

**MEMORANDUM OF UNDERSTANDING
AMONG
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY**

**RELATIVE TO
PLANNING AND IMPLEMENTING UNITED STATES DEPARTMENT OF
AGRICULTURE PROGRAMS ON INDIAN LANDS**

This Memorandum of Understanding (MOU) is made and entered into among the Department of the Interior (DOI), Bureau of Indian Affairs (BIA), the Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA).

I. PURPOSE

The BIA, NRCS, and FSA have common objectives of communication, collaboration, cooperation, and consultation with agricultural producers, Indian landowners, and Indian tribes for the development, conservation and sustainable use of natural resources. The parties, therefore, enter into this MOU for the coordination, planning, and implementation of USDA programs on Indian lands in an environmentally, culturally, and economically sound manner. This MOU identifies the respective Federal responsibilities that must be coordinated. It also recognizes the role of Indians and Indian tribes as landowners, land users, and as sovereign governmental entities with authority and responsibility for the management of agricultural land and conservation of natural resources programs on Indian lands. This Agreement is made and entered into and among the BIA, NRCS, and FSA to update and replace the 2006 Agreement among BIA, NRCS, and FSA.

The parties to this MOU recognize the variability of and degree to which the respective Agencies are organized, staffed, and funded to carry out their trust responsibilities to tribes through a government-to-government relationship with tribes, which varies from region to region and from tribe to tribe. While this in no way diminishes those trust responsibilities, it is mutually acknowledged that the nature in which this MOU is carried out will be subject to these variables.

Definitions for the purposes of this MOU:

1. *ARMP* means Agricultural Resource Management Plan, which is a 10-year agricultural resource management and monitoring plan developed in accordance with American Indian Agricultural Resource Management Act (P.L. 103-177).
2. *BIA* means the Bureau of Indian Affairs within the Department of the Interior.

3. *BIA Conservation Plan* is a statement of management objectives for Indian agricultural lands, including required uses, operations, and improvements.
4. *Conservation District (CD)* means a political subdivision of a state, Indian tribe, or territory, organized pursuant to the state or territorial soil conservation district law or tribal law.
5. *Conservation Practice* means a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.
6. *Conservation System* means the combination of conservation practices and resource management for the treatment of soil, water, air, plant, animal, and/or energy resource concerns.
7. *FSA* means the U.S. Department of Agriculture Farm Service Agency.
8. *Indian* means an individual who is a member, or eligible to become a member, of an Indian tribe, band, nation, or other group.
9. *Indian lands* means all:
 - a. Lands held in trust by the United States for individual Indians or Indian tribes; or
 - b. Lands, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance; or
 - c. A combination of one or more of the lands listed above.
10. *Indian tribe* means an Indian tribe, band, nation, pueblo, Rancheria, or other organized or community, including any Alaska Native village, regional corporation, or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act 43 U.S.C.A § 1601 et seq., that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians.
11. *IRMP* means Integrated Resource Management Plan, which is a tribal policy document, based on the vision a tribe has for its resources, that describes a tribe's resources, the tribe's long-term resource goals, and appropriate management activities designed to reach those goals.
12. *NRCS* means U.S. Department of Agriculture Natural Resources Conservation Service.
13. *NRCS Conservation Plan* means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process, that meets Field Office Technical Guide (FOTG) quality criteria for each natural resource (soil, water air, plants, and animals) and takes into account economic and social consideration. The plan describes the schedules of operations and activities needed to solve identified natural resources problems and take advantage of opportunities at a conservation management system level. The needs of the client, the resources, Federal, state and tribal requirements will be met.

II. BACKGROUND

This MOU establishes a foundation to improve assistance to Indian tribes, American Indians and Alaska Natives. Assistance shall be provided within the authorities and resources available to each Agency.

The BIA administers approximately 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. There are 566 federally recognized tribal governments in the United States. Within the government-to-government relationship, BIA assists Indian tribes and individual Indian landowners in developing conservation and management plans to protect and preserve their natural resources on Indian land and shared off-reservation resources. The BIA also assists tribes and individual Indian landowners to lease or permit their land for agricultural production and other uses. Federal statutes and regulations generally require BIA approval of encumbrances to title of Indian lands.

The NRCS provides leadership in a partnership effort by providing conservation planning and management assistance to maintain, conserve, and improve natural resources and the environment (which may include resources of cultural and sacred sites important to the tribes). NRCS provides technical and financial assistance for implementing national conservation programs using conservation practices that address natural resource concerns. This is done directly and in partnership with Conservation Districts, Technical Service Providers and other Federal, tribal, state and local entities regarding natural and other environmental resources on non-Federal, private and Indian lands.

The FSA stabilizes farm income; helps farmers and ranchers conserve land, air, wildlife, and water resources; provides credit to new or disadvantaged farmers and ranchers; and helps farm operations recover from the effects of disaster. FSA operates under a unique system where Federal farm programs are administered locally. This grassroots approach gives farmers a much needed say in how Federal actions affect their communities and their individual operations.

III. STATEMENT OF MUTUAL BENEFIT

The BIA, NRCS, and FSA have common objectives of consulting with Indian landowners and Indian tribes, promoting the best management/conservation practices for Indian lands, including the development of rural business, farming and animal management, grazing and ranching operations on Indian lands. These objectives are carried out through a government-to-government relationship and tribal consultation process.

This Agreement is made and entered into by and amongst the BIA, NRCS, and FSA to:

1. Ensure a clear understanding of the applicable Federal and tribal laws and regulations and to define the role and responsibilities of the signatory parties in order to increase the amount of Indian land enrolled under USDA conservation and farm loan programs.
2. Define those areas of mutual interest and assistance relative to managing and conserving natural resources and the delivery of conservation programs of the Federal Government administered by the BIA, NRCS, and FSA.

3. Effectively utilize the available resources of each signatory such as personnel, time, conservation technology, equipment, office space, and funds which may be made available for the delivery of conservation programs and services on Indian lands.
4. Increase efficiency and reduce redundancy by sharing pertinent data, as authorized by Federal law, to facilitate conservation and management of natural resources on Indian land.

Therefore, the BIA, NRCS, and FSA find it mutually beneficial to cooperate in this undertaking and hereby agree as follows:

IV. RESPONSIBILITIES

A. The BIA will:

1. Review all NRCS developed conservation plans that will affect Indian lands to ensure consistency with existing leases, permits and BIA conservation plans incorporated therein and incorporate NRCS developed conservation plans where appropriate.
2. Assist NRCS and FSA to verify eligibility of individual landowners and operators as well as Indian land parcels for USDA conservation programs.
3. Provide technical assistance to NRCS to make needs assessments and feasibility determinations for conservation programs on Indian lands.
4. Assist lessees, permittees, Indians, and Indian tribes in developing conservation plans certified by NRCS that will protect natural resources and comply with NRCS or FSA conservation program provisions, as applicable.
5. Work with NRCS to coordinate recommendations for stocking rates and grazing capacities on Indian lands, and provide production data and permit or lease information upon request, for the development and implementation of conservation plans to ensure that permitted livestock numbers are not exceeded with ultimate authority to establish stocking rates for leases and permits of Indian lands residing with BIA, in consultation with the Indian landowner.
6. Upon request advise NRCS and FSA of existing programs, leases, rights-of-way or other encumbrances which may affect proposed projects on Indian lands.
7. Assist in conducting land and resources surveys and investigations and preparing designs and conservation practice layouts that meet the specifications of the NRCS Field Operations Trust Guide and conservation program specifications, for NRCS or FSA conservation program provisions, when requested by Indian tribe, Indian landowner, Tribal Conservation District or permittee/leasee.

8. Assist NRCS and FSA to ensure that all statutory and regulatory requirements are met prior to the BIA approving and the cooperator implementing any USDA conservation practice on Indian lands which includes providing IRMP's and ARMPs that have been completed and/or are under development by tribes.
9. Notify NRCS and FSA office of any changes in tribal or Federal law that may affect implementation of existing USDA programs, to the extent that BIA is aware of such changes.
10. Where appropriate, provide rights-of-way, leasing, permitting and landowner information for the installation of NRCS and FSA conservation practices on Indian lands.
11. Notify NRCS and FSA of changes of permittee or lessee on lands under NRCS and FSA conservation program contracts.
12. Cooperate with NRCS and tribes in conducting and maintaining soil surveys under the National Cooperative Soil Survey (NCSS) Program on Indian lands, working through local MOU's and agreements, following NCSS guidelines, policy and handbooks.
13. Assist FSA and NRCS in obtaining the required consent of owners of trust and restricted interests in Indian land for FSA farm programs and NRCS conservation programs.
14. Work with FSA Farm Loan Programs to develop a standard process for handling requests for BIA action, where needed, in a timely manner so that FSA Farm Loan programs is able to service distressed loan accounts within statutory and regulatory time frames.
15. Develop a shared process with FSA for spot checks by BIA and loan servicing by FSA where the Agencies, as permitted by Federal law, can accept each other's chattel and other security inspection and monitoring reports.

B. The NRCS will:

1. Provide technical assistance to Indian tribes, Indian landowners, and Indian land users, including subsistence agricultural producers on Indian and non-Indian lands. This assistance is provided to facilitate participation in NRCS programs for which the individuals, tribes, or groups are eligible.
2. Coordinate with BIA to ensure that applicants for NRCS conservation programs have an interest in Indian lands and are eligible to participate in NRCS programs.
3. Integrate the provisions of tribal programmatic resource management plans, where available, in the delivery of NRCS programs, as permitted by regulations.
4. Inform BIA of appropriate available natural resource conservation programs and training offered by NRCS.

5. Assist with the development of IRMPs, ARMPs, conservation plans, and/or conservation systems, to identify resource concerns and guide proper management of natural resources and other environmental resources as well as improving and/or maintaining production of agricultural commodities and subsistence agricultural activities on Indian lands that comply with the conservation compliance requirements of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq., and amendments) and content requirements set forth by BIA.
6. Coordinate with BIA Irrigation Project or System Managers on all draft and final plans outlining the conservation and management of natural resources on any lands (including non-Indian, or non-Trust) within BIA Irrigation Projects.
7. Provide high-level information collected detailing NRCS assistance and compliance reports to Indians, Indian tribes, or non-Indians on Indian lands to the Director of BIA.
8. Prioritize conservation application workloads, giving joint projects between the signatories of this MOU a high priority for the use of available personnel, time, equipment, materials, and funding. The NRCS will help facilitate the implementation of joint agency projects.
9. Certify the design, application and construction of planned and mutually reviewed and approved conservation practices delivered through NRCS-administered conservation programs.
10. Conduct and maintain soil surveys under the National Cooperative Soil Survey (NCSS) Program in cooperation with BIA and tribes on Indian lands, working through local MOU's and agreements, following NCSS policy guidelines and the Technical Soil Survey Handbook.
11. Encourage the development of Tribal Conservation Districts and district associations; and work collaboratively with such districts and other associated parties to encourage the use of traditional ecological knowledge within approved conservation practices on tribal lands.

C. The FSA will:

1. Accept eligible applications for its programs and maintain a record of referrals for projects on Indian lands.
2. As permitted by Federal law coordinate with BIA to ensure that applicants for FSA programs have an interest in Indian lands and confirm eligibility for participation in FSA programs.
3. Transmit completed offers to participate in FSA conservation programs, as appropriate, to the appropriate NRCS District Conservationist and BIA office.
4. Provide program benefits, including payments to approved program participants, consistent with program rules and regulations.
5. Perform contract compliance oversight during the term of FSA-administered contracts.

6. When requested by BIA, identify operators holding FSA contracts on Indian lands as permitted by Federal law.
7. Advise BIA and NRCS personnel of available programs and technical requirements for distribution to Indians and Indian tribes.
8. Advise BIA and Indian landowners and land users of FSA programs, notices of local committee elections, and other special events.
9. Receive or attend training on land ownership of Indian lands. This training may be conducted as a joint effort by the signatory parties to this agreement.
10. Work with BIA to develop a standard process for handling requests for BIA action in a timely manner so that FSA Farm Loan Programs is able to service its distressed loan accounts within statutory and regulatory timeframes.
11. Develop a shared process with BIA for spot checks by BIA and loan servicing by FSA where the Agencies, as permitted by Federal law, can accept each other's chattel and other security inspection reports.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE PARTIES THAT:

1. The parties will communicate, collaborate, cooperate, and consult to ensure that conservation and farm programs comply with all applicable Indian and Federal laws and regulations. The parties mutually agree that the purpose of this MOU is to improve, and make more effective and efficient, program delivery by all signatories on Indian lands, for the benefit of Indian people, their communities, and their tribal governments, and in furtherance of the government-to-government relationship between the United States and Indian tribes and trust responsibilities owed by the Federal Government to Indian tribes and individual Indians.
2. All signatory parties will use their best efforts to efficiently and effectively coordinate the delivery of programs on Indian lands, including, when possible, the prioritization of approval and review mechanisms between the two Departments and among the various signatory Agencies; and the identification and eradication of duplicative administrative requirements, where possible to streamline and add flexibility to program delivery on Indian lands.
3. Conservation practice improvements constructed on Indian lands, under NRCS or FSA programs, will remain on the land and the operation and maintenance (O&M) shall become the responsibility of the current and succeeding lessee or permittee for the life of the practice. Conservation practice improvements will be considered, for purposes of all conservation programs, improvements to the land and not rights-of-way.
4. The Indian Self-Determination and Education Assistance Act, 25 USC § 450 et seq., authorizes the BIA to contract with, and fund, tribes and tribal organizations that choose to take over operation of programs, including natural resource programs, and services

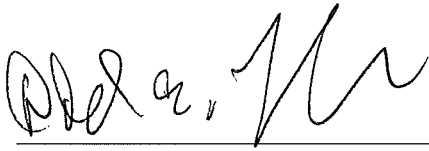
operated by the BIA; however, the BIA is still responsible for the contracted program and remains the deciding Federal official.

5. BIA, NRCS and FSA will work with the Intertribal Technical Assistance Network coordinated by the Intertribal Agriculture Council and funded through the USDA Office of Tribal Relations to improve service delivery of programs on Indian lands.
6. Although not a signatory to this agency-level agreement, the BIA, NRCS, and FSA will work jointly by and through the Office of Tribal Relations within the USDA Office of the Secretary to facilitate and support the full implementation of this agreement.
7. The signatories to this MOU encourage the development of supplementary cooperative working agreements between tribal governments, BIA, and state-level NRCS and FSA offices.
8. The parties to this Agreement may consider joint consultation with tribal governments on program issues related to this Agreement, where applicable and consider coordinating consultation schedules among the Agencies to improve delivery of programs related to this MOU. This joint consultation shall not substitute for other project or program government to government consultation responsibilities (such as under Section 106 of the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), or Executive Order 13175).
9. The parties to this Agreement will entertain opportunities such as short term personnel details and inter-agency personnel agreements to foster career advancement opportunities and better understanding of each Agency's mission, responsibilities and work load.
10. The parties agree to consult before and during conservation planning assistance as needed to confirm the appropriate land owner, lessee or permittee and to ensure compliance with all statutory requirements and regulatory requirements. For example, such requirements could arise from the American Indian Agricultural Resources Management Act, NEPA, NHPA and Endangered Species Act (ESA) and their implementing regulations. This includes NRCS and FSA State Offices seeking opportunities to collaborate and cross train with BIA staff on each Agency's historic preservation responsibilities, policies, procedures, consultation agreements and contracts. Interagency agreements, such as the Historic Preservation Agreement currently in effect between NRCS Montana and the Rocky Mountain Regional Office, are encouraged to facilitate communication and coordination and define roles and responsibilities.
11. Each Agency agrees to provide training to staff of the Agencies, tribes, lenders and other interested parties regarding the statutory, regulatory and administrative requirements and policies of each Agency, upon request as funding and agency priorities allow.
12. The BIA, NRCS, and FSA personnel will work to develop a process to perform quality reviews and spot checks on conservation practices on Indian lands, as determined by the specific conservation programs, during the lifespan of the specific program.

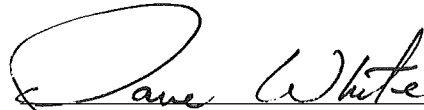
13. The parties will strive to provide appropriate training to each Agency on program implementation on Indian lands. This includes FSA and NRCS training on USDA programs for BIA and BIA training on ownership of Indian lands and the leasing and permitting process to FSA and NRCS.
14. The signatory parties to the Agreement will strive to conduct regular meetings between USDA field staff, BIA representatives, and tribal leadership.
15. Nothing in this MOU shall obligate BIA, NRCS, and FSA to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the Agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
16. The mutual exchange of geospatial information, including ownership and usage information, would be useful in the context of agricultural and financial development on Indian lands. 7 USC § 8791 prohibits the Secretary of Agriculture and its employees from disclosing certain information that has been provided by agricultural landowners and producers to participate in the U.S. Department of Agriculture's (USDA) programs, except for specific exclusions. If the Department determines that the natural resource spatial data from Indian lands will not be disclosed according to 7 U.S.C. § 8791, it may be released in cooperation with BIA (a Federal Agency) to provide technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices on Indian lands as permitted by this statute. The parties will sign separate agreements to share this data.
17. This MOU takes effect upon the signatures of the Director of BIA, the Chief of NRCS and the Administrator of FSA and shall remain in effect for 5 years from the date of execution. This MOU may be extended or modified upon written request of any of the Agencies and the subsequent written concurrence of the other(s). BIA, NRCS or FSA may terminate this MOU with a 60-day written notice to the other(s).
18. The BIA, NRCS, and FSA will jointly review this MOU periodically to determine if changes are needed to meet new policy, laws, regulations, and arrangements. The Agency signatories will delegate a lead point of contact for each Agency, which is reflected in Addendum A, with regard to implementation of this agreement and those points of contact will coordinate periodic meetings between program staff of all signatory Agencies at the national level, to augment field office-level regular meetings between applicable staff.
19. None of the provisions of this MOU shall affect other programs and activities carried out by BIA, NRCS, and FSA.

20. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

APPROVAL:



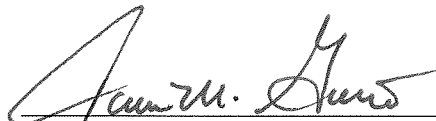
Donald E. Laverdure
Acting Assistant Secretary – Indian Affairs
U.S. Department of the Interior
Date: **AUG 28 2012**



Dave White
Chief, Natural Resources Conservation Service
U.S. Department of Agriculture
Date:



Michael S. Black
Director, Bureau of Indian Affairs
U.S. Department of the Interior
Date: **AUG 28 2012**



Bruce Nelson
Administrator, Farm Service Agency
U.S. Department of Agriculture
Date: **SEP 06 2012**

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IMPLEMENTATION TEAM

BUREAU OF INDIAN AFFAIRS

1. Deputy Director of Trust Services

NATURAL RESOURCES CONSERVATION SERVICE

1. Chief of the NRCS or his designee
2. Regional Conservationist as designated by Chief, NRCS
3. State Conservationist as designated by Chief, NRCS

FARM SERVICE AGENCY

1. Assistant Deputy Administrator for Farm Loan Programs
2. Assistant Deputy Administrator for Farm Programs

USDA OFFICE OF TRIBAL RELATIONS

1. Program Specialist or Program Manager, as designated by the Director of the Office of Tribal Relations
2. Additional Technical Assistance provided by USDA OCIO, specifically regarding data sharing and data improvement functions (as determined by Chief Information Officer, USDA)