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 CONSERVATION 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 USDA, 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 managing and conserving natural resources on Indian lands. The parties, therefore, enter into this MOU for the coordination, planning and implementation of USDA conservation 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 development and administration of natural resource programs on Indian lands. This agreement is made and entered into and between the BIA, NRCS, and FSA to update and replace the May 1988 Agreement.

The parties to this MOU recognize the degree to which the respective agencies are organized and staffed to carry out their trust responsibilities to 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. BIA means Department of Interior Bureau of Indian Affairs.
2. Conservation District (CD) means a subdivision of a State, tribal, or other unit of government organized pursuant to the applicable State or tribal law for the purpose of

natural resources conservation, including plant and cultural resources.

3. Conservation Plan means the written document describing the conservation practice(s) which will be or have been established to conserve natural resources.
4. Conservation System means the combination of conservation practices and resource management for the treatment of soil, water, air, plant, and/or animal resource concerns.
5. FSA means Department of Agriculture Farm Service Agency.
6. Indian means a person who is a member of an Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any member of a Native Village Corporation, Regional Corporation, or Native Group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).
7. Indian lands means all lands held in trust or restricted status by the United States for an Indian tribe or individual Indians.
8. Indian tribe means an Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village, Regional Corporation, or Village Corporation, as defined in or established pursuant to the Alaska Native Claims Act (85 Stat. 688) [43 U.S.C.A 1601 et seq.], which 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.
9. IRMP means Integrated Resource Management Plan, which is a document that provides coordination of comprehensive management of the tribes' natural resources.
10. NRCS means Department of Agriculture Natural Resources Conservation Service.
11. Restricted land or land in restricted status means land to which the title is held by an individual Indian or a tribe and can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations (see 25 CFR 151.2 Definitions).
12. Trust land or land in trust status means land to which title is held in trust by the United States for an individual Indian or a tribe (see 25 CFR 151.2 Definitions).

II. BACKGROUND

BIA administers 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. There are 561 federally recognized tribal governments in the United States. The BIA and other Federal agencies are responsible for consulting with Indian landowners and Indian tribes to develop their trust assets. This includes leasing and permitting these trust assets, directing agricultural programs, protecting water and land rights, and developing and maintaining infrastructure and economic development.

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 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.

NRCS provides leadership in a partnership effort to help people conserve, maintain, and improve natural resources and the environment. NRCS provides technical and financial assistance for implementing national conservation programs and conservation practices on non-Federal, private, and tribal lands in partnership with Conservation Districts and other Federal, tribal, State and local entities.

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 practices for Indian lands and managing and conserving natural resources.

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

1. Ensure a clear understanding as to the applicable Federal and tribal laws and regulations and to define the role and responsibilities of the signatory parties.
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 NRCS, FSA, and BIA.
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.

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

IV. RESPONSIBLILITIES

A. NRCS will:

1. Provide technical assistance to Indian tribes, Indian landowners, land users, including subsistence agricultural producers on Indian and non-Indian lands. This assistance is provided to facilitate participation in USDA programs for which the individuals, tribes or groups are eligible.
2. Make monetary payments to program participants with approved contracts in a timely manner.
3. Utilize IRMP's, where available, in the delivery of NRCS programs.
4. Provide available natural resource spatial data of Indian lands to the BIA and Indian tribes, unless restricted from distribution.
5. Make Field Office Technical Guides (FOTG) available to BIA regional and agency area

offices and to Indians and Indian tribes. (The NRCS FOTG is available on the NRCS Web site).

6. Advise BIA of available natural resource conservation programs and training.
7. Assist with the development of conservation plans, and/or conservation systems, for the production of agricultural commodities and subsistence agricultural activities on Indian lands that will 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).
8. Consult with BIA during conservation planning assistance to confirm the appropriate land owner, lessee or permittee to ensure that all statutory requirements and regulations are completed.
9. Consult with BIA Irrigation Project or System Managers on all plans outlining the conservation and management of natural resources on any lands (including non-Indian, or non-Trust) within BIA Irrigation Projects.
10. Provide annual progress reports of NRCS assistance to Indians, Indian tribes, or non-Indians on Indian lands to the Director of BIA.
11. Certify the design, application and construction of planned and mutually reviewed conservation practices delivered through NRCS-administered conservation programs.
12. Perform spot checks and status reviews jointly with BIA staff on NRCS-administered conservation program contracts located on tribal lands.
13. Work with BIA and Indian tribes to identify technical training needs and provide training to BIA and tribal technical personnel.
14. 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 guidelines.

B. BIA will:

1. Review all conservation plans that will affect Indian lands to ensure consistency with existing leases and permits.
2. Provide technical assistance to make needs assessments and feasibility determinations for conservation programs on Indian lands.
3. Work with NRCS to coordinate recommendations for stocking rates and grazing capacities, 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.
4. Advise NRCS and FSA of existing programs, agricultural leases, rights-of-way or other encumbrances which may affect proposed projects.

5. Assist Indians and Indian tribes in developing conservation plans that will outline land treatment and management required to protect natural resources and comply with NRCS or FSA conservation program provisions, as applicable.
6. Perform surveys and investigations and prepare designs and conservation practice layouts that meet the specifications of the NRCS FOTG and conservation program specifications, and certify completion of practice implementation in accordance with requirements for NRCS or FSA conservation program provisions, as applicable.
7. Maintain complete files of all supporting computations, design data, construction specifications, as-built surveys, and completion inspections and provide copies to NRCS as necessary for contract payment documentation.
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 BIA will help facilitate the implementation of joint agency projects.
9. Include provisions that require the maintenance of all installed conservation practices as a stipulation in future permits and leases. The provisions will state that maintenance will be required of the lessee or permittee throughout the prescribed lifespan of the installed practice.
10. Accompany and assist NRCS and FSA personnel in performing quality reviews and spot checks on conservation practices, as determined by the specific conservation programs, during the lifespan of the cost shared practice.
11. Advise NRCS and FSA of existing BIA programs and amendments and provide training as requested.
12. Assist NRCS or FSA to ensure that all statutory requirements and regulations are completed prior to implementing any conservation practice.
13. Advise NRCS and FSA of any changes in tribal law that may affect existing or future USDA programs, to the extent that BIA is aware of such changes.
14. Provide ownership and natural resource spatial data of Indian lands to NRCS and FSA for communication, collaboration, cooperation, and consultation purposes unless specifically prohibited by a tribe or otherwise restricted from distribution.
15. Provide to NRCS and FSA, when available, IRMP's that have been completed and/or are under development by tribes.
16. Where appropriate, provide easement and landowner information for the installation of NRCS and FSA conservation practices on Indian lands.
17. Notify NRCS and FSA of changes of lease holder on lands under NRCS and FSA conservation program contracts.
18. 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.

C. **FSA will:**

1. Accept eligible applications for its programs and maintain a record of referrals for projects on Indian lands.
2. Transmit completed offers to participate in FSA conservation programs, as appropriate, to the appropriate NRCS District Conservationist and BIA office.
3. Provide program benefits, including payments to approved program participants, consistent with program rules and regulations.
4. Perform contract compliance oversight during the term of FSA-administered contracts.
5. Advise BIA and NRCS personnel of available programs and technical requirements for distribution to Indians and Indian tribes.
6. Provide technical assistance to the BIA upon their request, subject to the availability of FSA personnel and consistent with FSA conservation programs' mission, objectives, and priorities.
7. Advise BIA and Indian landowners and land users of FSA programs, notices of local committee elections and other special events.
8. Provide natural resource spatial data from Indian lands to the BIA, NRCS, and tribal governments for communication, collaboration, cooperation, and consultation purposes, unless restricted from distribution.

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 programs, practices and plans comply with all applicable tribal and Federal laws and regulations.
2. Conservation facilities or improvements constructed on Indian lands, under NRCS programs, will remain on the land and the operation and maintenance (O&M) shall become the responsibility of the current and succeeding lessee for the life of the practice.
3. The BIA has fire management responsibility on Indian trust lands for all fires, natural or man-made, and will coordinate with USDA on all prescribed burns that are part of a USDA conservation program.
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 formerly 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 jointly review this MOU periodically to determine if changes are needed to meet current policy, laws, regulations and arrangements.

6. None of the provisions of this MOU shall affect other programs and activities carried out by BIA, NRCS, and FSA.
7. This MOU encourages the development of subsidiary cooperative working agreements between tribal governments, BIA, and State-level NRCS and FSA Agency offices.
8. NRCS, BIA and FSA will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
9. Nothing in this MOU shall obligate NRCS, BIA or 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.
10. This MOU takes effect upon the signatures of the Chief of NRCS, the Director of BIA 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). NRCS, BIA or FSA may terminate this MOU with a 60-day written notice to the other(s).
11. 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:

12/6/06

USDI –Director, Bureau of Indian Affairs — Date

12/6/2006

USDA – Chief, Natural Resources Conservation Service — Date

12-6-06

USDA – Administrator, Farm Service Agency — Date