

A Primer: Extension, Indian Land Tenure, and Rangeland Limitations

By Joseph P. Brewer II, Joseph G. Hiller, Shawn Burke, and Trent Teegerstrom

On the Ground

- Rangelands in Indian Country are unique. Legal and historical realities present challenges to range and natural resources management not seen outside of Indian Country.
- Cooperative Extension educational programs are highly valued for their important impact on Agriculture and Natural Resources in counties. These programs exist on less than 10% of Americas Indian Reservations. Federally Recognized Tribal Extension Program (FRTEP) personnel, in the few places where they are funded, are a sought after resource to tribal individuals and communities in Indian Country.

Keywords: American Indian, Cooperative Extension, Federally Recognized Tribal Extension Program (FRTEP), Indian Land Tenure, rangelands, Indian Country Extension.

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By some estimates, there are 48 million acres of rangelands, forests and watersheds on American Indian reservations. Working on these lands requires exceptional sensitivity to and competence in cultural, historical, and government-to-government relations; human subjects reviews; and more. Land ownership on American Indian reservations is unique and complex, requiring a thorough understanding of Indian land tenure. Cooperative Extension personnel in the Federally Recognized Tribal Extension Program (FRTEP) are well versed in the cultural, historical, and legal foundations of land management education. To effectively manage rangelands in Indian country, funding the ubiquitous presence of Cooperative Extension is paramount, similar to county-based Cooperative Extension.

Extension in Indian Country

Cooperative Extension was established under the Smith Lever Act of 1914, requiring 1862 Land Grant universities to conduct off-campus educational programs in agriculture and home economics. The Smith Lever Act joined earlier Acts in establishing agricultural colleges (the Morrill Act of 1862) and agricultural experiment stations (the Hatch Act of 1887) in colleges. The contemporary/traditional model has county governments contributing funding and support, at various scales, with state governments' contribution of university faculty and staff and federal formula funding from the US Department of Agriculture (USDA). The breadth of local and statewide programs grew quickly in response to demand for the inclusion of 4-H, youth leadership, natural resources, and economic development, as well as community resource development. Cooperative Extension personnel consist of off-campus faculty and staff, on-campus faculty (normally housed within academic departments), and administrative units.

Extension programs exist in counties across the nation, including US territories, and are staffed by nearly 9000 full-time employees (FTEs).^{1,2} Over 97% of all counties in the United States are partners with the 1862 Land Grants in delivering Cooperative Extension programs. Many, if not most, county Extension programs have existed for around 100 years. Less than 10% of American Indian tribes receive similar dedicated Extension programs.³

Separate Extension offices have been established through two other Land Grant Acts for the historically black colleges and universities ("1890s") and tribal colleges and universities ("1994s"). Upon receiving accreditation, tribal colleges become eligible for Land Grant programs administered by the USDA. Tribal Land Grant colleges receive USDA funding to conduct teaching, research, and extension programs. There are 34 tribal colleges in 14 states with eligibility (Figure 1)⁴; most have extension programs. Montana presently has the largest number of tribal colleges at seven. Three colleges are currently in the process of accreditation.

In contrast to the state/county model, Cooperative Extension in Indian Country is far from ubiquitous; in fact, it

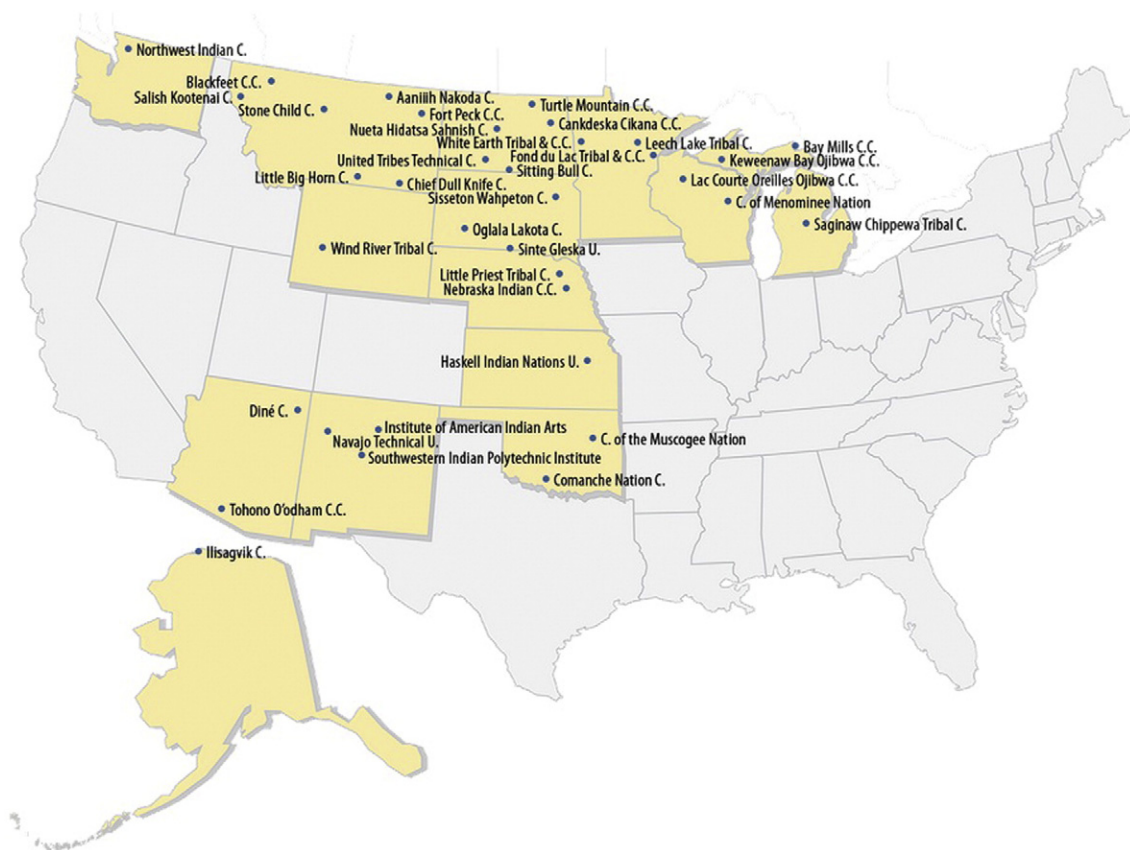


Figure 1. Tribal Colleges and Universities in the United States. (Map courtesy of American Indian Higher Education Consortium: <http://aihec.org/who-we-serve/tcumap.cfm>).⁴

is just the opposite. In most cases, it is at least 75 years *younger* than traditional county Extension programs. Accordingly, the government-to-government relationship between tribal councils and the state-federal Extension partners is also in early stages of development and maturation.

The objective of the FRTEP is to populate major/large reservations with dedicated 1862 Cooperative Extension services and programs. The original intent of supporters was to adequately fund and establish nearly 90 offices nationwide. Both the US government and the tribes had agriculture—at least the subsistence form of it—on their minds when important treaties were negotiated.⁵ Many treaties (1790s–1871) clearly obligated the US government to provide tribes with an agent to assist in the development of agriculture on reservations. Much later, a conglomeration of agencies, namely, the Bureau of Indian Affairs (BIA), 1862 Land Grants, and Tribes, conducted (1900s–1980s) this extension work.

The desire to create the FRTEP was born out of a continued demand from Indian Country for Extension services on reservations, along with Extension's favorable, but inconsistent, history in Indian Country. Cooperative Extension was historically based in counties, servicing those in rural environments but not the remote geographies of Indian reservations. There is a long and muddled history of a federal legal obligation to Extension work dedicated to reservation

clienteles. For example, early Indian Agents (later known as BIA superintendents) assigned to the reservations hired “boss farmers” to manage tribal agricultural operations. Some of these positions later evolved into extension agent positions under contract between the 1862 land grant university and the BIA.^{6,7} “Boss farmers” were a fixture on some reservations until sometime in the 1950s, and Contract Extension Agents were employed by the 1862 Land Grant universities and funded by BIA contracts.⁶ These particular contracts ended in the 1980s.⁸ This created a gap in Extension services for reservation populations, which tended to disillusion those in Indian Country.⁸

Political as well as administrative challenges from both Indian and non-Indian entities prevented actions being taken to remedy the inequity. In the mid-to-late 1980s, principals representing the Intertribal Agricultural Council and the Southwest Indian Agriculture Association, along with several interested and key university and USDA administrators, began making a case to resurrect Extension on reservations.^{7–10} The result was authorization and funding for the Extension Indian Reservation Program, which later became the FRTEP, in the 1990 Farm Bill. Initially, the program was intended to serve reservations as large as 200,000 acres or more with the potential for farming and ranching. Originally conceived with a \$10 million dollar annual budget in its first year, the program funded 12 offices in the first year with a total of \$1 million in USDA funding.

Funding the Extension Needs of Indian Country

As noted, conventional county-based Cooperative Extension has several funding partners. Although county extension nationally is experiencing shrinking public funding, the net resource base at the county, state, and federal levels for county extension is comparatively vast compared with that of Indian Country. States and counties are not involved in the FRTEP funding model. There are no counties on Indian reservations, and there is no equivalent local property tax base available for FRTEP support.³ The only minor exception is fee-simple lands (i.e., absolute private ownership) within reservation boundaries. Counties are allowed to tax fee-simple lands as if those lands were not on a reservation (discussed further below).

Currently, the FRTEP has 36 offices in 19 states and is supported by a budget of \$3 million (Figure 2). Many FRTEP single-person offices are tasked with serving multiple—sometimes dozens or scores—of individual tribes. Still minuscule, the FRTEP's budget and number of offices have both tripled in size over the course of 25 years. However, the program is actually worse off than at its inception. Twenty-five years later, the average funding has remained nearly constant in actual dollars, not accounting for inflation, and the per-office average budgets have shown zero growth over this period. The FRTEP is predominately 100% funded by a fluctuating USDA budget, which requires participation in a nationally competitive 5-year grant writing process. This puts the local FRTEP office in the unenviable (and completely unique) position of facing defunding every 5 years. Each FRTEP office competes with other FRTEP offices for federal base funding. This is not the case with county Extension offices. Cooperative Extension programs succeed because of community trust and sustained programming efforts within communities and because issues important to the local communities are addressed. The uncertainty of funds and competition between FRTEP agents limits their ability to perform the core tasks that have made Cooperative Extension so successful.

Capacity and Land Grant Responsibility, Without Formula Funding

The formula funding that supports county-based Cooperative Extension (and other land-grant programs such as the Agricultural Experiment Station) is driven, in part, by the number of farms and farmers in a state. The National Agricultural Statistics Service (NASS) works with counties to provide these data. Only recently has the NASS developed data for Indian Country in response to considerable pressure from tribes. As a result, the “count” for agriculture on reservations was either not done or, at best, severely underestimated. It remains a work in progress. As the result of a more recent development, spurred by political pressures, NASS data show a remarkably significant number of previously uncounted Indian farms and farmers. Congress has not yet directed the USDA to modify base formulas for land-grant work in the states, in light of these new data.

Accordingly, the FRTEP delivers programs supported not by appropriated base funding of any kind but rather by an extraordinarily high level of internally competitive grant writing.⁷ FRTEP agents have been very persistent over the programs 25-year tenure, as the agents provide successful 4H, Future Farmers of America, gardening, livestock, and noxious weed (as examples) services to tribal communities.¹¹ In their role of facilitating access to the breadth of agricultural services, FRTEP offices provide such things as pesticide applicator training and plant identification, as well as best practices in areas ranging from forage production, multispecies grazing, stocking rates, and holistic range management. FRTEP agents may have specialized areas of expertise in agricultural disciplines, but their principal role is to provide a doorway for access to necessary information and education through their 1862 colleagues and USDA partners. Beyond the tribal community, FRTEP agents often serve as advisees/liaisons to university and other state and federal personnel working or wanting to work in tribal communities.¹²

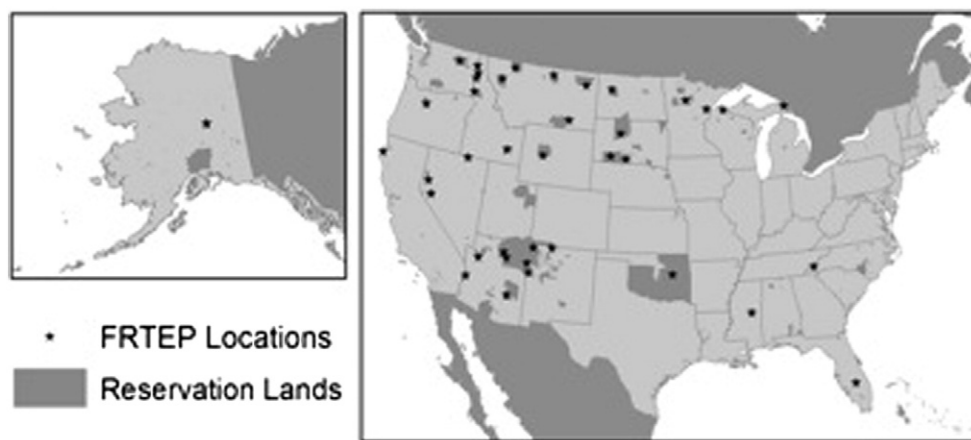


Figure 2. Map of Indian Reservations and Federally Recognized Trial Extension Program (FRTEP) offices in the United States. Geographic distribution obtained through the Indian Extension website (created by Joshua Meisel).¹¹

The challenge of creating a model for 1862 Land Grant Extension work in Indian Country remains. Classic Extension models are built on community-based professional educators being directly linked with supporting research and teaching functions at campuses and experiment stations. Tribal Colleges and universities are steadily developing their teaching, research, and extension capacities. A closer relationship between them and the 1862 Land Grants would probably benefit not only American Indians on reservations, but Extension as well as the entire Land Grant system. Although tribes continue to steward over 48 million acres of potential agricultural opportunities, lack of consistent and equitable access to funding, land tenure resolutions, human capital, and enterprise of technology hinders their ability to act.¹³

Lack of Extension agents to Indian Country can also be summed up in a quick comparison: the state of Arizona commits 75 FTEs to 15 counties, averaging five agents per county. Tribes “own” (discussed below) one-third of the land base in Arizona,¹⁴ and the FRTEP provides seven FTEs on five reservations, of a total 22, averaging 0.3 agents per reservation (Figure 3). Despite the disparity in Arizona’s FTEs in Indian Country, they are one of the better cases of Indian Country Extension work in the nation.

On a national level, there are 8987 extension FTEs supporting 3057 counties across the nation, averaging three agents per county in the United States.^{1,2} There are 314 reservations in the United States and 36 full-time FRTEP agents, averaging 0.1 agent per reservation. Realistically, to provide an equitable level of Extension services to reservations, the FRTEP will need to be staffed similar to traditional county Extension programs. To accomplish this, some have estimated that the FRTEP should be funded at approximately \$10–12 million/year.¹⁵

All troubles aside, FRTEP personnel and associated faculty have come to understand the issue of land tenure in Indian Country as a limiting factor in agricultural and economic development.¹³ Other issues, such as human subjects research

and institutional review board relations in Indian Country, have also been identified and developed by the FRTEP as pivotal for university work in Indian Country.¹² Knowledge of land ownership histories is essential in conventional range management scenarios and just as important in Indian Country. A primer on the key issues that are embedded in range management work on America’s Indian Reservations is presented below.

Land Tenure and Agriculture on Indian Reservations

There are 567 federally recognized tribes in the United States, and over 314 federally recognized Indian reservations. “Tribe” is both an ethnologic term and a legal term. American Indians are Indigenous peoples. Other Indigenous populations in the United States, such as Native Hawaiians, have a different legal relationship with the US government. Tribes have a legal co-sovereign relationship with the United States, driven by treaties many tribes signed. These treaties created a special relationship with the US government and politically set tribes apart from other indigenous groups, such as Native Hawaiians and Alaskan Natives. Not all tribes have reservations. Tribes have the right of occupancy to the land, but they do not own it, and it is held in trust by the federal government for the tribes.¹⁶ Reservations are land areas set aside by treaty, Acts of Congress, or Executive Orders. To the casual observer, a glance at a map of Indian Country would suggest that reservations are great opportunities for landscape-scale agriculture and range management activities. Nothing could be farther from reality.

There are several types of land status on reservations; and land status directly impacts agriculture, natural resources, and economic development. Beginning with the General Allotment (or Dawes) Act of 1887, lands were issued to individual Indians as allotments but remained in federal title. Allotted lands can pass from one generation to the next but only as undivided interests, not as discreet land parcels. As a result,



Figure 3. Number of full-time employees (FTEs) per reservation in Arizona. This chart is ranked from high to low, from left to right, using percentage of reservation land (created by Joshua Meisel).

most allotted land now has up to several hundred successors/undivided individual interest holders. The ownership of the land is commonly referred to as *fractionated* (Figure 4). Land management, even on small parcels, can be exceedingly complicated because of fractionated heirship.

Many reservations have within their exterior boundaries high percentages of land held in fee-simple title. Once all adult Indians had received allotments under the Dawes Act, unissued lands were declared as surplus by the Indian Agent, converted to fee land, and sold to individuals. Buyers were not required to be Indian. The fee lands are subject to state and county taxes, whereas trust lands, as part of the federal estate, are not.¹⁷ Finally, other non-fee lands on reservations are held in trust by the US government, for the benefit of the American Indian people and is known as *tribal trust land*. American Indian tribes can purchase and hold title to private fee-simple lands off or on reservation for various reasons, such as business ventures. To make an attempt at simplifying this cumbersome land tenure history, the Indian Land Tenure Foundation, a national nonprofit organization with the sole purpose of resolving these issues, states:

As a result of the General Allotment Act of 1887 (also called the Dawes Act), 90 million acres of Indian land—nearly two-thirds of the total Indian land base—were taken out of

Indian ownership and control. From 1887 to 1934, 60 million acres of “surplus” Indian lands were sold or transferred to non-Indians, and another 30 million acres were lost due to the 1906 Burke Act, forced sales and other takings. All of these alienated Indian lands remained within reservation boundaries but were no longer under Indian ownership and control. In the end, land that had been held in common by the entire tribe was now divided into a jumbled mix of trust lands, fee lands, and lands owned by the tribe, individual Indians, and non-Indians.¹⁸

The land tenure issue in Indian Country is unique and complex and is the underlying reason for the often-meager agricultural, natural resources and economic development initiatives seen on many reservations. The BIA, as the lead trust agent for tribes, however, has a wide range of responsibilities and authorities. Generally, tribes have either the BIA or tribal variations of natural resources departments, which deal with agriculture, range, forestry, and wildlife management issues, to name a few. The Indian Self Determination Act of 1974 began allowing tribes to contract with the US government to provide services for itself, such as agriculture management, which are part of the trust responsibility normally executed by the BIA. For example, a range-dependent landowner will end up working with the BIA, the tribe, other

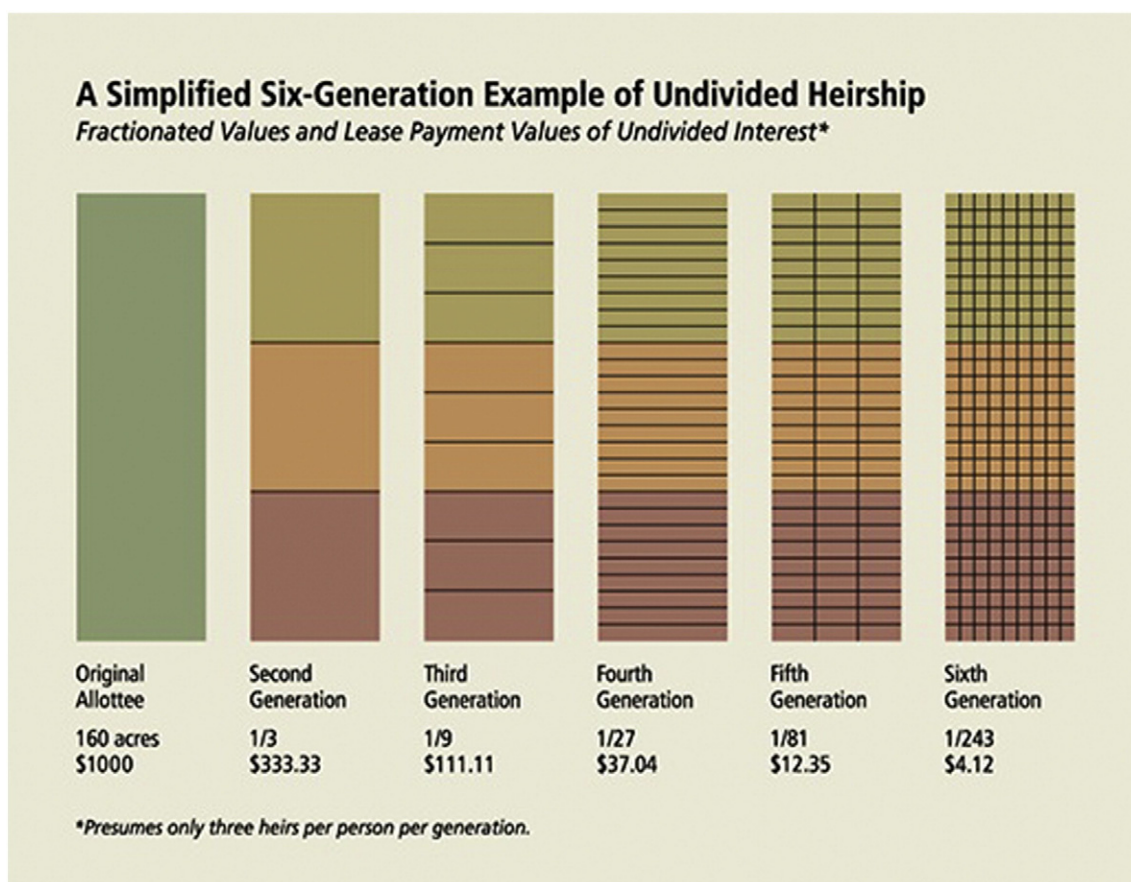


Figure 4. Simplified version of fractionation. (Courtesy of Indian Land Tenure Foundation: <https://www.iltf.org/land-issues/fractionated-ownership>).¹⁸

landowners and landlords of fee-simple land, and fractionated interest holders to accomplish management objectives. Very few natural resources professionals and those who are new to working those disciplines in Indian Country understand this complex history and current processes. The FRTEP is tasked with thoroughly understanding this operating environment.

The following section details significant laws and court decisions to demonstrate the underlying complexity that FRTEP agents work within when dealing with agriculture in Indian Country.

Key Legislation and Court Decisions

The American Indian Probate Reform Act of 2004 helped to end fractionation. For example, if trust or restricted land was passed from generation to generation intestate (without a legal will), it was subject to state probate laws (if the tribe had no probate code).¹⁹ However, after the passing of the American Indian Probate Reform Act, State probate courts no longer have jurisdiction in the probate of trust or restricted Indian lands. Interested owners now have the ability to consolidate current fractionated lands and reduce the persisting effects of fractionation. The positive impact of consolidation is the enhanced opportunity for focused management as a result of the dramatically reduced number of owners.

The Cobell Settlement (Claims Resolution Act of 2010) resulted from a class action lawsuit against the Department of Interior, specifically the BIA, for incorrect handling of accounts known as Individual Indian Money accounts. Eloise Cobell, a member of the Blackfeet Nation in Montana, filed as lead plaintiff for an accurate accounting.²⁰ Incomes to the Individual Indian Money accounts come from land leases, rentals, and royalties from land/allotments held in trust for individual Indians by the federal government. The US government negotiated a settlement in an unprecedented \$3.4 billion dollar award. The award set aside \$1.4 billion in damages to individual Indians and \$2 billion to a "Trust Consolidation Fund," or "Land Buy-Back Program" (LBBP).²¹

The LBBP's goals are to purchase, at fair market value, "fractional interests in trust or restricted land from willing sellers," and the consolidated interests are then "restored to tribal trust ownership for uses benefiting the tribal community."²² The current geographic focus of the LBBP is on those tribes in the northern Great Plains, for example, South Dakota, whose lands were heavily impacted by fractionation.²² Through the LBBP, tribes are transitioning from induced individual ownership status (via the Dawes Act) to land held in common.

A settlement of \$760 million was negotiated with the USDA in the *Keepseagle v. Vilsack* class action lawsuit.²³ The lawsuit claimed that the USDA discriminated against American Indians by denying them equal access to credit in the USDA Farm Loan Program. The lawsuit claims that the USDA denied thousands of American Indian farmers and ranchers the same opportunities to get farm loans or loan services that were given to non-Indians and ranchers. Plaintiffs also claimed that the USDA did not do adequate outreach, a requirement of the federally funded programs, to

American Indian farmers and ranchers or provide them with the technical assistance they needed to prepare applications for loans and loan servicing.²³ A distribution of approximately \$380 million was made to plaintiffs; the remaining settlement funds are currently held in a trust account until such time as the federal district court rules on their disposition.

Keepseagle reminds those of us who work in Indian Country, and informs those who do not, that access to operating capital has never been on par with non-Indians/off-reservation farmers. Bankers are reluctant to underwrite loans where collateral is scarce (i.e., non-fee land held in federal trust) or cannot be attached as collateral. The USDA became the lender of last resort, and it failed to adequately serve American Indian farmers and ranchers. Many federal agencies have not historically been active on reservations, commonly resorting to servicing only fee-simple landowners. Although they are not directly discriminatory, their administrative guidance often do not allow work (design work, cost-share programs, loans) with owners of restricted (trust) lands. Legal authorities are in need of change, which will allow the full breadth of program access to all Indian landowners. One can easily see how Cooperative Extension, as the educational arm of the USDA, has been left out of the suite of USDA services to Indian Country, hence the creation of and the need for the FRTEP.

So, Why Should You Care?

Clearly, the history of agriculture (and, by association, natural resources development) in Indian Country is different from that in non-Indian Country.⁵ Tribes and reservations were both encouraged and compelled by the US government to participate in agricultural development and yet were paralyzed by land tenure issues, among other things. Access to contemporary research-based agricultural education in the form of extension services has never been adequate, never been present in many cases, and has never been as robust in Indian Country as it has in neighboring counties.

Land in Indian Country has a compelling, muddled, and complex history, which is beginning to change ever so slowly. As a result, range, natural resources, and agriculture opportunities have a brighter future. The FRTEP has played a significant, if low profile and local, role in educating tribal members and the larger public at universities, as well as state and federal agencies on the intricacies of working within the nexus of Indian Country.

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Authors are Assistant Professor, Environmental Studies, the University of Kansas, Lawrence, Kansas 66045 (Brewer; joseph.brewer@ku.edu); Professor Emeritus, College of Agriculture and Life Sciences, The University of Arizona, Tucson, AZ 85721 (Hiller); Native American Extension Program Director, South Dakota State University, Rapid City, SD 57702 (Burke); and Director of Tribal Extension Programs and Ag Econ Extension Specialist, The University of Arizona, Tucson, AZ 85721 (Teegerstrom).