A wholly owned economic development arm of the Rosebud Sioux Tribe

RE: **Written Comments to the USDA Tribal Consultation on the 2018 Farm Bill and Tribal Hemp Plans**

Submitted: May 6, 2019

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A. BACKGROUND: THE ROSEBUD SIOUX TRIBE

The Rosebud Indian Reservation is the home of the federally recognized Sicangu Oyate (the Upper Brulé Sioux Nation) - also known as Sicangu Lakota, and the Rosebud Sioux Tribe (RST), a branch of the Lakota people. The Lakota name Sicangu Oyate translates into English as "Burnt Thigh Nation"; the French term "Brulé Sioux" is also used.

The Rosebud Reservation encompasses an area of 882,416 very rural isolated acres, covering four different counties. In total we own and control over 1 million acres spread across five counties, which comprise the original Rosebud Reservation. We still claim the original boundaries of the Rosebud Reservation and have official government representation in our Tribal Council from these areas. Four of the top poorest counties in the United States are Indian reservations in South Dakota, including the primary county in which Rosebud sits, Todd County. Rosebud has a tribal membership of just over 34,000, with over 21,000 enrolled members living on the reservation, and a median income of less than $19,000 each.

Created in 1868 by the Treaty of Fort Laramie, the Great Sioux Reservation originally covered all of the area west of the Missouri River in South Dakota, part of northern Nebraska, and part of eastern Montana. The Rosebud Indian Reservation was established in 1889 by the United States' unilateral

partition of the Great Sioux Reservation. We have never relinquished our claim to the entire Great Sioux Reservation.

ECONOMIC DEVELOPMENT IS ESSENTIAL GOVERNMENTAL INCOME

Like any nation state, including federal, state, and local governments, tribal governments must also provide essential governmental services and economic development opportunities to its nation and citizens. Unlike federal, state and local governments, however, Tribal governments have no tax base to produce governmental revenue.

Tribal land is federal trust land and is non-taxable, thus no property taxes, and case law has awkwardly evolved to prohibit us from taxing fee lands even though within our own boundaries. It should be noted that this is a function of federal policy, where the federal government has failed to work with tribes on a nation-to-nation basis, or even a government-to-government basis.

The population base is so small and impoverished that an income tax would be futile, thus no income taxes

And even though all other sales, use, improvements, etc. taxes should solely be the purview of our nation, the state governments have litigated sales tax to the point of inaccessibility for most tribes. At a minimum they aggressively enforce a race based tax for their citizens on *our* lands. Thus we have no sales tax.

Therefore, to generate basic governmental revenue, tribal governments must compete in the open private commercial marketplace. *See* Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue,* 80 N.D. L. REV. 759 (2004). As such, Rosebud created an economic development holding company, the Rosebud Economic Development Corporation ("REDCO").

REDCO is dedicated to serving the tribe by generating governmental revenue generated through private enterprise, and to serving the Lakota people by creating a self-sustaining, local economy through the creation of business opportunities, jobs, workplace training, positive role models, and resource development.

REDCO (ROSEBUD ECONOMIC DEVELOPMENT CORPORATION)

As a wholly owned arm and entity of the Rosebud Sioux Tribe, REDCO serves as the official development corporation of the Tribe. REDCO's primary mission is to generate revenue for the Tribe and promote economic development. Utilizing an integrated multi-faceted approach REDCO's concentrates its work in three areas:

- **Business Management and Development.** REDCO serves as the primary holding and management company for the Tribe, managing numerous subsidiary companies to generate revenue create jobs.
- **Policy Development.** REDCO works with the Tribal government to promote business friendly economic policies and regulations.
- **Community Development.** REDCO engages in specific community development projects aimed at strengthening the overall economy and improving quality of life.

B. IMPORTANT HISTORICAL & LEGAL INFORMATION FOR IMPLEMENTING THE 2018 FARM BILL

USDA SHOULD NOT TRY TO DEFINE ROSEBUD'S CIVIL JURISDICTION. The Rosebud Sioux Tribe actively asserts, jurisdiction over all commerce and trade.

Rosebud Sioux Tribal Business License – Required of All Businesses and Persons. We require all businesses and persons doing business within the exterior boundaries of the Rosebud Indian Reservation to obtain a Rosebud Sioux Tribal Business License. This licensing and regulatory jurisdiction is asserted regardless of the race or citizenship of the business or person, and regardless of the land ownership of the location. If you are conducting trade and commerce within the boundaries of the Rosebud reservation or with the Tribe and its people from another location, you are required to obtain a Tribal Business License.

Rosebud Tribal Employment and Contracting Rights Office (TECRO). The Rosebud Sioux Tribe applies tribal employment and hiring regulations to all employers operating within our nation's boundaries.

SPECIFIC TREATY PROVISIONS THAT REQUIRE THE UNITED STATES TO PROTECT TRIBAL ECONOMIC INTERESTS. The United States government's treaty and statutory provisions with the Great Sioux Nation require more than simple "protection" of our economic interests, they require active and engaged "promotion" of our economic interests. In return for taking our lands and placing us in difficult, isolated, and barren lands, the federal government committed to the higher obligation of actually actively engaging in, promoting and ensuring our trade commerce was and is strong and robust. If the federal government cannot or does not want to maintain that fundamental promise, then our lands should be returned and we can stimulate our own commerce and trade.

TREATY PROMISES OF TRADE AND COMMERCE PROTECT TRIBAL AGRICULTURAL ECONOMY. By far one of the most prominent reoccurring themes in our treaties, is a promise by the United States government that in return for our ceding our land to the United States the United States government repeatedly promised to establish, protect, and grow a variety of commerce and trade on our new nation.

The Great Sioux Nation signed the Treaty of Ft. Laramie with the understanding that the United States government would protect our reserved lands from encroachment and protect and promote our trade and commerce. The United States has failed miserably in upholding both of these basic treaty tenets.

Treaty of Ft. Laramie – 1868. The underlying commitment to promote tribal trade and commerce are crystal clear, particularly a tribal agricultural economy and commerce. Article after article the United States promised to provide the tools and resources to create and protect a sustainable economy, in the new location in which our people were essentially banished.

In the treaty we agreed to concede the land base we needed to be self-sufficient. In return the United States promised to provide the resources and protections necessary to ensure our economic success for self-sufficiency within this new limited land base.

At the time of the treaty signing, the resources necessary to ensure a robust and self-sufficient economy of commerce and trade were carpenters, farmers, blacksmiths, millers, and engineers. The infrastructure to support this human capital, a warehouse, a store-room, a residence for the physician, a good steam circular saw-mill, with a grist-mill and shingle machine attached to the same, and a school-house. The supplies necessary to succeed, the seeds to plant, one good American cow, and one good well-broken pair of American oxen, and an expert farmer to guide our agricultural commerce to success.

> **Article IV. The United States agrees, at its own proper expense, to construct**, at some place on the Missouri river, near the centre of said reservation where timber and water may be convenient, the following buildings, to wit, **a warehouse**, **a store-room** for the use of the agent in storing goods belonging to the Indians, to cost not less than $2,500; **an agency building**, for **the residence of the agent**, to cost not exceeding $3,000; **a residence for the physician**, to cost not more than $3,000; and **five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer-each** to cost not exceeding $2,000; also, **a school-house,** or mission building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding $5,000. The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, **a good steam circular saw-mill, with a grist-mill and shingle machine attached to the same**, to cost not exceeding $8,000.
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> **Article VIII.** When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, **he shall be entitled to receive seeds and agricultural implements for the first year**, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid, not exceeding in value twenty-five dollars. And it is further stipulated that such persons as commence farming **shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.**
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> **Article X.** And it is further stipulated that the United States will furnish and deliver to each lodge of Indians or family of persons legally incorporated with the, who shall remove to the reservation herein described and commence farming, **one good American cow, and one good well-broken pair of American oxen** within 60 days after such lodge or family shall have so settled upon said reservation.
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> **Article XIII. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths,** as herein contemplated, and that such appropriations shall be made from time to time, on the estimate of the Secretary of the Interior, as will be sufficient to employ such persons.

Treaty of Ft. Laramie – 1868

The modern understanding of these historical treaty terms is all the same. On these new barren lands, the United States will provide the resource, the people, the oversight, and the protection necessary to ensure a vibrant economy so that we can remain self-sufficient as we were in our original lands which have been ceded. Further, any treaty ambiguities must be read in the light most favorable to the Indians.

In the Treaty of 1868 the United States government promised to provide all the resources and support necessary to grow and protect an economy in this new and limited reservation of land to which they forced us. The Act of 1877 just nine years later confirmed this federal commitment to support and protect our commerce and trade by directly promising to find and promote markets for our products.

This promotion and protection of commerce on these new, difficult, and isolated lands was one of the *primary* and most important promises made to us in ceding and taking our lands. To ensure our people would be as self-sufficient as we had been on our ceded lands.

The Act of February 28, 1877 (19 Stat., 254)**.** The Great Sioux Nation and the Rosebud Sioux Tribe have never consented to the legitimacy of the unilateral Act of 1877, and the Supreme Court upheld the illegal unilateral taking of the Black Hills in the *United States v. Sioux Nation of Indians*. 488 U.S. 370 (1980). However, the United States still views this Act as good law and relies upon it as justification for the taking of the Black Hills, which became the Black Hills National Forest, and for limiting our land base to what it is now. Therefore, the United States clearly must follow its own law.

The language in The Act of 1877 strengthens and bolsters the language and promises in the original unilateral Treaty of 1868 with the promise of support for a tribal agricultural economy in return for our loss of land base.

USDA Promise to Purchase Provision with The Act of February 28, 1877. Certain federal agencies have an additional layer of statutory clarification on tribal contracting preferences and tribal hiring preferences, such as SBA (8(a)) and DOI (Buy Indian). While the SBA 8(a) program and the DOI Buy Indian Act are helpful additional statutory authorizations, they are not necessary particularly for USDA. Rosebud and other Great Plains region tribes have a very specific "promise to purchase provision" in the Act of February 28, 1877. Combined with the "cannons of construction" and trust responsibility, the authorization is clear. Many other re-located tribes have similar provisions in their treaties and other Congressional Acts.

When the Sicangu Oyate, the Rosebud Sioux Tribe, was moved out of the Black Hills to the Rosebud Sioux Indian Reservation to begin a western agrarian economy on the barren plains, the United States Congress legislated purchase and hiring preferences within Agriculture to facilitate this otherwise unlikely new and difficult economy.

> *"The Government will aid said Indians as far as possible in finding a market for their surplus productions… and will purchase such surplus, as far as may be required, for supplying food to those Indians… and will also employ Indians, so far as practicable, in the performance of Government work upon their reservation.***"**[1]

Article 5 of the Act of February 28, 1877

[1] http://legisworks.org/sal/19/stats/STATUTE-19-Pg254.pdf

CONGRESSIONAL AFFIRMATION OF SUPPORT AND PROTECTION FOR TRIBAL SELF-REGULATION, TRADE AND COMMERCE INCLUDING REGULATING TRIBAL AGRICULTURE. Congress has continued to "explicitly" act to support Tribal commerce and self-sufficiency, bolstering the ideals of our treaties and set forth throughout the 2018 Farm Bill. Congress has taken numerous steps to enhance and support Tribal sovereign commerce and economic development. For example, Congress has clearly and unequivocally expressed its intent for the United States government to encourage and foster tribal commerce and economic development. In the comprehensive bill the Native American Business Development Act, Congress made its findings regarding tribal economic development and the role of the federal government and federal agencies in that nation-building pursuit very "explicit":

- the United States has an obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes;
- the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian land;
- the economic success and material well-being of Native American communities depends on the combined efforts of the Federal Government, tribal governments, the private sector, and individuals….;

Native American Business Development Act, 25 U.S.C. § 4301(a).

With these duties to protect Indian commerce come the powers to protect Indian commerce. The "duty" to protect is clearly and naturally accompanied by the "power" to protect or it is useless and unenforceable.

> [Tribes] owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the **States where they are found are often their deadliest enemies**. From their very weakness and helplessness, so **largely due to the course of dealing of the federal government** with them, and the treaties in which it has been promised, there arises **the duty of protection, and with it the power.**

United States v. Kagama, 118 U.S. 375 (1886)

NO USDA PROGRAMS SHOULD BE PASSING THROUGH A STATE GOVERNMENT ONTO A TRIBAL GOVERNMENT. South Dakota Explicitly Conceded to Federal Jurisdiction - Dakota Territory Act & The Enabling Act**.** South Dakota expressly acknowledged, conceded to, and accepted exclusive federal jurisdiction in Indian Country in order to become a territory, and then again in order to become a state. Therefore, there is nothing surprising about the supremacy or exclusivity of federal law in Indian Country to the state. Yet South Dakota challenges the boundaries of this contract every day, fighting every aspect of our trade and commerce jurisdiction, and crippling our economy.

1861 Dakota Territory Act. In the 1861 Dakota Territory Act, Congress proclaimed that the Territory, now North and South Dakota, had no authority over Indian lands and that Congress reserved all of its Indian affairs powers. Including regulations, lands, and laws.

> That **nothing in this act contained shall** be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by paired. treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but **all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Dakota, until said tribe shall signify their assent to the President of the United States to be included within the said Territory,** or to **affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise,** which it would have been competent for the government to make if this act had never passed:

The Dakota Territory Act of March 2, 1861

1868 Treaty of Ft. Laramie. The State of South Dakota was not a state in 1868 when the Great Sioux Nation signed the 1868 Treaty with the United States. At that time the Dakota Territory was in existence and the Dakota Territory Act of 1861 was the applicable law. Therefore the prohibition on any territory (or state) jurisdiction over Indian lands was what was understood at the time of our treaty. In fact, there is not a single mention of state jurisdiction, state taxes, state regulations, anywhere in the Treaty of 1868. It was irrelevant. It was inapplicable. It was unfathomable. Our constitutional, federalist, and treaty relationship is solely and *exclusively* with the United States of America.

1889 Enabling Act. Again after acknowledging the prohibition on any jurisdiction in Indian Country as a territory, South Dakota confirmed those prohibition principles and federal exclusivity in the Enabling Act of 1889 in order to become a state. South Dakota, North Dakota, Montana and Washington explicitly acknowledged federal primacy:

- That the people inhabiting said proposed States…
- do agree and declare that they **forever disclaim all right and title to … all lands lying within said limits owned or held by any Indian or Indian tribes**;
- and said **Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States**;
- that **no taxes shall be imposed by the States** on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use.

The Enabling Act, Section 4, Act of Feb. 22, 1889, 25 stat. 676, ch. 180, pp. 276—284

CANONS OF FEDERAL INDIAN LAW CONSTRUCTION – ANY STATUTORY AMBIGUITIES IN THE 2018 FARM BILL MUST BE INTERPRETED IN FAVOR OF THE TRIBES. Furthermore, because of the unique trust relationship with Tribes, the Supreme Court has made clear that a basic cannon of Indian law is that "ambiguities in federal law should be construed generously" in favor of the tribes. *Ramah Navajo School Board v. Bureau of Revenue,* 458 U.S. 832 (1982). Therefore, if in reading the 2018 Farm Bill there are any ambiguities, each ambiguity should be read in favor of the Indians. This same premise should have been known and applied to the 2014 Farm Bill as well.

C. SPECIFIC PROVISIONS IN THE 2018 FARM BILL

HEMP COMMENTS

THE USDA HAS USED ITS DISCRETION TO ENABLE THE SYSTEMIC SUPPRESSION OF THE TRIBAL HEMP ECONOMY. While we appreciate that there was ambiguity in the 2014 Farm Bill about tribal participation. However, for all the numerous legal authorities listed above not least of which is the U.S. Supreme Court's Cannon of Construction, the USDA should have used its discretion to hold the opinion that Tribes could directly participate in the 2014 Farm Bill. The result was a massive inequity, with only 2-3 Tribes successfully participating in the state licensed 2014 Hemp Farm Bill process, and several others being raided by law enforcement. Some States, like California, actively excluded Tribes from even being able to participate in their state licensing process.

The 2018 Farm Bill finally formally righted that wrong, yet the USDA is continuing to use its discretion to exclude tribes from moving forward in the hemp agricultural industry. The USDA's further delay of the 2018 rules dramatically and disproportionately prejudices only Tribes.

THE USDA SECRETARY HAS AN OBLIGATION TO ALLOW TRIBES TO GROW HEMP THIS SEASON - THIS SPRING 2019 – WAIVER OF WAITING PERIOD. Per the Constitutional, treaty, trust, statutory and Executive order authorities cited above, the USDA has a legal and trust responsibility to find a path for tribes to immediately participate in this important agricultural economy.

At the tribal consultation last week, Secretary Purdue made an "aspirational" commitment to tribes to try and plant this year, either through the 2014 Farm Bill or the 2018 Farm Bill. We would like to request a waiver through the 2018 Farm Bill for implementation of this commitment. The 2014 requirements cannot be implemented in a timely fashion, but dozens of tribes already have their 2018 Farm Bill Tribal Hemp Plans ready to go.

USDA has made the discretionary decision that the hemp provisions of the 2018 Farm Bill in general, and specifically as to the 60 days review time period, do not come into effect until after the final regulations are in place. We respectfully disagree and believe the statute is self-effectuating.

Tribes were excluded from the 2014 Farm Bill and are thus already years behind states in the hemp market. The USDA's further delay of the 2018 rules dramatically and disproportionately prejudices only tribes. Find a way to allow tribes to plant this season. For example, preliminarily and quickly approve our Tribal plans pending final approve once the final regulations are done.

WAIVERS OF USDA'S DISCRETIONARY DECISION TO MAKE TRIBES WAIT FOR THEIR HEMP PLAN APPROVALS CAN BE GRANTED– EXECUTIVE ORDER 13175. We think the statute is self-effectuating and no special decisions or waivers need to be made to accomplish this goal. But to the extent that USDA believes they need extra authorities, discretionary waivers are explicitly allowed for Tribes. Executive Order 13175 – Sec 6. "Increasing Flexibility for Indian Tribal Waivers." Please consider this a formal waiver request as soon as our Tribal Plan is submitted. Any discretionary decision by USDA can be waived for tribal nations.

> *"Increasing Flexibility for Indian Tribal Waivers" "(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes. (b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate. (c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor. (d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency."*

Executive Order 13175 – Sec 6. "Increasing Flexibility for Indian Tribal Waivers."[2]

TRIBES CAN LEGALLY BE TREATED DIFFERENTLY THAN STATES – USDA IS A LEGAL TRUSTEE. Tribes are not signatories to the U.S. Constitution. They are not represented in the democratic decision-making process of the U.S. federal government. Unlike State governments, which, for example, are each allocated two Senators. Thus, the diplomatic government-to-government relationship and extra-legislative negotiations, "consultation" with tribal nations, is required. Tribal relationships are defined by the terms of contracts between the two governments, treaties, U.S. Supreme Court precedent, federal law, and executive branch negotiations. The entire federal government, including the USDA, serves in the legal capacity as a fiduciary trustee. Serving as a trustee inherently requires "special/more/different" treatment than one would have to an entity to which you do not have a legal trust responsibility. It affords more flexibility and a higher standard of care.

CLARIFY STATES CANNOT INTERFERE WITH TRIBAL HEMP LEGALIZATION OR TRIBAL HEMP TRANSPORTATION. Provide very clear guidance that reflects what is already in the statute and the conference committee notes. Tribes can independently legalize hemp, no state authorization is required. Further, states that do not legalize hemp cannot seize or interfere with legal hemp and hemp product loads. We are already witnessing these aggressive seizures and arrests post Farm Bill passage in Idaho and South Dakota. Make clear that non-interference with interstate transportation includes entry and egress from tribal territory (ie. Inter and Intra state transportation). Perhaps provide a stamp or form for bills of lading that must be accepted by all law enforcement.

DO NOT TRY TO DEFINE TRIBAL TERRITORY. Per our legal discussion in the prior section, Congress specifically chose not to define tribal territory/tribal civil jurisdiction in hemp provisions, and the USDA should not attempt to do so. Defining tribal territory is outside the scope of USDA's authority delegated in the Farm Bill. Civil, regulatory, and taxing jurisdiction for tribes varies from federal circuit to circuit, state to state and tribe to tribe, and no one definition can properly address it. Each tribe can address it in their own regulations if they so choose, otherwise it is already defined in current case law.

ALLOW FLEXIBILITY IN LAND DESCRIPTION REQUIREMENTS. Include enough flexibility in the legal land description process for tribes to not use GPS or street addresses. Many tribes have pre-

[2] https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf

existing processes and legal descriptions currently used with the tribe, BIA, BLM or other federal agencies.

ENSURE DISPOSAL OPTIONS ARE ECONOMICALLY SUSTAINABLE. Ensure that regulations do not automatically require complete destruction for plants out of compliance. Incorporate flexibility for continued use of stalks and rendering the THC non-viable for continued harvesting and finishing for consumer products.

HIRE A FEDERAL INDIAN LAW EXPERT. Hire a Federal Indian law expert for the Office of General Counsel and for AMS to assist in expedited review of the submitted Tribal hemp plans, and in review of the 2018 Farm Bill regulations. Use the OPM authorized temporary hiring provisions to do so expeditiously.

- **Temporarily Hire A Federal Indian Law Attorney to** Assist in Reviewing the 2018 Farm Bill Regs & Tribal Hemp Plans. Use the "Special Appointments" Temporary/Term Appointments authority under OPM.
- **Permanently Hire Federal Indian Law Attorney for OGC Staff**. Do not take the funds from OTRs already limited budget.
- **Provide Additional Funding to Office of Tribal Relations.**
- **Review previous Farm Bills for the <u>many</u> unimplemented tribal provisions.** Many tribal provisions were included in prior Farm Bills which have still either not been implemented at all or only partially implemented, that need to be included. Such as requiring USDA to place offices on Indian reservations, buffalo purchasing requirements, the traditional and local foods provisions.

FOOD NUTRITION, CONSUMER SERVICES: TITLE IV: NUTRITION

(Acting Deputy Undersecretary Brandon Lipps)

TRIBES ARE NOT POLITICAL SUBSIDIARIES OF STATE GOVERNMENTS. Please reference our lengthy discussion in the legal background section, states have no legal relationship to tribal nations. No tribal eligible programs should be passing through state governments.

FNS MUST DO A BETTER JOB INTEGRATING TRADITIONAL, LOCAL AND WILD FOODS

THERE MUST BE A TRIBAL AND TRIBAL CITIZEN PURCHASE PREFERENCE IN FDPIR. The Seminole Tribe of Florida is one of the wealthiest and most economically sophisticated tribes in the United States. They own the international chain of Hard Rock Cafes. Yet it took even Seminole two years to get certified and still have not been successful on a contract bid. This despite the fact that they have 30,000 head of cattle. For all the legal reasons previously outlined in this written testimony, the USDA already has the legal authority to implement tribal and tribal citizen preference.

USDA Promise to Purchase Provision. Per our lengthy discussion in the legal history section, the language in The Act of 1877 creates a Promise to Purchase right for tribes and tribal citizens within the FDPIR program. Certain federal agencies have an additional layer of statutory clarification on tribal contracting preferences and tribal hiring preferences, such as SBA (8(a)) and DOI (Buy Indian). While the SBA 8(a) program and the DOI Buy Indian Act are helpful additional statutory authorizations, they are not necessary particularly for USDA. Rosebud and other Great Plains region tribes have a very specific "promise to purchase provision" in the Act of February 28, 1877. Combined with the "cannons of construction" and trust responsibility, the authorization is clear. Many other re-located tribes have similar provisions in their treaties and other Congressional Acts.

When the Sicangu Oyate, the Rosebud Sioux Tribe, was moved out of the Black Hills to the Rosebud Sioux Indian Reservation to begin a western agrarian economy on the barren plains, the United States Congress legislated purchase and hiring preferences within Agriculture to facilitate this otherwise unlikely new and difficult economy.

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> Article 5 of the Act of February 28, 1877

TRIBES CAN LEGALLY BE TREATED DIFFERENTLY THAN STATES – USDA IS A LEGAL TRUSTEE. Tribes are not signatories to the U.S. Constitution. They are not represented in the democratic decision-making process of the U.S. federal government. Unlike State governments, which, for example, are each allocated two Senators. Thus, the diplomatic government-to-government relationship and extra-legislative negotiations, "consultation" with tribal nations, is required. Tribal relationships are defined by the terms of contracts between the two governments, treaties, U.S.

[3] http://legisworks.org/sal/19/stats/STATUTE-19-Pg254.pdf

Supreme Court precedent, federal law, and executive branch negotiations. The entire federal government, including the USDA, serves in the legal capacity as a fiduciary trustee. Serving as a trustee inherently requires "special/more/different" treatment than one would have to an entity to which you do not have a legal trust responsibility. It affords more flexibility and a higher standard of care.

TRIBAL CITIZENS CAN LEGALLY BE TREATED DIFFERENT THAN OTHER INDIVIDUALS – TRIBAL MEMBERSHIP IS A CITIZENSHIP NOT A RACE. Tribal citizenship is a political, rather than racial, classification. The entire 25 U.S. Code is dedicated to the federal oversight and disparate treatment of tribal citizens. Native Americans in their capacity as Tribal Citizens can and are treated differently Constitutionally than other U.S. citizens.

ADDITIONAL TRIBAL FARM BILL COALITION RECOMMENDATIONS

- The USDA- Food and Nutrition Service (FNS) should continue to work closely with the Food Package Review Group to determine which traditional foods should be added to the FDPIR food package and can be procured cost-effectively.
- Throughout the implementation of the 638 provision, the USDA-FNS should continually consult with Tribal leaders and the National Association of FDPIR Board to determine how this new authority can best be tailored to allow ITOs to better serve Tribal citizens. Moreover, the USDA-FNS should work closely with the Department of Interior Office of Self Governance to determine best practices in implementation.
- USDA-FNS must look at funding multiple 638 FDPIR pilot projects in various areas throughout Indian Country to provide important information on how the program will work in various regions as the "one-size fits all" models do not reflect the unique challenges and opportunities of each regional and ITO.
- The Farm Bill authorizes appropriations of $5,000,000 until expended for the 638 demonstration program, but it provides no funding for the program. The USDA must request funding for this program in the President's Budget.
- The USDA-FNS must continue to conduct monthly Farm Bill Implementation phone calls with the Tribal Leaders Consultation Working Group on FDPIR and the National Association of FDPIR Board throughout the implementation process for all Farm Bill provisions related to FDPIR.

RURAL DEVELOPMENT: TITLE VI: RURAL DEVELOPMENT

(RUS Administrator Chad Rupe)

STOP SUBSIDIZING MONOPOLIES BY RURAL UTILITIES THROUGH THE NON-DUPLICATION POLICY FOR UTILITIES THAT REFUSE TO FOLLOW TRIBAL LAWS AND REGULATIONS. Loan and contract documents with RUS recipients need to be strengthened to clearly state compliance with local laws and regulations includes tribal laws and regulations. RUS needs to enforce these provisions up to and including loss of RUS financing, otherwise they are meaningless. As it stands now, local rural utilities are not following tribal regulations and rules, yet USDA-RUS continues to subsidize their monopoly on tribal lands through USDA's non-duplication policies. For Rosebud, Cherry Todd electrical has continued to refuse compliance with our Tribal Utility Regulatory body. And Golden West telecommunications continues to refuse to provide mapping for the rights-of-way they have within our jurisdiction and tribal boundaries.

CLARIFY THAT TRIBES, TRIBAL CORPORATIONS, AND TRIBAL LOCAL GOVERNMENTS ARE "ELIGIBLE ENTITIES" FOR RUS PROGRAMS. State and local RUS Programs are wildly inconsistent in how they treat and categorize Tribal Corporations and Local Tribal Governments.

Local Tribal Governments. Tribes like Navajo, Oglala and Rosebud are so large that we have local tribal governments as well. Not unlike cities and counties within a state government structure. Tribes have delegated to these local tribal governments the power of self-governance and economic development, and they should be eligible entities.

Tribal Corporations. Tribes have no tax revenue and must participate in the private marketplace. Tribal corporations are hybrids, they are revenue generating entities (like a private company) and should be eligible for business programs, but they are also tribal government owned and should also be eligible for government programs.

ENSURE TRIBES ARE PROPERLY INTEGRATED INTO THE BROADBAND POINT SYSTEMS. Implementation of the broadband provisions must ensure that application for priority points for Tribes/Tribal entities are applied correctly. Application components for points that do not fit Tribal applications, must not count against Tribal entities.

RESEARCH, EDUCATION, AND ECONOMICS: TITLE VII: RESEARCH, EXTENSION, AND RELATED MATTERS *(Dept Undersecretary Scott Hutchins)*

INTEGRATE TRADITIONAL AND WILD FOODS INTO USDA MULTIPLE RESEARCH INITIATIVES. It is a matter of national security to restore indigenous and wild food growth, food forests. All USDA's research focuses on western forms of agriculture which will be unsustainable in a national economic crisis.

ADJUST THE $1,000/YEAR FARMER DEFINITION – CONSIDER AN EXCEPTION/WAIVER FOR INDIGENOUS, SELF-SUFFICIENCY, SUBSISTENCE FARMERS

WORK WITH DOI TO DEVELOP A BETTER PLAN FOR SURVIVAL OF THE YELLOWSTONE BUFFALO. Saving 5 or so buffalo a year and slaughtering 1,000 is unconscionable, wasteful, and counter to our nation's national security and food sovereignty needs

BETTER INCLUSION OF TRIBAL COLLEGES. Work with TCUs to determine the best ways to facilitate TCU participation in the collaborative research, extension, and teaching efforts with international partner institutions, to further support inclusions and access to the capacity building program.

REQUEST INCREASED APPROPRIATIONS. The 2018 Farm Bill extended parity to TCUs and made them eligible to compete for FRTEP funding, which is an importance acknowledgment of the need for TCU parity in funding and programs. While this doubles the eligible entities for the program, no additional funding was provided for FRTEP, which remains its original 1990 funding level of $3 million. The USDA should ask that the President's Budget include a request for an additional $7 million, at a minimum, in Congressional appropriations for the FRTEP program, and provide funding for FRTEP through available extension funding.

NATURAL RESOURCES & ENVIRONMENT: TITLE VIII: FORESTRY

(Undersecretary Jim Hubbard)

THE 638 PROVISIONS ARE SELF-EFFECTUATING. The 638 provisions are self-effectuating and do not require additional appropriations to begin implementation.

TRANSFER/TRIBAL RIGHT OF FIRST REFUSAL FOR USFS EXCESS LANDS. Most Forest Service lands are either still treaty lands or lands originally inhabited by tribal nations acquired by the USFS upon their forcible removal. Many still contain sacred sites and essential traditional hunting and gathering sites. USFS must figure out a way to offer tribal nations access to excess lands other than the public GSA bidding process. We believe all the treaty and trust responsibilities outlined earlier allow for this transfer now. If the USFS disagrees then then need to request a statutory fix. The lands should be transferred outright, but at a minimum there should be a right-of-first refusal.

LEGISLATIVE FIX NEEDED FOR THE "RETAINED RECEIPTS" ISSUE UNDER GNA

IMPROVE FOREST MANAGEMENT PLAN FOR BLACK HILLS NATIONAL FOREST. Forest management plans need to better support tribal treaty hunting, gathering rights and scared sites.

INCLUDE THE PURCHASE AND HIRING PREFERENCES FROM THE ACT OF FEBRUARY 28, 1877 PREVIOUSLY DISCUSSED IN DETAIL.

HIGHLIGHT THE IMPORTANCE OF FORESTRY & FIREFIGHTING AS AN ECONOMIC DEVELOPMENT DRIVER FOR TRIBES

CREATE TRIBAL "SHARED STEWARDSHIP AGREEMENTS" FOR THE BLACK HILLS NATIONAL FOREST.

BETTER COORDINATE LAW ENFORCEMENT COORDINATION BETWEEN FS AND DOI/TRIBAL LAW ENFORCEMENT (FEDERAL COMMISSIONS).

OFFICE OF TRIBAL RELATIONS: TITLE XII: MISC

(Acting Director Diane Cullo)

OTR NEEDS ADDITIONAL FUNDING. A budget of approximately $500,000 results in a USDA allocation of roughly $800/per tribe.

OTR SHOULD BE INCLUDED IN THE DRAFTING AND IN THE REVIEW OF ALL 2018 FARM BILL REGULATIONS

OGC NEEDS TO HIRE FEDERAL INDIAN LAW EXPERT TO ASSIST

IMPLEMENT THE TRIBAL ADVISORY COUNCIL.