Country in Conservation Title**

##### ***Recognition of Traditional, Ecological, Knowledge-Based Conservation***

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



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

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

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

***Include Tribal Priorities in Definition of Priority Resource Concerns***

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

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

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

***Priority for Enrollment of Tribal Lands in the Conservation Reserve Program***

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

***Notice Regarding Conservation Activities and ARMP Compliance***

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

***Recognizing Tribal Law Parity***

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



### ***Tribal Technical Committee***

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

### ***No Additional Compensation for Expired Conservation Measures***

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

### ***NRCS Report on Natural Resource Inventory Investments Needs on Tribal Lands***

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

### ***Traditional Ecological Knowledge Consideration for Conservation Compliance***

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

### ***BIA Actions Responsible for Non-Compliance***

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

### ***Tribal Priority in Environmental Quality Incentives Program (EQIP)***

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



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

### ***Tribal Parity in the Conservation Title***

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

### ***Technical Assistance Funding for Tribal Governments and Organizations***

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

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

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

### ***Tribal Conservation Technical Committee***

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



### ***Conservation Reserve Program (CRP)***

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

### ***Beginning Producers in Conservation Programs***

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

### ***Rollback CSP Program to 2013 Standards***

- Reinstigate the CSP program to 2013 standards.

### ***Next Generation Easement***

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

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

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

September 2017

