

**Testimony of Kari Jo Lawrence
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**Before the
U.S. Senate Committee on Indian Affairs
Oversight Hearing on "Native communities' priorities for the 118th Congress"**

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Chairman Schatz, Vice Chair Murkowski, and Members of the Committee, thank you for the opportunity to submit testimony on behalf of the Intertribal Agriculture Council as it relates to agriculture priorities in Native communities in 2023. I am Kari Jo Lawrence, the Executive Director of the Intertribal Agriculture Council (IAC), which is headquartered in Billings, Montana. I am Hidatsa, and an enrolled member of the Three Affiliated Tribes located on the Fort Berthold Indian Reservation, where I was raised on a cattle ranch. Prior to joining the Intertribal Agriculture Council, I had a 20-year career with the United States Department of Agriculture's Natural Resources Conservation Service in North Dakota and South Dakota, and I now live, work and ranch with my family on the Cheyenne River Sioux Reservation. In addition to my role as Executive Director for IAC, I also serve as the co-Chair of the Native Farm Bill Coalition, a nationwide initiative that was launched in 2017 by the Shakopee Mdewakanton Sioux Community, the Intertribal Agriculture Council, the Indigenous Food and Agriculture Initiative—as research partner for the Coalition—and the National Congress of American Indians, to share the voices of Indian Country during the Farm Bill reauthorization.

The Intertribal Agriculture Council is a national, Native-led nonprofit that was formed in 1987 and tasked with pursuing and promoting the conservation, development, and use of our agriculture resources for the betterment of our people. Since our founding, IAC has actively supported Tribal producers across the country through on-the-ground technical assistance and services, as well as advocacy for improvements in the policies that govern the landscape in which Tribal producers must operate. In 1987, IAC's predecessor, the National Indian Agricultural Working Group, published a report that outlined a number of recommendations aimed at improving the environment for the main Indian industry: **agriculture**. The report noted that the issues it addressed were “neither new, nor unknown.”

While there have certainly been improvements around Tribal agriculture since 1987, the sentiment remains the same. The issues Tribal producers face today are neither new, nor unknown. Similar to 1987, Tribal agriculture could still be better supported through “innovative approaches to land management . . . and modifications to Department of Agriculture programs and procedures at the county or local level to enhance Indian Agricultural producer involvement in agriculture programs”

With 2023 marking a Farm Bill reauthorization year, the IAC, through feedback we receive from producers who engage with our Technical Assistance Network, as well as outreach conducted by the Native Farm Bill Coalition, is focused on elevating agriculture priorities Tribes and producers have shared across Indian Country.¹ Some of these priorities are unique to USDA programming, but many priorities are areas of concern where Tribal agriculture intersects with the Bureau of Indian Affairs' oversight of Tribal lands.²

This testimony will cover two key priority areas which often intersect: first, USDA programming and directives authorized under the 2023 Farm Bill; and second, the Bureau of Indian Affairs, and its role in Tribal agriculture.

2023 Farm Bill, Generally

In the last year, the Native Farm Bill Coalition has conducted more than 60 roundtables across Indian Country—both in-person and virtually—to ascertain the agriculture priorities Tribes and producers are advancing in 2023.

Specific to the Farm Bill, there is resounding support for greater 638 contracting authority throughout USDA programming and parity, generally.

While we know Tribes have successfully implemented 638 authority over Bureau of Indian Affairs and Indian Health Services programs for decades, the USDA has been slow to recognize the same authority. In the 2018 Farm Bill, Congress authorized two 638 pilot projects: one for the procurement portion of the Food Distribution Program on Indian Reservations, the other for the co-management of forests. These marked the first time Congress directed the USDA to recognize Tribes through a self-determination lens.

According to USDA's report to Tribal leaders at a recent FDPIR consultation, USDA's Food and Nutrition Services (FNS) paid \$250,000 in FY21 and FY22 to the BIA to handle the "638" contracting process for the FDPIR pilot. This is understandable, while USDA has no "638"

¹ For purposes of this testimony, Indian Country means "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151.

² For purposes of this testimony, "Indian land" and "Tribal land" are used interchangeably and mean "any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and tribal land." 25 C.F.R. § 162.003 (the definition for Indian land in the leasing provisions for the Indian Title in the Code of Federal Regulations).

contracting office, and this program is in a pilot phase. However, Tribal leaders have expressed that USDA needs its own staff and office for this work in anticipation of these “638” authorities

being expanded and made permanent. This is because Tribal leaders support broad “638” expansion beyond any single agency or authority at USDA: food assistance programs through FNS, forestland management and agroforestry through Forest Service, and land stewardship through NRCS, just to name a few. With so many USDA agencies potentially well-suited for “638” agreements, it would not make sense for USDA to subcontract all of that work to an entirely different Department, especially one as chronically overworked as BIA.

Expanding and Making Permanent FDPIR 638 Authority

The Coalition’s 2022 Gaining Ground report shares IAC’s position that FDPIR 638 authority is critical to not only the physical health of our community members but to Tribal economies that support Tribal producers in keeping locally-grown food in our communities:

FDPIR 638 is an important acknowledgment of Tribal sovereignty that opens the door to food purchasing decisions that allow for more traditional, Tribally-grown, local, and regionally produced foods. Since [the 2018 Farm Bill authorized the FDPIR pilot project], seven self-determination contracts have been awarded to eight Tribal Nations and Tribal organizations for the FDPIR procurement project, including one intertribal partnership between the Menominee Tribe and Oneida Nation of Wisconsin, as well as individual contracts with the Red Cliff Band of Lake Superior Chippewa, the Little Traverse Bay Bands of Odawa Indians, the Lummi Nation, the Alaska Native Tribal Health Consortium (ANTHC), the Chickasaw Nation, and the Mississippi Band of Choctaw Indians. Initial contract awards for these Tribes and Tribal organizations totaled \$3.5 million, all of which support Tribal and locally produced foods moving into the FDPIR food packages of those Tribes. Additional funds appropriated by Congress since those contracts were awarded have enabled USDA to extend existing contracts and consider opening new applications for additional participation. Legal constraints, both statutory and regulatory, [however,] prevent Tribal governments and producers from taking full advantage of more opportunities, like the FDPIR food sourcing program, to expand food access and food economies.³

As a pilot project, funding for this 638 authority is capped at \$5 million, with approximately \$3 million being appropriated annually thus far. This severely limits the number and size of the Tribes that can participate in this demonstration project. Even so, “[p]articipating Tribes are

³ Erin Parker and Carly Griffith Hotvedt, et al., *Gaining Ground: A Report on the 2018 Farm Bill Successes for Indian Country and Opportunities for 2023* 46-47 (Sept. 2022).

reporting higher take rates of Tribally-procured foods among their FDPIR participants and higher engagement with the program. . . . If Congress made this procurement opportunity permanent and granted it mandatory funding in the Farm Bill, more Tribal Nations would be able to participate and take advantage of this pathway to improved Tribal food access.”⁴

Further, the 638 authority is limited to procurement, instead of authorizing Tribes to exercise greater control in the design and implementation of this program. “Tribal Nations have also called for a full expansion of ‘638’ authority for the entirety of the FDPIR program, not just the sourcing opportunity from Sec. 4003(b) of the 2018 Farm Bill. This would facilitate full Tribal authority over this program for the first time, and enable Tribal Nations to offer the program in a way that best fits the needs of their community.”⁵ Expanding and making FDPIR authority permanent would, as this Committee knows, not represent an increase in spending, but rather, reallocate existing spending for FDPIR in instances where Tribes express a desire to exercise such authority, and would further support Tribal self-determination in feeding their own.

Expanding 638 Authority to All USDA and Implementing 638 Office at USDA

In 2018, prior to being appointed as General Counsel of USDA, Janie Simms Hipp testified before this Committee and shared the findings from a report authorized under the 2014 Farm Bill that reviewed the feasibility of Tribal administration of federal food assistance programs. At that time, USDA, and FNS specifically, maintained the position that they did “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.”⁶

In part, this absence of congressionally-recognized 638-like authority at USDA only exacerbates the pervasive lack of recognition or understanding of the federal trust responsibility owed to Tribes—and by extension, Tribal lands and producers—across USDA agencies and staff, generally, creating obstacles to progress for Tribal agriculture endeavors.

This lack of recognition or understanding is underscored by the fact that for the two 638 pilot projects the 2018 Farm Bill authorized, the USDA contracts the negotiation function to the Bureau of Indian Affairs (BIA) at the Department of the Interior. The BIA tells Tribal leaders it is chronically underfunded and needs additional financial support to negotiate its current level of contracts. No one would like to see a fully funded and functional BIA more than Tribal leaders

⁴ *Id.* at 48.

⁵ *Id.*

⁶ Breaking New Ground in Agribusiness Opportunities in Indian Country: Oversight Hearing before the Senate Comm. on Indian Affairs 4 (Jan. 17, 2018), (Testimony of Janie Simms Hipp), https://www.indian.senate.gov/sites/default/files/JanieSimmsHippTestimonySCIA-AgribusinessHearing-011718-FinalSubmitted_0.pdf

and Tribal producers in Indian Country, for whom BIA delays often cost business opportunities and stifle economic development. Indeed, this is part of the reason that several of the initial “638” pilot recipients were dismayed to learn that BIA, not USDA, would be handling the contract negotiation process. Should “638” authority expand at USDA, we must reiterate that the process—as well as a chunk of administrative funds that should be supporting Tribal communities—must not be diverted to BIA. If Congress wishes to increase BIA funding support, it surely can choose to do so directly. Future expansion of “638” authority at USDA should not be used as a backdoor fund for BIA. There are only disadvantages, and no advantages, for USDA and for Tribes to allow any USDA funds to be diverted to BIA for “638” administration. And it is completely unnecessary. A relatively small “638” staff group at both BIA and IHS routinely negotiates and transfers hundreds of millions of dollars each year to hundreds of Tribes and tribal organizations. USDA can, and should, do the same without reinventing the wheel or outsourcing the residual “638” negotiation work to BIA. It merely needs to replicate the BIA and IHS model for a “638” office at USDA, and keep that wheel attached to the USDA axle.

Challenges Unique for Tribal Producers in USDA Programming

There are additional Farm Bill-specific priorities that reflect issues IAC regularly encounters in the services our Technical Assistance Network provides to Tribal producers on the ground. Programs at the USDA are rarely structured to meet the unique needs specific to Tribes and producers based on jurisdiction of land and the federal government’s trust obligations to Tribes. As a result, Tribes and producers operating on Tribal lands that don’t fit neatly within the county and state-based frameworks under which most, if not all, USDA programs operate, are treated inconsistently within the USDA—and often bear the negative consequences.

Credit

Access to credit in Indian Country cannot begin without discussing the unique status of Indian land. Because Indian land is either held in trust or has a restricted status, Tribal producers often encounter obstacles to accessing credit through traditional banking institutions. The data to reflect this, however, is limited and/or less than accurate. In the 2018 Farm Bill, Congress directed a report on the availability of credit to Tribes and Tribal producers in agriculture.⁷

⁷ See *Agriculture Improvement Act of 2018*, Pub. L. 115-334, Sec. 5415 (Dec. 20, 2018); see also Government Accountability Office, GAO-19-464, *Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands* (May 2019) (“Congress included a provision in statute for GAO to review the ability of [the Farm Credit System, a government-sponsored enterprise that includes 69 associations that lend to farmers and ranchers,] to meet the agricultural credit needs of Indian tribes and their members on tribal lands. This report describes (1) what is known about the agricultural credit needs of Indian tribes and their members, (2) barriers stakeholders identified to agricultural credit on tribal lands, (3) FCS authority and actions to meet those agricultural credit needs, and (4) stakeholder suggestions for improving Indians’ access to agricultural credit on tribal lands.”).

In the report published by the Government Accountability Office, it was noted that “[a]ccording to tribal stakeholders, experts, and BIA officials we interviewed, tribal members who obtain agricultural credit likely receive it from USDA’s Farm Service Agency, other USDA programs, or Native CDFIs. Some tribal members receive agricultural credit from local private lenders, but they are typically larger, more established borrowers. One expert told us that tribal members who are smaller or beginning agricultural producers and cannot access commercial banks instead may borrow money from family members.”⁸ That is, Indian Country is a credit desert that affords Tribal producers few options for the capital necessary to maintain and build their operations. The report went on to note that Tribal producers operating on trust lands must navigate accessing credit when “some lenders, including [the Farm Credit System] associations, report[] concerns about their ability to recover loan collateral if the borrower defaulted on a loan involving tribal lands.”⁹ It is difficult enough to find lenders familiar with and willing to lend around the inherent risks and uncertainties that accompany agribusiness, but to find lenders that also have an understanding of the unique status of Tribal lands and are willing to lend within this landscape at a reasonable interest rate can be rare.

The information in the 2019 GAO report represents a step in the right direction of understanding credit access for Tribal producers, however, the report itself is now outdated, or otherwise misses key points that underscore the need around credit for Tribal producers. In December 2022, Akiptan—a Native American Community Development Financial Institution (CDFI) that provides loans and technical assistance to those in Indian Agriculture—published its Native Agriculture Market Study Report. The 179-page Akiptan Report “assess[es] the current needs and barriers that exist for Native producers across the U.S. . . . to determine what the unmet financing need is for Native producers amongst other barriers that, if addressed, would lead to greater prosperity and sustainability for Native agriculture.”¹⁰ Based on the 273 producers (representing 81 tribes) who took the Native producer survey, the “total unmet financing need” is \$147,406,308.67, or an average of \$539,949.85 per producer.¹¹ The Akiptan Report further states that “[w]hen extrapolated to all Native producers in the United States (79,198 producers in 2017) we would estimate the total unmet capital need for Native producers to be \$42,762,948,220.”¹² Nearly \$43 billion. This amount stands in stark contrast to the outdated amounts cited in the GAO Report¹³—a Report that interviewed representatives of 6 of the 574 federally recognized Tribes, with no consideration for individual Tribal producers.¹⁴

⁸ Government Accountability Office, GAO-19-464, *Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands* 10 (May 2019) (“GAO Report”), <https://www.gao.gov/assets/gao-19-464.pdf>.

⁹ GAO Report 16.

¹⁰ Akiptan, Native Agriculture Market Study Report 4 (Dec. 2022),

https://www.akiptan.org/_files/ugd/023fa2_9a012afa1cd745d29fd1cd3b0d45e8ea.pdf.

¹¹ *Id.* at 6.

¹² *Id.*

¹³ *See* GAO Report 11, 23.

¹⁴ *Id.* at 32-34.

Accordingly, access to credit through the USDA's Farm Service Agency (FSA) and, more recently, through Native CDFIs, is critical to Tribal producers. Even so, obstacles and/or limitations remain for Tribal producers in accessing credit through the FSA or through Native CDFIs—obstacles and limitations that can be addressed through the Farm Bill.

In instances where Tribal producers are attempting to access credit, be it through a commercial lender or their FSA county office, they are often forced into the role of educator on the unique status of Tribal lands and why the Tribal land status should not be an impediment to accessing credit. Greater education and accountability on the lender side are critical to improving credit access outcomes for Tribal producers.

Commodities, Conservation and Crop Insurance

Risk is an inherent component of agriculture—whether you're a Tribal producer operating on Tribal lands or a non-Tribal producer operating on your own fee lands—and the Commodity, Conservation and Crop Insurance Titles of the Farm Bill are intended to serve as a buttress against some of these risks. But the current framework under which the programs supported by these Titles operate is often ill-suited to meet the needs of Tribal producers. That is, Tribal producers operating on trust or restricted fee lands often encounter barriers, inequities, and inefficiencies in accessing USDA programs administered under a county or state committee.

Extreme, long-term drought, market challenges, and region-specific issues underscore the need for programs that offer flexibility instead of a one-size-fits-all approach. Recognizing Tribal sovereignty and authority over Tribal lands in USDA programming would alleviate inconsistent access to and application of commodity, conservation, and crop insurance programs that Tribal producers regularly experience.

Currently, a Tribal producer's ability to access disaster relief or a conservation program can be inhibited because Tribal lands are not considered under a reservation framework, but as a part of a county. Similarly, Tribal producers encounter challenges in accessing USDA's Natural Resources Conservation Service's (NRCS) programs, as access often requires negotiation or sign-off from the Bureau of Indian Affairs (BIA) and navigating around NRCS program terms that conflict with BIA leasing or land management terms. As an example, both FSA and NRCS administer conservation programming that assists with the installation of structural practices that are crucial to proper land management. Prior to completing these projects, FSA and NRCS require cultural resource surveys. If the survey for an agriculture operation is on fee land, the producer is eligible to have agency-compensated staff conduct the survey. But if the producer is operating on trust or restricted fee lands, the producer is responsible for hiring and paying for the cultural resource survey, which can cost thousands of dollars out of pocket, as the FSA and NRCS will not accept surveys completed by a Tribal Historic Preservation Office (THPO) in

instances where the THPO is willing and able to do the survey. This creates a significant burden on Tribal producers who are operating on Tribal lands for no fault of their own.

Barriers to these programs could, however, be addressed in the Farm Bill by recognizing the unique status of Tribal lands and authorizing flexibility in programs that can and should be tailored to the Tribal agriculture landscape.

As an example, the Gaining Ground report makes the recommendation that the “Farm Service Agency (FSA) County Committee determinations on normal grazing periods and drought monitor intensity should be amended to ensure that separate carrying capacities and normal grazing periods for each type of grazing land or pastureland are set at different rates for Tribal lands and are established by the national FSA office (not at the county committee level).”¹⁵ Moreover, the Gaining Ground report makes the case that “rates should be established after Tribal consultation and must be established after discussions with the Bureau of Indian Affairs as well.”¹⁶

Until the programs in these Titles are tailored to address Tribal lands as distinct from non-Tribal lands, the health of the Tribal land and Tribal agriculture operations will suffer. At a minimum, Tribes should have the authority to identify Priority Resource Concerns and have parity with states in these Titles. Ideally, however, Tribes would have the authority and the necessary set-asides to administer programs based on a Tribal lands framework, independent of county and state committee determinations.

Intersection of Tribal Agriculture and the Bureau of Indian Affairs

While the 2023 Farm Bill reauthorization compels Farm Bill-related priorities, most conversations with Tribal producers veer toward issues with BIA oversight of Tribal lands. Without cooperation and accountability at the BIA—in every office across Indian Country—Tribal priorities gained in the Farm Bill will likely fall short of providing comprehensive improvements to the Tribal agriculture landscape. This is true as it concerns the BIA’s interactions with individual Tribal producers, as well as the BIA’s interactions with Tribes related to agriculture issues.

At IAC, our priorities related to the intersection of agriculture and the BIA are informed by Tribal producers who work with our Technical Assistance Network to address outstanding BIA issues. Some of the issues involve cross-agency cooperation, or lack thereof, while other issues are solely within the scope of the BIA.

¹⁵ Parker and Hotvedt, *supra* note 1 at 22.

¹⁶ *Id.*

Agriculture Leases, Lease Enforcement, and Land Management, Generally

Many Tribal producers, especially in the West, have expressed frustration around the BIA's land management and lease enforcement practices, citing BIA delays and lack of transparency at the root of many of these frustrations.

The BIA could begin to address these frustrations by communicating clear processes and timelines around agriculture leases, and enforcement of lease terms, as well as provide clarity around Tribal producers' rights in relation to agriculture leases.

Agriculture Resource Management Plans

Another priority aimed at improving the agriculture landscape for Tribes and producers is more comprehensive support for Tribal Agriculture Resource Management Plans. When Congress passed the American Indian Agriculture Resource Management Act in 1993 (AIRMA), Tribes were encouraged to develop comprehensive Agriculture Resource Management Plans (ARMPs) to plan for the use and management of agricultural resources to “produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities” (25 USC Ch. 39) and yet only a handful have developed ARMPs. This is partially due to the expense and complexity inherent in planning for integrated resource use as well as limitations in internal capacity for carrying out plans.

With adequate funding and technical assistance resources on the front end, more Tribes would be able to undertake the labor-intensive development of ARMPs. The development and implementation of these plans are key to supporting Tribal agriculture priorities, improved land management practices that will benefit the health and productivity of the land, and local economies that value Tribally-produced food staying in Tribal communities. Until the use of ARMPs becomes widespread among Tribes, we expect Tribes and producers will continue to battle extractive agriculture that values the exportation of Tribal resources with few benefits reaching the Tribal communities from which they come.

Technical Assistance

In recent years, the IAC has entered into multi-year technical assistance agreements with the USDA. Through multi-year agreements, our TA Network is able to walk alongside producers from the beginning of a project through completion. Under these multi-year cooperative agreements, the IAC, through our Technical Assistance Network, works to “ensure improved understanding of and equitable participation in the full range of USDA programs and services among underserved farmers, ranchers, forest landowners and operators through supporting the organizational delivery of technical assistance projects and networks.” We do this by providing technical assistance, program development, curriculum development, deployment and evaluation of impact through 1) an introduction to USDA programs; 2) financial literacy training;

3) market planning; and 3) technical support.

It is through these multi-year agreements that a federal agency like the USDA can fulfill some of its obligations to Tribal communities—by working with Native-led organizations like the IAC to reach out to Tribal producers in a meaningful way in an effort to ensure they are aware of and taking advantage of programming that suits their agriculture operations. Likewise, multi-year planning allows projects to advance from aspirational to coming to fruition. With inconsistent access to BIA staff across Indian Country, multi-year cooperative agreements may be a path the Department of Interior should consider in advancing Tribal agriculture priorities on the ground.

Conclusion

In sum, there is no shortage of priorities in Tribal agriculture, all of which could improve not only the livelihood of individual Tribal producers, but support Tribal sovereignty, build Tribal economies, and improve the health of Tribal members.